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APPALACHIAN MOUNTAIN ADVOCATES

P.O. Box 507
Lewisburg, WV 24901
ph: 304-645-9006
fax: 304-645-9008
email: info@appalmad.org
www.appalmad.org

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USDA Forest Service
George Washington and Jefferson National Forests
ATTN: Mountain Valley Pipeline Survey Comments
5162 Valleypointe Parkway
Roanoke, VA 24019-3050

By electronic mail only to: comments-southern-georgewashington-jefferson@fs.fed.us

RE: Comments on Special Use Application submitted by Mountain Valley Pipeline, LLC

Please accept this letter in response to your request for comments on the November 24, 2014 special use application from Mountain Valley Pipeline, LLC (“MVP”), which requested permission to conduct a survey along a single, 2.13-mile proposed natural gas pipeline corridor within the Jefferson National Forest.¹ Appalachian Mountain Advocates is a non-profit environmental law firm working in West Virginia, Virginia, Kentucky, and Tennessee. We submit the following comments on our own behalf and on behalf of Berriedale Farms, Dominion Pipeline Monitoring Coalition, Eight Rivers Council, Friends of the Lower Greenbrier, Greenbrier River Watershed Association, Indian Creek Watershed Association, Natural Resources Defense Council, Ohio Valley Environmental Coalition, Preserve Giles County (VA), Preserve Montgomery County (VA), Preserve the New River Valley, the Sierra Club (including the Virginia and West Virginia Chapters), West Virginia Highlands Conservancy, West Virginia Rivers Coalition, West Virginia Wilderness Coalition, and the undersigned individuals. We also incorporate by reference the comments submitted by the Laurel Mountain Preservation Association and the Virginia Chapter of the Sierra Club.

Introduction and Requested Action

We understand that the application is for the survey alone and not the pipeline right of way itself. However, as you have already noted, the information from any surveys will form the basis of all future decisions regarding whether and where to allow the pipeline. *See* Jan. 21, 2014 News Release, quoting Supervisor Speaks saying that “The information gathered from these surveys are necessary to make future decisions on whether or not to allow the construction

¹ These comments address only the specific route proposed by MVP and detailed in the Forest Service’s public notice. In the event that MVP alters its proposed route, including any alteration of its proposed crossing of the National Forest, the company would need to submit a revised application and a new public comment period would be required.

and operation of the proposed pipeline on the Jefferson National Forest.” Because the surveys will be the basis of future substantive decisions, the Forest Service’s decision on MVP’s application is important. We ask that the permit be denied because:

(1) MVP’s application provides unsupported answers to crucial Special Use Authorization questions involving reasonable alternatives and avoidance of Federal Lands;

(2) the application is inconsistent with the Jefferson National Forest Plan, which contains management prescriptions that are inconsistent with MVP’s proposal;

(3) the application as presented does not serve the public interest because it proposes to gather too little detail during the surveys to allow the Forest Service to adequately analyze either the actual environmental effects of the proposed route or of reasonable alternatives;

(4) the Forest Service’s asserted categorical exclusion from the National Environmental Policy Act is inapplicable because the impacts of the actual pipeline construction are the reasonably foreseeable result of approving a single-corridor survey of MVP’s preferred route; and

(5) the Forest Service has an obligation under NEPA to consider alternatives to MVP’s proposed survey that is independent from the requirement to perform an EIS.

In short, the application as submitted is irreconcilable with the Forest Service’s own policy goals and legal obligations. For those reasons, we urge the Forest Service to deny the application. MVP should not be allowed to invest so heavily in a single route at this early stage, in which all alternatives deserve equal investigation and consideration by the public and by public agencies such as the Forest Service.

I. The Forest Service should deny the application as inconsistent with Forestwide Standards, and insufficient to serve the public interest.

a. MVP’s application fails to provide adequate support for its answers to crucial questions about alternatives and avoidance of Federal Lands.

MVP is required to complete Form 299 in order receive a Special Use Authorization from the Forest Service. Form 299 includes questions, such as question 13, that carry out the objectives of the Revised Land and Resource Management Plan for the Jefferson National Forest (the “Forest Plan”), which explains that special use authorizations should be “[l]imited to needs that cannot be reasonably met on non-NFS lands or that enhance programs and activities.” Forest Plan, 2-60. Thus, the Forest Service requires and applicants must provide substantive information about alternatives on non-Federal Land as a condition of permit issuance. Without that information, the Forest Service cannot assess the necessity to serve the public interest and

cannot determine whether the use can be accommodated on non-Federal land.² MVP's application fails to provide information for the Forest Service to make that determination.

Question 13a of Form 299 states in full: "Describe other reasonable alternative routes and modes considered." The Application Instructions require that applicants answering Question 13 must provide "information on alternate routes and modes in as much detail as possible." The applicant is also instructed that the failure to provide information may lead to rejection of the application. Form 299 Instructions, p. 3. MVP answered that

A detailed routing analysis was performed in May, 2014 that analyzed 94 corridor segments including 2,362 miles of alternative routes including several alternate locations to cross the Jefferson National Forest. There are no routes from the origination of the pipeline to its terminus that would not cross the National Forest System (NFS) lands. The proposed location was the shortest crossing distance identified with the least disturbance and an opportunity to co-locate.

MVP, however, failed to provide any documentation of its routing analysis that would allow the Forest Service to confirm or deny its claims. Such supporting information is necessary for the Forest Service to determine if MVP's proposed route actually involves the "least disturbance" of National Forest lands of any potential route or if there are other routes that would not cross National Forest lands.

As with Question 13a, MVP also fails to provide adequate information in response to Question 13b, which requires the applicant to answer "[w]hy were these alternatives not selected?" MVP answers that the route selected was "the shortest crossing of NFS lands" and that other routes presented "constraints" that eliminated them from contention. Again, without the underlying alternative route analysis, the Forest Service cannot confirm that MVP's proposed route is indeed the shortest crossing. Nor can it know whether the unspecified constraints would actually preclude pipeline construction along an alternative route.

Similarly, MVP fails to provide any analysis that would allow verification of its response to Question 13c, which asks for "an explanation as to why it is necessary to cross Federal Lands." MVP makes only the unsupported contention that there "is no potential route to deliver gas from the Project's origination to its terminus without crossing federal lands." Indeed, there appears to be a route close to MVP's proposed route that, while crossing lands within the Jefferson National Forest proclamation boundary, would not actually cross any existing National

² Additionally, Forest Service Manual Directive 2726.34, concerning special use authorization for natural gas pipelines under the jurisdiction of FERC, imposes an independent duty upon the Forest Service to ensure that the pipeline applicant, as part of the FERC process, collects adequate information for the Forest Service to issue an ultimate decision. USFSM 2726.34(2)(c) (directing the Forest Service to "[e]nsure the [FERC] process and documentation are adequate (FSM 1950 and FSH 1909.15) for Forest Service use in issuing a decision").

Forest lands.³ MVP has not explained why that route is not feasible. Nor, as discussed in more detail below, has MVP explained why its pipeline cannot be constructed within, or the needs it will serve be met by, one of the numerous existing natural gas corridors that connect the Marcellus region of northern West Virginia with the intended consumers in the Southeast. As numerous documents in the public record show, there are numerous alternatives that demonstrate there is no necessity to cross new Federal Lands for a pipeline. Alternatives include (1) existing corridors that avoid the National Forest and (2) proposed corridors that avoid the National Forest. Because it lacks the necessary information to assess the feasibility of those alternative routes, MVP's application is incomplete and cannot be processed by the Forest Service.

Existing Corridors that avoid the National Forest

Several existing pipeline corridors already connect the "Marcellus region" to the Southeast. See Exhibit A (Map of "System Alternatives" for Dominion Resources' Atlantic Coast Pipeline, Resource Report 10, Table 10.4-1, submitted to FERC December 2014) (showing proposed routes of several pipelines along with existing lines). Each of these merits consideration.

There are many existing pipelines that follow a general trajectory from MVP's proposed production area to its proposed customer delivery points. Exhibit B is a detail of a map of existing pipelines in the region. Several existing pathways that avoid the National Forest are evident. First, there is an existing right of way that runs roughly due south from northern West Virginia. That right of way connects to an east-west right of way in Virginia that would reach MVP's desired destination. Second, there is an existing pipeline that runs east-west through southern Pennsylvania and then connects to the Transco pipeline, which runs southward to southern Virginia. Pennsylvania and West Virginia are already so interconnected by pipeline that they function as a single unit. (U.S. Energy Information Administration, Aug. 23, 2013 news article, "West Virginia, southwest Pennsylvania form an integrated natural gas production region," Energy Information Administration article, Aug. 23, 2013, available at <http://www.eia.gov/todayinenergy/detail.cfm?id=12671>). Thus, pipelines from Pennsylvania can carry gas from West Virginia as well. Those existing pipeline routes follow a general trajectory from Northern West Virginia to the Tidewater area and southward to southern Virginia. MVP cannot meet its Special Use Authorization obligation to show the necessity of its project on Federal Lands without considering these existing pipeline rights of way.

Additionally, according to the U.S. Energy Information Administration, many companies are already increasing their pipelines' capacity to move bidirectionally, which will allow natural gas from the Northeast and West Virginia into the Southeastern markets. Notably, the agency found that many existing pipelines are significantly underused. Many pipelines saw a decrease in usage of as much as 84% from 2008 to 2013. The agency found:

³ That general route would run just south of MVP's proposed route, going south of Narrows, VA then north of Pearisburg, VA, then south of Blacksburg, VA. MVP fails to address this potential route either in its response to Question 13a or in its response to Question 13c.

As a result of these pipelines being underutilized, the pipeline companies have announced plans to modify their systems to allow for bidirectional flow, adding the ability to send natural gas out of the Northeast region:

- Columbia Gulf Transmission completed two bidirectional projects in 2013 and 2014 that enable the system to transport natural gas from Pennsylvania to Louisiana.
- ANR Pipeline, Tennessee Gas Pipeline, Texas Eastern Transmission, and Transcontinental Gas Pipeline are planning to send natural gas from the Northeast to the Gulf Coast because of the potential of industrial demand and LNG exports from the Gulf Coast. These projects total 5.5 Bcf/d of flow capacity.
- The Rockies Express Pipeline's partial bidirectional project (2.5 Bcf/d of capacity) is primarily to transport Marcellus natural gas to more attractive markets in Chicago, Detroit, and the Gulf Coast.

(U.S. Energy Information Administration, Dec. 2, 2014 news article, “32% of natural gas pipeline capacity into the Northeast could be bidirectional by 2017,” available at <http://www.eia.gov/todayinenergy/detail.cfm?id=19011>). Thus, this assessment describes at least six projects that are completed or underway that move Marcellus natural gas to Southeastern markets. The EIA further noted that, in addition to costing less money to construct, these bidirectional projects produce fewer environmental impacts. We agree that using existing, underused pipelines is a superior option to constructing new rights of way, especially rights of way through Federal Lands. The above information must be presented by MVP and analyzed by the Forest Service before a new and potentially redundant utility corridor is established in the National Forest.

Proposed Corridors that avoid the National Forest

At least three other proposed natural gas pipelines also follow a general trajectory from northern West Virginia to southern Virginia, one of them using an existing east-west Texas Eastern pipeline to cross the Appalachians, but none of those proposals cross the National Forest. A prime example is the Transco Atlantic Sunrise Expansion Project. As explained by Transco, “[t]he expansion will connect producing region in northeastern Pennsylvania to markets in the Mid-Atlantic and southeastern states, as far south as Alabama.” Exhibit C is Transco’s map of the Atlantic Sunrise Project. It illustrates the existing and proposed connections from central Pennsylvania southward into North Carolina. Thus, this project will connect the same production area to the same customer areas as those proposed by MVP, and will do so with a mix of facility upgrades and 178 miles of new pipeline, far fewer than what MVP has proposed.

Spectra Energy has proposed the Carolina pipeline project, which would run roughly due south from Pennsylvania through Virginia and into North Carolina, avoiding the National Forest. Although the project appears to be on hold, it appears that the route is viable.

All of this information undercuts MVP’s assertion to the Forest Service that there is “no potential route to deliver gas from the Project’s origination to its terminus without crossing

federal lands.” MVP’s application should not be approved without complete, verifiable answers to Questions 13a-c. MVP, as with all other applicants for Special Use Authorization, should demonstrate that reasonable alternatives were considered and provide factual support for why they were rejected. MVP has not done so. Without complete answers, the Forest Service cannot evaluate whether a Special Use Authorization is appropriate. Therefore, the permit should be denied.

b. MVP’s application fails to conform to the Forest Plan and, if approved, would prevent the Forest Service from implementing the plan.

As the Forest Service knows, an extensive public process led to the creation and publication of the Forest Plan. MVP’s application is inconsistent with several aspects of the Forest Plan, including the goal of full co-location of new utility corridors and protection of the values of the Appalachian Trail corridor, and does not provide any information that would allow the Forest Service to implement its policies. For that reason, the application should be denied.

According to the Plan’s Forestwide Direction, existing utility corridors within the National Forest are designed “to facilitate co-location of new utilities.” Forest Plan, 2-59. Forestwide Standard FW-247 addresses linear rights-of-ways and requires the Forest Service to “[d]evelop and use existing corridors and sites to their greatest potential in order to reduce the need for additional commitment of lands for these uses. When feasible, expansion of existing corridors and sites is preferable to designating new sites.” Forest Plan, 2-60. Similarly, FW-244 addresses new special use authorizations and requires the Forest Service to “[l]ocate uses where they minimize the need for additional designated site[s]” and to “[r]equire joint use on land when feasible.” *Id.* Pursuant to FW-248, utility special use authorizations outside of existing corridors require amending the Forest Plan. Forest Plan, 2-60.

The Forest Plan includes areas called “5C – Designated Utility Corridors.” Buried pipelines are a specifically included use for this type of land. Forest Plan, 3-72. For such areas, “[w]here possible, existing corridors are expanded as needed, rather than creating additional areas. Compatible multiple uses are encouraged[.]” *Id.* The stated purpose of Designation 5C is to facilitate the co-location of utility rights of way. Forest Plan, 2-59. Fully 3,700 acres of the National Forest are already Designated Utility Corridors. Forest Plan, 3-2.

We recognize and appreciate that MVP’s proposed route utilizes co-location to some extent. However, in order to be consistent with the Forest Plan, MVP and the Forest Service must demonstrate why full co-location within existing corridors is infeasible. Any decision to defer consideration of co-location will only make such co-location more difficult and costly, and therefore less likely. To abide by the Forest Plan, MVP must be required to fully survey existing 5C areas for suitability. The Forest Plan’s maps show multiple routes that could fully traverse the National Forest using existing 5C Designated Corridors. Without an explanation showing why those routes are not feasible, the Forest Service cannot approve MVP’s application as consistent with the Forest Plan.

The segment of MVP’s route that does not co-locate within an existing 5C Utility Corridor crosses the Appalachian National Scenic Trail Corridor, management area 4A, which is

subject to its own management directives. That corridor is to be managed for, among other things, “the conservation and enjoyment of the nationally significant scenic, historic, natural and cultural qualities of the land through which the Trail passes,” while adjacent areas should be managed “in a manner which will reasonably harmonize with and be complementary to the Appalachian Trail experience.” Forest Plan, 3-19.

The Forest Plan specifically addresses the relationship between utility corridors and the Appalachian Trail corridor, stating a goal of avoiding the existence of utility corridors within the viewshed of the Appalachian trail corridor “to the greatest extent possible.” Forest Plan, 3-20. Where utility crossings cannot be avoided, Standard 4A-028 requires the Forest Service to “[l]ocate new public utilities and rights-of-way in areas of this management prescription area where major impacts already exist.” Forest Plan, 3-23.

Again, MVP’s application fails to provide adequate information to determine compliance with the Forest Plan’s management prescriptions for the Appalachian Trail corridor. MVP has not demonstrated why avoidance of crossing the corridor is not feasible, nor has it even claimed that its proposed crossing is in an area where “major impacts already exist.” A major new pipeline right-of-way is not compatible with the “conservation and enjoyment of the nationally significant scenic, historic, natural and cultural qualities of the land through which the Trail passes,” nor would it “reasonably harmonize with and be complementary to the Appalachian Trail experience.” Without information showing that MVP’s proposed crossing location is located at an area where “major impacts already exist,” the Forest service cannot approve the application.

The remainder of MVP’s proposed route crosses an area designated as 8A1 – Mix of Successional Habitat in Forested Landscapes. Pursuant to the Forest Plan, the desired condition for this area is “a natural, forested appearance.” Forest Plan, 3-112. Management of those areas should, among other things, “retain forest cover across the prescription area,” “maintain or enhance hard and soft mast production,” and “limit motorized access across the prescription area.” *Id.* Pipeline rights of way must be kept clear and cannot be forested. Pipeline rights of way tend to be extremely linear, do not foster a natural appearance, and increase access for motorized vehicles such as ATVs. In those ways, establishing a new utility right of way across this area would conflict with the Forest Plan.

In sum, MVP’s application cannot be squared with the Forest Plan. The objectives of the Forest Plan cannot be achieved if applicants such as MVP are not required to investigate and achieve full co-location or siting in alternative routes outside the National Forest. Such investigation is the only way for the Forest Service to implement its own policies embodied in the Forest Plan. Further, if MVP is not compelled to investigate options consistent with the Forest Plan, it will only be more reluctant to do so once it has invested heavily in its preferred route. FERC is not obliged to follow the goals and standards set forth in the Forest Plan and consideration of the compatibility of MVP’s proposed route with the Forest Plan cannot be deferred. If investigation of full co-location or avoidance is postponed or deferred to FERC, the public has no assurance that the investigation will ever be carried out. If full co-location and avoidance are not investigated now by the applicant, they likely will not occur, and the Forest Plan will be violated and diminished. For those reasons, the permit should be denied unless and

until the applicant proposes to fully investigate co-location and achieve congruity with the Forest Plan.

c. MVP's application does not serve the public interest and should be denied.

The Forest Service, in evaluating Special Use applications, has an obligation to determine whether the proposed use would be in the public interest. The Forest Service also has the authority to require information and to impose permit conditions in order to serve the public interest. MVP's proposed use would not be in the public interest. On the contrary, MVP's single-corridor proposal would deprive the Forest Service and the public of the information necessary to evaluate other routes. MVP has not provided information about non-Forest routes and has not justified why its proposed pipeline cannot be located entirely within existing utility corridors. That failure is more than sufficient to trigger denial of the application.

Under the federal regulations governing Special Uses, the Forest Service has the obligation to reject any proposed special use that the authorized officer determines would not be in the public interest. 36 C.F.R. § 251.54(e)(5)(ii) (addressing "Second-level Screening of Proposed Uses"). Further, all applicants are required to furnish information regarding feasibility that is requested by the agency. 36 C.F.R. § 251.54(b)(5). Additionally, § 251.54(5) provides that the agency may require "any other information and data necessary to determine . . . compliance with requirements for associated clearances, certificates, permits, or licenses."⁴

MVP's proposed use is both too narrow and too shallow to serve the public interest. It is too narrow because it proposes a survey of only a single corridor. It is too shallow because the proposed survey would not yield enough data to evaluate the full environmental impact of the pipeline itself.

As to the single-corridor proposal, MVP's application is insufficient. As noted above, there are feasible existing and proposed routes that avoid Federal lands. Many underused pipelines are becoming bidirectional to serve southeastern markets. There are also existing utility corridors within the Forest that could allow complete co-location. The above citations regarding alternative routes in section I(a) are incorporated herein by reference. Without a proposal to study those alternatives, the application is insufficient. The public interest demands that the Forest Service carry out an evaluation of route alternatives at the outset of the process, regardless of whether MVP itself has settled upon a single preferred route.

Even setting aside the issue of alternative routes, MVP's proposed survey would not collect sufficient information to allow full evaluation of the route. For example, it is well established that removal of mature forest results in changes in the bird community. Some forest-dependent species are sensitive to both loss of forest (e.g., within the corridor itself) but also to

⁴ 30 U.S.C. § 185 pertains to rights of way rather than surveys. However, it requires that such authorizations shall be subject to "such terms and conditions as the Secretary or agency head may prescribe regarding . . . survey[s] . . .". That statute, at 30 U.S.C. § 185(h), also requires the agency issuing such an authorization to "issue regulations or impose stipulations" necessary for environmental protection.

degradation of forest along edges (from edge effects due to forest fragmentation) which effectively increases the size of the disturbance footprint.

As shown in previous studies, it appears that long, linear corridors such as those created by buried pipelines are especially problematic because of the large amounts of edge and fragmentation they create. For example, abundance and nesting success of forest birds could be negatively affected along these extensive edges from increased predation (e.g. predators could use pipelines as travel corridors and to search for nests along edges), increased parasitism by cowbirds, and/or increases in exotic species (e.g., European starling which compete for cavities with native cavity nesters). Both cowbirds and starlings can use corridors to move into previously unfragmented forest habitats (as can other invasive and exotic species).

Additionally, the central Appalachians are known for high abundance and diversity of woodland salamanders. Salamanders have very low abundance in grasslands on surface mines and the forest edges along mines have lower abundance than forest away from edges.

MVP's application is devoid of any proposal that would collect information on the effect of fragmentation on wildlife. The application does not include any information that would allow the public to analyze the noise effects from construction and from any compressor stations along the route. Several other citizens, including the Laurel Mountain Preservation Association have made cogent comments regarding additional information to be gathered and those comments are incorporated by reference.

Additionally, MVP's proposal would not provide stream habitat information that would allow the public to assess the impact of construction on brook trout and other aquatic life. MVP does not propose to assess shallow aquifer characteristics, slope stability, groundwater patterns, or spring locations if those springs do not constitute waters of the United States. MVP evidently does not propose to survey with regard to species that are state-listed as endangered or threatened. Without this information, FERC, the Forest Service and the public will be deprived of a complete and accurate analysis of the actual effects of pipeline construction, as required by NEPA.

The application reflects a private company's focus on building the route it prefers. It is the Forest Service's duty to weigh that application against the public interest and to assess reasonable alternatives. MVP's application reflects its own interest. It does not reflect the Forest Service's interest in carrying out its own Forest Plan, and it does not reflect the broader public interest in a full and fair consideration of alternative routes. For those reasons, the permit should be denied.

- II. The Forest Service is obligated under NEPA to thoroughly consider alternatives to MVP's proposed single corridor survey.**
 - a. The Forest Service's use of a categorical exclusion is improper because the agency is obligated to consider the indirect effects of the construction and operation of the pipeline associated with a single-corridor survey.**

The Forest Service has asserted a categorical exclusion to the requirement to prepare an environmental impact statement under National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.* However, because a reasonably foreseeable impact of the issuance of a special use permit for a single-corridor survey is the construction of the pipeline proposed for that route, and because granting the permit as proposed could foreclose meaningful consideration of reasonable alternatives such as full co-location or avoidance of the National Forest, the use of a categorical exclusion does not comply with NEPA.

The Forest Service has indicated that the issuance of a special use permit to MVP for the proposed pipeline survey would fall under the categorical exclusion for “[s]hort-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities.” 36 C.F.R. § 220.6(e)(8). In electing this categorical exclusion, the Forest Service is making a finding that the survey will not significantly affect the environment such that NEPA’s environmental impact analysis obligations are not triggered.

MVP’s proposed survey is not, however, an isolated action, but rather one step in a larger process that would result in construction and operation of a major gas pipeline within the survey corridor. As these comments previously explained, authorization of MVP’s proposed single-route survey only serves to “lock in” the single surveyed route as the ultimate path of construction because it ensures that (1) MVP will continue to invest exclusively in that route (and resist other routes, regardless of Forest Plans or other public policies) and (2) the public and public agencies will not have sufficient information to fully and fairly assess alternatives not on the preferred route.

Because the impacts of the Forest Service authorizing the single-route survey are so closely connected with the impacts of the ultimate construction and operation of the pipeline along that route, those impacts must be considered together. The impacts of issuing a special use permit for a single-corridor survey, when viewed cumulatively with the impacts of the reasonably foreseeable future actions of pipeline construction and operation, trigger a full NEPA review and make the Forest Service’s election to proceed under the categorical exclusion at 36 C.F.R. § 220.6(e)(8) inappropriate.

NEPA requires the preparation of an environmental impact statement for all actions that will significantly affect the environment. 42 U.S.C. § 4332(2)(C). Assessment of impacts includes consideration of both direct and indirect effects on the environment. 40 C.F.R. § 1508.8. Indirect effects of an action “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* at § 1508.8(b). The Forest Service’s NEPA regulations define “reasonably foreseeable future actions” as “[t]hose Federal or non-Federal activities not yet undertaken, for which there are existing decisions, funding, or identified proposals.” 36 C.F.R. § 220.3. Consideration of the indirect effects of reasonably foreseeable future actions falls within the Forest Service’s duty to consider cumulative effects. *Id.* at § 220.4(f); *see also* 40 C.F.R. § 1508.7 (defining “cumulative impact” as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions”).

The construction and operation of the pipeline within the survey corridor proposed by MVP is a reasonably foreseeable future action and its effects must therefore be analyzed by the Forest Service. MVP has made abundantly clear in both filings with FERC and statements to the public that it wishes to construct the pipeline along a route that includes the proposed survey corridor and that it has raised the funding to do so. Those statements and their underlying facts constitute “existing decisions, funding, or identified proposals” for final construction and operation of the pipeline within the survey corridor. See 36 C.F.R. § 220.3. If MVP is allowed to conduct a survey only for its preferred route, to the exclusion of other routes that avoid the forest and/or fully co-locate with existing rights of way, the construction and operation of the pipeline along that route are reasonably foreseeable future actions that must be considered. Use of a categorical exclusion as proposed by the Forest Service would thus violate NEPA.

That conclusion is bolstered by the NEPA regulations’ definition of “significance.” In order to determine whether an action will significantly affect the environment, and thus trigger preparation of an EIS, an agency must look at both “context and intensity.” 40 C.F.R. § 1508.27. Key considerations in assessing the intensity of an action include both the “degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration” and whether “the action is related to other actions with individually insignificant but cumulatively significant impacts.” Id. at § 1508.27(b)(6)-(7). The regulations explain that “[s]ignificance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” Id. at § 1508.27(b)(7).

As explained above, allowing MVP to proceed with the survey along only its preferred route limits the information available to the Forest Service, FERC, and other agencies that will ultimately be required to evaluate the feasibility and likely impacts of alternate actions. It also furthers MVP’s already significant financial investment into its preferred route, making selection of an alternate route substantially less likely and effectively tipping the scales toward MVP’s preferred route by failing to elicit information about other alternative routes. While authorization of the single route survey does not make 100% certain that the pipeline will be constructed along that route, it undoubtedly “establish[es] a precedent” for that future action to a significant degree. See 40 C.F.R. § 1508.27(b)(6). If detailed information exists only for MVP’s preferred route, it is “reasonable to anticipate” that the pipeline will ultimately be constructed along that route. Id. § 1508.27(b)(7).

The Forest Service may thus only use the proposed categorical exclusion for a special use permit for a survey that does not foreclose the consideration of reasonable alternatives and effectively bias the ultimate decision about the route of construction. In order to avoid violating NEPA by failing to consider the reasonably foreseeable indirect impacts of pipeline construction and operation along a particular route, the Forest Service must deny any permit application that does not include a survey of multiple routes both within and outside the Forest, including routes that fully co-locate with existing rights of way. By requiring surveying along multiple routes, the Forest Service can ensure that consideration of reasonable alternatives are not foreclosed such that construction along any single route does not become a reasonably foreseeable future impact requiring a full NEPA analysis.

b. The Forest Service is obligated under NEPA to consider alternatives to MVP's proposed route even if the agency elects to use a categorical exclusion.

Consideration of alternate routes at this stage is not only prudent, it is mandatory under NEPA. The Forest Service has a duty to consider alternatives to its proposed action irrespective of its choice to prepare an EA or EIS or to assert a categorical exclusion. NEPA contains two independent mandates for agencies to consider alternatives to their actions. In addition to the requirement to consider alternatives as part of an EIS found at 42 U.S.C. § 4332(2)(C)(iii), NEPA also directs agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” *Id.* at § 4332(2)(E); *see also* Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1229 (9th Cir. 1988) (“The language and effect of the two subsections [] indicate that the consideration of alternatives requirement is of wider scope than the EIS requirement.”); City of New York v. United States Department of Transportation, 715 F.2d 732, 742 (2d Cir.1983) (“[F]ederal agencies have a duty under NEPA to study alternatives to any actions that have an impact on the environment, even if the impact is not significant enough to require a full-scale EIS.”); Environmental Defense Fund, Inc. v. Corps of Engineers, 492 F.2d 1123, 1135 (5th Cir.1974) (“Section [4332(2)(E)] is supplemental to and more extensive in its commands than the requirement of [4332(2)(C)(iii)].”).

Thus, even if the Forest Service proceeds pursuant to a categorical exclusion, the agency must investigate alternatives to MVP's single-corridor survey because the proposed action involves “unresolved conflicts concerning alternative uses of available resources.” at 42 U.S.C. § 4332(2)(E). Courts have read the “unresolved conflicts” requirement very broadly, such that an agency must study alternatives not just for actions that involve an “identifiable use of a limited resource” but rather for “any actions that have an impact on the environment.” City of New York, 715 F.2d at 742; *see also* Trinity Episcopal School Corp. v. Romney, 523 F.2d 88, 93 (2d Cir. 1975) (“[W]here (as here) the objective of a major federal project can be achieved in one of two or more ways that will have differing impacts on the environment, the responsible agent is required to study, develop and describe each alternative for appropriate consideration.”).

For example, the Court of Appeals for the Ninth Circuit required the Bureau of Land management to perform an alternatives analysis for a set of oil and gas leases—for which an EIS was not required—even though the leases expressly prohibited any surface disturbance. Bob Marshall Alliance, 852 F.2d at 1229. The Court found that the sale of the leases involved conflicts that triggered Section 4332(2)(E) because the sale “may allow or lead to other activities that would affect [the subject area]'s suitability for wilderness designation.” *Id.* The Court cautioned that “the sale of leases cannot be divorced from post-leasing exploration, development, and production.” *Id.* The Court concluded that because the “lease sale opens the door to potentially harmful post-leasing activity, it ‘involves unresolved conflicts concerning alternative uses of available resources.’” *Id.*

MVP's proposed survey would not only have its own immediate impacts on the National Forest, but would also open the door for future pipeline construction and operation along its preferred route. That construction and operation would significantly alter the character of the

surrounding areas of the Forest and preclude other Forest uses with lesser impacts. The Forest Service is thus obligated to study alternatives to the single-corridor survey.

The range of the Forest Service's alternatives analysis is governed by a "rule of reason," whereby the agency need not analyze every conceivable alternative but must "consider such alternatives to the proposed action as may partially or completely meet the proposal's goal." City of New York, 715 F.2d at 742. The agency may not, however, narrow its goals in a manner designed to restrict the range of alternatives to be considered. Id. at 743. Moreover, the Forest Service is obligated to consider alternatives both within and outside of its jurisdiction. See Environmental Defense Fund, 492 F.2d at 1135 (explaining that Section 4332(E)'s "directive is a thorough consideration of all appropriate methods of accomplishing the aim of the action, including those without the area of the agency's expertise and regulatory control as well as those within it" such that 4332(E) does not "limit an agency to consideration of only those alternatives that it could adopt or put into effect").

The "reasonable range" of alternatives that the Forest Service must consider includes at a minimum those alternatives for which its own policies state a preference, namely, routes outside of the Forest and routes that fully co-locate with existing utility corridors within the Forest. See City of New York, 715 F.2d at 743 ("a pertinent guide for identifying an appropriate definition of an agency's objective will be the legislative grant of power underlying the proposed action"). The Service must analyze routes outside the Forest to be consistent with its own Special Use guidelines as expressed in the Forest Plan and the Special Use permit application. See Forest Plan, 2-60 (explaining that special use authorizations should be "[l]imited to needs that cannot be reasonably met on non-NFS lands or that enhance programs and activities"); Form 299, Question 13a (asking the applicant to "[d]escribe other reasonable alternative routes and modes considered") and Question 13c (requesting an "explanation as to why it is necessary to cross Federal Lands"). Likewise, to be consistent with the Forestwide Standards in the Forest Plan, the Forest Service's analysis must include alternative routes inside the Forest that fully co-locate with existing utility corridors. FW-247, Forest Plan, 2-60 ("Develop and use existing corridors and sites to their greatest potential in order to reduce the need for additional commitment of lands for these uses. When feasible, expansion of existing corridors and sites is preferable to designating new sites."). Importantly, the Forest Service may not accept MVP's self-serving, unsupported statements that such alternatives do not exist or are not feasible. See Trinity Episcopal School Corp., 523 F.2d at 94 (explaining that an agency may not accept "an unsupported statement as to lack of any alternatives from 'interested' [parties]" and that "even where the agency determines that an EIS is not required, a perfunctory and conclusory statement that there are no alternatives does not meet the agency's statutory obligation"). Rather, it must itself undertake a "thorough consideration of all appropriate methods of accomplishing the aim of the action." Environmental Defense Fund, 492 F.2d at 1135.

Conclusion

We fully understand that the proposed survey is the only application before the agency. However, the agency has a legal duty to issue only those permits that serve the public interest. The proposed single-corridor survey represents a substantial investment in MVP's preferred route. The concentration of investment in a particular route will inevitably make MVP less

inclined to consider an alternative route elsewhere. Therefore, it short circuits the NEPA analysis to allow a single-corridor survey, and to allow a survey that fails to demonstrate the infeasibility of avoiding the National Forest. If only one route is surveyed, a lack of information will hamper the full and fair consideration of alternate routes. The Forest Service is not obligated to defer its authority to FERC, nor to defer its collection of information until the later consideration of a right of way application. On the contrary, now is the most opportune time to demand that the applicant address the public interest in full.

For these reasons, we respectfully request that the application be denied because (1) MVP's application is incomplete; (2) the application is inconsistent with the Jefferson National Forest Plan; (3) the application would not serve the public interest; and (4) the Forest Service has an obligation under NEPA to consider the reasonably foreseeable impacts of permitting a single-corridor survey that would bias the ultimate decision in favor of MVP's preferred route and fail to provide a basis for the analysis of reasonable alternatives to MVP's proposal.

Respectfully submitted,

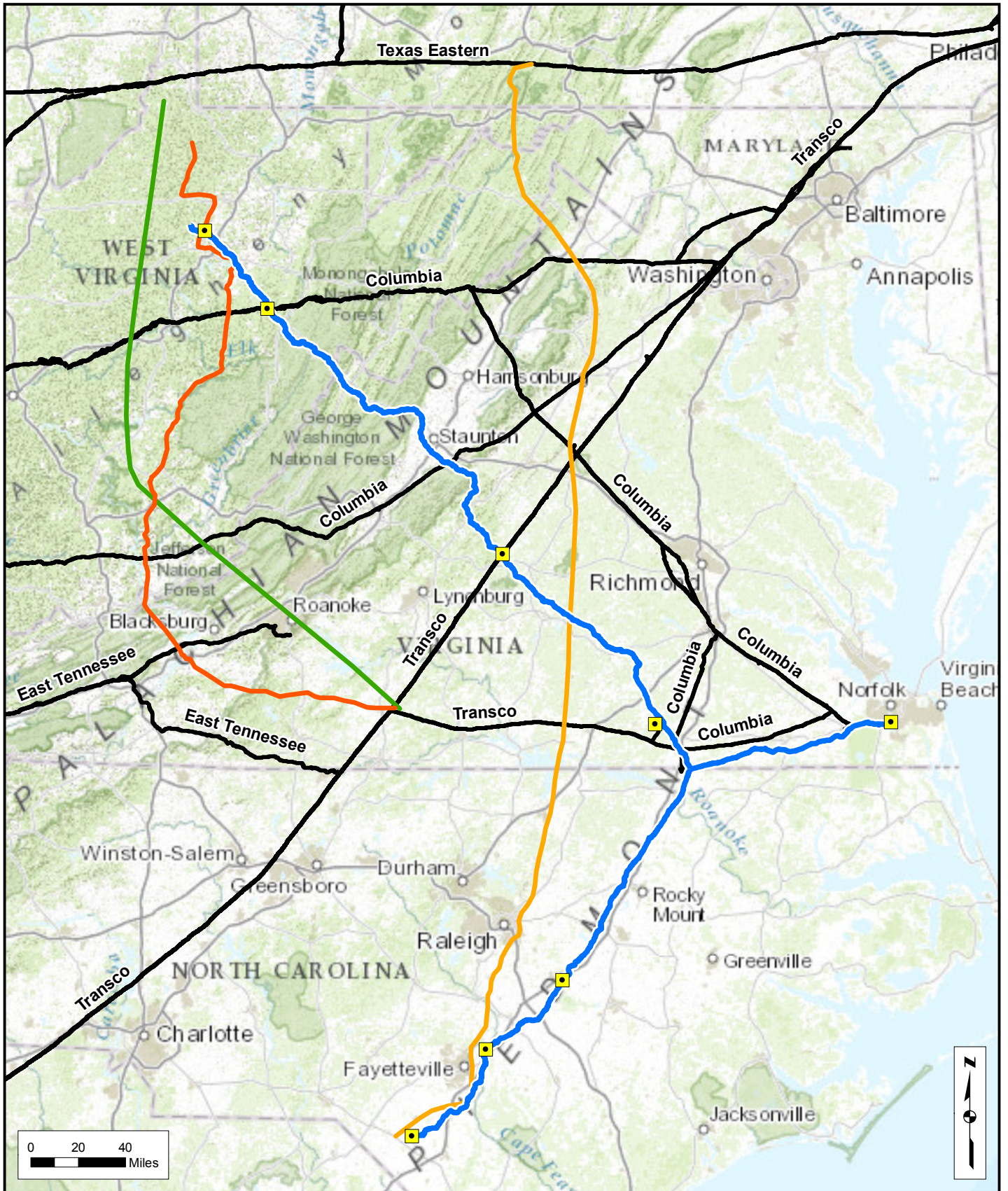
/s/ Benjamin A. Lockett
Benjamin A. Lockett
Isak J. Howell
Joseph M. Lovett
Appalachian Mountain Advocates
PO Box 507
Lewisburg, WV 24901
blockett@appalmad.org
ihowell@appalmad.org

On behalf of the above named organizations and the following affected individuals:







Elizabeth V. Biggs
C. Nelson Hoy
Charlotte L. Rea
Robert Tracy
Patricia Tracy
Bill T. Dooley
Don Barber
Kevin W.R. Crispin
Teresa A.M. Crispin
Steven Wayne Drumheller
Mary Suzanne Sanford
Jennifer Joy Henderson
Dane Landon Webster
Robert A. Wey
Louise W. Wey
John O. Browder
Patricia B. Laurrell

Robert Anthony Beasley
Karen Peters Ellingson
Tina Badger
Teresa Chen Shaw
Wil Stanton
Angela Stanton
Marge Lewter
Renee Ryan
Scott Ryan
Michele Ferri
Mike Ferri
Hersha Evans
Suzi Gablik
Allyn Moss
Robert Miller
Sharon Parker
Jeffrey Parker
Jennifer McDonald
Michael McDonald
Eva Collakova
Robert Shea
Laurie Shea
Danny Axsom
Lynda Majors
Natasha Laity Snyder
Mark Laity Snyder
Susan Spence Edwards
Pamela P. Humphrey
Diana Christopulos
Wendy L. O'Sullivan
L. Kayla Bancroft
David H. Walker
Don Barber
Teresa Crispin
Kevin Crispin
Deborah Olsen
Peter J. Montgomery
Freda Ascot
Marino Colmano
David Seriff
Bridget Simmerman
Leah Simmerman
Linda Vick
Brian Vick
Rita Burge
Bob Kahler

Carol Kahler
Julie Georges
James Lanter
Elizabeth Lanter
Mara Robbins
Stephen Tod Whitehurst
Pamela McGraw
Sharon Ponton
Johnny Ponton
Chris Ponton
Tom Hoffman
Nancy L. Hadden
Judith Lee Rauchle
Glenn David Rauchle
Dave Hinkle
Faith Hinkle
Dick Saacke
Stockton Maxwell
Megan Maxwell
Steven G. Hanes
Patti C. Hanes
Steven Helm
Jacob Edward Hackman
Carol Bienstock
Steve Bienstock



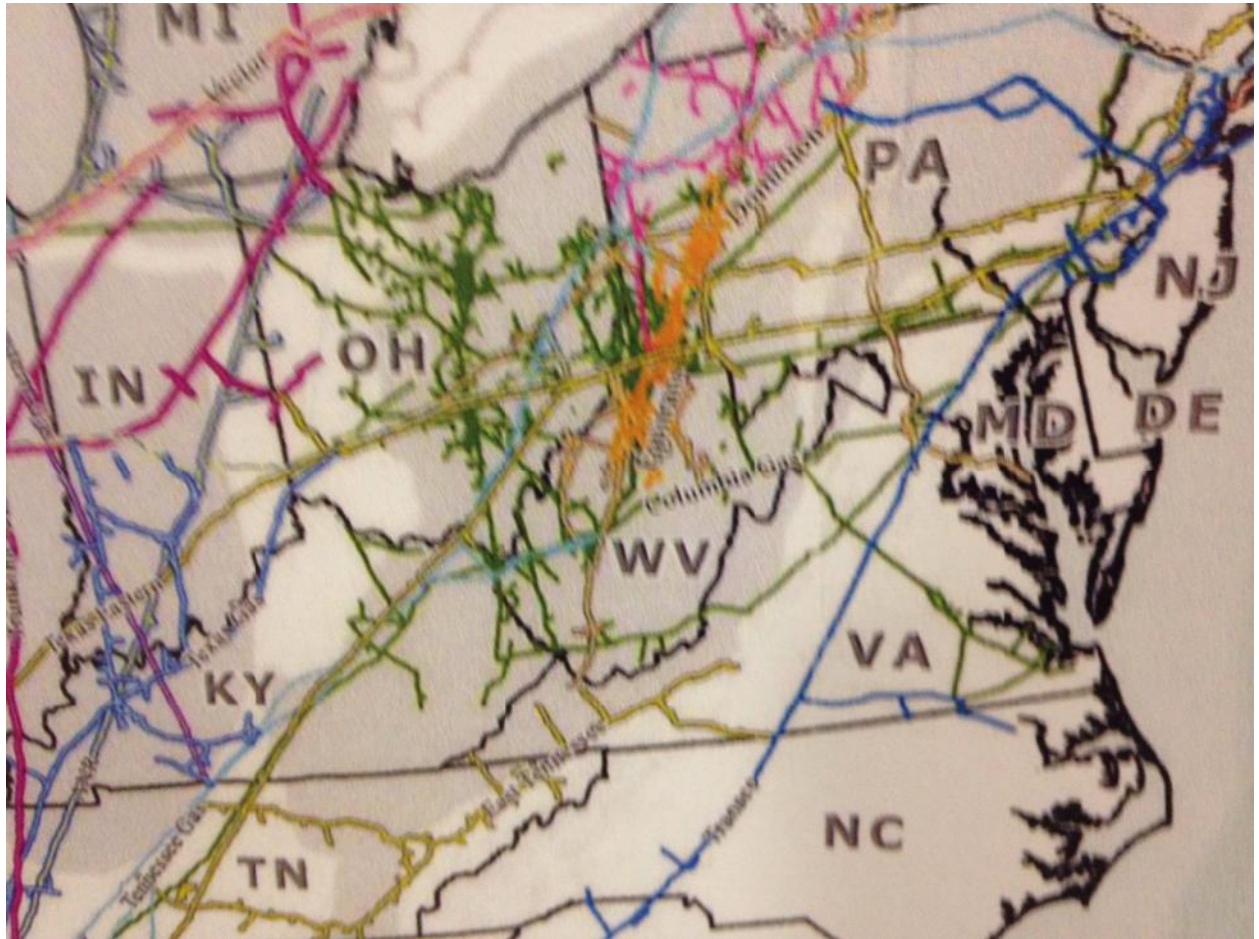
Atlantic Coast PipelineSM

- | | | | |
|---|---------------------------|---|------------------------------------|
|  | Atlantic Coast Pipeline | Proposed Pipeline Systems | |
|  | Receipt/Delivery Point |  | Mountain Valley Pipeline |
|  | Existing Pipeline Systems |  | Spectra Carolina Pipeline |
| | |  | Transco Western Marcellus Pipeline |

Atlantic Coast Pipeline
Figure 10.4-1
System Alternatives



EXHIBIT B:





ATLANTIC SUNRISE

ABOUT THE PROJECT



LANDOWNERS

COMMUNITY

FACILITIES & MAPS

REGULATORY

FAQ

SHOW YOUR SUPPORT

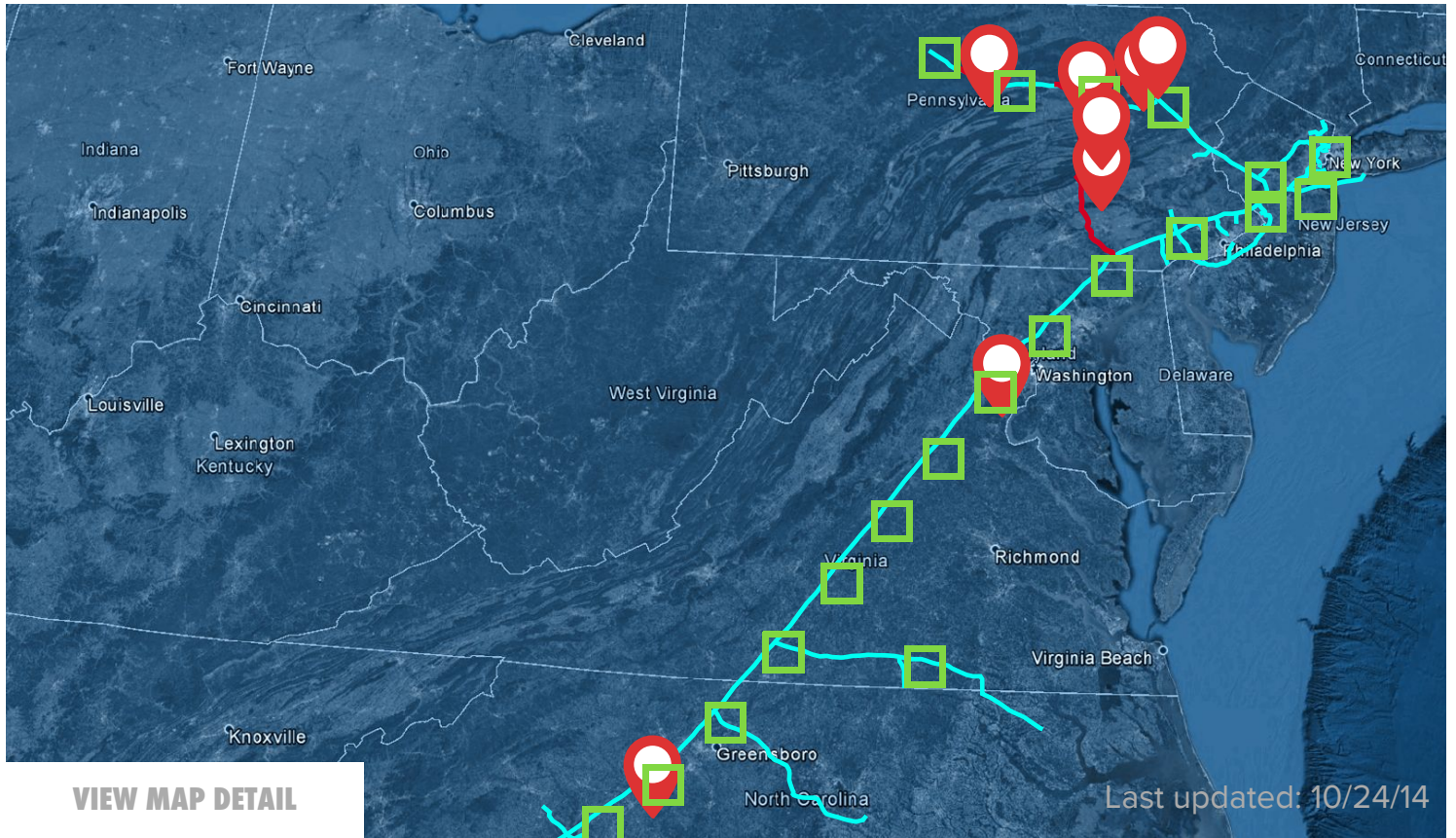
MAPS

When Williams develops a pipeline project, we work hard to balance environmental concerns, landowner considerations, and the engineering requirements for safely constructing a transmission pipeline.

PROPOSED ATLANTIC SUNRISE PROJECT

VIEW MORE MAPS

- PROPOSED
PIPELINES
- PROPOSED
REPLACEMENTS
- EXISTING TRANSCO
PIPELINE
- EXISTING
COMPRESSOR STATIONS
- INFORMATION
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844-785-0455 (toll free)

AtlanticSunrise@williams.com

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