



Highlights of FERC Decision Rejecting Requests to Rehear ACP Approval

August 11, 2018

Below are excerpts from FERC's August 10 decision addressing some of the issues raised by the various petitioners that filed timely requests (by November 12, 2017) for a rehearing of the agency's October 13, 2017 decision to issue a permit for the Atlantic Coast Pipeline

1. Introducing new evidence – “We find that there is no material issue of fact that we cannot resolve on the basis of the written record in the proceeding. Therefore, we will reject Shenandoah Valley Network’s attempt to submit new evidence at the rehearing stage.”
2. Rate of return for ACP – “We disagree that the treatment of ROE or the resulting recourse rates in these proceedings are flawed. Because the establishment of recourse rates is based on estimates, the Commission’s general policy is to accept the pipeline’s cost components if they are reasonable and are consistent with Commission policy.”
3. Whether the draft EIS satisfies NEPA requirements – “NEPA does not require a complete plan be actually formulated at the onset, but only that the proper procedures be followed for ensuring that the environmental consequences have been fairly evaluated. When considering the Commission’s ‘evaluation of scientific data within its expertise,’ the courts afford the Commission ‘an extreme degree of deference.’”
4. Regarding the need for the project – “The precedent agreements are significant evidence of demand.”
5. Considering renewable energy alternatives – “The Final EIS explained that it excluded renewable energy and energy efficiency alternatives because renewable energy and energy efficiency measures do not transport natural gas. Because these energy technologies would not feasibly achieve the projects’ aims, they were not considered or evaluated further. Petitioners contend this approach is impermissibly restrictive, but for purposes of NEPA, an agency may take into account an applicant’s needs and goals when assessing alternatives, so long as it does not limit the alternatives to only those that would adopt the applicant’s proposal.”

6. Capacity of other pipelines to meet need – “The Final EIS analyzed the availability of capacity on other pipelines to serve as alternatives to the ACP Project, and concluded that they do not presently serve as practical alternatives to the project. . . . The Final EIS considered transportation on existing Columbia, Transco, and East Tennessee Systems and on new pipeline projects—Mountain Valley Pipeline and Columbia’s WB XPress Project—but found that these alternatives do not have available capacity and are not environmentally preferable due to necessary modifications.”
7. Collocation of the ACP and MVP – “The Commission need not analyze ‘the environmental consequences of alternatives it has in good faith rejected as too remote, speculative, or . . . impractical or ineffective.’ With respect to the collocation alternative, as described in the Final EIS and Certificate Order, there is insufficient space along the narrow ridgelines to accommodate two parallel 42-inch-diameter pipelines. As a result, this alternative is technically infeasible and would not offer a significant advantage. The Final EIS also determined that merging ACP Pipeline and the Mountain Valley Pipeline into one pipeline system was infeasible.”
8. Crossing the National Forests and Blue Ridge Parkway – “The Final EIS eliminated routes that would completely avoid National Forest land, including the Blue Ridge Parkway, because such routes would not be environmentally preferable. Routing the ACP Project to the south of the Monongahela National Forest and George Washington National Forest would increase the route by 43 miles. In general, shorter pipeline routes have fewer environmental impacts than, and are environmentally preferable to, longer routes.”
9. Potential extension of ACP into South Carolina – “To date, neither Atlantic nor any of its affiliate owners have proposed a pipeline extending from the ACP Project terminus at Lumberton, North Carolina, into South Carolina. Without a proposal, the Commission cannot determine if the projects are related to each other closely enough to be considered a single course of action.”
10. Threat of seismic activity and landslides – Petitioners argue “that the Final EIS was inadequate because the analysis relating to water impacts from steep slope construction remains ongoing. The We disagree. The final EIS specifically finds that constructing the pipelines in steep terrain or high landslide incidence areas could increase the potential for landslides to occur, including areas outside National Forest lands. The mitigation measures described above attempt to minimize these effects.
11. Consideration of impact on historic resources - Petitioners conclude “that because of inadequate consultation, the Commission’s process did not sufficiently identify potential resources, evaluate their historic significance, assess whether the undertaking will adversely affect them, and then evaluate ways to avoid, minimize, or mitigate adverse effects. We disagree. The Final EIS described the public outreach for the project, including Applicant-sponsored open houses, public scoping meetings, and receipt of more than 8,000 written comments.”

12. Impacts to streams and wetlands along steep slopes - Petitioners argue “that the Final EIS failed to adequately assess or mitigate impacts to streams and wetlands from construction along steep slopes.” They contend “that such construction will increase sedimentation from erosion and landslides and result in long-term adverse effects on pristine headwaters, wetlands, and brook trout habitat. The Final EIS concluded that surface water impacts from construction along steep slopes on Forest Service land would be avoided or minimized through adherence to the mitigation requirements discussed above.”
13. Impacts of access roads - Petitioners argue that the Final EIS violated NEPA because it failed to analyze the impacts from 99 acres of access roads on water resources. It is not clear which roads petitioners are referring to, but the Final EIS fully analyzed impacts from all access roads.
14. Impacts on karst and groundwater – Petitioners state “that the Final EIS failed to adequately assess construction impacts on karst and related groundwater resources. Specifically, it contends that the Commission’s conclusion that there would not be a significant impact on aquifers or other groundwater resources was not supported by a meaningful assessment of potential impacts to water quality from construction through fragile karst terrain.

“We disagree. Atlantic conducted an extensive analysis of geologic conditions in the project area, consulted with the applicable state agencies and local water management districts, and used these efforts to prepare the aforementioned plans to avoid, minimize, and mitigate project-related impacts on karst resources. Atlantic was required to submit the requested Fracture and Dye Trace study before the commencement of construction, which it did as part of October 18, 2017 Implementation Plan. The study confirmed that the protocols in the *Karst Mitigation Plan* should be followed to limit the potential for groundwater to be impacted by Project construction.”

15. Environmental justice – “We disagree that the Final EIS contained a flawed environmental justice analysis. However, before examining that question, we observe that Shenandoah Valley Network is mistaken that Executive Order 12898 applies to the Commission. The Executive Order states that ‘[i]ndependent agencies are requested to comply with the provisions of this order.’

“Shenandoah Valley Network argues that the Final EIS failed to make use of the limited data it compiled. Despite the information about minority and low-income groups in the Final EIS, Shenandoah Valley Network states that the Final EIS and Certificate Order failed to ‘consider the environmental injustice of allowing a massive, new industrial project to cut through so many communities with high percentages of low income families, people of color, and American Indians.’”