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H. Thomas Speaks, Jr., Forest Supervisor
USDA Forest Service
George Washington and Jefferson National Forests
ATTN: Atlantic Coast Pipeline Survey Comments
5162 Valleypointe Parkway
Roanoke, VA 24019-3050

RE: Comments on Special Use Application submitted by Atlantic Coast Pipeline, LLC

Dear Mr. Speaks:

Please accept this letter in response to your request for comments on the September 29, 2014 special use application from Atlantic Coast Pipeline, LLC ("Dominion"), which requested permission to conduct a survey along a single, 12.6-mile proposed natural gas pipeline corridor within the George Washington National Forest. 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 Highlanders for Responsible Development, the Dominion Pipeline Monitoring Coalition, Shannon Farm Association, West Virginia Highlands Conservancy, West Virginia Wilderness Coalition, and individuals Craig Vanderhoef and Terry Hughes. We also incorporate by reference the comments submitted by the Southern Environmental Law Center, Highlanders for Responsible Development, the Dominion Pipeline Monitoring Coalition, Ernie Reed, Wild Virginia, and Heartwood.

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* Dec. 11, 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 and operation of the proposed pipeline on the George Washington National Forest." Because the surveys will be the basis of future substantive decisions, the Forest Service's decision on Dominion's application is important. We ask that the permit be denied because:

(1) Dominion's application is incomplete, providing no answer or unsupported answers to crucial Special Use Authorization questions involving reasonable alternatives and avoiding Federal Lands;

(2) the application is inconsistent with the George Washington National Forest Plan, which implements a Forestwide policy that favors co-location of new rights of way in areas already designated as utility corridors;

(3) the application as presented does not serve the public interest because it does not investigate any alternative routes and because it proposes to gather too little detail during the surveys;

(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 Dominion's preferred route; and

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

In short, the application as submitted is defective, incomplete, and irreconcilable with the Forest Service's own policy goals and legal obligations. For those reasons, we urge the Forest Service to deny the application. Dominion 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 incomplete, inconsistent with Forestwide Standards, and insufficient to serve the public interest.

a. Dominion's application is incomplete and fails to answer crucial questions about alternatives and avoidance of Federal Lands.

Dominion 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 Plan and Resource Management Plan for the George Washington National Forest (the "Forest Plan"): "Special use authorizations provide for those private uses of Forest lands that are necessary to serve the public interest and <u>which cannot be accommodated on non-Federal land</u>." Forest Plan, Section 2-29 (emphasis added). 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.[1] Dominion's application is incomplete and should be rejected.

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. Dominion answered that "No alternative routes were considered." There is no attachment, and no explanation for why no alternative routes were considered. The answer is insufficient.

Next, Question 13b requires applicant to answer "[w]hy were these alternatives not selected?" Dominion answers in full: "not applicable." The question is applicable to all applicants, and Dominion has no exemption from the question, and certainly gains no exemption through its failure to answer Question 13a. Dominion must explain its consideration and selection of alternatives for the Special Use Authorization. Dominion has failed to do so. Its failure to consider alternatives does not mean the question is "not applicable." It means that Dominion must acknowledge that it failed to choose an alternate route because it did not develop any alternate routes, if that is the case. As it stands, the answer to Question 13b is inadequate.

Question 13c requires that applicants "[g]ive [an] explanation as to why it is necessary to cross Federal Lands." Dominion answered that it is not feasible to avoid the National Forest, given the "general trajectory of the pipeline and the need to cross the Shenandoah and Blue Ridge Mountains." Dominion's answer regarding feasibility of alternate routes is perfunctory, unsupported and inadequate. There is no factual material supplied in answer, only the bald assertion that the "general trajectory" of the pipeline prevents avoidance of the National Forest. Dominion's assertion is incorrect. 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; (2) proposed corridors that avoid the National Forest; and (3) existing corridors within the National Forest.

Existing Corridors that avoid the National Forest

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

[1] 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").

There are many existing pipelines that follow a general trajectory from Dominion'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, which in turns connects to existing lines in North Carolina. Second, there is an existing pipeline that runs east-west through southern Pennsylvania and then connects to the Transco pipeline, which runs southward into North Carolina. Pennsylvania and West Virginia are already so interconnected by pipeline that they function as a single unit. [cite]. 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 North Carolina. Dominion 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:

> 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 flow 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, underuse pipelines is a superior option to constructing new rights of way, especially rights of way through Federal Lands.

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, and beyond, and does so with a mix of facility upgrades and 178 miles of new pipeline, far fewer than what Dominion has proposed.

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

Existing Corridors within the National Forest

As to alternate routes within the National Forest, Dominion's own documents filed with FERC demonstrate that there are several existing pipelines within the National Forest that connect West Virginia to Virginia and North Carolina. See Exhibit A (showing Columbia pipeline); Exhibit D (Dominion Description of "System Alternatives", Resource Report 10, Section 10.4.1, "Existing Systems", submitted to FERC December 2014). The George Washington National Forest Plan shows another utility corridor running southeastward from northern West Virginia, passing near Beech Lick Knob and the Rocky Knob ATV area. Forest Plan Map, Northern Half. The Columbia pipeline right of way is evidently fairly wide, as it already houses several pipelines. Dominion fails to even mention those alternatives in its Special Use Permit application. There are certainly other utility corridors within the National Forest as well. Dominion has provided no information at all regarding its consideration of those existing corridors.

Thus, Dominion's own submissions to FERC and other public records undercut Dominion's assertion to the Forest Service that it is infeasible to avoid the National Forest due to "general trajectory" between Marcellus production areas and customer areas in Virginia and North Carolina.

Dominion's application should not be approved without complete answers to Question 13. Dominion, as with all other applicants for Special Use Authorization, should demonstrate that reasonable alternatives were considered and to explain why they were rejected. Dominion 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. Dominion'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. Colocation of utility rights of way is a forest-wide policy goal of the Forest Plan. Dominion's application does not achieve colocation and does not provide any information that would allow the Forest Service to implement its policies. The application flies in the face of the Forest Plan. For that reason, the application should be denied.

According to the Plan's Forestwide Standards, the National Forest, when dealing with linear rights of way, will: "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." Forest Plan, Section 4-24, FW-243. Standards such as FW-243 "put a condition on the application of a suitable use." Further, "Forestwide standards apply to the entire Forest unless superseded by specific management prescription area direction." Forest Plan, Section 4-1.

Notably, the Forest Plan already includes areas called "5C – Designated Utility Corridors." Buried pipelines are a specifically included use for this type of land. Forest Plan, Section 4-76. 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, Section 2-31. Fully 7,000 acres of the National Forest are already Designated Utility Corridors. Forest Plan, 4-76.

Given the above standards, and the massive investment in the Forest Plan, it is an affront to the Forest Service and the taxpayers for Dominion to seek permission to survey a new utility corridor without consideration of existing corridors. Further, the Forest Service itself is obligated under the Forestwide Standard 243 to utilize co-location to its "greatest potential," and that process is inseparable from Dominion's survey request. 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 FW-243 and the Forest Plan, Dominion must be required to fully survey existing 5C areas for suitability.

Additionally, nearly all of Dominion's proposed route passes through areas designated as Type 13: Mosaics of Habitat. Dominion Resource Report 10, Section 10-25; December 11, 2014 Forest Service Letter to Interested Citizens. According to the Forest Plan, such areas have a desired condition described as "generally retain[ing] a natural, forested appearance." Forest Plan, 4-131. Pipeline rights of way must be kept clear and cannot be forested. Pipeline rights of way tend to be extremely linear and do not foster a natural appearance. In those ways, an additional utility right of way would conflict with the Forest Plan by hampering the Forest Plan goals and by limiting the Forest Service's options with regard to forest management and timber production.

Other portions of the survey corridor cross lands designated 7B-Scenic Corridors and 7E2-Dispersed Recreation Areas. Scenic Corridors are intended to provide high quality scenery

and be dominated by mid- and late-successional forests. Forest Plan, 4-81, 82. Virtually none of the desired conditions for Scenic Corridors are compatible with a large natural gas pipeline. For 7E2 areas, the Forest Plan envisions subtle and carefully timed timber production to enhance wildlife habitat. Forest Plan, 4-94. There is no timber production within natural gas rights of way, so the application is inconsistent with use 7E2 as well.

Finally, Dominion's proposed route is inconsistent with the Forest Plan's management prescriptions for the Cow Knob Salamander. In 1994, the Forest Service and the U.S. Fish and Wildlife Service signed a Conservation Agreement with the goal of protecting that imperiled species "and its occupied and potential habitat" in the Forest. January 25, 1994 Conservation Agreement for the Cow Knob Salamander, attached as Exhibit E, at 1. The Forest Plan recognizes that the Agreement continues to apply to management decisions that could affect the salamander and its habitat. Forest Plan, 4-113. The Agreement establishes special protections for the salamander in the Shenandoah Mountain Crest - Special Interest Area (SMC-SIA), which contains the majority of the species' habitat, and extends those same protections to surrounding areas where Cow Knob Salamanders have been documented. Ex. E at 1. Although Dominion's proposed survey corridor does not cross the SMC-SIA, it does cross areas where the salamander has been documented and thus the protections afforded to the SMC-SIA apply to those areas of salamander habitat. See Map of Dominion's Proposed Route with Cow Knob Salamander Occurrences, as Documented in 2008 by Dr. Reid Harris, James Madison University Biology Department, attached as Exhibit F.

The Agreement specifically address the effects of utility corridors on salamander habitat areas, explaining that "[b]ecause corridors of any size will fragment Cow Knob salamander habitat and isolate populations on either side, new utility corridors must be sited around the [protected areas]." Exhibit E at 6. See also id. at 4 ("[S]ignificant disturbances of the surface are not compatible with the long-term survival of the Cow Knob salamander and will not be allowed."); id. at 5 (recognizing that activities that "directly destroy salamander habitat, create additional habitat fragmentation, [or] increase forest edge" are detrimental to the species' survival); Forest Plan, 4-116 (Forestwide Standard 8E7-026 mandating that areas containing Cow Know Salamander habitat "are unsuitable for designation of new utility corridors, utility rights-of-way, or communication sites unless there is an over-riding demonstrated public need or benefit."). Dominion's proposal thus directly conflicts with the Forest Service and USFWS's Conservation Agreement, the management prescriptions of which are adopted in the Forest Plan.

In sum, Dominion's application cannot be squared with the Forest Plan. The Forest Plan cannot be achieved if applicants such as Dominion are not required to investigate and achieve co-location. Such investigation is the only way for the Forest Service to implement its own policies embodied in the Forest Plan. Further, if Dominion is not compelled to investigate option consistent with the Forest Plan, it will only be more reticent to do so once it has invested heavily in its preferred route. FERC is not obliged to follow FW-243 and consideration of adherence to FW-243 cannot be deferred. If full investigation of co-location is postponed or deferred to FERC, the public has no assurance that the investigation will ever be carried out. If co-location is not investigated now by the applicant, it likely will not occur, and the Forest Plan will be violated and diminished. For those reasons, the permit should be denied unless and until it the applicant proposes to fully investigate co-location and achieve congruity with the Forest Plan.

c. Dominion'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. Dominion's proposed use would not be in the public interest. On the contrary, Dominion's single-corridor proposal would deprive the Forest Service and the public of the information necessary to evaluate other routes. Dominion has not provided information about non-Forest routes and has not provided information about 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."[2]

Dominion'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, Dominion'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 existing utility corridors within the Forest. 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 Dominion itself has settled upon a single preferred route.

Even setting aside the issue of alternative routes, Dominion'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 degradation of forest along edges (from edge effects due to forest fragmentation) which effectively increases the size of the disturbance footprint.

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[2] 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.

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.

Dominion'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, Dominion'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. Dominion 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. Dominion 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 NEPA analysis.

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. Dominion'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 Dominion'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 impacts statement under National Environmental Policy Act (NEPA), 42 U.S.C. §

4321 *et seq.* However, because issuance of a special use permit for a single-corridor survey would effectively ensure future construction of the pipeline along the studied route and foreclose meaningful consideration of reasonable alternatives such as co-location, 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 Dominion 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.

Dominion'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 Dominion'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) Dominion 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 Dominion is a reasonably foreseeable future action that would be caused in part by Forest Service issuance of the proposed special use permit. Dominion 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. [Resource Report 10, citations]. 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 Dominion is allowed to conduct a survey only for its preferred route, to the exclusion of other routes that avoid the forest and/or co-locate with existing rights of way, the construction and operation of the pipeline along that route become reasonably foreseeable future actions that must be considered as indirect, cumulative impacts. 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 Dominion 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 Dominion's already significant financial investment into its preferred route, making selection of any alternate route substantially less likely. Even if 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 Dominion'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 determine the ultimate 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 survey of multiple routes both within and outside the Forest, including routes that co-locate with existing rights of way. By requiring surveying along multiple routes, the Forest Service can ensure that consideration of reasonable alternatives is 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 Dominion'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 Dominion'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.

Dominion'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 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, Section 2-29 ("Special use authorizations provide for those private uses of Forest lands that are necessary to serve the public interest and which cannot be accommodated on non-Federal land." (emphasis added)); 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 along existing utility corridors. Forest Plan, Section 4-24, FW-243 (stating that the Forest Service will "[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."). Importantly, the Forest Service may not accept Dominion' 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 Dominion's preferred

route. The concentration of investment in a particular route will inevitably make Dominion 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) Dominion's application is incomplete; (2) the application is inconsistent with the George Washington 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 foreclose other alternatives and an obligation to analyze alternatives to Dominion's proposal.

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Respectfully submitted,

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