



April 09, 2017

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Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426
Submitted Via FERC eFiling Feature on the FERC Web Site

Re: Comments on DEIS for the Atlantic Coast Pipeline Proposal, FERC Docket No. CP15-554-000, In Response to Notice of Availability of Draft Environmental Impact Statement for the Atlantic Coast Pipeline, January 6, 2017

Board of Directors:

Dear Mr. Davis:

Bette Dzamba
Howard Evergreen
Katie Keller
Jennifer Lewis
Laurie Miller
Ernie Reed
David Sellers
Deirdre Skogen
Elizabeth Williams

I am transmitting the comments included in this document on behalf of Wild Virginia, Heartwood, Ernest Q. Reed, Jr., Misty Boos, and David Sligh, in response to the referenced Notice of Availability of the Draft Environmental Impact Statement ("Notice"). The USFS Notice states that: "All comments must be submitted to the FERC, the Lead Federal Agency, within 90 days following the date of publication of the FERC Notice of Availability." in the Federal Register. The FERC Notice was published and dated Monday, January 9 in the Federal Register. 90 days after that date falls on April 9, which is not an official business day, making the deadline for these comments April 10. We therefore request that these comments be considered timely.

Thank you for accepting these comments.

Sincerely,

_____/s/_____
Ernest Q. Reed, Jr.

Comments on Draft Environmental Impact Statement
for
Atlantic Coast Pipeline
Docket No. CP15-554-000
From Wild Virginia, Heartwood, Ernest Q. Reed, Jr., Misty Boos, and David Sligh

Introduction

The above-named organizations and individuals (collectively “Wild Virginia”), all intervenors on Docket CP15-554-000, strongly object to the approval of the proposed Atlantic Coast Pipeline (“ACP”) by the Federal Energy Regulatory Commission (“FERC” or the “Commission”). Through these comments, we explain the reasons FERC may not legally issue the requested Certificate of Public Convenience and Necessity (“Certificate”), based on both procedural and substantive grounds.

Wild Virginia also objects to the proposed issuance of a Special Use Permit (“SUP”) to Atlantic Coast Pipeline, LLC (“Applicant”) for crossings of National Forest lands, and to related proposals to amend the Land and Resource Management Plans (“plan amendments”) for the Monongahela National Forest (“MNF”) and the George Washington National Forest (“GWNF”). These include proposed project-specific plan amendments for both forests and “plan-level” amendments for the GWNF. The proposals for these administrative actions cannot be upheld based on procedural violations in the current administrative process and because the proposals would cause unacceptable damages and risks to humans and the environment. The environmental review process now underway flagrantly violates the National Environmental Policy Act (“NEPA”); the construction, operation, and maintenance of the pipeline and associated activities (roads, work spaces, etc.) would violate the procedural requirements and resource protection requirements that the United States Forest Service (“FS” or the “Service”) is charged with upholding.

In the following sections, we describe some of the ways that the DEIS is inadequate and fails to meet legal standards. Reports and comments already in the record to inform FERC and the FS illustrate a multitude of other issues ignored or poorly represented in the DEIS. In addition, we describe the ways in which the impacts of the proposed project would be unacceptable and fail to satisfy regulatory environmental protection standards and to serve the public interest.

Wild Virginia is a non-profit organization, incorporated in the Commonwealth of Virginia, with the mission of protecting and conserving the wild and natural values of Virginia’s Natural Forests. Heartwood is a non-profit organization, incorporated in the state of Indiana, with the mission of protecting national forests throughout the central and eastern United States. Wild Virginia, Heartwood Ernest Q. Reed, Jr., Misty Boos, and David Sligh, interveners.

Incomplete Record to Support Decisions and Adequately Inform the Public

FERC has failed to meet its obligations for review of this project under the National Environmental Policy Act (“NEPA”), by failing to compile and include necessary information in the DEIS. The Draft Environmental Impact Statement (“DEIS”) now under review fails to meet legal standards which govern its content and quality.

FERC has undertaken a process under NEPA to review a proposal by Applicant to construct, operate, and maintain a 42-inch natural gas pipeline through portions of West Virginia and Virginia. In

pursuance of its duties under NEPA, FERC published a Draft Environmental Impact Statement (“DEIS”) and a notice requesting public comments on the DEIS on December 30, 2016. Federal regulations implementing NEPA command that a DEIS “must fulfill and satisfy *to the fullest extent possible* the requirements established for final statements in section 102(2)(C) of the Act.” 40 C.F.R. § 1502.9(a) (emphasis added). FERC’s DEIS for the ACP fails to meet this mandate in a number of respects, as described below. Of special note, by explicitly deferring requirements for Applicant to supply information needed in the DEIS to the end of this comment period, FERC has clearly violated 40 C.F.R. § 1502.9(a). If FERC deemed it possible in December, 2016 for Applicant to submit necessary materials within the short time the public comment period runs, then it was clearly possible for FERC to take the time needed to get this information and incorporate it into the DEIS before issuing the document. Instead, FERC rushed publication of the DEIS to meet an arbitrary schedule set to serve only Applicant’s interests and in response to pressure from Applicant.

We doubt that FERC is capable of being an unbiased decision maker. More importantly, we doubt that having already concluded that there will be no impacts if the face of incomplete and inconsistent information, that FERC is capable of taking the “hard look” at the issues that NEPA requires.

The Forest Service has independent authorities and duties for this project proposal (to rule on the SUP application and Plan Amendment proposals), including fulfillment of all NEPA requirements and requirements in the Service’s governing laws. Under NEPA, the Forest Service is acting as a “cooperating agency” in this EIS process. As such, the Forest Service may adopt FERC’s DEIS, as provided at 40 C.F.R. § 1506.3(c), only if that document meets both the substantive and procedural requirements that govern its regulatory decisions. These requirements arise from NEPA and from the agency-specific regulations that govern the Service’s resource protection duties. If the FERC DEIS fails to meet those requirements, as is amply proven by the record, then the Forest Service must undertake its own separate NEPA review. The current FERC DEIS fails as a basis for meeting the Forest Service’s responsibilities under both NEPA and the agency’s own regulations. Therefore, a revised and sufficient DEIS must be prepared, either in cooperation with FERC or through a separate action.

The materials submitted by Applicant to support its request for a SUP and associated Forest Plan amendments to “occupy and use” National Forest System lands fall far short of the regulatory requirements that specify the information and justifications that must be submitted to allow the permit and Plan amendments to be approved. The failure of the DEIS to provide this information, at this stage in the NEPA process, also prevents these agencies from meeting their procedural duties under NEPA and agency requirements. Even if the deficiencies were to be remedied at a later time, the public will have been deprived of its rights to review the necessary information and make effective comments in time for those comments to be fully considered and addressed in the Final Environmental Impact Statement (“FEIS”).

Under law, the applicant bears the burden of supplying sufficient information and analyses to meet all applicable requirements. Likewise, the law places the burden on the federal agencies adopting a DEIS to provide a “detailed” review of the pertinent information and explain the basis for their decisions. Both Applicant and FERC have failed to meet their respective burdens of evidence.

The decision on ACP’s application for a special use permit to “occupy and use” National Forest System lands is governed by federal regulations at 36 C.F.R. § 251.54. Under the regulations, the applicant must submit, “at a minimum,” information detailed at 36 C.F.R. § 251.54(e). In addition, the Forest Service may allow the ACP to occupy or use National Forest lands “only if” these agencies make

specific findings in accordance with the Forest Service Manual (“FSM”). The requisite findings, in pertinent parts, are that:

- a. The proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will best meet the present and future needs of the American people, taking into account the needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values; and
- b. The proposed use cannot reasonably be accommodated on non-Natural Forest System land. . . .

FSM 2703.2(2).

The record does not include information conforming to the minimum requirements set out in 36 C.F.R. § 251.54(e) and is wholly inadequate to justify the findings required by the Forest Service Manual. As demonstrated by the requests for information made by the Forest Service, many of which were not adequately answered before the DEIS’s release and are still not met, and by deficiencies identified and documented in the record by Wild Virginia and other parties, the Applicant has failed or refused to provide the necessary information and analyses. The evidence, in fact, indicates strongly that the threshold requirements for issuing a Special Use Permit cannot be met, as shown in part in the discussion of water quality threats below.

1. By letter dated October 24, 2016, Clyde Thompson, Forest Supervisor, Monongahela National Forest (Docket submittal no. 20161025-5044) requested Applicant to provide “site specific design of stabilization measures in selected high-hazard locations along the proposed ACP Project route.” The Forest Service explained in its letter that the proposed ACP “would cross some very challenging terrain in the central Appalachians” posing “[p]otentially difficult situations,” including “steep slopes, presence of headwater streams, geologic formations with high slippage potential, highly erodible soils, and the presence of high-value natural resources downslope of the high hazard areas.”

The Forest Service substantiated its concerns, noting that “[s]imilar hazards on other smaller pipeline projects in the central Appalachians have led to slope failures, erosion and sedimentation incidents, and damages to aquatic resources.” The possibility that similar problems would occur for this much larger pipeline, according to the Forest Service, “could present a high risk of failures that lead to resource damage.”

The October 2016 letter was not the first time the Forest Service had raised these issues. In fact, the agency has insisted that these potential problems be assessed through extensive and detailed comments and requests for information from its earliest involvement in this process. Those questions have been met by Applicant with “general descriptions and conceptual drawings” of methods proposed to stabilize slopes and control erosion/sedimentation.

The Forest Service makes clear that the requested information for high hazard sites is necessary for it to deem the application for a Special Use Permit complete and ready for further processing and that the information is necessary to “clarify the likelihood that the ACP can be constructed through the George Washington National Forest without undue risk of resource damage.” Given these findings, the analyses in the DEIS cannot be considered adequate to meet the Forest Service requirements under NEPA.

The deficiencies identified implicate several portions of the requirements the agencies must satisfy. First, one of the minimum requirements contained in the regulations is that the applicant must “provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which authorization is requested. . . .” Without knowing, in detail, how the hazards identified will affect the pipeline’s construction and maintenance, whether the technical challenges can be surmounted, and, if so, at what cost, the Forest Service cannot deem this minimum requirement to have been met. In expressing the need to “clarify the likelihood that the ACP can be constructed through the George Washington and Monongahela National Forests without undue risk of resource damage,” the Forest Service has questioned whether the pipeline can be built in the National Forest in a safe and protective manner. As discussed below, there is strong evidence that the project cannot be built through individual watersheds without undue risk, because the requirements of the Clean Water Act and state water quality standards will almost certainly be violated.

Second, even if the pipeline can be built in this terrain, the lack of information about the hazards described prevents the Forest Service from making properly-supported findings as to the impacts that would occur. Thus, these agencies do not have a basis of fact on which to rest conclusions about the ways this proposal would affect the uses and values of the National Forest, nor to properly weight the costs and benefits of this proposal, a “no-action alternative,” or any other alternative.

2. The DEIS does not include an adequate analysis of an alternative route for the ACP that would not cross National Forest lands, as federal regulations require and as specified at FSM 2703.2(2)b. The minimum threshold for deciding whether *any* crossing of National Forest lands may be allowed, is a finding that the “proposed use cannot reasonably be accommodated on non-National Forest System land.” By contrast, FERC stated in the DEIS:

Based on our evaluations, we conclude that the major pipeline route alternatives do not offer a significant environmental advantage when compared to the proposed route or would not be economically practical; and therefore, are not preferable to the proposed action. We also conclude that the route variations evaluated do not offer significant environmental advantages when compared to the corresponding segments of the proposed pipeline route; and therefore, are not preferable to the proposed action.

DEIS at 5 - 27.

Forest Service regulations place a substantial burden on those proposing to cross our public lands. FERC seeks to relieve Applicant of that burden but cannot legally do so. The FS may not allow this process to proceed without a valid analysis of one or more alternative routes that avoid *all* National Forest lands. And such an important analysis cannot be supplied for the first time in the FEIS but must be available for public review and comment in a revised DEIS. If *any* alternative to crossing National Forest lands can “reasonably accommodate” the project, then it is nearly certain that such a re-routing in those specific areas will also require significant changes to the route on non-National Forest lands, producing issues that the public cannot possibly anticipate or address in comments to the current DEIS.

Unacceptable Impacts

Even with the deficiencies in the evidence Applicant has submitted and the inadequacies of FERC's analyses, the record reveals risks that are undoubtedly posed by this project proposal. Three examples are described below:

Water Quality Violations in Headwater Streams -

Headwater streams, the arteries that feed larger waterbodies downstream, are of enormous importance, both as individual resources and as essential components of entire river systems.¹ The proposed route for the ACP would damage dozens of these types of streams and yet these impacts are essentially dismissed by FERC in the DEIS. FERC catalogs some of the threats to streams posed by the proposal, though the list is far from complete:

Impacts on waterbodies could result from construction activities in stream channels and on adjacent banks. Clearing and grading of stream banks, blasting (if required), in-stream trenching, trench dewatering, and backfilling could each result in temporary, local modifications of aquatic habitat involving sedimentation, increased turbidity, and decreased dissolved oxygen concentrations.

DEIS at 4-100. FERC then asserts, without scientific support, that “[i]n almost all cases, these impacts would be limited to the period of in-stream construction, and conditions would return to normal shortly after stream restoration activities are completed.” DEIS at 4-100. While FERC has not defined what “shortly” means in this context, the common meaning of the word does not mean months or years, and yet that is the window of recovery the scientific literature describes. For example, a study by an industry group states that “recovery to pre-construction conditions [after in-stream construction of natural gas pipelines] is generally apparent within a year,”² providing no assurance that habitat and aquatic communities will reach pre-construction conditions “shortly.” Another study stated that “[s]ediment load increases during construction have been reported to directly and/or indirectly affect fish through modification of their habitats (e.g., increased embeddedness of substrates or infilling of pools) but blithely described those impacts as “temporary” because pre-construction condition were restored with 1 to 2 years.³ Again, impairment of these resources for months or even years, as studies demonstrate may occur, is not consistent with FERC's claims of minimal and short-term impacts.

The findings cited above and others show FERC's assertions as to the persistence of damages to aquatic life in streams from pipeline crossings to be invalid. However, based on these incorrect assertions, the DEIS goes on to state that “[l]ong-term impacts on surface waters are anticipated to be minor, under normal circumstances, because ACP . . . would not permanently affect the designated water uses. . . .” DEIS at 4-115. The flawed logic this statement reflects cannot be a basis for FERC's findings that water quality impacts will be acceptable. A conclusion that long-term impacts would be minor does not follow from a finding that designated uses in the streams would not be permanently impaired. Further, though the DEIS gives summary descriptions of Clean Water Act requirements and state water quality standards, its analysis is not based on those requirements.

¹ The paper by Meyer et al. provides a comprehensive discussion and literature review supporting these values: Meyer, Judy L., David L. Strayer, J. Bruce Wallace, Sue L. Eggert, Gene S. Helfman, and Norman E. Leonard, *The Contribution of Headwater Streams to Biodiversity in River Networks*, Journal of the American Water Resources Association, Vol. 43, No. 2, February 2007, pages 86 - 103.

² Interstate Natural Gas Association of America (INGAA), *INGAA, River and Stream Crossings Study, (Phase I), Executive Summary*, at 15.

³ Reid, Scott M., Scott Stoklosar, Serge Metikosh, and Jim Evans, *Effectiveness of Isolated Pipeline Crossing Techniques to Mitigate Sediment Impacts on Brook Trout Stream*, Water Qual. Res. J. Canada, Volume 37, No. 2, 2002, at 473.

Both West Virginia and Virginia have adopted water quality standards reflecting the requirements of the Clean Water Act.⁴ Both states include the support of aquatic life as “designated uses.” The specific command in Virginia standards requires that water quality be protected to support “the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them.”⁵ Also, both states’ regulations require full support of what are termed “existing uses,” which may not be impaired.⁶ Neither designated nor existing uses may be degraded for years or even months, so FERC’s analysis is misguided, in that it focuses on a level of impacts that is not legally allowed, and its assurances that water quality will be adequately protected are baseless.

This general discussion of impacts by the proposed project on streams is particularly troublesome in relation to sensitive and valuable headwater streams in its path. Just one example of likely dire impacts can be seen for the Warwick Run sub-watershed in Highland County, Virginia, at the point where the pipeline would cross from West Virginia into Virginia. The confluence of natural conditions and the intensity of activities Applicant proposes within this small watershed present a situation in which conformance with water quality standards is virtually impossible.

Warwick Run lies within the Back Creek/Jackson River watershed and drains a mountainous area that is 4,337 acres in size.⁷ The watershed is currently more than 96% forested and is almost entirely within the boundaries of the GWNF. Approximately four miles of the proposed pipeline path would affect the watershed, with more than half that length cutting directly across the area and the rest running along the ridge-top on the eastern border of the drainage. Applicant proposed a corridor that would plunge down the slope of the mountain for a distance of about 7,500 feet, on slopes that are sometimes greater than 40% and which are never less than 25%. In one section, the slope would be 105%.⁸ Due to these slopes, shallow bedrock, limited work areas on steep and narrow ridges, and evidence of “surficial creep,” the Forest Service included three separate portions of the pipeline route within the Warwick Run drainage in its request for site-specific assessments in high-hazard areas.⁹

The right-of-way would cross two tributaries to Warwick Run that are designated trout waters by the state and which harbor rare and vulnerable populations of native brook trout. These tributaries and two others that would be crossed by the pipeline would flow directly into Warwick Run, which is also a brook trout stream. All of the upland construction areas and a 4,000+ foot stretch of access road would drain to Warwick Run and its tributaries as well. Warwick Run lies within an area that has been identified to have high quality, “intact” brook trout populations, one of only 103 areas so-designated out of 1,443 in the entire Chesapeake Bay drainage, and is therefore considered a high priority for preservation EPA’s Chesapeake Bay Program.¹⁰

⁴ W. Va. CSR § 47.2.1. et seq.; 9 VAC 25-260-5. et seq.

⁵ 9 VAC 25-260-10.

⁶ Both states adopt the federal definition of “existing uses” - “those uses actually being attained in or on the water, on or after November 28, 1975, regardless of designated uses.” 40 C.F.R. § 131.3(e).

⁷ Watershed characterization information comes from the U.S. EPA’s *National Hydrography Database Plus*, described at <https://www.epa.gov/waterdata/nhdplus-national-hydrography-dataset-plus>.

⁸ October 24, 2016 Letter, Clyde Thompson, Forest Supervisor, Monongahela National Forest (Docket submittal no. 20161025-5044) described on page 2 above.

⁹ Id.

¹⁰ U.S. EPA, Chesapeake Bay Program, *Brook Trout Outcome Management Strategy, 2015-2025, v. 1*.

Even if Applicant implemented the most protective erosion and sediment control measures on upland construction areas in the Warwick Run watershed, if the greatest possible care was taken in construction of stream crossings (some of which would likely require blasting of bedrock), and if stream banks and riparian areas were restored to conditions as close as possible to those currently found, severe impairment of these waters is likely, if not certain. Cumulative impacts on stream temperatures, from clearing during construction, from the loss of hemlocks to pest infestations, and from global warming must also be considered. Likewise, the conversion of any significant areas of forest to other vegetation types that would accompany the pipeline will affect runoff and infiltration patterns, which will in turn degrade the streams.

The horror story presented by Applicant's proposal for the Warwick Run watershed is repeated numerous times along the proposed pipeline route. These circumstances make passage through these areas legally, if not technically, impossible. The DEIS/EIS must acknowledge as much. These impacts will clearly rise to the level of "significant" impacts and cannot be mitigated sufficiently to justify approval. The Forest Service will fail in its duty if it allows construction through the Warwick Run watershed and others with similar characteristics.

Significant Impairment of Visual Quality and Recreation -

The DEIS makes no attempt to assess the impacts of this proposed pipeline on the Appalachian Trail in context with other pipelines and other existing or potential impacting activities/existing projects that would damage the AT's character and value. Thus, any conclusions related to the scenic, recreational, or economic impacts on the AT, from crossings or viewing areas, are without great value. This failure violates FERC's duty to perform an adequate cumulative impacts analysis under NEPA.

High Risk of Impairment of Groundwater and Subterranean Resources -

The information in the DEIS about groundwater wells, springs, and karst features is, by design, woefully incomplete. First, the assessment ignores the fact that pollutants from upland areas on the Forest will flow down-gradient and enter the karst systems through losing streams. Second, Applicant and FERC have limited the area in which water wells, springs, and swallets ("karst features") must be identified to a region that is within 500 feet of the pipeline and aboveground facilities. This arbitrary distance limit is shown by the overwhelming weight of scientific consensus to be without any basis and totally inadequate to provide any reliable protection for groundwater or surface waters.

Further, the surveys that have been done and those proposed have not and will not be capable of fully characterizing the risks of "karst features" forming in the future, in part due to the very activities proposed by the Applicant. The entire area of subsurface environment overtop karst bedrock formations, including that layer generally called the epikarst, may be just as vulnerable to contamination and channeling of materials to sinkholes and will contribute more diffuse, but still potentially very harmful flows to groundwater, which can still move to springs and wells in a much shorter time than would generally occur in other areas.

The DEIS completely ignores the disruption of hydrologic flow patterns through the karst and into caves; changes that could be catastrophic for the future viability of water supplies for humans and for springs contributing important flows to streams in the region. "Base flows," those contributions of groundwater that sustain perennial streams even during the worst droughts, may be destroyed or greatly diminished if the operations proposed by Applicant do not properly protect against such impacts and the field investigations and analyses so far completed fall far short of a standard that would supply any reasonable degree of protection. Springs in the Shenandoah Valley also contribute important cold-water contributions to the major streams that sustain populations of trout and other species that would otherwise be absent from the "warm water" streams.

Both the quality and the flow patterns of subterranean flows through the karst, which may be damaged by this project, are vital to the survival of the many sensitive, and in some cases endangered or threatened animals, in the caves and other subsurface zones. The Forest Service has a special responsibility to protect these species and the overall integrity of these systems and the only way any degree of certainty about possible impacts to the whole range of resources at risk in karst areas is to conduct extensive dye testing, LIDAR imagining, ground surveys, and possibly other measures. Even then, the risks are still significant but could be at least lessened to some extent

Forest Fragmentation

The ACP route bisects 105 separate core forest areas in West Virginia and Virginia where biodiversity is the highest and harm to the interior forest from fragmentation would be the greatest. From the terminus in Harrison County, WV. to Buckingham County, Va., 14,786 acres of core forest would be lost to fragmentation caused by the pipeline corridor, access roads, and edge effects along both. The DEIS concedes that forest fragmentation will be permanent and that it cannot be mitigated, but does not see this as a significant issue.

Yet the DEIS fails to detail the environmental impacts of this fragmentation. For instance, the DEIS admits that there would be “the removal of approximately 6,800 acres of forested vegetation (includes 3,800 acres of permanent impacts)” and “fragmentation of interior forest blocks,” but there are no maps or explanation of the location of the large blocks of interior forest that would be impacted.¹¹

Furthermore, the DEIS fails to fully account for the impacts of the forest fragmentation that will be caused by the construction and operation of the pipeline, in terms of (1) the total amount of forest impacted and (2) the impacts to individual species and to habitat. For example, the effects of fragmentation are more extensive than simply the amount of forest cover impacted. Fragmentation impairs key ecosystem functions by decreasing biomass and altering nutrient cycles. Effects are greatest in the smallest and most isolated fragments, and they magnify with the passage of time.¹² These effects create their own cascade of environmental impacts. For this reason, the portion of the draft EIS addressing forest fragmentation and impacts to wildlife and habitat is inadequate.

Environmental Impacts to Bat Populations

Although the DEIS concludes that the ACP is likely to adversely affect both the Indiana bat and the northern long-eared bat, requiring formal consultation with USFW, the lack of information renders the analysis of impacts to these and other bat species in the draft EIS incomplete. There is no discussion of the impacts unique to construction or maintenance. Moreover, the Commission has failed to properly include impacts to these species in its assessment of the cumulative impacts of the proposal.

The interrelationships between bat populations and the karst geological formations and caves where they roost and hibernate is well documented. “Dissolution and erosion of limestone and dolostone in this region have created an extensive karst landscape, creating a network of sinkholes, underground streams, caves, and the like...the prevalent carbonate rocks and karst in this ecoregion are associated with unique fauna within caves, including bats, salamanders, and a wide variety of

¹¹ DEIS, at 4-352.

¹² Haddad, et.al., Habitat Fragmentation and its Lasting Impact on Earth’s Ecosystems, American Association for the Advancement of Science, Sci. Adv. 2015;1:e1500052, 20 March 2015.

invertebrates... cave habitats in the Appalachian region include several federally listed rare and/or endangered species including the Madison cave isopod, Townsend's big-eared bat and Indiana bat.¹³

With respect to biological surveys alone, the draft EIS admits that necessary data have yet to be collected for most of the species at issue. For the endangered gray and Virginia big-eared bats, the DEIS does not contain "3,103 acres of hibernacula surveys in 2017."¹⁴ For the endangered Indiana bat and the threatened northern long-eared bat, the DEIS fails to include "surveys on 65 acoustic sites, 4 mist net sites, 3,103 acres of hibernacula surveys and 185 acres of roost tree surveys in 2017."¹⁵

While the DEIS states that "FWS has expressed concern regarding impacts to potentially connected karst system located upstream of bat hibernacula that could cause changes to structure, hydrology, and/or hibernacula microclimate that could make bat hibernacula unsuitable, and/or disrupt hibernating bats, leading to mortality[.]" the DEIS states that the applicants would follow a "Karst Mitigation Plan."¹⁶ In this same section, the Commission admits that "[d]iscussions regarding the potential impacts on karst and bat hibernacula are ongoing with the Commission, FWS, FS, VDGIF, and WVDNR."¹⁷ If these discussions are ongoing, it is impossible to know whether or how the eventual karst mitigation plan will reduce impacts to bat species. Without this information, it is clear that the impacts and proposed mitigation have not yet been fully noted or analyzed.

The gaping holes in the draft statement's bat and habitat assessment are at odds with the National Environmental Policy Act. Under NEPA, federal agencies are obligated to take a "hard look" at the environmental implications of their actions—a look that demands, "[a]t the least, ... a thorough investigation into the environmental impacts of ... [proposed] action[s] and a candid acknowledgment of the risks that those impacts entail."¹⁸ In order to satisfy these requirements, an agency must "gather" all relevant information and ultimately "provide the data on which it bases its environmental analysis."¹⁹ Since the DEIS does not include the information required to assess the project's impacts on these threatened and endangered species, the DEIS is both premature and arbitrary.

Specific Objections to Proposed Plan Amendments

Monongahela NF

The Notice describes potential amendments to the MNF Forest Plan to "temporarily exceed standards identified under management direction for soils and water, specifically forest-wide standards SW06 and SW07, provided that design criteria, mitigation measures, project requirements, and/or monitoring activities agreed upon by the FS are implemented as needed to achieve adequate slope and soil stability."

SW 06 specifies:

"Severe rutting resulting from management activities shall be confined to less than 5 percent of an activity area."

¹³ Kastning, Ernst, H., An Expert Report on the Geological Hazards in the Karst Regions of Virginia and West Virginia, Investigations and Analysis Concerning the Proposed Mountain Valley Gas Pipeline, July 3, 2016.

¹⁴ DEIS at 4-200 (Table 4.7.1-1) and 4-203.

¹⁵ DEIS at 4-200 (Table 4.7.1-1) and 4-207.

¹⁶ DEIS at 4-212.

¹⁷ Id.

¹⁸ Nat'l Audubon Soc'y v. Dep't of the Navy, 422 F.3d 174, 185 (4th Cir. 2005).

¹⁹ N. Plains Res. Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1083, 1085 (9th Cir. 2011)

An activity that causes “severe rutting” is, by definition, destructive and presents a risk to water quality. Ruts will provide channels for runoff and enhance the likelihood that erosion will occur. The force of concentrated flows in areas of severe rutting will be more difficult to control and management practices for sediment trapping or filtering will be less effective. Therefore, limiting the occurrence of this condition to a relatively small area, within which stabilization and restoration can be achieved quickly, is absolutely necessary.

Even the existing formulation, based on a percentage of the work area, is inadequate, because the larger the overall site, the larger the severely-rutted area will be. And the larger the severely-rutted area is, the more time and effort will be required to correct the problems at this site and prevent serious environmental damage. Given that much of the terrain in the MNF that would be crossed by the ACP is steep, has sensitive streams, unstable and highly erodible soils, and high rainfall amounts and intensities, allowing larger areas with “severe rutting” would be particularly reckless. If any variance from the general condition in SW 06 is made, the requirement should be more stringent rather than less. It should specify an aerial extent in acres or square feet rather than a percentage of the entire work area. Also, it may well be necessary to require and even more limited size of area in difficult terrain.

SW 07 specifies:

Use of wheeled and/or tracked motorized equipment may be limited on soil types that include the following soil/site area conditions:

- a) Steep Slopes (40 to 50 percent) - Operation on these slopes shall be analyzed on a case-by-case basis to determine the best method of operation while maintaining soil stability and productivity.
- b) Very Steep Slopes (more than 50 percent) - Use is prohibited without recommendations from interdisciplinary team review and line officer approval.
- c) Susceptible to Landslides - Use on slopes greater than 15 percent with soils susceptible to downslope movement when loaded, excavated, or wet is allowed only with mitigation measures during periods of freeze-thaw and for one to multiple days following significant rainfall events. If the risk of landslides during these periods cannot be mitigated, then use is prohibited.
- d) Soils Commonly Wet At Or Near The Surface During A Considerable Part of the Year, or Soils Highly Susceptible To Compaction. Equipment use shall normally be prohibited or mitigated when soils are saturated or when freeze-thaw cycles occur.

This requirement is already conditional (use of certain equipment “may be limited”). All the condition defined in items a. through d. allow the use of the equipment described but only after additional review. The environmental settings described, in which special reviews are required, are all very problematic and present great risks of destructive results from equipment use and severe damage to water quality. There is no justification for eliminating the requirements for additional review contained in a. through d. and, as stated above, an amendment that relaxes these requirements will be reckless.

George Washington National Forest-Proposed Forest Plan Amendments

The Revised Land Management Plan for the George Washington National Forest was approved and finalized in November, 2014. The plan states that “Public collaboration is a key part of the planning process. Our goals...are to ensure that all individuals and groups interested in or affected by the management of the George Washington National Forest have the opportunity to be informed and participate in the revision process; to reach an informed understanding of the varying interest; and to

consider these interests in developing the revised plan...many opportunities were provided...to get involved in the planning process and to provide comments.”²⁰

There is no mention in the plan of either energy or natural gas infrastructure as being a significant issue. This despite the fact that 1) the announcement of the Request for Proposals by Duke Energy and the announcement of the Southeast Reliability Project (the previous name for the ACP) in May, 2014 predated the release of the plan and 2) neither Dominion nor Duke Energy had chosen to be involved in the planning process, depriving the public, state and federal agencies of the opportunity to fully analyze the relevance, sufficiency or impacts of new energy corridors in the “reasonably foreseeable future.” Dominion and Duke Energy acted arbitrarily and capriciously in waiting until the new plan was released to consider raising the issue, instead of including it in the more appropriate forest plan analysis for the plan itself. This action was an act of deceit that deprived the USFS opportunity to consider it in a timely and effective manner and in context with all other components of the plan.

For this reason, and for the reasons stated below, we request denial of any forest plan amendment increasing the areas or acreage in “Rx 5C-Designated Utility Corridors” by the applicants.

Proposed Amendment 1: This proposal would change the plan designation of 102.3 acres to make these lands “Rx 5C-Designated Utility Corridors.” This change would remove management for dispersed recreation and mosaics of habitat from these areas. We oppose this change and assert that any new utility project should be examined in a site-specific plan review.

Proposed Amendment 2: These soil condition and riparian corridor conditions are appropriate and protective measures. The proposed change, allowing the general conditions to be violated “provided that mitigation measures or project requirement agreed upon by the FS are implemented as needed,” defers decisions and allows variances without adequate guidance to limit the discretion of FS personnel faced with these decisions.

The protections these conditions provide are too important to be swept away for the benefit of this one entity. For example, FW-5 requires that “organic layers, topsoil and root mat” be left in place over at least 85% of the activity area and that revegetation occur within 5 years. The Applicant is supposed to be committed to establishing viable and sustainable plant communities in all disturbed areas and should have that goal met well before 5 years have elapsed. Making sure that sufficient organic matter and suitable soils are kept in place is essential to meet these goals.

FW-15, FW-16, and FW-17 all appropriately regulate activities in and near the channels of ephemeral streams. Case-by-case exceptions may be allowed for F-15 (vehicle travel) and FW-17 (limit on percentage of timber removed), providing sufficient flexibility for operations in these areas while requiring site-specific reviews to avoid serious damage in these areas. FW-16 limits the percentage of “mineral soil” that may be exposed in these zones and is also an appropriate and necessary limitation. These ephemeral streams are important resources and must be protected even when flow is not present. It is well established that aquatic biota can and do survive in ephemeral stream beds and, of course, they may contribute pollution to downstream waters when flowing. The proposed special exceptions should not be granted. Rather, Applicant must be held to the same standards as all other activities in these areas, whether conducted by public or private parties.

²⁰ United States Department of Agriculture, Region 8, Revised Land and Resource Management Plan, George Washington National Forest, November, 2014, 1-9.

The requirements of 11-019 prevent tree removal in the “core of the riparian corridor,” unless done to meet one or more of the listed purposes. The exception to the prohibition, allowing for tree removal “[f]or approved facility construction/renovation” should easily accommodate the work proposed for this project, if approved. There is no valid reason for removing the protections this provision provides.

Proposed Amendment 3 - The notice states that “[t]he LRMP would be amended to allow the ACP to cross the Appalachian National Scenic Trail in Augusta County, Virginia (reference LRMP Standard 4A-025).” As with other proposed amendments above, this change is unnecessary, because the provisions of 4A-025 already allow “a single crossing of the prescription area by linear utilities and rights-of-way, limiting location of new crossings to areas “where major impacts already exist.” The damages that would be inflicted on the Appalachian Trail and the experience of users due to visual and noise impacts in sight and hearing of the Trail but not directly associated with a crossing are already much too great. Any new activities of this type must be very strictly limited and there is no justification for this amendment.

Proposed Amendment 4: The Notice states that “[t]he LRMP may need to be amended to allow the removal of old growth trees within the construction corridor.” The pipeline route should avoid all old growth stands. Given that the DEIS already acknowledges that forest fragmentation would be a significant negative impact of the ACP that cannot be mitigated, the removal of old growth trees would exacerbate unavoidable impacts that already exist and must not be allowed.

Proposed Amendment 5: This possible amendment, according to the Notice, would be made “to allow major reconstruction of a NFS road within the Rx 2C3 area.” The areas under this prescription include just seven stream segments on some of the highest quality streams in the GWNF, all of which have been designated “eligible recreation rivers” for possible inclusion in the “National Wild and Scenic River System.” Water resources of this magnitude are much too rare to allow major and very invasive construction within them - work that could well destroy the values that, otherwise, might enable their designation for national-level protections. Rather than allowing major reconstruction of roads in these areas, the FS should place a high priority on the removal and rehabilitation of roads.

Proposed Amendment 6: This proposal would allow violation of the existing “Scenic Integrity Objectives” for some unspecified period of time while the wounds created by the Project are allowed to partially heal. The Notice promises that mitigation measures “are expected to improve visual quality over an extended timeframe.” This “extended timeframe” is undefined and, in fact, the FS must acknowledge that even the best mitigation measures will still damage scenic integrity. Neither short-term nor long-term impairment of this important feature of the Forest for industrial construction should be granted approval through the Forest Plan. If any lessening of scenic integrity standards were to be allowed, those exceptions should be very strictly defined and limited and the current construction and mitigation plans the Applicant has proposed and FERC has deemed acceptable in the DEIS are far from sufficient.

As a cooperating agency, the Forest Service may adopt the draft EIS issued by the Commission on December 30, 2016 without recirculating it if, “after an independent review of the statement,” the Forest Service concludes that its comments and suggestions have been satisfied.²¹ Given the dearth of essential information in the draft EIS related to impacts to the MNF and GWNF, we urge the Forest Service not to adopt this draft EIS. Instead, the Forest Service should issue a revised draft EIS for the

²¹ 134 40 C.F.R. 1506.3(c). 49

SUP, associated plan amendments, and other impacts to the MNF and GWNF, based on complete information and an adequate assessment of the environmental impacts of the Atlantic Coast Pipeline's proposed route through the National Forests, and provide that revised draft EIS for public review and comment.

The Forest Service clearly has the authority and the obligation to revise the National Forest analysis in this draft EIS and to issue a new draft for public comment. Only then will the Forest Service have the information it needs to make a reasoned decision and the public the tools needed to comment in a meaningful way on the impacts on the National Forests and the sufficiency of Atlantic's proposed mitigation measures.

Furthermore, we request that the Forest Service reject all and any forest plan amendments that would change or increase the areas or acreage in "Rx 5C-Designated Utility Corridors" by the applicants. We also request denial of any special-use permit by the applicants that would depend on any changes to the existing forest plan in management area Rx 5-C.