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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426

RE: Chesapeake Climate Action Network supplemental comments regarding the Draft Environmental Impact Statement on the Atlantic Coast Pipeline and Supply Header Project (FERC Docket Nos. CP15-554-000, CP15-554-001, and CP15-555-000)

On behalf of Chesapeake Climate Action Network (“CCAN”), we offer these comments regarding the draft Environmental Impact Statement (“DEIS”) on the Atlantic Coast Pipeline and Supply Header Project (“ACP”), issued by the Federal Energy Regulatory Commission (“FERC”) on December 30, 2016. These comments from CCAN supplement the comments submitted by the Appalachian Mountain Advocates on behalf of CCAN and other groups.

CCAN is the first grassroots, nonprofit organization dedicated exclusively to fighting global warming in Maryland, Virginia, and Washington, D.C. Our mission is to build a diverse movement powerful enough to put our region on the path to climate stability, while using our proximity to the nation’s capital to inspire action in neighboring states, regions nationwide, and countries around the world.

These comments begin by outlining the federal government’s plan to clean up the Chesapeake Bay, the important role protected lands play in this plan, and the pipeline’s impact to these lands. They conclude that FERC’s DEIS completely failed to consider the impact of the ACP on the Chesapeake Bay clean-up plan and recommend additional analysis before approval.

I. The Federal Energy Regulatory Commission failed to consider the consequences of the Atlantic Coast Pipeline on high-value lands protected from development in compliance with the Chesapeake Bay Total Maximum Daily Load

The decision to grant Atlantic Coast Pipeline, LLC (“Atlantic”) a permit to construct the ACP is a “major Federal action” within the meaning of the National Environmental Policy Act (“NEPA”), and it must be preceded by the preparation of an Environmental Impact Statement (“EIS”). 42 U.S.C. § 4332. FERC must prepare an EIS that addresses:

(i) the environmental impact of the proposed action, (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, (iii) alternatives to the proposed action, (iv) the relationship between the local short-term uses of the project as compared to the long term use of the land, and (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332. Under NEPA, “agencies [must] take a ‘hard look’ at the environmental effects of their planned action.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989). If a court determines that an agency did not take a hard look at the relevant factors, the court may find that the agency’s review was arbitrary and capricious and send the analysis back for review. 5 U.S.C. § 706(2)(A). Here, FERC completely failed to consider how, by developing lands that are supposed to be permanently protected from development, the ACP will impact the Chesapeake Bay clean-up plan. We strongly recommend that FERC require Atlantic to consider the ACP’s impact on the Chesapeake Bay before granting approval of the project.

a. Authority for the Chesapeake Bay Clean-Up Plan

The Chesapeake Bay was designated a national treasure by Executive Order in 2009. Exec. Order No. 13,508 (May 12, 2009). The Order also established a federal program tasked with cleaning up the Bay by 2025. To comply with this Order, the Environmental Protection Agency (“EPA”) established the Bay clean-up plan, known as the “Total Maximum Daily Load” (“TMDL”). The TMDL identifies the necessary pollution reductions of nitrogen, phosphorus, and sediment across the seven jurisdictions in the Bay watershed¹ and sets pollution limits necessary to meet applicable water quality standards in the Bay and its tidal rivers. The applicable water quality standards vary depending on the particular water body. When setting the standard, a state must first designate the use of the water body (fishing or recreation, for example) and then establish criteria necessary to protect that use. 40 C.F.R. § 131.6. Under the TMDL, all pollution control measures needed to fully restore the Bay must be in place by 2025, with at least 60 percent of the actions completed by 2017. *Am. Farm Bureau Fed. v. EPA*, 984 F. Supp. 2d 289, 305 (Pa. 2013).

b. Development is a Main Stressor to the Chesapeake Bay

Land development continues to be a top stressor to the Chesapeake Bay ecosystem and a threat to the goal of remediating the Chesapeake Bay. Developing forests and open lands increases pollution by removing the ecosystem services responsible for capturing rainfall and reducing runoff, filter nutrients and sediment, and stabilize soils. Margaret Walls & Virginia

¹ The jurisdictions are Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia.

McConnell, *Incentive-Based Land Use Policies and Water Quality in the Chesapeake Bay*, Discussion Paper 04–20, 4 (March 2004). An 18 percent increase in impervious surfaces results in an 80 percent increase in runoff volume. Stephen J Gaffield, PhD., et al., *Public Health Effects of Inadequately Managed Stormwater Runoff*, 93 AM. J. PUBLIC HEALTH. 1527, 1528 (2003). By contrast, natural groundcover undisturbed by development generally results in only 10 percent of the precipitation traveling as runoff. PRINCE GEORGE’S COUNTY, LOW IMPACT DEVELOPMENT HYDROLOGIC ANALYSIS 4 (1999). The remaining precipitation is soaked up and filtered by the land.

Stormwater runoff is one of the “non-point” sources of pollution that have become the dominant water quality problem in the Bay, dwarfing all other sources of nutrients and sediments. *Am. Farm Bureau*, 984 F. Supp. 2d at 296. Increased land disturbance because of pipeline construction could increase the discharge of sediments into streams, raising total suspended solids concentrations. P.J. Drohan & M. Brittingham, *Topographic and Soil Constraints to Shale-Gas Development in the North Central Appalachians*, 76 SOIL SCI. SOC. AM. J. 1696, 1706 (2012). In addition, removing vegetation for construction and rights-of-way can cause excess runoff and sedimentation that are harmful to river ecosystems, especially in sensitive headwater streams. Susan L. Brantley et al., *Water Resource Impacts during Unconventional Shale Gas Development: the Pennsylvania Experience*, 126 INT’L J. OF COAL GEOLOGY 140, 153 (2014).

c. A Key Strategy to Meet the Bay Clean-Up Plan is to “Permanently Protect Lands from Development”

Protecting land is a key strategy for Bay restoration efforts. On June 16, 2014, representatives from all seven jurisdictions in the Bay watershed signed the most recent Chesapeake Bay Watershed Agreement. CHES. BAY PROGRAM, WATERSHED AGREEMENT (2014). To achieve the goal of restoring the Bay by 2025, the jurisdictions identified protecting lands as a top priority. Since signing the Agreement, the Chesapeake Bay Program has been crafting “management strategies” that describe the steps necessary to achieve the goals of the Agreement. Among the steps, jurisdictions committed to protecting an additional two million acres of lands throughout the watershed by 2025. *Ches. Bay Program, Management Strategy*, http://www.chesapeakebay.net/managementstrategies/strategy/protected_lands (last visited April 6, 2017).

The Bay Program defines “protected lands” as those “permanently protected from development, whether by purchase or donation, through a perpetual conservation or open space easement or fee ownership.” CHES. BAY PROGRAM: INDICATOR ANALYSIS AND METHODS DOCUMENT 1 (2013), available at http://www.chesapeakebay.net/images/indicators/5402/analysis_and_methods_2016_protected_l

[ands_02-06-2017.pdf](#) (last visited April 6, 2017). Protected lands may be held in private ownership as working farms or forests; designated open space and recreational land as a county, town, city, state or federal park; publicly owned forests or wetlands; historically significant properties held as battlefields, colonial towns and farms or military-owned parks. ANALYSIS AND METHODS DOCUMENT at 1.

The Bay clean-up plan requires these lands to be “permanently protected from development.” Indeed, the Chesapeake Bay Program’s Watershed Model, which is used to analyze the impact on the watershed of various pollution-reducing actions, assumes that these lands are permanently protected. CHES. BAY PROGRAM, PHASE 5.3 WATERSHED MODEL § 4.7.3, at 4-40, *available at* http://ftp.chesapeakebay.net/modeling/P5Documentation/SECTION_4.pdf. The model helps guide decision-making for reducing pollution and meeting water quality standards. It *cannot* accurately predict impacts to the Bay if it is based on false assumptions.

The commonwealth of Virginia is heavily invested in the Bay clean-up plan. In 2011, the Virginia Senate Finance Committee estimated that the total cost to Virginia of cleaning up the Bay could reach \$3.2 billion by 2025. VA. SENATE FINANCE COMMITTEE, CHESAPEAKE BAY TMDL WATERSHED IMPLEMENTATION PLAN: WHAT WILL IT COST TO MEET VIRGINIA’S GOALS? Attachment 2, at 17, *available at* http://www.chesapeakebay.net/channel_files/17761/bay_tmdl_wip_ii_overview_for_rrbc_12feb_13.pdf. By all measures, the state has already invested significant resources into clean-up, with state funding for Chesapeake Bay restoration activities in fiscal year 2016 exceeding \$255 million. OFFICE OF MGMT. & BUDGET, REPORT TO CONGRESS: CHESAPEAKE BAY RESTORATION SPENDING CROSSCUT 25 (Dec. 2016), http://www.chesapeakebay.net/documents/cbara_chesapeake_bay_restoration_spending_crosscut_report.pdf. As part of those investments, the state has protected 2,907,343 acres of land—21 percent of Virginia land within the watershed. CHES. BAY PROGRAM, INDICATOR ANALYSIS AND METHODS DOCUMENT: PROTECTED LANDS 5 (updated Sept. 2016), *available at* http://www.chesapeakebay.net/images/indicators/5402/analysis_and_methods_2016_protected_lands_02-06-2017.pdf.

Virginia is on track to meetings its TMDL goals, but it cannot afford setbacks. According to the data provided by Virginia, the commonwealth is on track to meet its nutrient reduction goals. EPA EVALUATION OF VIRGINIA’S 2014-2015 AND 2016-2017 MILESTONES 1 (June 17, 2016), *available at* https://www.epa.gov/sites/production/files/2016-06/documents/va_2014-2015_-_2016-2017_milestone_eval_06-17-16.pdf. It failed, however, to meet its state-wide target for sediment in 2015. *Id.* As a result, the EPA initiated backstop authority and put Virginia’s urban/suburban stormwater program under “enhanced oversight” in 2016. *Id.* With so much invested, Virginia cannot afford for its progress to be undermined by pipeline development that fails to consider impacts to the Bay.

d. The Atlantic Coast Pipeline Will Set Back Efforts to Clean Up the Bay

Construction and operation of the ACP threaten Virginia's commitment to protecting lands in the Chesapeake Bay and all the resulting water quality, public health, and other gains these protected lands are meant to achieve. Overall, the Project will disturb a total of 12,030.7 acres of land in connection with the installation and operation of 603.8 new miles of pipeline in West Virginia, Virginia, and North Carolina. FERC, DRAFT ENVIRONMENTAL IMPACT STATEMENT: ATLANTIC COAST PIPELINE AND SUPPLY HEADER PROJECT, Volume I, at 2-15 (Dec. 2016) [hereinafter DEIS]. Nearly 307 miles of the pipeline—approximately half—will be located in Virginia, DEIS at Table 2.1.1-1. In Virginia, much of the ACP would lie in the Chesapeake Bay watershed, leaving the watershed in Dinwiddie County in southern Virginia only to enter it again in the Tidewater region. DEIS at Table 4.3.2-1.

The construction process is destructive and polluting. During construction, temporary rights-of-way will require trees and vegetation to be removed from a 75- to 150-foot swath over the path of the pipeline, with additional space set aside for spoil and workspace. DEIS at Table 2.2.2-1, at 2-19 (the DEIS labels two different tables with this same number). The construction process involves “leveling the right-of-way surface.” DEIS at 2-32. When rock is encountered, which is likely to be the case on the steep forested mountains of western Virginia, “blasting may be required to fracture the rock.” DEIS at 2-32. Workers will dig trenches to depths of six to eight feet to submerge the 16- to 42-inch pipes below the surface. DEIS at 2-32–2-33. Upon completion of the trenching phase, the construction zone will be allowed to start the decades-long process of reversion back to its natural state. In some cases, the “clearing and restoration of forested areas would be a long-term to permanent impact because of the extended length of time it takes trees to grow to maturity from seedlings or saplings planted as part of the revegetation process.” DEIS at ES-5. Permanent rights-of-way, between 50- and 75-feet wide, along which trees will never be allowed to grow, will remain above the entire stretch of the project. DEIS at Table 2.2.2-1, at 2-19.

Of specific concern to the Bay clean-up plan is ACP's plan to cross a variety of protected lands within the watershed. The crossings at issue will impact the George Washington National Forest and thousands of acres of land held under conservation easements in Highland, Augusta, Bath, and Nelson Counties.

The pipeline will disturb 301.4 acres of land in the George Washington National Forest, with permanent impacts to 156 acres. DEIS at 5-16. The George Washington National Forest is the largest federal landowner in the Chesapeake Bay watershed and the Forest Service recognizes that “[t]he Forest is . . . an important component of the Chesapeake Bay watershed.” USDA, REVISED LAND AND RESOURCE MANAGEMENT PLAN: GEORGE WASHINGTON NATIONAL

FOREST 1-6, E-15 (Nov. 2014) [hereinafter 2014 LRMP]. On these lands, the Forest Service is requiring Atlantic to implement additional mitigation measures. DEIS at 4-148. These requirements are laid out in Land and Resource Management Plans (“LRMPs”). The LRMPs are comprehensive planning documents designed to guide land management decisions within the National Forest boundaries. The 2014 LRMP for the George Washington National Forest takes the Chesapeake Bay clean-up plan into account. “As the largest Federal land manager in the Bay watershed, the Forest fully supports measures like . . . the Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorous and Sediment.” 2014 LRMP at 3-3. In other words, by requiring Atlantic to take additional steps—steps beyond what FERC requires—to comply with a management plan that takes the Bay into account, the Forest Service is making additional efforts to ensure that the pipeline complies with the TMDL.

By publication of the DEIS, consultations between Atlantic and the Forest Service were ongoing. To comply with Forest Service requirements as they relate specifically to the George Washington National Forest, FERC’s DEIS included a laundry list of missing information, recommending that Atlantic file (a) a revised Biological Evaluation; (b) an updated Restoration and Rehabilitation Plan; and (c) an updated Construction, Operation, and Maintenance Plan. DEIS at 5-7. Nowhere in the DEIS did FERC itself discuss the George Washington National Forest’s importance to and impact on the Chesapeake Bay.

The ACP would also cross 10 conservations easements in the Bay watershed, impacting nearly nine miles or 4,622 acres held by the Virginia Outdoors Foundation (“VOF”). DEIS at 4-324 & Table 4.8.5-1. The ACP will permanently impact 54.59 acres of these protected lands. Supplemental Filing, VOF Open Space Conversion Applications, Attachment 1, at 15 (filed Mar. 31, 2017). The VOF is a public organization created by Virginia General Assembly with the goal of preserving open-space lands and the natural, scenic, historic, scientific, open-space, and recreational areas of the Commonwealth. VA. CODE § 10.1-1800. Land held under VOF conservation easements is integral to Bay clean-up. According to its website, VOF is “responsible for more than one third of all the land conserved in the six-state Chesapeake Bay watershed since 2000.” *Va. Outdoors Fdn., About VOF*, <http://www.virginiaoutdoorsfoundation.org/about/> (last visited April 5, 2017).

Activities such as establishing rights-of-way require written approval from the VOF using standards outlined under Virginia law. VA. CODE § 10.1-1704(A). By publication of the DEIS, the VOF had declined to decide on Atlantic’s unprecedented request to convert 10 separate conservation easements. *Va. Outdoors Fdn., Search: Atlantic Coast Pipeline*, <http://www.virginiaoutdoorsfoundation.org/?s=atlantic+coast> (last visited April 4, 2017). Nonetheless, FERC concluded that it believed that “the project w[ill] not be precluded from establishing an easement for ACP on each VOF easement crossed.” DEIS 4-325. FERC then

failed entirely to discuss the impacts of the development of these conservation easements on the Chesapeake Bay.

e. Conclusion

Protected lands play a key role in the federal government’s—and Virginia’s—plan to meet the Bay TDML. In total, the pipeline will disturb at least 4,923 acres of land in the Bay watershed that the Chesapeake Bay Program Watershed Model assumes is permanently protected and untouchable by development. The ACP will permanently impair 211 acres of this land. Volume I of the DEIS mentions the Chesapeake Bay a mere eight times in the 742-page document. It does not mention “protected lands,” as this term is used by the Chesapeake Bay Program, even once. In its discussions about the impacts to public lands and lands held under conservations easements, FERC completely fails to account for how this unexpected development will impact the Bay. In conclusion, we strongly recommend that FERC require Atlantic to take a hard look at the effects of the ACP on the Chesapeake Bay.