

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Mountain Valley Pipeline, LLC) **Docket No. CP19-14-002**
)

**PROTEST AND COMMENTS OF NATURAL RESOURCES DEFENSE COUNCIL IN
OPPOSITION TO REQUEST FOR EXTENSION OF TIME**

INTRODUCTION

The Natural Resources Defense Council (NRDC), an intervenor in these proceedings,¹ opposes Mountain Valley Pipeline, LLC’s (Mountain Valley or MVP) June 15, 2023 request (Extension Request) that the Federal Energy Regulatory Commission (Commission or FERC) grant an extension of time to build the MVP Southgate Project (the Project or Southgate Project).²

NRDC joins and supports in full the comments filed concurrently by Appalachian Mountain Advocates opposing the Extension Request. NRDC files these additional comments to highlight the gravity of the Extension Request. Mountain Valley characterizes the Extension Request as a routine filing that is consistent with Commission practice. In reality, the Extension Request fails to demonstrate actions taken by Mountain Valley sufficient to meet the Commission’s standards for good cause to grant such a request, and fails to address changed circumstances that indicate an absence of any demonstration of necessity or public interest by the Southgate Project. Approving the Extension Request would be inconsistent with the

¹ Natural Resources Defense Council, “Motion to Intervene of Natural Resources Defense Council and Sustainable FERC Project,” Docket No. CP19-14-000, Accession No. 20181130-5203 (November 30, 2018).

² Mountain Valley, LLC, “Letter from Matthew Eggerding to Kimberly D. Bose,” Docket No. CP19-14-000, Accession No. 20230615-5090 (June 15, 2023) (“Extension Request”).

Commission’s precedent regarding good cause for granting extensions and would facilitate unnecessary environmental and economic damage to the landowners and communities affected by the Southgate Project. Accordingly, the Commission should deny the Extension Request.

On November 6, 2018, Mountain Valley applied for a certificate of public convenience and necessity (certificate) to build the proposed Southgate Project, a 73-mile pipeline project that would run through Virginia and North Carolina, carrying 375 million cubic feet of natural gas per day.³ On June 18, 2020, the Commission issued a certificate of public convenience and necessity. In its certification of the project, the Commission gave Mountain Valley three years, or until June 18, 2023, to complete the Pipeline.⁴ From inception, the Pipeline has been mired by its attachment to another Mountain Valley project, the Mainline System (Mainline). As an extension of Mainline, the Project’s necessity and purpose is entirely dependent upon completion of the original project—one North Carolina Department of Environmental Quality (DEQ) officer, in denying a water permit, stated that, without Mainline, the Project in essence “would be a pipeline from nowhere to nowhere incapable of carrying any natural gas, and certainly not able to fulfill its basic project purpose, while having no practical alternative.”⁵

Acknowledging this, in issuing the Certificate, the Commission included a key condition that prohibited construction of the Pipeline until Mountain Valley had acquired all required

³ Mountain Valley, LLC, “Application of Mountain Valley Pipeline, LLC for Authorization to Construct and Operate Pipeline Facilities Under the Natural Gas Act under CP19-14,” Docket No. CP19-14-000, Accession No. 20181106-5159 (November 6, 2018).

⁴ *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) at (C)(1), order on reh’g, 172 FERC ¶ 61,261 (2020) (“Certificate Order”).

⁵ John Hennessy, *Hearing Officer’s Report and Recommendations Mountain Valley Pipeline LLC Individual 401 Water Quality Certification*, 20 (Division of Water Resources, August 11, 2020), available at <https://www.deq.nc.gov/pipelines/ho-report-signature-081120/download>.

federal permits for Mainline.⁶ Legal challenges and permitting issues continue to delay Mainline, and its construction is currently halted, pending judicial review of the Congressional order attempting to greenlight the project, resulting in even further delay.⁷

Meanwhile, Southgate’s own permitting process has been largely unsuccessful, and the Pipeline has been denied key permits at both the state and federal level. On December 3, 2021, the Virginia Air Pollution Control Board denied a necessary air permit for a compressor station that supports the project, citing environmental justice concerns.⁸ On August 11, 2021, the North Carolina DEQ denied the Pipeline a 401 Water Quality Certification, citing the lack of utility of the project without Mainline, potential environmental impacts to water quality and protected riparian buffers and aquatic life, and risks to protected and critical drinking water supplies.⁹ Following this setback, Mountain Valley notified the Army Corps of Engineers that they would not be completing any permitting applications in 2021 and, to date, those permitting efforts are

⁶ See Certificate Order, at P 9 “[W]hile we are authorizing the Southgate Project with this order, we are directing the Office of Energy Projects to not issue any notice to proceed with construction of the Southgate Project until Mountain Valley receives the necessary federal permits for the Mainline System, and the Director of the Office of Energy Projects, or the Director’s designee, lifts the stop-work order and authorizes Mountain Valley to continue constructing the Mainline System.”

⁷ See Ben Lefebvre, *Appeals court orders temporary halt to Mountain Valley Pipeline construction*, Politico (July 10, 2023), available at <https://www.politico.com/news/2023/07/10/appeals-court-mountain-valley-pipeline-halt-ruling-00105551>.

⁸ See Sarah VogelSong, *Virginia Regulatory board denies Mountain Valley Pipeline compressor station*, Virginia Mercury (December 3, 2021), available at <https://www.virginiamercury.com/2021/12/03/virginia-regulatory-board-denies-mountain-valley-pipeline-compressor-station-permit/#:~:text=By%3A%20Sarah%20Vogelsong%20%2D%20December%203%2C%202021%20%3A48%20pm&text=In%20a%206%2D1%20vote,the%20controversial%20Mountain%20Valley%20Pipeline>

⁹ See *Denial of 401 Water Quality Certification and Jordan Lake Riparian Buffer Authorization Application*, Virginia Department of Environmental Quality (August 11, 2020) available at <https://www.deq.nc.gov/pipelines/2018-1638v3-mvp-southgate-rockingham-alamance-denial/download>.

paused.¹⁰ And while permitting applications ground to a halt, energy policy continues to move the region away from necessity for the project. The passage of the Inflation Reduction Act (IRA) in 2022, for example, best illustrates how far the momentum of policy has shifted away from fossil energy and towards renewable energy sources of generation.¹¹

It is arguable that Mountain Valley would not be filing this extension request were its Mainline efforts not saved by a political bargain effectuated in the Fiscal Responsibility Act (FRA) as a result of 2023 debt ceiling negotiations.¹² That legislation attempted to explicitly exempt the Mainline project from permitting procedures, however, it failed to reckon with the market forces discussed above. Despite the legal tailwind FRA offered to the Mountain Valley Pipeline project, passage of the FRA did not extend its protection to Southgate. Regardless of the fate of Mainline, the Commission must still faithfully consider whether an extension of this Project's Certificate is truly in the public interest. Given national, state and regional commitments to move away from natural gas as an energy source in the coming years, combined with continued uncertainty around the fate of the Mainline system, the Commission must reject Mountain Valley's plea and deny the Extension Request. Denying this Extension provides the Commission with a logical imperative opportunity to demonstrate its commitment to a sensible energy future by refusing to saddle the public with another stranded asset inconsistent with statewide, regional, and Federal energy needs, and ultimately the public interest. Mountain

¹⁰ See *Mountain Valley Pipeline -Southgate*, U.S. Army Corps of Engineers (April 1, 2022), available at https://www.saw.usace.army.mil/Portals/59/siteimages/FY23%20Congressional%20Fact%20Sheets/MountainValleyPipelineSouthgate.pdf?ver=vkGDRJ5_Td7SsuoEAOY5WQ%3D%3D.

¹¹ See Inflation Reduction Act of 2022, Pub. L. 117-169, 136 Stat. 1818 (2022) (hereinafter "IRA or Inflation Reduction Act").

¹² See Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 324, 137 Stat. 10 (2023) (hereinafter "FRA")

Valley cannot be rewarded for the “wait-and-see” approach it has adopted in regard to Southgate, as this fails to demonstrate sufficient good cause as required by an applicant to secure an extension request from the Commission. The unique combination of absence of demonstration of necessity or public convenience and evolving energy markets and public interest policy necessitate the Commission deny this extension request.

I. Mountain Valley’s inaction and inability to advance the Project fail to demonstrate “good cause” sufficient to justify an extension of its certificate.

To justify an extension request, a project sponsor must show that good cause for its requested extension exists, defined as a demonstration that a good faith effort has been made to meet project deadlines, but the project has encountered circumstances beyond its control that resulted in delays.¹³ The Commission considers extension requests on a case-by-case basis.¹⁴ The Commission has previously stated it looks for a demonstration by the project sponsor that they are actively pursuing project construction and engaging diligently to advance the project when considering an extension request.¹⁵ Consequently, a developer’s refrain from forward movement with activities that must be completed, or be underway, prior to initiating construction “provide[s] grounds for the Commission to refrain from ‘automatically’ granting an extension of time without further consideration.”¹⁶

Here, there is no demonstration of good cause sufficient to justify the extension of the Certificate, as Mountain Valley admits it has basically halted efforts to advance the project as its permitting efforts have dwindled. Mountain Valley has yet to resubmit an application for a water

¹³ See *Mountain Valley Pipeline LLC*, 180 FERC ¶ 61,117, at P 13 (2022).

¹⁴ See, e.g., *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 8 (2012).

¹⁵ *Id.* at P 11.

¹⁶ *Id.*

certification from North Carolina following their denial. Mountain Valley withdrew an appeal of the Virginia Air Pollution Control Board's denial of permits for the compressor station.¹⁷ They have abandoned their eminent domain cases against North Carolina landowners.¹⁸ Rather than affirmatively advancing, Mountain Valley has sat on its hands during the Certificate period—abandoning efforts to secure crucial permits for the Project, time and time again. These pending litigation- and permitting-related delays are entirely within Mountain Valley's control.

Further, the construction restriction tying the project to Mainline continues to be a stumbling block, and in its extension request, Mountain Valley admits that even if Southgate had all the proper permits in place, construction could not proceed under the terms of the original Certificate Order.¹⁹ While Mountain Valley declares that the circumstances surrounding the Mainline project have changed, the fact remains that construction of that project has once again been halted pending further judicial review.²⁰ Mountain Valley tries to smooth over this significant restriction by stating that, “After resolving Mainline permitting, Mountain Valley can resume its permitting efforts for the Southgate Project,”²¹ thereby plainly demonstrating they cannot and are not pursuing permitting advancement related to *this* proceeding, pending resolution of issues related to the Mainline.

¹⁷ See Sandy Hausman, *MVP will not appeal latest setback*, WVTF (March 30, 2022), available at <https://www.wvtf.org/news/2022-03-30/mvp-will-not-appeal-latest-setback>.

¹⁸ See Morgan Caplan, *MVP Requests Three-Year Extension for Southgate Project*, Sierra Club (June 16, 2023), available at <https://www.sierraclub.org/press-releases/2023/06/mvp-requests-three-year-extension-southgate-project>.

¹⁹ Extension Request at 2.

²⁰ See Lefebvre, *supra* note 7.

²¹ Extension Request at 2.

From its inception, the Commission has acknowledged that the Southgate Project is dependent on the completion of the Mainline project to justify its construction. During the Certificate period, Mountain Valley has done little in the affirmative to advance the project, but rather, has shrunk their efforts to bring its proposal to fruition. Granting this extension request would fly in the face of the Commission’s own reasoning for allowing extensions in the first place, as the actions taken by Mountain Valley do not demonstrate the active participation that the Commission has highlighted when granting extensions for good cause.

II. The Commission must consider new information calling into question market demand for the Project and its consistency with the public interest.

To grant an extension request, the Commission also must evaluate whether a project remains in the “public interest.” The Commission must consider “all factors bearing on the public interest” when reviewing the gas projects before it²² and this duty does not end with initial approval of the project. The Commission’s certificate deadlines for completing construction and placing pipelines into service “are an important tool for the Commission to use in ensuring that an interstate natural gas pipeline is developed in a manner that is consistent with the public interest.”²³ These deadlines help “ensure that the facts, analysis, and rationale regarding a particular proposal do not grow stale.”²⁴ Although extension requests do not provide a forum to relitigate the underlying certificate, “parties must have the right to argue that developments since the issuance of the certificate have called into question the Commission’s finding[s].”²⁵ Thus, as

²² See, e.g., *Alt. Ref. Co. v. Pub. Serv. Comm’n of N.Y.*, 360 U.S. 378, 391 (1959).

²³ See *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 3 (2020) (Glick, Comm’r, dissenting).

²⁴ See *Iroquois Gas Transmission Sys., L.P.*, 104 FERC ¶ 61,307, at P 14 (2003).

²⁵ *Algonquin*, 170 FERC ¶ 61,144, at P 9 (Glick, Comm’r, dissenting).

in this case when projects are long-delayed and developers are seeking extensions of their certificate deadlines, the Commission is required to assess whether its original determinations remain valid.²⁶ As Commission precedent recognizes, the Commission may also “deny an extension of time based on significantly changed market conditions.”²⁷ In determining whether or not to grant an extension of time, the Commission is *required* to consider any credible information presented to it indicating the project is no longer needed.²⁸ The same is true of information indicating that the Commission’s environmental analysis no longer reflects on-the-ground reality or adequately accounts for a project’s impacts.²⁹

While the Original Certificate may have claimed this need was demonstrated by Mountain Valley’s execution of long-term precedent agreements, the Commission has further stated that the purpose of conditioning certificate authority with a deadline for completion of construction is to “diminish [] the potential that the public interest might be compromised by significant changes occurring between the issuance of the certificate and the commencement of the project.”³⁰ Given the transitory moment that the project finds itself in, the Commission must give serious consideration to how significant changes of public policy and market expectations have altered

²⁶ See *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at P 9 (2018) (explaining that deadlines exist to ensure that the Commission’s findings are not “compromised by significant changes occurring between issuance of the certificate and commencement of the project”).

²⁷ *Trunkline Gas Co., LLC Lake Charles LNG Exp. Co., LLC & Lake Charles LNG Co., LLC*, 179 FERC ¶ 61,086 at P 11 (2022). See also *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 11, 23-25 (2012).

²⁸ See *Mountain Valley Pipeline, LLC*, 182 FERC ¶ 61,046 (2023) (Clements, Comm’r, *concurring*), at P 1 (emphasis original).

²⁹ See, e.g., *Constitution Pipeline Co.*, 165 FERC ¶ 61,081, at P 16–17 (“We recognize that environmental impacts are subject to change, and that the validity of our conclusions and environmental conditions cannot be sustained indefinitely”).

³⁰ *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026 at P 17 (2020).

the viability of the Pipeline sufficient to demonstrate that its construction is not in the public interest.

First, the long-term agreements which the Commission considered when granting the original Certificate were signed by PSNC, a party that would go on to acquire a 30% interest in the Pipeline.³¹ They would then quietly sell that interest ahead of the sale of their parent company to Dominion Energy (Dominion).³² Dominion Energy (Dominion) attempted and failed to bring a separate pipeline project to the region, an effort that was canceled due to ongoing delays and increased cost uncertainty.³³ Dominion renamed PSNC “Dominion Energy North Carolina,” and these legacy contracts are still the only agreements cited by MVP for demonstrating demand for this project. As Appalachian Voices noted in their 2019 report, filings submitted by MVP for the Certificate show that when a call was placed on the open market to sign the rest of the capacity agreements, there were no bidders.³⁴ Thus, further assurances that demand exists based on these same agreements must be scrutinized. Commitments from a closely related party that demand exists should not pass the smell test of whether construction is in the public interest.

³¹ See John Downey, *PSNC buys 30% share of interstate pipeline spur into NC*, Charlotte Business Journal (Aug 21, 2018), available at <https://www.bizjournals.com/charlotte/news/2018/08/21/psnc-buys-30-share-of-interstate-pipeline-spur.html>.

³² See John Downey, *Gastonia-based PSNC sells interest in \$500m pipeline project shortly after buying in*, Charlotte Business Journal (Feb 15, 2019), available at <https://www.bizjournals.com/charlotte/news/2019/02/15/gastonia-based-psnc-sells-interest-in-500m.html>.

³³ See *Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline*, Duke Energy (July 5, 2020), available at <https://news.duke-energy.com/releases/dominion-energy-and-duke-energy-cancel-the-atlantic-coast-pipeline>.

³⁴ See Elizabeth A. Stanton, PhD & Eliandro Tavares, *Analysis of the Mountain Valley Pipeline Southgate Project 5*, Appalachian Voices (2019), available at https://appvoices.org/resources/reports/MVP_Southgate_Report_25Jul2019.pdf; see also Mountain Valley Pipeline, LLC, “*Application of Mountain Valley Pipeline, LLC for Authorization to Construct and Operate Pipeline Facilities under the Natural Gas Act*” at Exhibit Z-2 Docket No. CP19-14-000, Accession No. 20181106-5159 (November 30, 2018).

Additionally, concerns about demand forecasting used by MVP to show need in the original certification request have only increased during the Certificate period, sufficient to require the Commission consider them anew during its review of this extension request.

Public policy is rapidly moving towards renewable energy, and the Southgate Project will therefore represent another sunk cost and stranded asset for which taxpayers will be left on the hook for should it be constructed, as natural gas infrastructure moves increasingly towards retirement in the coming years and beyond. The IRA will provide \$369 billion in strategic investment to promote clean energy and climate justice, including more than \$100 billion in clean energy tax incentives.³⁵ Analysis shows that with the IRA in place there will be lower levels of capacity, generation, and new investment in all forms of fossil-fueled power plants (coal, gas, and oil) and instead, the post-IRA years show a greater retention of existing nuclear and stronger deployment of new wind, solar, and storage in all run years.³⁶ Each clean energy dollar spent further decreases the need for the Project. The IRA investment represents an unprecedented level of spending that represents a major shift in public policy since the Commission issued its original certificate for the Project.

Additionally in October 2021, North Carolina signed into law new bipartisan climate legislation which requires the North Carolina Utilities Commission to design and implement a

³⁵ See generally Inflation Reduction Act of 2022, Pub. L. No. 117-169.

³⁶ See, e.g., Amanda Levin, *Inflation Reduction Act to Drive Historic Clean Energy Transition*, NRDC (June 29, 2023), available at <https://www.nrdc.org/press-releases/inflation-reduction-act-drive-historic-clean-energy-transition#:~:text=%E2%80%9CAI%20of%20the%20analyses%20point,co%2Dauthor%20of%20the%20paper>.

plan to achieve 70% reduction in carbon emissions in the state by 2030 and net zero by 2050.³⁷ NRDC modeling shows that achieving those goals is incompatible with substantial new gas investments. It is as simple as that. With a 70% emission reduction mandate in place, North Carolina is not demonstrating need for any additional buildout of gas infrastructure.

Finally, the U.S. Environmental Protection Agency (EPA) has also proposed new electric sector emission regulations³⁸ that would require carbon pollution reductions from the coal- and gas-fired power plants responsible for almost one-third of the United States' carbon footprint—which until now has gone nearly unchecked. This also impacts the need for additional gas investment in North Carolina.

While broader state and federal policy shifts and the realities of climate impacts are inconsistent with further buildout and utilization of gas infrastructure, concerns raised by Mountain Valley about meeting natural gas capacity in the short term might also be addressed via existing natural gas infrastructure in the region, decreasing environmental impacts related to construction and reducing consumer exposure to stranded assets in the future. The Commission's policy against "site banking" should inform its decision to deny the extension request.³⁹ Safety concerns raised by other project developers and the public should be further evaluated by the Commission and warrant further review for consistency with the public convenience and

³⁷ See Kelly Kenoyer, What exactly is in North Carolina's Carbon Plan?, WHQR (February 1, 2023) available at <https://www.whqr.org/local/2023-02-01/what-exactly-is-in-north-carolinas-carbon-plan>.

³⁸ See New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units, 88 FR 33240 (proposed May 5, 2023) (to be codified at 40 CFR 60).

³⁹ See, e.g., *Public Utility District No. 1 of Pend Oreille County, Washington*, 124 FERC ¶ 61,064, at P 31 (2008) (explaining that "an entity that is unwilling or unable to develop a site should not be permitted to maintain the exclusive right to develop it).

necessity—not unflinching ratification of a developer’s desire to sit on its rights for a prolonged period of time.⁴⁰ The NRDC shares and wishes to amplify Appalachian Voices comments that new information demonstrates greater and different impacts to federally-protected species than previously disclosed, necessitating further review by the Commission under Section 7 of the Endangered Species Act as a prominent example of such concerns.

III. Conclusion

FERC’s previous analyses for the project are stale and Mountain Valley has failed to demonstrate good cause for the extension it seeks. The Commission must deny Mountain Valley’s extension request. To issue applicants such as Mountain Valley who have slept on their rights “blank checks” of time with which to advance projects erodes the validity of the Commission’s framework for meaningfully reviewing project proposals. Should the Commission, despite overwhelming evidence that no good cause exists, approve the extension sought by Mountain Valley, it must also conduct supplemental assessments of both the need for the Pipeline and its environmental consequences.

Respectfully submitted this 24th day of July, 2023,

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⁴⁰ See, e.g., Comments of Transcontinental Gas Pipe Line Company, LLC on Final Environmental Impact Statement under CP19-14-000,” Docket No. CP19-14-000, Accession No. 20200327-5148 (March 27, 2020) (raising concerns about the safety risks associated with Southgate’s proposed route close to Transco, including “serious” risks to Transco’s cathodic protection system on the Southgate pipeline. Other safety risks of Southgate mentioned by Williams include blasting, grading, and other Southgate activities proposed to occur in the Transco right-of-way).

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 24th day of July, 2023, in Silver Spring, Maryland.



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