UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Atlantic Coast Pipeline, LLC	)	**Docket Nos. CP15-554-000**
Dominion Transmission, Inc.	)	**CP15-555-000**
	)	

MOTION FOR LEAVE TO ANSWER AND ANSWER
OF ATLANTIC COAST PIPELINE, LLC
AND DOMINION TRANSMISSION, INC.

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 1/ Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Transmission, Inc. (DTI) hereby request leave to answer, and answer, certain protests and comments opposing Atlantic's Application for the Atlantic Coast Pipeline (ACP) or DTI's Application for its related Supply Header Project. Specifically, Atlantic and DTI respond to comments filed by a large number of environmental activists and certain landowners that oppose the proposed pipeline projects, 2/ as well as to the North Carolina Utilities Commission

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1/ 18 C.F.R. §§ 385.212 and 385.213 (2015).

2/ Atlantic and DTI respond here principally to: the "MOTION TO INTERVENE AND PROTEST OF APPALACHIAN MOUNTAIN ADVOCATES, APPALACHIAN VOICES, CHESAPEAKE CLIMATE ACTION NETWORK, DODDRIDGE COUNTY WATERSHED ASSOCIATION, EIGHT RIVERS COUNCIL, GREENBRIER RIVER WATERSHED ASSOCIATION, SATCHIDANANDA ASHRAM-YOGAVILLE, INC., SHANNON FARM COMMUNITY, SIERRA CLUB, WEST VIRGINIA RIVERS COALITION, AND WEST VIRGINIA HIGHLANDS CONSERVANCY," (hereinafter "Appalachian Mountain Advocates, *et al.*"); the "MOTION TO INTERVENE AND PROTEST OF SHENANDOAH VALLEY NETWORK; HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT; VIRGINIA WILDERNESS COMMITTEE; SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION;AND NATURAL RESOURCES DEFENSE COUNCIL (hereinafter "Shenandoah Valley Network, *et al.*"); the "MOTION TO INTERVENE AND PROTEST OF FRIENDS OF THE CENTRAL SHENANDOAH," (hereinafter "Friends of Central Shenandoah,"); the "MOTION TO INTERVENE OF OHIO VALLEY ENVIRONMENTAL COALITION," (hereinafter "OVEC"); the "MOTION TO INTERVENE AND PROTEST BY FRIENDS OF WINTERGREEN, INC.," (hereinafter "Friends of Wintergreen"); and the Intervention and Protest of Waterkeepers Chesapeake (hereinafter "Waterkeepers").

("NCUC"), which explicitly supports the projects but protested certain rate and tariff proposals. 3/

I. Motion for Leave to Answer Protests

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally does not permit answers to protests unless otherwise ordered by the decisional authority. 4/ The Commission, however, routinely allows answers to protests where it will assist in its decision-making and help to ensure a more complete and accurate record. 5/ Atlantic and DTI respectfully submit that the answer will do just that, while not delaying the proceeding. Accordingly, good cause exists for the Commission to accept this answer.

II. Answer To Protests

A. The Need for ACP and the Supply Header is Manifest 6/

Several environmental groups question the need for ACP and whether Atlantic has demonstrated public benefits for the ACP Project as required under the Commission's Certificate Policy Statement. 7/ There can be no serious question about this need and the public benefits.

3/ "COMMENTS IN SUPPORT OF PROJECT AND PROTEST OF PROPOSED RECOURSE RATES OF THE NORTH CAROLINA UTILITIES COMMISSION," in Docket No. CP15-554-000 (hereinafter "NCUC-ACP"); "NOTICE OF INTERVENTION, COMMENTS IN SUPPORT OF PROJECT, AND PROTEST OF PROPOSED RECOURSE RATES OF THE NORTH CAROLINA UTILITIES COMMISSION" in Docket No. CP15-555-000 (hereinafter "NCUC-Supply Header").

4/ 18 C.F.R. § 385.213(a)(2) (2015).

5/ *See, e.g., Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160 at n. 6 (2015); *Natural Gas Pipeline Co. of America*, 151 FERC ¶ 61,232 at P 18 (2015); *Paiute Pipeline Co.*, 151 FERC ¶ 61,132 at P 16 (2015); *Enable Gas Transmission, LLC,* 151 FERC ¶ 61,031 at P 9 (2015); *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012 at P 22 (2015); *Tres Palacios Gas Storage, LLC*, 150 FERC ¶ 61,197 at P 9 (2015); *Empire Pipeline Co.*, 150 FERC ¶ 61,181 at P 25 (2015).

6/ Environmental commenters questioning the need for these related projects focus on ACP; accordingly, so does the reply here. As explained in the Atlantic and DTI Applications, the Supply Header is an essential and integral part of the service to be provided by Atlantic to its Customers. Accordingly, the need for the Supply Header follows from the need for ACP, which is detailed here.

To begin with, Atlantic has entered into precedent agreements with six companies (its "Customers") for a total of 1.44 million dekatherms per day (MMDt/day) of firm transportation capacity, which is approximately 96 percent of the ACP Project's total capacity, for twenty year terms. The Customers are: Duke Energy Progress, LLC (DEP), Duke Energy Carolinas, LLC (DEC), Piedmont Natural Gas Co., Inc. (Piedmont), Virginia Power Services Energy Corp., Inc. (VPSE), Public Service Company of North Carolina, Inc. (PSNC), and Virginia Natural Gas Company, Inc. (VNG). Such contractual commitments are always viewed as strong evidence of the market demand for a project. 8/

Moreover, Atlantic's Customers are all end-users of natural gas that require the incremental supplies that will be transported on ACP to supply existing and proposed power generation facilities, as well as residential, commercial, and industrial gas consumers in Virginia and North Carolina. Indeed, as explained in Atlantic's Application, the original genesis for ACP was a response to solicitation in April 2014 by Duke Energy and Piedmont for competitive service proposals for incremental firm gas transportation service into North Carolina to support Duke Energy's existing and growing reliance on natural gas for needed electric generation and to meet Piedmont's core gas distribution load growth and system reliability and supply diversity goals. In June 2014, another Customer, VPSE, also issued a request for proposals for firm natural gas transportation service to serve gas-fired power generation in the Commonwealth of

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7/ *Certification of New Interstate Natural Gas Pipeline Facilities; Statement of Policy*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000), *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000)

8/ *See Certificate Policy Statement*, 88 FERC at p. 61,748. *See also, e.g.*, *Algonquin Gas Transmission*,150 FERC ¶ 61,163 at P 23 (2015); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 at n. 26 (2014); *Transcontinental Gas Pipe Line Co., LLC*, 142 FERC ¶ 61,102 at P 42 (2014); *Dominion Transmission, Inc.*, 143 FERC ¶ 61,148 at P 30 (2013); *Tennessee Gas Pipeline Company, L.L.C.*, 142 FERC ¶ 61,025 at n. 111 (2013); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,240 at P 23 (2012); *Transcontinental Gas Pipe Line Co., LLC*, 141 FERC ¶ 61,091 at P 20 (2012); *Texas Eastern Transmission, LP and Algonquin Gas Transmission*, 139 FERC ¶ 61,138 at P 22 (2012).

Virginia. These customers selected ACP as the best way to supply their growing need for natural gas.

The view of the Customers – which are the predominant utility and local distribution companies in North Carolina and Virginia – that the ACP Project is needed is bolstered by their supporting comments filed in these proceedings. DEC and DEP stated that they "strongly support the Project" and explained that it "is critical to ensure DEC and DEP have the needed firm transportation service to meet the needs of its growing gas generation fleet in North Carolina." 9/ Piedmont also stated that it "strongly supports the Project" and added that:

> The Project presents a unique opportunity for the State of North Carolina. It is the first occasion in more than 60 years in which the projected unserved demand for natural gas transportation capacity within North Carolina will support the construction and operation of a new high-volume natural gas pipeline into the state. The Project will provide a multitude of benefits to not only Piedmont, but also the State of North Carolina. 10/

Similarly, "PSNC supports construction of the facilities proposed in the Applications, which together provide for the development of a new interstate pipeline that will provide much-needed firm natural gas transportation service to customers in Virginia and North Carolina." 11/ Atlantic's Virginia Customers also strongly support ACP. VNG explained that ACP service "will enable it to assure its access to geographically proximate, incremental supplies of natural gas at market-competitive prices…. [and] to continue to grow its markets, improve reliability,

9/ "Joint Motion to Intervene and Comments in Support of Duke Energy Progress, LLC and Duke Energy Carolinas, LLC," filed in the captioned proceedings on Oct. 19, 2015, at page 3.

10/ "Comments of Piedmont Natural Gas Company, Inc. in Support of the Atlantic Coast Pipeline Project, Supply Header Project, and Capacity Lease Arrangement," filed in the captioned proceedings on Oct. 16, 2015, at page 3.

11/ "Motion for Leave to Intervene and Comments in Support of Public Service Company of North Carolina, Inc.," filed in the captioned proceedings on Oct. 23, 2015, at page 5.

and enhance operating flexibility." 12/ And VPSE stated that transportation service on ACP "will support VPSE's natural gas transportation needs for supply to various of its affiliate's (Virginia Electric and Power Company) existing and proposed electric power plants." 13/

Additional support for ACP was offered by producers who may sell gas to the Customers. The West Virginia Oil and Natural Gas Association stated that: "many of [its] members produce natural gas from the Marcellus and Utica Shales and will greatly benefit from these new end-use consumption markets created by the ACP pipeline." 14/ The production region to be accessed by ACP -- and particularly the liquid Dominion South Point trading point from which Atlantic's Customers can source gas using the Supply Header capacity – offers some of the lowest gas prices in the nation. A major new pipeline to growing end-use markets in Virginia and North Carolina will benefit producers in the region, just as access to that abundant and affordable gas supply will benefit Atlantic's Customers and the consumers they serve.

Certain environmental groups seem to suggest that market studies – rather than commercial contracts – are the best evidence of demand for a project. That is not the Commission's policy. 15/ But market studies too show the need for ACP. In the Background section of its Application, Atlantic provided information from the Energy Information Agency (EIA) documenting the growing demand for natural gas in Virginia and North Carolina,

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12/ "Motion to Intervene of Virginia Natural Gas, Inc. and Comments in Support," filed in the captioned proceedings on Oct. 23, 2015, at page 3-4.

13/ "Motion to Intervene of Virginia Power Services Energy Corp.," filed in the captioned proceedings on Oct. 23, 2015, at page 1.

14/ "Motion to Intervene of West Virginia Oil and Natural Gas Association," filed in the captioned proceedings on Oct. 22, 2015, at page 2.

15/ The change announced in the Certificate Policy Statement was that the Commission would consider indicia of market demand other than capacity contracts, which it previously had required. That policy change did not alter the reality that contracts remain, at least usually if not always, stronger evidence of demand than market studies, which are inherently assumption-dependent and often quite general. *See Turtle Bayou Gas Storage Company, LLC*, 135 FERC ¶ 61,233 at P 31-34 (2011), *reh'g denied*, 139 FERC ¶ 61,033 (2012).

especially for gas-fired power generation. 16/ Natural gas demand in the two states is projected to increase by 3.5% annually from 2010 to 2035, for a total increase of nearly 165 percent, while power sector gas demand is expected to grow at a rate of 6.3% annually over those years. 17/

The recent Clean Power Plan rule – which encourages the decreased utilization of aging base load coal-fired plants and the increased generation of electricity using cleaner fuel sources, such as natural gas – only increases the need for new gas supplies in Virginia and North Carolina. Indeed, construction of ACP is essential to these states' ability to comply with the Clean Power Plan. ACP will improve electric reliability and support the development of renewable power generation, while also creating benefits by enhancing gas supply security and increasing gas supply flexibility and optionality.

The ACP Project also will provide numerous more quantifiable economic benefits. ICF estimates a net annual energy cost savings from ACP in Virginia and North Carolina of over $377 million between 2019 and 2038. 18/ These consumer cost savings will trigger stimulus effects that create jobs, boost labor income, and grow the states' economies. ICF estimated that economic activity related to ACP will contribute more than 2,200 permanent full-time jobs, $131 million in annual labor income, and $218 million in annual gross state product in the two states over the 20-year period. 19/ Another study, by Chmura Economics & Analytics, also included West Virginia and concluded that: (1) from 2014-2019, construction of ACP can generate an

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16/ Overall natural gas use grew by 31 and 78 percent in Virginia and North Carolina between 2009 and 2013, while demand for gas-fired electric power generation grew by 67 percent in Virginia and by 417 percent in North Carolina from 2009 to 2014. Atlantic Application at pages 5-6 & n. 5 (providing links to EIA data).

17/ "The Economic Impacts of the Atlantic Coast Pipeline," prepared by ICF International (ICF) (Feb. 9, 2015)(hereinafter, the "ICF Study") at page 6, available at: https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-icf-study.pdf?la=en

18/ ICF Study at 5.

19/ *Id.*

economic impact (including direct, indirect and induced) in the three states of $2.7 billion and support 17,240 cumulative jobs; and (2) from 2019 onward, ongoing ACP operations can produce a total of $69.2 million of annual economic impact and support 271 jobs annually. 20/ In addition, the property taxes paid to counties and municipalities by the ACP would ultimately exceed $25 million a year. 21/

Certain environmental groups criticize the ICF and Chmura studies, largely on the ground that they are not "auditable" and reflect certain assumptions that could be challenged. 22/ Of course, there is no requirement that studies showing the benefits of a project be "auditable," and all such studies necessarily require assumptions. No intervener has provided any basis to challenge the fundamental conclusions of these studies that ACP will create enormous monetary benefits.

The need for ACP has been recognized by governmental leaders in the affected States, including Governor Terry McAuliffe of Virginia, Governor Pat McCrory of North Carolina, and Governor Earl Ray Tomblin of West Virginia. A list of other prominent supporters of ACP is available at: https://www.dom.com/corporate/what-we-do/atlantic-coast-pipeline/supporters-of-acp.

Altogether, the showing of need for ACP, and of its public benefits, is overwhelming. The need and benefits dramatically outweigh the impact on affected interests.

20/ "The Economic Impact of the Atlantic Coast Pipeline in West Virginia, Virginia, and North Carolina," Chmura Economics & Analytics (Sept. 2014), Executive Summary, available at: https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-chmura-report-091014.pdf?la=en This study assumed capital expenditures of $4.6 billion – significantly less than Atlantic's current estimate of $5.1 billion included in its Application – and thus understates the actual effects.

21/ A spreadsheet detailing the projected tax payments by year and county is available at: https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-property-tax-estimates-may2015.pdf .

22/ Appalachian Mountain Advocates, *et al*. at 17-18.

B. Other Existing and Proposed Pipelines Cannot Replace the Need for ACP

As part of their argument that ACP is not needed, certain environmental groups argue that other existing or proposed pipelines could serve the purpose of ACP. Atlantic's Customers have chosen ACP as the best way to meet their needs, and the interveners provide no basis for the Commission to second-guess those commercial decisions. And other pipeline proposals are simply not good alternatives to ACP, for the reasons detailed in Resource Report 10 submitted as part of Atlantic's Application. 23/

Appalachian Mountain Advocates, *et al.* argue that existing pipeline systems are viable alternatives to ACP and claim that "evidence shows that significant existing pipeline capacity may be available to serve the South East and Mid-Atlantic markets." 24/ The "evidence" offered is, first, a study by the Department of Energy that average pipeline utilization on an annual basis from 1998-2013 was "only 54%." 25/ This nation-wide, historic number reflects only the annual load factor usage of pipelines and in no way suggests that existing **firm** pipeline capacity is available to serve Atlantic's Customers. The second piece of "evidence" offered for the claim that existing pipeline capacity is available to serve ACP's markets is the Commission's observation that faster, computerized scheduling "could promote more efficient use of existing pipeline infrastructure." 26/ It hardly bears responding that improved scheduling processes

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23/ For an explanation of why existing pipeline systems are not viable alternatives to ACP, see Resource Report 10 at 10-17 to 10-18. For support for the same conclusion regarding proposed new pipelines, see Resource Report 10 at 10-19 to 10-21.

24/ Appalachian Mountain Advocates, *et al.* at 15. Essentially the same argument is advanced by Shenandoah Valley Network, *et al.* at 11-13.

25/ Appalachian Mountain Advocates, *et al.* at 16. The citation for the DOE study is not properly identified in the footnote reference for this assertion, but is provided at note 8 of the protest. The same study is also relied upon by Shenandoah Valley Network, *et al.* at 12-13.

26/ Appalachian Mountain Advocates, *et al.* at 16 & n. 5 and Shenandoah Valley Network, *et al.* at 12 & n. 15 (*citing* Coordination of the Scheduling Processes of Interstate Natural Gas Pipelines and Public Utilities, Order No. 809, FERC Stats. & Regs. ¶ 31,368 at P 107 (2015)).

would not create new capacity that would serve as an alternative for the 1.5 MMDt/day ACP. The environmental groups also assert that ACP's markets could be served by flow reversals on existing pipelines from the Gulf – notably Transcontinental Gas Pipe Line Company (Transco) with its proposed Atlantic Sunrise Project. 27/ Such flow reversals are occurring but they do not replace the need for ACP: Atlantic Sunrise has its own customers, and Atlantic's Customers have supported the need for the addition of a new pipeline, with their comments in this proceeding and, more significantly, their contractual commitments. 28/

Some of the environmental interveners also claim that three other pipeline proposals – Mountain Valley Pipeline, the Appalachian Connector, and the WB Xpress Project -- share with ACP the "important similar objective" of "deliver[ing] gas from the Marcellus and Utica region to the Transco Mainline east of the Blue Ridge Mountains." 29/ To begin with, only one of these other proposals – Mountain Valley Pipeline – has actually been proposed to the Commission in a certificate application. Even more important, delivering gas into Transco is **not** ACP's purpose. As the environmentalists note, ACP will provide Atlantic's Customers the option of delivery into Transco in Buckingham County, Virginia, but that interconnection is mainly to provide increased optionality. Every Customer with the Transco delivery point also has primary delivery point rights further downstream where the Customer's end-use demand is served. ACP's purpose, and the contractual obligation to Atlantic's Customers, is to deliver gas not just into Transco, but further downstream where incremental gas demand exists in Virginia and North Carolina. None

27/ Appalachian Mountain Advocates, *et al.* at 16; Shenandoah Valley Network, *et al.* at 11; Friends of Central Shenandoah at 9.

28/ The environmental groups cite another DOE study that indicates that flow reversals may help meet growing demand for natural gas in the southeast. Appalachian Mountain Advocates, *et al.* at 16 & n. 8 and Shenandoah Valley Network, *et al.* at 11 & n. 13. That study, however, does not suggest that no new pipeline infrastructure will be needed.

29/ Shenandoah Valley Network, *et al.* at 10. *See also* similar arguments in Friends of Central Shenandoah at 18-22 and OVEC at 2-3.

of the other proposed projects (whether or not yet filed with the Commission) serve this purpose, or the Customers' needs. So, the other proposed new projects are not viable alternatives to ACP.

C. Increased Development of Renewable Energy Cannot Replace the Need for ACP

Certain environmental groups argue that the increased use of renewable energy sources can eliminate the need for more use of gas-fired generation in Virginia and North Carolina and, thus, eliminate the need for ACP. 30/ Renewables are important, and are playing a growing role in the region. But with the lessening use of coal-fired power plants, the region needs reliable energy sources that can meet demand 24 hours per day regardless of weather conditions. Meeting this demand with reliable, abundant, domestic and clean-burning natural gas provides the flexibility for the region's utilities to continue working to incorporate more renewable sources into a balanced energy portfolio. The region's leading utilities are ACP Project Customers and they have determined both that more use of gas-fired generation is required and that ACP is needed to deliver the needed gas.

Shenandoah Valley Network, *et al*. argue that whether new pipeline capacity is needed depends on how the States meet their obligations under the recently-finalized Clean Power Plan and note that those plans might not culminate until September 2018. 31/ Appalachian Mountain Advocates, *et al*. also emphasize the Clean Power Plan, touting its benefits (particularly in Virginia) and argue that ACP would displace the renewables emphasized in that Plan. 32/ Friends of Central Shenandoah note Dominion Virginia Power's significant efforts to develop

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30/ *See* Appalachian Mountain Advocates, *et al.* at 36-44; Shenandoah Valley Network, *et al.* at 15-16; Friends of Central Shenandoah at 12-13.

31/ Shenandoah Valley Network, *et al.* at 15.

32/ Appalachian Mountain Advocates, *et al.* at 36-44.

solar resources in Virginia, suggesting that this effort is somehow inconsistent with developing ACP. 33/

Notably, when President Obama announced the Clean Power Plan, the White House released a list of reactions to the Plan from a variety of leaders with diverse interests and included the following comment from Thomas F. Farrell II, the Chairman, President and CEO of Dominion Resources:

> The compliance targets for Virginia have moved in a positive direction that fairly recognizes the role of natural gas generation in reducing emissions. Dominion will work constructively with Governor McAuliffe, the state agencies, and other stakeholders on a compliance plan that has our customers as the first priority, ensures reliability, and maintains a diverse mix of electric generation. I commend Administrator McCarthy for making critical changes to the proposed rule. 34/

Virginia is one of the states joining the legal effort to support the Clean Power Plan, and Dominion is actively working with the Commonwealth on compliance plans. But the claims of the environmental groups that the Plan will not require any increased use of natural gas, or that ACP is not needed to support that new demand, are simply wrong. And the utilities that must take steps to comply with the Plan cannot wait on the final details of those plans before deciding

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33/ Friends of Central Shenandoah at 12-13. In a rather different take, environmental interveners also explain that the new gas-fired power plants under-development by Dominion Virginia Power already have access to other pipelines. Friends of Central Shenandoah at 10-11; Shenandoah Valley Network, *et al.* at 13-15. Access to one pipeline, of course, does not mean that an alternative means of supply is not necessary or desirable. VPSE, as the supplier of those power-plants, has committed contractually to ACP and the views of certain environmentalists obviously provide no reason for the Commission to question that contractual decision. The Commission's policy is not to look behind contracts to judge whether customer commitments represent genuine market demand (even in cases where a customer's need is much more questionable than that of a major end-user). Certificate Policy Statement at p. 61,744; *Transcontinental Gas Pipeline Corp.*, 82 FERC ¶ 61,084 at p. 61,316 (1998).

34/ "Here's What They're Saying About President Obama's Clean Power Plan," White House Blog, by Dan Utech, Rohan Patel (Aug. 3, 2015), available at: https://www.whitehouse.gov/blog/2015/08/03/here-s-what-theyre-saying-about-president-obama-s-clean-power-plan how to access new gas supplies. Now is the time that ACP needs to be approved so that it can be constructed to begin service for its Customers, as proposed, in 2018.

D. ACP's Adverse Effects Are Minimized and Far Outweighed by its Benefits 35/

Under the Certificate Policy Statement, Applicants are encouraged to minimize adverse effects on their existing customers, competing existing pipelines and their captive customers, and landowners and surrounding communities. Projects are then approved only if the benefits outweigh the residual adverse impacts on these affected interests. 36/ Atlantic has minimized the adverse effects of the ACP, and the project's many benefits far outweigh the residual adverse impacts.

Atlantic does not have any existing customers; so, there are obviously, and uncontestably, no adverse impacts of that nature. Atlantic's proposal also will have no adverse effect on any competing pipeline or its captive customers. Appalachian Mountain Advocates, *et al.* complain that "Atlantic does not even bother to identify existing pipelines that serve the same market that it proposes to serve, let alone consider the effects of its proposal on customers of those pipeline," adding that they "expect that, during this application process, it will become clear that the ACP will have adverse effects on existing pipelines and their existing customers." 37/ Contrary to this cryptic prophesy, no competing pipeline or any customers of such a pipeline have raised any concerns in this proceeding. And there is no evidence that ACP will have any such adverse impacts.

35/ The interveners focus on the alleged adverse effects of ACP, and offer little in the way of claims about any adverse impacts of DTI's Supply Header; accordingly, this response focuses on ACP. The conclusion, however, that any adverse impacts have been minimized and that the project's benefits significantly outweigh any residual adverse impacts applies equally to the Supply Header.

36/ Certificate Policy Statement, 88 FERC at p. 61,747.

37/ Appalachian Mountain Advocates, *et al.* at 19.

Atlantic certainly does not claim that there will be no adverse impacts on landowners, the surrounding communities, or the rural character of the intervening landscape emphasized by the interveners. 38/ The point is that these impacts have been minimized and are outweighed by the benefits of a major new pipeline needed to transport the abundant gas supplies available from the Marcellus and Utica production region to growing demands in Virginia and North Carolina. As explained in its Application, Atlantic hosted 28 public Open Houses prior to and during the Commission's pre-filing process to gather input from affected landowners and the communities. Atlantic has gone to extraordinary efforts to identify the best route possible for the pipeline, examining more than 3,000 potential miles of terrain for the route. As part of the ongoing effort to determine the feasible route with the least impact to landowners, the environment, and cultural and historic resources, Atlantic submitted supplemental information on October 30, 2015, concerning six route alternatives, variations and adjustments (and had submitted information on another route modification on October 16, 2015). While those route modifications are minor, they reflect Atlantic's strong and sincere commitment to listening to project stakeholders and addressing their concerns with the proposed route where possible.

Atlantic is also committed to using best-in-class restoration and mitigation techniques along the route to protect native species, preserve wetland and water resources, control erosion and minimize emissions. The fact is that, once constructed, the impact of the pipeline will be fairly minimal. There are actually 2.5 times more miles of underground natural gas pipelines than interstate highways in Virginia, and most residents do not even notice them.

38/ *See, e.g.*, Appalachian Mountain Advocates, *et al.* at 19-24; Shenandoah Valley Network, *et al.* at 16-19; Waterkeepers at 2.

Atlantic also is committed to obtain as much of the necessary right of way as possible through negotiation with landowners. Consistent with Commission policy, 39/ Atlantic will make good faith efforts to negotiate with landowners for any needed rights, and will resort only when necessary to the use of the eminent domain granted to interstate pipelines in the public convenience and necessity under NGA Section 7(h). 40/ Of course, in those cases, all affected landowners will receive just compensation. And the very significant benefits of ACP are more than sufficient to justify the limited use of eminent domain that may be required to site and construct major new infrastructure like ACP. 41/

One particular landowner group, the Friends of Wintergreen, argues in detail that ACP will have a host of adverse economic and environmental consequences that it claims could be avoided "if the current route were slightly altered." 42/ Atlantic believes that Friends of Wintergreen exaggerate and overstate the likely impact of ACP on their interests. DTI (which is designing, constructing and operating ACP) and its predecessor companies have more than 100 years of experience building and safely operating natural gas pipelines. The 75-foot permanently maintained right of way (with the other 50-feet reverting to pre-construction conditions) around the buried pipeline can be covered with flowering shrubs or similar shallow-rooted vegetation. Because of the dense native vegetation, and varying terrain in the region, much of the pipeline corridor will not be visible at all to most houses in the area. And nothing is more important to Atlantic and DTI, operator of ACP, than safety. The pipeline will be monitored 24/7 through DTI's gas control center, will be regularly monitored by air and foot patrol, as well as inspected

39/ *See, e.g., Dominion Transmission, Inc.*, 141 FERC ¶ 61,183 at P 23 & n. 12 (2012); *Columbia Gas Transmission Corp.*, 128 FERC ¶ 61,050 at P 47 & n. 54 (2009).

40/ 15 U.S.C. § 717f(h) (2012).

41/ *See* Certificate Policy Statement, 88 FERC at p. 61,749.

42/ Friends of Wintergreen, Cover Page.

by in-line pigging to assure the integrity of the pipe. As the Commission well-knows, underground pipelines are the safest way to transport natural gas.

So, it is difficult to give credence to the claims of "dramatically negative effects" of the pipeline, supposedly causing the Wintergreen Resort up to a 20% reduction in business as forecast by Friends of Wintergreen. 43/ Still, Atlantic certainly would avoid the adverse impacts on the Wintergreen Resort and nearby landowners if a better route were available. The fact is that the route alternative championed by Friends of Wintergreen – what it terms "Alternative 28" – would have much greater adverse effects (not on the Resort obviously, but on the surrounding area) than Atlantic's proposed route. Friends of Wintergreen charge that Atlantic "has not properly considered" this route, as reflected by the fact that "there is only one sentence in Atlantic's entire application devoted to" it. 44/ This alternative, as just one of 33 collocation route alternatives for which Atlantic identified significant impediments warranting rejection, was not afforded extensive analysis in the Application; but, that does not mean that Atlantic did not consider the alternative or other options to minimize adverse impacts on Wintergreen Resort.

This Alternative 28 would have the theoretical advantage – such as it is – of collocating for much of its duration with roadways, including Interstate 64. As explained in Resource Report 10, at pages 10-55 and 10-56, large diameter pipeline generally cannot be sited within or adjacent to interstate highways. Moreover, the possibility of constructing ACP adjacent to the Interstate 64 corridor in places (including for a stretch similar to that involved in Alternative 28) was considered and expressly rejected as not viable or feasible in the Resource Report at pages 10-56 to 10-60. Moreover, following the roadways along the route championed by Friends of

43/ *Id.* at 6.

44/ *Id.* at 13 (referring to an entry in Table 10A-1 in Appendix 10A concerning the route depicted in Figure 10A-28).

Wintergreen would lead the pipeline route right through Staunton and Waynesboro, Virginia – two of the largest towns in the area. The impacts on these highly developed areas would be more significant than those of Atlantic's proposed route which, at its closest point, passes more than two miles away from the Wintergreen Resort. Furthermore, Alternative 28 would involve crossing the Blue Ridge Mountains at Afton Gap, which poses significant challenges due to the existence of two railroad tunnels. In particular, the Claudius Crozet Blue Ridge Tunnel was constructed between 1850 and 1858 and is designated as a National Historic Civil Engineering Landmark. The tunnel is currently under restoration and preservation through funding from Federal transportation enhancement funds and state grants. The restored tunnel project will incorporate a trailway through the restored tunnel, accessible from both sides by trail hikers, walkers, and bicyclists, linking to existing trail systems. Phase I of the restoration and preservation is complete and funding for Phase II work has been awarded. Because of this established use of the tunnel, routing the pipeline through the tunnel is not a viable option. Therefore, Atlantic has concluded that Alternative 28 is infeasible and less desirable than the proposed route due to the construction constraints, dense residential/commercial infrastructure, highway system, and terrain.

For all of these reasons, the Commission should give no further consideration to the alternative route proposed by Friends of Wintergreen. Moreover, the protest of that advocacy group in no way undermines the general conclusion that Atlantic has satisfactorily endeavored to minimize the adverse effects of ACP on affected landowners. And the residual adverse effects are clearly outweighed by the significant benefits of the project.

E. A Programmatic or Regional EIS is not necessary or warranted

Certain environmental groups have urged the Commission to conduct a regional or programmatic environmental impact statement (EIS) addressing multiple other pipeline projects, along with ACP and the Supply Header. 45/ The Commission has consistently and repeatedly rejected calls for such an approach, and it should do so again here.

The Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act (NEPA) state that major federal actions for which an EIS may be required include "programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program." 46/ As the Commission has repeatedly explained, there is no Commission plan or policy to promote the unconventional production of, or increase reliance on, natural gas. 47/ Nor is the Commission some kind of central-planning pipeline czar, determining where and when pipelines should be expanded or added. As the Commission rightly emphasizes, interstate natural gas infrastructure is proposed and developed by private industry, as reflected in applications filed with the Commission by natural gas companies, and the Commission simply acts on the filed applications. 48/ When pipeline proposals are supported by sufficient contractual commitments – as ACP most definitely is – the proposals reflect market-based decisions about where and when particular new infrastructure is needed. Once the proposal is filed, the Commission is obligated under section 7 of the Natural Gas Act to authorize the project if it finds that the construction and operation of the proposed facilities "is or will be required by the present or future public convenience and necessity."

45/ The Southern Environmental Law Center advocated this notion in Atlantic's pre-filing proceeding, and it has been advanced in these proceedings both in a series of petitions filed with the Commission and comments by certain interveners such as Shenandoah Valley Network, *et al.* at 19-23 and OVEC at 4.

46/ 40 C.F.R. § 1502.18(b)(3) (2015).

47/ *E.g.*, *Texas Gas Transmission, LLC*, 152 FERC ¶ 61,160 at P 51 (2015); *Dominion Transmission, Inc.*, 152 FERC ¶ 61,138 at P 30 (2015); *Texas Eastern Transmission, LP*, 149 FERC ¶ 61,259; *Columbia Gas Transmission, LLC*, 149 FERC ¶ 61,255 (2014).

48/ *Id.*

To further explain the Commission's standard, and well-reasoned, rejection of calls for a programmatic EIS, Atlantic cannot respond better than simply quoting here at length from one of the Commission's recent orders:

> the mere fact that there are a number of approved, proposed, or planned infrastructure projects to increase infrastructure capacity to transport natural gas from the Marcellus and Utica Shale does not evidence the existence of a regional plan or policy of the Commission. Instead, this information confirms that the regional development of Marcellus and Utica Shale gas is initiated solely by a number of different companies in private industry. As the Supreme Court held in in *Kleppe v. Sierra Club*, a programmatic EIS is not required to evaluate the regional development of a resource by private industry if the development is not part of, or responsive to, a federal plan or program in that region.
>
> Similarly, in *Piedmont Environmental Council v. FERC*, the U.S. Court of Appeals for the Fourth Circuit ruled that the Commission was not required to prepare a programmatic EIS for its promulgation of regulations to govern how we will issue permits for electric transmission facilities in areas designated as national interest corridors. The court explained that because permit applications would come later from private parties for sites within the corridors, the Commission could not "identify projects that are likely to be sited and permitted," and thus did not have 'information about the ultimate geographic footprint of the permitting program." Under these circumstances, the court found that "a programmatic EIS would not present a credible forward look and would therefore not be a useful tool for basic program planning."
>
> Likewise, the Commission's siting decisions regarding pending and future natural gas pipeline facilities will be based on proposals by private entities in a highly competitive industry, and the Commission has no basis to reliably predict the scale, timing, and location of projects, much less the type of facilities that will be proposed. Any broad, regional environmental analysis would "be little more than a study … containing estimates of potential development and attendant environmental consequences," and could not present "a credible forward look that would be a useful tool for basic program planning." In these circumstances, the Commission's longstanding practice to conduct an environmental review for each proposed project, or a number of proposed projects that are interdependent or otherwise interrelated or connected,

> "should facilitate, not impede, adequate environmental assessment." 49/

The most common pleas here call for a single EIS to address three other proposed pipelines for Virginia: Mountain Valley Pipeline, the Appalachian Connector, and the WB Xpress Project. As explained in Section II.B. above, two of these projects have not yet been filed with the Commission and, thus, are not "proposals" ripe for analysis under NEPA. 50/ None of the projects actually serve the same, or even a similar, purpose as ACP. ACP unquestionably has independent utility from any of the others: it will go forward regardless of their future. The various projects have completely different customers and do not have overlapping facilities or routes. Thus, ACP is certainly not connected or interrelated with any of the other proposed projects. In these circumstances, a programmatic EIS is neither necessary nor appropriate. Of course, the Commission will consider the reasonably foreseeable cumulative impacts of the other projects (to the extent warranted under NEPA and its well-established policies) as part of its EIS for ACP and the Supply Header.

F. Detailed Analysis of the Effects of Gas Production Is Not Required

As is now routinely the case with the environmental groups' opposition to pipeline projects, they claim here that the Commission must evaluate the environmental effects of

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49/ *Texas Gas*, *supra.* at P 53-55 (internal citations omitted).

50/ Section 102(C) of NEPA requires environmental review of "proposals" for major Federal actions affecting the human environment. 42 U.S.C. § 4332(2)(C) (2012). The CEQ regulations state that a "proposal" exists when the action is at the stage when "an agency subject to [NEPA] has a goal and is actively preparing to make a decision… and the effects [of that action] can be meaningfully evaluated." 40 C.F.R. § 1508.7 (2014). "Without an application, the Commission cannot actively prepare to make a decision on the projects and the effects of the projects cannot be meaningfully evaluated." *Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 at P 110 (2015).

"induced" gas production. 51/ The Commission has uniformly rejected such arguments in other proceedings and should continue to do so here.

The environmental effects of the production of gas to be transported through ACP are not sufficiently causally related to the Project to warrant detailed analysis, not reasonably foreseeable for NEPA purposes, and they cannot be determined without inappropriate speculation. Under the CEQ regulations, NEPA analysis must include a discussion of the direct and indirect effects of a federal action, and indirect effects are defined as effects that "are *caused* by the action and are later in time or farther removed in distance, but are still *reasonably foreseeable*."52/

Before an action may be found to be the "cause" of an environmental impact, "NEPA requires 'a reasonably close causal relationship' between the environmental effect and the alleged cause." 53/ Even a "but for" causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. The Supreme Court has described the relevant causation test as similar to the "familiar doctrine of proximate cause from tort law" used to determine legal responsibility. 54/ In addition to the lack of causal connection, any effects associated with gas production supposedly resulting from the Commission's approval of a pipeline also are not "reasonably foreseeable" for NEPA purposes.

51/ Appalachian Mountain Advocates, *et al.* at 30-36; OVEC at 2-3; Waterkeepers at 3. While most of the environmental groups focus these sorts of argument on ACP, the Clean Air Council advances it concerning the Supply Header. The proper response is the same for both projects.

52/ *See* 40 C.F.R. § 1508.7-.8 (emphases added).

53/ *U.S. Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (internal citation omitted).

54/ *Id.*

Again, because Atlantic fully agrees with the Commission's well-established policy, quotation from a recent Commission order seems the most appropriate response to these arguments:

> As we have previously concluded in natural gas infrastructure proceedings, the environmental effects resulting from natural gas production are generally neither caused by a proposed pipeline (or other natural gas infrastructure) project nor are they reasonably foreseeable consequences of our approval of an infrastructure project, as contemplated by the CEQ regulations. A causal relationship sufficient to warrant Commission analysis of the non-pipeline activity as an indirect impact would only exist if the proposed pipeline would transport new production from a specified production area and that production would not occur in the absence of the proposed pipeline (i.e., there will be no other way to move the gas). To date, the Commission has not been presented with a proposed pipeline project that the record shows will cause the predictable development of gas reserves. In fact, the opposite causal relationship is more likely, i.e., once production begins in an area, shippers or end users will support the development of a pipeline to move the produced gas. It would make little economic sense to undertake construction of a pipeline in the hope that production might later be determined to be economically feasible and that the producers will choose the previously-constructed pipeline as best suited for moving their gas to market.
>
> Even accepting, arguendo, that a specific pipeline project will cause natural gas production, we have found that the potential environmental impacts resulting from such production are not reasonably foreseeable. As we have explained, the Commission generally does not have sufficient information to determine the origin of the gas that will be transported on a pipeline. It is the states, rather than the Commission, that have jurisdiction over the production of natural gas and thus would be most likely to have the information necessary to reasonably foresee future production. We are aware of no forecasts by such entities, making it impossible for the Commission to meaningfully predict production-related impacts, many of which are highly localized. Thus, even if the Commission knows the general source area of gas likely to be transported on a given pipeline, a meaningful analysis of production impacts would require more detailed information regarding the number, location, and timing of wells, roads, gathering lines, and other appurtenant facilities, as well as details about production methods, which can vary per producer and depending on the applicable regulations in the various states.

> Accordingly, the impacts of natural gas production are not reasonably foreseeable because they are "so nebulous" that we "cannot forecast [their] likely effects" in the context of an environmental analysis of the impacts related to a proposed interstate natural gas pipeline.
>
> Nonetheless, we note that, although not required by NEPA, a number of federal agencies have examined the potential environmental issues associated with unconventional natural gas production in order to provide the public with a more complete understanding of the potential impacts. The Department of Energy has concluded that such production, when conforming to regulatory requirements, implementing best management practices, and administering pollution prevention concepts may have temporary minor impacts to water resources. The EPA has reached a similar conclusion. With respect to air quality, the Department of Energy found that natural gas development leads to both short-and long-term increases in local and regional air emissions. It also found that such emissions may contribute to climate change. But to the extent that natural gas production replaces the use of other carbon-based energy sources, the Department of Energy found there may be a net positive impact in terms of climate change. 55/

This Commission's established approach, as reflected above, fully addresses the environmental groups' arguments about the effects of "induced" gas production.

G. There is no need for a formal adjudicatory hearing in this case

Certain individuals or groups submitting comments have called on the Commission to conduct a formal adjudicatory, or evidentiary, hearing concerning ACP. Under well-established Commission policy, that is not required or warranted.

Although the Natural Gas Act and the Commission's regulations provide for a "hearing" when an applicant seeks a certificate of public convenience and necessity, neither the statute, the regulations, nor due process require that the hearing be a trial-type, evidentiary hearing. It is long-established, black-letter law that the Commission need not conduct a formal, trial-type evidentiary hearing if any disputed issues can be adequately resolved on the basis of a written

55/ *Dominion Transmission, Inc.*, 153 FERC ¶ 61,203 at P 24-26 (2015)(internal citations omitted).

record. 56/ The Commission has an established policy of not conducting an adjudicatory hearing in these circumstances as long as "all interested parties have had a full opportunity to present their views through multiple written submissions."57/ Rather, a "paper hearing" is appropriate "[w]hen, as is usually the case, the written record provides a sufficient basis for resolving the relevant issues." 58/

Just as in virtually all certificate proceedings, the issues raised here may be resolved on the written record, with no need for additional proceedings. Given the ample opportunities that interested parties have to comment in the proceeding – not to mention in the pre-filing process that came before it – all relevant topics and contested issues will be thoroughly aired and developed on the record for Commission decision.

H. Reply to Issues Raised by the NCUC

1. The Commission Should Reject NCUC's Challenge To Its Established Policy Regarding Return on Equity

The NCUC challenges, in separate pleadings, the rate of return on equity (ROE) included in the recourse rates proposed both by DTI as the incremental rates for the Supply Header and by Atlantic for its initial rates. 59/ In each case, the NCUC's argument is contrary to well-established Commission policy and should be rejected.

56/ *See, e.g.*, *CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993); *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan Co., Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969.

57/ *E.g., Algonquin Gas Transmission, LLC*, 150 FERC ¶ 61,163 at P 20 (2015); *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 at P 15 (2014); *Transcontinental Gas Pipe Line Co., LLC*, 147 FERC ¶ 61,102 at P 32 (2014); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,240 at P 25 (2012).

58/ *Transco, supra.*, 147 FERC at P 32 (internal citation omitted).

59/ All of Atlantic's Customers have agreed to pay negotiated rates, as has Atlantic for its DTI Supply Header capacity.

In designing its incremental recourse rates for the Supply Header, DTI utilized the authorized pre-tax rate of return of 13.7% from the settlement of its last general Section 4 rate case. The NCUC acknowledges that this approach comports with Commission policy, 60/ but challenges it on the basis that the settlement ROE allegedly does not reflect current costs and may exceed the rates of return authorized by the Commission in recent rate cases which the NCUC states have ranged from 10.28% to 12.99%. 61/ NCUC explains that DTI's most recent rate case settlement was filed over 15 years ago, without recognizing that DTI has twice entered into settlements with its customers reaffirming its rates while providing certain rate relief, most recently in the uncontested settlement filed in December 2013 in Docket No. RP14-262-000.

In recent years, DTI has developed a large number of projects on its system with incremental rates, and has used the 13.7% pre-tax rate of return in calculating all of those rates. All of the projects with this rate approach have been approved by the Commission. This approach generally has not been questioned – presumably because it follows well-established Commission policy -- in those certificate proceedings, but it was challenged with regard to DTI's Allegheny Storage Project. In that case, the Commission considered and rejected the same argument advanced by the NCUC here, explaining:

> The Commission finds DTI's use of its previously approved pretax return rate of 13.70 percent to be appropriate for designing its incremental rates. The Commission's policy with respect to developing incremental rates is to use the rate of return components approved in the pipeline's last NGA section 4 general rate proceeding. In fact, as DTI states, the Commission has approved the use of DTI's previously approved pretax return of 13.70 percent in recent orders approving certificate applications made by DTI. Therefore, DTI's use of its most recent Commission

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60/ NCUC – Supply Header at 5.

61/ *Id.* at 6-7.

> approved pretax return rate is appropriate in accordance with Commission policy. 62/

The NCUC's challenge to the ROE utilized by Atlantic in the design of recourse rates is also contrary to well-established Commission policy. As NCUC notes, Atlantic stated in its Application that its proposed use of an ROE of 14% "reflects the risk inherent in a new, major project venture like ACP and is consistent with the returns authorized for other new pipeline companies" and provided citations to three Commission decisions issued from 2010 to 2014. 63/ While acknowledging that the Commission authorized the use of an ROE of 14% for new pipelines in each of those cited cases, NCUC opines that the Commission's reasoning in the cases was insufficient. 64/

The Commission's policy of utilizing an ROE of 14% for new pipelines with an equity ratio of no more than 50% is reflected in a large body of precedent, dating from much earlier than the cases previously cited by Atlantic. *See, e.g., Corpus Christie LNG, Inc.*, 111 FERC ¶ 61,081 (2005); *Ingleside Energy Center*, 112 FERC ¶ 61,101 (2005); *Bradwood Landing LLC*, 124 FERC ¶ 61,257 (2008); *Markwest Pioneer, LLC*, 125 FERC ¶ 61,165 (2008); *T.W. Phillips Pipeline Corp.*, 126 FERC ¶ 62,132 (2009); *Ruby Pipeline*, 128 FERC ¶ 61,224 (2009); *Fayetteville Express Pipeline, LLC*, 129 FERC ¶ 61,235 (2009); *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010); *ETC Tiger Pipeline, LLC*, 131 FERC ¶ 61,010 (2010).

In all of these cases, spanning a full decade, the Commission has determined that an ROE of 14% reasonably reflects the construction, financial, regulatory and contractual risks faced by

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62/ *Dominion Transmission, Inc.*, 141 FERC ¶ 61,240 at P 41 (2012)(omitting internal footnotes that cite (1) *Texas Eastern Transmission, L.P.*, 129 FERC ¶ 61,151 (2009) for this general Commission policy and (2) *Dominion Transmission, Inc.*, 136 FERC ¶ 61,126 (2011) and *Dominion Transmission, Inc.*, 120 FERC ¶ 61,235 (2007) as examples of other orders approving DTI's use of this rate of return to calculate incremental rates.)

63/ NCUC-ACP at 5, discussing ACP Application at 30 & n. 24.

64/ *Id.* at 5-6.

new pipelines. Few of the cases contain the sort of "analysis of current financial markets and/or current investor expectations" that NCUC seeks. 65/ Back in 2005, the Commission required a capital structure with at least 50% debt as part of its approval of an ROE of 14%, explaining that a larger equity ratio (as proposed there) would be too costly to ratepayers. 66/ In 2010, the Commission rejected an ROE of 15% proposed by a pipeline as appropriate to encourage new construction while reaffirming the reasonableness of an ROE of 14%. 67/

The NCUC provides no basis for ACP to be treated differently than all these other new pipeline projects. Obviously, financial conditions have changed, in a variety of ways, from 2005 through 2015 – but the Commission has never found that those conditions warranted a reduction in the ROE allowed for new pipelines. And the ROE approved in rate cases for existing pipelines are consistently lower than the allowed ROE for new pipes. 68/ This discrepancy reasonably reflects the increased risks of developing and building new pipelines. Particularly given the need for the construction of new pipelines at this time, the Commission should not alter its established policy of allowing an ROE of 14% to reflect their risks.

2. Recourse Rates for a Possible Future Expansion of ACP Should Be Determined at the Time of the Expansion, Based on Commission Policy at that Time.

NCUC argues that the Commission should rule, now, that Atlantic must roll-in the costs of a potential future expansion of ACP for purposes of calculating recourse rates. 69/ This approach would be consistent with Atlantic's agreement with respect to its negotiated rates with

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65/ *See id.* at 6.

66/ *Ingleside Energy Center, supra.*, 112 FERC at p. 61,253.

67/ *ETC Tiger Pipeline, supra.*, 131 FERC at P 25-26.

68/ *See* NCUC-ACP at 7.

69/ *Id.* at 7-9.

Foundation and Anchor Shippers that contemplate this possibility, which NCUC supports. 70/ The NCUC's request with respect to recourse rates for a potential expansion, however, is premature.

NCUC quotes from the discussion in the Certificate Policy Statement of situations in which inexpensive expansibility is made possible because of earlier, costly construction. 71/ The Certificate Policy Statement, however, further states that "it is the Commission's intent to evaluate specific proposals based on the facts and circumstances relevant to the application and to apply the criteria on a case-by-case basis." 72/ Atlantic does not know at this time whether ACP will be expanded, when it will be expanded, what the size and cost of a potential expansion will be, or what the Commission's rate design policies may be at that future time. Accordingly, the "facts and circumstances" of a potential future expansion are not known at this time.

The Commission confronted this same issue in a recent Transco proceeding, where the pipeline requested a pre-determination that a future, inexpensive expansion would be rolled-into the rates of its then-proposed project. 73/ The Commission refused to do so, explaining that "Without a specific proposal, the Commission cannot make the requested determinations." 74/ The same result is required here.

NCUC, however, also asks the Commission to "clarify that nothing herein exempts ACP from complying with Commission policy requiring roll-in of expensive expansion capacity for purposes of calculating recourse rates." 75/ Atlantic does not propose to be exempt from any

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70/ *Id.* at 8.

71/ *Id.*

72/ Certificate Policy Statement, 88 FERC at p. 61,746.

73/ *Transcontinental Gas Pipe Line Co., LLC*, 145 FERC ¶ 61,152 at P 24-27 (2013).

74/ *Id.* at P 27.

75/ NCUC-ACP at 9.

such policy, and knows of no basis on which it would be. If Atlantic proposes a relatively inexpensive expansion at some time in the future, and Commission policy at that time provides for the roll-in of the expansion costs, that would occur. At this time, however, there is no basis to determine how recourse rates should be calculated in the event that possibility occurs at an unknown future date.

3. Atlantic's Response to NCUC's Tariff Issues

As part of its Application, Atlantic requested that the Commission approve the terms of its FERC Gas Tariff, a *pro forma* copy of which was included as Exhibit P of the Application. Prior to submitting its Application, Atlantic engaged in an extensive collaborative effort to develop the proposed Tariff with the Customers, who have subscribed to approximately 96% of ACP's capacity. Those Customers support or do not oppose all the service terms and conditions reflected in the proposed Tariff. 76/ The NCUC, however, has presented questions or concerns about a series of Atlantic's proposed Tariff provisions. 77/ Atlantic will respond briefly here to each tariff issue raised by the NCUC.

NCUC first objects to the application in GT&C Section 37 of overrun charges when a shipper exceeds its applicable Maximum Daily Delivery Obligation (MDDO) or Maximum Daily Receipt Obligation (MDRO), the maximum amount that Atlantic is contractually obligated to deliver or receipt at a Primary Point. NCUC views the provision as inconsistent with the Commission's flexible point quantities because "if a shipper were to use its capacity at an alternative point,… it could be assessed penalties for exceeding its MDRO or MDDO at a given

76/ One of the Customers raised with Atlantic an objection to one particular aspect of the proposed Tariff: the scheduling penalty provisions set forth in Section 37.3 of Atlantic's proposed General Terms and Conditions ("GT&C"). To address that concern, Atlantic proposed a modification of that provision in its Motion to Modify One Proposed Tariff Provision, submitted on October 23, 2015.

77/ NCUC-ACP at 9-13.

point." 78/ NCUC misconstrues the provision. Shippers have "applicable" MDDO and MDROs only at their Primary points. So, a shipper could not exceed a maximum contractual point right, and incur an overrun charge, when delivering or receiving gas at an alternate point.

Next, NCUC objects to the proposed restriction in GT&C Section 11.3 that provides that Atlantic is not obligated to add a new Primary Point or change an existing Primary Point if the point is associated with unsubscribed capacity. This provision, which was accepted by all of Atlantic's Customers which have already selected their Primary Points, is intended to promote Atlantic's ability to market its small amount of unsubscribed capacity. In these circumstances, Atlantic submits that the limited restriction on its Customers' flexibility – which they have accepted – is reasonable.

Next, NCUC interprets the reduction in service provisions of GT&C Section 10.2.A.3 as treating all firm services equally, and states that the provision should provide priority for primary firm to primary firm points. The referenced tariff provision provides for allocations or interruptions of firm service "pursuant to GT&C Sections 13.3.A through E." Those subsections of 13.3 provide for the ordering of nomination priorities, starting with Primary Point services, etc. The reference in Section 10.2.A.3 was intended to reflect a similar ordering of priorities among firm services when allocating capacity. To clarify the allocation provision, Atlantic proposes that it modify Section 10.2.A.3 to add the phrase "in the reverse order of priority provided in that section for scheduling."

The NCUC claims that the statement in Atlantic's Application that shippers may use any point on the DTI system on a secondary basis "in accordance with the terms of DTI's FERC Gas Tariff" appears to be inconsistent with GT&C Section 29.1, which states that service on DTI

78/ *Id.* at 10.

capacity will be made available pursuant to Atlantic's Tariff. Atlantic's GT&C Section 29.2, however, provides that Customer's "rights shall not exceed the rights of Pipeline under its firm transportation service agreement with DTI or DTI's FERC Gas Tariff." Thus, the statement in the Application was a short-hand reference to this Tariff provision. Atlantic does not view the Application and Tariff statements as inconsistent; to the extent that they are considered so, however, the Tariff provision controls.

Next, NCUC states that the "penalties" in GT&C Section 37 are cumulative and argues that Atlantic's Tariff should be revised so that shippers may only be penalized once for a given action. Atlantic initially notes that GT&C Section 18.5.C. provides that any OFO penalties are in lieu of any penalties under Sections 37.2 and 37.3. Section 37.2 (Unauthorized Overrun Penalties) and 37.3 (Scheduling Penalties) refer to "any other applicable charges and penalties" because it is possible for a shipper to incur both penalties in a single day, but not on the same quantities. Assume, for instance, that a shipper schedules 80% of its MDTQ and then takes 105% of its MDTQ: that shipper would incur scheduling penalties for quantities between 80% and 102% of MDTQ and overrun penalties on the quantities in excess of the 102%. In this example, this shipper would not incur multiple penalties on any single dekatherm delivered, but would incur two different penalties on the different quantities on the same day. Atlantic submits that this approach, as reflected in GT&C Section 37, is reasonable and consistent with Commission policy.

NCUC next challenges GT&C Section 37.4, which provides for billing of Customers responsible for charges Atlantic incurs pursuant to operational balancing agreements (OBAs) with interconnecting pipelines. NCUC complains that "ACP provides no basis for charging shippers for OBA costs, even if the shipper was in perfect balance every day of the month." 79/ NCUC seems perhaps to have overlooked the portion of this Tariff section providing "to the extent such charge incurred by Pipeline *is caused by Customer(s) [emphasis added]*, Pipeline shall promptly bill such Customer(s)…." Thus, only shippers causing the OBA-related charge – not those that are "in perfect balance" – will receive the charge.

Next, NCUC objects to the statement in GT&C Section 38.4 that Atlantic will accrue "Interest" on payments set for revenue crediting for the period January 1 through March 1 of the year in which Customer invoices are credited, based on its belief that Atlantic is attempting to not pay interest in year in which the credit is accrued. "Interest" is a defined term in the Tariff and its definition (at GT&C Section 1.W) refers to the Commission's regulations at 18 C.F.R. Section 154.501(d): those regulations, in turn, require the payment of interest from the date that monies are received. Atlantic did not in any way intend to imply that it would not follow this regulation. The reference to interest for the period January to March of the following year is only intended to explain how long the interest would continue to accrue. If the Commission deems it useful, Atlantic certainly is willing to clarify this Tariff provision.

NCUC also objects to the exception in Atlantic's reservation charge crediting provisions, at GT&C Section 39.2.A.1 for credits due to the conduct of the interconnecting point operators. This provision is fully consistent with Commission policy. *See, e.g., Enable Gas Transmission, LLC*, 152 FERC ¶ 61,052 at P 133-134 (2015); *Dominion Transmission, Inc.*, 142 FERC 61,154 at PP 51-52 (2013); *TransColorado Gas Transmission Co. LLC.*, 139 FERC 61,229 at P 50 (2012). The exception is applicable because Atlantic does not control the actions of

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79/ *Id*. at 11-12.

interconnecting point operators on their systems. The fact (mentioned by NCUC) that the upstream interconnecting pipeline DTI is affiliated with Atlantic is immaterial.

In its penultimate tariff challenge, NCUC states that it is unclear why Pack Account balances are limited to managing daily imbalances at the furthest downstream primary Delivery Point (or Citygate) on the Foundation/Anchor Shippers service agreement during a release. Pack Accounts (as set forth in GT&C Section 41) are an innovative, unique feature designed by Atlantic in negotiation with its Foundation and Anchor Shippers to give them an ability to tender gas quantities into the account in advance for later delivery on a no-notice basis. The pack provision was a critical element for the Foundation and Anchor Shippers' participation in the ACP Project because it provides significant flexibility that is especially important to electric generation customers that may have significant and unexpected variations in their gas needs. Atlantic's ability to provide this flexibility is extremely limited as it has no access to gas storage on its system and only a limited system-wide capability to retain gas for such needs, in addition to the line pack required for the pipeline's day-to-day operations. The limitation of the Pack accounts to the furthest downstream primary Delivery Point (or Citygate) is intended to take account of Atlantic's operational requirements to meet all of its contractual obligations while serving the purposes of the Foundation/Anchor Customers that negotiated for this right (and have not objected to the limitation highlighted by NCUC). Accordingly, Atlantic submits that this provision is reasonable.

Finally, NCUC objects to Atlantic's right, in GT&C Section 42.5, to correct imbalances by suspending receipts or deliveries if the shipper does not correct its net imbalance within 17 business days after it receives notice of its month-end imbalance. Of course, shippers have multiple opportunities and ways to correct the imbalance over that significant time period, in

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accordance with Atlantic's Tariff and the applicable NAESB rules. Atlantic's need for the right to take decisive action for imbalances that remain uncorrected after that period arises from its lack of storage, limited line pack, no cash-out provisions for imbalances, and the flexibility devoted to Customers with their Pack accounts. In these circumstances, Atlantic submits that this right is reasonable.

In summary, Atlantic submits that all of the Tariff provisions questioned by NCUC are reasonable provisions for Atlantic's Tariff, especially in light of the fact that all of the Customers support or do not oppose the provisions. Some of the Tariff provisions addressed here may warrant clarification. To the extent that is deemed necessary, Atlantic will include the required clarifications (or modifications if warranted) when implementing its actual Tariff.

III. Conclusion

WHEREFORE, for all the foregoing reasons, Atlantic and DTI request that the Commission accept this Answer, consider it when evaluating the protests filed in these proceedings, and grant the authorizations requested by Atlantic for ACP and by DTI for the Supply Header, as proposed in their respective certificate applications.

Respectfully submitted,

*_/s/ J. Patrick Nevins_*

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DOMINION TRANSMISSION, INC.

Dated: December 4, 2015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 4th day of December, 2015.

/s/ J. Patrick Nevins

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