



and appurtenant facilities commencing near Chatham, Virginia and terminating at a delivery point with the Public Service Company of North Carolina, Inc., d/b/a Dominion Energy North Carolina (“Dominion”) near Graham, North Carolina.<sup>5</sup> The primary purpose of the Southgate Project is to (i) provide new natural gas transportation service for Dominion, which signed a long-term, binding precedent agreement for 300,000 dekatherms (“Dth”) per day; (ii) meet the growing needs of natural gas users in the southeastern United States; (iii) add a new natural gas transmission pipeline to provide competition and enhance reliability and resiliency of the existing pipeline infrastructure in North Carolina and southern Virginia; and (iv) provide North Carolina and southern Virginia with direct pipeline access to the Marcellus and Utica gas regions in West Virginia, Ohio, and southwestern Pennsylvania.<sup>6</sup>

The Commission published the Final Environmental Impact Statement (“FEIS”) on February 14, 2020, for the Southgate Project,<sup>7</sup> and on June 18, 2020, issued its Certificate Order to Mountain Valley.<sup>8</sup> A number of parties filed requests for rehearing, raising issues related to project need, the appropriate return on equity (“ROE”), various environmental impacts of the Project, and the appropriateness of the Commission’s tribal consultation process.<sup>9</sup>

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<sup>5</sup> Prior to filing its Application, Mountain Valley actively engaged in the Commission’s pre-filing process beginning in May 2018. *See* Letter Order, Approval of Pre-Filing Request, Docket No. PF18-4-000 (May 15, 2018).

<sup>6</sup> Application at 2.

<sup>7</sup> *See* Notice of Availability of the Final Environmental Impact Statement for the Proposed Southgate Project, Docket No. CP19-14-000 (Feb. 14, 2020).

<sup>8</sup> 171 FERC ¶ 61,232.

<sup>9</sup> The Monacan Indian Nation and the Sappony Indian Tribe (“Tribes”), Appalachian Mountain Advocates, *et al.* (“AMA”), and the North Carolina Utilities Commission (“NCUC”).

## **II.** **MOTION TO ANSWER**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,<sup>10</sup> Mountain Valley respectfully moves to answer and requests that the Commission accept this Answer to the requests for rehearing. Although the Commission’s procedural rules generally do not allow for answers to rehearing requests,<sup>11</sup> the Commission may, for good cause, permit such an answer. The Commission has accepted answers for good cause when an answer will facilitate the decisional process or aid in the explication of issues. The Commission has explained that it will accept answers to requests for rehearing in order to “assist[] in our decision-making process.”<sup>12</sup> Mountain Valley’s Answer will ensure a complete and accurate record and will aid the Commission in its disposition of issues raised in this proceeding. Mountain Valley therefore requests that the Commission (i) accept Mountain Valley’s Answer, and (ii) deny the requests for rehearing.

## **III.** **ANSWER**

### **A. The Commission Properly Found the Precedent Agreement Demonstrates Need for the Southgate Project.**

AMA argues “the precedent agreement between Mountain Valley and its single customer, Dominion, is not sufficient to establish that the Project is required by the

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<sup>10</sup> 18 C.F.R. §§ 385.212 and 385.213.

<sup>11</sup> *Id.* §§ 385.213(a)(2) and 385.713(d)(1).

<sup>12</sup> *Columbia Gas Transmission, LLC*, 146 FERC ¶ 61,116, at P 1 n.3 (2014), *pet. for review denied sub nom., Gunpowder Riverkeeper v. FERC*, 807 F.3d 267 (D.C. Cir. 2015); *see also Algonquin Gas Transmission Co.*, 83 FERC ¶ 61,200, at p. 61,893 n.2 (1998) (accepting an answer in order to ensure “a complete and accurate record”), *order amending certificate*, 94 FERC ¶ 61,183 (2001); *Transwestern Pipeline Co.*, 50 FERC ¶ 61,211, at p. 61,672 n.5 (1990) (citing *Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 (1988)) (accepting an answer “where consideration of matters sought [will be] addressed in the answer will facilitate the decisional process or aid in the explication of issues.”).

present or future convenience and necessity” and, therefore, the Certificate Order violates the Natural Gas Act (“NGA”).<sup>13</sup> AMA is wrong. The Commission’s reliance on the precedent agreement is fully consistent with the Commission’s precedent and policy, case law, and the requirements of the NGA.

The Commission appropriately relied on Mountain Valley’s 20-year precedent agreement with Dominion for 300,000 Dth per day of service on the Southgate Project to find that there is a need for the Project.<sup>14</sup> AMA argues that the Commission should pay no mind to this evidenced contractual market demand, as its hired outside consultants know better than Dominion and the NCUC as to how much capacity Dominion needs and can predict with utmost certainty future demand for natural gas.<sup>15</sup>

The Commission appropriately concluded that the precedent agreement “adequately demonstrates that the project is needed.”<sup>16</sup> The Commission explained that under the Certificate Policy Statement,<sup>17</sup> “precedent agreements are the best evidence that the service to be provided by the project is needed in the markets to be served,”<sup>18</sup> and noted that courts have upheld its policy that precedent agreements adequately demonstrate need for a project.<sup>19</sup> In reaching this conclusion, the Commission correctly

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<sup>13</sup> AMA Reh’g Request at 7.

<sup>14</sup> The original precedent agreement was with the Public Service Company of North Carolina, a local distribution company primarily engaged in the purchase, transportation, distribution, and sale of natural gas to customers in North Carolina. Following a January 2, 2019 merger, Dominion Energy, Inc. acquired the Public Service Company of North Carolina and changed the company name to Dominion Energy North Carolina. For ease of reference, the project shipper is referred to herein as “Dominion.”

<sup>15</sup> AMA Reh’g Request at 9-13.

<sup>16</sup> Certificate Order at P 51.

<sup>17</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (“Certificate Policy Statement”), *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).

<sup>18</sup> Certificate Order at P 39.

<sup>19</sup> *Id.* at n.77 (citing cases, including *Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (“*Sabal Trail*”).

found that there is uncertainty with respect to long-term demand projections and thus the precedent agreement is the better evidence of demand.<sup>20</sup>

AMA's contention that the Commission's reliance on contracts is not supported by the Certificate Policy Statement is incorrect. The Certificate Policy Statement makes clear that "contracts or precedent agreements always will be important evidence of demand for a project," and specifically states that "if an applicant has entered into contracts or precedent agreements for the capacity, it will be expected to file the agreements in support of the project, and they would constitute significant evidence of demand for the project."<sup>21</sup> The U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") consistently has upheld the Commission's finding of need based on the existence of precedent agreements under similar circumstances.<sup>22</sup> Accordingly, the Commission should follow this settled law and reaffirm its finding in the Certificate Order that the Project has met the test for need.

Moreover, although reliance on the precedent agreement is more than legally adequate, Mountain Valley did not rely entirely on the precedent agreement to demonstrate demand for the project. Mountain Valley explained in its Application and other filings during this proceeding that the Southgate Project is also needed to meet

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<sup>20</sup> Certificate Order at P 41.

<sup>21</sup> Certificate Policy Statement, 88 FERC at p. 61,748.

<sup>22</sup> See *Sabal Trail*, 867 F.3d at 1379 (holding that applicants met the market need "by showing that 93% of their capacity has already been contracted for"); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015) ("[T]he Commission concluded that the evidence that the Project was fully subscribed was adequate to support the finding of market need. It is the case here, as it was in *Minisink*, that 'Petitioners identify nothing in the policy statement or in any precedent construing it to suggest that it requires, rather than permits, the Commission to assess a project's benefits by looking beyond the market need reflected by the applicant's existing contracts with shippers.'" (quoting *Minisink Residents for Env'tl. Pres. & Safety v. FERC*, 762 F.3d 97, 111 n.102 (D.C. Cir. 2014)) (internal citation omitted). See also *Allegheny Def. Project v. FERC*, 932 F.3d 940, 947 (D.C. Cir. 2019) (the Commission's "finding of market need rested on the existence of contracts with shippers for 100% of the Project's capacity. That alone is enough."), *reh'g en banc granted, judgment vacated on other grounds*, 943 F.3d 496 (D.C. Cir. 2019), and *on reh'g en banc*, No. 17-1098, 2020 WL 3525547 (D.C. Cir. June 30, 2020).

growing demand for natural gas in the southeastern United States; to enhance reliability and competition in the region; and to provide users with direct pipeline access to the Marcellus and Utica gas regions. The need for the Southgate Project is even greater now given the recent cancellation of the Atlantic Coast Project (“ACP”) Project.<sup>23</sup> The ACP Project had been intended to provide up to two billion cubic feet of capacity to serve demand in the same general region as the Southgate Project. Dominion had subscribed to 100,000 Dth per day of ACP Project capacity. As Dominion explained in recent testimony before the NCUC, cancellation of the ACP Project will result in Dominion relying more on the Southgate Project to serve its customers.<sup>24</sup> Referring to the Southgate Project and Mountain Valley Mainline System, Dominion stated that it “needs that capacity to support its ability to satisfy customers’ firm peak-day demand for the foreseeable future.”<sup>25</sup> Dominion also provided an exhibit showing the predicted shortage in capacity to serve its demand without the Mountain Valley capacity.<sup>26</sup> Thus, there is an even greater demand for the Southgate Project now than there was when the Commission issued the Certificate Order.

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<sup>23</sup> See Press Release, Dominion Energy and Duke Energy Cancel the Atlantic Coast Pipeline (July 5, 2020) <https://atlanticcoastpipeline.com/news/2020/7/5/dominion-energy-and-duke-energy-cancel-the-atlantic-coast-pipeline.aspx>.

<sup>24</sup> See Supplemental Direct Testimony of Rose M. Jackson, Public Service Company of North Carolina, Inc., d/b/a Dominion Energy North Carolina, Petition for Annual Review of Gas Costs, Docket No. G-5, Sub 622, North Carolina Utilities Commission (July 10, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=ec3921df-6549-4fde-9277-93f3b91803e1>.

<sup>25</sup> *Id.* at 5:18-19.

<sup>26</sup> *Id.* at Revised Jackson Ex. 1.

**B. The Commission Properly Approved Mountain Valley’s Proposed ROE.**

AMA and NCUC argue that the Commission should not have approved Mountain Valley’s requested ROE of 14 percent for the Southgate Project.<sup>27</sup> This argument is without merit.

**1. FERC Appropriately Granted a 14 Percent ROE to Mountain Valley As a New Entrant Into the Market.**

AMA and NCUC assert that the Commission failed to provide substantial evidence supporting its acceptance of Mountain Valley’s proposed ROE of 14 percent.<sup>28</sup> They claim that the Commission over-relied on past decisions to support Mountain Valley’s ROE, without providing enough substantive analysis of Mountain Valley’s own market risk. AMA and NCUC also assert that rather than treating Mountain Valley as a new pipeline company for purposes of setting the ROE for the Southgate Project, the Commission should have treated Mountain Valley as an existing pipeline company, for which Commission policy is to apply a lower ROE.<sup>29</sup>

These assertions do not withstand scrutiny. Mountain Valley is a new market entrant. Given the Mountain Valley Mainline System is not yet in service, the Commission correctly recognizes that Mountain Valley is still not a “natural gas company” under section 2(6) of the NGA.<sup>30</sup> In approving the 14 percent ROE for the Mainline System, the Commission stated that its policy is to permit an ROE of up to 14 percent for new pipeline companies constructing greenfield projects because such companies “face higher business risks than existing pipelines proposing incremental

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<sup>27</sup> AMA Reh’g Request at 13-15; *see generally* NCUC Reh’g Request.

<sup>28</sup> AMA Reh’g Request at 13-15; NCUC Reh’g Request at 12-14.

<sup>29</sup> AMA Reh’g Request at 15; NCUC Reh’g Request at 10-11.

<sup>30</sup> Certificate Order at P 10.

expansion projects.”<sup>31</sup> The D.C. Circuit upheld the Commission’s decision to grant a 14 percent ROE for Mountain Valley’s Mainline System, finding that the Commission’s analysis was “reasonably based on the specific character of the Project and Mountain Valley’s status as a new market entrant.”<sup>32</sup> As AMA and NCUC recognize, courts have upheld the Commission’s policy to grant a 14 percent ROE to new entrants into the gas transportation market.<sup>33</sup> Thus, it is settled law that a 14 percent ROE is reasonable.

The Commission also appropriately explained its decision to treat Mountain Valley’s Southgate Project the same as an initial greenfield pipeline system for the purposes of setting initial rates. As stated above, Mountain Valley is still not a “natural gas company” as it is not in operation. It then logically follows that the Southgate Project is not an extension undertaken by a natural gas company. The Certificate Order explains that the same risks that apply to Mountain Valley’s Mainline System also apply to the Southgate Project. The Commission stated that “[w]ithout cash flows from existing operations and a proven track record . . . with respect to the Southgate Project, Mountain Valley faces a capital funding outlook similar to other companies constructing new pipeline systems.”<sup>34</sup> AMA does not offer any evidence to rebut the Commission’s finding in this regard, merely relying on inapposite case law with respect to incremental expansions of pipelines that are already in service. As such, the 14 percent ROE for Southgate is justified. Mountain Valley also faces additional risks, which provide further

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<sup>31</sup> *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, at P 82 (2017), *order on reh’g*, 163 FERC ¶ 61,197 (2018), *aff’d sub nom.*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019).

<sup>32</sup> *Appalachian Voices*, No. 17-1271, 2019 WL 847199 at \*1.

<sup>33</sup> *Sabal Trail*, 867 F.3d at 1377. *See also City of Oberlin v. FERC*, 937 F.3d 599, 609 (D.C. Cir. 2019) (affirming decision to grant ROE of 14 percent for new pipeline, where project’s risks were similar to those of other greenfield pipelines).

<sup>34</sup> Certificate Order at P 57.



support for the Commission’s decision to grant a 14 percent ROE for the Southgate Project, in the form of the protracted litigation affecting the construction of Mountain Valley’s Mainline System.<sup>35</sup> Delays associated with lawsuits opposing the permitting and construction of the Mountain Valley Mainline System has increased the cost of that project by billions of dollars. Indeed, AMA itself is one of the lead proponents of this barrage of litigation, thus rendering its argument to treat the Southgate Project as an incremental mainline expansion an exercise in abject hypocrisy.

**2. The Commission Was Not Required to Approve Recourse Rates Prior to Parties’ Negotiation of a Precedent Agreement for a Negotiated Rate Agreement.**

NCUC argues that by allowing the pipeline and shipper to enter into a precedent agreement for service at negotiated rates before the Commission approved the pipeline’s recourse rates, the Commission failed to prevent the pipeline from exercising “market power.”<sup>36</sup> NCUC asserts that this was inconsistent with the Commission’s Alternative Rates Policy Statement.<sup>37</sup>

NCUC has made these arguments in other proceedings, and the Commission has rejected them.<sup>38</sup> In other proceedings, the Commission has properly explained that NCUC’s concerns with the justness and reasonableness of a precedent agreement for

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<sup>35</sup> As noted in the Certificate Order, there has been major litigation challenging the Mainline System. *Id.* at PP 5-9.

<sup>36</sup> NCUC Reh’g Request at 3 (citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services*, 74 FERC ¶ 61,076 at p. 61,240 (1996), *order on clarification*, 74 FERC ¶ 61,194 (1996), *reh’g denied*, 75 FERC ¶ 61,024 (1996), *pets. for review denied sub nom. Burlington Res. Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998) (“Alternative Rates Policy Statement”).

<sup>37</sup> NCUC Reh’g Request at 3.

<sup>38</sup> See *Transcon. Gas Pipe Line Corp.*, 158 FERC ¶ 61,125, at PP 34-41, 60, *order on reh’g*, 161 FERC ¶ 61,250, at PP 17-20 (2017), *pet. for review denied*, 932 F.3d 940 (D.C. Cir. 2019), *set for panel hearing, Allegheny Def. Project v. FERC*, 943 F.3d 496 (D.C. Cir. 2019), *reh’g granted on other grounds*, No. 17-1098, 2020 WL 3525547 (D.C. Cir. June 30, 2020).

service at a negotiated rate were unripe in the certificate proceeding.<sup>39</sup> Rather, “the proper forum for a protest of the negotiated rate is at the time the pipeline files the relevant contracts or tariff records containing the essential details of the agreement.”<sup>40</sup> This applies equally to the Southgate Project: NCUC may protest Dominion’s negotiated rate agreement with Mountain Valley when it is filed with the Commission, not in this certificate proceeding, when that rate is not at issue. Simply put, NCUC’s concerns with the negotiated rate are not yet ripe.

Setting aside ripeness, the Commission has rejected NCUC’s argument substantively. NCUC ignores that it is standard practice in the industry for pipelines and shippers to enter a precedent agreement for service at a negotiated rate before a project has been certificated. The Commission has issued numerous certificates to new entrants into the interstate natural gas pipeline market based on rates that were negotiated among the parties, prior to the pipeline company establishing recourse rates for service on the new system.<sup>41</sup> As the Commission explained, at the time shippers negotiate a precedent agreement for service on a project under development, shippers know they will have the option to take service at a cost-based recourse rate. The Commission pointed out that this knowledge “provide[s] a check on any potential market power.”<sup>42</sup> Consequently, NCUC is wrong to argue that a recourse rate must already have been approved by the Commission in order to provide a check on market power.

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<sup>39</sup> See *Transcon. Gas Pipe Line Corp.*, 164 FERC ¶ 61,112, at P 10 (2018).

<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., *NEXUS Gas Transmission, LLC*, 160 FERC ¶ 61,022, at P 92 (2017), *order on reh’g*, 164 FERC ¶ 61,054 (2018), *aff’d in relevant part, City of Oberlin v. FERC*, 937 F.3d 599 (D.C. Cir. 2019); *Fla. Se. Connection*, 154 FERC ¶ 61,080, at P 140, *reh’g denied*, 156 FERC ¶ 61,160 (2016), *aff’d in relevant part, Sabal Trail*, 867 F.3d 1357).

<sup>42</sup> *Transcon. Gas Pipe Line Corp.*, 164 FERC ¶ 61,112 at P 14.

Moreover, Mountain Valley is not an existing pipeline company. Rather, Mountain Valley is a new market entrant and thus the very notion it can exercise market power is contrary to basic economics. The Commission describes “market power” as “the withholding of capacity to create an artificial scarcity, thereby raising prices.”<sup>43</sup> Mountain Valley is a new pipeline company without any facilities in service, and it negotiated the precedent agreement in an arms’ length transaction with Dominion. Unlike an existing pipeline considering whether to build an incremental expansion project, Mountain Valley has no incentive to “create an artificial scarcity.” To the contrary, Mountain Valley is building new pipeline capacity that will create competition with respect to the price of gas transportation in Appalachia and the Southeast. Thus, NCUC is incorrect in claiming that Mountain Valley could have exercised market power in negotiating rates with Dominion.

With respect to the NCUC’s argument that the initial recourse rate is “stagnant or outmoded,”<sup>44</sup> the Commission adequately supported its decision to grant an ROE of 14 percent on the Project, as explained above. NCUC ignores that the Commission reviews initial rates for service using proposed new pipeline capacity under the public convenience and necessity standard, which is a less rigorous standard than the just and reasonable standard under NGA Sections 4 and 5.<sup>45</sup> If NCUC believes the initial rate

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<sup>43</sup> *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 11 (2002), *order on reh’g*, 106 FERC ¶ 61,088 (2004), *pet. for review denied*, *Am. Gas Ass’n*, 482 F.3d 255 (D.C. Cir. 2005).

<sup>44</sup> NCUC Reh’g Request at 4, 5, 8 (citing Alternative Rates Policy Statement, 74 FERC at pp. 61,240).

<sup>45</sup> Certificate Order at P 63.

fails that more rigorous standard, NCUC is free to challenge that rate in a proceeding under NGA Section 5.<sup>46</sup>

**C. The Commission Took the Requisite “Hard Look” at the Environmental Impacts of the Project.**

AMA broadly claims that both “[t]he Certificate Order and the EIS on which it rests” do not meet the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370h.<sup>47</sup> AMA alleges a series of failings in the Southgate Project’s FEIS, and argues that the Commission failed to take a “hard look” at the Project’s impacts on aquatic resources, greenhouse gas (“GHG”) and non-GHG air emissions, and special status species.<sup>48</sup> AMA’s allegations are not supported by the facts of this case, or by court and Commission precedent.

“NEPA’s primary function is ‘information-forcing,’ compelling federal agencies to take a hard and honest look at the environmental consequences of their decisions.”<sup>49</sup> NEPA “does not force an agency to reach substantive, environment-friendly outcomes.”<sup>50</sup> Rather, “NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.”<sup>51</sup> Although the definition of “hard look” may be imprecise, the D.C. Circuit has made clear that “an agency has taken a ‘hard look’ at the environmental impacts of a proposed action if ‘the statement contains sufficient

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<sup>46</sup> 15 U.S.C. § 717d.

<sup>47</sup> AMA Reh’g Request at 19.

<sup>48</sup> *See id.* at 15-60.

<sup>49</sup> *Am. Rivers v. FERC*, 895 F.3d 32, 49 (D.C. Cir. 2018) (internal citations omitted).

<sup>50</sup> *McGuinness v. U.S. Forest Serv.*, 741 F. App’x 915, 923 (4th Cir. 2018) (citing *Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 184 (4th Cir. 2005)); *Sabal Trail*, 867 F.3d at 1367 (“NEPA directs agencies only to look hard at the environmental effects of their decisions, and not to take one type of action or another.”) (internal quotation marks omitted).

<sup>51</sup> *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)).

discussion of the relevant issues and opposing viewpoints,” and “the agency’s decision is fully informed and well-considered.”<sup>52</sup> When determining whether a NEPA analysis is deficient, courts will not “flyspeak an agency’s environmental analysis, looking for any deficiency no matter how minor.”<sup>53</sup> Thus, “[t]he overarching question is whether an EIS’s deficiencies are significant enough to undermine informed public comments and formed decision making.”<sup>54</sup>

Contrary to NEPA’s purpose, AMA asks the Commission to deliver a “particular result” and greatly overstates what is required of the Commission under NEPA. As discussed below, the Commission’s review of the Southgate Project’s environmental impacts satisfied NEPA’s “hard look” review.

**1. The Commission Properly Analyzed the Impacts of the Project on Aquatic Resources.**

AMA argues that the Commission’s conclusion that the Project’s cumulative impacts on aquatic resources would not be significant is arbitrary and capricious.<sup>55</sup> AMA mainly argues that the erosion and sediment control (“ES&C”) mitigation measures are insufficient to prevent impacts to aquatic resources, based on alleged failures of similar controls for the Mountain Valley Mainline System. AMA’s argument is flawed for multiple reasons.

First, AMA argues that the Commission’s conclusion is not supported by the record in this proceeding, while also arguing that the Commission must look beyond the

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<sup>52</sup> *Food & Water Watch v. U.S. Dep’t of Agric.*, Civ, Action No. 17-1714 (BAH), 2020 WL 1479462, at \*14 (D.D.C. Mar. 26, 2020) (quoting *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1324-1325 (D.C. Cir. 2015)).

<sup>53</sup> *Sabal Trail*, 867 F.3d at 1368 (citation omitted; internal quotations omitted).

<sup>54</sup> *Id.* (citing *Nevada v. Dep’t of Energy*, 457 F.3d 78, 93 (D.C. Cir. 2006)).

<sup>55</sup> AMA Reh’g Request at 37-38.

record to instances of impacts on water quality in other docketed proceedings.<sup>56</sup> AMA alleges that “Mountain Valley and its contractors have caused severe adverse impacts to water quality during construction of the MVP mainline in Virginia and West Virginia.”<sup>57</sup> Apart from the inaccuracy of the allegations and the embellished rhetoric surrounding it, the truth is that the Commission’s findings in this proceeding should and do stand on their own independent factual grounds. AMA ignores this in its transparent efforts to mount an inappropriate collateral attack on the Mountain Valley Mainline System, which is a separate project certificated by the Commission in an order issued almost three years ago.<sup>58</sup>

Further, AMA glosses over the fact that Mountain Valley has continually upgraded its ES&C plans for the Southgate Project in response to incidents occurring during construction of the Mainline System.<sup>59</sup> The FEIS also properly noted that 2018 was an extraordinarily wet year, breaking records for precipitation, and distinguished the Southgate Project, explaining that “given the flatter terrain where the Southgate Project would be constructed, [Commission staff does] not anticipate the Southgate Project would experience the same issues with erosion and sediment control.”<sup>60</sup> AMA further ignores that fact that Mountain Valley has agreed to implement supplemental control measures, which exceed the minimum standards required by Virginia and North Carolina.<sup>61</sup> While AMA complains about the ES&C measures generally, AMA fails to

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<sup>56</sup> See *id.* at 38 (“FERC offers no explanation for why past projects . . . led to significant water quality impacts but the MVP Southgate Project will not.”).

<sup>57</sup> *Id.*

<sup>58</sup> *Mountain Valley Pipeline*, 161 FERC ¶ 61,043, *order on reh’g*, 163 FERC ¶ 61,197, *aff’d sub nom.*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199.

<sup>59</sup> See FEIS at 1-12.

<sup>60</sup> *Id.*

<sup>61</sup> See *id.*

provide specific information on what mitigation measures are missing from Mountain Valley's plans.<sup>62</sup> Finally, it bears repeating yet again that due to the barrage of litigation on the Mainline System brought by AMA and others, Mountain Valley has been unable to complete construction and achieve final restoration on portions of the Mainline System or has been required to delay such actions, which has lengthened the time Mountain Valley has relied on temporary erosion control devices and forestalled the environmental benefits and protections associated with final restoration.

AMA also argues that the Commission's temporal and geographic restrictions on its consideration of cumulative impacts to aquatic resources are not rational.<sup>63</sup> Yet again, the FEIS demonstrates that AMA is wrong. The Commission relied on HUC-10 watersheds for its cumulative impacts to aquatic resources and on HUC-12 watersheds to assess cumulative impacts on most biological resources including wetlands, vegetation, and wildlife. These are standard criteria used by the Commission and are accepted criteria. The total area included in the Commission's consideration of cumulative impacts on these resources covers more than one million total acres, whereas the Southgate Project impacts 1,465.4 total acres within the HUC-10 watershed, or 0.1 percent—a *de minimus* percentage of this total.<sup>64</sup> The Commission included the Mountain Valley Mainline System in its cumulative impacts on the overlapping watersheds (182.3 acres constructed for the mainline in the Cherrystone Creek-Banister River HUC-10 watershed and 49.3 acres constructed in the Stinking River-Banister River

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<sup>62</sup> See *Adelphia Gateway, LLC*, 169 FERC ¶ 61,220, at P 161 (2019), *order denying reh'g and stay*, 171 FERC ¶ 61,049, at P 72 (2020) (noting commenter's failure to explain what additional mitigation measures would be necessary).

<sup>63</sup> AMA Reh'g Request at 42-43.

<sup>64</sup> FEIS tbls.4.13-2 and 4.13-3.

HUC-10 watershed). The Mountain Valley Mainline System and the Southgate Project would cross only two of the same perennial streams and one intermittent stream within the Cherrystone Creek-Banister River HUC-10 watershed.<sup>65</sup> In short, the facts support the Commission's temporal and geographic boundaries as being completely rational.

AMA's argument that sedimentation from the mainline construction and Southgate construction will somehow both contribute to increased sedimentation of the Kerr Reservoir is speculative and unfounded given that this reservoir is located more than 50 miles from the Southgate crossings of the Dan River and its tributaries.<sup>66</sup> Mountain Valley also intends to cross the Dan River using the horizontal directional drilling method, greatly reducing the likelihood of sedimentation. Finally, as the Commission already rightly concluded, AMA's speculative claim that construction in the small overlapping affected areas on the Mainline System and the Southgate Project will occur at the same time is very unlikely given the different construction schedules for the two projects.

In sum, AMA's argument that the Commission essentially should ignore project-specific facts contained in the record is unreasonable and far beyond what NEPA demands.

**2. The Commission Properly Considered the Impacts on Threatened and Endangered Species and Other Species of Concern Resulting From the Southgate Project.**

AMA raises a host of arguments related to the Commission's conclusions in the FEIS and the Certificate Order with respect to its finding that the Project is not likely to

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<sup>65</sup> *Id.* at 4-236.

<sup>66</sup> AMA Reh'g Request at 43.



adversely affect any proposed or listed species.<sup>67</sup> As discussed below, these arguments are without merit.

- a. The Commission's analysis of impacts on special status species complies with the Endangered Species Act.

AMA argues that the Commission never completed its analysis of “special status species” as contained in the DEIS<sup>68</sup> and FEIS and that the Commission did not complete its Endangered Species Act (“ESA”) Section 7 consultation for all relevant species with the United States Fish and Wildlife Service (“USFWS”) before issuing the FEIS.<sup>69</sup> AMA’s allegations are incorrect and misleading.

The DEIS contained twelve pages of detailed analysis on all the federally-listed and state-listed threatened, endangered, and special status species.<sup>70</sup> The FEIS further discussed these same species with an additional two pages of analysis.<sup>71</sup> Any concerns regarding the DEIS and the FEIS lacking analysis and information with respect to such species are, therefore, without merit. On March 19, 2020, the USFWS concurred with the Commission’s final Biological Assessment.<sup>72</sup> Thus, ESA Section 7 consultation is substantially completed.

Moreover, there is no reason for concern about the minimal outstanding surveys. The Certificate Order contains a condition that construction cannot commence until Mountain Valley files with the Commission the results of all outstanding biological

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<sup>67</sup> Certificate Order at P 110.

<sup>68</sup> Draft Environmental Impact Statement for Mountain Valley Pipeline LLC’s Southgate Project, Docket No. CP19-14-000 (July 26, 2019) (“DEIS”).

<sup>69</sup> AMA Reh’g Request at 47-48.

<sup>70</sup> See DEIS at 4-87 to 4-99.

<sup>71</sup> See FEIS at 4-96 to 4-110.

<sup>72</sup> Certificate Order at P 110.

surveys and the Commission completes ESA consultation with the USFWS.<sup>73</sup> Courts have upheld the Commission’s ability to condition construction on receipt of outstanding required federal approvals.<sup>74</sup> Contrary to AMA’s allegations, the Commission’s ESA consultation complied with the ESA, and will continue to do so going forward.

b. Mountain Valley undertook the necessary surveys for required species.

In addition to arguing that the Commission’s ESA consultation was deficient, AMA argues that Mountain Valley has not completed necessary surveys for “special status species.”<sup>75</sup> As discussed below, Mountain Valley has undertaken the necessary surveys for required species and will complete all required surveys prior to commencing construction.

Mountain Valley coordinated with the Commission, USFWS, Virginia Department of Game and Inland Fisheries (“VDGIF”), and the North Carolina Wildlife Resources Commission (“NCWRC”) to identify where surveys should occur for aquatic species. Mountain Valley has completed over 90 percent of all required species surveys.<sup>76</sup> Surveys conducted for the Project to date have found no federally endangered and threatened species and, thus, the Commission concluded that the Southgate Project was not likely to adversely affect federally listed species.<sup>77</sup> Given the need for additional surveys to be completed for bat hibernacula and certain plants, construction of the Project is conditioned on completing these surveys and the remaining surveys will be completed

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<sup>73</sup> *Id.* at P 111 and Condition No. 19.

<sup>74</sup> *See, e.g., Del. Riverkeeper Network v. FERC*, 857 F.3d 388 (D.C. Cir. 2017).

<sup>75</sup> AMA Reh’g Request at 50-53.

<sup>76</sup> FEIS at 4-83.

<sup>77</sup> *See id.* at 4-96.

when land access can be acquired. As discussed above, conditioning construction on completion of surveys is fully in accordance with settled law.

Habitat surveys were conducted for the Roanoke logperch in the waterbodies identified by USFWS where the species is historically known to occur. Given that USFWS did not approve individual surveys for the Roanoke logperch because its presence would be assumed in those waterbodies, Mountain Valley assumed that three waterbodies may contain the Roanoke logperch.<sup>78</sup> There is no requirement to survey for the species in the other stream crossings along the Project route with no potential for suitable habitat or historic record of presence. Similar to the USFWS, the Commission determined that the Southgate Project was not likely to adversely affect the Roanoke logperch, in large part due to Mountain Valley using trenchless crossing methods for the three waterbodies with historically known presence.<sup>79</sup> Likewise, only certain waterbodies were surveyed for mussels due to their historic presence and potential for habitat suitability. There is no requirement to conduct surveys in these other waterbodies where the habitat is not suitable for the species or outside of the known range. Indeed, AMA's claim that two of the 21 perennial streams containing fisheries of special concern went unsurveyed is false.<sup>80</sup> Under the guidance of federal and state agencies, Mountain Valley surveyed two waterbodies in Virginia and nineteen waterbodies in North Carolina.<sup>81</sup>

The FEIS concludes properly that the Project would not significantly impact the state-listed bats, fishes, salamanders, freshwater mussels, crayfish, and plants that may be

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<sup>78</sup> *Id.* at 4-99.

<sup>79</sup> *Id.* at 4-100. The Roanoke logperch is known to occur in the Dan River and is generally found on the bottom of the river. Mountain Valley continues to coordinate with the NCWRC and the USFWS to determine if water withdrawal can occur at the Dan River without affecting any applicable species, including the Roanoke logperch.

<sup>80</sup> AMA Reh'g Request at 51.

<sup>81</sup> FEIS at 4-101.

present within the Project area.<sup>82</sup> Nonetheless, Mountain Valley continues to coordinate with the NCWRC regarding presence surveys and habitat assessments for state species the Project could impact. As a voluntary measure, Mountain Valley also coordinated with the VDGIF and agreed to implement specific mitigation and conservation measures in the unlikely event that the state listed tri-colored bat or little brown bat are impacted during construction.

c. The Commission analyzed cumulative impacts to federally listed species.

Contrary to AMA's claims otherwise, the Commission's FEIS did include a discussion on cumulative impacts to federally listed species.<sup>83</sup> The Commission concluded that projects in the geographic scope in combination with the Southgate Project could have minor cumulative effects on special status species, including federally listed threatened and endangered species.<sup>84</sup> The Commission determined correctly<sup>84</sup> that under the ESA, these other projects would need to engage in consultation with USFWS and there is no legal requirement nor is it possible for the Commission to supplant the authority of USFWS and attempt to determine these Project-specific species impacts as part of its NEPA review.<sup>85</sup>

d. The Commission's FEIS properly analyzed and acknowledged direct impacts to protected species.

AMA argues that the Commission's FEIS fails to analyze acknowledged direct impacts to protected species.<sup>86</sup> Once again, AMA is incorrect.

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<sup>82</sup> FEIS at 4-110.

<sup>83</sup> *Id.* at 4-248.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> AMA Reh'g Request at 56-57.

AMA offers unfounded allegations contrary to the commitments Mountain Valley has undertaken to reduce any take of migratory birds. As the Commission states in the FEIS, Mountain Valley would attempt to minimize Project impacts on migratory birds by conducting construction-related vegetation clearing outside of the peak migratory bird nesting season within each state (March 15 through August 15 in Virginia and April 1 through August 31 in North Carolina).<sup>87</sup> Conducting vegetation clearing outside of the peak migratory bird nesting season would minimize incidental take of nesting migratory birds. If avoiding the migratory bird nesting season during construction-related clearing becomes infeasible, Mountain Valley would consult with the FWS to identify alternative measures to implement to minimize impacts on migratory birds.<sup>88</sup> During operation of the Project, Mountain Valley would coordinate with the VADGIF, NCWRC, and local conservation districts to develop right-of-way mowing schedules and conservation practices beneficial to bird species (and other wildlife) that may use the Project right-of-way as nesting or foraging habitat. Due to recommendations from VADCR and NCWRC, Mountain Valley has proposed to modify its FERC-approved Southgate Upland Erosion Control, Revegetation, and Maintenance Plan to restrict maintenance clearing or mowing of the right-of-way between April 1 and October 15 of any year.<sup>89</sup>

AMA also speculates that blasting will cause harm to certain state aquatic species of concern.<sup>90</sup> None of the surface water crossings with sensitive aquatic species have the potential for blasting to occur. Accordingly, the FEIS concludes that blasting is unlikely to occur and is only intended to be utilized if all other methods of crossing surface waters

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<sup>87</sup> FEIS at 4-83.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> AMA Reh'g Request at 57.

have been exhausted.<sup>91</sup> Additionally, in the unlikely event blasting is required, Mountain Valley committed to prepare and implement Project-specific blasting plans, in coordination with federal and state agencies, to minimize impacts on aquatic species.<sup>92</sup>

### **3. The Commission Properly Analyzed the Impacts of the Southgate Project's Air Emissions.**

AMA claims that the Commission's analysis of non-GHG air emissions from the Southgate Project violated NEPA.<sup>93</sup> AMA argues that FERC's analysis of impacts from the Lambert Compressor Station is inadequate because the underlying air modeling performed by Mountain Valley using the U.S. Environmental Protection Agency's ("EPA") atmospheric dispersion modeling system ("AERMOD") was "fundamentally flawed."<sup>94</sup> AMA cites no precedent or regulation for its arguments. Rather AMA simply claims that Mountain Valley failed to analyze cumulative air pollutant emissions from the adjacent Transcontinental Gas Pipe Line, LLC ("Transco") property, inconsistent with "decades of EPA guidance regarding use of AERMOD."<sup>95</sup> Incredibly, AMA bases this allegation on a declaration from an individual who taught himself how to use the AERMOD system based on online training videos.<sup>96</sup> AMA and its self-taught analyst are, not surprisingly, wrong.

AMA's argument relies on its analysis of the emissions for the Lambert Compressor Station contained in Section 4.11.1.7 of the FEIS, which sets forth the estimated operational emissions for the compressor station in Table 4.11-5 and the

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<sup>91</sup> FEIS at 4-95.

<sup>92</sup> *Id.*

<sup>93</sup> AMA Reh'g Request at 33.

<sup>94</sup> *Id.* at 36

<sup>95</sup> *Id.*

<sup>96</sup> *See id.*, Ex. A, Declaration of Mark Barker ¶¶ 5-9.

criteria pollutant modeling results in Table 4.11-6. Contrary to AMA's claims, Mountain Valley's expert consultant *did* take into account Transco Station 165 when using the AERMOD system for the modeling of the Lambert Compressor Station. The receptor grid used for the modeling study submitted to the Commission was based on a grid that sufficiently captured the maximum combined concentrations from Lambert and Transco Station 165 (along with other nearby background sources). The center point of the receptor grid is essentially irrelevant as long as the spacing of the receptors in the area of the maximum modeled concentrations is sufficient to capture the maximum concentrations. In this instance, the expected outcome was that the Transco Station 165 source would dominate the cumulative modeled concentrations, given its much larger emissions profile, compared to the proposed Lambert Compressor Station. Upon completing the modeling, it was verified that the Transco Station 165 source did indeed dominate the cumulative modeled concentrations. As such, placement of the receptor grid centered on the dominating source was appropriate, especially given the fact they are located so close in proximity to one another. Further, the EPA memos and policy documents referred to by AMA are intended to be used by EPA as criteria for obtaining an air permit and are not germane to the Commission's NEPA analysis with respect to air emissions from the Lambert Compressor Station.<sup>97</sup>

Moreover, AMA ignores the fact that this is not the only air modeling contained in the FEIS. The FEIS also contains cumulative criteria pollutant modeling results for the Lambert Compressor Station and other sources within 31.8 miles.<sup>98</sup> Not only does this air modeling include Transco Station 165, it includes another Transco compressor station

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<sup>97</sup> *Id.* ¶¶ 11-15 (referencing a number of "memos and policy documents").

<sup>98</sup> FEIS at 4-256-4-257 tbl.4.13-6.

as well as 24 additional facilities. Therefore, contrary to AMA's allegations, the Commission correctly assessed the emissions from Transco Station 165 in its cumulative emissions analysis in the FEIS, as well as the emissions from many more sources.

**4. The Commission Properly Analyzed the Southgate Project's GHG Emissions.**

AMA broadly asserts that the Commission "refuse[d] to take a hard look at the Project's greenhouse gas effects."<sup>99</sup> AMA contends that the Commission failed to assess alleged indirect GHG emissions associated with the Project, because the FEIS did not provide quantitative estimates of upstream and downstream GHG emissions.<sup>100</sup> As explained below, AMA is wrong.

AMA asserts that the Commission is required to estimate and analyze upstream GHG emissions, but fails to connect the Commission's action with any alleged associated upstream activity.<sup>101</sup> AMA simply claims that because the Commission "is aware that the Project is designed to transport 375 million cubic feet per day of gas" it should be required to estimate the amount of GHG emissions associated with upstream production.<sup>102</sup>

First, AMA's argument presents a fundamental misunderstanding of the purpose of the Southgate Project. The Southgate Project is simply an extension from the previously certificated Mountain Valley Mainline System, and does not add additional capacity beyond what was previously approved.<sup>103</sup> Second, upstream GHG emissions are not indirect impacts of the Southgate Project because they are neither caused by the

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<sup>99</sup> AMA Reh'g Request at 20.

<sup>100</sup> *Id.* at 20-25.

<sup>101</sup> *Id.* at 21.

<sup>102</sup> *Id.*

<sup>103</sup> Certificate Order at P 57.



Project, nor are they reasonably foreseeable.<sup>104</sup> The Commission has explained that it is not the legally relevant cause of upstream GHG emissions because it lacks jurisdiction over natural gas production, which is regulated by individual states.<sup>105</sup> Further, the Commission has found consistently that rather than inducing production, the opposite causal relationship is more likely—that once production begins, shippers or end-users will support the development of infrastructure to move the produced gas.<sup>106</sup> This reasoning is particularly relevant here, because the Southgate Project does not increase the amount of gas being transported by Mountain Valley’s system in any significant way. The FEIS for the Mainline System concluded that it was not likely to lead to additional drilling and production and the sole Project shipper is a local distribution company.<sup>107</sup> AMA’s argument that GHG emissions from upstream activity constitute an “indirect effect” of the Southgate Project should have been raised in a challenge to the Mainline System and is nothing more than an impermissible collateral attack on that certificate.

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<sup>104</sup> See *Birckhead v. FERC*, 925 F.3d 510, 519 (D.C. Cir. 2019) (explaining that emissions from downstream gas combustion are neither, “as a categorical matter, always a reasonably foreseeable indirect effect of a pipeline project,” nor are they “an indirect effect of a project only when the project’s “entire purpose” is to transport gas to be burned at “specifically-identified” destinations”). Rather, the court observed that *Sabal Trail* did not establish a bright-line rule, and NEPA continues to compel “compels a case-by-case examination.” *Id.*

<sup>105</sup> See Certificate Order at P 97. See also *Dominion Transmission, Inc.*, 156 FERC ¶ 61,140, at P 44 (2016), *order denying reh’g*, 158 FERC ¶ 61,029 (2017); *Tenn. Gas Pipeline Co.*, 156 FERC ¶ 61,156, at P 83 (2016), *order on reh’g*, 163 FERC ¶ 61,129 (2018) (same). See also *Dominion Transmission, Inc.*, 163 FERC ¶ 61,128, at P 61 (2018) (“*New Market*”) (explaining that the Commission “only has jurisdiction over the pipeline applicant, whose sole function is to transport gas from and to the contracted for delivery and receipt points”).

<sup>106</sup> See *Nw. Pipeline, LLC*, 157 FERC ¶ 61,093, at P 32 (2016) (noting that “[t]o date, the Commission has not been presented with a proposed project that the record shows will cause the predictable development of gas reserves,” and that “the opposite causal relationship is more likely”); *Tenn. Gas Pipeline Co.*, 163 FERC ¶ 61,190, at P 59 (2018) (“this does not mean that the Commission’s action of approving a particular pipeline project will cause or induce the effect of additional shale gas production”), *aff’d*, *Birckhead v. FERC*, 925 F.3d 510. The U.S. Court of Appeals for the Second Circuit has upheld the Commission’s conclusion that impacts from upstream natural gas development “are not sufficiently causally-related . . . to warrant a more in-depth analysis.” *Coal. for Responsible Growth & Res. Conservation v. FERC*, 485 Fed. App’x 472, 474 (2d Cir. 2012), *aff’g*, *Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121 (2011), *reh’g denied*, 138 FERC ¶ 61,104 (2012).

<sup>107</sup> MVP Mainline FEIS, at 1-26.

Neither are the alleged impacts of upstream production reasonably foreseeable for purposes of NEPA review. The Commission has previously explained that upstream production is not reasonably foreseeable where the record lacks “more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods.”<sup>108</sup> Without this information, “there are no forecasts in the record that would enable the Commission to meaningfully predict production-related impacts.”<sup>109</sup> AMA fails to present any potentially relevant evidence to support its contention that the Southgate Project has induced production.

AMA also argues that the Commission erred by failing to consider GHG emissions associated with downstream combustion of natural gas to be transported by the Project. Citing *Sabal Trail*, AMA argues that “downstream greenhouse-gas emissions are quintessential indirect effects because such emissions predictably result from operating a pipeline whose sole purpose is to transport gas that will be consumed by end-users.”<sup>110</sup> AMA’s reliance on *Sabal Trail* is misplaced.

In *Sabal Trail* the court held that the Commission was required to quantify potential GHG emissions transported on the pipeline projects at issue there because it was reasonably foreseeable that the gas would be burned in the downstream power plants.<sup>111</sup> The D.C. Circuit subsequently explained that *Sabal Trail* did not establish “as a categorical matter” that downstream GHG emissions are “always a reasonably

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<sup>108</sup> *New Market*, 163 FERC ¶ 61,128 at P 61 n.148.

<sup>109</sup> *Id.*

<sup>110</sup> AMA Reh’g Request at 23 (citing *Sabal Trail*, 867 F.3d at 1371-72).

<sup>111</sup> *Sabal Trail*, 867 F.3d at 1371-72.

foreseeable indirect effect of a pipeline project.”<sup>112</sup> The Commission has interpreted the holding in *Sabal Trail* to mean that the Commission must analyze downstream GHG emissions “where it is known that the natural gas transported by a project will be used for a specific end-use combustion.”<sup>113</sup> Although AMA correctly notes that most of the gas transported by the Southgate Project will service residential and commercial North Carolina end-users, the Commission determined that there remained a range of possible uses for the gas delivered by the Project.<sup>114</sup> And beyond these end-users, it is unknown how Dominion will utilize the natural gas transportation capacity created by the Project, and it would be futile for the Commission to engage in the sort of speculation that AMA demands.

Further, and particularly significant here, the Commission previously quantified the potential downstream GHG emissions for Mountain Valley’s Mainline System during its environmental review of that project.<sup>115</sup> In its review of the Mainline System, the Commission calculated a conservative estimate of the potential downstream emissions based on the amount of end-use combustion that could result from the natural gas transported on the Mainline System.<sup>116</sup> The Commission noted that its estimate was conservative because, among other things, some of the gas transported on the project could displace other fuels, which would actually lower total GHG emissions, and the new transportation capacity could displace gas that otherwise would be transported via

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<sup>112</sup> *Birckhead*, 925 F.3d at 519.

<sup>113</sup> *Adelphia Gateway, LLC*, 171 FERC ¶ 61,049, at P 124 (2020) (citing *Sabal Trail*, 867 F.3d at 1371).

<sup>114</sup> Certificate Order at P 99.

<sup>115</sup> See Final Environmental Impact Statement for the Mountain Valley Project and Equitrans Expansion Project, Docket Nos. CP16-10-000, *et al.*, at 4-620, tbl.4.13.2-2 (June 23, 2017).

<sup>116</sup> *Mountain Valley Pipeline*, 161 FERC ¶ 61,043 at P 293.

different means, resulting in no change in GHG emissions.<sup>117</sup> The Commission's analysis was challenged by AMA and other parties and ultimately upheld by the D.C. Circuit.<sup>118</sup>

The estimate the Commission provided in its certificate for the Mainline System is relevant here. Because the Southgate Project is simply an extension of the Mainline System, it does not add any significant incremental pipeline capacity. Rather, it merely diverts a portion of that capacity to a new customer and delivery point. Therefore, accepting for the sake of argument AMA's premise that the Commission is required to assess alleged downstream GHG emissions, the Southgate Project cannot be responsible for such incremental emissions because it does not transport gas in addition to what is transported on the Mainline System. Thus, quantifying the downstream GHG emissions associated with the Southgate Project would represent an inaccurate figure resulting from the double-counting of GHG emissions.<sup>119</sup> As the Commission concluded, this underscores its determination that providing upper-bound estimates of downstream GHG emissions on individual pipeline projects "may be misleading and does not provide meaningful information" regarding impact on GHG emissions and climate change.<sup>120</sup> AMA's attempt to relitigate these issues now amounts to nothing more than an impermissible collateral attack on Mountain Valley's Mainline System certificate authorization.

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<sup>117</sup> *Id.*

<sup>118</sup> *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*3.

<sup>119</sup> See Certificate Order at P 100; see also Application, Resource Report 9, at 24.

<sup>120</sup> Certificate Order at P 100.

**5. The Commission Properly Assessed the Cumulative Impacts of the Project.**

AMA also asserts that the Commission failed to consider GHG emissions associated with the cumulative impacts of the Project.<sup>121</sup> However, the Commission’s analysis of cumulative impacts only applies to those that are “reasonably foreseeable,” and must be proportional to the magnitude of the Project. Thus, the Commission properly adhered to Council on Environmental Quality (“CEQ”) regulations and applicable precedent in concluding that the Southgate Project’s FEIS fully analyzed the cumulative impacts of the Project.

In considering cumulative impacts, CEQ advises that an agency first identify the cumulative effects issues associated with a proposed action.<sup>122</sup> The agency should then establish the geographic scope for analysis.<sup>123</sup> Next, the agency should establish the time frame for analysis, equal to the timespan of a proposed project’s direct and indirect impacts.<sup>124</sup> Finally, the agency should *identify* other actions that potentially affect the same resources, ecosystems, and human communities that are affected by the proposed action.<sup>125</sup>

The Commission’s cumulative impacts analysis for the Project satisfied NEPA requirements. First, the Commission established the geographic scope of 0.25 mile from the Project area based on the construction activities that would produce temporary impacts on air quality.<sup>126</sup> The Commission also established the geographic scope of 50

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<sup>121</sup> AMA Reh’g Request at 25.

<sup>122</sup> *New Market*, 163 FERC ¶ 61,128 at P 33 (citing 1997 CEQ Guidance at 11).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> FEIS at 4-228; *see* tbl.4.13-1.

km (about 31.1 miles) from the Lambert Compressor Station, which would contribute to cumulative impacts during operation.<sup>127</sup> Next, the Commission appropriately determined that the temporal scope of the impacts would be limited to the duration of construction and operation, consistent with the direct and indirect impacts on air quality.<sup>128</sup> Because the Commission found that the Project would not result in any significant direct or indirect impacts on local or regional air quality, NEPA “require[s] only a limited cumulative effects analysis.”<sup>129</sup> Thus, the cumulative impacts analysis in this case only required the Commission to *identify* other potential projects that could impact air quality, which was completed and included in the Appendix F.2 to the FEIS.<sup>130</sup>

**D. FERC’s Tribal Consultation Efforts Satisfied the Requirements of Section 106 of the NHPA.**

In their Petition for Rehearing, the federally recognized Monacan Indian Nation (“Monacan”) and the state recognized Sappony Indian Tribe (“Sappony”) (collectively, the “Tribes”) claim that the Commission’s consultation efforts for the Southgate Project were deficient under Section 106 of the National Historic Preservation Act (“NHPA”). The Tribes’ allegations are unfounded because, as detailed below, the Commission’s consultation process satisfied the requirements of Section 106 of the NHPA.

The basic directive of Section 106 of the NHPA is that when authorizing the construction of an interstate natural gas pipeline, the Commission “shall take into account

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<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *New Market*, 163 FERC ¶ 61,128 at P 32 (internal citations omitted).

<sup>130</sup> *See* FEIS, App. F.2. To the extent AMA also argues the Commission violated NEPA by failing to utilize the so-called Social Cost of Carbon Tool, AMA’s arguments are misplaced. AMA Reh’g Request at 28-32. The Commission has consistently held that the “Social Cost of Carbon is not a suitable method for determining whether GHG emissions that are caused by a proposed project will have a significant effect on climate change.” *Transcon. Gas Pipe Line Co.*, 171 FERC ¶ 61,032, at P 15 (2020). Courts have affirmed the Commission’s position. *See EarthReports, Inc. v. FERC*, 828 F.3d 949, 956 (D.C. Cir. 2016); *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*2.

the effect of the undertaking on any historic property.”<sup>131</sup> When such an undertaking may affect property to which an Indian tribe attaches religious and cultural significance, the Commission is required to “consult with” the Indian tribe.<sup>132</sup> In implementing Section 106, the Advisory Council on Historic Preservation (“ACHP”) has promulgated detailed regulations describing how agencies must satisfy the statutory requirement to consult with tribes, state historic preservation offices (“Preservation Offices”), and other consulting parties.<sup>133</sup>

The NHPA is procedural and not outcome determinative. Section 106 does not impose substantive requirements; rather, it only seeks to ensure that agency decision makers “stop, look, and listen,” by identifying affected historic sites and engaging in a limited and timely consultation process prior to the initiation of a federal undertaking.<sup>134</sup> By adhering to the consultation process outlined in the ACHP’s regulations, the Commission complied with Section 106 requirements.

Section 106 of the NHPA, as implemented through the ACHP’s regulations, sets forth a step-by-step consultation process.<sup>135</sup> The Commission complied with all of these requirements, including the proper identification of persons to be consulted (§ 800.3); identification of any historic properties affected by the undertaking (§ 800.4); assessment of adverse effects (§ 800.5); and resolution of adverse effects (§ 800.6).

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<sup>131</sup> 54 U.S.C. § 306108.

<sup>132</sup> *Id.* § 302706(b).

<sup>133</sup> *See* 36 C.F.R. pt. 800.

<sup>134</sup> *See Narragansett Indian Tribe v. Warwick Sewer Auth.*, 334 F.3d 161, 166 (1st Cir. 2003); *see also Nat’l Mining Ass’n v. Fowler*, 324 F.3d 752, 755 (D.C. Cir. 2003) (requirements imposed by Section 106 are procedural, not substantive).

<sup>135</sup> *See* 36 C.F.R. pt. 800 subpt. B.

In short, the Commission performed a comprehensive consultation process and attempted to involve the Tribes, in full compliance with Section 106. The Tribes' allegations to the contrary are unfounded.

**1. The Commission Identified All Tribes That Might Attach Significance to the Affected Historic Properties.**

As early as possible, the Commission identified Indian tribes that might attach religious and cultural significance to the properties that would be affected by the Project. Section 800.3(f) of the ACHP regulations requires the Commission to identify parties entitled to be consulting parties and invite them to consult. Specifically, Section 800.3(f)(2) requires the Commission to “make a reasonable and good faith effort to identify any Indian tribes . . . that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties.”<sup>136</sup> That identification properly occurred here.

The Commission issued the *Notice of Intent to Prepare and Environmental Impact Statement for the Planned MVP Southgate Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (“NOI”) on August 9, 2018, and sent copies of the NOI directly to the Tribes, as well as other potential stakeholders, which included a total of 33 federally recognized Indian tribes, 10 state-recognized tribes, and the Virginia and North Carolina Preservation Offices.<sup>137</sup> The Commission also followed up with individual letters to the Tribes on October 16, 2018.<sup>138</sup> In response, the Monacan requested a meeting and a site visit to consult with

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<sup>136</sup> 36 C.F.R. § 800.3(f)(2).

<sup>137</sup> FEIS at 4-158. The Monacan are a federally recognized tribe and the Sappony are a North Carolina state-recognized tribe. *See also* 83 Fed. Reg. 40,509 (Aug. 15, 2018).

<sup>138</sup> FEIS at 4-158.



Commission staff.<sup>139</sup> A meeting was held on January 17, 2019 between Monacan Tribal representatives and Commission staff in Richmond, Virginia where the Commission explained its administrative process and efforts to comply with NEPA and the NHPA.<sup>140</sup> The Monacan asked that Mountain Valley Staff visit the Monacan Museum to learn about the Tribe’s history and culture.<sup>141</sup> Per the Monacan Tribe’s request, Mountain Valley staff subsequently visited the Monacan Museum.<sup>142</sup>

The Sappony sent letters to the Commission requesting a meeting and provided comments on the draft EIS.<sup>143</sup> In the FEIS, the Commission explained its determination that the Sappony had “demonstrated interest in the cultural resources of the Project area; therefore, they could be consulting parties.”<sup>144</sup> The Commission requested that Mountain Valley send certain tribes the archaeological investigation reports for the Project, and Mountain Valley provided the reports to the Sappony on February 21, 2019.<sup>145</sup> In July 2019, both the Monacan and the Sappony submitted comments on the reports, and the comments were addressed in the FEIS.<sup>146</sup>

The Commission’s efforts and engagement with the Tribes clearly indicates that it met ACHP’s regulatory requirements by making a “reasonable” and “good faith” effort to identify the Tribes and then to invite them to be consulting parties.<sup>147</sup> The Commission “identified Indian tribes that historically used or occupied the Project area through basic

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<sup>139</sup> *Id.*

<sup>140</sup> *See id.* & n.37.

<sup>141</sup> *See id.* 4-158–4-159.

<sup>142</sup> *Id.* at 4-159.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> Certificate Order at P 121.

<sup>147</sup> *Id.* at P 122 (“the final EIS provides a detailed account of the Commission’s efforts to consult on a government-to-government basis with Indian tribes that may attach religious or cultural significance to sites in the region or may be interested in potential impacts from the Southgate Project on cultural resources”).

ethno-historical sources” and then contacted all of the Indian tribes that might be interested in the Project’s impacts.<sup>148</sup> Thus, the Commission satisfied the requirement of 36 C.F.R. § 800.3 to identify and initiate consultation with interested parties.

**2. FERC Identified Historic Properties That Could Be Affected by the Project.**

The Commission then identified historic properties, including any properties which may be of significance to the Tribes.<sup>149</sup> Section 800.4 of the Council’s regulations requires the Commission to gather information from Indian tribes that have been identified, to assist in identifying properties “which may be of religious and cultural significance to them.”<sup>150</sup> The Commission did just that.

With the NOI filing on August 9, 2018, the Commission formally initiated consultation with interested Indian tribes, expressly soliciting the view of the Indian tribes “on the Project’s potential effects on historic properties.”<sup>151</sup> To ensure that this process occurred in a timely manner, the Commission requested that comments be submitted within a month of the publication of the NOI.<sup>152</sup>

Commission staff then consulted with interested parties, including Indian tribes to identify archaeological sites and determine eligibility as a National Register of Historic Places (“NRHP”).<sup>153</sup> Site surveys, literature reviews, site file searches, and cultural resources inventories were conducted to identify potential historic properties.<sup>154</sup>

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<sup>148</sup> FEIS at 4-157.

<sup>149</sup> *Id.* at ES-8.

<sup>150</sup> 36 C.F.R. § 800.4(a)(4).

<sup>151</sup> NOI, 83 Fed. Reg. at 40,511.

<sup>152</sup> *Id.* at 40,509.

<sup>153</sup> FEIS at ES-8.

<sup>154</sup> *Id.* at 4-166–4-167.

In addition, Mountain Valley sent numerous communications to the Tribes regarding the status of cultural resources work that occurred and is planned to occur. All interested tribes (and their representatives), including the Monacan and the Sappony, received copies of the Southgate Project cultural resource survey work plans, reports, and treatment plans that have been prepared once such plans were available for comment and with a request for comment. Despite Tribes' assertions otherwise, Mountain Valley sent cultural resource reports in draft form to the Tribes on numerous occasions, including on July 11, 2018, February 27, 2019, August 7, 2019, November 5, 2019, March 6, 2020, March 31, 2020, and July 16, 2020. In addition, Mountain Valley incorporated recommended historical literature where appropriate into the reports. At the time of this filing, Mountain Valley has not received any comments from representatives of the Tribes on any of the draft reports or on any recommendations of site eligibility.

In contrast to the Tribes' assertions otherwise, Mountain Valley sent the Tribes electronic mapping files of the route in 2018 during the FERC pre-filing process.<sup>155</sup> In addition, Mountain Valley is in the process of updating the Unanticipated Discoveries Plan and will list all interested tribes including the Monacan, Upper Mattaponi, Nansemond, Sappony, and Occaneechi, to be contacted, as identified in the Programmatic Agreement.<sup>156</sup>

Further, supplementary investigations will continue to occur in accordance with the NHPA. The Commission has stated that Mountain Valley must "complete surveys, and file with the Commission evaluation reports, avoidance plans, or treatment plans for NRHP listed or eligible sites" and also respond to comments from interested Indian tribes

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<sup>155</sup> Tribes' Reh'g Request at 16.

<sup>156</sup> *See id.*

on the cultural resources reports prior to beginning construction.<sup>157</sup> All interested tribes, including the Monacan and Sappony, were invited to attend an active cultural resource investigation on April 25, 2019, and August 6, 2020, in an effort to further facilitate tribal engagement. While no representatives from the Monacan or Sappony attended the April 25, 2019 investigation, representatives from the Sappony attended the August 6, 2020 investigation. Thus, the Tribes have had and will have additional opportunities to consult and identify any additional historic properties through this ongoing process.

The Commission has met the necessary regulatory requirements under 36 C.F.R. § 800.4 by gathering information from the Tribes in order to identify historic properties that have the potential to be affected by the Project.

### **3. FERC Properly Assessed Whether the Project Would Have Adverse Effects on Historic Properties.**

The Commission assessed the Project's adverse effects on historic properties in consultation with interested Indian tribes, as required by Section 800.5 of the ACHP regulations.<sup>158</sup> In the letter notifying the ACHP of the Project's adverse effects, the Commission described the efforts that Mountain Valley has taken to assess the adverse effects and stated that Commission staff would be consulting with parties to resolve the effects.<sup>159</sup> As further described in the FEIS, the Commission explained that:

The Project would have adverse effects on some historic properties. To outline a process to resolve adverse effects at affected historic properties, the FERC will produce a [Programmatic Agreement] for the current undertaking, to be circulated among the consulting parties. A draft [Programmatic Agreement] was circulated among the consulting parties

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<sup>157</sup> FEIS at ES-8; *see also* FEIS at 4-172–4-174; and Certificate Order, App., Environmental Conditions.

<sup>158</sup> 36 C.F.R. § 800.5; *see* FEIS at ES-8 (describing the number of archaeological sites that were assessed).

<sup>159</sup> Letter to Reid Nelson, Director, Office of Federal Agency Programs, Notification of Adverse Effect for the Southgate Project, Docket No. CP19-14-000 (Nov. 14, 2019) (“November 2019 Letter”).

on January 8, 2020. Execution of the [Programmatic Agreement] document would satisfy compliance with Section 106 of the NHPA.<sup>160</sup>

The process described above demonstrates that FERC met the requirements under 36 C.F.R. § 800.5 to assess the Project’s adverse effects.

**4. The Commission Properly Resolved the Project’s Adverse Effects on Historic Properties.**

The Commission also complied with all requirements concerning the resolution of the Project’s adverse effects.<sup>161</sup> Section 800.6 requires that upon determining that an undertaking would have adverse effects on historic properties, the Commission must notify the ACHP and “seek ways to avoid, minimize, or mitigate the adverse effects.”<sup>162</sup>

The letter the Commission sent to the ACHP on November 14, 2019, demonstrates compliance with this requirement.<sup>163</sup> The November 2019 Letter describes the Project, the steps taken to identify historic properties along the Project’s route, provides descriptions of such properties and their eligibility for the NRHP, and the plan for additional identification of historic properties.<sup>164</sup> A copy of the draft Programmatic Agreement was also sent to the Tribes for comment. Despite allegations that Mountain Valley failed to “object or attempt to correct FERC’s failure to respond to the Tribes, to include them in the Programmatic Agreement,”<sup>165</sup> it was the Tribes’ responsibility to confer with the Commission on the draft Programmatic Agreement and not Mountain Valley’s obligation to act on behalf of the Tribes. Throughout the consultation process—

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<sup>160</sup> FEIS at 5-11.

<sup>161</sup> See 36 C.F.R. § 800.6.

<sup>162</sup> *Id.* § 800.6(b)(2).

<sup>163</sup> See Letter from James Martin, Chief Gas Branch 3, Division of Gas–Environmental and Engineering, FERC to Reid Nelson, Director, Office of Federal Agency Programs, Advisory Council on Historic Preservation, Docket No. CP19-14-000 (Nov. 14, 2019); see also FEIS at 1-13, tbl.1.4-1.

<sup>164</sup> See *id.*

<sup>165</sup> Tribes’ Reh’g Request at 16.

and even prior to consultation—Mountain Valley engaged the Tribes via phone, email, and in-person meetings for over two years as the project was developed with initial surveys, pre-filing, and continued cultural investigations.

On March 10, 2020, the Commission issued the Final Programmatic Agreement which details the “framework that will be followed to identify historic properties, and resolve adverse effects for those properties.”<sup>166</sup> As explained in the Certificate Order, the Programmatic Agreement was executed by the North Carolina and Virginia Preservation Offices and the Commission, which properly concludes the Section 106 process.<sup>167</sup> While the Tribes may disagree, the Commission “acted within its discretion and in accord with the NHPA and its implementing the regulations, by limiting the signatories to the programmatic agreement to those required under section 800.6(c)(1).”<sup>168</sup> The Commission invited the Tribes to sign the Programmatic Agreement as concurring parties, but the Tribes chose not to do so.<sup>169</sup> The record in this proceeding demonstrates that the Tribes were given every opportunity to meaningfully engage and participate in the consultation process, and actually did so throughout much of the process, despite assertions to the contrary.

**5. The Commission Did Not Improperly Delegate Authority to Applicant.**

The Commission should reject the Tribes’ assertion that it impermissibly delegates its consultation responsibilities to certificate applicants.<sup>170</sup> The Tribes assert

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<sup>166</sup> Programmatic Agreement Regarding the Southgate Project, Docket No. CP19-14-000, at 2 (Mar. 10, 2020).

<sup>167</sup> Certificate Order at P 114.

<sup>168</sup> *Id.* at P 117.

<sup>169</sup> *Id.*

<sup>170</sup> See Tribes Reh’g Request at 14-17.

that the Commission “improperly delegated its Section 106 consultation obligations to Mountain Valley” and that Mountain Valley “did not properly consult with either of the Tribes.”<sup>171</sup>

The Tribes’ argument is unfounded. ACHP and Commission regulations work in tandem to require the applicant to make initial outreach to Indian tribes, but the Commission retains the ultimate responsibility for the government-to-government relationship with any affected Indian tribes. ACHP’s regulations state that “[t]he agency official may authorize an applicant . . . to initiate consultation with the SHPO/THPO and others.”<sup>172</sup> Consistent with that procedure, Commission regulations require that the “project sponsor, as a non-Federal party, assists the Commission in meeting its obligations under NHPA section 106 and the implementing regulations at 36 CFR part 800 by following the procedures at § 380.12(f).”<sup>173</sup> Section 380.12(f) requires applicants to include in their “initial application . . . documentation of initial cultural resource consultation . . . and written comments from SHPOs, THPOs and land-managing agencies, if available.”<sup>174</sup> Mountain Valley made its initial outreach to the Monacan in May 2018 and to the Sappony in August 2018, in full compliance with these requirements.

While Mountain Valley assisted the Commission with some communication with consulting parties, including the Tribes, the Commission retained responsibility for and satisfied the consultation requirements independently. With no legal references or factual basis, the Tribes allege that the Commission improperly delegated the duty to initiate

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<sup>171</sup> *Id.* at 14.

<sup>172</sup> 36 C.F.R. § 800.2(c)(4).

<sup>173</sup> 18 C.F.R. § 380.14(a).

<sup>174</sup> *Id.* § 380.12(f)(2).

consultation to Mountain Valley.<sup>175</sup> But it was the Commission—not Mountain Valley—that formally initiated consultation. On August 9, 2018, the Commission issued its NOI that expressly stated that “the Commission is using this notice to initiate consultation with . . . interested Indian tribes.”<sup>176</sup> The Commission sent a letter to the Monacan (and other appropriate Indian tribes) on October 16, 2018, stating:

We are interested in receiving your comments on the project to ensure that the concerns of the Monacan Indian Nation are identified and properly considered in our environmental analysis. We also request your assistance in identifying properties of traditional, religious, or cultural importance to the tribe that may be affected by the planned project.<sup>177</sup>

The Sappony sent comments on the Draft EIS, which Commission staff responded to in the FEIS.<sup>178</sup> The Commission also properly acknowledged in the FEIS that the agency “remains responsible for all final determinations.”<sup>179</sup>

The Tribes’ assertion that the Commission improperly delegated its responsibility to initiate consultation is incorrect because it was the Commission that initiated the consultation, followed up with an in-person meeting with the Monacan and written responses to both Tribes’ comments, and maintained ultimate responsibility for the government-to-government consultation process.

## **6. The Commission’s Tribal Consultation Process Did Not Violate Any Trust Responsibility.**

The Tribes allege that by violating the NHPA, the Commission has “failed to meet its trust responsibility to the Tribes.”<sup>180</sup> As explained above, the Commission

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<sup>175</sup> Tribes’ Reh’g Request at 14.

<sup>176</sup> NOI, 83 Fed. Reg. at 40,511.

<sup>177</sup> Letter from J. Rich McGuire, Director of Gas-Environment and Engineering, FERC to Chief Dean Branham, Monacan Indian Nation, Docket No. PF18-4-000, at 2 (Oct. 16, 2018).

<sup>178</sup> FEIS, App. I.1 at I.3-62–I.3-67, I.3-78–I.3-80.

<sup>179</sup> *Id.* at 1-18.



completed the Section 106 consultation process in good faith and in full compliance with the NHPA. Congress has delineated a clear process for addressing impacts to historic properties, with which the Commission has complied. Courts have held that compliance with the NHPA “satisfies [the federal government’s] general trust obligations to Indian tribes.”<sup>181</sup> Furthermore, the NHPA does not create a trust obligation because it is a general statute that does not expressly assume a trust obligation on the part of the government.<sup>182</sup> By properly completing the Section 106 consultation process with the Tribes for the Project, the Commission engaged in a thoughtful and purposeful fulfillment of the government’s trust obligation.

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<sup>180</sup> Tribes’ Reh’g Request at 11-14.

<sup>181</sup> *Ctr. for Biological Diversity v. BLM*, No. 2:14-CV-00226-APG, 2015 WL 794327, at \*1 (D. Nev. Feb. 24, 2015) (“the federal government’s compliance with . . . NHPA satisfies its general trust obligations to Indian tribes”).

<sup>182</sup> *States v. Jicarilla Apache Nation*, 564 U.S. 162, 177 (2011) (“The Government assumes Indian trust responsibilities only to the extent it expressly accepts those responsibilities by statute.”); *see also Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 574 (9th Cir. 1998) (“[A]lthough the United States does owe a general trust responsibility to Indian tribes, unless there is a specific duty that has been placed on the government with respect to Indians, this responsibility is discharged by the agency’s compliance with general regulations and statutes not specifically aimed at protecting Indian tribes.”).

**IV.**  
**CONCLUSION**

For the foregoing reasons, Mountain Valley respectfully requests that the Commission: (1) grant Mountain Valley's Motion to Answer; and (2) deny the requests for rehearing.

Respectfully submitted,

*/s/ Brian D. O'Neill*

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Dated: August 10, 2020

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**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2020), I hereby certify that I have this 10th day of August 2020, served the forgoing documents on each person designated on the official service list compiled by the Secretary in this proceeding.

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