

187 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mountain Valley Pipeline, LLC

Docket No. CP19-14-003

ORDER ADDRESSING ISSUES RAISED ON REHEARING

(Issued April 25, 2024)

1. On December 19, 2023, the Commission granted Mountain Valley Pipeline, LLC's (Mountain Valley) request for a three-year extension of time, until June 18, 2026, to complete construction of the Mountain Valley Southgate Project (Southgate Project).¹ On January 18, 2024, Appalachian Voices, Blue Ridge Environmental Defense League, Center for Biological Diversity, Chesapeake Climate Action Network, Haw River Assembly, Natural Resources Defense Council, Sierra Club, and Wild Virginia, Inc. (Appalachian Voices) filed a timely request for rehearing of the Extension Order.

2. Pursuant to *Allegheny Defense Project v. FERC*,² the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 19(a) of the Natural Gas Act (NGA),³ we are modifying the discussion in the Extension Order and continue to reach the same result in this proceeding, as discussed below.⁴

¹ *Mountain Valley Pipeline, LLC*, 185 FERC ¶ 61,208 (2023) (Extension Order).

² 964 F.3d 1 (D.C. Cir. 2020) (en banc).

³ 15 U.S.C. § 717r(a) ("Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.").

⁴ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Extension Order. See *Smith Lake Improvement & Stakeholders Ass'n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

I. Background

3. On June 18, 2020, the Commission issued a certificate authorizing Mountain Valley to construct and operate the Southgate Project, approximately 75.1 miles of natural gas pipeline and associated aboveground facilities in Pittsylvania County, Virginia, and Rockingham and Alamance Counties, North Carolina.⁵ The Southgate Project will interconnect with Mountain Valley's Mainline System, which was separately authorized in 2017.⁶ The currently certificated Southgate Project has a capacity to provide up to 375,000 dekatherms per day of firm transportation service.⁷ Mountain Valley holds precedent agreements for 300,000 dekatherms per day of firm transportation service.⁸

4. Mountain Valley began construction of the Mainline System in February 2018, but, following a series of court decisions overturning permits from and additional actions by other agencies, the Commission staff issued a stop-work order for remaining construction of the Mainline System in October 2019.⁹ While the Certificate Order set the in-service date for the Southgate Project as June 18, 2023,¹⁰ the Commission simultaneously directed the Office of Energy Projects not to issue any notice to proceed with construction of the Southgate Project until Mountain Valley received its necessary federal permits for the Mainline System.¹¹ After Mountain Valley received all

⁵ *Mountain Valley Pipeline, LLC*, 171 FERC ¶ 61,232 (2020) (Certificate Order), *order on reh'g*, 172 FERC ¶ 61,261 (2020), *aff'd sub. nom.*, *Sierra Club v. FERC*, 38 F.4th 220 (D.C. Cir. 2022).

⁶ *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). The Mainline System consists of 303 miles of natural gas pipeline from Wetzel County, West Virginia, to an interconnection in Pittsylvania County, Virginia.

⁷ Certificate Order, 171 FERC ¶ 61,232 at PP 1, 12.

⁸ *Id.*

⁹ *See Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221, at PP 3-8 (2023) (discussing the construction status of the Mainline System).

¹⁰ Certificate Order, 171 FERC ¶ 61,232 at ordering para. (C).

¹¹ *Id.* P 9.

outstanding permits, on June 28, 2023, the Commission authorized all construction activities to resume on the Mainline System.¹²

5. On June 15, 2023, Mountain Valley requested an extension of time to complete construction of the Southgate Project and place it into service.¹³ In support, Mountain Valley cited the difficulties in completing the Mainline System and consequent delays to the Southgate Project, and Mountain Valley committed to resuming permitting efforts for the Southgate Project once the Mainline System permits were resolved.¹⁴ Mountain Valley stated that it remained committed to completing the project, that precedent agreements for the project were still in place, and that the environmental findings underlying the certificate would remain valid through the term of the extension.¹⁵

6. The Commission granted Mountain Valley's extension request, finding that Mountain Valley had demonstrated good cause for the extension and that the Certificate Order's findings about project need and environmental impacts remain valid.¹⁶ The Commission set a new deadline for completion of construction and placing the facilities into service of June 18, 2026.¹⁷

7. On December 29, 2023, Mountain Valley informed the Commission that it had entered into new precedent agreements for 550,000 dekatherms per day of firm transportation service with respect to the Southgate Project that "contemplate a redesigned project (in lieu of the original project)."¹⁸ The project, if amended, would "extend approximately 31 miles from the terminus of the Mountain Valley Pipeline in Pittsylvania County, Virginia, to planned new delivery points in Rockingham County, North Carolina, using 30-inch diameter pipe," and would include fewer water crossings and would not require a new compressor station as compared to the certificated Southgate

¹² *Mountain Valley Pipeline, LLC*, 183 FERC ¶ 61,221 at P 10.

¹³ Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 1.

¹⁴ Mountain Valley Pipeline, LLC June 15, 2023 Request for Extension of Time at 2.

¹⁵ Mountain Valley Pipeline, LLC August 14, 2023 Answer at 3.

¹⁶ Extension Order, 185 FERC ¶ 61,208 at P 28.

¹⁷ *Id.*

¹⁸ Mountain Valley Pipeline, LLC December 29, 2023 Letter at 1 (December 29 Letter).

Project.¹⁹ Mountain Valley states that it is targeting June 2028 for completion of the redesigned project.²⁰

II. Procedural Matters

8. On February 2, 2024, Mountain Valley filed a motion for leave to answer and an answer to Appalachian Voices' rehearing request. The Commission's Rules of Practice and Procedure²¹ prohibit answers to a request for rehearing. Accordingly, we deny Mountain Valley's motion to answer and reject its answer.

III. Discussion

9. On rehearing, Appalachian Voices asks the Commission to set aside the Extension Order in light of the contemplated redesign of the Southgate Project because, it argues, Mountain Valley is no longer pursuing the certificated project and the Commission has not yet determined whether any redesigned project is required by the public convenience and necessity and is environmentally acceptable.²² Alternatively, Appalachian Voices argues that the Commission erred: (1) in determining that Mountain Valley demonstrated good cause for the extension of time; (2) by failing to address new information that undermines the Commission's determination of market need for the project; and (3) by not addressing new information that undermines the Commission's environmental analysis.²³

A. Summary Denial

10. We find that in the Extension Order the Commission adequately addressed Appalachian Voices' arguments regarding Mountain Valley's purported failure to pursue the project. Specifically, the Commission adequately addressed Appalachian Voices claims about Mountain Valley failing to acquire permits and other approvals,²⁴ about a

¹⁹ *Id.*

²⁰ *Id.* Information similar to that provided in the December 29 Letter was also provided to the Securities and Exchange Commission (SEC) on the same date. *See* Rehearing Request at Ex. 2.

²¹ 18 C.F.R. §§ 385.213(a)(2), 385.713(d)(1) (2023).

²² Rehearing Request at 8.

²³ *Id.*

²⁴ *Compare* Appalachian Voices Motion to Intervene, Protest, and Comments ("Intervention") at 33 *with* Rehearing Request at 13-16; *see* Extension Order, 185 FERC

lack of continued market need for the Southgate Project,²⁵ and about evidence indicating that there have been impacts to soil and aquatic resources greater than those considered at the time of the Certificate Order.²⁶ Accordingly, we sustain the Extension Order on these issues.

B. Request to Set Aside Extension Order

11. Appalachian Voices argues that the Commission should set aside the extension order due to Mountain Valley's statements that it is considering a redesign for the project.²⁷ According to Appalachian Voices, these statements indicate that Mountain Valley is no longer making a reasonable effort to complete the project²⁸ and has therefore abandoned it.²⁹

12. Appalachian Voices further argues that there is no basis for Mountain Valley to maintain the certificate of public convenience and necessity for the Southgate Project

¶ 61,208 at PP 14-15. With respect to the claim that Mountain Valley should be required to apply for a new certificate for the potential redesign of the project, as explained below, a certificate amendment would be the appropriate means to account for any changes to the project as previously certificated.

²⁵ Compare Intervention at 13-19 with Rehearing Request at 19-24; see Extension Order, 185 FERC ¶ 61,208 at PP 16-17. Further, we find that Appalachian Voices's reliance on *Environmental Defense Fund v. FERC* is misplaced. Rehearing Request at 23 (citing *Env't Def. Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2023) (*Environmental Defense Fund*)). In that case, the D.C. Circuit overturned the Commission's finding that a project was required by the public convenience and necessity based on a single precedent agreement with an affiliated shipper. *Environmental Defense Fund*, 2 F. 4th at 976. *Environmental Defense Fund* concerned the grant of an initial certificate, not an extension of time for an already issued certificate. The Southgate Project is supported by precedent agreements for 80% of the project's capacity with nonaffiliated shippers; for the reasons stated in the Extension Order, we need not revisit those conclusions here. Extension Order, 185 FERC ¶ 61,208 at P 17.

²⁶ Compare Intervention at 21-27 with Rehearing Request at 26-29; see Extension Order, 185 FERC ¶ 61,208 at PP 24-27.

²⁷ Rehearing Request at 9.

²⁸ *Id.* (citing *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138 (2020) (good cause found because of "reasonable efforts to move the project forward")).

²⁹ *Id.*

because there has been a significant change to the project since the issuance of the certificate.³⁰ Appalachian Voices claims that the precedent agreements for the project are no longer valid because Mountain Valley, by potentially redesigning the project and seeking a future amendment, is no longer supporting deliveries to the specific end users at specified locations.³¹ Additionally, Appalachian Voices argues that the environmental impacts of the potential amendment have not been analyzed under NEPA.³²

13. We disagree with Appalachian Voice's assertion that, by contemplating redesign of the project, Mountain Valley is abandoning it. Mountain Valley indicates that it is contemplating a redesigned project and has entered into precedent agreements for 550,000 dekatherms per day of firm transportation service.³³ Mountain Valley also stated that it "will finalize the scope and timeframe of the redesigned project after it conducts an open season and executes any additional agreements for firm capacity" and will provide additional information to the Commission when available.³⁴ None of these statements indicate that Mountain Valley intends to abandon the Southgate Project, and instead shows that Mountain Valley is making a good faith effort toward project completion.

14. Currently, Mountain Valley has not entered into prefilings or filed an application to amend the Southgate Project; thus, the details of such an amended project are speculative. As we stated in the Extension Order, Mountain Valley continues to have precedent agreements in place that meet or exceed those for the certificated Southgate Project, and the Commission's determinations of need and environmental analysis remain valid.³⁵

³⁰ *Id.* at 12.

³¹ *Id.* at 10.

³² *Id.* at 11.

³³ December 29 Letter at 1.

³⁴ *Id.* at 2.

³⁵ Extension Order, 185 FERC ¶ 61,208 at P 25. In light of the foregoing, we find without merit Appalachian Voices' request that the Commission require Mountain Valley to surrender any easements for the Southgate Project that it has already obtained. Rehearing Request at 3. Nonetheless, nothing in the NGA gives the Commission authority to deny or restrict a certificate holder's exercise of the statutory right of eminent domain with respect to a certificate issued pursuant to the procedures laid out in the NGA or to require the surrender of property rights obtained either by contract or eminent domain, both processes outside the Commission's jurisdiction. *See Spire STL Pipeline, LLC*, 178 FERC ¶ 61,109, at P 9 (2022); *Twp. of Bordentown, N.J. v. FERC*, 903 F.3d

15. Project sponsors often propose to amend their certificated projects to account for changes.³⁶ Furthermore, the prospect that the project may be amended in the future does not change the underlying consideration of an extension of time.³⁷

16. Should Mountain Valley move forward with revising the project and file an application to amend the certificate, Commission staff will evaluate the environmental impacts of the revised project consistent with NEPA³⁸ and the Commission will determine whether the amendment is required by the public convenience and necessity.³⁹ Moreover, Mountain Valley has represented that it continues to have precedent agreements that cover not only the majority of the capacity of the original certificated project but also the increased capacity of the revised project.⁴⁰ Appalachian Voices has not demonstrated that the Commission should set aside the Extension Order.

234, 265 (3d Cir. 2018); *Berkley v. Mountain Valley Pipeline, LLC*, 896 F.3d 624, 628 (4th Cir. 2018); *PennEast Pipeline Co., LLC*, 174 FERC ¶ 61,056, at P 10 (2021)

³⁶ See, e.g., *Mountain Valley Pipeline, LLC*, 185 FERC ¶ 61,193 (2023) (order amending cost-based resource rates following two extensions of time for the initial certification); *Mountain Valley Pipeline, LLC*, 179 FERC ¶ 61,013 (2022) (order amending construction route and methods following grant of extension of time for certificate); *Golden Pass Pipeline, LLC*, 181 FERC ¶ 61,050 (2022) (order issuing amendment moving or eliminating structures and piping within the certificated project scope); *Algonquin Gas Transmission, LLC*, 174 FERC ¶ 62,179 (2021) (order simultaneously granting extension of time to complete construction and place certificated project into service and amending certificate to modify the project facilities).

³⁷ See *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138 at P 3 (2020) (order granting extension of time to complete construction and make the project available for service while an application for an amendment to the certificate was pending).

³⁸ Compare *Golden Pass Pipeline*, 181 FERC ¶ 61,050 at PP 21-23 (discussing results of environmental impact statement prepared for consideration of the amendment) with *Algonquin Gas Transmission*, 174 FERC ¶ 62,179 at PP 16-17 (finding that prior environmental analysis remains valid and that amended project does not constitute a major federal action significantly affecting the quality of the human environment).

³⁹ See *Golden Pass Pipeline*, 181 FERC ¶ 61,050 at PP 14-15; *Algonquin Gas Transmission*, 174 FERC ¶ 62,179 at PP 14-15.

⁴⁰ December 29 Letter at 1.

C. Environmental Analysis

17. Appalachian Voices argues that the Commission applied the incorrect legal standard when considering whether the environmental analysis for the Certificate Order was stale at the time of the Extension Order. It argues that, instead of considering whether the environmental analysis should be supplemented pursuant to the requirements of NEPA, the Commission should have considered whether there were new environmental impacts affecting the balancing of public benefits against adverse impacts under the NGA.⁴¹

18. This argument is unpersuasive. First, Appalachian Voices does not cite to any support for its argument that the NGA requires the Commission to fully reanalyze the project's public benefits and adverse impacts when considering an extension request and we uphold our prior NGA determinations.⁴² The Commission does not reevaluate issues that were already addressed when it first approved the project; this "forward-looking policy promotes the interests of [the Commission] and project developers in finality."⁴³ The Commission, however, will consider new information or circumstances that post-date the certificate process,⁴⁴ and does so here by finding that Mountain Valley's potential redesign of its certificated Southgate Project fails to justify the Commission setting aside the Extension Order.

19. Next, we disagree with Appalachian Voices' argument that we should have considered new environmental impacts before approving the extension of time request. "[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."⁴⁵ Mountain Valley

⁴¹ Rehearing Request at 26.

⁴² Extension Order, 185 FERC ¶ 61,208 at P 17.

⁴³ *Sierra Club v. FERC*, Nos. 22-1233, 22-1235 and 22-1267, 2024 WL 1335236, at *15 (D.C. Cir. 2024) (*Northern Access*) (The Commission's forward-looking policy allows the Commission to "avoid duplicating the extensive work that was done when granting the certificate; and allows developers to rely on their certificate as they construct their facilities.").

⁴⁴ *Id.*

⁴⁵ *Corpus Christi Liquefaction Stage III, LLC*, 181 FERC ¶ 61,033 at P 20 (2022), *aff'd sub nom.*, *Northern Access*, 2024 WL 1335236 at *7 (citing 40 C.F.R. § 1502.9(d)(1) (2023)) (stating that the Commission has deference to determine "whether a supplemental environmental analysis is necessary under NEPA because such judgement relies on the Commission's evaluation of 'substantial changes' to the proposed project or

has not to date made significant or substantial changes to the Southgate Project that would trigger a supplemental NEPA analysis, and Appalachian Voices has not presented evidence to dispute this finding.

20. Finally, Appalachian Voices argues that the scope of the Commission's consideration of new evidence indicating greater impacts to threatened species was not appropriate and argues that the Commission should have balanced that new evidence under the requirements of the NGA, rather than considering whether the new evidence would require a supplemental NEPA document.⁴⁶ As the Commission has explained, any potential need to reinitiate consultation under the Endangered Species Act and any required environmental analysis to examine the results or such consultation are premature and not "germane to our action here on the requested extension of time."⁴⁷

The Commission orders:

In response to the request for rehearing filed by Appalachian Voices, the Extension Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

'significant new circumstances or information' related to the project."); *Adelphia Gateway, LLC*, 178 FERC ¶ 61,030 at PP 23-24 (2022).

⁴⁶ Rehearing Request at 25-26.

⁴⁷ *Delfin LNG LLC*, 178 FERC ¶ 61,031, at P 19 (2022).