UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

In the matter of:	)	
Atlantic Coast Pipeline, LLC Docket Nos. CP15-554-000 PF15-6-000	)	March 31, 2017
Dominion Transmission, Inc. Docket Nos. CP15-555-000 PF15-5-000	)	
Atlantic Coast Pipeline, LLC and Piedmont Natural Gas Company Docket No. CP15-556-000	)	

MOTION TO RESCIND AND REVISE DEIS

PURSUANT to FERC Rule 212 at 18 C.F.R. § 385.212, the National Environmental Policy Act ("NEPA") at 42 U.S.C. § 4332, and 40 C.F.R. § 1502.9, Friends of the Central Shenandoah with a motion to the Commission to rescind or revise the Draft Environmental Impact Statement ("DEIS") for the Atlantic Coast Pipeline ("ACP") issued on December 30, 2016, in the above-captioned dockets.

MOTION

Pursuant to NEPA Section 102, 42 U.S.C. § 4332, and its implementing rules, specifically 40 C.F.R. § 1502.9, Friends of the Central Shenandoah moves that the Commission rescind and revise the DEIS in this matter because the DEIS is "so inadequate as to preclude meaningful analysis," *id.*, § 1502.9(a), as demonstrated by the lack of information provided in order to complete a proper evaluation of the need for the project and a thorough assessment of its alternatives. A thorough assessment of the need for a project is fundamental to its evaluation. If a project does not serve a public purpose that is the most powerful factor in its approval, whatever the environmental consequences. Once the appropriate information about the need for the project is provided, the public must have an opportunity to review and comment on it. The present public comment period should be placed in abeyance until a revised DEIS is issued, at which time a new public comment period should be granted.

Alternatively, Friends of the Central Shenandoah moves that the Commission issue a supplemental DEIS that fully addresses and provides the public an opportunity to comment on the proper evaluation of the need for the project as required by NEPA. When the Commission staff provides the necessary information required by NEPA a supplement would be required because "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or it's impacts." *id.*, §

1502.9(c)(1)(ii). A new public comment period must be granted for the supplemental DEIS.

SUPPORTING FACTS AND LAW

1. Friends of the Central Shenandoah is an organization created to promote the best future energy system for the State of Virginia and to review how new natural gas pipelines might contribute to such a system. Friends of the Central Shenandoah is an intervenor in this proceeding as filed in a Motion to Intervene dated November 3, 2015. As an intervenor, Friends of the Central Shenandoah has the ability to make motions to the Commission pursuant to Commission Rule 212, 18 C.F.R. § 385.212. The interests of Friends of the Central Shenandoah will be significantly affected by the proposed ACP.

2. On September 18, 2015, the Atlantic Coast Pipeline, LLC (ACP), filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own, and operate the ACP, including three compressor stations and at least 564 miles of pipeline across West Virginia, Virginia, and North Carolina. The ACP is a joint venture of Dominion Resources, Inc., Duke Energy Corporation, Piedmont Natural Gas Company, Inc. (now a wholly-owned subsidiary of Duke Energy), and AGL Resources, Inc., a subsidiary of Southern Company (collectively, “ACP”).

3. On October 2, 2015, the Commission filed its Notice of Application, providing additional details about the application and outlining the review process, and opportunities for public comment.

4. The Commission has authority under NGA Section 7 (Interstate Natural Gas Pipelines and Storage Facilities) to issue a Certificate of Public Convenience and Necessity ("certificate") to construct a natural gas pipeline. As described in the Commission guidance manuals, environmental documents are required to describe the purpose and commercial need for the project, the transportation rate to be charged to customers, proposed project facilities, and how the company will comply with all applicable regulatory requirements.[1] The applicants must evaluate project alternatives, identify a preferred route, and complete a thorough environmental analysis – including consultation with appropriate regulatory agencies, data reviews, and field surveys. The Commission is required to analyze the information provided by the ACP to determine if the project serves the public convenience and necessity. The purpose of the Commission's review is to avoid overbuilding of pipeline capacity in order to protect consumers and property owners.

5. As part of its review process, the Commission prepares environmental documents, and in this case, a Draft Environmental Impact Statement (DEIS)

[1] Both the FERC Guidance Manual for Environmental Report Preparation (August 2002) and the Draft Guidance Manual for Environmental Report Preparation (December 2015) provide the minimum analysis required by the agency in preparing environmental documents. Neither guidance manual discusses the requirement to supplement environmental documents so the Commission must rely on NEPA guidance.

was prepared and released on December 30, 2016. As part of the release, the Commission provided a public comment period until April 6, 2017. Subsequently, the Commission scheduled "public comment sessions" at ten locations along the ACP route to allow for public comments.

6. The Council on Environmental Quality has issued guidelines to federal agencies about how to prepare environmental statements for projects under their jurisdiction that will conform to NEPA requirements. In §1502.14 Alternatives including the proposed action, the NEPA guidelines state that "This section is the heart of the environmental impact statement."[2] The NEPA instructions identify that the environmental impacts of the proposal and the alternatives must be presented in a comparative form, "thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public." The NEPA requirements specify that agencies preparing Environmental Impact Statements shall:[3]

a. Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

b. Devote substantial treatment to each alternative, including the proposed action so that reviewers may evaluate their comparative merits.

[2] Department of Energy, National Environmental Policy Act Guidelines, http://energy.gov/sites/prod/files/NEPA-40CFR1500_1508.pdf

[3] Ibid.

c. Include reasonable alternatives, not within the jurisdiction of the lead agency.
d. Include the no action alternative.
e. Identify the agency's preferred alternative or alternatives.
f. Include appropriate mitigation measures not already included in the proposed action or alternatives.

The DEIS claims that it was prepared in compliance with the requirements of NEPA, but that is not the case. There is no evidence of market demand included in the DEIS. Only precedence agreements with subscribers who are affiliates of the owners of the pipeline have been included. The Commission's own guidelines show that this is not an adequate indication of market demand for a project. In guidelines prepared in 1999, the Commission stated, "Rather than relying only on one test for need, the Commission will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market."[4] In their Policy Statement issued in 2000, the Commission explained: "that as the natural gas marketplace has changed, the Commission's traditional factors for establishing the need for a project, such as

[4] United States of America 88 FERC ¶ 61,227, Federal Energy Regulatory, Issued September 15, 1999

contracts and precedent agreements, may no longer be a sufficient indicator that a project is in the public convenience and necessity."[5]

7. We ask that the Commission follow its own directives and provide information in the DEIS that identifies demand projections, potential cost savings to consumers, and a comparison of projected demand with the amount of capacity currently serving the market, so that the public can understand the reasoning that the proposed action is considered to be in the public's interest (not just in the applicant's interest).

8. NEPA also requires that the DEIS include a discussion of reasonable related issues and alternatives not within the jurisdiction of the lead agency. The DEIS includes no mention of the higher cost to ratepayers to use new pipelines when adequate capacity is available in less expensive existing pipelines; no mention is made of the societal costs of accelerated climate change due to methane leaks along the natural gas supply chain; no mention has been made of the possibility and the existing occurrence of lower electricity demand, energy efficiency and lower cost renewables undercutting the cost of energy from new gas-fired power plants leading to stranded costs; and investments in the

[5] Order Clarifying Statement of Policy, 90 FERC ¶ 61, 128 (2000); Certification of New Interstate Natural Gas Pipeline Facilities, Docket No. PL99-3-001, Issued February 9, 2000, p3

accelerated development of natural gas infrastructure foreclosing investments in cleaner, lower-cost generation options. These are issues that should be considered when determining whether this project serves the public convenience and necessity and should be included in the DEIS which is a document that supports that determination.

9. Once the required information is provided, the case law on the agency's requirement to revise an environmental document is clear. An EIS that fails to provide the public a meaningful opportunity to review and understand the agency's proposal, methodology and analysis of the need for a project and its potential environmental impacts violates NEPA. See e.g., California ex rel. Lockyer v. U.S. Forest Service, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); see also Idaho ex rel. Kempthorne v. U.S. Forest Service, 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) ("NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.").

New information causes environmental documents to be supplemented, even after the environmental document has been completed and the agency action taken. In its review of one action, the Court found there "are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." Norton v. Southern Utah Wilderness Alliance, 542 U.S. 55 (2004) (study of the use of park lands). Of course, not all new information is significant or relevant; but the Commission is required to take a "hard look" at the new information and, after review, incorporate it into environmental documents. As discussed in Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 109 S.Ct. 1851, 104 L.Ed.2d 377 (1989), "

> The parties are in essential agreement concerning the standard that governs an agency's decision whether to prepare a supplemental EIS. They agree that an agency should apply a "rule of reason," and the cases they cite in support of this standard explicate this rule in the same basic terms. These cases make clear that an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decisionmaking intractable, always awaiting updated information only to find the new information outdated by the time a decision is made. On the other hand, and as the petitioners concede, NEPA does require that agencies take a "hard look" at the environmental effects of their planned action, even after a proposal has received initial approval.

The Court endorsed the "hard look" at new information even after a proposal had received its initial approval, and permit, from the agency. "When new information is presented, the agency is obligated to consider and evaluate it and to make a reasoned decision as to whether it shows that any proposed action will affect the environment in a significant manner not already considered." Ibid., 490 U.S. at 374; also endorsed by the Court in Arkansas Wildlife v. U.S. Army Corps, 431 F.3d 1096 (Fed. 8th Cir., 2005).

10. Friends of the Central Shenandoah believes that the mandate for a full analysis of the "public convenience and necessity" for pipelines involves more than a professed, but unsubstantiated, need for more pipeline capacity.

RELIEF REQUESTED

Friends of the Central Shenandoah respectfully requests that the Commission grants the motion. In this matter, the Commission must take a “hard look” at the new information, review it in the context of the application and current public comments, and then revise the DEIS to incorporate the new information. At the same time, the Commission should rescind the DEIS and hold the public comment period in abeyance until it issues the revised DEIS. Lastly, the Commission should require the ACP to file all additional information that is vital to the NEPA review before proceeding further.

Alternatively, FERC must issue a supplement to the DEIS that addresses all new information. FERC must not issue a certificate until the supplement fully incorporates all necessary information to justify that the project provides for the public convenience and necessity and is finalized following public notice and comment.

/s/ *Thomas Hadwin*

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