

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC) Docket Nos. CP15-554
Dominion Energy Transmission, Inc.) CP15-555

**MOTION TO SUPPLEMENT ENVIRONMENTAL IMPACT STATEMENT
BY
ALLIANCE FOR THE SHENANDOAH VALLEY, APPALACHIAN VOICES,
CHESAPEAKE BAY FOUNDATION, INC., CHESAPEAKE CLIMATE ACTION
NETWORK, COWPASTURE RIVER PRESERVATION ASSOCIATION, FRIENDS
OF BUCKINGHAM, FRIENDS OF NELSON, HIGHLANDERS FOR RESPONSIBLE
DEVELOPMENT, PIEDMONT ENVIRONMENTAL COUNCIL, SHENANDOAH
VALLEY BATTLEFIELDS FOUNDATION, SIERRA CLUB, SOUND RIVERS, INC.,
VIRGINIA WILDERNESS COMMITTEE, WILD VIRGINIA, INC., AND WINYAH
RIVERS FOUNDATION**

Pursuant to Rules 202 and 212 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure¹ and 40 C.F.R. § 1502.9(c), Alliance for the Shenandoah Valley, Appalachian Voices, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Cowpasture River Preservation Association, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Sierra Club, Sound Rivers, Inc., Virginia Wilderness Committee, Wild Virginia, Inc., and Winyah Rivers Foundation (collectively, “Conservation Groups”) request that the Commission supplement its Environmental Impact Statement (“EIS”) for the Atlantic Coast Pipeline and Supply Header Project (collectively, “ACP”) to address significant new information bearing on the ACP’s environmental impacts.²

¹ 18 C.F.R. §§ 385.202, 385.212.

² The Commission granted Conservation Groups’ respective motions to intervene in these proceedings. *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, ¶ 19 (2017).

With a projected cost of \$8 billion and a path that traverses federally protected lands, steep landslide-prone mountains, and environmental justice communities, the ACP would be one of the nation’s most expensive gas pipelines—and one of its most destructive. A poorly designed route and rushed permitting process have led to the vacatur or withdrawal of eight different permits for the pipeline,³ and construction has been halted since December 2018, when the Fourth Circuit stayed the project’s Biological Opinion.⁴ In January 2020, Virginia—the site of over half of the ACP’s proposed route—told the Supreme Court that in light of the mounting evidence that the pipeline is not needed, the ACP threatens Virginia’s natural resources without clear corresponding benefits.⁵

Meanwhile, the ACP’s path remains uncertain as federal agencies revisit their authorizations of the project, including consideration of alternative routes. The U.S. Forest Service must reconsider whether the project can reasonably be accommodated off of national

³ See Letter from Angela M. Woodard, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Nov. 21, 2018) (eLibrary No. 20181121-5094) (**Exhibit A**) (notifying Commission that U.S. Army Corps of Engineers’ Norfolk, Pittsburgh, and Wilmington Districts have suspended ACP’s Nationwide Permit 12 verifications); *Cowpasture River Pres. Ass’n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018), *cert. granted* (Oct. 4, 2019) (Nos. 18-1584, 18-1587) (vacating Forest Service Special Use Permit and Record of Decision); Order, *Sierra Club v. U.S. Dep’t of the Interior*, No. 18-2095 (4th Cir. Jan. 23, 2019), ECF No. 51 (granting National Park Service’s request to vacate and remand Construction and Right-of-Way permits); Order, *Sierra Club v. U.S. Army Corps of Eng’rs*, No. 18-1743 (4th Cir. Jan. 25, 2019), ECF No. 67 (granting U.S. Army Corps of Engineers Huntington District’s request to vacate and remand Nationwide Permit 12 verification); *Def. of Wildlife v. U.S. Dep’t of the Interior*, 931 F.3d 339 (4th Cir. 2019) (vacating second Biological Opinion and Incidental Take Statement); *Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68 (4th Cir. 2020) (vacating Clean Air Act permit for Buckingham Compressor Station).

⁴ See Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Dec. 11, 2018) (eLibrary No. 20181211-5109) (**Exhibit B**).

⁵ See Br. Amicus Curiae of Virginia in Supp. of Resp’ts 4–9, *U.S. Forest Serv. v. Cowpasture River Pres. Ass’n*, No. 18-1584 (U.S. Jan. 22, 2020), <https://bit.ly/3gzK8RI> (“Virginia Amicus Br.”).

forestlands,⁶ while the National Park Service is still reviewing whether it can authorize the pipeline's proposed crossing of the Blue Ridge Parkway.⁷

Critically, new information arising since the Commission issued its EIS for the ACP in July 2017⁸ presents a seriously different picture of the project's available alternatives and environmental impacts than the one considered by the Commission:

- Alternatives. The region's energy future has undergone a dramatic shift away from gas-fired power generation while the ACP's projected cost has ballooned and its timeline has been pushed back, compelling the Commission to revisit its consideration of alternatives.⁹
- Vulnerable Species. Surveys have documented multiple new occurrences of the endangered rusty-patched bumble bee along the ACP route, and the U.S. Fish and Wildlife Service ("FWS") has proposed critical habitat for the newly listed candy darter (endangered) and yellow lance (threatened) in streams that the pipeline would cross.¹⁰
- Water Quality. Well-documented landslides and sedimentation problems along the ACP's steep terrain, combined with the rollback of federal water protections relied on by the Commission, indicate that the project's impacts to water quality would be more substantial than previously analyzed.¹¹
- Environmental Justice. The Commonwealth of Virginia and Atlantic Coast Pipeline, LLC ("Atlantic") have now recognized the existence of a minority environmental justice population in Union Hill, Virginia, neighboring the ACP's proposed Buckingham Compressor Station.¹²

⁶ *Cowpasture*, 911 F.3d at 168.

⁷ Fed. Resp'ts' Unopposed Mot. for Voluntary Remand at 1, 5–6, *Sierra Club*, No. 18-2095 (4th Cir. Jan. 1, 2019), ECF No. 50.

⁸ The analysis in the Commission's EIS is the subject of petitions for review pending in the D.C. Circuit. *Atl. Coast Pipeline, LLC v. FERC*, Nos. 18-1224 et al. (D.C. Cir.).

⁹ See Section II.A.

¹⁰ See Section II.B.

¹¹ See Section II.C.

¹² See Section II.D.

- Climate Change. Scientific understanding about the anticipated impacts of climate change, both globally and in the area of the ACP, has expanded dramatically since the publication of the EIS.¹³
- Cumulative Impacts. The majority of the ACP's construction is now anticipated to occur between 2020 and 2021 alongside newly proposed area projects whose cumulative impacts the Commission never considered.¹⁴

In light of this substantial new information, the Commission's prior environmental review of the ACP is stale and fails to address significant effects of the project. The ACP is far from complete—less than 6% of the 604-mile pipeline has been installed¹⁵—and cannot be completed without further action by the Commission, including a decision whether to extend the ACP's construction and in-service deadline of October 2020. As such, the National Environmental Policy Act (“NEPA”) requires the Commission to analyze new information and to disclose its analysis for public review. With this motion, Conservation Groups request that the Commission supplement the EIS to address the new information, circulate the supplemental EIS for public comment,¹⁶ and stay its certificate of public convenience and necessity for the ACP pending finalization of the supplemental EIS.

ARGUMENT

I. The Commission Has a Duty Under NEPA to Consider New Information Because There Is Remaining Federal Action and a Meaningful Opportunity to Weigh the Adverse Environmental Impacts of the Project.

The Commission's NEPA obligations do not end with issuance of an EIS, preventing the Commission from putting on “blindfolders to adverse environmental effects.”¹⁷ So long as

¹³ See Section II.E.

¹⁴ See Section II.F.

¹⁵ Harry Weber, *Dominion Confident It Will Win Atlantic Coast Pipeline Legal Challenges*, S&P Global Platts (June 11, 2019), <https://bit.ly/2kJr5Md>.

¹⁶ See 40 C.F.R. § 1502.9(c)(4).

¹⁷ *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989).

there is “remaining government action [that] would be environmentally significant” and the Commission still has “a meaningful opportunity to weigh the benefits of the project versus the detrimental effects on the environment,” the Commission has a continuing duty to supplement its environmental analysis.¹⁸

Unmistakably there is remaining action by the Commission that would be environmentally significant. Construction of the pipeline has been halted since December 2018 and multiple agency approvals remain outstanding. Even if Atlantic secures these missing permits, the Commission must issue orders authorizing construction before Atlantic can resume building the pipeline.¹⁹ Because the ACP’s developers have indicated that construction will last until at least the end of 2021,²⁰ the Commission must also decide whether to extend the October 13, 2020 deadline it imposed on Atlantic to complete construction and place the pipeline into service.²¹ And even after issuing such orders, the Commission would retain stop-work authority over the project for the duration of construction.²² Authorizing construction along nearly 570 miles of the proposed route, extending the duration of such construction, and retaining stop-work authority all constitute “government action [that] would be environmentally significant.”²³

¹⁸ *Id.*; see also *Norton v. S. Utah Wilderness All.*, 542 U.S. 55 (2004).

¹⁹ See *Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, App. A ¶ 10 (2017) (“Certificate Order”).

²⁰ See Dominion Energy, Q4 2019 Earnings Call 24 (Feb. 11, 2020), <https://bit.ly/2zcrePF> (**Exhibit C**).

²¹ See Certificate Order at 129.

²² *Id.* App. A ¶ 2.

²³ *Marsh*, 490 U.S. at 372.

Further, with only 35 miles of the pipeline in the ground,²⁴ almost 570 miles of the project must still be constructed, requiring tree-felling, trenching, blasting through mountaintops, and installing pipe. Over 365 miles of the proposed route are still in approximately the same condition as the day the Commission issued the EIS nearly three years ago.²⁵ The Commission’s opportunity to weigh the purported benefits of the project against the adverse environmental impacts is as meaningful now as it was when the Commission issued the EIS three years ago.

II. Significant New Information Requires Supplementation of the EIS.

For an environmental impact statement to serve its two main functions—informing agency decision-making and disclosing environmental impacts to the public²⁶—its analysis must be based on accurate, up-to-date information. As a result, an agency must supplement its environmental impact statement where there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”²⁷

Since the July 2017 issuance of the EIS, the energy landscape of the region the ACP would serve has transformed dramatically, while the costs of the project have ballooned and its timeline has been pushed back. Meanwhile, significant new information has arisen regarding the project’s impacts on endangered and threatened species, water quality, environmental justice communities, and climate change, presenting “a seriously different

²⁴ Weber, *supra*.

²⁵ See Interim Right-of-Way and Work Area Stabilization Plan 2, Dkt. Nos. CP15-554 et al. (Dec. 19, 2018) (eLibrary No. 20181219-5240) (**Exhibit D**).

²⁶ See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

²⁷ 40 C.F.R. § 1502.9(c)(1)(ii).

picture of the environmental impact of the proposed project from what was previously envisioned.”²⁸

A. Significant Shifts in the Region’s Energy Landscape and Changes to the ACP’s Cost, Timeline, and Environmental Impacts Merit Reexamination of the Commission’s Alternatives Analysis.

Consideration of alternatives “is the heart of the environmental impact statement.”²⁹

When there is “an alternative which is not a variation of the proposal or of any alternative discussed in the [] impact statement, and [it] is a reasonable alternative that warrants serious agency response ... the agency must issue a supplement to the [] EIS that discusses this new alternative.”³⁰ A supplemental EIS is also required where new circumstances reopen for consideration alternatives previously rejected.³¹

The EIS identified the ACP’s stated purpose as:

- to serve the growing energy needs of multiple public utilities and local distribution companies in Virginia and North Carolina by using the natural gas to generate electricity for industrial, commercial, and residential uses;
- to provide natural gas for direct residential, commercial, and industrial uses;
- to increase the reliability and security of natural gas supplies in Virginia and North Carolina; and
- to provide access to a low cost supply hub with a large volume of transactions characterized by multiple buyers and sellers.³²

²⁸ *Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 443 (4th Cir. 1996).

²⁹ 40 C.F.R. § 1502.14.

³⁰ Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, 46 Fed. Reg. 18,026, 18,035 (Mar. 23, 1981).

³¹ *See Alaska Wilderness Recreation & Tourism Ass’n v. Morrison*, 67 F.3d 723, 730 (9th Cir. 1995) (finding cancellation of timber contract that had limited range of reasonable alternatives required supplemental EIS); *see also Friends of Capital Crescent Trail v. FTA*, 877 F.3d 1051, 1061 (D.C. Cir. 2017) (citing *Alaska Wilderness* for holding that “a basic change that undercut[s] the rationale upon which the agency action depended” would require a supplemental EIS).

³² FERC, Final Envtl. Impact Statement 1-2, Dkt. Nos. CP15-554 et al. (July 2017) (eLibrary No. 20170721-4000), <https://bit.ly/2TSVuWP> (“EIS”); *see also id.* at 3-2 (stating purpose as

The EIS concluded that no economically practical alternatives existed that could meet this purpose within a similar timeframe and at a significant environmental advantage.³³

Since the Commission issued the EIS in 2017, the demand for natural gas has declined while the supply of gas in Virginia and North Carolina from low-cost supply hubs has increased.³⁴ Meanwhile, Atlantic’s construction and in-service timelines have been pushed back by at least two years, the cost of the project has grown by 60%, and the pipeline’s environmental impacts have become more significant than previously envisioned.³⁵ These new circumstances undermine the Commission’s rationale in dismissing alternatives to the ACP, requiring the Commission to reevaluate alternatives it previously rejected as untimely, economically impractical, or not environmentally superior in a supplemental EIS. That reevaluation would likely lead the Commission to conclude that the project is no longer needed and should be abandoned, or that a less-damaging pipeline with a smaller environmental footprint would better meet current needs.

1. Natural gas demand in the area to be served by the ACP has declined considerably since 2017.

According to the EIS, Atlantic anticipated that nearly 80% of the gas transported by the ACP would be used as fuel at power plants to meet growing energy demand.³⁶ To the extent demand for energy in Virginia and North Carolina was “growing” in 2017,³⁷ that is no

providing transportation of 1.44 billion cubic feet per day (“Bcf/d”) of natural gas to consuming markets).

³³ *Id.* at 5-38 to 5-39.

³⁴ *See* Sections II.A.1, 2.

³⁵ *See* Sections II.A.3–5.

³⁶ EIS 1-3.

³⁷ *Id.* at 1-2.

longer the case in 2020.³⁸ The project’s developers—Dominion Energy and Duke Energy, whose subsidiaries have contracted for 86% of the ACP’s capacity—have revised downward the demand forecasts that informed the Commission’s 2017 analysis. Dominion was forced to lower its forecasts after they were rejected by the Virginia State Corporation Commission in 2018 as “consistently overstated ... with high growth expectations despite generally flat actual results each year.”³⁹ Duke Energy’s most recent estimate of energy needed in 2025 is 13% lower than its estimate from 2012.⁴⁰ These revisions were consistent with the U.S. Energy Information Administration’s recent projection that demand for natural gas for electricity generation in the South Atlantic region⁴¹ will decline from 2021 to 2030 and will not return to 2021 levels until the late 2040s.⁴²

The Commission’s alternatives analysis must also be updated to reflect the requirements of the recently enacted Virginia Clean Economy Act (“VCEA”) and North Carolina’s Clean Energy Plan, which call for zero carbon emissions from the power sector by 2045 and 2050, respectively. Through the VCEA, Virginia joined the Regional Greenhouse

³⁸ See Virginia Amicus Br. at 2 (arguing that “claims the [ACP] is necessary to address an unmet and growing demand for natural gas in Virginia and North Carolina ... do not withstand scrutiny”).

³⁹ *In re Va. Elec. & Power Co.’s Integrated Res. Plan filing*, 2018 WL 6524202, at *5 (Va. SCC Dec. 7, 2018).

⁴⁰ Compare Duke Energy Carolinas Integrated Res. Plan 27, Dkt. E-100, Sub 137 (NCUC Sept. 1, 2012), <https://bit.ly/2UHkK3b> (**Exhibit E**), and Progress Energy Integrated Res. Plan 9, Dkt. E-100, Sub 137 (NCUC Sept. 4, 2012), <https://bit.ly/346RqpX> (**Exhibit F**) (estimating demand for combined 186,300 gigawatt hours of energy in 2025), with Duke Energy Carolinas Integrated Res. Plan Update Report 15, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2yF2bEy> (**Exhibit G**), and Duke Energy Progress Integrated Res. Plan Update Report 16, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2RbaHRT> (**Exhibit H**) (estimating demand for 161,904 gigawatt hours of energy in 2025).

⁴¹ The South Atlantic region includes Virginia and North Carolina, the ACP’s service area.

⁴² U.S. Energy Info. Admin., *Annual Energy Outlook 2020*, <https://bit.ly/3etFd2p> (last visited May 28, 2020) (**Exhibit I**).

Gas Initiative, requiring Dominion to achieve a 30% reduction in carbon emissions by 2030.⁴³ By 2045, the VCEA requires Dominion to retire all remaining natural-gas fired power plants and produce 100% of its electricity from renewable sources.⁴⁴ In response to the VCEA, Dominion recognized that “significant build-out of natural gas generation facilities is not currently viable”⁴⁵ and reduced its proposed natural gas expansion to between 46% and 81% of its earlier proposals.⁴⁶ North Carolina’s Clean Energy Plan similarly calls for North Carolina utilities to achieve carbon-neutral electric production by 2050.⁴⁷

2. Newly proposed projects would substantially increase the region’s supply of natural gas.

In addition to decreasing demand, there are newly proposed natural gas projects that, if built, would be in the vicinity of the ACP.⁴⁸ As proposed, Virginia Natural Gas’s Header

⁴³ H.B. 1526, Gen. Assemb., Reg. Sess. (Va. 2020), <https://bit.ly/3exe3aS>.

⁴⁴ *Id.* Dominion may petition to keep a power plant online for reliability purposes; in evaluating such a request, the State Corporation Commission would consider not only the power plants in Dominion’s fleet but all the power plants in the regional electrical transmission grid. *See id.*

⁴⁵ Va. Elec. & Power Co.’s Mot. for Relief from Certain Requirements ¶ 9, Case No. PUR-2020-00035, *In re Va. Elec & Power Co.’s Integrated Res. Plan filing* (Va. SCC Mar. 24, 2020), <https://bit.ly/2zDYxeD> (**Exhibit J**).

⁴⁶ *Compare* Va. Elec. & Power Co.’s Integrated Res. Plan 14–15, Dkt. No. E-100, Sub 147 (Va. SCC May 1, 2017), <https://bit.ly/2ZKOn6I> (**Exhibit K**), *and* Va. Elec. & Power Co.’s Integrated Res. Plan 11–12, Dkt. No. E-100, Sub 157 (Va. SCC May 1, 2018), <https://bit.ly/3c5H5Ni> (**Exhibit L**) (proposing 1,800 to 5,300 megawatts (“MW”) of potential gas generation by 2032 and 2033), *with* Va. Elec. & Power Co.’s Integrated Res. Plan 28-30, Dkt. No. E-100 Sub 165 (Va. SCC May 1, 2020), <https://bit.ly/2U3eORx> (**Exhibit M**) (proposing no more than 970 MW of “placeholder” additional generation).

⁴⁷ *See* N.C. Dep’t of Env’tl. Quality, Clean Energy Plan 12 (Oct. 2019), <https://bit.ly/3evSnMC> (**Exhibit N**).

⁴⁸ *See* EIS 3-6 (considering “major natural gas transportation projects proposed in the general vicinity of ACP” in system alternatives analysis). Conservation Groups do not concede the need for or acceptability of these projects. As a factual matter, they are relevant to the Commission’s review of potential alternatives to the ACP.

Improvement Project would provide over 0.4 Bcf/d to customers in Virginia,⁴⁹ while the Southeastern Trail project would supply an additional 0.3 Bcf/d to the Southeast, including Virginia.⁵⁰ The MVP Southgate Project would deliver 0.375 Bcf/d of new firm capacity in North Carolina.⁵¹ And the Robeson LNG plant would represent a 1 billion-cubic-foot liquefied natural gas peaking and storage facility in North Carolina.⁵² Each of these four projects is proposed to be completed within a timeframe similar to the ACP's, with the Southeastern Trail and Robeson LNG projects expected to be operational before the ACP.⁵³ These projects are in addition to recently completed projects that have further increased the region's access to low-cost supply hubs well beyond what was available in 2017.⁵⁴

3. The ACP's projected cost has increased by 60% since 2017.

Since 2017, the projected cost of the ACP has increased from \$5 billion to \$8 billion, making it one of the nation's most expensive gas pipelines.⁵⁵ This is significant new information considering that the Commission rejected alternatives it deemed "economically impractical,"—*i.e.*, alternatives that would not "result in an action that generally maintains

⁴⁹ See Appl. of Va. Nat. Gas at 1, Case No. PUR-2019-00207 (Va. SCC Dec. 6, 2019), <https://bit.ly/2XHC9sI> (**Exhibit O**).

⁵⁰ See *Transcontinental Gas Pipe Line Co., LLC*, 169 FERC ¶ 61,051, at ¶¶ 1, 7 (2019).

⁵¹ See Appl. of Mountain Valley Pipeline, LLC at 2, 9, Dkt. No. CP19-14 (Nov. 6, 2018) (eLibrary No. 20181106-5159) (**Exhibit P**).

⁵² See *Robeson Liquefied Natural Gas*, Piedmont Nat. Gas, <https://bit.ly/3caQD9J> (last visited May 28, 2020) (**Exhibit Q**).

⁵³ See *Transcontinental*, 169 FERC ¶ 61,051, at 41 (setting in-service deadline of October 2021); Piedmont Nat. Gas (estimating summer 2021 completion).

⁵⁴ See *Transcontinental Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at ¶¶ 1, 11 (2017) (Atlantic Sunrise project adding 1.7 Bcf/d from Marcellus to mid-Atlantic and Southeast markets); *Columbia Gas Transmission, LLC*, 161 FERC ¶ 61,200, at ¶ 9 (2017) (WB Xpress project adding 1.3 Bcf/d from Marcellus to West Virginia and Virginia markets).

⁵⁵ See Scott DiSavino, *Dominion Confirms \$8bln Atlantic Coast Natgas Pipe Cost, Early 2022 In Service*, Reuters (May 5, 2020), <https://reut.rs/2M3cmpE>.

the price competitive nature of the proposed action.”⁵⁶ Alternatives deemed economically impractical as compared with a \$5 billion project may well be considered practical as compared with an \$8 billion project. The projected costs of the new projects discussed in Section II.B.2 are significantly below the ACP’s \$8 billion; for example, Transco expects its Southeastern Trail expansion to cost \$404.8 million.⁵⁷

4. The ACP’s construction timeframe has been delayed by a minimum of two years.

The Commission also rejected alternatives that would not meet Atlantic’s planned construction timeframe,⁵⁸ which required “plac[ing] the projects in service by the fourth quarter 2019.”⁵⁹ Due to significant delays, the ACP—if built—will now not be placed into operation before 2022.⁶⁰ Accordingly, reasonable alternatives that the Commission rejected as untimely, or that have since been disclosed, may meet or surpass Atlantic’s new anticipated in-service date.

5. New information indicates that the environmental impacts of the ACP would be more significant than previously understood.

The Commission rejected numerous alternatives where modifications “could result in impacts similar to those of the proposed project.”⁶¹ Because the environmental impacts of the ACP would likely be more significant than previously disclosed,⁶² alternatives otherwise

⁵⁶ EIS 5-38, 3-1.

⁵⁷ See *Transcontinental*, 169 FERC ¶ 61,051, at ¶ 8.

⁵⁸ EIS 3-5.

⁵⁹ *Id.* at ES-2.

⁶⁰ See Dominion Energy, Q1 2020 Earnings Call Presentation 23 (May 5, 2020), <https://bit.ly/2ArFu7f> (**Exhibit R**).

⁶¹ EIS 5-38.

⁶² See Section II.B.

rejected as environmentally similar or inferior may now offer a significant environmental advantage.

6. Together, these new circumstances warrant reevaluation of alternatives to the ACP.

These new circumstances open for consideration numerous alternatives that were not previously evaluated in the EIS or were otherwise rejected based on now-outdated information.⁶³

The Commission must reassess against the ACP's new baselines the alternatives it previously rejected as unable to meet the region's energy needs, not within ACP's timeframe, economically impractical, or environmentally inferior.⁶⁴ The significant decrease in gas demand indicates there may be alternative ways to fulfill any remaining energy needs that would have a smaller environmental impact. Even Atlantic has acknowledged since the issuance of the EIS that it could get a majority of its 2017 capacity needs from the Transco and Columbia pipeline systems, with significantly less construction than would be required for the full ACP.⁶⁵ Included in the Commission's reevaluation should be alternatives rejected because they could not reach Atlantic's specified delivery points;⁶⁶ some of those delivery points may have changed due to the region's changed energy landscape, allowing the selection of a less environmentally damaging route. The Commission must also consider

⁶³ See *Alaska Wilderness*, 67 F.3d at 730; *Friends of Capital Crescent*, 877 F.3d at 1061.

⁶⁴ See EIS § 3.0.

⁶⁵ See Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, 3, Dkt. Nos. CP15-554 et al. (Aug. 13, 2018) (eLibrary No. 20180813-5065) (**Exhibit S**); Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, 2, Dkt. Nos. CP15-554 et al. (Aug. 15, 2018) (eLibrary No. 20180815-5047) (**Exhibit T**).

⁶⁶ See EIS 3-4.

whether projects identified in Section II.A.2 could meet the reduced demand for gas and “make it unnecessary to construct all or part of the [ACP].”⁶⁷

B. Significant New Information and Circumstances Related to Impacts on Endangered and Threatened Species Necessitate Supplementation.

Since publication of the EIS, significant new circumstances and information have developed regarding the ACP’s impacts on three species protected under the Endangered Species Act (“ESA”): rusty-patched bumble bee (“RPBB”), candy darter, and yellow lance. The “degree to which [an] action may adversely affect an endangered or threatened species or its [critical] habitat” is relevant under NEPA.⁶⁸ Since issuance of the EIS, multiple endangered rusty-patched bumble bees have been found along the pipeline’s route; the candy darter and yellow lance, two species in the ACP’s path, have been newly listed as endangered and threatened, respectively; and FWS has proposed critical habitat along the pipeline route for both newly listed species. Based on this new information, the project is likely to have more severe adverse impacts on these species than disclosed in the EIS. Once properly assessed, the severity of impact may lead the Commission to reach a different determination regarding the harm to be inflicted on these species from construction of the ACP and the necessity of rerouting the project.

Although the ACP has been subject to ongoing consultation under Section 7 of the ESA, the Commission cannot treat that process as a substitute for NEPA compliance.⁶⁹ There are at least two distinct differences between the ESA’s consultation process and

⁶⁷ *Id.*

⁶⁸ 40 C.F.R. § 1508.27(b)(9).

⁶⁹ *See San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 650 (9th Cir. 2014) (“We cannot say that Section 7 of the ESA renders NEPA ‘superfluous’ when the statutes evaluate different types of environmental impacts through processes that involve varying degrees of public participation.”).

NEPA’s environmental review. First, “the ESA Section 7 consultation process does not define cumulative impacts in the same way that NEPA does.”⁷⁰ Whereas the cumulative impacts analysis under the ESA focuses on non-federal actions within the action area,⁷¹ the cumulative impacts analysis under NEPA includes federal actions and is not limited by the ESA concept of “action area.”⁷²

Second, “the ESA’s Section 7 consultation process fails to provide for public comment in the same way that NEPA does.”⁷³ If anything, new information revealed through the Section 7 process underscores the need for additional NEPA analysis informed by public comment.

1. New information reveals that the pipeline will more significantly impact the endangered rusty-patched bumble bee.

When the Commission issued its EIS in July 2017, it determined that “[c]onstruction activities associated with ACP and SHP are not expected to impact individual rusty patched bumble bees” and that while “FWS has identified ‘high potential zones’ around ... records where the species is most likely to be present ... neither ACP nor SHP intersect a high

⁷⁰ *Fund for Animals v. Hall*, 448 F. Supp. 2d 127, 136 (D.D.C. 2006).

⁷¹ See 50 C.F.R. § 402.02 (defining “cumulative effects” under ESA).

⁷² See 40 C.F.R. § 1508.7 (defining “cumulative impact” under NEPA); 50 C.F.R. § 402.02 (defining “action area” for ESA purposes). A recent example from FWS’s ongoing ESA review of the ACP’s impacts on RPBB highlights this distinction. As part of its cumulative impacts analysis, FWS declined to consider information about a proposed timber sale near the ACP’s proposed route, saying that under the ESA, the timber sale “doesn’t apply since it’s a federal action.” Email from Sumalee Hoskin, FWS, to Carol Croy, U.S. Forest Serv. (Aug. 29, 2018) (**Exhibit U**).

⁷³ *Fund for Animals*, 448 F. Supp. 2d at 136; see also *Catron Cty. Bd. of Comm’rs v. U.S. Fish & Wildlife Serv.*, 75 F.3d 1429, 1437 (10th Cir. 1996) (holding “ESA requirements for notice and environmental consideration *partially* fulfill the primary purposes of NEPA” but partial fulfillment “is not enough”).

potential zone.”⁷⁴ As a result, the Commission concluded that the project was unlikely to have an adverse impact on RPBB.⁷⁵ New information made available since publication of the EIS materially affects that conclusion.

Since 2017, various state, federal, and private surveyors have documented multiple occurrences of RPBB in the path of the ACP along the Virginia/West Virginia border.⁷⁶ It is now understood that the project will disturb RPBB “high potential zones” and “primary dispersal zones”; FWS has determined that project construction is likely to cause significant adverse impacts to RPBB, including the loss of individuals and nests.⁷⁷

These impacts will be inflicted on a species that “is so imperiled that *every remaining population* is important for the continued existence of the species.”⁷⁸ As of 2016, “[u]nder the most likely future risk scenario” the species was expected to be extirpated in all but one ecoregion within five years, with “the remaining ecoregion ... projected to decline to extinction in 30 years.”⁷⁹ RPBB is in the direst of straits.

Impacts to the populations along the Virginia/West Virginia border are likely to be acutely felt because of the importance of the affected population(s) to the overall status of RPBB.

⁷⁴ EIS 4-314.

⁷⁵ *Id.* at 4-315.

⁷⁶ See *Rusty Patched Bumble Bee Map*, FWS, <https://bit.ly/2TJsil2> (last visited May 28, 2020) (providing shapefiles documenting specimen detections).

⁷⁷ See, e.g., FWS, Biological Opinion 23–24, 41–42, Dkt. Nos. CP15-554 et al. (Sept. 11, 2018) (eLibrary No. 20180917-3001) (**Exhibit V**).

⁷⁸ See FWS, Survey Protocols for the Rusty Patched Bumble Bee 1 (Apr. 12, 2019) (emphasis added), <https://bit.ly/2Ajffji> (**Exhibit W**).

⁷⁹ FWS, Rusty Patched Bumble Bee Species Status Assessment 74 (June 2016), <https://bit.ly/2Ber2Ad> (**Exhibit X**).

The RPBB populations [affected by the ACP] are of global significance in our efforts to prevent extinction of this species. RPBBs in the Bath/Highland County area are one of just five populations (or metapopulations) reported outside of the Midwest in the last decade, the other four consisting of single-bee observations that researchers have not been able to confirm across multiple years of inventory.⁸⁰

Because the affected populations have outsized importance to the overall survival of the species, adverse impacts inflicted on those populations are more consequential for the species' overall survival.

This information paints a seriously different picture of the impacts of the project on RPBB. Because the information is new, none of it appeared in the EIS where the Commission weighed the ACP's benefits against its detrimental effects. The EIS assumed the project would have *no* impact on the species; in fact, new information now shows it would cause significant adverse impacts to one of the most important remaining populations of a highly endangered species.

2. The listing of the endangered candy darter suggests greater impacts from the ACP than previously considered.

The EIS's discussion of impacts to candy darter—a freshwater fish found only in Virginia and West Virginia—was brief. In totality, the EIS stated that “the candy darter is not currently listed under the ESA”; disclosed that candy darter “has the potential to occur in Pocahontas County, West Virginia within the ACP project area” but that surveys for the species had not been completed; and recommended assuming candy darter presence and applying enhanced conservation measures at certain waterbody crossings.⁸¹ Since

⁸⁰ Letter from Patrick Hunter, SELC, to Paul Phifer, FWS, Ex. D (RPBB Inventory for Virginia and West Virginia) at 11, Dkt. Nos. CP15-554 et al. (Oct. 1, 2019) (eLibrary No. 20191018-5045) (**Exhibit Y**) (“Hunter Letter”).

⁸¹ EIS 4-292 to 4-293.

publication of the EIS, the candy darter has been listed as endangered under the ESA,⁸² and FWS has proposed designating critical habitat that overlaps with the ACP project area.⁸³

The listing of a species may not *always* constitute a new circumstance necessitating supplemental analysis, as long as the original analysis adequately assessed impacts to the species and that assessment was not based on the species' non-listed status.⁸⁴ Here, however, the EIS based its analysis on the fact that the “candy darter is not currently listed under the ESA” and then offered almost no analysis of the ACP's impact on the species beyond recommending application of enhanced conservation measures at certain crossings.⁸⁵

An updated Species Status Assessment Report for candy darter, also released after publication of the EIS, acknowledges that large interstate gas pipelines like the ACP would degrade candy darter habitat but does not analyze what that degradation might mean for candy darter in light of its new endangered status, underscoring why further analysis by the Commission is critical.⁸⁶ The updated Species Status Assessment also underscores the need for cumulative impacts analysis under NEPA for candy darter in light of its new listing status. While the EIS acknowledged that “candy darter would be affected by both ACP and [Mountain Valley Pipeline (“MVP”)],” it did not analyze the cumulative effect of those two

⁸² Candy Darter Final Listing Rule, 83 Fed. Reg. 58,747 (Nov. 21, 2018).

⁸³ Candy Darter Proposed Critical Habitat, 83 Fed. Reg. 59,232 (Nov. 21, 2018).

⁸⁴ *Compare Swanson v. U.S. Forest Serv.*, 87 F.3d 339, 344 (9th Cir. 1996) (listing of species as threatened did not require supplemental EIS where prior determination that project would not adversely affect species was not based on non-listed status), *with Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 559 n.5 (9th Cir. 2000) (designating species as “sensitive” necessitated supplemental EIS where effects of project on species had not been previously considered).

⁸⁵ See EIS 4-292 to 4-293.

⁸⁶ See FWS, Special Status Assessment Report for the Candy Darter 39 (Mar. 2018), <https://bit.ly/3c8l9RD> (**Exhibit Z**).

large interstate gas pipelines on the species.⁸⁷ Nor did it consider the cumulative effect on candy darter of other potential federal projects, such as the Forest Service’s Greenbrier Southeast Project, Panther Ridge Project, or Eastern Divide Insect and Disease Project Phase II, all of which may affect the species.⁸⁸

FWS’s proposed critical habitat designation is likewise new information necessitating a supplemental EIS. The EIS assumed there was no critical habitat for candy darter and thus provided no analysis of any impact to that habitat. The proposed critical habitat is significant new information because it (1) confirms candy darter presence in streams crossed by the ACP;⁸⁹ (2) establishes that those streams provide “physical or biological features [that] are essential to the conservation of the candy darter;”⁹⁰ and (3) confirms that effects associated with the ACP such as increased “sedimentation and stream bottom embeddedness” are a threat to those features.⁹¹

⁸⁷ See EIS 4-610. An October 1, 2019 letter from the Southern Environmental Law Center raised with FWS the combined impact of both the MVP and the ACP on candy darter. See Hunter Letter. That letter also made the point that to “accurately assess sediment impacts, FWS must revisit its prior sedimentation analyses for ACP and MVP.” *Id.* at 5. It appears that the MVP’s developer has completed an “updated technical analysis of potential project-related sedimentation.” See Letter from Cindy Schulz, FWS, to Dr. James Martin, FERC (Apr. 27, 2020) (**Exhibit AA**). Atlantic must also update its sedimentation analysis. If that updated analysis shows different sedimentation effects than previously disclosed, such effects may also constitute new information necessitating a supplemental EIS.

⁸⁸ See U.S. Forest Serv., Greenbrier Southeast Project Draft Env’tl. Assessment 26-27 (Apr. 2020), <https://bit.ly/2XetfEh> (**Exhibit BB**); U.S. Forest Serv. Panther Ridge Wildlife Habitat Enhancement Project Env’tl. Assessment 30–31 (Apr. 2019), <https://bit.ly/2AfFQhi> (**Exhibit CC**); U.S. Forest Serv., E. Divide Insect & Disease Project Phase II Env’tl. Assessment 23 (Dec. 2019), <https://bit.ly/3cdNnur> (**Exhibit DD**); SELC, E. Divide Insect & Disease Phase II Comments 38-42 (Feb. 26, 2020) (**Exhibit EE**).

⁸⁹ See 83 Fed. Reg. 59,236 (noting that several streams crossed by the ACP are “occupied by the species”).

⁹⁰ *Id.* at 59,235.

⁹¹ *Id.*

3. The threatened yellow lance’s listing suggests a more severe impact on the species than envisioned in the EIS.

The listing of yellow lance, a freshwater mussel, as threatened and FWS’s proposed critical habitat designation for the species constitute new circumstances necessitating a supplemental EIS.⁹²

The EIS disclosed the presence of yellow lance in the project area but stopped short of analyzing the ACP’s impact on the species or its habitat. Because the “degree to which [an] action may adversely affect an endangered or threatened species” is relevant to significance thresholds under NEPA, the “degree” must be considered in agency NEPA documents.⁹³ The EIS requires supplementation because there is no analysis of impacts to yellow lance or its habitat.

The proposed critical habitat designation constitutes significant new information for the additional reason that it documents the threat the ACP poses to yellow lance and its habitat. The ACP mainline and lateral line are proposed to cross waterbodies in the Nottoway River watershed over 100 times.⁹⁴ Portions of that watershed have been proposed as critical habitat for yellow lance.⁹⁵ The proposed critical habitat designation notes specifically that “threats to this [critical habitat unit] include oil and gas pipeline projects” such as the ACP and “alternate routes for oil and gas pipelines, or directional boring for those projects” may be required to sufficiently protect the species and its habitat.⁹⁶ This

⁹² See Yellow Lance Final Listing Rule, 83 Fed. Reg. 14,189 (Apr. 3, 2018); Yellow Lance Proposed Critical Habitat, 85 Fed. Reg. 6856 (Feb. 6, 2020).

⁹³ 40 C.F.R. § 1508.27(b)(9).

⁹⁴ See EIS App. K, <https://bit.ly/3cmn8IH>.

⁹⁵ See 85 Fed. Reg. at 6863.

⁹⁶ *Id.*

information paints a seriously different picture of impacts to yellow lance than disclosed in the EIS.

C. Significant New Information Suggests More Severe Water Quality Impacts From Construction of the ACP Than Disclosed in the EIS.

The three years since publication of the EIS have witnessed the repeated failure of erosion control and landslide prevention measures and the rollback of federal water quality protections. This new information undermines the EIS’s reliance on such safeguards to protect water quality along the ACP route and suggests that construction will result in more significant impacts to water quality than previously disclosed, including violations of Virginia and West Virginia water quality standards.⁹⁷

1. Recent failures of mitigation measures relied on by the Commission compel reevaluation of water quality impacts.

The EIS concluded that “impacts on surface waters would be effectively minimized or mitigated, and would be largely temporary in duration” based on the application of proposed mitigation measures contained in the EIS and in other federal or state permits.⁹⁸ Since the EIS’s release in 2017, substantial erosion, sedimentation, and slope failures have occurred along the routes of the ACP and other pipelines in mountainous terrain, undermining the Commission’s conclusions and calling for additional analysis.⁹⁹

⁹⁷ See 40 C.F.R. § 1508.27(b)(10).

⁹⁸ EIS 5-10.

⁹⁹ Contrary to the Commission’s claim in its Rehearing Order, merely requiring mitigation and then monitoring it do not alone constitute “substantial evidence” of its effectiveness, *see Atl. Coast Pipeline, LLC*, 164 FERC ¶ 61,100, at ¶ 228 (2018) (“Rehearing Order”), and cannot relieve the Commission of its NEPA obligation to supplement its EIS. The *Abenaki* case relied on by the Commission concluded that mitigation measures were supported by substantial evidence where they were adequately monitored for effectiveness and where, if they failed, “a *supplementary* mitigation ... proposal” had to be reviewed and approved by the agency. *Abenaki Nation of Missisquoi v. Hughes*, 805 F. Supp. 234, 239 n.9 (D. Vt. 1992) (emphasis added). Indeed, in the other case the Commission relied on, the court

- a. *Chronic failures of erosion control measures indicate that erosion and sedimentation impacts will be more significant than the EIS disclosed.*

Since 2018, nearly half of the Environmental Compliance Monitoring Reports the Commission has issued for the ACP have reported that rain events overwhelmed Atlantic's erosion control devices.¹⁰⁰ Atlantic has also reported several sediment spills in construction areas that violated West Virginia's water quality standards.¹⁰¹ After one incident, it took over a week for the stream to reach acceptable turbidity levels.¹⁰² And the West Virginia Department of Environmental Protection ("DEP") has already issued four notices of violation to Atlantic during less than a year of active construction along a small portion of the pipeline.¹⁰³

Other area gas pipelines have experienced similarly serious problems with erosion control devices. Since April 2018, DEP has issued 46 notices of violation to the MVP's developer, including for violations of West Virginia water quality standards for turbidity.¹⁰⁴ Virginia's Department of Environmental Quality ("DEQ") filed suit against the MVP's

concluded that because the Forest Service did *not* consider alternatives in the event a mitigation measure failed, the proposed mitigation was *not* supported by substantial evidence. *Nat'l Audubon Soc'y v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997).

¹⁰⁰ See **Exhibit FF** (34 Environmental Compliance Monitoring Reports for ACP documenting overwhelmed erosion control devices).

¹⁰¹ See, e.g. Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep't of Env'tl. Prot. (Aug. 22, 2018) (**Exhibit GG**).

¹⁰² Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep't of Env'tl. Prot. (Aug. 27, 2018) (**Exhibit HH**).

¹⁰³ See **Exhibit II** (4 notices of violations issued by DEP to Atlantic for violations of water pollution control permit and water quality standards).

¹⁰⁴ See **Exhibit JJ** (46 notices of violations issued by DEP to MVP's developer for violations of water pollution control permit and water quality standards).

developer for its hundreds of violations of state water quality requirements.¹⁰⁵ Similarly, between April 2018 and February 2020, DEP issued 53 notices of violations for problems on the Mountaineer Xpress project.¹⁰⁶ The most common problems cited in these notices were the incorrect use of water bars and overwhelmed erosion control devices¹⁰⁷—the same problems now plaguing the ACP.

This recent field experience shows that far from effectively “minimizing and mitigating,” the ACP’s proposed erosion control measures may be incapable of preventing significant water quality impacts from pipeline construction.

b. Repeated landslides along the ACP and other area pipelines suggest that landslide impacts will be more significant than the EIS concluded.

Construction of the ACP along steep slopes in West Virginia has already led to at least 15 reported slope failures.¹⁰⁸ Citizen monitors have also reported numerous slips and mudslides along the MVP route.¹⁰⁹ In August 2019, the MVP’s developer reported a landslide along the route that posed a threat to landowners located downslope of the slide, making at least one individual’s home unsafe to occupy.¹¹⁰ And in May 2020, Mountain

¹⁰⁵ Complaint, *Paylor v. Mountain Valley Pipeline, LLC*, No. CL18006874-00 (Va. Cir. Ct. Dec. 7, 2018), <https://bit.ly/3dkgI7K>.

¹⁰⁶ See **Exhibit KK** (53 notices of violations issued by DEP to Mountaineer Xpress’s developer for violations of water pollution control permit and water quality standards).

¹⁰⁷ *Id.*

¹⁰⁸ Letters from Spencer Trichell, Dominion Energy Servs., to Harold D. Ward, DEP (Apr. 17, 2019, Apr. 12, 2019, and Mar. 26, 2019) (**Exhibit LL**).

¹⁰⁹ Letter from Indian Creek Watershed Bd. of Directors to Kimberly D. Bose, FERC, 5, Dkt. No. CP16-10 (May 6, 2020) (eLibrary No. 20200507-5054) (**Exhibit MM**).

¹¹⁰ Letter from Matthew Eggerding, Mountain Valley Pipeline, LLC, to Kimberly D. Bose, FERC (Aug. 8, 2019) (eLibrary No. 20190808-5134) (**Exhibit NN**).

Valley Pipeline crew members observed that installed pipe had shifted as a result of “landslips” in at least three locations in West Virginia.¹¹¹

Sixty-one separate landslides have been reported along the Mountaineer Xpress right-of-way, prompting FWS to recommend that developers conduct additional siting or analysis or use additional construction controls to prevent additional slips.¹¹² FWS further recommended that for future pipeline projects, the Commission conduct more detailed analyses to identify landslide prone areas prior to approving construction to prevent developers from continuing to site projects in such areas.¹¹³

In Virginia, fully 50 percent of the ACP route would cross areas with a high susceptibility to landslides.¹¹⁴ Considering that a landslide resulted in the explosion of the Leach Xpress gas pipeline in 2018,¹¹⁵ the Commission must take seriously this new information relevant to the adequacy of proposed landslide controls.

2. Recent regulatory changes may remove water quality protections relied on by the Commission.

A supplemental EIS should be prepared to account for the impacts to water quality and other resources from an intervening change in the scope of the Clean Water Act. On April 21, 2020, the U.S. Environmental Protection Agency (“EPA”) and U.S. Army Corps of Engineers (“Corps”) published a final rule changing the definition of “waters of the United

¹¹¹ FERC, Env'tl. Compliance Monitoring Program, Weekly Summary Report 5–8, Dkt. No. 16-10 (Apr. 24, 2020) (eLibrary No. 20200424-4001) (**Exhibit OO**).

¹¹² Supplemental Information – April 10 Variance Request 26, Dkt. No. 16-357 (May 30, 2019) (eLibrary No. 20190530-5170) (**Exhibit PP**).

¹¹³ *Id.* at 28.

¹¹⁴ EIS 4-27.

¹¹⁵ See Mike Soraghan, *Landslides, Explosions Spark Fear in Pipeline Country*, E&E News (June 4, 2019), <https://bit.ly/2M5p7jq>.

States” to grant federal protection to far fewer waterbodies and wetlands.¹¹⁶ Particularly relevant here, the new rule excludes from federal jurisdiction ephemeral features and many wetlands and ditches that were considered waters of the United States at the time of the development of the ACP’s EIS, as well as the Construction, Operation, and Maintenance plan, and implementation plans.¹¹⁷

The Commission analyzed the ACP’s impacts on streams and wetlands at a time when many such ephemeral features, wetlands, and ditches were still under federal jurisdiction. The Commission’s analysis identified 1,669 waterbody crossings over the course of the project, including 228 ephemeral streams, 49 canals/ditches, and 798.2 acres of wetlands.¹¹⁸ In light of the narrower definition of waters of the United States, some of these waterbodies may now be at greater risk if permitting authorities no longer consider them within the purview of the Clean Water Act.

In particular, this regulatory change affects the EIS’s baseline assumption that certain impacts will be controlled by conditions imposed by other federal agencies. For example, the EIS concluded that “[c]onstruction and operation-related impacts on wetlands” would be minimized or mitigated “by compliance with conditions imposed by the [Corps] and state water regulatory agencies.”¹¹⁹ The Commission may have to revisit that conclusion; the Navigable Waters Protection Rule disclaims Army Corps jurisdiction over many wetlands previously subject to federal protection.

¹¹⁶ See Navigable Waters Protection Rule, 85 Fed. Reg. 22,250 (Apr. 21, 2020). Conservation Groups do not concede that the Navigable Waters Protection Rule is valid.

¹¹⁷ See *id.* at 22,251–52.

¹¹⁸ EIS 5-9; Certificate Order ¶ 225.

¹¹⁹ EIS ES-10.

The EIS also downplayed the potential for cumulative impacts to water quality by explaining that other “projects crossing Waters of the United States would have to obtain permits from the [Corps]. Therefore, most of the impacts on waterbodies are expected to also be of short duration and/or permissible under regulations implemented by the [Corps].”¹²⁰ Given that fewer waterbodies and wetlands are federally protected under the new rule, the Commission must reevaluate its dismissal of potential cumulative impacts based on Corps permitting. A substantial regulatory change that calls into question key assumptions about water quality protections compels supplementation of the EIS.¹²¹ To the extent the Commission intends to remove certain water quality protections required for ephemeral features, ditches, and wetlands in light of the new rule,¹²² supplemental analysis would be required on that basis as well.

D. New Information Confirms the Existence of an Environmental Justice Community Near the Buckingham Compressor Station.

In its EIS the Commission concluded that there were no minority environmental justice communities near Compressor Station 2 in Buckingham County, Virginia.¹²³ Since that time, the Commonwealth of Virginia and Atlantic have both acknowledged the existence of a minority environmental justice community in Union Hill, where the Buckingham Compressor Station would be located.¹²⁴ Accordingly, the Commission must reevaluate its

¹²⁰ *Id.* at 4-606 to 4-607.

¹²¹ *Cf. Friends of Back Bay v. U.S. Army Corps of Eng’rs*, 681 F.3d 581, 588 (4th Cir. 2012) (“An unjustified leap of logic or unwarranted assumption ... can erode any pillar underpinning an agency action, whether constructed from the what-is or the what-may-be.”).

¹²² *See, e.g.*, EIS ES-9 (requiring compliance with the Commission’s Wetland and Waterbody Construction and Mitigation Procedures).

¹²³ *Id.* at 4-513.

¹²⁴ *See Friends of Buckingham v. State Air Pollution Control Bd.*, 947 F.3d 68, 88 n.10 (4th Cir. 2020) (observing that Virginia’s counsel accepted study showing 84-85% of residents

conclusion about the absence of minority environmental justice communities near the compressor station and consider whether the project should be re-routed to avoid this community.

The Commission also concluded in its EIS that compressor station “emissions would not exceed regulatory permissible levels ... [so] no disproportionately high and adverse impacts on environmental justice populations” would result.¹²⁵ But “blindly relying on ambient air standards” that are “not tailored to [the] specific [environmental justice] community” to reject the likelihood that those living closest to the compressor station would suffer from disproportionate health impacts “is not a sufficiently searching analysis.”¹²⁶ In light of the Fourth Circuit’s holding, and the Commission’s prior recognition that African Americans are more sensitive to decreased air quality,¹²⁷ the Commission must revisit its “no disproportionate impacts” conclusion regarding compressor stations and reconsider the Midland Road Alternative site, which the Commission rejected without consideration of environmental justice concerns.¹²⁸

within 1.1 miles of Compressor Station are people of color); Letter from Amanda B. Tornabene, Dominion Energy Services, Inc., to Michael Dowd, DEQ, 1 (Apr. 30, 2020) (“analysis shows that an Environmental Justice community exists to the north and east of the [compressor station] along Union Hill Road[.]”) (**Exhibit QQ**).

¹²⁵ EIS 4-514.

¹²⁶ *Friends of Buckingham*, 947 F.3d at 90, 93.

¹²⁷ See EIS 4-513 to 4-514.

¹²⁸ *Id.* at 3-58.

E. Scientific Understanding of the Impacts of Climate Change Has Expanded Substantially Since the Issuance of the EIS.

The EIS acknowledged that greenhouse gas emissions associated with construction and operation of the ACP “would ... contribute incrementally to climate change ...,”¹²⁹ and briefly listed environmental impacts projected to occur in ACP project areas that “may be attributed to climate change.”¹³⁰ Since the Commission issued the EIS, scientific understanding about the projected scope and severity of the impacts of climate change has advanced substantially, materially changing the EIS’s discussion of climate impacts and compelling the Commission to supplement the EIS’s analysis.

The Commission based its discussion on the U.S. Global Change Research Program’s (“USGCRP’s”) Third National Climate Assessment.¹³¹ The Third National Climate Assessment is now six years old, and no longer reflects “the current state of climate science.”¹³² In its Fourth National Climate Assessment, published in 2018, the USGCRP reports that “[o]ur understanding of and experience with climate science, impacts, risks, and adaptation in the United States have grown significantly since the Third National Climate Assessment.”¹³³ Among the USGCRP’s new findings is the projection that average temperatures in the United States could increase by as much as 12°F by the end of the

¹²⁹ *Id.* at 4-620.

¹³⁰ *Id.* at 4-618 to 4-619.

¹³¹ *See id.*; *see also* *Climate Change Impacts in the United States* (May 2014), <https://go.aws/2TNLgXS> (cover page at **Exhibit RR**) (“Third National Climate Assessment”). The EIS recognized the USGCRP as the “leading U.S. scientific body on climate change,” involving the participation of 13 federal departments and agencies. EIS 4-618.

¹³² Rehearing Order ¶ 274.

¹³³ U.S. Global Change Research Program, *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States* 65 (2018), <https://bit.ly/2Xa3BAg> (cover page at **Exhibit SS**) (“Fourth National Climate Assessment”).

century compared to pre-industrial temperatures if substantial reductions in emissions do not occur.¹³⁴ In contrast, the Third National Climate Assessment projected a 5°F to 10°F average temperature rise without substantial emissions reductions.¹³⁵

Scientific analysis also now provides a more detailed picture today of how climate change threatens the region to be served by the ACP. As the Fourth National Climate Assessment explains, scientific advances have enabled projections of future climate from global models at finer scales, resulting in enhanced local and regional information about sea level rise and other climate impacts than was previously available.¹³⁶ Among other new information that appeared in neither the Third National Climate Assessment nor the EIS, the Fourth National Climate Assessment projects that by 2100, the Southeast's coastal plain regions will experience daily high tide flooding, and the region could lose over one-half billion labor hours annually from heat-related deaths.¹³⁷

Finally, at the time of the EIS's publication, limited knowledge existed about the projected global impacts of 1.5°C of warming and the feasibility of limiting global warming to 1.5°C.¹³⁸ In 2018, the IPCC—which the Commission has recognized as the “leading international, multi-governmental scientific body for the assessment of climate change,”¹³⁹—presented that information for the first time in its special report *Global Warming of 1.5°C*. The report concluded that “[w]ithout ... a sharp decline in greenhouse gas emissions by

¹³⁴ *Id.* at 74.

¹³⁵ Third National Climate Assessment 8.

¹³⁶ Fourth National Climate Assessment 65.

¹³⁷ *Id.* at 757, 780.

¹³⁸ International Panel on Climate Change (“IPCC”), *Global Warming of 1.5°C* at v (2018), <https://bit.ly/3deWWdF> (cover page at **Exhibit TT**).

¹³⁹ EIS 4-618.

2030, global warming will surpass 1.5°C in the following decades, leading to irreversible loss of the most fragile ecosystems, and crisis after crisis for the most vulnerable people and societies.”¹⁴⁰ The IPCC’s findings were dire:

- Global warming is *likely* to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate.¹⁴¹
- Climate-related risks for natural and human systems are higher for global warming of 1.5°C than at present. These risks include increases in mean temperatures; hot temperature extremes; heavy precipitation; the probability of drought; sea-level rise; ecosystem impacts (including species loss and extinction); ocean temperature and acidity; and risks to health, livelihoods, food security, water supply, human security, and economic growth.¹⁴²
- There are clear benefits to keeping global warming to 1.5°C (2.7°F) rather than 2°C (3.6°F) or higher, as each of these risks is higher at 2°C than at 1.5°C.¹⁴³
- Limiting global warming to 1.5°C is possible but would require unprecedented transitions in all aspects of society, with deep emissions reductions in all sectors.¹⁴⁴

Because this information was not available until a year after the EIS’s publication, the EIS’s discussion of climate impacts included none of it. New scientific consensus around the likely impacts of climate change, its specific impacts on ACP project areas, and the importance of reducing greenhouse gas emissions over the short term (*i.e.*, by 2030) compel the Commission to supplement the EIS’s discussion of climate change.

¹⁴⁰ *Global Warming of 1.5°C* at vi.

¹⁴¹ *Id.* at 4 (emphasis in original).

¹⁴² *Id.* at 5, 7–9.

¹⁴³ *Id.* at v–vi.

¹⁴⁴ *Id.* at v, 15.

F. The Commission Must Now Consider Cumulative Impacts from Post-2019 Project Construction.

NEPA requires a cumulative impacts analysis.¹⁴⁵ In that analysis, the “incremental impact of the action [at issue] must be considered when added to other past, *present*, and *reasonably foreseeable future* actions.”¹⁴⁶

The EIS expressly considered the cumulative impacts of “projects that would occur during the same general timeframe” as the ACP,¹⁴⁷ and stressed that overall impacts to aquatic resources and species of concern “would be greatest where projects are constructed *in the same timeframe* and area” as the ACP.¹⁴⁸ Because Atlantic initially proposed to perform construction activities between November 2017 and May 2019, the Commission’s “cumulative impact analysis considers current and other reasonably foreseeable projects that may be constructed within the geographic scope ... *up through about mid-2019*.”¹⁴⁹

It is now mid-2020. Only 6% of the ACP has been completed.¹⁵⁰ According to the ACP’s lead developer, construction is anticipated to resume in 2020 and last until the end of

¹⁴⁵ See *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1319 (D.C. Cir. 2014) (remanding Certificate Order to the Commission for failure to consider cumulative impacts under NEPA); *Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 197 (4th Cir. 2005) (vacating and remanding to agency for failure to adequately consider cumulative impacts under NEPA).

¹⁴⁶ *Am. Rivers v. FERC*, 895 F.3d 32 (D.C. Cir. 2018) (alteration in original; emphasis added); see 40 C.F.R. § 1508.7 (defining “cumulative impact”).

¹⁴⁷ EIS 4-595.

¹⁴⁸ *Id.* at 4-608, 4-610 (emphasis added).

¹⁴⁹ *Id.* at 4-592 (emphasis added). This time limitation is reflected in Table W-1’s list of projects “that would potentially cause a cumulative impact when considered with” the ACP. *Id.* at 4-595. The Commission limited “Past, Present, or Reasonably Foreseeable Future Action (RFFA) classification” to “the project’s construction schedule *in relation to Atlantic’s and DETI’s currently proposed schedules*.” *Id.* App. W at W-16 (emphasis added), <https://bit.ly/3gCR0gC>.

¹⁵⁰ Weber, *supra*.

2021.¹⁵¹ Yet the EIS contains no analysis of cumulative impacts over the period—mid-2020 to 2021—when ACP’s lead developer anticipates that the overwhelming majority of the ACP’s construction would occur. The Commission could not lawfully approve a standalone project without considering cumulative impacts.¹⁵² It can no more allow construction of over 90% of a project to proceed without any consideration of cumulative impacts from this point forward. Because the Commission never considered post-2019 cumulative impacts in the EIS, it must supplement its EIS to include all new projects that might affect the environment in the area of the ACP and to analyze their cumulative impacts. These include logging, transportation, and other pipeline projects—projects of the type that the Commission considered in its EIS but that were never assessed due to the EIS’s mid-2019 cutoff.

A key consideration in the EIS’s analysis of impacts to forest fragmentation, water quality, and wildlife was logging projects pursued by the Forest Service in the Monongahela National Forest and the George Washington and Jefferson National Forests.¹⁵³ The current and past Schedule of Proposed Actions for both national forests lists numerous new projects that do not appear in the EIS’s cumulative impacts analysis.¹⁵⁴ Moreover, the Commission

¹⁵¹ See Dominion Energy, Q4 2019 Earnings Call Presentation 24. Even that estimate of project completion by the end of 2021 is likely overly optimistic, because a subsequent federal court decision vacating the Corps’ Nationwide Permit 12—on which Atlantic intended to rely to satisfy its obligations under Clean Water Act Section 404, 33 U.S.C. § 1344—is likely to further delay the project. See *N. Plains Res. Council v. U.S. Army Corps of Eng’rs*, No. CV-19-44-GF-BMM, 2020 WL 1875455, at *7-8 (D. Mont. Apr. 15, 2020).

¹⁵² See, e.g., *Del. Riverkeeper Network*, 753 F.3d at 1319.

¹⁵³ See EIS App. W.

¹⁵⁴ See U.S. Forest Serv., George Washington and Jefferson National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/2MbJc7M> (**Exhibit UU**); U.S. Forest Serv., Monongahela National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/3ccZt6P> (**Exhibit VV**).

must account for increased logging over the next several years in response to Executive Order 13855, which calls for a significant acceleration in the timbering of national forests.¹⁵⁵

The Commission’s consideration of cumulative effects must also account for increased logging from biomass facilities in eastern Virginia and North Carolina. There are currently five operating wood pellet plants with sourcing areas that overlap the ACP project area, under the conservative assumption that sourcing areas constitute a 50-mile radius around each plant.¹⁵⁶ Only one, Enviva Sampson, was considered in the EIS.¹⁵⁷ Since the issuance of the EIS, however, four of the five plants, including Enviva Sampson, received new permits authorizing substantial increases in production.¹⁵⁸ Conservatively estimating that plant modifications to expand production would take two years to install, these facilities are projected to produce between 2,415,000 to 3,110,000 metric tons of pellets per year (“MTPY”) between 2019 and 2022.¹⁵⁹ This massive level of production will require harvesting 44,207 to 56,929 acres of forest *per year* between 2019 and 2022¹⁶⁰—a potentially significant cumulative impact for the impacted area, particularly when added to the ACP’s impacts. And a sixth wood pellet plant has recently been proposed near the ACP

¹⁵⁵ See Exec. Order No. 13,855, 84 Fed. Reg. 45 (Dec. 21, 2018).

¹⁵⁶ See **Exhibit WW** (Map of Southeast U.S. Wood Pellet Plants in 2020).

¹⁵⁷ See EIS App. W, tbl. W-5.

¹⁵⁸ Compare **Exhibit XX** (Map of Southeast U.S. Wood Pellet Plants in 2018) with **Exhibit WW** (2020 map).

¹⁵⁹ See **Exhibit XX** at 3–4 (2018 map); **Exhibit WW** at 2 (2020 map).

¹⁶⁰ See SELC, *Burning Trees for Power: The Truth About Woody Biomass, Energy & Wildlife* 9 n.9 (Jan. 2018), <https://bit.ly/2zxsFbL> (**Exhibit YY**) (providing equation for converting tons of pellets produced into acres of forest cleared).

route, which, if approved, would have the potential to produce an additional 35,761 MTPY,¹⁶¹ requiring an additional harvest of 654 acres of forest per year.¹⁶²

The Commission must also update its assessment of the cumulative impacts of transportation projects on forest fragmentation, wildlife, and water quality. In particular, the Complete 540 Project in North Carolina will affect some of the same protected species impacted by the ACP.¹⁶³ The EIS also noted “several planned roadway projects that would intersect or be near the ACP,” but did not consider their impacts because “the timeframe in which these projects would occur is unknown.”¹⁶⁴ To the extent such timeframes have been clarified since 2017, the Commission should now include those roadway projects in a supplemental cumulative impacts analysis.

Finally, the Commission must account for the cumulative effects of other non-jurisdictional natural gas projects in eastern North Carolina and Virginia announced after publication of the EIS. These projects include plans to transport swine biogas from swine

¹⁶¹ See N.C. DEQ, Notice for Public Meeting (Feb. 14, 2020), <https://bit.ly/2Mc6w1C> (**Exhibit ZZ**). The reference to 39,420 oven dried tons in the notice has been converted to MPTY above for consistency.

¹⁶² Although currently proposed to produce 35,761 MTPY, the publicly traded parent company of Active Energy Renewable Power recently announced to shareholders its intent for this facility to produce up to 400,000 tons of pellets per year. See *AEG Lumberton Manufacturing Hub*, Active Energy Group, <https://bit.ly/2M9QSXY> (last visited May 29, 2020) (**Exhibit AAA**); Active Energy Group, Transforming low-cost biomass into high-value efficient fuel 10 (Apr. 2019), <https://bit.ly/3gAPtb1> (**Exhibit BBB**). This would require harvesting 7,322 acres of forest per year. See SELC, *Burning Trees for Power* 9 n.9.

¹⁶³ See FWS, Biological Opinion for the Complete 540, Triangle Expressway 18-22 (Oct. 15, 2019), <https://bit.ly/3erphOc> (**Exhibit CCC**).

¹⁶⁴ EIS App. W, tbl. W-1 at W-16.

farms to “existing natural gas distribution systems,” which could include the ACP, the Header Improvement Project, and ongoing construction of the Robeson LNG facility.¹⁶⁵

III. A Stay of the Certificate Order Pending Supplementation of the EIS Is Warranted to Avoid Needlessly Harming the Environment or Limiting Available Alternatives.

The Commission may conclude its supplemental analysis by requiring Atlantic to make significant changes to the proposed project, select a different alternative, or potentially abandon the project. CEQ’s NEPA regulations prohibit agencies from taking action that would “[h]ave an adverse environmental impact” or “[l]imit the choice of reasonable alternatives” before making a final decision.¹⁶⁶ Courts have recognized that these prohibitions apply while an agency completes a supplemental EIS.¹⁶⁷

To avoid potentially needless environmental harm and to preserve the availability of reasonable alternatives, the Commission must stay its Certificate Order until it finalizes a supplemental EIS.

CONCLUSION

For these reasons, the Commission should supplement the EIS for the ACP, circulate the supplemental EIS for public comment, and stay its Certificate Order pending finalization of the supplemental EIS.

¹⁶⁵ See, e.g., Press Release, Smithfield Foods, Dominion Energy and Smithfield Foods Break Ground on Largest Renewable Natural Gas Project in North Carolina (Aug. 16, 2019), <https://bit.ly/3dj8KMk> (**Exhibit DDD**); Appl. of Va. Nat. Gas, Case No. PUR-2019-00207; Piedmont Natural Gas.

¹⁶⁶ 40 C.F.R. § 1506.1(a).

¹⁶⁷ See *Nat’l Audubon Soc’y*, 422 F.3d at 201, 207 (upholding injunction prohibiting Navy from pursuing activities that would harm the environment or limit alternative while completing supplemental EIS); *Pub. Emps. for Envtl. Responsibility v. Hopper*, 827 F.3d 1077, 1084 (D.C. Cir. 2016) (recognizing need to enjoin construction pending supplementation of EIS).

Respectfully submitted,

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Dated: May 30, 2020

**EXHIBITS TO MOTION TO SUPPLEMENT ENVIRONMENTAL IMPACT
STATEMENT**

- Exhibit A Letter from Angela M. Woodard, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Nov. 21, 2018) (eLibrary No. 20181121-5094)
- Exhibit B Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Dec. 11, 2018) (eLibrary No. 20181211-5109)
- Exhibit C Dominion Energy, Q4 2019 Earnings Call (Feb. 11, 2020), <https://bit.ly/2zcrePF>
- Exhibit D Interim Right-of-Way and Work Area Stabilization Plan, Dkt. Nos. CP15-554 et al. (Dec. 19, 2018) (eLibrary No. 20181219-5240)
- Exhibit E Duke Energy Carolinas Integrated Res. Plan, Dkt. E-100, Sub 137 (NCUC Sept. 1, 2012), <https://bit.ly/2UHkK3b>
- Exhibit F Progress Energy Integrated Res. Plan, Dkt. E-100, Sub 137 (NCUC Sept. 4, 2012), <https://bit.ly/346RqpX>
- Exhibit G Duke Energy Carolinas Integrated Res. Plan Update Report, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2yF2bEy>
- Exhibit H Duke Energy Progress Integrated Res. Plan Update Report, Dkt. E-100, Sub 157 (NCUC Oct. 29, 2019), <https://bit.ly/2RbaHRT>
- Exhibit I U.S. Energy Info. Admin., Annual Energy Outlook 2020, <https://bit.ly/3etFd2p> (last visited May 28, 2020)
- Exhibit J Va. Elec. & Power Co.’s Mot. for Relief from Certain Requirements, Case No. PUR-2020-00035, *In re Va. Elec & Power Co.’s Integrated Res. Plan filing* (Va. SCC Mar. 24, 2020), <https://bit.ly/2zDYxeD>
- Exhibit K Va. Elec. & Power Co.’s Integrated Res. Plan, Dkt. No. E-100, Sub 147 (Va. SCC May 1, 2017), <https://bit.ly/2ZKOn6I>
- Exhibit L Va. Elec. & Power Co.’s Integrated Res. Plan, Dkt. No. E-100, Sub 157 (Va. SCC May 1, 2018), <https://bit.ly/3c5H5Ni>
- Exhibit M Va. Elec. & Power Co.’s Integrated Res. Plan, Dkt. No. E-100 Sub 165 (Va. SCC May 1, 2020), <https://bit.ly/2U3eORx>
- Exhibit N N.C. Dep’t of Envtl. Quality, Clean Energy Plan (Oct. 2019), <https://bit.ly/3evSnMC>

- Exhibit O Appl. of Va. Nat. Gas, Case No. PUR-2019-00207 (Va. SCC Dec. 6, 2019), <https://bit.ly/2XHC9sI>
- Exhibit P Appl. of Mountain Valley Pipeline, LLC, Dkt. No. CP19-14 (Nov. 6, 2018) (eLibrary No. 20181106-5159)
- Exhibit Q *Robeson Liquefied Natural Gas*, Piedmont Nat. Gas, <https://bit.ly/3caQD9J> (last visited May 28, 2020)
- Exhibit R Dominion Energy, Q1 2020 Earnings Call Presentation (May 5, 2020), <https://bit.ly/2ArFu7f>
- Exhibit S Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Aug. 13, 2018) (eLibrary No. 20180813-5065)
- Exhibit T Letter from Matthew R. Bley, Dominion Energy Transmission, Inc., to Kimberly D. Bose, FERC, Dkt. Nos. CP15-554 et al. (Aug. 15, 2018) (eLibrary No. 20180815-5047)
- Exhibit U Email from Sumalee Hoskin, FWS, to Carol Croy, U.S. Forest Serv. (Aug. 29, 2018)
- Exhibit V FWS, Biological Opinion, Dkt. Nos. CP15-554 et al. (Sept. 11, 2018) (eLibrary No. 20180917-3001)
- Exhibit W FWS, Survey Protocols for the Rusty Patched Bumble Bee (Apr. 12, 2019), <https://bit.ly/2Ajffji>
- Exhibit X FWS, Rusty Patched Bumble Bee Species Status Assessment (June 2016), <https://bit.ly/2Ber2Ad>
- Exhibit Y Letter from Patrick Hunter, SELC, to Paul Phifer, FWS, Dkt. Nos. CP15-554 et al. (Oct. 1, 2019) (eLibrary No. 20191018-5045)
- Exhibit Z FWS, Special Status Assessment Report for the Candy Darter (Mar. 2018), <https://bit.ly/3c8I9RD>
- Exhibit AA Letter from Cindy Schulz, FWS, to Dr. James Martin, FERC (Apr. 27, 2020)
- Exhibit BB U.S. Forest Serv., Greenbrier Southeast Project Draft Env'tl. Assessment (Apr. 2020), <https://bit.ly/2XetfEh>
- Exhibit CC U.S. Forest Serv. Panther Ridge Wildlife Habitat Enhancement Project Env'tl. Assessment (Apr. 2019), <https://bit.ly/2AfFQhi>

- Exhibit DD U.S. Forest Serv., E. Divide Insect & Disease Project Phase II Env'tl. Assessment (Dec. 2019), <https://bit.ly/3cdNnur>
- Exhibit EE SELC, E. Divide Insect & Disease Phase II Comments (Feb. 26, 2020)
- Exhibit FF FERC, Environmental Compliance Monitoring Reports, Dkt Nos. CP15-554 et al.)
- Exhibit GG Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W.Va. Dep't of Env'tl. Prot. (Aug. 22, 2018)
- Exhibit HH Letter from Richard Gangel, Dominion Energy Servs., Inc., to Timothy J. Casto, W. Va. Dep't of Env'tl. Prot. (Aug. 27, 2018)
- Exhibit II W. Va. Dep't of Env'tl. Prot., Notices of Violation on Atlantic Coast Pipeline project
- Exhibit JJ W. Va. Dep't of Env'tl. Prot., Notices of Violation on Mountain Valley Pipeline project
- Exhibit KK W. Va. Dep't of Env'tl. Prot., Notices of Violation on Mountaineer Xpress project
- Exhibit LL Letters from Spencer Trichell, Dominion Energy Servs., to Harold D. Ward, W. Va. Dep't of Env'tl. Prot. (Apr. 17, 2019, Apr. 12, 2019, and Mar. 26, 2019)
- Exhibit MM Letter from Indian Creek Watershed Bd. of Directors to Kimberly D. Bose, FERC, Dkt. No. CP16-10 (May 6, 2020) (eLibrary No. 20200507-5054)
- Exhibit NN Letter from Matthew Eggerding, Mountain Valley Pipeline, LLC, to Kimberly D. Bose, FERC (Aug. 8, 2019) (eLibrary No. 20190808-5134)
- Exhibit OO FERC, Env'tl. Compliance Monitoring Program, Weekly Summary Report, Dkt. No. 16-10 (Apr. 24, 2020) (eLibrary No. 20200424-4001)
- Exhibit PP Supplemental Information – April 10 Variance Request, Dkt. No. 16-357 (May 30, 2019) (eLibrary No. 20190530-5170)
- Exhibit QQ Letter from Amanda B. Tornabene, Dominion Energy Services, Inc., to Michael Dowd, DEQ (Apr. 30, 2020)
- Exhibit RR U.S. Global Change Research Program, *Climate Change Impacts in the United States* (May 2014), <https://go.aws/2TNLgXS> (only cover page included due to length of document; full report available at URL)

- Exhibit SS U.S. Global Change Research Program, *Fourth National Climate Assessment, Vol. II: Impacts, Risks, and Adaptation in the United States* (2018), <https://bit.ly/2Xa3BAg> (only cover page included due to length of document; full report available at URL)
- Exhibit TT International Panel on Climate Change (“IPCC”), *Global Warming of 1.5°C* (2018), <https://bit.ly/3deWWdF> (only cover page included due to length of document; full report available at URL)
- Exhibit UU U.S. Forest Serv., George Washington and Jefferson National Forest Current and Past Schedule of Proposed Actions, <https://bit.ly/2MbJc7M>
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- Exhibit AAA *AEG Lumberton Manufacturing Hub*, Active Energy Group, <https://bit.ly/2M9QSXY> (last visited May 29, 2020)
- Exhibit BBB Active Energy Group, *Transforming low-cost biomass into high-value efficient fuel* (Apr. 2019), <https://bit.ly/3gAPtb1>
- Exhibit CCC FWS, Biological Opinion for the Complete 540, Triangle Expressway (Oct. 15, 2019), <https://bit.ly/3erphOc>
- Exhibit DDD Press Release, Smithfield Foods, Dominion Energy and Smithfield Foods Break Ground on Largest Renewable Natural Gas Project in North Carolina (Aug. 16, 2019), <https://bit.ly/3dj8KMk>

CERTIFICATE OF SERVICE

I hereby certify that I have on May 30, 2020, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Gregory Buppert
Gregory Buppert
SOUTHERN ENVIRONMENTAL LAW CENTER