



July 19, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Via e-filing and U.S. Mail

Re: Request for Revised or Supplemental Draft Environmental Impact Statement for the Atlantic Coast Pipeline and Supply Header Project (Docket Nos. CP15-554-000, CP15-554-001, CP15-555-000)

Dear Secretary Bose:

We submit the following comments regarding the need for a Revised or Supplemental Draft Environmental Impact Statement for the proposed Atlantic Coast Pipeline Project (hereinafter “Atlantic Coast,” “ACP,” the “Pipeline,” or the “Project”). Numerous government agencies and the environmental community submitted comments noting substantial defects in the Draft Environmental Impact Statement (“DEIS”) for the Atlantic Coast Pipeline and Supply Header Project.

In the comments below, we outline many of these defects in the DEIS that must be corrected in a Revised or Supplemental DEIS. Correcting these deficiencies will require significant new analysis and the incorporation of high quality and accurate information regarding the Project’s impacts. Public scrutiny of environmental decision making, informed by high quality and accurate information, is essential to the purposes of the National Environmental Policy Act (“NEPA”). 40 CFR § 1500.1(b). The Commission must allow public scrutiny of these substantial changes in a Revised or Supplemental DEIS.

We also identify significant new information associated with the Project that has come to light after the public comment period on the DEIS closed on April 6, 2017. Additional information necessary for a fully informed evaluation of potential impacts remains undisclosed.

In light of these circumstances, we urge FERC to issue a Revised or Supplemental DEIS for Atlantic Coast, and to provide sufficient opportunity for public comment. FERC must supply information and analysis regarding the Project in a manner that facilitates meaningful analysis and public participation. The Commission should use this as an opportunity to correct the substantial deficiencies in the DEIS, thereby furthering the purposes of NEPA.

I. Legal Requirements for a Revised or Supplemental Environmental Impact Statement

The National Environmental Policy Act EIS requirement “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Information must be provided in a timely manner to ensure that the public can meaningfully participate in the decisionmaking process. *League of Wilderness Defenders/Blue Mountain Biodiversity Project v. Connaughton*, 752 F.3d 755, 761 (9th Cir. 2014) (“Informed public participation in reviewing environmental impacts is essential to the proper functioning of NEPA.”). An agency must “not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989).

When an agency publishes a draft EIS, it “must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act.” 40 C.F.R. § 1502.9(a). “If a draft statement is so inadequate as to preclude meaningful analysis, the agency *shall* prepare and circulate a revised draft of the appropriate portion.” *Id.* (emphasis added). “The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.” *Id.* An EIS that fails to provide the public a meaningful opportunity to review and understand the agency’s proposal, methodology, and analysis of potential environmental impacts violates NEPA. *See e.g., California ex rel. Lockyer v. U.S. Forest Service*, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); *see also Idaho ex rel. Kempthorne v. U.S. Forest Service*, 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) (“NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.”).

Furthermore, NEPA requires a supplement to an EIS when significant new information or changes in a project implicate significant changes in the environmental analysis. The NEPA regulations require that:

- (1) [Agencies] . . . [s]hall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (2) [Agencies] may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

40 C.F.R. § 1502.9(c). The use of the word “shall” is mandatory: it creates a duty on the part of the agency to prepare a supplemental EIS if substantial changes are made or if there is significant new information relevant to environmental concerns. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989) (recognizing the duty where there are significant new circumstances or information); *see also Dubois v. U.S. Dep’t. of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996).

When determining if new circumstances or new information require an agency to issue a supplemental EIS, the following factors should be considered: (a) the environmental significance of the new information; (b) its probable accuracy; (c) the degree to which the agency considered the new information and considered its impact; and (d) the degree to which the agency supported its decision not to supplement its impact statement with explanation or additional data. *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025 (9th Cir. 1980); *Commonwealth of Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983).

II. The Commission Must Prepare a Revised or Supplemental Draft Environmental Impact Statement for the Atlantic Coast Pipeline Project

A. FERC must prepare a Revised DEIS due to the substantial lack of information in the DEIS regarding the need for the Atlantic Coast Pipeline and its environmental impacts.

1. Necessity

The Commission must prepare a Revised DEIS for the Project to address the significant lack of information in the DEIS concerning actual need for the Pipeline – i.e., whether it is required by the present or future public convenience and necessity. 15 U.S.C. § 717f(e). As explained in greater detail in the motion for evidentiary hearing filed by various conservation groups on June 21, 2017, “the purported justifications for this project have eroded, if they ever existed.” Motion for Evidentiary Hearing at 1 (Accession No. 20170621-5160). Despite the critical nature of this inquiry, the DEIS failed to seriously assess any aspect of this lack of need, including but not limited to:

- 1) The precedent agreements with affiliated shippers, which are or serve a regulated utility with captive ratepayers, distort market signals and are not a reliable market proxy.
- 2) Demand for natural gas for power generation in the region that includes Virginia and North Carolina is level through 2030, undermining market demand for the Pipeline.
- 3) Electricity load forecasts for Virginia remain level through 2030, undermining market demand for the Pipeline.
- 4) Electricity load forecasts for North Carolina have declined since 2014, undermining market demand for the Pipeline.
- 5) The capacity of existing natural gas pipeline and storage infrastructure, with planned modifications, is sufficient to meet demand for natural gas in Virginia and North Carolina.
- 6) Rapidly declining costs of renewable energy will render gas-fired power generation uneconomic in coming years.

Id. at 2-3. An evidentiary hearing is needed for the reasons outlined in the June 21, 2017 motion. In addition, the DEIS must include a robust discussion of the project purpose and need – not just adopt the Project proponents’ general claims regarding necessity. This error, in turn, infects the alternatives analysis. “NEPA ensures that the agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 371 (1989). FERC should remedy its failure by preparing a Revised DEIS for Atlantic Coast that properly discloses and analyzes the need for the Pipeline.

2. Lack of Relevant Environmental Information

The DEIS also lacked sufficient information about the Atlantic Coast Pipeline and its potential environmental impacts on a wide variety of resources. Some missing information has been supplied by Atlantic Coast and Dominion Energy *after* the DEIS comment period, and submission of additional missing information is expected before construction begins. The public will not have an opportunity to meaningfully review and comment on this information, which should have been included in the DEIS.

Only the issuance of a revised or supplemental DEIS that thoroughly analyzes this missing information will satisfy NEPA's public comment procedures, which "[encourage] public participation in the development of information during the decision making process." *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). Simply adding this missing information in the FEIS is insufficient, as it does not allow the same degree of meaningful public participation. *Id.* (citing *California v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982)) ("It is only at the stage when the draft EIS is circulated that the public and outside agencies have the opportunity to evaluate and comment on the proposal.... No such right exists upon issuance of a final EIS."); 40 CFR § 1500.1(b).

The Sierra Club and other conservation organizations have submitted comments regarding many of the flaws in the DEIS, including identifying critical information that FERC failed to include or assess in the DEIS.¹ Furthermore, numerous government agencies have identified significant deficiencies in the DEIS. For example, the U.S. Environmental Protection Agency (EPA) rated the DEIS information as "Insufficient" under its DEIS rating scheme. EPA Comments on the Atlantic Coast Pipeline and Supply Header Project DEIS – Cover Letter, at 1 (April 6, 2017) (Accession No. 20170411-0262). Pursuant to that rating scheme, the DEIS "does not contain sufficient information to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the proposal."² EPA identified concerns in the following areas:

- **Geology and Soils:** EPA noted that FERC should provide "additional risk and risk mitigation information" regarding "challenging geologic conditions." EPA Comments on the Atlantic Coast Pipeline and Supply Header Project DEIS – Technical Comments, at 1 (April 6, 2017).
 - o EPA noted that the DEIS did not include "complete relevant ground reconnaissance surveys," which is critical given that "blasting, in combination

¹ See, e.g., Comments on the Draft Environmental Impact Statement for the Atlantic Coast Pipeline and Supply Header Project (Accession No. 20170407-5203); Comments of the Virginia Chapter of the Sierra Club concerning the Draft Environmental Impact Statement (Accession No. 20170406-5364).

² EPA, Rating the Adequacy of the Draft Environmental Impact Statement (EIS), *available at* <https://www.epa.gov/nepa/environmental-impact-statement-rating-system-criteria#Category 2 - Insufficient Information>

- with steep slopes, sensitive karst topography, and active or abandoned mines and quarries, has the potential to result in adverse impacts.” *Id.*
- EPA indicated that the DEIS did not adequately evaluate “the potential effects of these geologic hazards, including mining-related subsidence, landslides and flash flooding, on pipeline construction and operation.” *Id.*
 - EPA noted that it is “especially important to evaluate potential impacts in high risk areas,” including “evaluating locations with high susceptibility to landslides and determining their proximity to streams.” *Id.*
 - The DEIS also failed to adequately “describe the nature and extent of potential blasting impacts on local residents, drinking water wells, springs, wetlands, local hydrology, and other resources of special concern,” and EPA “recommend[ed] the practicability of monitoring be considered in hydrologically sensitive areas, such as karst terrain, to determine if wells have been affected.” *Id.*
 - EPA also indicated that the DEIS did not sufficiently “consider ecological risks to karst systems, and risk mitigation that includes avoidance measures,” such that the DEIS does not support its “conclusion that karst blasting and other construction activities would result in only temporary, insignificant impacts.” *Id.*
 - Finally, EPA recommended that the portions of the route in areas with shallow bedrock “be surveyed for heavy metals, radioactive materials, and acid producing rocks with the potential for contamination of nearby water sources.” *Id.*
 - The absence of all of this information in the DEIS necessitates a revised or supplemental DEIS, in order to fulfill NEPA’s mandates.
- Wetlands and Streams: EPA’s comments show that the DEIS failed to include completed wetland and stream surveys, or to adequately “consider practicable avoidance and mitigation” to be incorporated “into the project design and construction.” *Id.* at 2.
- EPA also notes that “[a]lthough wetland impacts in the DEIS are classified by system type, this classification does not provide details regarding the wetland quality or identify unique, difficult-to-mitigate wetland systems such as cypress gum swamps, vernal pools, bog, fen, or groundwater seeps, would be impacted.” *Id.* In other words, the DEIS does not include “specific information regarding high quality and unique wetland types,” and consequently fails to consider “appropriate mitigation.” *Id.*
 - EPA also notes that the “Neuse River and Rocky Swamp crossing is of particular concern,” and that “the proposed Neuse River crossing location will impact a large amount of bottomland hardwood wetlands.” *Id.* EPA recommends the FERC “consider practicable alternative locations for the Neuse River” and that, more generally, FERC “describe[e] whether and how the number of water crossings were minimized.” *Id.*
 - This information should be included in a revised or supplemental DEIS to ensure that the public has an adequate opportunity to consider and comment on it.

- Forests: EPA notes that there will be “large impacts to forest resources” and that “[s]tudies to consider these impacts are ongoing and include a fragmentation study; Construction, Operational and Maintenance Plan; Migratory Bird Plan; Restoration and Rehabilitation Plan; Karst Mitigation Plan; geotechnical studies; and coordination with the U.S. Forest Service and other agencies.” *Id.* The omission of all of this relevant information from the DEIS necessitates the preparation of a Revised or Supplemental DEIS.

- Groundwater and Drinking Water Protection: EPA noted that the pipeline’s “proposed path has the potential to impact public and private drinking water supplies.” *Id.* at 3.
 - The DEIS failed to provide a complete list of “public and private supply wells and springs within the area,” and failed to adequately “describe practicable avoidance and minimization measures to protect groundwater resources.” *Id.*
 - EPA urged FERC to “describe efforts to minimize overall drinking water impacts through avoidance of Groundwater Assessment Areas (GAAs) and Wellhead Protect Area (WHPAs), *id.*; this information must be included in a Revised or Supplemental DEIS so that the public has ample opportunity to consider it and provide input, as required by NEPA.
 - EPA’s comment letter also noted that it supports FERC’s recommendations regarding field surveys for wells and springs, as well as water quality tests for certain wells and springs. *Id.* But the omission of this information from the DEIS itself, as well as information regarding well testing, is problematic and must be remedied with a Revised or Supplemental DEIS.
 - Similarly, the DEIS lacks information regarding the risk to groundwater and surface water drinking water resources posed by aboveground storage tanks, which could be the source of hazardous waste spills during major earth disturbance activities. *Id.*
 - The DEIS also fails to adequately “describe activities that will be implemented to minimize the impact on surface water intakes and source water protection areas.” *Id.* at 4.
 - The DEIS also fails to “provid[e] the proposed or potential sources of water used for hydrostatic tests and dust control, anticipated quantities of water to be appropriated from each source, and practicable measures that could be implemented to ensure water sources and aquatic biota are not adversely affected.” *Id.*³

- Cumulative Impacts: The DEIS lacks information and analysis regarding cumulative impacts “at the *individual* watershed scale.” *Id.* (emphasis added). The DEIS

³ See also Virginia DEQ DEIS comments (Accession No. 20170406-5489), App. B at 14 (“Provide an assessment in the EIS of the river flows where withdrawals for hydrostatic testing are proposed with a discussion of how the withdrawals will affect flows, particularly during low flow or drought conditions.”)

cumulative impacts analysis also fails to properly consider stream crossings and water withdrawals. *Id.*

- EPA noted that other environmental variables “that may influence cumulative impacts at a watershed level include miles of impaired streams, occurrence of rare or at-risk species, and number of National Pollutant Discharge Elimination System outfalls in the HUC,” and that this information “would sharpen the disclosure of cumulative impacts and appropriate consideration of mitigation.” *Id.* at 4-5.
- To comply with the requirements of NEPA, this information missing from the DEIS must be included in a Revised or Supplemental DEIS. EPA included an example of a methodology used to assess the cumulative impact of stream crossings that assessed the number of stream crossings per HUC10 for the ACP and FERC-jurisdictional natural gas pipeline projects. *Id.* at 5. EPA then noted that “[t]his type of assessment, coupled with known attributes of watersheds, would indicate areas of special concern, such as Inch Branch-Back Creek and the Headwaters Middle Island Creek, which are impaired for benthic macroinvertebrates and have high numbers of stream crossings.” *Id.*
- EPA also noted that “[s]ome of these headwaters also are critical for downstream Federally-listed endangered freshwater mussels,” and that “[t]hese areas could potentially be avoided through minor route modifications.” *Id.*
- These assessments and modifications must be considered in a Revised or Supplemental DEIS.

The Forest Service was also critical of the Atlantic Coast Pipeline DEIS for its lack of information and meaningful analysis. *See* Forest Service’s Comments on the Draft Environmental Impact Statement for the Proposed Atlantic Coast Pipeline Project (April 6, 2017) (Accession No. 20170406-5532). This missing information is necessary in order to identify and assess the Project’s impacts. The Forest Service comment letter includes a table, nearly 70 pages long, that outlines missing data and other issues with the DEIS pertaining to National Forest Service lands. These omissions include, but are not limited to:

- “The karst section, when referring to steep slopes, should clearly illustrate the difference between working on steep[] slopes in general and those steep slopes that are located over karst terrain. In addition, given that steep slopes are a major issue for this pipeline analysis through the mountainous regions (Allegheny Mountains and the Ridge and Valley), a separate section highlighting steep slopes in general and then in detail also needs to be included.” *Id.* at 1.
- Lack of data (and consequently effects analysis) in the DEIS regarding electrical resistivity investigation surveys to detect subsurface solution features along portions of the route with potential for karst development. *Id.* at 1-2.
- “The Forest Service cannot concur with this conclusion [that the potential for the Project to initiate or be affected by damaging karst conditions would be adequately minimized] for National Forest land until all erosion control, steep slope procedures, etc. are available for review.” *Id.* at 2. This statement in the DEIS “would appear to

- be premature given the acknowledgement ... of *incomplete information* presumed necessary to arrive at a conclusion,” including analysis, field surveys, and final measures related to slope hazards, and information necessary to assess project-induced landslide hazards and risk to public safety. *Id.* (emphasis added).
- Inconsistencies between the DEIS and the Biological Assessment regarding “likely to adversely affect” determinations. *Id.* at 3.
 - With regard to the statement in the DEIS that FERC has several recommendations for outstanding information regarding sensitive species, the Forest Service commented: “This statement acknowledges *deficiencies in information* needed to conduct an appropriate effects analysis for at least some sensitive species. Given this, the FS has serious reservations about the conclusions of the analyses up to this point because those conclusions have been reached *prior to acquiring the necessary information* to substantiate what must otherwise be presumed to represent judgments based on incomplete information.” *Id.* (emphasis added).
 - With regard to the statement in the DEIS that vegetation types such as grassland/herbaceous, barren, and emergent wetlands would return to preconstruction conditions during operation of ACP facilities, the Forest Service noted that “without assistance, it is highly unlikely that soil quality, native plant communities, hydrological conditions, etc. would return to preconstruction conditions equivalent in ecological function and value to what was disturbed.” *Id.*
 - With regard to the statement in the DEIS that construction impacts to wildlife would be temporary or short-term, the Forest Service noted that “[i]mpacts to certain species of wildlife in the 4208 acres likely to be permanently impacted will ... likely be long-term and functionally permanent.” *Id.* at 4.
 - With regard to the statement in the DEIS that Atlantic and Dominion would minimize impacts on the natural and human environments, the Forest Service wrote: “This statement seems inconsistent with other statements in the Major Conclusions regarding adverse effects and permanent impacts on the environment. There will be irreversible impacts to the soil and vegetation resources from construction of the ACP pipeline on NFS lands.... The Construction, Operation, and Maintenance Plan is currently not complete, and *substantial work remains to develop and refine measures to avoid, minimize, and mitigate impacts to a variety of resources on NFS lands, including steep slopes/sensitive soils; threatened, endangered, and sensitive species; and management indicates species.*” *Id.* (emphasis added).
 - With regard to the statement in the DEIS that some Construction, Operation, and Maintenance Plan requirements or mitigation projects may have less certain outcomes or may be associated with thresholds such as water temperature, the Forest Service noted that “[t]his statement of recognition, along with other statements that speak about minimizing effects (as opposed to eliminating them) are key considerations for conclusions of analyses that must fully incorporate potential direct, indirect, and

cumulative project effects. This comprehensive level of consideration seems to *currently be lacking* in the documented accounts for the various aquatic resources analyses and conclusions.” *Id.* at 10 (emphasis added).

- The DEIS lacks documentation to support its statement that the three existing natural gas pipeline transportation systems operating in the vicinity of the proposed project area do not have sufficient capacity. *Id.*
- The DEIS lacks documentation to support its statements that existing pipeline system alternatives would have similar or greater impacts than, and would not provide a significant environmental advantage over, the proposed Project. *Id.* at 10-11. Furthermore, the DEIS fails to “indicate[] that modification of” those existing systems could meet the purported project need. *Id.*
- With regard to the DEIS’s elimination of the merged system alternative from further consideration, the Forest Service commented: “This statement is not supported by the information presented.... A detailed comparison of feasibility and environmental impacts is needed before the MVP Merged Systems Alternative can be eliminated from consideration.” *Id.* at 11.
- With regard to the ACP and MVP co-location alternative, the Forest Service noted that the DEIS lacks “specific information” supporting its statement regarding the reduction of benefits of co-location, and “does not present any information that would allow comparison of environmental impacts or technical feasibility.” *Id.* at 12.
- The DEIS lacks an analysis of a National Forest Avoidance Alternative. *Id.* at 13.
- With regard to shallow bedrock and blasting, and the statement in the DEIS that blasting of bedrock could *temporarily* affect local groundwater flow, the Forest Service commented that “[e]ffects to local groundwater flow patterns from blasting in bedrock are *likely to be permanent.*” *Id.* at 14 (emphasis added). The Forest Service commented that [t]his description of effects is not specific enough for the activities proposed.” *Id.*
- The DEIS lacks “[d]ocumentation of the effectiveness of stabilization techniques” for certain sites with varying degrees of potential slope instability hazard. *Id.* at 15.
- With regard to the statement in the DEIS that 73 percent of the AP-1 mainline route in West Virginia would cross areas with a high incidence of and high susceptibility to landslides, and that Atlantic has not yet completed the Phase 2 analysis at all evaluation sites, the Forest Service commented: “This information *will be critical to inform* the site-specific designs on MNF lands as well as *the effects analysis* of the FEIS.” *Id.* (emphasis added). This information must be included in a Revised or Supplemental DEIS.

- In the Steep Slopes section, the DEIS uses 40 percent as a lower threshold to classify steep slopes even though Forest Plan standards define >35% as the break for steep slopes. *Id.* at 16. The DEIS thus lacks information and analysis for segments in the 35-40% range.
- The Forest Service directs FERC to add specific information regarding project-induced landslides and associated debris flow hazards. *Id.* at 17.
- The DEIS lacks adequate information regarding the collateral impacts of installing pipeline on ridgetops. The DEIS does not include “construction narratives on steep slope construction plans to account for the placement and end point of all excavated material to minimize unstable slopes and project-induced debris flows/landslides.” *Id.* at 18.
- With regard to the DEIS statement that “[c]onsidering the historic and recent landslide incidences in the immediate project area, ... we conclude that constructing the pipelines in steep terrain or high landslide incidence areas could increase the potential for landslides to occur,” the Forest Service commented that “[t]his conclusion needs to be fully considered in the analysis and conclusions of potential effects on aquatic resources.” *Id.* at 20.
- With regard to soil impacts for federal lands, the applicable section of the DEIS fails to mention the RUSLE2 sediment analysis, which is “supposed to quantify erosion rates and loads and potential transport to receiving streams.” *Id.* This section also fails to “provide soil data collected from the Order 1 Soil Survey on NFS Lands.” *Id.*
- With regard to construction-related impacts on soils, the DEIS’s conclusion paragraph “needs to be reworded to include permanent impacts to the soil resource. On NFS lands, the dedication of the soil resource for housing a pipeline will result in an irreversible commitment of resources and degradation of soil quality.... Analysis and conclusions of potential direct, indirect, and cumulative *effects to aquatic resources cannot be considered complete and valid until deficiencies in the analysis of soil resources have been corrected* and deemed acceptable.” *Id.* at 21 (emphasis added).
- With regard to DEIS section 4.3.1.7 (Groundwater Impacts and Mitigation), the Forest Service noted that the “section is too general and does not describe actual site-specific impacts.” *Id.*
- The DEIS lacks sufficient information regarding effects to aquatic resources from access roads; the Forest Service noted that the “various effects of roads need to be considered as part of the documented analysis and conclusions for aquatic resources.” *Id.* at 22.
- For aquatic resources, the DEIS lacks sufficient information regarding “[s]ources of potential effects other than crossings.” *Id.*

- The DEIS lacks information regarding the potential for water withdrawals and discharges that occur off NFS lands to impact aquatic habitats and biota on NFS lands. *Id.* at 22-23.
- The DEIS does not contain wetland surveys for “100 percent of both routes and all areas of proposed infrastructure.” *Id.* at 24.
- The DEIS does not include an adequate “discussion on mitigation measures expected” for wetlands. *Id.*
- The DEIS lacks an analysis regarding the potential for construction to “trigger an oak decline event that would affect more than just” the trees adjacent to the cleared areas. *Id.*
- The DEIS lacks “disclosure of the impacts of herbicide use on humans, plants, and animals.” *Id.* at 25.
- The DEIS fails to disclose “[t]he acres of impact on old growth forest,” which is necessary “for proper effects disclosure and NEPA compliance.” *Id.* at 26.
- The DEIS lacks accurate information regarding impacts on small mammals. *Id.* at 27.
- The DEIS makes certain recommendations regarding construction during migratory bird season. The suggested information should be included in the DEIS. As the Forest Service points out, “[w]aiting until after the Decision is made to identify the areas that ACP would be clearing vegetation during the nesting season does not allow the EIS to fully disclose and analyze the effects of the proposed actions on migratory birds.” *Id.* at 28. “Nor does this allow for a full development of conservation and mitigation measures to address impacts of the proposed actions on migratory birds.” *Id.*⁴

⁴ Furthermore, because this project (and in particular the clearing and maintenance of the right-of-way) involves the take of Migratory Bird Treaty Act (MBTA) protected migratory birds through killing of nesting birds and interference with their migration and reproduction, and destruction of habitat, FERC and/or the pipeline owner/operators are required by the MBTA to have a permit from the U.S. Fish and Wildlife Service. *See* Migratory Bird Treaty Act, 16 U.S.C. sections 701 *et seq.*, which directs that unless otherwise permitted, “it shall be unlawful at any time, by any means or in any manner, to ... take [or] kill ...any migratory bird ... nest, or egg of any such bird . . . included in the terms of the conventions between the United States and Great Britain..., the United Mexican States . . . the Government of Japan..., and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments.” *Id.* at section 703. However, there are no such permits issued in this case, and any Migratory Bird Plan between the owner/operator and the U.S. Fish and Wildlife Service (FWS) is no legal substitute for the permit (which would be enforceable). On information and belief, the U.S. Fish and Wildlife Service has no current program to issue such permits. Thus, if and when a request to

- The DEIS lacks “scientific evidence ... to support the claim that wetlands would revert back to pre-construction hydrology, native species, etc. in one to two years. Recovery is likely to take far longer, on the order of decades, particularly in forested wetlands.” *Id.*
- Even though “[f]ragmentation is a well-studied issue,” the DEIS lacks supporting documentation of effects statements regarding fragmentation and edge effects. *Id.* The DEIS also lacks an adequate “discussion of impacts on species populations (especially interior species and those with metapopulation dynamics.)” *Id.* at 29. *See also id.* at 47 (“Somewhere in this document or the fragmentation analysis, fragmentation needs to be discussed (which species are most affected, how/why are they affected, how much does the proposed fragmentation reduce the interior or intact portions of the forests, etc...).”).⁵
- The discussion regarding sediment and turbidity lacks “results of Sediment analysis and downstream effects on biota.” *Id.* at 30.
- The DEIS lacks adequate information regarding sediment and turbidity. The Forest Service commented: “Potential effects to erosion and stream sedimentation from other proposed actions (such as access roads, ATWS, and releases of drilling mud) seem to be dismissed in this discussion or perhaps altogether in the DEIS.” *Id.*
- The DEIS lacks a discussion of “the potential for periodic leaks during the lifetime of the pipeline (not just leaks or spills during construction).” *Id.* at 31.
- The DEIS did not include the sedimentation model to assess the extent of sedimentation that could occur within certain priority subwatersheds during construction. As the Forest Service noted, “Effects cannot be analyzed without the completed sediment analysis. The sediment analysis was provided late in the public comment period.... The conclusions reached by the current analysis represent judgment that are based on incomplete information.” *Id.* at 32.
- The Forest Service notes that the DEIS “gives the impression that FERC will be issuing a decision with all of this outstanding T&E work undone and an unfinished Section 7 consultation with the FWS.” *Id.* at 33.
- The DEIS was issued before mussel surveys were completed and thus lacks information regarding federal listed mussels. *Id.* at 34. The Forest Service noted that “[e]ffects cannot be analyzed without completed surveys, or assumed presence.

proceed by the owner/operator is made to FERC, it will not be able to certify that it has obtained all permits required by law, and FERC will not be able to give it permission to proceed.

⁵ The West Virginia Division of Natural Resources, Wildlife Resources Section also noted deficiencies in the fragmentation analysis. *See* DEIS Comments at 2-3 (April 6, 2017) (Accession No. 20170406-5148).

Sediment analysis has not been incorporated which would inform on downstream effects.” *Id.*

- The DEIS “does not appear to list the species in Virginia that the state has determined are threatened or endangered at the state level.” *Id.* at 38.
- The DEIS states that FERC’s determination regarding the overall impacts on state listed and sensitive species is pending. The Forest Service correctly points out that “[w]aiting until the FEIS to provide impacts on state-listed and sensitive species does not allow the Public to be able to comment on the full impacts of the proposed actions.” *Id.* at 39.
- The DEIS lacks adequate consideration of “potential effects to aquatic resources from the development and/or use of” roads to access the right-of-way that would be located on NFS lands. *Id.* at 40.
- With regard to cumulative impacts, the DEIS omits relevant information. The Forest Service commented that “[l]imiting the cumulative effects analysis to only considering projects that fit within” eight project types (identified in the DEIS) “would seem to be a fatal procedural flaw.” *Id.* at 44.
- The DEIS lacks information regarding the occurrence of water wells and springs. As the Forest Service noted, “[i]t is unclear and unsubstantiated how an effects determination can be made if the number and location of wells and springs is unknown.” *Id.* at 45.
- With regard to groundwater, “[t]he limited ability of ACP to significantly affect groundwater is stated as fact here although information needed to help substantiate such a claim (soils analysis) has not been produced or accepted at the time of this review.” *Id.*
- With regard to surface waters, “[t]his section contains statements that are based on incomplete analyses (soils, erosion/sediment, and cumulative effects), that are contradictory, and erroneous in concluding that “*the cumulative effect on surface waterbody resources would be temporary and minor.*” *Id.* at 46 (emphasis in original).
- The DEIS lacks information regarding cumulative impacts on wildlife: “Given the incomplete survey information and analysis of impacts of the proposed actions on the most sensitive species in this area (migratory birds, Management Indicator Species), this statement is premature and needs to be substantially verified with currently unfinished section of this EIS, reports, and analysis.” *Id.* at 47.
- With regard to cumulative impacts, the DEIS lacks information regarding the “specific effects that are expected for each species.” *Id.* at 48.

- With regard to the DEIS conclusion that projects in the geographic scope of influence in combination with the Project would have minor cumulative effects on special status species, the Forest Service noted: “Given an acknowledgement of missing information needed to assess potential project-related effects, failure to fully recognize the implications of potential effects that have been identified, and the use of a questionable approach to conduct and interpret potential cumulative effects, this statement currently lacks credibility for aquatic species.” *Id.*
- The Forest Service noted that “[t]his EIS has incomplete survey information and analysis of impacts of the proposed actions on sensitive species, as well as visuals and cultural resources. Preliminary determinations of ‘may adversely affect’ for a number of federally listed species puts into question the above statement of ‘not cumulatively significant’ for this project alone. No information is presented from the other ongoing gas pipeline projects overseen by FERC to substantiate the statement that any adverse effects impacts on sensitive resources would be adequately mitigated, to come to a ‘not cumulatively significant’ conclusion.” *Id.*
- The DEIS lacks information regarding “soil carbon and the effects to soil carbon from soil disturbance.” *Id.* at 49.
- In response to a statement in the DEIS addressing “inconsistencies between survey reports, incomplete incorporation of FS revisions and comments to reports, incorrect terrestrial and aquatic community classification data, incomplete quantification of habitat impacts (i.e., old growth, karst features), incomplete sedimentation analysis of watersheds, pending survey information (e.g., access roads), and lack of species-specific conservation measures,” the Forest Service pointed out that “[t]his statement summarizes many of the short-comings associated with the various analyses related to aquatic resources and elucidates the rationale for reservations concerning concluding statements within the DEIS about potential project impacts.” *Id.* at 49-50.
- The DEIS lacks information regarding geotechnical studies because data collection was not completed when the DEIS was released. *See id.* at 53. Accordingly, the DEIS lacks critical information regarding the potential for landslides and landslips to occur during Project construction and operation.
- With regard to Appendix P, the Forest Service noted: “The RUSLE2 equation is used to evaluate potential erosion rates at specific sites – specific sites that are important to the USFS are receiving streams and watersheds for impact analysis on water quality and sensitive aquatic biota. Please include an analysis. Please include comparisons of scenarios by load, such that % increases in sediment yield are accurately described.” *Id.* at 61.
- With regard to Appendix R, the Forest Service noted: “Many of the species determinations in these tables are still ‘pending’ because of incomplete surveys or analysis. Effects determinations cannot be evaluated until these are complete.” *Id.*

- The DEIS lacks important information regarding the Scenery Management System. *Id.* at 64.⁶

The Department of Interior also noted several deficiencies and omissions in the DEIS, including regarding mobilization of mercury and arsenic into stream water; wellhead and aquifer protection areas; public supply well contributing areas in carbonate aquifers; trench excavation by blasting; construction in steep-slope areas; and streamflow to protect aquatic species. *See* Department of Interior DEIS Comments (April 6, 2017) (Accession No. 20170407-5085).

As outlined in comments submitted by EPA, the Forest Service, other resource agencies, conservation groups, and others, a substantial amount of detailed information was not adequately disclosed or analyzed in the DEIS. This information is critical to evaluation of the Project's impacts, and a fully informed decision cannot be made without it. FERC's failure to provide this information in the DEIS frustrates the public's opportunity to comment on the Project in a meaningful manner. This missing information must be disseminated and evaluated by the public and the relevant resource agencies, and this should be done through the use of a Revised or Supplemental DEIS.

Failing to consider this information in the DEIS leads to gaps in the data and lack of potentially important information for both the public and FERC. The missing information is relevant to FERC's evaluation of "reasonably foreseeable significant adverse effects," and should have been included in the DEIS so that the public had an opportunity to review it and provide comments. 40 C.F.R. § 1502.22. Based on the analysis outlined in comments on the DEIS, a Revised DEIS should, at a minimum, correct the following deficiencies:

- FERC's purpose and need statement and range of alternatives are inadequate.
- The lack of complete information in the DEIS renders it legally deficient.
- The DEIS fails to take a "hard look" at the direct, indirect, and cumulative effects of the Project.

Correcting these deficiencies in the DEIS, including defects in the assessment of the need for the Project, will require significant new analysis and the incorporation of high quality and accurate information regarding the Project and its impacts. To comply with NEPA, FERC must prepare a Revised Draft EIS. Furthermore, FERC should prepare a Programmatic EIS for infrastructure projects related to increasing takeaway capacity from the Appalachian Basin.

B. Alternatively, FERC must prepare a Supplemental DEIS.

As explained above, the DEIS is inadequate due to the substantial amount of incomplete information and analysis, which precludes meaningful review. 40 C.F.R. § 1502.9(a). Thus, FERC must prepare a Revised DEIS. Alternatively, due to the amount of information that Atlantic and Dominion have submitted since the close of the DEIS comment period, and will

⁶ Similarly, the National Park Service requested "consideration of additional avoidance, minimization, and mitigation measures to further reduce visual impacts from" several viewpoints on the Appalachian National Scenic Trail. National Park Service DEIS Comments at 5 (April 7, 2017) (Accession No. 20170407-5227).

continue to submit, this information constitutes significant new information for which a Supplemental EIS “shall” be prepared. 40 C.F.R. § 1502.9(c)(1). This information is also likely to result in substantial changes to the proposed action. *Id.* At the very least, preparing a Supplemental DEIS that considers this new information furthers the purposes of NEPA. *Id.* § 1502.9(c)(2).

As noted, significant new information for which a Supplemental DEIS must be prepared has already come to light since the close of the DEIS comment period. Moreover, a substantial amount of new information was filed after issuance of the DEIS but before the comment period closed on April 6, 2017. Although this information was released prior to the close of the DEIS comment period, the public did not have sufficient time to consider and comment on it, and it was not incorporated into the DEIS. *See, e.g.*, Accession Nos. 20170331-5087; 20170324-5283; 20170310-5157; 20170224-5149; 20170127-5202; 20170123-5110; 20170119-5180; 20170110-5142. Between the release of the DEIS in December 2016 and March 24, 2017, for example, Atlantic Coast filed more than 8,000 pages of new information. *See* Comments on the Draft Environmental Impact Statement for the Atlantic Coast Pipeline and Supply Header Project, at Attachment 4 (Accession No. 20170407-5203).

Significant new information provided by Atlantic Coast Pipeline, LLC and Dominion Transmission, Inc. after the close of the DEIS comment period also requires FERC to prepare a Supplemental DEIS. For example:

On April 6, 2017, ACP and Dominion submitted significant new information (Accession No. 20170406-5362) (84 pages), including:

- A construction schedule for U.S. Forest Service lands
- A response to the Forest Service regarding topsoiling

On April 12, 2017, ACP and Dominion submitted significant new information (Accession No. 20170412-5098) (198 pages), including:

- A site-specific plan for the Gateway Route Adjustment horizontal directional drill
- An update on agency consultations regarding rookeries
- Laurel Run macroinvertebrate survey report

On May 5, 2017, ACP and Dominion submitted significant new information (Accession No. 20170505-5036) (423 pages), including:

- Freshwater Mussel Relocation Plan for the ACP in North Carolina
- Neuse River Waterdog Survey Report for the ACP in North Carolina
- Running Buffalo Conservation Plan for the ACP in West Virginia
- Myotid Conservation Plan for the ACP in West Virginia
- An updated to the Migratory Bird Plan
- Phase II Archaeological Site Testing Report for Virginia
- Phase II Archaeological Site Testing Report for North Carolina

On May 12, 2017, ACP and Dominion submitted significant new information (Accession No. 20170512-5163), including:

- An addendum to the Geohazards Field Survey Report
- Northern Long-Eared Bat Hibernacula Report for West Virginia
- Northern Long-Eared Bat Hibernacula Report for Virginia
- Chowanoke and North Carolina Spiny Crayfish Survey Report for North Carolina
- Revised Architectural Survey Reports
- Archaeological Survey and Testing Reports

On May 19, 2017, ACP submitted supplemental information regarding construction on steep slopes within National Forests (Accession No. 20170522-5016).

On May 26, ACP and Dominion submitted significant new information (Accession No. 20170526-5257), including:

- Proposed modifications to FERC's *Upland Erosion Control, Revegetation, and Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* based on the final designs of the erosion and sediment control plans for the Projects
- Updated topographic Project facility maps
- Responses to "A High-Risk Proposal Drilling through the Blue Ridge Mountains for the Atlantic Coast Pipeline"
- Green Salamander Habitat Report for the Monongahela National Forest in West Virginia
- Small Mammal Survey Report for the George Washington National Forest in Virginia
- Macroinvertebrate Survey Report for the George Washington National Forest in Virginia
- Candy Darter Habitat Report for West Virginia
- Bat Habitat Report for West Virginia (SHP)
- Cultural Resources Survey and Testing Reports
- Architectural Survey Report
- Archaeological Site Testing Reports
- Updated wetland impact tables

On June 2, ACP and Dominion submitted significant new information, including Resource Impact Tables for Topsoil Segregation Areas in the National Forests (Accession No. 20170602-5056). On June 16, ACP and Dominion submitted significant new information, including recent communications with the U.S. Fish and Wildlife Service (Accession No. 20170616-5153). On June 27, ACP and Dominion submitted significant new information, including updated Project facility maps (Accession No. 20170627-5040). On July 14, 2017, ACP and Dominion submitted significant new information regarding the rusty patched bumble bee (Accession No. 20170714-5128).

All of this information should have been included in the DEIS. Instead, it was supplied by ACP and Dominion *after* the close of the DEIS comment period. By allowing ACP and Dominion to supply information after issuance of the DEIS, and even after the comment period on the DEIS has closed, FERC is failing to supply information and analysis regarding the Project in a manner that facilitates meaningful analysis and public participation. *See, e.g., League of Wilderness Defenders/Blue Mountain Biodiversity Project v. Connaughton*, 752 F.3d 755, 761

(9th Cir. 2014). This information should have been included in the DEIS, and constitutes significant new information that is relevant to environmental concerns and thus requires a Revised or Supplemental DEIS. *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989).

C. A Revised or Supplemental DEIS should be prepared to address the inadequacies of the DEIS in furtherance of the purposes of NEPA.

As explained above, FERC must prepare a Revised DEIS due to the substantial amount of information that was omitted from the DEIS. 40 C.F.R. § 1502.9(a). Alternatively, the submission of this missing information, in addition to other information that has come to light since the close of the DEIS comment period, constitutes significant new information for which a Supplemental DEIS “shall” be prepared. 40 C.F.R. § 1502.9(c)(1)(ii). Furthermore, in light of the substantial deficiencies of the DEIS, FERC should prepare a Supplemental DEIS because “the purposes of [NEPA] will be furthered by doing so.” 40 C.F.R. § 1502.9(c)(2).

D. The issuance of a Final EIS with a comment period is inconsistent with the requirements and purpose of NEPA

Issuance of a Final EIS (“FEIS”) with a comment period, in lieu of a Revised or Supplemental DEIS, would not satisfy the requirements and purpose of NEPA. NEPA was enacted to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 CFR § 1500.1(b). It is essential that that environmental information is high quality and based upon “accurate scientific analysis, expert agency comments and public scrutiny.” *Id.* Furthermore, part of the NEPA process includes the public’s opportunity to understand the agency’s response to these comments. Even with a comment period, an FEIS would not allow informed public scrutiny of and input into the decision making process before a “decision is made and before actions are taken.” *Id.* For the reasons outlined in this letter, FERC must prepare a Revised or Supplemental DEIS that corrects the significant deficiencies in the DEIS that have been identified above.

III. Conclusion

For the reasons outlined above, a Revised or Supplemental DEIS is required to address substantial deficiencies in the DEIS, as well as new information and circumstances which have arisen subsequent to the close of the DEIS comment period. In such circumstances, NEPA regulations require the issuance of a Revised or Supplemental DEIS. 40 CFR § 1502.9. Issuing a Revised or Supplemental DEIS will also further the intent and purposes of NEPA, which is to ensure that high quality, accurate environmental information is available to public officials and citizens before actions are taken. 40 CFR § 1500.1(b).

Thank you for taking these concerns into consideration. If you have any questions about these comments, please contact me.

Sincerely,



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