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October 21, 2019

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: *Mountain Valley Pipeline, LLC*
MVP Southgate Project
Docket No. CP19-14-000
Errata to October 21, 2019 Answer of Mountain Valley Pipeline, LLC to Comments on
the Draft Environmental Impact Statement

Dear Ms. Bose:

Earlier this afternoon, Mountain Valley Pipeline, LLC (“Mountain Valley”) filed an Answer to Comments on the Draft Environmental Impact Statement (“Answer”) for Mountain Valley’s Southgate Pipeline Project with the Federal Energy Regulatory Commission. The Answer inadvertently included an incomplete Exhibit 1. Submitted herewith is a complete copy of the Answer with the corrected Exhibit 1.

If you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

MOUNTAIN VALLEY PIPELINE, LLC

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Mountain Valley responds to certain issues that are predominately legal in nature in this narrative and responds to other more discrete issues raised by commenters in the table attached as Exhibit 1.

The Southgate Project is a new natural gas pipeline system commencing near Chatham, Virginia and terminating at a delivery point with Dominion Energy North Carolina⁶ (“DENC”) near Graham, North Carolina. The Project includes approximately 73 miles of pipe, one compressor station, associated valves, piping, and appurtenant facilities, and will receive gas from two new interconnections, one with the Mountain Valley Pipeline Project (“Mainline Facilities”)⁷ and one with East Tennessee Natural Gas Transmission, LLC (“East Tennessee”). Mountain Valley has a long-term, binding precedent agreement with DENC for 300,000 dekatherms (“Dth”) per day on the Project.

I. EXECUTIVE SUMMARY

Notwithstanding protestations of insufficient time to comment, numerous detailed comments were filed on a multitude of issues in the DEIS. Certain commenters argue that Mountain Valley has failed to demonstrate that the Southgate Project is needed, but ignore the compelling fact that Mountain Valley has entered into a binding 20-year precedent agreement with DENC, a local distribution company operating in North Carolina, for 300,000 Dth per day of capacity, representing approximately 80 percent of

⁶ Formerly “PSNC Energy.” After Mountain Valley filed the Application for the Southgate Project, Dominion Energy, Inc. (“Dominion”) acquired PSNC Energy, which is now called Dominion Energy North Carolina and referred to as “DENC” in this Answer.

⁷ The Commission issued the Certificate Order for the Mainline Facilities, which are currently under construction, on October 13, 2017. *See Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (“Certificate Order”), *order denying reh’g*, 163 FERC ¶ 61,197 (2018), *aff’d*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019) (unpublished opinion). The MVP Certificate Order was upheld on appeal by the Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”), which considered sixteen different challenges to FERC’s environmental review of the Mainline Facilities and subsequent issuance of the certificate and denied all challenges, finding them without merit. *See Appalachian Voices v. FERC*, No. 17-1271 (D.C. Cir. Feb. 19, 2019).

the total Project capacity. This is a strong demonstration of market need for the Project and is fully consistent with Commission policy and precedent.

Despite assertions otherwise, the National Environmental Policy Act (“NEPA”) does not require the Commission to prepare a revised or supplemental DEIS for the Project. The DEIS, while not a final document, is thorough, comprehensive, and certainly does not warrant the preparation of a revised or supplemental draft. It contains more than sufficient information to provide the public an opportunity for meaningful analysis.

The DEIS analyzes all direct, indirect and cumulative impacts of, and reasonable alternatives to, the Project, consistent with the Commission’s NEPA responsibilities. The DEIS does not improperly segment the Southgate Project by not evaluating the Mainline Facilities in the same environmental document. It is beyond reproach that any argument regarding segmentation does not apply in this situation, where the Commission has completed an EIS for the Mainline Facilities and is in the process of completing another comprehensive EIS for the Southgate Project—an FEIS which will include a comprehensive cumulative impacts analysis that considers the Mainline Facilities and two Transcontinental Gas Pipe Line Company, LLC (“Transco”) compressor stations as “cumulative actions” within a resource-specific geographic scope of the Project.

Similarly, the DEIS provides a robust alternatives analysis consistent with NEPA requirements. The DEIS considered the no-action alternative, system alternatives, major route alternatives and variations, and alternative locations for proposed above-ground facilities. Based on this, the DEIS reasonably concludes that no alternative “would

provide a significant environmental advantage over the Project” and “that the proposed Project is the preferred alternative that can meet the Project’s stated purpose.”⁸

The DEIS also appropriately considered the principle of environmental justice in determining that the Southgate Project would not disproportionately impact minority or low-income populations. The DEIS identified the environmental justice communities within one mile of the proposed Lambert Compressor Station, and explains that impacts to these communities would not be disproportionately high or adverse because impacts to air quality from construction and operation of the Southgate Project would not be significant with respect to *any* population.

The DEIS also addresses the potential greenhouse gas (“GHG”) emissions attributable to the construction and operation of the Southgate Project, including cumulative impacts, and concludes that construction and operation-related emissions are not expected to have a significant impact on local or regional air quality. There is no NEPA requirement that the Commission consider impacts from upstream natural gas production allegedly induced by the Southgate Project, because the impacts of such activities are neither causally connected to the Southgate Project nor are they reasonably foreseeable.

With respect to downstream GHG emissions, Mountain Valley in both its Application and in its own comments on the DEIS has explained in detail that any potential downstream GHG emissions associated with the Southgate Project have already been accounted for in the Commission’s “upper bound” estimate for the Mainline Facilities and by virtue of the fact that the expected deliveries of natural gas from East Tennessee into the Southgate Project will come from existing capacity and will not

⁸ DEIS at 3-48.

require any expansion of the East Tennessee system. Thus, any further quantitative estimate would result in misleading and inaccurate double-counting of impacts. For the same reason, there is no need to consider upstream GHG emissions, as the Southgate Project is not transporting additional volumes of natural gas and cannot, therefore, be said to be “inducing” additional natural gas production.

In sum, the Commission’s DEIS is consistent with the requirement that the Commission take a “hard look” at the environmental impacts of its actions.⁹

II. **ANSWER**

A. Mountain Valley Has Fully Demonstrated the Need and Demand for the Project.

Commenters argue that the Southgate Project is not needed and that market demand in the Southeastern United States does not support the Project.¹⁰ Notwithstanding that this argument is not a comment regarding the DEIS, Mountain Valley will once again explain why these commenters are incorrect. Commenters deliberately ignore that Mountain Valley has entered into a binding 20-year precedent agreement with DENC, a local distribution company operating in North Carolina, for 300,000 Dth per day of capacity on the Southgate Project, representing approximately 80

⁹ *Mo. Coal. for the Env't v. FERC*, 544 F.3d 955, 958 (8th Cir. 2008) (quoting *Mayo Found. v. Surface Transp. Bd.*, 472 F.3d 545, 549 (8th Cir. 2006)); see also *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983).

¹⁰ Comments of Appalachian Mountain Advocates, *et al.* on Draft Environmental Impact Statement for Mountain Valley Pipeline, LLC’s Proposed Southgate Project, Docket No. CP19-14-000, at 5-7 (Sept. 16, 2019) (“AMA Comments”); Comments and Request for 60-Day Extension for Comments of Blue Ridge Environmental Defense League, Docket No. CP19-14-000, at 5-8 (Sept. 16, 2019) (“BREDL Comments”).

percent of the total Project capacity, which fully supports the market need for the Project.¹¹

The Commission’s Certificate Policy Statement plainly states that binding precedent agreements are “significant evidence of demand for [a] project.”¹² In approving the Mainline Facilities, the Commission explained that binding agreements are the “best evidence that additional gas will be needed” in the markets the Project is intended to serve.¹³ On appeal, the D.C. Circuit unequivocally affirmed the Commission’s finding of need based on long-term precedent agreements.¹⁴ While Commenters introduce their own demand projections, this does not overcome the fact that the most objective evidence of market demand for the pipeline capacity created by the Project is Mountain Valley’s precedent agreement with DENC for the overwhelming majority of the Project capacity. The D.C. Circuit consistently has upheld the Commission’s finding of need based on the existence of precedent agreements under similar circumstances.¹⁵ Therefore, in accordance with longstanding Commission

¹¹ Application of Mountain Valley Pipeline, LLC for Authorization to Construct and Operate Pipeline Facilities Under the Natural Gas Act, Docket No. CP19-14-000, at 7 (Nov. 6, 2018) (“Application”). Mountain Valley will be at risk for the additional 20 percent of the capacity as stated in its Application.

¹² *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at p. 61,748 (1999) (“Certificate Policy Statement”), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000). *See, e.g., Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 242 (D.C. Cir. 2013) (recognizing FERC’s finding that precedent agreements supporting the project constituted “strong evidence of market demand”) (citation omitted).

¹³ Certificate Order, 161 FERC ¶ 61,043 at P 41.

¹⁴ *Appalachian Voices*, No. 17-1271, 2019 WL 847199 at *1 (“Notwithstanding petitioners’ argument to the contrary, FERC’s conclusion that there is a market need for the Project was reasonable and supported by substantial evidence, in the form of long-term precedent agreements for 100 percent of the Project’s capacity”). *See also Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) (holding that applicants met the market need “by showing that 93% of their capacity has already been contracted for”).

¹⁵ *See Myersville Citizens for a Rural Community, 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 Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 111 n.102 (D.C. Cir. 2014)) (emphasis added).

practice and D.C. Circuit precedent, the Commission reasonably may conclude that Mountain Valley's long-term, binding precedent agreement with DENC provides adequate evidence of need for the Project.

Commenters argue that the Commission must also consider indicators of project need other than precedent agreements. This is incorrect. While the Certificate Policy Statement *allows* the Commission to consider this type of information, it did not *require* the Commission to do so. The Certificate Policy statement *allows* pipelines to submit additional types of evidence that “*might include . . . demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.*”¹⁶ Indeed, Mountain Valley submitted such a market study with its Application. However, precedent agreements remain “significant evidence of demand for [a] project.”¹⁷

The Certificate Policy Statement permits additional evidence to allow pipelines to demonstrate project need even if the pipeline had executed few (or even no) agreements to support it, because the amount of capacity under contract may not fully reflect “all the public benefits that can be achieved by a proposed project.”¹⁸ Accordingly, benefits could include “the environmental advantages of gas over other fuels, lower fuel costs, access to new supply sources or the connection of new supply to the interstate grid, the elimination of pipeline facility constraints, better service from access to competitive transportation options, and the need for an adequate pipeline infrastructure.”¹⁹ Mountain Valley explained in its Application that the Project provides many of these benefits. The

¹⁶ Certificate Policy Statement, 88 FERC at p. 61,747 (emphasis added).

¹⁷ *Id.* at p. 61,748.

¹⁸ *Id.* at p. 61,744.

¹⁹ *Id.*

Project introduces meaningful competition as it represents an additional interstate pipeline into North Carolina, where Transco has a near monopoly. Further, the Project provides DENC with flexibility, optionality, and diversity of supply.²⁰

Thus, Mountain Valley has not only demonstrated Project need through its precedent agreement with DENC, it also has identified additional public benefits upon which the Commission may rely as evidence of Project need.

B. The DEIS Includes Sufficient Information to Analyze Impacts and Provide for Meaningful Public Review.

Some commenters assert that the DEIS is incomplete and lacks information necessary to analyze environmental impacts under NEPA, and that without this information, “the public cannot meaningfully comment on the project.”²¹ As a result, commenters argue that the Commission must either prepare a revised DEIS and release it for public comment, or issue a supplemental DEIS that addresses new information.²² Commenters misapprehend the purpose of a DEIS and overstate the requirements under NEPA to prepare a revised or supplemental DEIS. The DEIS contains more than sufficient information for the public to understand the impacts of the Project and comment meaningfully thereon.

As the D.C. Circuit has held, “[b]y its very name, the DEIS is a draft of the agency’s proposed [final] EIS, and as such the purpose of a DEIS ‘is to elicit suggestions for change[,]’” and to provide a “springboard for public comment.”²³ In the same vein,

²⁰ Application at 7-9.

²¹ See, e.g., Southern Environmental Law Center Comments on FERC’s Draft Environmental Impact Statement for Mountain Valley Pipeline’s Southgate Project, Docket No. CP19-14-000, at 6 (Sept. 16, 2019) (“SELC Comments”); BREDL Comments at 1-2.

²² SELC Comments at 6.

²³ *Nat’l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1328, 1329 (D.C. Cir. 2004) (quoting *City of Grapevine, Tex. v. Dep’t of Transp.*, 17 F.3d 1502, 1507 (D.C. Cir. 1994)); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989)). See also *Se. Supply Header, LLC*, 120 FERC ¶ 61,257, at

the Commission has explained that the DEIS “put[s] interested parties on notice of the types of activities contemplated and of their impacts.”²⁴ Commenters must show that any alleged omissions in the DEIS “left the public unable to make known its environmental concerns about the project’s impact.”²⁵ It is not sufficient that the public was not able to “analyze each aspect of the project, such as specific rather than generalized statements of proposed sitings.”²⁶ Courts have recognized that due to “the practical realities of large projects,” such as the Southgate Project, “[i]f every aspect of the project were required to be finalized before any part of the project could move forward, it would be difficult, if not impossible, to construct the project.”²⁷

These practical realities are evidenced by the Commission’s “longstanding practice to issue environmental documents along with recommended mitigation measures that request specific documentation of agency consultation, construction plans, and detailed information to supplement baseline data.”²⁸ It is thus reasonable—and consistent with Commission practice—for the DEIS to contemplate that certain information will be provided subsequent to issuance of the DEIS.²⁹ The mere fact that

P 27 (2007) (denying request to issue revised DEIS where DEIS called for submission information before the end of the comment period or prior to construction).

²⁴ *Constitution Pipeline Co.*, 154 FERC ¶ 61,046, at P 31 (2016).

²⁵ *New River*, 373 F.3d at 1329. The volume of comments received in response to the DEIS indicates the opposite—that commenters were more than able to make environmental concerns known to the Commission. *See id.*, 373 F.3d at 1329-30.

²⁶ *Id.*, 373 F.3d at 1329.

²⁷ *Id.* (quoting *E. Tenn. Nat. Gas Co.*, 102 FERC ¶ 61,225, at P 25 (2003)); *see also Robertson*, 490 U.S. at 350 (NEPA does not require all plans to be finalized and complete in draft or even final EIS).

²⁸ *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163, at P 56 (2015), *reh'g denied*, 154 FERC ¶ 61,048 (2016).

²⁹ SELC alleges that key information is missing from the DEIS (*see* SECL Comments at 5-6). However, the DEIS instructs Mountain Valley to either provide such information prior to the comment period deadline for the DEIS, or at a future date (*see* DEIS at 5-14 – 5-21). Mountain Valley complied with the DEIS and submitted the information required by the comment period deadline (*see, e.g.*, Mountain Valley Pipeline, LLC, Response to FERC Staff’s Recommended Mitigation, Docket No. CP19-14-000 (Sept. 13, 2019)). Mountain Valley will continue to comply with all Commission directives contained within the DEIS, FEIS, and Commission orders.

additional information will be submitted after issuance of the DEIS does not, as commenters erroneously suggest, in and of itself require the Commission to prepare a revised DEIS. “NEPA does not require agencies to constantly revise their issued analyses as new information becomes available.”³⁰ The “fact that many of the permits, approvals, consultations, and variances required for the . . . project have been or will be filed after the formal public notice and comment periods does not mean that the public is excluded from meaningful participation.”³¹ On the contrary, information filed after the comment period continues to be “accessible to the public in the Commission’s electronic database.”³²

This practice is consistent with the Council on Environmental Quality’s (“CEQ”) regulations implementing NEPA. CEQ regulations provide that an agency shall prepare a revised DEIS if the “draft statement is so inadequate as to preclude meaningful analysis.”³³ The CEQ regulations further provide that an agency shall prepare a supplemental DEIS if: “(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”³⁴ Neither of these conditions is present in this case; there is no basis to warrant a revised or supplemental DEIS.

Likewise, the Commission is not required to prepare a supplemental DEIS because the practical realities of the Southgate Project necessitate additional filings after

³⁰ *Dominion Cove Point LNG, LP*, 151 FERC ¶ 61,095, at P 52 (2015), *aff’d sub nom. EarthReports, Inc. v. FERC*, 828 F.3d 949 (D.C. Cir. 2016).

³¹ *Constitution Pipeline*, 154 FERC ¶ 61,046 at P 31.

³² *Id.*

³³ 40 C.F.R. § 1502.9(a).

³⁴ *Id.* § 1502.9(c)(1)(i)-(ii).

issuance of the DEIS. The Supreme Court has soundly rejected the notion that an agency is required to prepare a supplemental DEIS each time new information becomes available. According to the Court, requiring otherwise “would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made.”³⁵ Whether to prepare a supplemental DEIS is subject to the Commission’s discretion.³⁶ The Commission’s decision on whether to prepare a supplemental DEIS is subject to a “rule of reason.” “if the new information is sufficient to show that the remaining action will ‘affect the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”³⁷ The significance of the new information depends on whether it “provides a *seriously* different picture of the environmental landscape.”³⁸ In this case, none of the information that commenters allege is missing or deficient would present a “*seriously* different picture” of the impacts of the Project, and the Commission should appropriately decline to issue a supplemental DEIS.

C. The Commission Has Not Inappropriately Segmented Its Review of the Southgate Project From the Mainline Facilities.

Some commenters assert that the DEIS impermissibly “segments” the Southgate Project by failing to evaluate the Mainline Facilities as a “connected action” in the same environmental document.³⁹ This argument is nonsensical. According to these commenters, the failure to include the Mainline Facilities in the Commission’s review of the Southgate Project undermines its cumulative impacts analysis and determination that

³⁵ *Marsh v. Ore. Nat. Res. Council*, 490 U.S. 360, 373 (1989). See also *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at p. 62,106 (1996) (denying request for supplemental EIS).

³⁶ *Wisconsin v. Weinberger*, 745 F.2d 412, 417 (7th Cir. 1984).

³⁷ *Marsh*, 490 U.S. at 374.

³⁸ *City of Olmsted Falls, OH v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002) (quoting *Wisconsin*, 745 F.2d at 418).

³⁹ See AMA Comments at 8-10; BREDL Comments at 3-5.

the Southgate Project will cause only limited adverse environmental impacts.⁴⁰ However, commenters conveniently ignore the entire purpose of the rule against segmentation—to ensure that agencies do not analyze projects in smaller components to avoid a finding of significance that would trigger the need to prepare an EIS.⁴¹ Here, the Commission is preparing an EIS for the Southgate Project, and commenters are opining on that very document.⁴² Further, the Commission already completed a thorough environmental review of the Mainline Facilities, including preparation of a full DEIS and Final EIS, and concluded that it would have limited adverse environmental impacts.⁴³ The Commission cannot go back in time more than two years and add the impact of the Southgate Project into the Mainline Facilities’ DEIS and FEIS. There is thus no segmentation.

Moreover, as discussed further below,⁴⁴ the DEIS considers the Mainline Facilities as a “cumulative action” in its cumulative impacts analysis, including an

⁴⁰ AMA Comments at 8; BREDL Comments at 3. *See also* DEIS at 5-1 (noting that any adverse environmental impacts would be reduced to less than significant levels with recommended mitigation measures).

⁴¹ *See* 40 C.F.R. § 1508.27(b)(7); *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 299 (D.C. Cir. 1987) (“‘Piecemealing’ or ‘Segmentation’ allows an agency to avoid the NEPA requirement that an EIS be prepared for all major federal actions with significant environmental impacts by dividing an overall plan into component parts, each involving action with less significant environmental effects.”).

⁴² The Commission’s decision to prepare an EIS for the Southgate Project is the most detailed review under NEPA and in contrast to most projects of this size where the Commission prepares an EA. *See, e.g., Cheyenne Connector, LLC*, 168 FERC ¶ 61,180 (2019) (Commission staff prepared an EA for a new 70-mile pipeline project); *Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (Commission staff prepared an EA for a new 65-mile pipeline); *Gulf South Pipeline Company, LP*, 155 FERC ¶ 61,287 (2019) (Commission staff prepared an EA for a new 66-mile pipeline).

⁴³ Mountain Valley Pipeline, LLC, Final Environmental Impact Statement, Docket No. CP16-10-000, at 5-1 (June 23, 2017) (“Final EIS”). The Final EIS did note that impacts to forested resources would be more significant, but would be reasonably reduced through adherence to certain mitigation measures. *Id. See also* Certificate Order, 161 FERC ¶ 61,043 at P 308 (Mainline Facilities would be “environmentally acceptable actions” if constructed in accordance with requisite mitigation measures). The Commission’s environmental review of the Mainline Facilities lasted nearly three years, beginning with the environmental pre-filing review process in 2014. *See generally* Docket No. PF15-3-000.

⁴⁴ *See infra* pages 14-17.

evaluation of cumulative impacts to certain water resources.⁴⁵ To the extent that commenters argue the cumulative impacts analysis should include the “full impacts of each project in a single EIS,” commenters are incorrect.⁴⁶ The Commission is not required to re-analyze the entire Mainline Facilities as part of its cumulative impacts analysis.⁴⁷ Rather, the DEIS properly addresses cumulative impacts to specific resources within a defined geographic scope, in accordance with CEQ regulations.⁴⁸ Thus, the Commission is already undertaking what commenters are requesting, and concerns over segmentation are wrong and disingenuous.

Commenters’⁴⁹ reliance on the D.C. Circuit’s decision in *Delaware Riverkeeper Network v. FERC*⁵⁰ is similarly misplaced because, unlike the projects at issue in *Delaware Riverkeeper*, the Commission has already completed a thorough, nearly three-year environmental review of the Mainline Facilities, including preparation of an EIS, not an EA, and is now in the process of preparing yet another EIS for the Southgate Project. Therefore the Commission is certainly addressing the “true scope and impact” of the Southgate Project.⁵¹

⁴⁵ DEIS at 4-246.

⁴⁶ AMA Comments at 10.

⁴⁷ See *Coal. on Sensible Transp. v. Dole*, 826 F.2d 60, 71 (D.C. Cir. 1987) (noting that “[f]urther analysis” of projects already fully evaluated for environmental impacts would be unnecessarily redundant and “in no material way serve the purposes of NEPA”).

⁴⁸ DEIS at 4-235 – 4-243; see 40 C.F.R. § 1508.7.

⁴⁹ AMA Comments at 8-10; BREDL Comments at 4-5.

⁵⁰ 753 F.3d 1304 (D.C. Cir. 2014).

⁵¹ *Id.* at 1309, 1319. Note that since issuing the decision in *Delaware Riverkeeper*, the D.C. Circuit has decided several cases clarifying and limiting its application to the unique set of facts present in that case. See *City of Boston Delegation v. FERC*, 897 F.3d 241, 252 (D.C. Cir. 2018) (projects were not “under simultaneous consideration by the agency,” nor were they “financially and functionally interdependent”); *Myersville*, 783 F.3d at 1326 (noting that the court had “premised [its] decision [in *Delaware Riverkeeper*] requiring joint NEPA consideration on the unquestionable connectedness of the projects, the fact that the projects all were under consideration by the Commission at the same time, and the fact that the projects were financially interdependent”); *Minisink*, 762 F.3d at 113 n.11 (noting that the “critical facts” in *Delaware Riverkeeper* were “worlds apart” from the facts in *Minisink*). These cases indicate that the same unique factors present in *Delaware Riverkeeper* must be present for the court to reach the same result in a subsequent case.

D. The DEIS’s Cumulative Impacts Analysis Takes a Sufficient Hard Look at Cumulative Impacts Associated with the Project.

Some commenters assert that the DEIS failed to take a hard look at the cumulative impacts of the Southgate Project because the temporal and geographic scope of the analysis is too narrow.⁵² According to these commenters, the DEIS must be revised to broaden the scope of its analysis to include “massive projects” that would affect the same environmental resources.⁵³ Such projects, according to commenters, include a mixed-used development,⁵⁴ as well as two existing compressor stations within the vicinity of Lambert Compressor Station proposed as part of the Southgate Project.⁵⁵ Other commenters argue that the DEIS only includes a “minimal analysis” of cumulative impacts associated with the Mainline Facilities.⁵⁶ Contrary to these assertions, the cumulative impacts analysis in the DEIS is thorough and comprehensive, and properly defines the geographic and temporal scope of the analysis.

A “cumulative impact” is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”⁵⁷ The D.C. Circuit has explained that

a meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the

⁵² SELC Comments at 10-11.

⁵³ *Id.* at 11.

⁵⁴ SELC argues the DEIS fails to address the cumulative impacts of Chatham Park, a mixed-use development in Pittsboro, North Carolina. *Id.* at 10-11. The Chatham Park development is approximately 25 miles south of the Project in Chatham County, North Carolina and none of the Project facilities are located in Chatham County.

⁵⁵ *Id.* at 10; BREDL Comments at 15.

⁵⁶ AMA Comments at 10.

⁵⁷ 40 C.F.R. § 1508.7.

same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.⁵⁸

The DEIS's cumulative impacts analysis satisfies this criteria. The DEIS properly explained that “[f]or a cumulative impact to occur, another project(s) must impact the same resource(s) as the Southgate Project.”⁵⁹ Because [i]mpacts often vary in extent and duration,” the DEIS accounts for this variation “by considering resource-specific geographic scopes” for a range of resources, including: soils; groundwater, surface water, and wetlands; vegetation; wildlife; fisheries and aquatic resources; land use, recreation special interest areas, and visual resources; socioeconomics and environmental justice; cultural resources; and air quality and noise.⁶⁰ The DEIS then identified other past, present, and reasonably foreseeable projects within the resource-specific geographic scope of analysis, and analyzed the cumulative effects of such projects combined with the Southgate Project.⁶¹

The DEIS identifies both jurisdictional and non-jurisdictional projects within proximity to the Southgate Project, including *both* Transco Compressor Stations 165 and 166 and the Mainline Facilities.⁶² The DEIS then analyzes the cumulative impacts associated with those projects within the geographic scope of each resource. With respect to water resources in particular, the DEIS looked at projects within the same HUC-12 watershed for impacts to groundwater, and within the larger HUC-10 watershed

⁵⁸ *Grand Canyon Tr. v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002) (amended Aug. 27, 2002) (citation omitted).

⁵⁹ DEIS at 4-236.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 4-244 – 4-246 (identifying the Virginia Southside Expansion Project, the Virginia Southside Expansion II Project, and the Mainline Facilities); *see also id.* at 2-246 – 2-248 (identifying non-jurisdictional Southgate Project-related facilities, other energy projects, mining operations, transportation and road improvement projects, and commercial, industrial, and residential projects).

for impacts on surface water.⁶³ Importantly, both analyses included the Mainline Facilities as a project that could have cumulative impacts on water resources.⁶⁴ The DEIS concluded with respect to groundwater, that “it is unlikely that pipeline activities would negatively affect groundwater supplies from wells” due to the “shallow . . . nature of pipeline trenching.”⁶⁵ Concerning surface water, the DEIS explained that because most impacts are short-term, and would be minimized by the installation and maintenance of best management practices, the cumulative effect of the Project, combined with the 37 other projects within the HUC-10 watershed, would be minor.⁶⁶

The DEIS also evaluated cumulative impacts on air quality resulting from construction and operation of the Southgate Project facilities. Specifically with respect to the Lambert Compressor Station, the DEIS evaluated cumulative impacts on air quality as a result of the Southgate Project and projects within 31.1 miles of the Lambert Compressor Station.⁶⁷ The DEIS acknowledges that operation of both Transco Compressor Station 165 and 166, as well as the Southgate Project, would result in long-term, stationary sources of air emissions. Importantly, none of the major source thresholds would be exceeded, and the facilities would continue to operate in compliance with all applicable permitting requirements, including federal, state, and local air

⁶³ *Id.* at 2-450. To the extent that Appalachian Mountain Advocates, *et al.* (“AMA”) asserts that the DEIS only analyzed the cumulative impacts of the Southgate Project and the Mainline Facilities on HUC-12 watersheds, AMA is incorrect. The DEIS considered projects within the HUC-12 watershed for groundwater, and within the larger HUC-10 watershed for surface water. Both analyses included the Mainline Facilities. *Id.*

⁶⁴ DEIS at 2-450.

⁶⁵ *Id.*

⁶⁶ DEIS at 4-252. The DEIS explained that most projects, including the Mainline Facilities, would be required by permit to install erosion and stormwater control devices, so “any cumulative impacts from upland construction of multiple projects . . . would not likely be significant.” *Id.* at 4-251 – 4-252. It also noted that because of geographic and temporal separation of waterbody crossings, “it is unlikely that cumulative impacts would be significant.” *Id.* at 4-252.

⁶⁷ *Id.* at 4-265.

regulations.⁶⁸ As a result, the DEIS reasonably concluded that “operation of the Southgate Project combin[ed] with other projects would not result in significant cumulative impacts on air quality.”⁶⁹

Thus, contrary to commenters’ assertions, the DEIS comprehensively evaluates cumulative impacts associated with the Southgate Project and other projects within its resource-specific geographic scope, including the Mainline Facilities and both Transco Compressor Stations.

E. The DEIS Properly Articulates the Purpose and Need of the Project and Evaluates Reasonable Alternatives.

Commenters incorrectly argue the DEIS ignores the “question of whether there is a real public need for the [Project]” and “improperly restricts its analysis of alternatives to those that can transport Mountain Valley’s full desired volume of gas from its desired starting and ending points.”⁷⁰ However, the DEIS articulates properly the purpose and need of the Project and evaluates sufficiently the Project alternatives as required by NEPA.

Courts and the Commission have properly explained that NEPA requires the Commission to identify and analyze reasonable alternatives during its review of a proposed action.⁷¹ Importantly, “NEPA is a procedural statute; it does not mandate particular results, but simply prescribes the necessary process.”⁷² CEQ’s NEPA

⁶⁸ *Id.* The DEIS also explained that because the Transco compressor stations were constructed more than three years ago, these emissions are “considered part of the ambient air quality within the Southgate Project geographic scope and are accounted for in existing facility permits.” *Id.* Any future upgrades to Compressor Station 165 “would be reviewed for compliance with [National Ambient Air Quality Standards] and required air quality permits.” *Id.*

⁶⁹ *Id.*

⁷⁰ AMA Comments at 1-2.

⁷¹ *Minisink*, 762 F.3d at 102; *Millennium Pipeline*, 157 FERC ¶ 61,096 at P 112 (citing 42 U.S.C. § 4332(2)(C) (2012) and 40 C.F.R. §§ 1502.1, 1502.14, and 1502.16 (2016)).

⁷² *Minisink*, 762 F.3d at 111 (internal quotation marks omitted) (quoting *Robertson*, 490 U.S. at 350).

regulations require the Commission to “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”⁷³ It is not the intent of the DEIS to “reach a conclusion on whether there is a need for a proposed project.”⁷⁴ Rather, “[t]he function of a statement of purpose and need . . . is to define the objectives of the proposed action such that the agency can identify and consider legitimate alternatives.”⁷⁵

In this case, the DEIS properly articulates the purpose and need of the Project:

In general, as described by Mountain Valley, the purpose and need for the Southgate Project is to meet the specific requests for natural gas transportation service of its anchor shipper, [DENC], a local natural gas distribution company. Mountain Valley states that the Project will provide additional firm natural gas transportation services for [DENC] to meet its growing supply needs via interconnections with the under construction Mountain Valley Pipeline project in southern Virginia and the interstate pipeline of East Tennessee in North Carolina to two new delivery points on the [DENC] distribution system in Rockingham and Alamance Counties, North Carolina.⁷⁶

This purpose and need is consistent with the requirements of the Project shipper, DENC. Based on this purpose and need, the DEIS properly evaluates reasonable alternatives to the Project, consistent with the Commission’s stated methodology and precedent.

CEQ regulations on the alternatives analysis require the Commission to “[r]igorously explore and objectively evaluate all *reasonable* alternatives.”⁷⁷ While NEPA does not define what constitutes a “reasonable alternative,” CEQ guidance

⁷³ 40 C.F.R. § 1502.13. See also *Kern River Gas Transmission Co.*, 138 FERC ¶ 61,037, at P 27 (2012) (“The Council on Environmental Quality (CEQ) regulations implementing NEPA requires only that an EA include a brief discussion of the need for the proposal.”) (citing 40 C.F.R. § 1508.9 (2011)).

⁷⁴ *Kern River Gas Transmission*, 138 FERC ¶ 61,037 at P 27.

⁷⁵ *Id.* (citing *Colo. Env'tl. Coal. v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999)).

⁷⁶ DEIS at 1-2.

⁷⁷ 40 C.F.R. § 1502.14 (emphasis added).

clarifies that alternatives are not reasonable if they are not feasible.⁷⁸ CEQ guidance further provides that “[r]easonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.”⁷⁹

When evaluating whether an alternative is preferable to a proposed action, the Commission considers three evaluation criteria.⁸⁰ These criteria are: (1) whether “the alternative meets the stated purpose of the project;” (2) whether the alternative “is technically and economically feasible and practical; and” (3) whether the alternative “offers a significant environmental advantage over a proposed action.”⁸¹ The Commission, therefore, is not required to consider “alternatives that are not consistent with the purpose and need of the proposed project.”⁸² Consistent with these criteria, the DEIS considers the no-action alternative, system alternatives, major route alternatives and variations, and alternative locations for proposed aboveground facilities.⁸³ Based on this analysis, the DEIS reasonably concludes that no alternative “would provide a significant environmental advantage over the Project” and “that the proposed Project is the preferred alternative that can meet the Project’s stated purpose.”⁸⁴

Despite this comprehensive review of alternatives, Commenters nevertheless argue that the Commission “must consider other systems, including *non-gas energy*

⁷⁸ *Enable Gas Transmission, LLC*, 153 FERC ¶ 61,055, at P 25 (2015) (citing *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263 (July 28, 1983)).

⁷⁹ *See Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (Mar. 23, 1981).

⁸⁰ DEIS at 3-1.

⁸¹ *Id.*

⁸² *Dominion Transmission, Inc.*, 155 FERC ¶ 61,106, at P 113 (2016) (citing *Pac. Coast Fed’n of Fishermen’s Ass’ns v. Blank*, 693 F.3d 1084, 1100 (9th Cir. 2012)).

⁸³ DEIS at 3-1 – 3-48.

⁸⁴ *Id.* at 3-48.

alternatives, and/or energy conservation or efficiency.”⁸⁵ But because such alternatives cannot “meet[] the stated purpose of the project,” i.e., to meet the specific request for natural gas transportation service of its anchor shipper, DENC, they are not “reasonable” alternatives that the Commission must consider under NEPA.⁸⁶ Commission precedent recognizes that the use of renewable energy sources and increased energy conservation may not meet the purpose of a natural gas pipeline project.⁸⁷ Not surprisingly, these commenters fail to explain how the customers of DENC can utilize solar energy or wind energy or energy conservation programs to operate their gas appliances, gas furnaces and other devices and machinery that are natural gas fueled. Therefore, the DEIS properly considered reasonable alternatives to the Project, consistent with Commission precedent and the requirements of NEPA.

Transco and Atlantic Coast Pipeline (“Atlantic Coast”) each submitted comments on the hypothetical alternatives in the DEIS that address their respective pipeline systems.⁸⁸ Transco comments that it could, in theory, provide the same capacity required by DENC by using its existing system with minor modifications at an existing compressor station and constructing a 37.7-mile long lateral pipeline that would follow

⁸⁵ North Carolina Department of Environmental Quality Comment on the Draft Environmental Impact Statement (DEIS) for the Southgate Project, Docket No. CP19-14-000, at 3 (Sept. 16, 2019) (“NCDEQ Comments”).

⁸⁶ *Dominion*, 155 FERC ¶ 61,106 at P 113 (citing *Pac. Coast*, 693 F.3d at 1100).

⁸⁷ *Id.* (citing *Pac. Coast*, 693 F.3d at 1100). See also *Envtl. Law & Policy Ctr. v. NRC*, 470 F.3d 676, 684 (7th Cir. 2006) (NRC properly declined to consider energy-efficiency alternatives when goal of project was to generate baseload energy and private applicant “was in no position to implement such measures”); *National Parks Conservation Ass’n v. Forest Service*, 177, F.Supp.3d 1, 14 (D.D.C. 2016) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991)) (noting that where an agency is “asked to sanction a specific plan,” it must “take into account the needs and goals of the parties involved in the application,” and holding that purpose of “exploration of private minerals” was consistent with NEPA).

⁸⁸ Transcontinental Gas Pipe Line Company, LLC, Comments on Draft Environmental Impact Statement, Docket No. CP19-14-000 (Sept. 18, 2019) (“Transco Comments”); Atlantic Coast Pipeline. Draft Environmental Impact Statement for Southgate Project, Docket No. CP19-14-000 (Sept. 16, 2019) (“Atlantic Coast Comments”).

existing pipeline rights-of-way.⁸⁹ Unsurprisingly, in offering this hypothetical alternative, Transco fails to explain how it would meet a number of criteria DENC considered when it contracted for capacity on the Southgate Project.⁹⁰ Specifically, the Transco alternative to the Project would not (1) add competition to an interstate pipeline market where Transco has a near monopoly; (2) provide DENC with a third direct interstate pipeline connection improving reliability and adding resiliency to the interstate pipeline services that DENC receives; (3) diversify risk and provide access to the other pipelines to continue serving DENC’s customers without interruption in the event of an unplanned outage or interruption; and (4) provide a direct connection of DENC’s system to East Tennessee’s pipeline through which DENC sources its gas storage on Saltville Gas Storage Company L.L.C.’s storage facilities, which will allow DENC to replace less reliable secondary-firm backhaul deliveries on Transco with primary-firm forward-haul deliveries on the Southgate Project. Mountain Valley is not alone in describing these benefits, as DENC filed a response in this proceeding on December 28, 2018 describing how the Southgate Project will provide many of these benefits, including filing testimony provided before the North Carolina Utilities Commission (“NCUC”).⁹¹ Moreover, regarding the first three criteria, the NCUC has recognized the need for competitive

⁸⁹ Transco comments at 2.

⁹⁰ In fact, DENC solicited interest for additional pipeline capacity necessary to meet anticipated incremental demand on its distribution system from all existing and proposed pipelines, including Transco and Atlantic Coast. Application at 3. In choosing Mountain Valley and the Southgate Project, DENC cited numerous reasons, including transportation cost, supply cost, supply diversity, reliability and resiliency, and operational efficiencies. *Id.* at 7.

⁹¹ See *Motion for Leave to Answer, Answer, and Motion to Lodge of Public Service Company of North Carolina, Inc.*, Docket No. CP19-14-000 (Dec. 28, 2018) (“*Answer*”). In the *Answer*, DENC [PSNC] referenced its application before the NCUC seeking approval for compensation under the Southgate agreement wherein its stated various benefits the Southgate Project provides, including “access to MVP capacity, which constitutes the best-cost alternative available to satisfy the Company’s long-term interstate capacity needs;” “increase reliability, resiliency and direct to low-cost natural gas produced in the Marcellus and Utica shale regions;” “contribute to optionality of natural gas supply sources;” and “allow PSNC to replace secondary-firm backhaul deliveries with primary forward-haul deliveries.” *Answer* at 5.

interstate pipeline capacity alternatives *other* than Transco—which Transco fails to explain or acknowledge.⁹² DENC further filed its own response to comments on the DEIS stating that Transco has failed to explain how it could provide mainline capacity to serve DENC and never presented this new proposal until now and accordingly it is too late.⁹³ In short, the only comment Transco offered that is helpful to the Commission’s alternatives analysis is that Atlantic Coast is not a viable alternative.⁹⁴

Atlantic Coast comments that Commission staff “should *not* assume when considering [Atlantic Coast Pipeline (“ACP”)] as an alternative to Southgate that ACP would deliver gas to PSNC at the same delivery points proposed by [Mountain Valley].”⁹⁵ According to Atlantic Coast, instead of delivering gas where the Southgate Project is proposed to deliver gas and where DENC wants it delivered, the Commission should consider an alternative where Atlantic Coast would deliver gas on the eastern side of DENC’s system, reducing the length of pipeline necessary for Atlantic Coast to deliver gas to DENC. Atlantic Coast further suggests that in order to do so, it would need additional capacity to be added to the Piedmont intrastate pipeline.⁹⁶ But this is not what DENC has requested. Moreover, an Atlantic Coast alternative would not provide the

⁹² See Docket No. G-100, Sub 91, *Investigation Regarding Competitive Alternatives for Additional Natural Gas Service Agreements*. The NCUC approved the Southgate Project as beneficial to consumers in North Carolina, and authorized payment under the precedent agreement. See Order on Annual Review of Gas Costs, *In re Application of Public Service Company of North Carolina, Inc. for Annual Review of Gas Costs Pursuant to N.C.G.S. § 62-133.4(c) and Commission Rule R1-17(k)(6)*, Docket No. G-5, Sub 591 (NCUC Dec. 6, 2018); Order Accepting Affiliated Agreements for Filing and Permitting operation Thereunder Pursuant to N.C. Gen. Stat. § 62-153, *In re Application of Public Service Company of North Carolina, Inc. for Approval of Payment of Compensation Under a Service Agreement with Mountain Valley Pipeline, LLC*, Docket No. G-5, Sub 591 (NCUC Oct. 9, 2018) (attached to Mountain Valley’s Application as Ex. Z-1).

⁹³ See DENC [PSNC] Response filed October 17, 2019 in Docket No. CP19-14-000.

⁹⁴ Transco Comments at 2, n.1.

⁹⁵ Atlantic Coast Comments at 2 (emphasis in original). Atlantic Coast’s lead developer and largest equity owner is Dominion. As noted earlier, Dominion acquired the former PSNC Energy in January 2019, after PSNC Energy entered into the binding precedent agreement with Mountain Valley. DENC/PSNC and ACP are now affiliates. DENC/PSNC and Mountain Valley are not affiliates.

⁹⁶ Atlantic Coast Comments at 3.

crucial connection to East Tennessee that the Project will provide. Therefore, Atlantic Coast's new suggested system alternative would not meet the purpose of the Southgate Project, which, rather than simply delivering gas to DENC, specifically includes receiving gas from the interconnection with the Mainline Facilities (on which DENC is a customer) and from the new interconnection with East Tennessee and delivering gas to two new delivery points on the DENC distribution system in Rockingham and Alamance Counties, North Carolina. Neither would this alternative meet the goal of diversifying the interstate pipeline market in North Carolina, as evident by the NCUC's recognition of the need for competitive pipeline alternatives, notwithstanding the fact that DENC had an existing commitment on ACP.⁹⁷

More fundamentally, however, is that neither the Atlantic Coast alternative or the Transco alternative as put forward are real projects. While it may be appropriate to evaluate those "alternatives" under NEPA, the alternatives are hypothetical only, as neither pipeline company has proposed either "alternative" as a viable project. As the Commission recently explained in *Cheyenne Connector, LLC*, even if a potential alternative assessed under NEPA may present an environmental advantage, "NEPA does not require the Commission to certificate the most environmentally favorable alternative."⁹⁸ Based on comments from a competing pipeline company that its hypothetical system alternative provided less environmental impact over the proposed project, the Commission explained that the competing pipeline did not present a "viable system alternative" because that pipeline company did not have commitments from

⁹⁷ See *Answer* (explaining DENC's 20-year precedent agreement with Atlantic Coast for 100,000 dth/d). Atlantic Coast itself "fully understands and appreciates" the need for "a new pipeline alternative to serve North Carolina." Atlantic Coast Comments at 2.

⁹⁸ *Cheyenne Connector, LLC*, 168 FERC ¶ 61,180, at P 107 (2019).

shippers or submit an application for an alternative project.⁹⁹ Further, while the Commission assessed the potential impacts from the hypothetical alternative project for NEPA purposes, it ultimately issued a certificate for the proposed project because, among other things, the benefits of the proposed project “outweigh the potential environmental benefits of the non-viable, hypothetical system alternative proffered by [the competitor].”¹⁰⁰ The same analysis applies here where the Commission is faced with Atlantic Coast’s and Transco’s non-viable alternatives.

In this case, while both hypothetical alternatives may be appropriate for Commission consideration under NEPA (and have been considered), neither alternative is a real, viable project that the Commission has the ability to consider under the Natural Gas Act (“NGA”). The NGA restricts Commission action to issue certificates to an “*applicant*” when it finds that the “*proposed . . . construction . . . is or will be required by the present or future public convenience and necessity.*”¹⁰¹ Neither Atlantic Coast nor Transco are applicants for these proposed alternatives as both pipelines require construction of additional facilities to serve DENC. Furthermore, neither company has filed applications or presented evidence that they have customer support for their alternatives.¹⁰² Therefore, their hypothetical alternatives are not viable projects and remain exactly what they are—hypothetical.

⁹⁹ *Id.* at 105.

¹⁰⁰ *Id.* at 107.

¹⁰¹ 15 U.S.C. § 717f(e) (emphasis added).

¹⁰² Atlantic Coast purports not to question DENC’s decision to contract with Mountain Valley, as opposed to Atlantic Coast, and states that the Commission “should not look behind precedent agreements to judge a pipeline customer’s decision.” Atlantic Coast Comments at 2.

F. The DEIS Sufficiently Analyzes Impacts to Environmental Justice Populations.

Some commenters assert that the DEIS failed to analyze adequately impacts to environmental justice communities.¹⁰³ According to the SELC, the DEIS does not analyze the health impacts that the Lambert Compressor Station would have on environmental justice populations.¹⁰⁴ However, SELC’s comments essentially boil down to a disagreement with the DEIS’s analysis of air quality impacts in the vicinity of the Lambert Compressor Station—not the DEIS’s evaluation of environmental justice. The DEIS appropriately considered the principles of environmental justice and determined that the Southgate Project “would not have a disproportionately high and adverse environmental or human health impact on minority or low-income populations.”¹⁰⁵

Consistent with CEQ environmental justice guidance, the DEIS identified environmental justice communities by identifying census block groups with a specified minority population or household poverty rate.¹⁰⁶ The DEIS specifically identified two census block groups within one mile of the Lambert Compressor Station containing environmental justice populations.¹⁰⁷ SELC acknowledges these two populations in the DEIS, but asserts that the DEIS “does not assess the health impacts that the compressor

¹⁰³ SELC Comments at 7-8. The NCDEQ also raises environmental justice concerns with respect to the possibility that DENC will have a small increase in the total bill amount to its customers as a result of the Southgate capacity. Comments at 8-10. This argument is outside the scope of NEPA and not one properly before this Commission but rather an issue that should be raised before the applicable state utility commission.

¹⁰⁴ *Id.* at 7.

¹⁰⁵ DEIS at 4-138.

¹⁰⁶ *Id.* at 4-128 – 4-130. Executive Order 12898 requires federal agencies to identify adverse environmental or human health effects that are disproportionately higher on low-income and minority populations. *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, Executive Order 12898, 59 Fed. Reg. 7629 (Feb. 16, 1994). CEQ promulgated guidance to assist federal agencies in identifying these populations. CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act* (Dec. 10, 1997).

¹⁰⁷ DEIS at 4-131; *see also* SELC Comments at 7.

station would have on these populations.”¹⁰⁸ This is incorrect. The DEIS explains that although construction and operation of the compressor station “would result in long-term impacts on air quality,” these impacts would not be significant because Mountain Valley would take steps to minimize dust during construction and potential operational emissions would be below the NAAQS, “which are designated to protect public health.”¹⁰⁹ As a result, the Southgate Project “would not have significant adverse air quality impacts on the low-income or minority populations in the Project area.”¹¹⁰

SELC’s comments do not pertain to the DEIS’s identification and discussion of environmental justice populations. Rather, their comments take issue with the DEIS’s conclusions with respect to the Lambert Compressor Station’s impacts on air quality generally.¹¹¹ However, the DEIS thoroughly evaluated impacts (including cumulative impacts) to air quality resulting from construction and operation of the Lambert Compressor Station, concluding that impacts would not be significant.¹¹² With respect to its NEPA obligations to determine whether the Project will have a “disproportionately high and adverse impact on low-income and predominantly minority communities,” the DEIS satisfies this standard.¹¹³ By concluding that impacts to air quality from construction and operation of the Southgate Project would not be significant with respect to the general population, the DEIS appropriately concluded the Southgate Project would not have a “disproportionately high and adverse impact” on the two identified

¹⁰⁸ SELC Comments at 7.

¹⁰⁹ DEIS at 4-131. Impacts on air quality are more fully discussed in Section 4.11 of the DEIS.

¹¹⁰ *Id.*

¹¹¹ SELC Comments at 7 (arguing that “existing evidence” indicates impacts surrounding compressor station “could be significant”).

¹¹² See DEIS §§ 4.11, 4.13.2.9.

¹¹³ See *Sierra Club*, 867 F.3d at 1368 (internal quotations and citation omitted).

environmental justice populations.¹¹⁴ The DEIS thus satisfies NEPA’s goal of informed decisionmaking by recognizing and discussing the Southgate Project’s impacts on environmental justice populations.

G. Commission Review of GHG Emissions for the Project Is Consistent with NEPA.

The DEIS properly provides an estimate of the GHG emissions associated with construction and operation of the Southgate Project, and concludes that impacts on air quality during construction and operation will not be significant.¹¹⁵ Several commenters assert that the DEIS’s analysis of GHG emissions is deficient because it does not address emissions associated with upstream production and downstream combustion of natural gas to be transported by the Southgate Project.¹¹⁶ Commenters argue that the DEIS should include a quantitative estimate of both upstream and downstream GHG emissions associated with the Southgate Project.¹¹⁷ For the reasons explained below, the DEIS’s analysis of GHG emissions associated with construction and operation of the Southgate Project fully complies with NEPA.

¹¹⁴ *Id.* at 1369 (noting that the Commission had concluded that the project at issue would not have a high and adverse impact on any population, “meaning, in the agency’s view, that it could not have a *disproportionately* high and adverse impact on any population, marginalized or otherwise”) (internal quotations and citation omitted). *See also id.* at 1370 (noting that EIS had “explained that the [compressor] station’s noise and air-quality effects on these [environmental justice] locations were expected to remain within acceptable limits”).

¹¹⁵ DEIS at 4-193 – 4-195, tbls. 4.11-4 and 4.11-5.

¹¹⁶ *See* AMA Comments at 11-12; Motion to Intervene on Behalf of Food and Water Watch and Comments in Opposition to DEIS, Docket No. CP19-14-000, at 4 (Sept. 16, 2019) (“Food and Water Watch Comments”); NCDEQ Comments at 5-6; Institute for Policy Integrity at New York University School of Law, Comments on Failure to Quantify and Monetize Greenhouse Gas Emissions in the Draft Environmental Impact Statement for the Southgate Project, Docket No. CP19-14-000, at 2, 4 (Sept. 16, 2019) (“NYU Law Comments”).

¹¹⁷ Some commenters further assert that the DEIS should also assess the significance of GHG emissions using available methodologies, including the Social Cost of Carbon. *See* AMA Comments at 18-23; NCDEQ Comments at 5; NYU Law Comments at 1-2. The DEIS properly explains (at 4-269) that there is not a “universally accepted methodology” “to determine the incremental impact of individual projects.” Nothing more is required. *See Appalachian Voices*, No. 17-1271, 2019 WL 847199 at *2 (noting that Commission provided reasons for declining to use Social Cost of Carbon tool, and holding that nothing more “is required for NEPA purposes”).

CEQ regulations implementing NEPA require consideration of direct and indirect effects of a proposed project.¹¹⁸ Indirect effects are “caused by the [project] and are later in time or farther removed in distance, but are still reasonably foreseeable.”¹¹⁹ Commenters assert that the DEIS failed to estimate potential indirect downstream GHG emissions associated with natural gas to be transported by the Southgate Project.¹²⁰ According to one commenter, the specific end-use of the gas is irrelevant, because the Commission can provide a “full-burn” estimate of GHG emissions.¹²¹ Ignoring the fact that the Commission has repeatedly explained why the “full-burn” estimate of GHG emissions is not accurate,¹²² the Commission has already done what commenters request—provided an “upper bound” estimate of emissions associated with the Mainline Facilities. In analyzing the environmental impacts of the Mainline Facilities, the Commission conservatively estimated the full combustion of the Mainline Facilities’ total volume of natural gas transportation capacity.¹²³ As Mountain Valley explained in Resource Report 9 submitted with its Application,¹²⁴ and in its comments on the DEIS submitted on September 13, 2019, it is unnecessary for the Commission to provide an estimate of the upper-bound GHG emissions resulting from end-use combustion for the Southgate Project. This is because potential downstream emissions associated with the Southgate Project have already been accounted for in the Commission’s upper-bound estimate for the Mainline Facilities.

¹¹⁸ 40 C.F.R. § 1502.16(b).

¹¹⁹ *Id.* § 1508.8(b).

¹²⁰ *See* AMA Comments at 13-15; Food and Water Watch Comments at 1-2; NCDEQ Comments at 5-6; NYU Law Comments at 1.

¹²¹ AMA Comments at 14-15.

¹²² *See, e.g.*, Certificate Order, 161 FERC ¶ 61,043 at P 293.

¹²³ *Id.*

¹²⁴ *Mountain Valley Pipeline, LLC*, Application, Resource Report 9 at 9-24 (Nov. 6, 2018).

To clarify further, Commission approval of the Southgate Project will not cause any incremental downstream GHG emissions. As reflected in its precedent agreement, DENC expects to source more than 80 percent of the natural gas to be transported on the Southgate Project from the Mainline Facilities, and the remaining amount from East Tennessee’s existing pipeline system.¹²⁵ Accordingly, there is no incremental pipeline capacity, and therefore no additional gas use, attributable to the Project. Downstream GHG emissions were already considered as part of the Commission’s evaluation and approval of the Mainline Facilities. The Project simply represents different future utilization of the natural gas transported on the Mainline Facilities or East Tennessee.¹²⁶ Thus, a quantitative estimate of GHG emissions for the Southgate Project is not only unnecessary, but would result in an inaccurate double-counting of impacts. In short, commenters simply fail to explain how natural gas can be consumed twice.

Similarly, the Commission is not required to assess alleged impacts the Project could have on upstream natural gas production “induced by” the Southgate Project, as asserted by some commenters.¹²⁷ As explained above, the Southgate Project is not transporting additional volumes of natural gas. Rather, it is an extension of the MVP Mainline Facilities and cannot, therefore, be said to be “inducing” additional natural gas production.

¹²⁵ Resource Report 9 at 9-24 (noting that natural gas will be received “at either the Mountain Valley Pipeline interconnection near Chatham, Virginia or from East Tennessee at the LN 3600 Interconnect near Eden, North Carolina”).

¹²⁶ The expected deliveries of natural gas from East Tennessee into the Southgate Project do not require an expansion project on the East Tennessee system.

¹²⁷ See AMA Comments at 11-12; Food and Water Watch Comments at 1-2.

IV.
CONCLUSION

Mountain Valley requests that the Commission accept this Answer to comments filed in this proceeding.

Respectfully submitted,

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Dated: October 21, 2019

EXHIBIT 1

Number	Accession Number	Date Comment Posted	Response
1	20190731-5066	7/31/19	Mountain Valley has coordinated with the United States Fish and Wildlife Service regarding federally listed species including the Roanoke Logperch. In addition, the Orangefin Madtom is not within the range of the proposed MVP Southgate Project area. Mountain Valley proposes to cross the Dan River via horizontal directional drill and therefore will not disturb the bed or bank of the river.
2	20190814-5005	8/14/19	Mountain Valley spoke by phone with the landowner on August 14, 2019 and discussed their concerns. Mountain Valley provided a contact number for additional questions in the future.
3	20190823-5141	8/23/19	<p>The nearest commercially viable deposit of uranium is 3.5 miles north of the Lambert Compressor Station. Uranium concentrations near the project workspace are comparable to concentrations found elsewhere in the conterminous U.S., and trench depth generally would be 5.5 feet to 9 feet. Mountain Valley would implement erosion and sediment control plans to address fugitive dust migration, stormwater control, and erosion and sediment control measures during ground disturbing activities.</p> <p>Additional geotechnical information relating to the Project's horizontal directional drills has been completed and is included as part of Mountain Valley's October 2019 Supplemental Filing.</p>
4	20190823-5142	8/23/19	Mountain Valley is committed to adhering to best management practices and continues to work with the appropriate agencies to develop erosion and sediment control measures that protect property and natural resources along the proposed right-of-way.
5	20190826-5025	8/24/19	Mountain Valley is currently coordinating with local regulatory authorities regarding floodplain permitting for the project areas near Haw River. Mountain Valley plans to be in compliance with permitted activities within the floodplains.
6	20190826-0032	8/26/19	<p>Mountain Valley has responded to general comments received on the docket related to the purpose and need of the Project. This response is included as Appendix A.</p> <p>MVP Southgate is an open-access interstate transmission pipeline. Mountain Valley expects to pay significant new ad valorem tax revenue to localities through which the Project passes on an annual basis after the Project is completed and enters service.</p> <p>Mountain Valley has been communicating with local emergency services and fire department personnel to discuss the Project and plans to conduct training, develop response procedures and hold additional future meetings with local first-responders.</p>
7	20190827-0013	8/27/19	<p>Mountain Valley has met with the landowner to review their concerns. Adjustments have been made to accommodate the landowner requests and are incorporated into the October 2019 Supplemental filing information. As stated in previous filings, a study on "The Effect of Natural Gas Pipeline on Residential Value" performed by Diskin et al. (2011) could "not identify a systematic relationship between proximity to [a] pipeline and sale price or value." A study conducted by Integra Realty Resources for the Interstate Natural Gas Association of America ("INGAA") Foundation in 2016 found that "There is no measurable impact on the sales price of properties located along or in proximity to a natural gas pipeline versus properties which are not located along or in proximity to the same pipeline."</p>
8	20190910-5007	9/10/19	Mountain Valley has responded to general comments received on the docket related to the purpose and need of the Project and system alternatives considered. This response is attached herein.
9	20190906-3055	8/22/19	Mountain Valley has considered the concerns and does not cross any properties owned by Deep Creek Baptist Church.
10	20190906-3055	8/22/19	Mountain Valley does not anticipate permanent fill impacts to wetlands. Mountain Valley is coordinating with regulatory agencies regarding mitigation for permanent conversion of forested wetlands. In addition, Mountain Valley

Number	Accession Number	Date Comment Posted	Response
			identified certain locations where scouring could potentially occur and provided this information as part of its October 2019 Supplemental Filing.
11	20190906-3055	8/22/19	Mountain Valley has met with the landowner to review their concerns. As stated in previous filings, a study on “The Effect of Natural Gas Pipeline on Residential Value” performed by Diskin et al. (2011) could “not identify a systematic relationship between proximity to [a] pipeline and sale price or value.” A study conducted by Integra Realty Resources for the INGAA Foundation in 2016 found that “There is no measurable impact on the sales price of properties located along or in proximity to a natural gas pipeline versus properties which are not located along or in proximity to the same pipeline.”
12	20190906-3055	8/22/19	Mountain Valley is requesting a perpetual easement from each landowner. Landowners will have to continue to pay for individual property taxes.
13	20190906-3055	8/22/19	Mountain Valley has responded to general comments received on the docket related to greenhouse gases. This response is attached herein.
14	20190906-3055	8/22/19	Mountain Valley has been coordinating with the landowner since September 2018. Mountain Valley will review any subdivision plans the landowner brings forth and will attempt to address potential concerns.
15	20190911-5102	9/11/19	Mountain Valley has responded to comments received from regulatory agencies in agency-specific letters included as part of the October 2019 Supplemental Filing.
16	20190913-5090	9/13/19	Mountain Valley has responded to comments received from regulatory agencies in agency-specific letters included as part of the October 2019 Supplemental Filing.
17	20190912-5090	9/12/19	Mountain Valley has worked with the landowner in this location and the current home location is no longer impacted by the proposed Project footprint.
18	20190916-5022	9/14/19	Mountain Valley intends on submitting an avoidance plan for Little Cherrystone/Site 071-0036 and Farm/Site 071-5212 to the Virginia SHPO along with an effects recommendation in November 2019.
19	20190916-5034	9/16/19	Mountain Valley is committed to adhering to best management practices and continues to work with the appropriate state and federal agencies to develop construction and operation plans that minimize potential impacts to property and natural resources. The Project’s anchor shipper is Dominion Energy North Carolina (formerly PSNC Energy), a natural gas local distribution company that serves customers in Orange County, including the town of Carrboro. No compressor station is proposed in North Carolina.
20	20190916-5039	9/16/19	Mountain Valley is interested in negotiating amicable settlements with the landowner and will take loss of crop revenue into consideration. Mountain Valley has worked diligently with the landowner to propose the most agreeable route at this property. Mountain Valley is coordinating with the landowner to address any potential issues related to the landowner’s certified seed farm.
21	20190916-5074	9/16/19	Mountain Valley has responded to general comments received on the docket related to the purpose and need of the Project, cumulative impacts and compliance with the National Environmental Policy Act. This response is attached herein.
22	20190916-5106	9/16/19	Mountain Valley has responded to general comments received on the docket related to the purpose and need of the Project, cumulative impacts and compliance with the National Environmental Policy Act. This response is attached herein.
23	20190916-5160	9/16/19	Mountain Valley has responded to comments received from regulatory agencies in agency-specific letters included as part of the October 2019 Supplemental Filing.
24	20190916-5167	9/16/19	Mountain Valley has responded to comments received from regulatory agencies in agency-specific letters included as part of the October 2019 Supplemental Filing.

Number	Accession Number	Date Comment Posted	Response
25	20190917-5007	9/16/19	Mountain Valley has responded to comments received from Appalachian Voices in agency-specific letters included as part of the October 2019 Supplemental Filing.
26	20190916-5189	9/16/19	Mountain Valley has responded to comments received from regulatory agencies in agency-specific letters included as part of the October 2019 Supplemental Filing.
27	20190916-5191	9/16/19	Mountain Valley has responded to the comments from Atlantic Coast Pipeline. This response is attached herein.
28	20190917-5010	9/16/19	Mountain Valley has responded to the comments from Appalachian Voices. This response is attached herein.
29	20190918-5032	9/17/19	Mountain Valley has responded to the comments from Transcontinental Gas Pipeline Company. This response is attached herein.

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2019), I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 21st day of October, 2019.

/s/ Marco Bracamonte

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