

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Mountain Valley Pipeline, LLC	)	
Docket No. CP16-10-000	)	September 10, 2020
Mountain Valley Pipeline Project	)	
	)	

**MOTION TO INTERVENE AND COMMENT IN OPPOSITION TO  
MOUNTAIN VALLEY PIPELINE, LLC  
REQUEST FOR EXTENSION OF TIME BY:  
BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE  
AND ITS CHAPTERS AND MEMBERS IN VIRGINIA  
PRESERVE BENT MOUNTAIN/ROANOKE  
PRESERVE FRANKLIN COUNTY  
PITTSYLVANIA COUNTY PRESERVATION LEAGUE**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission (FERC) Rules of Practice and Procedure, Blue Ridge Environmental Defense League, an intervenor in this proceeding<sup>1</sup>, and its chapters Preserve Bent Mountain/Roanoke, Preserve Franklin County and Pittsylvania County Preservation League – collectively as BREDL - move to intervene and submit comments and complaint in opposition to the Mountain Valley Pipeline, LLC (MVP) request to FERC to extend its Certificate of Convenience and Public Necessity for a two-year period to allow MVP to construct and put in-service its pipeline and necessary supporting industrial facilities.

On August 25, 2020, Mountain Valley Pipeline, LLC (Mountain Valley) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until October 13, 2022, to complete the Mountain Valley Pipeline Project (Project).

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<sup>1</sup> BREDL Motion to Intervene, FERC Dockets CP16-10-000, CP16-13-000, November 24, 2015

## **I. INTEREST OF PROPOSED INTERVENORS**

The Blue Ridge Environmental Defense League and its chapters, Preserve Bent Mountain/Roanoke, Preserve Franklin County and Pittsylvania County Preservation League, are 501(c)(3) non-profit organizations dedicated to protecting and preserving resources in Virginia, and the southeastern United States. The MVP, if ever completed, would cause devastating degradation to the resources these groups seek to protect and preserve. Construction performed before the work stoppage in October 2019 caused considerable destruction, which is ongoing to this day. The requested extension of two years would allow environmental and economic devastation to privately owned land, federally owned properties belonging to all Americans, and wetlands and waterways along the path of the MVP. It is therefore appropriate for BREDL to participate in this intervention. BREDL's participation is in the public interest.

## **II. MVP IS CONSIDERED NEW TO THE MARKET AND NOT A "NATURAL GAS COMPANY". THEIR INEXPERIENCE HAS LED TO DELAYS.**

As pointed out by MVP in a recent filing, MVP is a new market entrant and not yet classified as a "natural gas company."<sup>2</sup> While this comes as no surprise to those who have suffered because of company inexperience, it has led to numerous water violations and other problems. MVP's lack of experience and poor workmanship are self-inflicted problems which caused delays. Therefore, we believe the record reveals they are not capable of completing this project in any way that will not cause lasting damage to landowners' property and local waterways.

## **III. FERC SHOULD UNEQUIVOCALLY DENY THIS MVP REQUEST FOR EXTENSION**

In its August 27, 2020 Notice of Request for Extension of Time, FERC insists that "the Commission will not consider arguments that re-litigate the issuance of the certificate order" including issues surrounding public convenience and necessity and environmental analysis.

Not addressing public purpose and need and NEPA environmental issues is the regulatory equivalent of not talking about the elephant in the room.

The truth of the matter is that FERC should never have granted a new company permission to construct a pipeline through the steep mountainous terrain of southern West Virginia and southwestern Virginia.

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<sup>2</sup> MVP, Motion to Answer to requests for rehearing, MVP Southgate Project, Docket No. C19-14-001, August 10, 2020

As Jacob Hileman, PhD recently pointed out in an article for Virginia Mercury in studying FERC approved pipelines over 100 miles in length from 1997 to present, “no other 42-inch diameter gas pipeline has ever been approved across more miles of steep slopes and high landslide risk areas; disturbingly, neither has a 36-inch, nor a 30-inch, nor even a 24-inch diameter gas pipeline.”<sup>3</sup>

Hileman further states, “MVP routed the pipeline across 75 miles of steep slopes (i.e., slopes over 30 percent grade) and 203 miles of high landslide susceptibility and incidence areas, far surpassing even the now-cancelled ACP, which was twice as long as the MVP.”<sup>4</sup>

#### **IV. CANCELLATION OF THE ATLANTIC COAST PIPELINE JUSTIFIES THE SAME FOR MVP**

In their Request for Extension of Time, MVP references the July 5 cancellation of the Atlantic Coast Pipeline (ACP) as a reason the MVP should be placed into service as soon as possible to meet natural gas needs. Industry experts, including some MVP investors, are saying otherwise.

Just one day after MVP’s filing for an extension, one of the MVP partners Con Edison announced it would no longer invest in natural gas pipelines and may sell its existing portfolio. Chairman, President and CEO John McAvoy was quoted during an Aug. 26 investor presentation saying that the company “certainly would” consider monetizing its MVP assets. He added, “We made those investments five to seven years ago, and at that time we — and frankly many others — viewed natural gas as having a fairly large role in the transition to the clean energy economy. That view has largely changed...”<sup>5</sup>

The US Energy Information Administration (EIA) forecasts that natural gas consumption in the power sector will fall 3.2% in 2021 after only slow growth in 2020. EIA has also stated that US natural gas supplies in storage are 36% above 2019 numbers. A Marketwatch article mentions the global supply glut and limited storage capacity as trouble for natural gas prices.<sup>6</sup>

Dominion and Duke Energy realized that continuing with the ACP was a monetary lost cause. MVP not realizing these market changes is further evidence of their being new to the market.

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<sup>3</sup> “Despite rosy projections, all is not well with the Mountain Valley Pipeline, Virginia Mercury, Jacob Hileman, Sept. 2, 2020, <https://www.virginiamercury.com/2020/09/02/despite-rosy-projections-all-is-not-well-with-the-mountain-valley-pipeline/>

<sup>4</sup> Ibid.

<sup>5</sup> Aug 26, 2020, <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/coned-may-sell-pipeline-stakes-as-it-reconsiders-gas-transmission-investments-60093361>

<sup>6</sup> June 12, 2020, <https://www.marketwatch.com/story/why-natural-gas-prices-havent-yet-bottomed-despite-this-years-nearly-20-drop-2020-06-12>

FERC must not ignore these significant issues and changes in the natural gas industry as it considers MVP's request for certificate extension.

## **V. MAINLINE PERMITS AND AUTHORIZATIONS VACATED; SOUTHGATE NORTH CAROLINA 401 PERMIT DENIED**

In its Request for Extension of Time, MVP said that MVP will not be in service by October 13, 2020 because of litigation regarding project permits and authorizations from the U.S. Forest Service, Bureau of Land Management, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the National Park Service.

MVP neglected to mention that MVP is the responsible party here; it is their efforts, or lack thereof, that have led to these permits and authorizations being revoked.

Regarding the Fish and Wildlife Service permit, MVP conducted activities and drafted the biological analysis (BA) for threatened and endangered species. MVP performed habitat and species surveys and filed survey results.<sup>7</sup> Had this work by MVP been thorough, the court would not have found reason to order a stay on the Biological Opinion (BO) and Incidental Take Statement (ITS). The Fish and Wildlife Service reissued its BO on September 4, 2020.

Regarding the U.S. Army Corps permit being pulled, MVP was unable to abide by the requirements in the permit. West Virginia requires all stream crossing be done within 72 hours. MVP opted to use a dry cut method that can take up to 4 to 6 weeks to complete. MVP should have known about this requirement.

In addition, MVP has benefitted from the hasty and shoddy work of regulating agencies. They shouldn't be allowed to cry about it when those flawed permits and authorizations have been ruled insufficient in a court of law.

The U.S. Court of Appeals - 4th Circuit ruled that the U.S. Forest Service did not adequately assess sedimentation impacts, and the Bureau of Land Management (BLM) did not address various alternative routes. The court opinion vacated both the Forest Service and BLM approvals.

Regarding the MVP Southgate Extension Project<sup>8</sup>, which is important to mention as it is tied to the MVP Mainline Project, North Carolina DEQ denied the 401 Certification on August 11, 2020. As counsel for NC DEQ stated, "the proposed MVP Southgate project is inextricably linked to,

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<sup>7</sup> Mountain Valley Project and Equitrans Expansion Project, FEIS, FERC/FEIS-0272F, June 2017, p. 4-226

<sup>8</sup> FERC Docket No. C19-14-001

and dependent upon, completion of the under-construction Mountain Valley Pipeline (MVP Mainline) project.”

MVP is quick to blame others – litigation, landowners, environmentalists, mother nature – when, in reality, it is MVP’s actions that have led to permits and authorizations being revoked and reviewed.

## **VI. VIOLATIONS**

Problems with MVP’s bad work arose soon after their construction began. On April 25, 2018 the West Virginia Department of Environmental Protection (WV DEP) issued a notice of violation against Mountain Valley after an inspection found sediment-laden water that had flowed beyond the perimeters of where a compressor station was under construction. On May 20, 2018 the Virginia Department of Environmental Quality (VA DEQ) stopped construction on part of the MVP in Franklin County because of improper erosion controls which led to significant sedimentation problems after a rainstorm.

On June 7, 2018 West Virginia regulators issued their second notice of violation citing erosion and sedimentation issues. It was also in June 2018 when the U.S. Army Corps of Engineers suspended its Nationwide 12 permit for MVP for four major crossings in West Virginia. Furthermore, in June MVP suspended pipeline work in Virginia based on issues discovered during inspections.

In July, the Army Corps reinstated the Nationwide 12 permit in West Virginia and VA DEQ allowed MVP to resume work in Virginia. However, on July 9, 2018 VA DEQ issued a Notice of Violation to MVP for failing to take corrective actions within the required timeframes, failure to install best management practices, sediment releases off the right-of-way and releases into surface waters. Also in July, it was reported that West Virginia regulators cited MVP for the 6th time for failing to contain muddy water flowing from construction sites. There were four similar actions in West Virginia since April. It was after these violations by MVP that on July 27, 2018 the U.S. Court of Appeals - 4th Circuit (Richmond) ruled that the U.S. Forest Service did not explain its rationale on sedimentation impacts and the BLM did not address various alternative routes.

Virginia finally took action against MVP on December 7, 2018 when Virginia Attorney General Mark R. Herring and the Virginia Department of Environmental Quality announced the filing of a lawsuit against Mountain Valley Pipeline, LLC for repeated environmental violations in Craig, Franklin, Giles, Montgomery, and Roanoke Counties, particularly violations that occurred during significant rain events over the last year. The suit alleges that MVP violated the Commonwealth’s environmental laws and regulations as well as MVP’s Clean Water Act Section

401 Water Quality Certification by failing to control sediment and stormwater runoff resulting in impacts to waterways and roads.

The complaint against MVP alleged that DEQ inspectors identified violations of environmental laws, regulations, and permits in May, June, July, August, September, and October 2018 while investigating complaints it had received. In addition, an inspection company contracted by DEQ to monitor MVP's compliance identified more than 300 violations between June and mid-November 2018, mostly related to improper erosion control and stormwater management.

On October 11, 2019 Virginia Attorney General Mark Herring announced a \$2.15 million settlement with MVP over the more than 300 water quality violations. However, MVP did not learn anything from this \$2.15 million slap on the wrist by Virginia. In June 2020, VA DEQ announced that it was seeking an additional \$86,000 fine from MVP for violations that occurred from Sept. 19, 2019 to March 10, 2020. These included 29 violations but seven were dropped during the negotiations process. After an initial \$8000 payment by MVP, VA DEQ says it will reduce the fine to an additional \$58,500, plus interest.

Meanwhile, in West Virginia in April 2020, MVP officials contacted FERC to report a land slip that caused the pipeline to move. Land movement occurred in at least three places. Hileman referenced this in his Virginia Mercury article as well.

On Aug. 8, 2019, MVP made an emergency request to FERC to address a landslide that "progressed to the point where a residence directly downslope is unsafe to be occupied." Even more troubling, in April of this year environmental inspectors observed that "slips" had resulted in a situation where "the installed pipe shifted due to the movement of the slips in at least three locations." Since 2018, landslides have caused at least five gas pipeline explosions in central Appalachia.<sup>9</sup>

## **VII. CONTRACTOR'S LAWSUIT**

At the end of July 2020, Trinity, a Texas based contractor who has done MVP work in West Virginia, filed a lawsuit against MVP to collect payment.<sup>10</sup> The \$104 million lawsuit filed in Monroe County requested foreclosure on a mechanic's lien, which placed this on landowner property where the MVP route traversed. Having this judgment on private landowner property places a burden the sale of the property. The lawsuit requested that MVP put the pipeline up

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<sup>9</sup> Hileman, Virginia Mercury, Sept. 2, 2020

<sup>10</sup> US Trinity Energy Services, LLC v. Mountain Valley Pipeline, LLC, Circuit Court of Monroe County, WV, e-filed 7/31/2020

for auction so Trinity can be reimbursed their due payment, further evidence of MVP's self-inflicted problems.

### **VIII. IN CONCLUSION**

Not all pipeline projects are the same. Not all pipeline companies are the same. FERC should properly examine this case and not simply grant this extension.

The Mountain Valley Pipeline project is far from being completed. In Virginia, according to MVP reports filed with FERC, MVP has completed about 80% clearing; 84% right-of-way preparation; 65% trenching, welding, coating and wrapping; 70% stringing; 54% backfilling and tying-in; and 15% final restoration.

FERC has a great opportunity here - the opportunity to right a wrong. Commissioners can prevent further harm to the communities along the MVP route by denying this request for an extension.

Respectfully submitted,

A handwritten signature in cursive script that reads "Mark E. Barker".

Mark E. Barker  
Executive Assistant, BREDL