

173 FERC ¶ 61,026  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and James P. Danly.

Mountain Valley Pipeline, LLC  
Equitrans, L.P.

Docket Nos. CP16-10-006  
CP16-13-000

ORDER GRANTING REQUESTS FOR EXTENSION OF TIME

(Issued October 9, 2020)

1. On October 13, 2017, the Commission issued an order authorizing Mountain Valley Pipeline, LLC (Mountain Valley) to construct and operate the Mountain Valley Pipeline Project (Certificate Order), which would provide up to 2,000,000 dekatherms per day (Dth/d) of firm transportation service from an interconnection with Equitrans, L.P. (Equitrans) in Wetzel County, West Virginia, to Transcontinental Pipe Line Company, LLC's Compressor Station 165 in Pittsylvania County, Virginia.<sup>1</sup> The Certificate Order also authorized Equitrans to construct and operate system modifications necessary to enable Equitrans to provide an additional 600,000 Dth per day of north-to-south firm transportation service from western Pennsylvania to the interconnect with the Mountain Valley Pipeline Project (Equitrans Expansion Project). The Certificate Order required that Mountain Valley and Equitrans construct the projects and make them available for service within three years.<sup>2</sup>
2. On August 25, 2020, Mountain Valley and Equitrans each filed a request for a two-year extension of time, until October 13, 2022, to complete construction of and place into service their respective projects.<sup>3</sup> For the reasons discussed below, we grant the requested extensions.

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<sup>1</sup> *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (Certificate Order), *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>2</sup> Certificate Order, 161 FERC ¶ 61,043 at ordering para. (C)(1).

<sup>3</sup> Mountain Valley's August 25, 2020 Request for Extension of Time at 1-2; Equitrans' August 25, 2020 Request for Extension of Time at 1.

## I. Background

3. The Mountain Valley Pipeline Project is a new pipeline system consisting of approximately 303.5 miles of 42-inch-diameter pipeline, three compressor stations, interconnection facilities, metering and regulation facilities, and other appurtenant facilities. The Equitrans Expansion Project consists of six new pipeline segments, totaling 7.87 miles, on Equitrans' existing mainline system, a new compressor station, interconnection facilities, and other appurtenant facilities. As stated above, the Certificate Order required that Mountain Valley and Equitrans complete the construction of the authorized facilities and make them available for service within three years, by October 13, 2020.<sup>4</sup>

4. On August 25, 2020, Mountain Valley filed a request for a two-year extension of time, until October 13, 2022, to complete construction of the Mountain Valley Pipeline Project and make it available for service due to litigation and permitting delays outside of Mountain Valley's control.<sup>5</sup> Mountain Valley asserts that the extension of time will not alter the public interest findings underlying the Certificate Order, as the project continues to be in the public convenience and necessity and is fully subscribed by binding, long-term agreements with multiple shippers.<sup>6</sup> Mountain Valley also states that the extension will not change the findings of Commission staff's Environmental Impact Statement (EIS) for the project.<sup>7</sup>

5. On August 25, 2020, Equitrans also filed a request for a two-year extension of time, until October 13, 2022, for the Equitrans Expansion Project. Equitrans explains that although no additional construction is necessary to complete the project facilities, an extension of time is needed because the Equitrans facilities are designed to deliver natural gas to the Mountain Valley Pipeline Project.<sup>8</sup>

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<sup>4</sup> *Id.* at ordering para. (C)(1).

<sup>5</sup> Mountain Valley's August 25, 2020 Request for Extension of Time at 2-4.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> Equitrans August 25, 2020 Request for Extension of Time at 1.

## II. Notice, Interventions, and Comments

### A. Mountain Valley' Extension of Time Request

6. Notice of Mountain Valley's request for an extension of time was issued on August 27, 2020, and published in the *Federal Register* on September 2, 2020, with interventions, comments, and protests due September 11, 2020.<sup>9</sup> Several parties to the underlying certificate proceeding filed timely motions to intervene, which are granted.<sup>10</sup> Elizabeth Terry Reynolds and J. Coles Terry, III, both parties to the underlying certificate proceeding, filed late motions to intervene, which are also granted.

7. Joseph Chasnoff, Mary Rives, Elizabeth Long, Mary Coffey, Reni Fulton, Molly Sutter, Kirk A. Bowers, Cynthia Munley, Freeda Cathcart, Noreen Fulton, Jacob Hileman, Emily Satterwhite, Kathy E. Chandler, Jason Brady Shelton, Gary H. Irwin, Nancy Dickinson, David Witt, Defenders of Wildlife,<sup>11</sup> and Perry D. Martin (collectively, Movants) filed late motions to intervene in the certificate proceeding and timely motions to intervene in this extension of time proceeding. As the Commission has explained, "[w]hen late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial."<sup>12</sup> In such circumstances, movants bear a higher burden to demonstrate good cause for granting the late intervention.<sup>13</sup> Here, interventions in the

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<sup>9</sup> 85 Fed. Reg. 54,553 (Sept. 2, 2020).

<sup>10</sup> See *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 39 (2020) ("Only interventions from entities that were party to the underlying proceeding will be accepted."). These parties are listed in Appendix A.

<sup>11</sup> Defenders of Wildlife filed its motion to intervene as a member of the Appalachian Mountain Advocates group, which also includes Appalachian Voices, Chesapeake Climate Action Network, Natural Resources Defense Council, Sierra Club, The Wilderness Society, West Virginia Rivers Coalition, and Wild Virginia, Inc. With the exception of Defenders of Wildlife, all other members of the group were parties to the underlying certificate proceeding.

<sup>12</sup> *National Fuel Gas Supply Corp.*, 139 FERC ¶ 61,037, at P 18 (2012); see also, e.g., *Florida Gas Transmission Co.*, 133 FERC ¶ 61,156, at P 6 (2010).

<sup>13</sup> See *California Department of Water Resources and the City of Los Angeles*, 120 FERC ¶ 61,057, at P 8 n.3, *reh'g rejected*, 120 FERC ¶ 61,248 (2007), *aff'd sub nom. California Trout and Friends of the River v. FERC*, 572 F.3d 1003 (9th Cir. 2009).

underlying certificate proceeding were due by November 27, 2015.<sup>14</sup> Because movants fail to provide good cause to justify the grant of their late motions to intervene, almost five years after the original deadline and two years after issuance of the Commission's Order on Rehearing in the proceeding, the motions are denied.<sup>15</sup> Additionally, the timely motions to intervene in the extension of time proceeding are denied because the individuals and entities were not parties to the underlying certificate proceeding.<sup>16</sup>

8. We received many comments both in support of and opposing the extension of time request. Comments in support of the extension of time assert that the project would develop needed natural gas supplies, create jobs, and result in other economic benefits to the region. Comments opposing Mountain Valley's request argue that: (1) Mountain Valley has not demonstrated good cause to justify granting the requested extension of time; (2) circumstances have changed since the issuance of the Certificate Order such that the project is no longer required by the public convenience and necessity, and the Commission's environmental analysis of the project is no longer valid; and (3) Mountain Valley's record of noncompliance suggests that it should not be granted an extension.

#### **B. Equitrans' Extension of Time Request**

9. Notice of Equitrans' request for an extension of time was issued on August 28, 2020, with interventions, comments, and protests due September 14, 2020. No motions to intervene or comments were filed.

### **III. Discussion**

#### **A. Mountain Valley's Request for Extension of Time**

##### **1. Good Cause Exists for Granting the Extension of Time**

10. Commenters argue that Mountain Valley failed to demonstrate that good cause exists to grant a two-year extension of time. They claim that Mountain Valley failed to make good faith efforts to meet the deadline in the Certificate Order, as the delays encountered by Mountain Valley are due to foreseeable interruptions from legal

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<sup>14</sup> Certificate Order, 161 FERC ¶ 61,043 at P 21.

<sup>15</sup> In their filings, Movants either provide no showing of good cause, state that they recently moved to the area, or broadly claim that "events have occurred and knowledge has deepened" since issuance of the Certificate Order.

<sup>16</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 at P 39.

challenges, losses of permits, and Commission-issued stop work orders.<sup>17</sup> Additionally, commenters claim that allowing Mountain Valley to complete construction of the project would result in further environmental harms and prevent landowners from restoring the right of way in a timely fashion.<sup>18</sup>

11. Although 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>19</sup> we consider such requests on a case-by-case basis.<sup>20</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>21</sup>

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<sup>17</sup> See, e.g., Suzanne Keller September 1, 2020 Comments at 1; William Plyer September 1, 2020 Comments at 1; Teresa Miller September 1, 2020 Comments at 1.

<sup>18</sup> See, e.g., Jason Shelton September 25, 2020 Comments at 2-3.

<sup>19</sup> See, e.g., *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149, at P 11 (2012) (denying request for extension of time where the applicant, of its own volition, had concluded that the project was not financially viable at the time, and had consequently refrained from moving forward with activities that must be completed, or be well underway, prior to initiating construction, e.g., attempting to acquire necessary property rights, submitting a Construction Implementation Plan, ordering materials, and obtaining state and federal permits and authorizations).

<sup>20</sup> *Id.* P 8.

<sup>21</sup> *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138 (2020) (granting a two-year extension of time to complete construction due to a need to conduct additional consultation under the National Historic Preservation Act and obtain new permits under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act); see also *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 (2016) (granting a two-year extension of time to accommodate the project applicant’s ongoing efforts to obtain a permit from the New York State Department of Environmental Conservation); *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).

12. Here, Mountain Valley has demonstrated that good cause exists to grant a two-year extension to complete construction of the project and make it available for service. Legal challenges have affected Mountain Valley's ability to maintain necessary authorizations and permits from the U.S. Forest Service (Forest Service), Bureau of Land Management (BLM), U.S. Army Corps of Engineers (Corps), U.S. Fish and Wildlife Service (FWS), and the National Park Service (NPS). However, in each instance, Mountain Valley applied for and obtained an initial grant of the needed authorizations, and staff had issued an initial Notice to Proceed for the project in 2018. Thus, absent legal challenges to these grants of authorizations, Mountain Valley would have possessed all authorizations necessary to complete construction of the project.

13. Moreover, Mountain Valley has actively worked to restore all permits necessary for construction and operation of the project. On September 4, 2020, FWS issued a new Biological Opinion and Incidental Take Statement for the project.<sup>22</sup> Additionally, the Forest Service and BLM recently issued a draft supplemental EIS for the project,<sup>23</sup> which will enable Forest Service to issue a new record of decision and allow BLM to process Mountain Valley's revised application to approve a right-of-way across the Jefferson National Forest.<sup>24</sup> The NPS has also issued a new right-of-way grant for project operations and maintenance.<sup>25</sup> Finally, on September 25, 2020, the Corps issued Nationwide Permit 12 Verifications for the Huntington and Pittsburgh Districts and reinstated the Nationwide Permit 12 Verification for the Norfolk District.<sup>26</sup>

14. Additionally, the project right of way is not yet permanently stabilized and restored, and forestalling lapse of Mountain Valley's current certificate authorization is necessary to ensure that further environmental degradation is avoided, whatever the outcome of the permit proceedings. We therefore conclude that Mountain Valley has

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<sup>22</sup> See Jennifer Fink's OEP's September 4, 2020 Note of Biological Opinion and Conference Opinion-U.S. Fish and Wildlife Service filed in Docket No. CP16-10-000.

<sup>23</sup> Forest Service, *Mountain Valley Pipeline and Equitrans Expansion Project: Draft Supplemental Environmental Impact Statement*, [https://www.fs.usda.gov/nfs/11558/www/nepa/104911\\_FSPLT3\\_5357753.pdf](https://www.fs.usda.gov/nfs/11558/www/nepa/104911_FSPLT3_5357753.pdf).

<sup>24</sup> See 85 Fed. Reg. 45,863 (July 30, 2020) (noticing Forest Service's intent to prepare a supplemental EIS for the project and explaining the procedural steps that would follow).

<sup>25</sup> See Mountain Valley's October 2, 2020 Letter Providing Permitting Updates in Support of Requests at 1.

<sup>26</sup> See Mountain Valley's September 25, 2020 Letter Providing Permitting Updates in Support of Requests at 1.

actively pursued the required federal permits and good cause exists to grant the extension of time.

15. Next, commenters argue that the information provided by Mountain Valley regarding the completion status of the project is inaccurate and that the progress made by Mountain Valley is not sufficient to justify an extension of time to complete it.<sup>27</sup> We disagree. According to Mountain Valley's most recent status report, more than 85% of the pipeline has been installed; however, those numbers only describe pipeline construction status and do not take into account other project components, such as compressor stations, all of which are complete.<sup>28</sup> Considering the construction of these additional project facilities, Mountain Valley's characterization that the project is 92% complete is accurate and not misleading. Thus, we find that Mountain Valley has been actively pursuing the completion of its project, further justifying a two-year extension of time.

**2. The Certificate Order's Public Interest Findings and Environmental Analysis Are Still Valid**

**a. Public Interest**

16. Commenters assert that the Commission should deny Mountain Valley's request for an extension of time because circumstances have changed since the Commission's issuance of the Certificate Order in 2017. They claim the project is no longer in the public interest because: (1) demand for natural gas in the region is declining;<sup>29</sup> (2) compliance with state clean energy plans could render the project's capacity unnecessary;<sup>30</sup> and (3) the

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<sup>27</sup> See, e.g., Jill Averitt September 1, 2020 Comments at 1; Laura Cooper September 4, 2020 Comments at 1; Sandy Arthur September 8, 2020 Comments at 1.

<sup>28</sup> See Mountain Valley's Weekly Status Report No. 149 (filed September 14, 2020).

<sup>29</sup> See, e.g., Theodore Chaconas September 8, 2020 Comments at 1; Lydia Armistead September 8, 2020 Comments at 1; Amy Harlib September 8, 2020 Comments at 1.

<sup>30</sup> See, e.g., William Plyler September 1, 2020 Comments at 1; Natalie Pien September 8, 2020 Comments at 1; Robin Kent September 11, 2020 Comments at 1; Jane Twitmyer September 11, 2020 Comments at 1.

project may no longer be economically viable, potentially resulting in an undue burden on captive ratepayers.<sup>31</sup>

17. Commission regulations do not establish a particular time period to complete construction of an authorized natural gas facility.<sup>32</sup> The Commission's certificate orders include completion deadlines, in part, because the information supporting our public convenience and necessity determinations can go stale with the passage of time.<sup>33</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>34</sup> The completion date specified in a certificate order provides what the Commission believes—based on its 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>35</sup> However, where good cause can be demonstrated, the Commission or staff will generally grant an extension of time if the extension is filed within a timeframe during which the environmental and other public interest findings underlying the Commission's authorization can be expected to remain valid.<sup>36</sup>

18. Extending the deadline to construct the Mountain Valley Pipeline Project and place it into service within five years of the date of the Certificate Order (i.e., October 13, 2022) will not undermine the Commission's findings in the Certificate Order that the

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<sup>31</sup> See, e.g., Douglas Hendren September 9, 2020 Comments at 1; Mary Finley-Brook September 11, 2020 Comments at 1; Jim Steitz September 16, 2020 Comments at 1.

<sup>32</sup> 18 C.F.R. § 157.20(b) (2020) (requiring, among other things, that authorized construction be completed and made available for service within the period of time to be specified by the Commission in each order).

<sup>33</sup> *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 at P 8 (citing *Iroquois Gas Transmission System, L.P.*, 104 FERC ¶ 61,307, at P 14 (2003)).

<sup>34</sup> *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

<sup>35</sup> *Arlington Storage Co., LLC*, 155 FERC ¶ 61,165 at P 8 (citing *Chestnut Ridge Storage LLC*, 139 FERC ¶ 61,149 at P 11 (2012)).

<sup>36</sup> *Id.*; 18 C.F.R. § 385.2008(a) (2020); see also 18 C.F.R. § 375.308(w)(4) (2020) (authorizing the Commission's Director of the Office of Energy Projects to take appropriate action on "applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order of the Commission.").

project is required by the public convenience and necessity. The Commission has frequently authorized infrastructure projects with initial deadlines of four, five, or six years without expressing concerns about the certificate order's findings becoming stale.<sup>37</sup> The Certificate Order found a market need for the project based on Mountain Valley's execution of long-term precedent agreements for the entirety of the project's capacity,<sup>38</sup> and the United States Court of Appeals for the District of Columbia Circuit upheld this finding.<sup>39</sup> The terms of these agreements extend many years beyond October 13, 2022, and commenters provided no evidence demonstrating that any shipper intends to cancel its transportation contract.<sup>40</sup>

19. With respect to comments regarding compliance with evolving state energy policies or the possibility of captive ratepayers paying for unneeded capacity, we note that these concerns were addressed in the underlying Certificate Order,<sup>41</sup> and as such, are improper collateral attacks on that order and need not be considered further. We have explained that in extension of time proceedings, "[t]he Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity."<sup>42</sup> Regardless, we reaffirm our findings in the Certificate Order that it is speculative to consider how a state will decide to manage its electric-power fuel sources in the future,<sup>43</sup> and that issues related to a state-regulated utility's ability to recover costs associated with transportation service provided by the Mountain Valley Pipeline Project are matters to be determined by the relevant state utility commissions.<sup>44</sup>

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<sup>37</sup> See, e.g., *Golden Triangle Storage, Inc.*, 121 FERC ¶ 61,313, at ordering para. (M) (2007) (six years to complete gas storage project); *Trunkline Gas Co., LLC*, 153 FERC ¶ 61,300, at ordering para. (B)(1) (2015) (four years to complete pipeline project).

<sup>38</sup> Certificate Order, 161 FERC ¶ 61,043 at P 41.

<sup>39</sup> *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at \*1.

<sup>40</sup> As required by the Certificate Order, Mountain Valley has executed service agreements for the volume of service subscribed under the precedent agreements.

<sup>41</sup> Certificate Order, 161 FERC ¶ 61,043 at P 53.

<sup>42</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 at P 40.

<sup>43</sup> Certificate Order, 161 FERC ¶ 61,043 at P 43.

<sup>44</sup> *Id.* P 53.

**b. Environmental Analysis**

20. Commenters contend that the effects of Mountain Valley's construction activities and changes to the project through Commission-approved variances have rendered the EIS invalid, as the project no longer resembles what was analyzed in the EIS and authorized in the Certificate Order.<sup>45</sup>

21. We recognize that environmental impacts are subject to change, and that the validity of our conclusions and environmental conditions cannot be sustained indefinitely. However, the record does not reflect that any changes of fact or of law have occurred requiring that we reconsider our prior finding that the project, as conditioned, is an environmentally acceptable action. The Council on Environmental Quality's regulations provide that supplemental environmental analysis may be necessary due to stale environmental information; for example, where an agency "makes substantial changes in the proposed action that are relevant to environmental concerns" or where there are "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."<sup>46</sup> New information must be sufficient to show that the remaining federal action will affect the environment in a significant manner or to a significant extent not already considered.<sup>47</sup> None of these circumstances has occurred in this case.

22. Here, Mountain Valley requests only to change the timing, not the nature, of the project, and the Commission is not aware of any significant new circumstances or information, and the commenters have not demonstrated any. Rather, as stated above, when reviewing a request for an extension of time, the Commission considers whether our conclusions and environmental conditions are still valid, and commenters have provided no evidence to suggest that is not the case here.

23. We also disagree with commenters' assertion that the approved variances for the project render the EIS invalid. Under authority delegated in the Certificate Order, Commission staff may approve certain modifications to the project.<sup>48</sup> However, prior to approving such modifications, Commission staff first verifies that the change will not undermine the conclusions made in the EIS for the project. Further, pursuant to the

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<sup>45</sup> See, e.g., Howdy Henritz September 8, 2020 Comments at 3; Freeda Catchcart September 11, 2020 Comments at 5.

<sup>46</sup> 40 C.F.R. § 1502.9(c)(1)(i)-(ii) (2020).

<sup>47</sup> *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 374 (1989).

<sup>48</sup> See Certificate Order, 161 FERC ¶ 61,043 at app. C, Environmental Condition 2.

Commission's *Upland Erosion Control, Revegetation, and Maintenance Plan* (Commission's Plan), staff only approve variances that meet specific criteria.<sup>49</sup>

24. Next, commenters assert that a proposal to increase the pipeline's capacity and/or operating pressure would present new environmental and safety concerns that were not previously analyzed.<sup>50</sup> Should Mountain Valley make a material change to the project, such as increasing the capacity or operating pressure, it must first file a request with the Commission and receive authorization to do so. During that proceeding, the Commission would examine the potential environmental and safety impacts of the proposal. However, to date, the Commission has not received such a proposal, and any assertions to the contrary are speculative at best.

25. Commenters also argue that construction of the project has the potential to exacerbate the spread of the novel coronavirus (COVID-19) because construction crews could introduce the virus to vulnerable communities along the pipeline's route.<sup>51</sup> Because this order does not authorize Mountain Valley to construct any facilities, these concerns are outside the scope of this proceeding. However, we note that Mountain Valley states that it has implemented enhanced health and safety measures to minimize the potential spread of COVID-19.<sup>52</sup>

26. Last, commenters reiterate previously addressed concerns regarding the project's impacts on threatened and endangered species, geology, water resources, forests, property values, visual impacts, land use, historic properties, and greenhouse gas emissions and

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<sup>49</sup> See FERC Office of Energy Projects, *Upland Erosion Control, Revegetation, and Maintenance Plan* (May 2013), <https://www.ferc.gov/sites/default/files/2020-04/upland-erosion-control-revegetation-maintenance-plan.pdf>. Mountain Valley agreed to follow the measures outlined in the Commission's Plan. Certificate Order, 161 FERC ¶ 61,043 at P 46.

<sup>50</sup> See, e.g., Lauren Lovejoy September 9, 2020 Comments at 1; Jessica Alley September 10, 2020 Comments at 1.

<sup>51</sup> See, e.g., Elizabeth Hahn September 10, 2020 Comments at 1; Edward Savage September 10, 2020 Comments at 1; Kimberley Homer September 10, 2020 Comments at 1.

<sup>52</sup> See Mountain Valley's March 25, 2020 Letter Providing Update Related to COVID-19 at 1-2.

climate impacts.<sup>53</sup> These concerns were fully addressed in the underlying certificate proceeding and need not be considered further. As mentioned above—and explained in previous extension of time proceedings—“[t]he Commission will not consider arguments that re-litigate the issuance of the certificate order.”<sup>54</sup> This includes arguments as to whether the Commission’s environmental analysis for the certificate complied with the National Environmental Policy Act.<sup>55</sup> Therefore, we decline to address commenters’ arguments regarding environmental impacts already considered in the certificate proceeding.<sup>56</sup>

### 3. **Mountain Valley’s Compliance Record Does Not Warrant Denying Its Extension of Time Request**

27. Commenters claim that Mountain Valley’s record of noncompliance with the conditions of its certificate suggests that it should not be granted an extension of time to complete the project.<sup>57</sup> First, commenters point to a series of violations documented by the Virginia Department of Environmental Quality (Virginia DEQ) and West Virginia Department of Environmental Protection (West Virginia DEP) due to issues with erosion control and runoff at project construction sites.<sup>58</sup> Mountain Valley reached consent

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<sup>53</sup> See, e.g., Dan Miles September 3, 2020 Comments at 1; Preserve Bent Mountain September 9, 2020 Comments at 2, 4; John H. Bagwell September 9, 2020 Comments at 1.

<sup>54</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 at P 40.

<sup>55</sup> *Id.*

<sup>56</sup> See Certificate Order, 161 FERC ¶ 61,043 at PP 126-309, *order on reh’g*, 163 FERC ¶ 61,197 at PP 95-310. The Commission’s findings regarding the project’s environmental impacts were upheld by the United States Court of Appeals for the District of Columbia Circuit. *Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199 at \*2.

<sup>57</sup> See, e.g., Nan Gray August 27, 2020 Comments at 1; Jean Porterfield August 28, 2020 Comments at 1; Louisa Gay September 1, 2020 Comments at 1.

<sup>58</sup> See, e.g., Louisa Gay August 28, 2020 Comments at 1; Laura Pendleton Livesay September 1, 2020 Comments at 1; Robert K. Johnson September 8, 2020 Comments at 1.

decrees with both Virginia DEQ<sup>59</sup> and West Virginia DEP<sup>60</sup> to resolve violations of state environmental standards and regulations and no additional action by the Commission is necessary at this time.

28. Commenters also raise a private lawsuit brought by unpaid contractors in West Virginia.<sup>61</sup> However, Mountain Valley's contract disputes with private parties are outside our jurisdiction and therefore have no bearing on our decision to act on Mountain Valley's request for extension of time.

29. Next, commenters express concern regarding the coating of exposed pipe along the right-of-way. On July 30, 2019, Mountain Valley replied to Commission staff's request for toxicological environmental and health information about the epoxy coating used to coat the project's pipeline due to concerns from commenters regarding "chalking," or coating degradation, on exposed pipe along the right-of-way.<sup>62</sup> Mountain Valley responded stating that "there is no evidence that the use of epoxy coatings present a risk to human health, aquatic life, or other environmental receptors through any foreseeable exposure pathway."<sup>63</sup> Further, as required by the Pipeline and Hazardous Materials Safety Administration, the pipeline coating will need to be inspected before installation and backfilling can occur.<sup>64</sup> Based on Commission staff's review of the FBE (fusion bonded epoxy) chalking analysis submitted by Mountain Valley and all other pertinent materials, we find no basis for supplementing the 2017 final EIS to analyze

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<sup>59</sup> See *David K. Paylor v. Mountain Valley Pipeline, LLC*, Case No. CL18006874-00 (Va. Cir. entered Dec. 11, 2019), <https://www.deq.virginia.gov/Portals/0/DEQ/Water/Pipelines/MVPCConsentDecree12-19.pdf>.

<sup>60</sup> See West Virginia Department of Environmental Protection, Consent Order Issued under the Water Pollution Control Act (Apr. 19, 2019), <https://dep.wv.gov/pio/Documents/MVPLLCsignedorder.pdf>.

<sup>61</sup> See, e.g., Aisha B. Cozad September 8, 2020 Comments at 1; William Muth September 9, 2020 Comments at 1; Marilyn Karp September 9, 2020 Comments at 1.

<sup>62</sup> Mountain Valley July 30, 2019 Response to Staff's July 10, 2019 Data Request.

<sup>63</sup> *Id.* at 2.

<sup>64</sup> See 49 C.F.R. § 192.461(c) (2020).

potential toxicity associated with FBE coating or revisiting the discussion therein.<sup>65</sup> As such, commenters' concerns do not provide adequate justification for denying Mountain Valley's request for an extension of time in the current proceeding.

30. Finally, commenters claim that Mountain Valley has caused damage to indigenous sacred sites along the pipeline route.<sup>66</sup> The route of the Mountain Valley Pipeline Project was previously inventoried for cultural resources, and Commission staff did not identify any religious or cultural sites of importance to Indian tribes.<sup>67</sup> Nor were any sacred sites discovered during construction; and the commenters did not identify any specific sites damaged. However, staff identified new and previously recorded archaeological sites within the project's area of potential effect.<sup>68</sup> The National Historic Preservation Act and its implementing regulations allow effects on not eligible sites and National Register of Historic Places-listed or eligible sites if they are properly mitigated according to an approved treatment plan in accordance with an agreement document.<sup>69</sup> Staff executed a Programmatic Agreement (PA) for the Mountain Valley Pipeline Project on December 15, 2017, which allows for the resolution of any adverse effects on historic properties, should they occur.<sup>70</sup> Mountain Valley has complied with the stipulations of the PA since its execution, and during construction. Therefore, we find that the allegations raised by commenters do not justify denying Mountain Valley a two-year extension of time to construct and place into service the Mountain Valley Pipeline Project.

**B. Equitrans' Request for Extension of Time**

31. No additional construction is necessary to complete the Equitrans Expansion Project. Equitrans requests an extension of time because the Equitrans Expansion Project facilities are designed to deliver natural gas to the Mountain Valley Pipeline Project, and

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<sup>65</sup> See EIS at 2-39 – 2-40 (explaining that pipeline will arrive at the worksite with a protective coating of fusion-bonded epoxy or other approved anti-corrosive coating and be inspected before being lowered into the trench).

<sup>66</sup> See, e.g., Kelli Whitfield September 9, 2020 Comments at 1; Michelle Mattioli September 11, 2020 Comments at 1.

<sup>67</sup> EIS at 5-11.

<sup>68</sup> *Id.* at 5-11 – 5-12.

<sup>69</sup> See 36 C.F.R. § 800.6 (2020).

<sup>70</sup> See Branch Chief's December 20, 2017 Letter Re: Executed Programmatic Agreement issued in Docket No. CP16-10-000.

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the extension is needed to align the deadlines for placing the two projects into service.<sup>71</sup> Therefore, we find that good cause exists to grant Equitrans' request for a two-year extension of time to place the facilities into service.

32. In view of the above, we grant Mountain Valley's and Equitrans' requests for a two-year extension of time to complete construction and place into service the Mountain Valley Pipeline Project and Equitrans Expansion Project, respectively.

33. 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:

(A) Mountain Valley Pipeline, LLC is granted an extension of time to October 13, 2022, to complete the Mountain Valley Pipeline Project and make it available for service.

(B) Equitrans L.P. is granted an extension of time to October 13, 2022, to complete the Equitrans Expansion Project and make it available for service.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>71</sup> Equitrans August 25, 2020 Request for Extension of Time at 1.

**Appendix A****List of Timely Intervenors****Docket No. CP16-10-006 – Mountain Valley Pipeline Project  
Request for Extension of Time**

Appalachian Mountain Advocates	Howdy Henritz
Arietta Dupre	Irene E. Leech
Blue Ridge Environmental Defense League, Inc.	J. Phillip Pickett
Carl E. Zipper	James Chandler
Clifford Shaffer	James McGrady
Dana Olson	Jonathan McLaughlin
David J. Werner	Laura Ardison
Delwyn Dyer	Linda E. Parsons Sink
Donald W. Jones	Louisa S. Gay
Donna Pitt	Lynda Majors
Dorothy W. Larew	Maury W. Johnson
Edward Savage	Nan Gray
Elizabeth Long	Nancy Guile
Elizabeth Struthers Malbon	North Carolina Utilities Commission
Fred Vest	Patricia Ann "Cookie" Cole
General Federation of Women's Clubs: Star Woman's Club	Paula L. Mann
Hersha Evans	

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Preserve Bent Mountain

Preserve Craig, Indian Creek Watershed Association, and Save Monroe

Preserve Giles County - Donna Pitt

Preserve Monroe

Protect Our Water, Heritage, Rights (POWHR)

Rick Shingles

Robert M. Jones

Roseanna Sacco

Russell Chisholm

Sandra Schlaudecker

Shirley J. Hall

Steven Hodges

Taylor Johnson

Tina Smusz

Wilbur and Irene Larew

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline, LLC  
Equitrans, L.P.

Docket Nos. CP16-10-006  
CP16-13-000

(Issued October 9, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissented from the Commission's June 2018 order denying rehearing<sup>1</sup> of the decision to issue the Mountain Valley Pipeline (MVP) and Equitrans Expansion Projects (collectively, the Projects) certificates pursuant to section 7 of the Natural Gas Act. In my view, the Commission did not have a sufficient basis to find that the Projects were needed and the Commission did not adequately evaluate the environmental impact of the Projects' greenhouse gas emissions and contribution to climate change. But, those issues are not before us today. The only question here is whether to grant MVP's request for a two-year extension of time to complete construction of the Projects and put them into service. The record before us does not indicate any bad faith or intentional delay on MVP's part to construct these projects. Rather MVP's inability to timely complete the pipeline seems to be due primarily to the multiple infirm permits it received from other federal agencies and their subsequent invalidation in court.<sup>2</sup> Accordingly, and on that basis, I support the extension of time.

2. Nevertheless, I dissent in part because the Commission denies motions to intervene from numerous landowners and an environmental group that were not parties to the underlying Certificate Order proceeding.<sup>3</sup> The Commission contends that only entities that participated in the underlying Certificate Order proceeding may intervene to

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<sup>1</sup> *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,197 (2018) (Glick, Comm'r, dissenting).

<sup>2</sup> *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,027 (2020) (Glick, Comm'r dissenting) (order granting MVP's request to resume construction activities).

<sup>3</sup> Joseph Chasnoff, Mary Rives, Elizabeth Long, Mary Coffey, Reni Fulton, Molly Sutter, Kirk A. Bowers, Cynthia Munley, Freeda Cathcart, Noreen Fulton, Jacob Hileman, Emily Satterwhite, Kathy E. Chandler, Jason Brady Shelton, Gary H. Irwin, Nancy Dickinson, David Witt, Defenders of Wildlife, and Perry D. Martin. *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026 at P 7 (2020).

address MVP's extension request and, because these entities did not, they are out of luck.<sup>4</sup>

3. I disagree. The would-be intervenors are predominately landowners residing on or near the pipeline route—giving them an obvious interest in these proceedings—and they explained how extending the deadline to complete construction would harm those interests. That alone should be enough for the Commission to grant them party status and consider their arguments on the merits. That is especially so given the Commission's oft-professed concern for landowners. Time and time again, landowners do their very best to navigate the complexity of FERC proceedings. And, time and time again, the Commission relies on technicalities to prevent them from even having the opportunity to vindicate their interests. When it comes to protecting landowner interests, we should look at what the Commission does, not what it says. With that in mind, today's order tells you everything need to know about how much the Commission cares about landowners.

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner

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

Document Content (s)

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