

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of the Applications of:

**Atlantic Coast Pipeline, LLC
Dominion Transmission, Inc.**

**Docket Nos. CP15-554-000
CP15-555-000**

MOTION TO INTERVENE AND PROTEST
OF
SHENANDOAH VALLEY NETWORK;
HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT;
VIRGINIA WILDERNESS COMMITTEE;
SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION; AND
NATURAL RESOURCES DEFENSE COUNCIL

On September 18, 2015, Atlantic Coast Pipeline, LLC, and Dominion Transmission, Inc., submitted their application to the Federal Energy Regulatory Commission to construct the Atlantic Coast Pipeline and the Supply Header Project. As authorized by 18 C.F.R. §§ 157.10, 385.211, 385.212, and 385.214, and the Commission’s Notice of Application dated October 2, 2015, SHENANDOAH VALLEY NETWORK, HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT, VIRGINIA WILDERNESS COMMITTEE, SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION, and NATURAL RESOURCES DEFENSE COUNCIL (collectively, the “Proposed Intervenors”) move to intervene in the Atlantic Coast Pipeline proceeding (Docket No. CP15-554-000) and protest the application. Furthermore, because the purpose of the Supply Header Project is to deliver gas to the Atlantic Coast Pipeline, the Proposed Intervenors also seek to intervene in that proceeding (Docket No. CP15-555-000) and

protest the application. The Proposed Intervenors also request a formal hearing on the applications under 18 C.F.R. § 157.10(a)(1).

All communications related to this proceeding should be address to the Proposed Intervenors counsel at the Southern Environmental Law Center:

Gregory Buppert
Kathryn Boudouris
Southern Environmental Law Center
201 West Main Street, Suite 14
Charlottesville, VA 22902
Phone:(434) 977-4090
Fax: (434) 977-1483
Email: gbuppert@selcva.org
kboudouris@selcva.org

In support of their motion and as required by 18 C.F.R. § 385.214(b), the Proposed Intervenors state their interests, their positions, and the basis in fact and law for each position “to the extent known” in the attached statement. The Proposed Intervenors expect to develop additional facts, arguments, and positions during the proceeding and reserve the right to bring those before the Commission when they are known and at the appropriate time.

STATEMENT OF INTEREST AND POSITION

I. INTERESTS OF THE PROPOSED INTERVENORS

A. Interests of Shenandoah Valley Network

The Shenandoah Valley Network (SVN) it is a non-profit organization based in Luray, Virginia. The organization’s mission is to maintain healthy and productive rural landscapes and communities, protect and restore natural resources, and strengthen and sustain our region’s agricultural economy. The Shenandoah Valley Network and its member organizations pursue this mission by supporting strong local citizens’ groups and

promoting good local land use and transportation plans, compatible economic development strategies, and effective land protection programs.

As required by 18 C.F.R. § 385.214(b)(2)(ii), the Shenandoah Valley Network and its member organizations in the Shenandoah Valley share interests that will be directly affected by the Atlantic Coast Pipeline. The organization serves various community groups in Augusta County, Virginia, through which the proposed pipeline is routed. This includes direct support for the work of local member organization Augusta County Alliance. Members and supporters of the Augusta County Alliance live along the pipeline route or alternative routes through Augusta County. These landowners are frustrated by intrusive surveying tactics associated with the proposed pipeline route, the use of eminent domain to take lands that in some cases have been in their families for generations, harm to their property caused by the pipeline, the loss of full use of the land, and the likelihood of diminished property values. Landowners are also concerned about the risk to public and private water supplies for homes, farms, and commercial enterprises as well as safety issues involving possible leaks, fires, and explosions associated with the pipeline, particularly because the pipeline would be located within close proximity to a number of schools and retirement communities.

In addition, the Shenandoah Valley Network and its member organizations are concerned about the long-term detrimental impacts that the Atlantic Coast Pipeline could have on agriculture and tourism, which are top economic sectors in the region. This could include damaging effects on farmland and forestland, as well as negative impacts to the viewsheds, rural character, and historic landscapes that characterize Augusta County.

SVN and its member organizations are also concerned about impacts to the natural resources and recreational opportunities provided by George Washington National Forest.

The interests that Shenandoah Valley Network represents here are shared by the public at large. Therefore, Shenandoah Valley Network's intervention is also warranted in the public interest under 18 C.F.R. § 385.214(b)(2)(iii).

B. Interests of Highlanders for Responsible Development

Highlanders for Responsible Development is a 501(c)(3) non-profit organization dedicated to the preservation and responsible use of the natural environment of Highland County, Virginia. The organization has several hundred supporters in Virginia and West Virginia. The natural environment of Highland County includes the source for both the James and Potomac Rivers and habitat for bald and golden eagles, native brook trout, many rare species of birds, and high elevation flora and fauna. Highlanders works in local communities to advance its objectives of economic development that supports responsible use of these natural resources, responsible land planning, and low-impact tourism.

As required by 18 C.F.R. §385.214(2)(ii), the Atlantic Coast Pipeline could directly and adversely affect Highlanders' interests in protecting Highland County's incomparable landscape, water, and natural resources. For example, construction of the pipeline on the unstable karst limestone geology of Highland County could adversely impact water resources in Highland County, as well as downstream waters like the James and Potomac rivers. In addition, Highlanders is concerned about the negative impacts that the Atlantic Coast Pipeline would have on the on the agricultural land, natural resources, and scenic beauty of Highland County, as well as associated harm to the economy of the

County. Supporters of Highlanders live along the pipeline's proposed route or alternative routes and their scenic, recreational, and property interests would be directly affected by the project.

The interests that Highlanders for Responsible Development represents here are shared by the public at large. Therefore, Highlanders' intervention is also warranted in the public interest under 18 C.F.R. § 385.314(b)(2)(iii).

C. Interests of Virginia Wilderness Committee

The Virginia Wilderness Committee is a 501(c)3 non-profit organization. The mission of the Virginia Wilderness Committee is to: permanently protect the best of Virginia's wild places for future generations; foster understanding and appreciation of Wilderness; and promote enjoyment and stewardship of our last remaining wildlands. As required by 18 C.F.R. § 385.214(b)(2)(ii), the organization has an interest that will be directly affected by the outcome of this proceeding because of its mission. Additionally, the Atlantic Coast Pipeline will directly the lands that its 280 members use for drinking water, recreation, and other natural resources and forms of enjoyment.

Organized in 1969, the Virginia Wilderness Committee has been instrumental in the passage of legislation that designated all existing wilderness areas in the George Washington and Jefferson National Forest and in Shenandoah National Park. It is committed to protecting Virginia's most outstanding natural areas on federal lands. The Atlantic Coast Pipeline poses a threat to special places in the George Washington National Forest. The organization is especially concerned about the effect of the pipeline on the remote areas that hold the potential for Wilderness or National Scenic Area designation in the future.

The pipeline would also have long-term detrimental impacts on plant and animal life, especially on the approximately 200 species already known to be endangered, threatened, rare, or declining in the George Washington. Of special concern is the Cow Knob salamander, which is found almost exclusively on Shenandoah Mountain in the national forest, directly in the path of the pipeline. The Virginia Wilderness Committee is also concerned about large-scale destruction, fragmentation, and degradation of habitat through edge effects reaching into adjoining forest. The organization is concerned about the effect of pipeline construction, maintenance, and herbicide use on water quality, especially on native trout streams and on headwaters of streams that supply municipal water. The Atlantic Coast Pipeline would disturb many unsuitable areas, such as erosion-prone steep slopes, seeps, and springs. It would also have a negative effect on scenic and recreational resources that are important to the public and the organization's members.

The interests that the Virginia Wilderness Committee represents here are shared by the public at large. Therefore, the Virginia Wilderness Committee's intervention is also warranted in the public interest under 18 C.F.R. § 385.214(b)(2)(iii).

D. Interests of Shenandoah Valley Battlefields Foundation

In support of its motion to intervene, the Shenandoah Valley Battlefield Foundation states that it is a non-profit organization with a mission to preserve the hallowed ground of the Valley's Civil War battlefields and battlefields in surrounding states, to share its Civil War story with the nation, and to encourage tourism and travel to the Valley's Civil War sites. Congress established the Shenandoah Valley Battlefields National Historic District in 1996. As required by 18 C.F.R. § 385.214(b)(2)(ii), the Shenandoah Valley Battlefields Foundation and its members have interests that will be directly affected by the

outcome of this proceeding. The Atlantic Coast Pipeline will cross or pass in close proximity to Georgia Camp Hollow and other Civil War sites in the George Washington National Forest, McDowell battlefield in Augusta and Highland counties, Virginia, and Camp Allegheny battlefield and Cheat Mountain battlefield in Randolph and Pocahontas counties, West Virginia. Portions of the McDowell battlefield are owned by the George Washington National Forest. Portions of the Camp Allegheny and Cheat Mountain battlefields are owned by the Monongahela National Forest. The pipeline will disturb and alter the historic battlefield areas, Civil War sites, and their surroundings that the Foundation seeks to protect. Additionally, the pipeline will impact the ability of the 445 members of and 735 donors to the Foundation to enjoy and view these battlefields and Civil War sites in their preserved state.

The interests that the Shenandoah Valley Battlefields Foundation represents here are shared by the public at large. Therefore, the Shenandoah Valley Battlefields Foundation's intervention is also warranted in the public interest under 18 C.F.R. § 385.214(b)(2)(iii).

E. Interests of Natural Resources Defense Council

The Natural Resources Defense Council ("NRDC") is a non-profit environmental membership organization with more than 440,000 members throughout the United States. More than 19,100 of these members reside in Virginia, West Virginia, and North Carolina. As required by 18 C.F.R. § 385.214(b)(2)(ii), NRDC has interests that will be directly affected by the outcome of this proceeding. NRDC members use and enjoy wild and public lands in Virginia, West Virginia, and North Carolina that will be impacted by the Atlantic Coast Pipeline. These lands include the central Appalachian Mountains of Virginia and West Virginia, as well as the George Washington and Monongahela

National Forests, and the Appalachian National Scenic Trail. All of these public lands and wild places will be impacted by the construction of the Atlantic Coast Pipeline. NRDC members use and enjoy these lands for a variety of purposes, including: recreation, solitude, scientific study, and conservation of natural resources. NRDC has had a longstanding and active interest in the protection of public lands in these national forests, the strongest possible system of safeguards for oil and gas development, the expansion of prioritization of clean energy resources, and the protection of public health from environmental threats.

The interests that the Natural Resources Defense Council represents here are shared by the public at large. Therefore, the Natural Resources Defense Council's intervention is also warranted in the public interest under 18 C.F.R. § 385.214(b)(2)(iii).

II. THE POSITION OF THE PROPOSED INTERVENORS

A. Introduction

Under the Natural Gas Act, FERC must determine whether the proposed Atlantic Coast Pipeline “is or will be required by the present or future public convenience and necessity.”¹ Applying this standard, “the Commission will approve an application for a certificate only if the public benefits from the project outweigh any adverse effects.”² Assessing the need for a proposed pipeline is a critical part of this balancing test, and the Commission has charged itself with considering “all relevant factors reflecting on the need for the project.”³ The Commission must also weigh the adverse impacts of the

¹ 15 U.S.C. § 717f(e).

² Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 at 28 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

³ *Id.* at 23.

project, specified as the interests of existing customers, the interests of competing pipelines, the interests of landowners and surrounding communities.⁴

Under agency policy, the Commission takes up environmental considerations in a separate, but related, evaluation under the National Environmental Policy Act (“NEPA”).⁵ The Commission evaluates whether a project “can be constructed and operated in an environmentally acceptable manner” and it has discretion to reject a proposed project on these grounds.⁶

Here, the Proposed Intervenors take the following positions regarding the Atlantic Coast Pipeline:

1. Evidence concerning multiple related pipeline proposals in the same region, flow reversal on the Transco Mainline, and available capacity on existing pipelines raises serious questions about the need for the project;
2. The expected adverse impacts of the project on the exceptional resources of the Allegheny Mountains, the Shenandoah Valley, and the Blue Ridge Mountains are unacceptable; and
3. The Commission must prepare a region-wide environmental impact statement that includes analysis of the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Appalachian Connector, and the WB XPress Project.

As required by 18 C.F.R. § 385.214(b)(1), the Proposed Intervenors provide the basis in law and fact for these positions below.

⁴ *See id.*

⁵ *See id.* at 27.

⁶ *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198, P 27 (Dec. 7, 2012).

B. Serious questions exist about the need for the Atlantic Coast Pipeline.

1. The Atlantic Coast Pipeline is one of four potentially redundant pipelines projects proposed through the same region to interconnect to the Transco Mainline.

Four interstate pipeline projects are slated for the same region of Virginia and West Virginia: the Atlantic Coast Pipeline, the Mountain Valley Pipeline, and the Appalachian Connector, which are proposed new interstate pipelines; and the WB XPress Project, which is an upgrade to the existing WB pipeline operated by Columbia Gas.⁷ These projects share an important similar objective; specifically, each will interconnect and deliver gas from the Marcellus and Utica region to the Transco Mainline east of the Blue Ridge Mountains.⁸ In addition to delivering gas directly to the Transco line, both the Atlantic Coast and Mountain Valley pipelines would also deliver gas to the existing Columbia WB line which then connects to the Transco Mainline in Fairfax County, Virginia.⁹

⁷ The Mountain Valley Pipeline, and the WB XPress Project are in the pre-filing phase with FERC. *See* FERC Docket Nos. PF15-3 & PF15-21, respectively. Williams held an open season for the Appalachian Connector in September 2014. *See* Williams, Expansion Projects: Appalachian Connector, <http://co.williams.com/expansionprojects/appalachian-connector/> (last viewed Aug. 24, 2015).

⁸ All four projects will deliver gas to the existing Transco interstate pipeline east of the Blue Ridge Mountains: the Atlantic Coast Pipeline will have the capacity to deliver 1.4 bcf/d in Buckingham County, Virginia; the Mountain Valley and the Appalachian Connector will each have the capacity to deliver 2.0 bcf/day in Pittsylvania County, Virginia; and the WB Express Project will connect with the Transco line in Fairfax County, Virginia. *See* Atlantic Coast Pipeline, LLC & Dominion Transmission, Inc., Resource Report 1, General Project Description, eLibrary No. 20150520-5023, at 1-17 (May 2015); Mountain Valley Pipeline, LLC, Resource Report 1, General Project Description, eLibrary No. 20150327-5320 at 1-7 (Mar. 2015); Williams, Expansion Projects: Appalachian Connector, <http://co.williams.com/expansionprojects/appalachian-connector/> (last viewed Aug. 24, 2015); Columbia Gas Transmission, LLC, Draft Resource Report 10, WB Xpress Project, eLibrary No. 20150522-5422, at 10-7 (May 2015).

⁹ *See* Columbia Gas Transmission, LLC, Resource Report 10, *supra*, at 10-7.

The Transco Mainline runs from the Gulf Coast to New York, allows or soon will allow bi-directional flow, and is the primary natural gas artery through the Mid-Atlantic and Southeast. Gas delivered by the Atlantic Coast Pipeline or any one of the three other proposed projects could reach the same end users south or north along the Transco Mainline. The Transco Mainline is also supplied by Marcellus pipelines farther north, including the Atlantic Sunrise Project, which is under review at FERC.¹⁰ These circumstances raise serious questions about whether the Atlantic Coast Pipeline and the other projects offer redundant capacity. The Commission must evaluate whether all of the proposed pipelines—the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Appalachian Connector, and the WB XPress Project—are needed to ensure adequate gas supply in the Transco Mainline.

2. Reversal of the Transco Mainline and available capacity on existing pipelines could eliminate the need for the Atlantic Coast Pipeline.

The Mid-Atlantic and Southeast regions are on the cusp of a historic shift in the direction of gas flow. For decades, the Transco Mainline has only offered unidirectional flow, south to north, from the Gulf Coast to New York. However, growth in Marcellus gas supplies is driving a reversal of flow on that artery. Transcontinental Gas Pipe Line Company, LLC, recently sought Commission approval for the Atlantic Sunrise Project, which will deliver 1.7 bcf/day to the Transco Mainline in Lancaster County, Pennsylvania, and reverse flows on the Mainline allowing Marcellus gas to reach existing markets as far south as Choctaw County, Alabama.¹¹ The company expects this project to

¹⁰ See FERC Docket No. CP15-138.

¹¹ See Transcontinental Gas Pipe Line Company, LLC, Resource Report No. 1, Atlantic Sunrise Project at 1-1 (Mar. 2015) (on file with FERC, eLibrary No. 20150331-5153).

be operational in July 2017.¹² A Department of Energy study released earlier this year suggested that flow reversals on existing infrastructure, like the Atlantic Sunrise Project, that allow Marcellus gas to move south had the potential to accommodate natural gas demand in Virginia and the Carolinas.¹³

In addition, existing pipelines also operate well below capacity. According to the Department of Energy, gas flow occupied only 54% of existing pipeline capacity between 1998 and 2013 nationwide.¹⁴ In the Mid-Atlantic and the Southeast region, at least one existing pipeline is operating at as low as 5% of its capacity, and others are operating between 20% and 50% capacity. FERC itself recognized that pipeline capacity was underutilized, finding that continued improvements to the process by which natural gas deliveries are scheduled would make “more efficient use of existing pipeline infrastructure.”¹⁵ In other words, the Proposed Intervenors believe that there is a significant amount of room on existing pipelines that could be harnessed to meet demand for Marcellus gas in the Mid-Atlantic and the Southeast regions.

One of the principal conclusions drawn by the Department of Energy in its 2015 report is that the combination of available pipeline capacity, flow reversals, and capacity increases on existing lines are a viable set of alternative to new pipeline infrastructure.

[I]ncreasing utilization of capacity that is not fully utilized
in existing interstate natural gas pipelines, re-routing

¹² *See id.*

¹³ *See* U.S. Dep’t of Energy, Implications of Increased Demand from the Electric Power Sector at 23 (Feb. 2015), http://energy.gov/sites/prod/files/2015/02/f19/DOE%20Report%20Natural%20Gas%20Infrastructure%20V_02-02.pdf.

¹⁴ *See id.* at 22.

¹⁵ Final Rule, Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities, 151 FERC 61,049, P 107 (2015).

natural gas flows, and expanding existing pipeline capacity are potentially lower-cost alternatives to building new infrastructure and can accommodate a significant increase in natural gas flows.¹⁶

The need for new capacity alleged by Atlantic Coast Pipeline may be dramatically diminished when viewed in light of these factors. The Proposed Intervenors urge the Commission to weigh the reversal of the Transco Mainline and the available unused capacity on existing lines before making any findings on the need for the Atlantic Coast Pipeline.

3. The stated gas demands of the proposed Greenville County gas plant and the Brunswick County gas plant are already satisfied by existing pipelines.

The Atlantic Coast Pipeline would provide redundant gas service to two natural gas plants in Virginia: the existing Brunswick County gas plant and the proposed Greenville County gas plant. In 2012, Virginia Electric and Power Company, a subsidiary of Dominion Resources, Inc., applied for approval to construct a new gas-fired power plant in Brunswick County, Virginia. This plant would be fueled by a new pipeline connecting the plant to the Transco Mainline at Station 165 in Pittsylvania County, Virginia. According to the application,

[t]he Brunswick County Power Station will be fueled by natural gas and will have 250,000 Dth per day of reliable firm transportation provided by Transcontinental Gas Pipe Line Company, LLC (“Transco”), at a cost-effective rate. This arrangement will provide the Brunswick County Power Station with access to abundant natural gas supplies

¹⁶ *Id.* at 31.

from the Gulf Coast to the expanding Marcellus Shale region and other supply regions.¹⁷

The Virginia State Corporation Commission approved the Brunswick gas plant in 2013, and that facility is now in service.

At the same time, Transcontinental Gas Pipe Line Company applied to FERC for approval of the Virginia Southside Expansion Project, the new pipeline that would serve the Brunswick plant. FERC approved the Virginia Southside Expansion Project, a combination of upgrades to reverse flow on the Transco Mainline and an approximately 100-mile long lateral to connect the Mainline with the Brunswick gas plant, in 2013.¹⁸ The Virginia Southside Expansion Project went into service at the end of August, 2015, and will deliver 250,000 Dth/d of incremental firm transportation service for 20 years to the Brunswick plant from Transco's pooling point in Mercer County, New Jersey.¹⁹

In July 2015, Virginia Electric applied to the Virginia State Corporation Commission for approval to construct a second new gas plant close to the Brunswick facility in Greensville County, Virginia. According to its filings with the state commission, two existing natural gas pipelines are already contracted to serve the Greensville gas plant:

[The plant] will be fueled using 250,000 Dth per day of natural gas with reliable firm transportation provided by Transcontinental Gas Pipe Line Company, LLC at a cost-effective rate. This arrangement will provide the Greensville County Power Station with access to abundant natural gas supplies from the Gulf to the Marcellus/Utica Shale regions. . . . In addition, Seneca Resources

¹⁷ Application for Approval and Certification of the Brunswick County Power Station, *in Application of Virginia Electric Power Company*, Case No. PUE-2012000128 (Va. State Corp. Comm'n, Nov. 2, 2012).

¹⁸ See Order Issuing Certificate, 145 FERC ¶ 61,152 P 1, 3, 4 & 5 (Nov. 21, 2013) (eLibrary No. 20131121-3015).

¹⁹ See *id.* at P 5; Letter Order from FERC to W. Hammons, Transco Gas Pipe Line Company, LLC (Aug. 27, 2015) (eLibrary no. 20150827-3029).

Corporation has entered into an Asset Management Agreement for 90,000 Dth of firm transportation pipeline capacity and natural gas commodity for the Project.²⁰

Like the Brunswick plant, the Greenville plant would be served by existing pipelines.

These two examples justify further detailed evaluation of the actual needs of these facilities and other end users that will connect to the Atlantic Coast Pipeline. They raise serious questions about whether the Atlantic Coast Pipeline is needed infrastructure or is merely offering redundant capacity to its proponents. The public benefits of redundant capacity must be carefully scrutinized. The Proposed Intervenors urge the Commission to fully evaluate the needs of the identified end users before making any findings regarding the need for the Atlantic Coast Pipeline.

4. The Commission must account for the risk that Clean Power Plan compliance and other future energy shifts will not involve the amount of gas infrastructure that it has been asked to approve.

The degree to which Virginia, North Carolina, and South Carolina need expanded natural gas pipeline capacity, as well as the timing of that need, depends, in great part, on how these states will meet their obligations under the EPA's recently-finalized Clean Power Plan. Clean energy sources, like renewable energy generation, energy efficiency, and other low- or zero-carbon energy sources, are viable alternatives to natural gas to achieve Clean Power Plan compliance. The details of the compliance plan for each individual state will only gradually become evident through the individual state compliance plan drafting process—which may not culminate until September 2018—as well as related deliberations before bodies such as state public utility commissions.

²⁰ Application for Approval and Certification of the Greenville County Power Station, *in Application of Virginia Electric and Power Company*, Case No. PUE-2015-00075 (Va. State Corp. Comm'n, July 1, 2015).

Over-reliance on natural gas pipeline infrastructure now could ensure under-reliance on alternative forms of energy in the future or, worse, result in stranded assets whose costs are borne by consumers. In considering the Atlantic Coast Pipeline, the Commission must account for the risk that Clean Power Plan compliance or other energy shifts will not involve the amount of gas infrastructure that it has been asked to approve. The Proposed Intervenors urge the Commission to fully evaluate the risks of overbuilding associated with the Atlantic Coast Pipeline in light of possible scenarios for Clean Power Plan compliance.

C. The expected impacts of the Atlantic Coast Pipeline on the exceptional resources of the Allegheny Mountains, the Shenandoah Valley, and the Blue Ridge Mountains are unacceptable.

The expected impacts of the Atlantic Coast Pipeline on the exceptional resources of the Allegheny Mountains, the Shenandoah Valley, and the Blue Ridge Mountains—their public and private forest lands, farmlands, communities, battlefields, historic sites, and waterways—are unacceptable and not justified by any purported need for the project. The proposed route of the Atlantic Coast Pipeline is not the product of a deliberate planning process designed to avoid or minimize harm to natural and cultural resources.²¹ The Proposed Intervenors expect to participate fully in the development of the environmental impact statement for the Atlantic Coast Pipeline and reserve the right to raise additional facts, arguments, and positions with the Commission during the NEPA process when they are known and at the appropriate time.

²¹*Cf.* Presidential Memorandum – Transforming our Nation’s Electric Grid Through Improved Siting, Permitting, and Review (June 7, 2003), available at <http://www.whitehouse.gov/the-press-office/2013/06/07/presidential-memorandum-transforming-our-nations-electric-grid-through-i>.

As proposed, the Atlantic Coast Pipeline would cross the heart of the George Washington and Monongahela National Forests, a region the U.S. Forest Service refers to as the “wildland core of the central Appalachians.”²² Public lands and adjacent private lands in this region represent some of the largest, least altered natural forests in the East and are the focus of conservation efforts of the Proposed Intervenors and other conservation organizations. As one example, the proposed pipeline would cross Shenandoah Mountain near Signal Corps Knob, part of a vast, largely undeveloped forestland in western Virginia that supports regionally significant concentrations of biodiversity and old growth forest tracts. The imperiled Cow Knob salamander is found almost exclusively at higher elevations on Shenandoah Mountain. In West Virginia, the route would cross rare, subalpine red spruce and balsam fir forests on Cheat Mountain that are habitat for the endangered Cheat Mountain salamander and other rare species. Other important attributes of the George Washington and Monongahela national forests include exceptional cold water trout streams, like Laurel Fork, which are regarded as some of the best trout fisheries in the Southeast and numerous steep slopes and rugged terrain.

Private lands adjacent to the national forests are characterized by farmland, private forest lands, and small, historic communities. Steep, forested slopes border rolling pastureland or cropland in valley bottoms. Civil War battlefields, like the McDowell Battlefield in Augusta and Highland counties, Native American sites, and other significant historic and cultural resources are present throughout the region. Highland and Augusta counties are also part of the Shenandoah Valley Battlefields National Historic

²² Letter from T. Speaks, U.S. Forest Serv., to K. Bose, FERC at ¶ 299 (July 30, 2015) (on file with FERC, eLibrary No. 20150730-5223).

District established by Congress in 1996. The Shenandoah Valley and smaller valleys to the west in Highland County are underlain by limestone and dolomite, and caves, sinkholes, sinking creeks, and other karst features are common. Streams originating on public lands and karst wells supply much of the water used by local communities for drinking water, agriculture, and other vital industries. The region's rural character draws millions of visitors, and tourism and outdoor recreation are important components of the local economy.

The Atlantic Coast Pipeline will also require compressor stations which release nitrogen oxides and volatile organic compounds (“VOCs”), among other air pollutants that are associated with health impacts to communities. For example, nitrogen oxides and VOCs react in the presence of sunlight to form ozone. Exposure to ozone is associated with a variety of respiratory and cardiovascular effects, including shortness of breath, reduced lung function, aggravated asthma and chronic respiratory disease symptoms, inflammatory processes, and premature death.²³ Compressor stations are also the source of significant noise impacts.

Constructing and operating a pipeline on a route through the George Washington and Monongahela National Forests, the Shenandoah Valley, and the surrounding counties would degrade the exceptional scenic, rural, and ecological values of the region. The pipeline right-of-way would fragment otherwise undeveloped forest lands, offer a direct avenue into the forest for invasive species and diseases, and impede essential natural processes, such as migration for amphibians and other small wildlife species. The

²³ NRDC, *Fracking Fumes: Air Pollution from Hydraulic Fracturing Threatens Public Health and Communities at 5* (Dec. 2014), available at: <http://www.nrdc.org/health/files/fracking-air-pollution-1B.pdf>.

pipeline would disrupt productive farmland, use eminent domain to take historic farms, damage agricultural water sources, and degrade Civil War battlefields and other historic and cultural resources. Excessive sediment loads caused by landslides and erosion from steep slopes could threaten the integrity of headwater streams and water supplies. Noise and air pollution from compressor stations will degrade the rural nature of communities and wildland areas and increase health risks for vulnerable populations.

The Proposed Intervenors believe that these impacts are unacceptable, cannot be mitigated, and outweigh any potential need for the Atlantic Coast Pipeline. The Commission would be justified in rejecting the application on these grounds. Moreover, they urge the Commission to employ a region-wide review process that will identify the route or routes that are the most protective of local communities and natural and cultural resources.

D. FERC must prepare a region-wide EIS that includes the Atlantic Coast Pipeline and other pipelines proposed through the central Appalachian region.

The Commission must take advantage of its existing authority to evaluate the need for the Atlantic Coast Pipeline, identify and evaluate alternatives that would avoid or minimize harm to natural and cultural resources, and responsibly plan for pipeline development in the central Appalachians. NEPA authorizes—and in our view, mandates—a region-wide EIS for pipelines that includes the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Appalachian Connector, and the WB XPress Project. NEPA requires federal agencies to prepare an EIS on major actions significantly affecting

the quality of the human environment.²⁴ The Supreme Court has held that “[a] comprehensive impact statement may be necessary in some cases for an agency to meet this duty.”²⁵ Thus, “when several proposals for [] actions that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together.”²⁶ Quoting the Fifth Circuit, FERC has also recognized that “[p]roposed actions with potential cumulative impacts may mandate the preparation of a regional or comprehensive impact statement.”²⁷

The authority for a region-wide EIS that addresses multiple pipeline projects is found in NEPA’s implementing regulations. Section 1508.25 requires agencies to consider cumulative actions and similar actions in defining the scope of an EIS.²⁸ “Cumulative actions” have “cumulatively significant impacts” when considered with “other proposed actions.”²⁹ And “[s]imilar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their

²⁴ See 42 U.S.C. § 4322(2)(C).

²⁵ See *Kleppe v. Sierra Club*, 427 U.S. 390, 409-410 (1976).

²⁶ *Kleppe* at 410; see *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1077 (9th Cir. 2001) (“[A]n agency must prepare both a programmatic EIS and a site-specific EIS where there are large scale plans for regional development. At least when the projects in a particular geographical region are foreseeable and similar, NEPA calls for an examination of their impact in a single EIS.”) (internal quotations and citations omitted); *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C.Cir. 1981) (“the environmental consequences of proposed actions must all be considered together in a single, programmatic EIS when their impacts will have a compounded effect on a region.”).

²⁷ *Columbia Gas Transmission, LLC*, 148 FERC ¶ 61,138, P 27 (Aug. 22, 2014) (emphasis omitted) (citations and quotations omitted).

²⁸ 40 C.F.R. § 1508.25. See also *id.* at § 1508.27(7) (“Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment.”)

²⁹ *Id.* at § 1508.25(a)(2).

environmental consequences together, such as common timing or geography.”³⁰ In recent guidance, the Council on Environmental Quality provided the following examples that justify the preparation of a regional or programmatic EIS: “[s]everal similar actions or projects in a region or nationwide (e.g., a large scale utility corridor project),” and “[a] suite of ongoing, proposed or reasonably foreseeable actions that share a common geography or timing, such as multiple activities within a defined boundary (i.e., Federal land or facility).”³¹ Relatedly, section 1508.18 defines “major federal action” requiring an EIS to include the “[a]doption of programs, such as a group of concerted actions to implement a specific policy or plan.”³²

Here, NEPA requires a regional EIS because the pipeline projects are “proposals for . . . actions that will have cumulative or synergistic environmental impact upon a region [and] are pending concurrently” before FERC. FERC is in the process of evaluating the Atlantic Coast Pipeline, the Mountain Valley Pipeline, and WB XPress Project, and Williams has announced its intent to pursue the Appalachian Connector. These pipelines would impact the same geographic region on the same schedule.³³ Furthermore, they would all cross the defined boundaries of the Jefferson, George Washington, or Monongahela National Forests. The potential cumulative impacts of a large-scale pipeline build-out through national forest lands in the central Appalachians requires a regional EIS.

³⁰ *Id.* at § 1508.25(a)(3).

³¹ Michael Boots, CEQ, Memorandum: Effective Use of Programmatic NEPA Reviews at 14 (Dec. 18, 2014).

³² 40 C.F.R. § 1508.18(b)(3).

³³ *See Peshlakai v. Duncan*, 476 F. Supp. 1247, 1258 (D.D.C. 1979) (recognizing that “space and time” are important considerations in evaluating a request for a regional EIS).

Furthermore, in *Sierra Club v. Kleppe*, the Supreme Court recognized that a key purpose of NEPA’s requirement for a comprehensive, regional EIS is the identification and evaluation of alternatives that lessen cumulative impacts for the entire region.³⁴ “Only through comprehensive consideration of pending proposals can the agency evaluate different course of action.”³⁵ When multiple proposals are pending for the same region, separate environmental review for each project presents the serious risk that a federal agency will overlook important alternatives that could avoid or minimize impacts for the region as a whole. The Commission can only rationally evaluate any viable alternative in the context of a complete understanding of the demand for natural gas, the capacity of existing pipelines, and the proposed capacity of new pipelines—in other words, a regional EIS.

The existence of alternatives that could avoid or minimize the impacts to the central Appalachian region as a whole is closely tied to the need for the project. As the Department of Energy concluded, flow reversals, available capacity on existing pipelines, and increasing the capacity of existing lines are a viable alternative to new infrastructure. If less than four new projects are needed to meet downstream demand, many impacts from new greenfield construction could be eliminated. Other important alternatives that warrant review include colocation with existing infrastructure, like roads, transmission lines, and pipelines; colocation with other proposed projects; increased capacity of existing projects; and renewable energy sources. The Proposed Intervenors urge the Commission to comprehensively examine these alternatives in a region-wide EIS that

³⁴ See *Kleppe* at 410; see also *Churchill Cnty* at 1080 (holding that the purpose of the cumulative impacts analysis is “to assist the decisionmaker in deciding whether, or how, to alter the program to lessen cumulative impacts”) (quotations omitted).

³⁵ *Kleppe* at 410 (emphasis added).

incorporates the Atlantic Coast Pipeline, the Mountain Valley Pipeline, the Appalachian Connector, and the WB XPress Project.

CONCLUSION

For the reasons stated above, the Commission should grant this motion to intervene and confer party status on Shenandoah Valley Network, Highlanders for Responsible Development, Virginia Wilderness Committee, Shenandoah Valley Battlefields Foundation, and Natural Resources Defense Council. The Commission should also accept the foregoing statements as the protests of the Proposed Intervenors under 18 C.F.R. § 385.211(a).

Respectfully submitted,



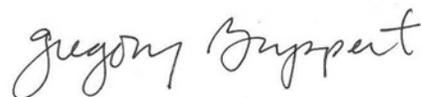
Gregory Buppert
Kathryn Boudouris
Southern Environmental Law Center
201 West Main Street, Suite 14
Charlottesville, VA 22902
434.977.4090
gbuppert@selcva.org
kboudouris@selcva.org

Counsel for the Proposed Intervenors

October 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have on October 23, 2015, caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.



Gregory Buppert

Counsel for the Proposed Intervenors