180 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
Mark C. Christie, and Willie L. Phillips.

Mountain Valley Pipeline, LLC

Docket Nos. CP16-10-009
CP19-477-001
CP21-57-001

ORDER GRANTING REQUESTS FOR EXTENSION OF TIME

(Issued August 23, 2022)

1. On June 24, 2022, Mountain Valley Pipeline, LLC (Mountain Valley) filed a motion requesting a four-year extension of time, until October 13, 2026, to construct and place into service the Mountain Valley Pipeline Project (project) and the Greene Interconnect.[1] The current date by which the project was to have been completed is October 13, 2022. For the reasons discussed below, the extension request is granted.

I. Background

2. On October 13, 2017, in Docket No. CP16-10-000, 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

[1] Mountain Valley Pipeline, LLC June 24, 2022 Request for Extension of Time. The Mountain Valley Pipeline Project was certificated in Docket No. CP16-10-000 and amended in Docket No. CP21-477-000. The Greene Interconnect Project was authorized in Docket No. CP19-477-000 pursuant to Mountain Valley's blanket certificate.

County, Virginia.[2] The Certificate Order required Mountain Valley to construct the project and make it available for service within three years, i.e. by October 13, 2020.[3]

3. On April 16, 2020, in Docket No. CP19-477-000, the Commission issued an order authorizing Mountain Valley to use its blanket certificate authority to construct and operate a new metering and regulating station and related facilities in Monroe County, West Virginia (Greene Interconnect Project). Under the Commission's regulations and subsequent authorizations, Mountain Valley was required to place the Greene Interconnect into service by October 9, 2021.[4]

4. On October 9, 2020, the Commission granted Mountain Valley's August 25, 2020, request for a two-year extension of time to complete the mainline project, extending the deadline to October 13, 2022.[5] The Commission found that Mountain Valley had demonstrated good cause for an extension as it faced ongoing litigation and permitting delays outside of its control.[6]

5. On September 29, 2021, Mountain Valley filed a timely request for an extension of time to construct and place into service the Greene Interconnect, seeking to align the deadline for that project with that of the mainline. That request is still pending before the

[2] *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). The Mountain Valley Project was subsequently amended in Docket No. CP21-57-000 to change the crossing method for 183 waterbodies and wetlands, slightly shift the permanent right-of-way at mileposts (MP) 0.70 and 230.8 to avoid one wetland and one waterbody, respectively, and conduct 24-hour construction activities at eight trenchless crossings. *Mountain Valley Pipeline, LLC*, 179 FERC ¶ 61,013 (2022) (Order Amending Certificate).

[3] Certificate Order, 161 FERC ¶ 61,043 at ordering para. (C)(1).

[4] 18 C.F.R. § 157.206(c) (2021) (requiring facilities to be put into service within one year); *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,047, at ordering paragraph B (2020) (staying the authorization until the October 2019 stop-work order is lifted); *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,027 (2020) (lifting stop-work order) (October 2020 Order).

[5] *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026, *order on reh'g*, 173 FERC ¶ 61,222 (2020), *petition for review pending sub nom. Sierra Club v. FERC*, No. 20-1512, 2021 WL 1044965 (D.C. Cir.) (oral argument held Apr. 7, 2022) (2020 Extension of Time Order).

[6] 2020 Extension of Time Order, 173 FERC ¶ 61,026 at P 12.

Commission, and Mountain Valley has now updated that request so that the in-service deadline for the Greene Interconnect project will match the extended timeline they are requesting for the Mountain Valley project.[7] Mountain Valley states that the Greene Interconnect Project is mechanically complete and ready to place into service, but cannot be placed into service until the mainline is ready for service.[8]

6. As we noted in our April 2022 Order Amending Certificate,[9] the outstanding actions required by law prior to Mountain Valley being able to complete construction of the rest of the Mountain Valley Pipeline Project are: completion of consultation pursuant to the Endangered Species Act; receipt of the U.S. Army Corps of Engineers' (Corps) authorization, pursuant to section 404 of the Clean Water Act, to conduct the open-cut crossings; and authorization from the Forest Service and Bureau of Land Management to construct in the Jefferson National Forest.[10]

7. On June 24, 2022, Mountain Valley filed a request for a four-year extension of time, until October 13, 2026, to complete construction of the Mountain Valley Pipeline Project and make it and the Greene Interconnect Project available for service, citing litigation and permitting delays outside of Mountain Valley's control.[11] Mountain Valley

[7] Mountain Valley Pipeline, LLC September 29, 2021 Request for Extension of Time, Docket No. CP19-477. A timely request for an extension of time tolls the expiration of the deadline until the Commission acts upon the request.

[8] Mountain Valley Pipeline, LLC September 29, 2021 Request for Extension of Time at 1-2.

[9] Order Amending Certificate, 179 FERC ¶ 61,013 at P 145 & n.262.

[10] The open-cut crossings of three additional waterbodies subject to section 10 of the Rivers and Harbors Act also require approval from the Corps pursuant to that act. The Corps anticipates issuing its section 404 and section 10 authorizations together. Virginia DEQ and West Virginia DEP issued certifications, pursuant to section 401 of the Clean Water Act, with respect to the Corps-jurisdictional activities on December 20, 2021, and December 30, 2021, respectively. On January 25, 2022, the Fourth Circuit vacated the Forest Service's record of decision and Bureau of Land Management's right-of-way grant issued for the Mountain Valley Pipeline Project. *Wild Va. v. U.S. Forest Serv.*, 24 F.4th 915 (4th Cir. 2022). Pursuant to Commission order, Mountain Valley remains prohibited from conducting construction activities in the Jefferson National Forest. October 2020 Order, 173 FERC ¶ 61,252 (2020).

[11] Mountain Valley June 24, 2022 Request for Extension of Time at 2.

asserts that good cause exists for an extension as the project is substantially complete[12] and it is actively working to reinstate all required permits.[13] Mountain Valley notes that the project remains fully subscribed under binding long-term agreements and that the Commission's environmental findings will remain valid through the length of the extension.[14] It also notes that stabilization and restoration work remain ongoing,[15] and asserts that it is ready to complete the remaining construction of the project as soon as practicable after receipt of the necessary permits.[16]

II. Procedural Issues

A. Notice, Interventions, and Protests

8. Notice of Mountain Valley's request was issued on June 29, 2022, and published in the *Federal Register* on July 6, 2022, with interventions, comments, and protests due by July 14, 2022.[17] On July 12, 2022, the Commission extended the comment period 15 days to July 29, 2022.[18]

9. The Public Service Commission of West Virginia filed a timely notice of intervention. Timely notices of intervention are granted by operation of Rule 214 of the Commission's rules of Practice and Procedure.[19] Over 20 groups and individuals filed

[12] Mountain Valley Pipeline, LLC June 24, 2022 Request for Extension of Time at 2. Mountain Valley's Weekly Status Report No. 246, which covers the week ending July 15, 2022, reports that of the 304-mile project route, 256.3 miles (84.3%) of pipe has been laid with trenches backfilled, and 169.6 miles (55.8%) of the pipeline route has been restored. Mountain Valley, in assessing the status of the project including compressor station construction and various economic milestones, asserts the project is 94% complete.

[13] Mountain Valley Pipeline, LLC June 24, 2022 Request for Extension of Time at 2.

[14] *Id.* at 2-3.

[15] *Id.* at 3

[16] *Id.* at 4.

[17] 87 Fed. Reg. 40,232 (July 6, 2022).

[18] Notice of Comment Period Extension, issued July 12, 2022.

[19] 18 C.F.R. §385.214 (2021).

timely, unopposed motions to intervene. These intervenors are listed in Appendix A. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.[20] Steven Hodges, a landowner whose property the project crosses, and Paula Mann, whose land is in close proximity to the project route, filed late motions to intervene in the extension of time proceeding, which motions were granted.[21]

10. We received many comments both in opposition to and support of the extension of time request. Multiple individuals whose land the project crosses filed comments expressing support for an extension in order for Mountain Valley to complete restoration of their properties as expeditiously as possible.[22] Comments in support of the extension of time generally assert that the project would develop needed natural gas supplies, create jobs, be consistent with Mountain Valley's obligations to repair and maintain the right-of-way, and result in other economic benefits to local and regional communities.

11. Comments opposing Mountain Valley's request broadly argue that: (1) Mountain Valley has not demonstrated good cause for an extension; (2) the public interest findings underlying the Certificate Order are stale; and (3) substantial new information on the environmental impacts of the project undermine the Certificate Order's conclusion that the project is an environmentally acceptable action.

B. Adequacy of Notice

12. 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.[23] They argue that 15 days is an inadequate amount of time for many of the interested parties to file comments and fully participate in the docket.[24] These arguments

[20] 18 C.F.R. § 385.214(c).

[21] August 12, 2022 Notice Granting Late Interventions.

[22] *See, e.g.*, Robert Allen July 20, 2022 Comments at 1; Beth Mollohan July 20, 2022 Comments at 1; Earl Richards July 26, 2022 Comments at 1.

[23] *See, e.g.*, Carl Zipper July 7, 2022 Comments at 1 (noting that after the publication in the *Federal Register* the public only had eight days to file comments); Chesapeake Climate Action Network July 29, 2022 Comments at 1; Virginia State Senator John Edwards and Virginia State Delegate Sam Rasoul July 6, 2022 Request for Comment Period Extension at 1; North Carolina State Representative Ricky Hurta July 7, 2022 Request for Comment Period Extension at 1.

[24] *See, e.g.*, Preserve Monroe July 11, 2022 Comments at 1.

are moot as the Commission extended the comment period a further 15 days, until July 29, 2022.[25]

III. Discussion

13. 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.[26] However, construction deadlines may be extended for good cause.[27] "Good cause" can be shown by a project sponsor demonstrating that it made good faith efforts to meet its deadline but encountered circumstances beyond its control.[28] We consider extension requests on a case-by-case basis.[29]

A. Good Cause Exists for Granting an Extension of Time

14. Commenters argue that Mountain Valley has failed to demonstrate good cause for an extension.[30] Appalachian Voices argues that Mountain Valley's litigation delays were not the result of unforeseeable circumstances because Mountain Valley inappropriately sought to take advantage of streamlined permitting processes and provided federal agencies with unrealistic analyses of the project's environmental impacts (citing specifically the hydrological analysis used by the Forest Service) and should have

[25] Alternatively, the comment period is consistent with Commission policy. *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144 at P 38 (2020).

[26] *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)).

[27] 18 C.F.R. § 385.2008(a) (2021) (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).

[28] *See, e.g.*, *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030, at P 15 (2022).

[29] *Id.*

[30] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 8-9; Virginia League of Conservation Voters July 29, 2022 Comments at 1; Natural Resources Defense Council July 29, 2022 Protest at 10; Meredith Wilkinson July 12, 2022 Comments at 1; Rebecca Dameron July 12, 2022 Comments at 1; Deborah Kushner July 26, 2022 Comments at 1.

anticipated the courts' vacatur of those approvals.[31] Appalachian Voices also asserts that Mountain Valley wasted two years seeking reauthorization for waterbody crossings under the U.S. Army Corps of Engineers (Corps) Nationwide Permit 12 when the Fourth Circuit had previously vacated such an authorization and suggested individual Section 404 permits would be necessary.[32] Appalachian Voices contends that Mountain Valley's difficulties in obtaining authorization to cross the Jefferson National Forest were foreseeable.[33] Finally, Appalachian Voices argues that Mountain Valley has not justified its extension request.[34]

15. Commenters further argue that Mountain Valley's contention that the project is 94% complete is misleading because only 55.8% of the project has been finally restored.[35] Commenters also claim that project costs to date are sunk and not evidence of Mountain Valley's continued commitment.[36] The Natural Resources Defense Council (NRDC) argues that Mountain Valley's request for four additional years is unprecedented,[37] contending that Mountain Valley's inability to obtain the necessary permits requires the Commission to realize that the project is not viable.[38] NRDC also

[31] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 30-31.

[32] *Id.* at 31 (citing *Sierra Club v. U.S. Army Corps of Eng'rs*, 909 F.3d 635, 655 (4th Cir. 2018)).

[33] *Id.* at 32-33.

[34] *Id.* at 37.

[35] *See, e.g.*, *Id.* at 34; Amelia Williams July 12, 2022 Comments at 1; Virginia League of Conservation Voters July 29, 2022 Comments at 1 (noting that only 55% of the project has pipe in the ground with full restoration completed); Preserve Monroe July 28, 2022 Comments at 3 (emphasizing that just under 56% of the project is complete to full restoration).

[36] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 35-36.

[37] Natural Resources Defense Council July 29, 2022 Protest at 4-9.

[38] *Id.* at 5.

asserts that the four-year timeline is inconsistent with Mountain Valley's public statements expressing the aim to complete the pipeline by 2023.[39]

16. We find that good cause exists to grant Mountain Valley the requested extension of time. 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.[40] Commenters' arguments regarding the foreseeability of Mountain Valley's litigation delays are unpersuasive. 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), Corps, U.S. Fish and Wildlife Service, and the National Park Service. Mountain Valley has attempted to proceed with the project by submitting its permit applications to the Corps[41] as well as the required documentation to the Forest Service and BLM.[42] The fact that Mountain

[39] *Id.*

[40] *See, e.g.*, *National Fuel Gas Supply Corp.*, 179 FERC ¶ 61,226 (2022) (granting a 35-month extension of time due to applicants litigation delays); 2020 Extension of Time Order, 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).

[41] *See* Mountain Valley Pipeline, LLC's Mar. 4, 2021 Individual Permit Application Materials submitted to the U.S. Army Corps of Engineers, Docket No. CP21-57-000.

[42] *See* Mountain Valley Pipeline, LLC's June 22, 2022 SF-299 and Plan of Development and Supporting Materials submitted to the Forest Service on June 3, 2022 and filed in Docket Nos. CP16-10-000 and CP21-57-000.

Valley's attempt to use the Corps' streamlined permitting process failed is not evidence of bad faith. The Fourth Circuit's vacatur of the permit issued by the Forest Service for this project was based on that court's finding fault with the agency's sedimentation analysis underpinning the permit, and thus does not undercut our finding of good cause here to grant Mountain Valley's extension of time.[43]

17. Commenters' arguments as to whether the project is 94% complete or 55.8% complete do not impact the Commission's determination that Mountain Valley remains committed to the project. Since the last grant of an extension of time, Mountain Valley has continued to actively pursue project construction and has engaged in whatever construction and restoration activities it was allowed to pursue.[44] We consider it likely that, should Mountain Valley receive the required permits, those permits will undergo judicial review, which will take time to resolve. It is therefore reasonable that Mountain Valley requests a four-year extension. Based on the foregoing, we conclude that Mountain Valley has made a good faith effort to meet its deadline, but has encountered circumstances that prevented it from doing so.

B. The Certificate Order's Public Interest Findings Remain Valid

18. Commenters argue that the Commission has an obligation to ensure a proposed pipeline project will serve the public interest that endures beyond the initial approval of the project.[45] Appalachian Voices and Preserve Monroe argue that developments since the issuance of the Certificate Order undermine the finding that the project is required by the public convenience and necessity.[46] Commenters further argue that the regions to be served by the project have sufficient pipeline capacity and that demand for the project's

[43] *Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582, 596 (4th Cir. 2018); *Wild Va. v. U.S. Forest Serv.*, 24 F.4th at 927-28.

[44] *See* Mountain Valley Pipeline's February 7, 2022 and April 13, 2022 Letters on Project Status (stating that it will not perform forward construction activities until it receives outstanding authorizations that allow additional construction but continues to perform necessary project stabilization work).

[45] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 9; Natural Resources Defense Council July 29, 2022 Protest at 11-12.

[46] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 11; Preserve Monroe July 28, 2022 Comments at 2-3 (stating that falling renewable energy prices and an overstated demand for gas demonstrate lack of market need for the project).

gas is declining.[47] Appalachian Voices claims that the Commission may not rely solely on the existence of precedent agreements to determine whether the project remains in the public convenience and necessity.[48]

19. These general arguments were asserted in Mountain Valley's 2022 amendment proceeding, in which case we explained that the Certificate Order had 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, and the United States Court of Appeals for the District of Columbia Circuit upheld this finding.[49] In consequence, comments regarding need for the Mountain Valley Pipeline Project are improper collateral attacks on that order and need not be considered further. 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."[50] Here, we find that extending the deadline to construct the project and place it into service until October 13, 2026, will not undermine the Commission's findings in the Certificate Order that the project is required by the public convenience and necessity.

C. The Certificate Order's Environmental Analysis Remains Valid

20. Commenters argue that the Commission must reconsider its environmental findings due to significant new information regarding the impacts of the project.[51] They claim that supplemental NEPA analysis is needed due to new information regarding the

[47] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 11-12; Rebecca Dameron July 12, 2022 Comments at 1; Joy Loving July 12, 2022 Comments at 1.

[48] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 12-14.

[49] Order Amending Certificate, 179 FERC ¶ 61,013 at P 13 (citing Appalachian Voices v. FERC, No. 17-1271, 2019 WL 847199, at *1).

[50] *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

[51] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 15-16; General Federation of Women's Clubs Star Woman's Club July 28, 2022 Motion to Intervene and Comments at 9-11 (stating that the project does not resemble that which was granted a certificate); Preserve Monroe July 28, 2022 Comments at 2-3 (arguing that there have been substantial changes since the project was originally approved); Meredith Wilkinson July 12, 2022 Comments at 1.

project's impacts to soil and aquatic resources.[52] Appalachian Voices asserts that the Commission's determination that the impacts on waterbodies due to sedimentation could be minimized was incorrect.[53] Commenters contend that unexpected sedimentation issues encountered on the project constitute significant new circumstances that require the Commission to supplement its environmental review in the form of a Supplemental EIS.[54] They maintain that the damage caused by the project undermines the conclusion that further construction can proceed without substantial adverse effects to soil and aquatic resources.[55] In addition, commenters suggest that Mountain Valley's compliance history and violations of water quality permits demonstrate it should be denied an extension.[56]

21. According to commenters, a greater understanding of the impact of greenhouse gas (GHG) emissions, including an emissions reduction target and draft guidance on the social cost of carbon protocol, is a significant new circumstance requiring the

[52] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 17; *see also* Louisa Gay July 1, 2022 Comments at 1 (arguing that Mountain Valley has not complied with its erosion and sediment control plan); Natural Resources Defense Council July 29, 2022 Protest at 12 (stating that the sediment and erosion control measures have failed to properly protect landowners and communities).

[53] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 17; *see also* Natural Resources Defense Council July 29, 2022 Protest at 12-13.

[54] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 17; Preserve Bent Mountain July 29, 2022 Motion to Intervene and Comments at 21 (describing multiple heavy rainfall events that caused sedimentation issues); Wild Virginia July 15, 2022 Comments in Opposition at 2 (arguing that prior compliance failures by Mountain Valley contradict the Commission's previous environmental conclusions); Louisa Gay July 1, 2022 Comments in Opposition at 1-2; Joy Loving July 12, 2022 Comments at 1.

[55] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 17; *see also* West Virginia Rivers July 28, 2022 Comments (arguing that Mountain Valley's history of water quality standard violations and non-compliance with state stormwater construction permits warrant a supplemental EIS); Joy Loving July 12, 2022 Comments at 1.

[56] *See, e.g.*, Kay Reibold July 11, 2022 Comments at 1; Wild Virginia July 15, 2022 Comments at 2; Louisa Gay July 1, 2022 Comments at 1; Amelia Williams July 12, 2022 Comments at 1; Joy Loving July 12, 2022 Comments at 1.

Commission to reassess whether the project is environmentally acceptable.[57] Appalachian Voices also suggests that pipe integrity issues associated with protective epoxy degradation on unburied pipe due to prolonged exposure to the elements will lead to safety issues unaccounted for by the EIS and require supplemental analysis by the Commission to gauge threats to public safety.[58] Commenters also raise general environmental justice concerns regarding the pipeline route and compressor station locations.[59]

22. 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 NEPA provide that agencies "[s]hall 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

[57] *See, e.g.*, Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 19-23; *see also* Preserve Monroe July 28, 2022 Comments at 4 (arguing that the project would result in significant negative impacts); Joy Loving July 12, 2022 Comments at 1; Erik Shilts July 12, 2022 Comments at 1; Deborah Kushner July 26, 2022 Comments at 1; Sandra Katz July 28, 2022 Comments at 1.

[58] Appalachian Voices et al. July 29, 2022 Motion to Intervene and Comments at 28; *see also e.g.*, Preserve Bent Mountain Motion to Intervene and Comments at 3 (arguing that pipe was stored improperly and no longer fit for service); Deborah Kushner July 26, 2022 Comments at 1.

[59] *See, e.g.*, Preserve Monroe July 28, 2022 Comments at 2 (arguing that the project targeted and negatively impacted elderly, rural, low-income communities and that those communities have faced severe impacts in Monroe County); Amelia Williams July 12, 2022 Comments at 1; Deborah Kushner July 26, 2022 Comments at 1. Preserve Monroe notes that the Virginia Air Pollution Control Board rejected a permit for the proposed Lambert Compressor Station due to likely disproportionate impacts of the emissions on environmental justice communities. Preserve Monroe July 28, 2022 Comments at 2. The Lambert Compressor Station is part of Mountain Valley's Southgate Project approved in Docket No. CP19-14-000, which is a separate and distinct project than the Mountain Valley Pipeline project that is the subject of this extension request. *See Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) (order issuing certificate for the Southgate Project, which is a 75.1-mile-long pipeline from the terminus of the Mountain Valley Pipeline Project in Pittsylvania County, Virginia, to an interconnect with Dominion Energy North Carolina's local distribution facilities in Rockingham and Alamance Counties, North Carolina).

relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[60] Here, neither factor for preparation for supplemental NEPA has been triggered.

23. First, approval of a request for extension of time is an administrative action and is not considered to be a major Federal action significantly affecting the quality of the human environment.[61] Granting a request for an extension of time to complete an approved action does not constitute the substantial changes to the proposed action envisioned in the NEPA regulations nor does it constitute a new approval of the specific project in question.[62]

24. Second, there has been no showing that the environmental effects of the project have changed materially since the Commission authorized the project. The Commission addressed the project's GHG emissions in the Certificate Order,[63] and will not relitigate those conclusions here.[64] We note, as required by the Pipeline and Hazardous Materials Safety Administration, the pipeline coating will need to be inspected before installation and backfilling can occur,[65] and therefore the concerns raised by commenters on this matter do not justify additional analysis.Similarly, granting of an extension of the deadline for completing construction and placing the project into service does not alter the impacts on environmental justice communities and, in the absence of significant new circumstances or information, does not necessitate a supplement to the prior analysis.[66]

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[60] 40 C.F.R. § 1502.9(d)(1) (2021).

[61] *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030 at P 23.

[62] *Id.*

[63] Certificate Order, 161 FERC ¶ 61,043 at PP 293-296; Rehearing Order, 163 FERC ¶ 61,197 at PP 268-274 (explaining that the Final EIS disclosed project emissions and qualitatively described how GHGs occur in the atmosphere and how they induce global climate change).

[64] *See* June 29, 2022 Notice of Request for Extension of Time.

[65] *See* 49 C.F.R § 192.461(c) (2021).

[66] Final Environmental Impact Statement at section 4.9, issued June 23, 2017, Docket No. CP16-10-000; Environmental Analysis at section B.4.1, issued Aug. 13, 2021, Docket No. CP21-57-000 and Order Amending Certificate, 179 FERC ¶ 61,013 at PP 55-70.

25. In view of the above, we grant Mountain Valley's request for a four-year extension of time to complete construction and place into service the Mountain Valley Project and Greene Interconnect.

26. 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, 2026, to complete the Mountain Valley Pipeline Project, as authorized in Docket No. CP16-10-000 and amended in Docket No. CP21-57-000, and make it available for service.

(B) Mountain Valley Pipeline, LLC is granted an extension of time to October 13, 2026, to complete the Greene Interconnect Project as authorized in Docket No. CP19-477-000, and make it available for service.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Intervenors

- American Gas Association
- Appalachian Voices, Blue Ridge Environmental Defense League, Center for Biological Diversity, Chesapeake Climate Action Network, Indian Creek Watershed Association, Natural Resources Defense Council, Preserve Craig, Inc., Sierra Club, West Virginia Highlands Conservancy, West Virginia Rivers Coalition, and Wild Virginia (jointly, "Appalachian Voices")
- County of Craig, Virginia
- GFWC Star Woman's Club
- Louisa Gay
- Maury Johnson
- Natural Gas Supply Association
- Preserve Bent Mountain
- Preserve Giles County
- Preserve Monroe
- The Wilderness Society
- Virginia Natural Gas
- WGL, Sustainable Energy LLC

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline, LLC — Docket Nos. CP16-10-009, CP19-477-001, CP21-57-001

(Issued August 23, 2022)

DANLY, Commissioner, *concurring*:

1. I concur in the Commission's decision to grant Mountain Valley Pipeline, LLC's request for a four-year extension of time,[1] until October 13, 2026, to construct and place into service the Mountain Valley Pipeline Project[2] and the Greene Interconnect Project.[3]

2. I write separately regarding the Commission's assertion that "the validity of our conclusions and environmental conditions cannot be sustained indefinitely."[4] As I explained in my separate statement in *Delfin LNG LLC*,[5] to suggest that an order's conclusions, which include its public convenience and necessity determination, may not be sustained indefinitely reinforces the Commission's misguided view in *Algonquin Gas Transmission, LLC* that it may revisit determinations made in final, unappealable certificate orders.[6] In *Algonquin Gas Transmission, LLC*, in the face of more than 80

[1] *See* Mountain Valley Pipeline, LLC June 24, 2022 Request for Extension of Time.

[2] *See 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); *see also Mountain Valley Pipeline, LLC*, 179 FERC ¶ 61,013 (2022) (amending the Mountain Valley Pipeline Project's certificate); *Mountain Valley Pipeline, LLC*, 173 FERC ¶ 61,026 (2020) (granting a two-year extension of time to complete construction and place the project into service), *order on reh'g*, 173 FERC ¶ 61,222 (2020), *petition for review pending sub nom. Sierra Club v. FERC*, No. 20-1512 (D.C. Cir.) (oral argument held Apr. 7, 2022).

[3] *See Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,047 (2020).

[4] *Mountain Valley Pipeline, LLC*, 180 FERC ¶ 61,117, at P 22 (2022).

[5] *See* 178 FERC ¶ 61,031 (2022) (Danly, Comm'r, concurring in part & dissenting in part at P 3).

[6] *See generally Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126

years of contrary precedent, the Commission reopened the record of a judicially-final certificate order without even an *attempt* to offer a statutory basis for its action.[7] Although the Commission has since terminated the proceeding,[8] in doing so it refused to identify the authority that would permit it to reopen a certificate proceeding once final, while still leaving the door open to later revisit whether an approved project is still in the public convenience and necessity.[9]

3. Even though the Commission's practice of establishing project deadlines in authorization orders is in order 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,"[10] our inquiry when reviewing a request for extension of time is narrow—it is not an opportunity to revisit the determinations made in certificate proceedings after orders have become final and unappealable.

For these reasons, I respectfully concur.

(2021) (Danly, Comm'r, dissenting).

[7] *See Algonquin Gas Transmission, LLC*, 174 FERC ¶ 61,126; *id.* (Danly, Comm'r, dissenting at PP 18, 22); Former Commissioners Mike Naeve, Elizabeth A. Moler, Donald F. Santa, Jr., Pat Wood, III, Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly April 12, 2021 Letter to the Commission, Docket No. CP16-9-000, et al., at 1-2 ("We are troubled by the novel assertion of authority to reconsider a long-since-final certificate order, without any suggestion that the terms of that order were violated, and long after a private company built and placed into service the facilities in question, at a cost of approximately a half billion dollars. We are unaware of any other instance, in the eight-decade history of the Natural Gas Act, where the Commission has taken such a step."). *Cf. U.S. v. Seatrain Lines, Inc.*, 329 U.S. 424 (1947) (affirming district court's holding that the Interstate Commerce Commission had exceeded its statutory authority in reopening the proceeding and altering the certificate).

[8] *See Algonquin Gas Transmission, LLC*, 178 FERC ¶ 61,029 (2022).

[9] *Id.* (Danly, Comm'r, concurring in part & dissenting in part at P 9) ("The majority's refusal to explain the Commission's authority only highlights the obvious fact that it had none. And instead of acknowledging this plain fact, the majority leaves the door open to revisit whether a project is in the public convenience and necessity at its whim.").

[10] *Altamont Gas Transmission Co.*, 75 FERC ¶ 61,348, at 62,103 (1996).

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James P. Danly
Commissioner