

185 FERC ¶ 61,208  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;  
Allison Clements, and Mark C. Christie.

Mountain Valley Pipeline, LLC

Docket No. CP19-14-002

ORDER GRANTING EXTENSION OF TIME REQUEST

(Issued December 19, 2023)

1. On June 15, 2023, Mountain Valley Pipeline, LLC (Mountain Valley), filed a request for a three-year extension of time,<sup>1</sup> until June 18, 2026, to complete construction of the MVP Southgate Project (Southgate Project), authorized by the Commission in its June 18, 2020 order issuing certificate.<sup>2</sup> For the reasons discussed below, we grant the extension request.

**I. Background**

2. The Certificate Order authorizes Mountain Valley to construct and operate the Southgate Project, approximately 75.1 miles of natural gas pipeline and associated aboveground facilities in Pittsylvania County, Virginia, and Rockingham and Alamance Counties, North Carolina. The Southgate Project will interconnect with Mountain Valley's Mainline System, which the Commission authorized in a prior proceeding in 2017.<sup>3</sup> The Mainline System consists of 303 miles of natural gas pipeline from Wetzel County, West Virginia, to an interconnection in Pittsylvania County, Virginia.<sup>4</sup>

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<sup>1</sup> Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time.

<sup>2</sup> *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) (Certificate Order), *order on reh'g*, 172 FERC ¶ 61,261 (2020) (Rehearing Order), *aff'd sub. nom.*, *Sierra Club v. FERC*, 38 F.4th 220 (D.C. Cir. 2022).

<sup>3</sup> *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017), *order on reh'g*, 163 FERC ¶ 61,197 (2018), *aff'd sub. nom.*, *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 (D.C. Cir. Feb. 19, 2019).

<sup>4</sup> *Id.*

3. Mountain Valley began construction of the Mainline System in February 2018, but, following a series of court decisions, Commission staff issued a stop-work order in October 2019, directing Mountain Valley to cease construction of certain remaining segments of the Mainline System.<sup>5</sup> In the Certificate Order, the Commission directed the Office of Energy Projects to not issue any notice to proceed with construction of the Southgate Project until Mountain Valley received the necessary federal permits for the Mainline System, and the Director of the Office of Energy Projects, or the Director's designees, lifted the stop-work order and authorizes Mountain Valley to continue constructing the Mainline System.<sup>6</sup> The Certificate Order also required Mountain Valley to construct the Southgate Project and make it available for service by June 18, 2023.<sup>7</sup>

4. On June 3, 2023, President Biden signed into law the Fiscal Responsibility Act of 2023.<sup>8</sup> Section 324 of the Act, entitled "Expediting Completion of the Mountain Valley Pipeline," ratifies and approves all authorizations issued pursuant to Federal law necessary for the construction and operation of the Mainline System, and directs relevant agencies to maintain those authorizations.<sup>9</sup> Mountain Valley subsequently received all outstanding permits, and, on June 28, 2023, the Commission authorized all construction activities to resume on the Mainline System.<sup>10</sup>

5. On June 15, 2023, Mountain Valley requested an extension of time to complete construction of the Southgate Project and place it into service, due to delays associated with constructing the Mainline System.<sup>11</sup> Mountain Valley asserts that good cause exists for an extension, as it has been prevented from completing the project due to the terms of its certificate, which required construction to resume on the Mainline System before construction of the Southgate Project could commence. Mountain Valley points to the passage of the Fiscal Responsibility Act, which allows Mountain Valley to

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<sup>5</sup> See *Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221, at PP 3-8 (2023) (discussing the construction status of the Mainline System).

<sup>6</sup> Certificate Order, 171 FERC ¶ 61,232 at P 9.

<sup>7</sup> *Id.* at ordering para. (C).

<sup>8</sup> Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (2023).

<sup>9</sup> *Id.* § 324(c)(1)-(2), 137 Stat. at 47.

<sup>10</sup> *Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221 at P 10.

<sup>11</sup> Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 1.

resume construction,<sup>12</sup> as evidence that it can satisfy the terms of the Certificate Order. Mountain Valley notes that the Southgate Project has also experienced its own permitting delays,<sup>13</sup> but, even with the necessary permits, delays with the Mainline System prevented Mountain Valley from proceeding with constructing the Southgate Project.<sup>14</sup> Accordingly, Mountain Valley put all resources toward Mainline System permits and construction,<sup>15</sup> and commits, once it resolves Mainline System permitting, to resume its permitting efforts for the Southgate Project.<sup>16</sup> Mountain Valley states that it remains committed to completing the project and that the environmental findings underlying the certificate will remain valid through the term of the extension.<sup>17</sup>

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<sup>12</sup> *Id.* (citing FISCAL RESPONSIBILITY ACT OF 2023, PL 118-5, 137 Stat 10 (June 3, 2023)).

<sup>13</sup> *Id.* at 2 (citing *Mountain Valley Pipeline, LLC v. N.C. Dep't of Env't Quality*, 990 F.3d 818, 833 (4th Cir. 2021)). The Fourth Circuit vacated and remanded the North Carolina Department of Environmental Quality's (NCDEQ) denial for section 401 water quality certification, finding the denial based on status of the Mainline System's completion to be consistent with the state's regulations and the Clean Water Act (CWA), but inadequately supported by the record. 990 F.3d at 821. The NCDEQ reissued its denial, further explaining that it "must have the opportunity to evaluate any relevant information regarding the status of the Mainline Project at that time and the likelihood that construction of the Southgate Project will result in avoidable and unnecessary impacts to North Carolina's surface waters and riparian buffers." *N.C. Dep't of Env'tl. Quality* April 29, 2021 Reissuance of Denial of 401 Water Quality Certification and Jordan Lake Riparian Buffer Authorization Application, <https://www.deq.nc.gov/pipelines/2018-1638v3-mvp-southgate-04292021>.

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

<sup>15</sup> Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3.

<sup>16</sup> Prior to issuing a notice to proceed with construction, Mountain Valley must verify that it has obtained all necessary environmental permits, licenses, and approvals required by the certificate and EIS for the Southgate Project. A list of needed permits can be found in the EIS. *See* EIS at 1-13 to 1-16.

<sup>17</sup> Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3.

## II. Procedural Issues

### A. Notice, Intervention, and Protests

6. Notice of Mountain Valley's request was issued on June 22, 2023, and published in the *Federal Register* on June 28, 2023.<sup>18</sup> The notice established July 7, 2023, as the deadline for filing interventions, comments, and protests. On June 30, 2023, the Commission extended the comment period, establishing July 24, 2023, as the deadline.<sup>19</sup>

7. The following groups and individuals filed timely, unopposed motions to intervene: AMMD Pine Grove Project; Appalachian Voices, Blue Ridge Environmental Defense League, Center for Biological Diversity, Chesapeake Climate Action Network, Haw River Assembly, Natural Resources Defense Council (NRDC), Sierra Club, and Wild Virginia (jointly, "Appalachian Voices"); Katie Whitehead; and the Pittsylvania County Branch, NAACP. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.<sup>20</sup> On August 14, 2023, Mountain Valley filed an answer to the comments in opposition and protests. The Commission's notice stated that no reply comments or answers would be considered.<sup>21</sup> We will accept the answer here, however, because it provides information that will assist in our decision-making.

8. We received numerous comments both in opposition to and in support of the extension of time request. Commenters in support generally argue that the project is needed to develop natural gas supplies in the region, create jobs, and result in economic benefits to local and regional communities. Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC support the extension, noting they face a potential fuel security challenge that will be difficult to resolve without completion of the Southgate Project, which would allow increased physical gas deliverability into the Carolinas.<sup>22</sup>

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<sup>18</sup> 88 Fed. Reg. 41,952 (June 28, 2023).

<sup>19</sup> Notice of Comment Period Extension, Issued June 30, 2023.

<sup>20</sup> 18 C.F.R. § 385.214(c) (2022).

<sup>21</sup> 88 Fed. Reg. 41,952. *See also*, 18 C.F.R. § 385.213(a)(2) (2022) (prohibiting answers to protests unless otherwise permitted by the decisional authority).

<sup>22</sup> Duke Energy Carolinas, LLC and Duke Energy Progress, LLC July 19, 2023 Comments at 2.

Virginia Governor Glenn Youngkin states that Mountain Valley's requested extension is critical to serving these new generators and maintaining Virginia's grid reliability.<sup>23</sup>

9. Commenters opposing Mountain Valley's request broadly argue that: Mountain Valley has not demonstrated good cause for an extension; the public interest findings underlying the Certificate Order are stale; and substantial new information on the environmental impacts of the project undermines the Certificate Order's conclusion that the project is an environmentally acceptable action. North Carolina Governor Roy Cooper urges the Commission to deny Mountain Valley's request because the Southgate Project is no longer needed in North Carolina.<sup>24</sup> Other commenters make arguments that seek to relitigate the issuance of the Certificate Order,<sup>25</sup> and thus those comments will not be considered here.<sup>26</sup>

### **B. Adequacy of Notice**

10. Some commenters, in requesting an extension of the comment period, argue that the Commission failed to give adequate notice of the opportunity to comment on the proceeding.<sup>27</sup> They argue that 15 days is an inadequate amount of time for interested parties to file comments and fully participate in the docket.<sup>28</sup> These arguments are moot, as the Commission extended the comment period on June 30, 2023, and additional

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<sup>23</sup> Glen Davis July 24, 2023 Comments for the State of Virginia at 1.

<sup>24</sup> North Carolina Governor Roy Cooper July 24, 2023 Comments at 1-2.

<sup>25</sup> *See, e.g.*, Robert Wald July 10, 2023 Comments at 1 (arguing that the project is not in the public interest); William Limpert July 24, 2023 Comments at 2-3 (arguing that the project and associated greenhouse gas emissions will contribute to climate change); Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 13 (arguing that the Commission improperly relied on precedent agreements when finding the project in the public interest); Jeanie Ambrose July 24, 2023 Comments at 1 (arguing that the Commission failed to consider alternatives that would minimize impacts to landowners and rural communities).

<sup>26</sup> *See Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

<sup>27</sup> William Limpert July 24, 2023 Comments at 1; Suzanne Keller June 30, 2023 Comments at 1; Russel Chisholm June 23, 2023 Comments at 1.

<sup>28</sup> *See, e.g.*, Protect our Water Heritage Rights Coalition June 27, 2023 Comment at 1; Russell Chisholm June 23, 2023 Comments at 1; Jessica Sims June 22, 2023 Comments at 1.

comments received after that deadline are also addressed below. We find that the overall comment period provided was reasonable.

### **III. Discussion**

11. The completion date specified in a certificate or authorization order provides what the Commission believes—based on the applicant’s initial project schedule and the Commission’s assessment of circumstances relevant to the specific project—to be a reasonable period of time for the project sponsor to complete construction and make the

project available for service.<sup>29</sup> However, construction deadlines may be extended for good cause.<sup>30</sup> Good cause can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered circumstances that prevented it from doing so.<sup>31</sup>

#### **A. Good Cause for Granting an Extension of Time**

12. Some commenters argue that Mountain Valley’s inaction in seeking permits to construct the Southgate Project is evidence that Mountain Valley has not demonstrated good cause to justify an extension of time.<sup>32</sup> Appalachian Voices states that the project currently lacks a needed Clean Air Act (CAA) permit for the Lambert Compressor Station in Virginia, and a CWA section 401 certification for construction in North Carolina,<sup>33</sup> which has been denied twice.<sup>34</sup> Appalachian Voices claims after these requested authorizations were last denied in 2021, Mountain Valley took no steps to

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<sup>29</sup> *Const. Pipeline Co., LLC*, 165 FERC ¶ 61,081, at P 9 (2018) (citing *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165, at P 8 (2016)).

<sup>30</sup> 18 C.F.R. § 385.2008(a) (2022) (allowing the relevant decisional authority to extend for good cause the time by which any person is required or allowed to act under any statute rule or order).

<sup>31</sup> *See, e.g., Adelpia Gateway, LLC*, 178 FERC ¶ 61,030, at P 15 (2022).

<sup>32</sup> Natural Resources Defense Council July 24, 2023 Comments at 5.

<sup>33</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 33.

<sup>34</sup> U.S. Representative Foushee and U.S. Representative Manning June 26, 2023 Comments at 1-2 (arguing the Commission should deny Mountain Valley’s request for an extension because of the company’s inability to obtain necessary CAA and CWA permits).

pursue them.<sup>35</sup> Appalachian Voices also notes that Mountain Valley dismissed eminent domain proceedings for the project in North Carolina in 2022.<sup>36</sup> Others argue that Mountain Valley's failure to advance the project by abandoning eminent domain proceedings and appeal permit denials shows that the company has not made a good faith effort to meet the deadline in the certificate order<sup>37</sup> and precludes a finding of good cause.<sup>38</sup>

13. Mountain Valley states that good cause exists due to "persistent litigation and resultant repetitive permitting processes" on the Mainline System, which have led to permitting delays for the Southgate Project.<sup>39</sup> Mountain Valley further argues that it has followed the Commission's directive in the Certificate Order to focus on resolving the permitting issues on the Mainline System and that its decision to prioritize those efforts are not evidence of neglect or bad faith regarding its continuing commitment to the Southgate Project.<sup>40</sup> Mountain Valley will, once it resolves Mainline System permitting, resume its permitting efforts for the Southgate Project.<sup>41</sup>

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<sup>35</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 33.

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

<sup>37</sup> *Id.* at 6.

<sup>38</sup> *See, e.g.*, Kevin Whitehead July 24, 2023 Comments at 3 (citing MVP's lack of progress on state permits and lack of coordination with state agency staff towards obtaining permits); Morgan Peterson July 16, 2023 Comments at 1 (highlighting Mountain Valley's lack of Minor New Source Review air permit in Virginia and Clean Water Act section 401 water quality certification in North Carolina); William Limpert July 24, 2023 Comments at 1-2 (arguing the withdrawal of pending eminent domain cases in North Carolina indicate that Mountain Valley is not attempting to complete the project).

<sup>39</sup> Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 2 (citing *Mountain Valley Pipeline, LLC v. N.C. Dep't of Env't Quality*, 990 F.3d 818 (4th Cir. 2021), which affirmed North Carolina's denial of water quality certification).

<sup>40</sup> Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3 (citing Certificate Order, 171 FERC ¶ 61,232 at P 9).

<sup>41</sup> Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3.

14. We find that good cause exists to grant Mountain Valley the requested extension. The Commission has stated that it will “in general, grant extensions of time when a project sponsor demonstrates that good faith efforts to meet a deadline have been thwarted[,]”<sup>42</sup> and we consider such requests on a case-by-case basis, assessing whether the total period of time ultimately allowed for constructing and placing a project into service is a reasonable one, within which the findings supporting our original certificate authorization can be expected to remain valid.<sup>43</sup> The Commission has previously found that providing more time for a project applicant to obtain necessary permits can be an appropriate basis for granting an extension of time.<sup>44</sup>

15. Commenters’ arguments regarding Mountain Valley’s lack of progress on the Southgate Project ignore the Commission’s decision to prohibit the issuance of a notice to proceed with construction until the Mainline System received its necessary permits and resumed construction.<sup>45</sup> It is not evidence of bad faith that Mountain Valley had prioritized its efforts on the Mainline System over its attempts to resolve permitting issues for the Southgate Project. Before the construction of the Mainline System was jumpstarted by the passage of the Fiscal Responsibility Act of 2023, it was reasonable for

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<sup>42</sup> See, e.g., *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, at P 11 (2012).

<sup>43</sup> *Id.* P 8.

<sup>44</sup> See, e.g., *Nat’l Fuel Gas Supply Corp.*, 179 FERC ¶ 61,226 (2022) (granting a 35-month extension of time due to applicants litigation delays); *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026 (granting a two-year extension of time to complete construction due to applicants’ litigation and permitting delays); *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138 (2020) (granting a two-year extension of time to complete construction due to a need to obtain new permits); *Const. Pipeline Co., LLC*, 165 FERC ¶ 61,081 (granting a further two-year extension of time to accommodate the applicant’s efforts to obtain a permit from NYSDEC); *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 (granting a two-year extension of time to accommodate a project applicant’s efforts to obtain a permit from NYSDEC). See also *Perryville Gas Storage LLC*, Docket No. CP09-418-000, et al. (Oct. 12, 2016) (delegated order) (granting two-year extension of time to complete construction to accommodate delays in obtaining a permit from the Louisiana Department of Natural Resources); *Columbia Gas Transmission, LLC*, Docket No. CP13-8-000 (Sept. 30, 2015) (delegated order) (granting pipeline project two-year extension of time to complete construction due to delays in obtaining waterbody crossing permits); *Bobcat Gas Storage*, Docket No. CP09-19-000 et al. (Mar. 25, 2015) (delegated order) (granting a two-year extension of time because applicant had not yet obtained required permit from a state agency).

<sup>45</sup> See *supra* P 2.

Mountain Valley to have anticipated further delay over the necessary federal permits and expect that it was all but impossible to meet the Certificate Order's in-service date for the Southgate Project of June 18, 2023. Based on the foregoing, we conclude that Mountain Valley has made a good faith effort to meet its deadline, but encountered circumstances that prevented it from doing so.

**B. The Certificate Order's Needs Analysis Is Still Valid**

16. Appalachian Voices argues that changes in market demand undermine the Commission's conclusion that the project is in the public convenience and necessity.<sup>46</sup> Appalachian Voices asserts that there is slower than anticipated growth in gas demand in the region which shows that the project is no longer needed.<sup>47</sup> Commenters state that the Commission must assess the impact of the Inflation Reduction Act and the post-certificate North Carolina Session Law 2021-165, which requires a 70% reduction in carbon emissions by 2030 and carbon neutrality by 2050.<sup>48</sup> Appalachian Voices argues that there is sufficient additional capacity to end users in the region because of the Atlantic Sunrise Pipeline Project.<sup>49</sup> NRDC further argues that the Commission must consider how changes in current market conditions and market expectations have altered the viability of the project.<sup>50</sup> NRDC suggests that a failure to obtain shippers for the project's remaining 20% capacity and the decisions of the project shipper, Dominion Energy North Carolina, to purchase and then sell a stake in the project requires the Commission to further scrutinize whether there remains a need for the project.<sup>51</sup> Mountain Valley, however, notes that the project continues to be supported by a long-

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<sup>46</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 13.

<sup>47</sup> *Id.* at 15-17.

<sup>48</sup> *Id.* at 19 (citing decarbonization efforts by the Governor of North Carolina); NRDC July 24, 2023 Comments at 10-11 (citing the Inflation Reduction Act of 2022, Pub. L. No. 117-169 and North Carolina's climate legislation directing the state's utility commission to seek a 70% reduction in carbon emissions by 2030).

<sup>49</sup> Appalachian Voices et al. July 24, 2023 Comments at 3.

<sup>50</sup> NRDC July 24, 2023 Comments at 8-9.

<sup>51</sup> *Id.* at 9.

term precedent agreement with Dominion Energy North Carolina at the same levels as approved in the Certificate Order.<sup>52</sup>

17. The Certificate Order found a market need for the project based on Mountain Valley's execution of long-term precedent agreements for 80% of the project's capacity,<sup>53</sup> and the United States Court of Appeals for the District of Columbia Circuit upheld this finding.<sup>54</sup> The purpose of conditioning certificate authority with a deadline for completion of construction is to “diminish[] the potential that the public interest might be compromised by significant changes occurring between issuance of the certificate and commencement of the project.”<sup>55</sup> None of the matters raised by commenters—*e.g.*, the investment decisions of the shipper, increased regional capacity, state emissions reductions targets, and the Inflation Reduction Act clean energy incentives<sup>56</sup>—undermine the Commission's previous finding that the project is needed.<sup>57</sup> Here, we find that extending the deadline to construct the project and place it into service until June 18, 2026, will not undermine the Commission's findings in the Certificate Order that the project is required by the public convenience and necessity.

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<sup>52</sup> Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 2.

<sup>53</sup> *Id.* See also Certificate Order, 171 FERC ¶ 61,232 at P 29. See also Public Service Company of North Carolina, Inc., d.b.a. Dominion Energy North Carolina July 5, 2023 Comments in Support at 1 (arguing that Mountain Valley has demonstrated good cause and that the project will provide it diversity of supply).

<sup>54</sup> *Sierra Club v. FERC*, 38 F.4th 220, 230 (D.C. Cir. 2022).

<sup>55</sup> *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

<sup>56</sup> We note that the Commission's findings under the NGA regarding whether the project is required by the public convenience and necessity do not preclude state regulators from undertaking an after-the-fact prudency review of any purchase agreement by an LDC, consistent with the state's jurisdiction. The Commission has held that oversight of the procurement decisions of LDCs is best left to state regulators. See *Transcontinental Gas Pipe Line Co. LLC*, 182 FERC ¶ 61,148, at P 28 (2023).

<sup>57</sup> See, *e.g.*, *N. Nat. Gas Co.*, 184 FERC ¶ 61,186, at PP 61-62 (2023) (discussing state GHG reduction targets and Inflation Reduction Act goals while issuing a certificate that would be expected to result in an increase in GHG emissions); *Equitrans, L.P.*, 183 FERC ¶ 61,200, at P 46 (2023) (issuing a certificate for a project in Ohio, Pennsylvania, and West Virginia while addressing Pennsylvania's statewide goals for GHG reductions).

**C. The Authorization Order's Environmental Analysis Is Still Valid**

18. The Pittsylvania County Branch of the NAACP argues that the Commission failed to properly consider air pollution impacts on environmental justice communities when approving the siting of the Lambert Compressor Station and must reassess the impacts to environmental justice populations in light of Mountain Valley's failure to obtain an air permit.<sup>58</sup> Commenters argue that the Commission must reassess the project's impacts to endangered species.<sup>59</sup> Appalachian Voices and Wild Virginia point to erosion and sedimentation issues along Mountain Valley's Mainline Project as significant new information requiring the Commission to either deny the extension or supplement its environmental analysis.<sup>60</sup> Appalachian Voices further argues that new information undermines the Commission's rationale for concluding that the project will not experience erosion and sedimentation issues similar to the mainline.<sup>61</sup>

19. We note that the extension request concerns only the timing, not the nature of Mountain Valley's proposed Southgate Project. We recognize that the environment is subject to change, and that the validity of our conclusions and environmental conditions cannot be sustained indefinitely. The commenters assert that there are changes of fact and law that would lead the Commission to reconsider its prior findings for the project. The Council on Environmental Quality's regulations implementing the National Environmental Policy Act (NEPA) provide that agencies:

Shall prepare supplements to either draft or final environmental impact statements if a major Federal action remains to occur, and:

(i) [t]he agency makes substantial changes to the proposed action that are relevant to environmental concerns; or

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<sup>58</sup> Pittsylvania County Branch NAACP July 24, 2023 Comments at 1.

<sup>59</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 21; Wild Virginia July 24, 2021 Comments at 1-3; NRDC Comments at 12.

<sup>60</sup> *Id.* See also, Wild Virginia July 24, 2023 Comments at 4.

<sup>61</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 22.

(ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.”<sup>62</sup>

Here, neither factor for preparation for supplemental NEPA has been triggered.

20. The Certificate Order and environmental analysis properly considered the project’s potential environmental impacts on environmental justice communities.<sup>63</sup> Mountain Valley intends to resume permitting efforts for the Southgate Project once it resolves the Mainline System’s permitting.<sup>64</sup> Notwithstanding Mountain Valley’s inability, to date, to obtain a permit from the Virginia Air Pollution Control Board, the facts underlying the Commission’s rationale have not changed. The Commission will not issue a notice to proceed with construction until Mountain Valley has shown that it has all necessary permits.

21. Appalachian Voices states the Commission must ensure compliance with section 7 of the Endangered Species Act (ESA) in light of the listing of the northern long-eared bat and the tricolored bat.<sup>65</sup> The northern long-eared bat was listed as endangered effective March 31, 2023,<sup>66</sup> while the tricolored bat was proposed for listing as endangered on September 14, 2022.<sup>67</sup> Appalachian Voices argues that the U.S. Fish and Wildlife Service (FWS) has removed the rule allowing for the incidental take of northern long-eared bats that formed the basis for the Commission’s determination that the project may

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<sup>62</sup> 40 C.F.R. § 1502.9(d)(1) (2022).

<sup>63</sup> See Certificate Order, 171 FERC ¶ 61,232 at P 125 (citing Final EIS at 4-153 and 5-11)

<sup>64</sup> See *supra* PP 5, 15. See also Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 2. Mountain Valley states that it focused its permitting efforts on the Mainline System to more expeditiously complete construction and comply with the Commission’s directive in the Certificate Order. Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3-4.

<sup>65</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 28.

<sup>66</sup> 88 Fed. Reg. 4908 (Jan. 26, 2023).

<sup>67</sup> 87 Fed. Reg. 56,381 (Sept. 14, 2022).

affect but is not likely to adversely affect the species.<sup>68</sup> As part of the endangered listing of the northern long-eared bat, FWS acknowledged that incidental take of the species would now require an incidental take statement and likely trigger the need to reinitiate consultation with the FWS.<sup>69</sup> Appalachian Voices acknowledges the Commission assessed the project's potential impact on the tricolored bat, but contends that the species' new status as a proposed endangered species renders the Commission's assessment stale.<sup>70</sup> Appalachian Voices contends that the Commission may not grant Mountain Valley's extension request until the completion of the reinitiated consultation.<sup>71</sup>

22. We recognize that since the issuance of the EIS, which discussed threatened and endangered species, the northern long-eared bat has been listed as endangered<sup>72</sup> and the tricolored bat has been proposed for listing.<sup>73</sup> The EIS considered potential impacts on both the northern long-eared bat<sup>74</sup> and the tricolored bat.<sup>75</sup> As we have previously stated, if a new species is listed after the Commission's issuance of a certificate and before the completion of project construction, Commission staff will determine whether the project may affect the species.<sup>76</sup> If the project will not affect the species, the Commission has no further ESA obligation, but if the project may affect the species, the Commission must consult with FWS if the effects are reasonably certain to occur.<sup>77</sup> However, the potential need to re-initiate consultation on newly listed species does not render the environmental

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<sup>68</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 29.

<sup>69</sup> 88 Fed. Reg. at 4908-09.

<sup>70</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 31.

<sup>71</sup> *Id.* at 30.

<sup>72</sup> 88 Fed. Reg. 4908.

<sup>73</sup> 87 Fed. Reg. 56,381 (Sept. 14, 2022).

<sup>74</sup> Final EIS at 4-97 to 4-98.

<sup>75</sup> *Id.* at 4-106 (assessing potential impacts on the tricolored bat as a state-listed species in Virginia).

<sup>76</sup> *Delfin LNG LLC*, 178 FERC ¶ 61,031, at P 18 (2022).

<sup>77</sup> *Id.*

analysis stale.<sup>78</sup> A determination as to whether additional NEPA analysis is needed cannot be made prior to determining whether further ESA consultation is required and obtaining the results of such consultation.<sup>79</sup> Neither of those determinations is germane to our ability to act on Mountain Valley's request here.

23. We agree with Appalachian Voices that because the conclusion of "may affect but is not likely to adversely affect" was based upon FWS's now inapplicable rule under section 4(d) of the ESA, we must reinitiate section 7 ESA consultation with FWS for the northern long-eared bat. We note that, should it become necessary based on ESA consultation with FWS (*e.g.*, if ESA consultation results in proposed new measures with impacts not previously studied or if an amendment is necessary to incorporate new measures), the Commission will determine whether it should, consistent with 40 C.F.R. § 1502.9(d)(1), supplement its environmental review prior to authorizing Mountain Valley to commence construction.<sup>80</sup>

24. Appalachian Voices and Wild Virginia argue that significant new information renders the Certificate Order's conclusions stale with regards to the project's impacts on soil and aquatic resources.<sup>81</sup> Appalachian Voices argues that the failures in erosion and sedimentation controls used by Mountain Valley and its contractors during the construction of the Mainline System can be expected to reoccur during the construction of the Southgate Project.<sup>82</sup> Appalachian Voices states that the Commission may not reasonably rely on the standard mitigation measures for erosion and sedimentation

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<sup>78</sup> *Id.* P 19; *see also*, *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,027, at P 41 (2020) ("[W]e note that consultation under section 7 of the [ESA] is a separate process from that established by [NEPA].").

<sup>79</sup> *Delfin LNG LLC*, 178 FERC ¶ 61,031 at P 19. If additional ESA consultation results in proposed new measures with impacts not previously studied or if a certificate amendment is necessary to incorporate new measures, the Commission would supplement its NEPA review.

<sup>80</sup> *See, e.g.*, *Delfin LNG LLC*, 181 FERC ¶ 61,144, at P 16 (2022) (discussing the steps the Commission will take when re-initiating ESA consultation).

<sup>81</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 21.

<sup>82</sup> *Id.*

control.<sup>83</sup> Wild Virginia points to 86 incidents<sup>84</sup> during the construction of the Mainline System that occurred in the same piedmont “ecoregion” as the Southgate Project will be located.<sup>85</sup> Wild Virginia argues that these incidents occurred despite enhanced measures by Mountain Valley, and are likely to recur with the Southgate Project.

25. The Commission disagrees with Appalachian Voices and Wild Virginia’s contention that the Mainline System erosion and sedimentation events are significant pieces of new information or will necessarily recur during the construction of the Southgate Project and require the supplementation of NEPA. Appalachian Voices claims that the Commission cannot rely on the assertion in the Southgate Project final EIS that unusual 2018 storms during the Mainline System construction caused erosion and sedimentation issues when that assertion was expressly rejected by the United States Court of Appeals for the District of Columbia Circuit.<sup>86</sup>

26. The Commission already addressed sedimentation and erosion concerns for the Southgate Project.<sup>87</sup> As the United States Court of Appeals for the District of Columbia Circuit explained, the Commission appropriately discussed potential mitigation measures for erosion and runoff in detail, and distinguished the Southgate Project measures from those that failed for Mountain Valley in the past. The court accepted the Commission’s

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<sup>83</sup> *Id.*

<sup>84</sup> Wild Virginia’s summary of Virginia Department of Environmental Quality’s report defined “pollution incidents” to include: (1) measurable sediment deposits in waterbodies caused by Mountain Valley; (2) sediment deposited outside Mountain Valley’s pollution controls; and (3) untreated or poorly treated discharges from MVP sites (these included inspector statements and photographs indicating that pollution control measures were undermined, overtopped, overwhelmed, or otherwise bypassed, thus releasing sediment-laden water offsite, without the benefit of filtering and/or temporary detention and settling before being released). Wild Virginia July 24, 2023 Comments at 2.

<sup>85</sup> *Id.* Wild Virginia used the U.S. Environmental Protection Agency’s explanation of ecoregion, which “denotes areas of similarity in the mosaic of biotic, abiotic, terrestrial, and aquatic ecosystem components” and are areas where ecosystems are generally similar. *Id.*

<sup>86</sup> Appalachian Voices et al. July 24, 2023 Motion to Intervene, Protest, and Comments at 24 (citing *Sierra Club v. FERC*, 68 F.4th 630, 650-51 (D.C. Cir. 2023)).

<sup>87</sup> Certificate Order, 171 FERC ¶ 61,232, *order on reh’g*, Rehearing Order, 172 FERC ¶ 61,261, *aff’d sub. nom.*, *Sierra Club, et al. v. FERC*, 38 F.4th 220 (D.C. Cir. 2022).

explanation that that 2018 precipitation level is not expected to repeat, but should it, erosion should be limited due to the Southgate Project traversing flatter terrain than the Mainline System<sup>88</sup> and additional weather monitoring and other measures.<sup>89</sup>

27. Appalachian Voices and Wild Virginia attempt to relitigate these findings by arguing that since the Southgate Project final EIS issued, there have been numerous Mainline System erosion and sedimentation control failures during 2020 and 2021 in flatter terrain shared by the two projects. Filings by the Virginia Department of Environmental Quality (VDEQ) in its 2021 approval of the section 401 water quality certification for the Mainline System indicate that although numerous, the impacts of the incidents during the construction of the Mainline System in Virginia have not been significant.<sup>90</sup> VDEQ notes that neither its inspectors nor the public have reported any evidence of violations of its water quality standards or of a fish kill during construction on the mainline.<sup>91</sup> VDEQ, based on daily field presence of VDEQ inspectors and third-party compliance inspectors, also disagrees with the statement that there are ongoing, significant violations of erosion and sediment controls or water quality standards.<sup>92</sup> The Fourth Circuit upheld Virginia's 2021 decision to issue a water quality certification for the Mainline System, finding that the state agencies had considered all relevant data and justified its conclusion.<sup>93</sup> Accordingly, no additional NEPA analysis is required.

#### IV. Conclusion

28. Because we find that Mountain Valley Pipeline, LLC has demonstrated good cause for the extension of time and that the Certificate Order's environmental findings remain valid, we will grant the request for a three-year extension, until June 18, 2026, to

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<sup>88</sup> As Wild Virginia acknowledges, less than 6% of the incidents cited in VDEQ reports on the Mainline System occurred in the piedmont ecoregion, and the VDEQ did not find those incidents to be significant violations of the state's water quality standards. Wild Virginia July 24, 2023 Comments at 2.

<sup>89</sup> *Sierra Club, et al. v. FERC*, 38 F.4th 220, 232–33 (D.C. Cir. 2022).

<sup>90</sup> Virginia Department of Environmental Quality, Memorandum to State Water Control Board. Part II – Additional DEQ Responses to Public Comments, November 19, 2021.

<sup>91</sup> *Id.*

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

<sup>93</sup> *Sierra Club v. State Water Control Bd.*, 64 F.4th 187, 198-99 (4th Cir. 2023).

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complete construction of the Southgate Project and place the project facilities into service.<sup>94</sup>

29. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the motion and exhibits thereto, and upon consideration of the record,

The Commission orders:

Mountain Valley Pipeline, LLC is granted a three-year extension of time, to June 18, 2026, to construct and make available for service the MVP Southgate Project facilities authorized in CP19-14-000.

By the Commission. Commissioner Danly is not participating.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

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<sup>94</sup> 18 C.F.R. § 385.2008(a). Rule 2008 of the Commission's Rules of Practice and Procedure allows the Commission, for good cause, to extend the time by which a project sponsor is required to complete construction and place the project facilities into service.

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