

FILED

MAY 11 2018

U.S. Court of Appeals
Fourth Circuit

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

_____)
BOLD ALLIANCE and)
BOLD EDUCATION FUND,)
<i>Petitioners</i>)
)
v.)
)
FEDERAL ENERGY)
REGULATORY COMMISSION,)
<i>Respondent</i>)
_____)

Case No. 18-1533

**BOLD ALLIANCE AND BOLD EDUCATION FUND
JOINT PETITION FOR REVIEW**

Pursuant to the Natural Gas Act, 15 U.S.C. § 717r(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, Bold Education Fund and Bold Alliance (collectively, “Bold”) hereby petition the Court for review of final actions taken by the Federal Energy Regulatory Commission (“Commission”) staff in granting Notices to Proceed requested by Mountain Valley Pipeline (“MVP”) by letter rulings dated January 29 and February 8, 9, 12, 13, 14, 15 and 16 (Attached as Exhibit A). Petitioners requested rehearing of these letter rulings, which the Commission denied, “Order Denying Rehearing,” 163 FERC ¶ 61,099 (May 4, 2018) (Attached as Exhibit B).

Bold Education Fund and Bold Alliance collectively have several hundred members in the Appalachian Region where the MVP pipeline is located, including

many who own property directly in the path of MVP.¹ These members face a variety of injuries from the continued issuance of Notices to Proceed, including loss of possession of their property, removal of mature trees, degradation of productive soil and contamination of their water wells. Pursuant to Local Rule 15(b), the orders for which review is being sought are attached as Exhibits A and B. Also pursuant to Local Rule 15(b), a list of Respondents specifically identifying the Respondents' names and addresses is attached as Exhibit C.

Petitioners request that the Court set aside the orders, prohibit the Commission from issuing further notices to proceed signed by non-supervisory staff, grant attorneys fees under the Equal Access to Justice Act, 28 U.S.C. §2412 and grant such other relief as may be appropriate.

Respectfully submitted,

/s/Carolyn Elefant

Carolyn Elefant
LAW OFFICES OF CAROLYN ELEFANT
1440 G Street N.W., Eighth Floor
Washington D.C. 20005
202-297-6100

¹ A declaration by Bold member and impacted landowner Carolyn Reilly in support of the Petition for Stay (Attachment 1) which has been filed along with this Petition for Review sets forth the basis for Bold's organizational standing in this proceeding.

CERTIFICATE OF SERVICE

I certify that on May 11, 2018, a copy of the Petition for Review and Request for Stay was served on the Solicitor for the Federal Energy Regulatory Commission and all of the parties on the official FERC Service List (Attachment D to Petition for Review), via email with an option to receive a hard copy of the petition, and was also filed in the Commission Docket for No. CP16-10.

Respectfully submitted,

/s/Carolyn Elefant

Carolyn Elefant
LAW OFFICES OF CAROLYN ELEFANT
1440 G Street N.W., Eighth Floor
Washington D.C. 20005
202-297-6100
carolyn@carolynelefant.com
Counsel for Bold Alliance and
Bold Education Fund

May 11, 2018

carolyn@carolynelefant.com
Counsel for Bold Alliance and
Bold Education Fund

May 11, 2018

Exhibit A – Staff Letters Granting Notices to Proceed and FERC Order Denying Rehearing

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:

OEP/DG2E/G3

Mountain Valley Pipeline LLC

CP16-10-000

January 29, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction at Compressor Stations and Certain Interconnections

Dear Mr. Eggerding:

I grant your January 16, 2018 request for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction at the three compressor stations, the Mobley Interconnect, and associated extra workspaces and access roads, in Wetzel, Braxton, Fayette, and Greenbrier Counties, West Virginia, for which you state that Mountain Valley has received landowner permission for all the requested construction activities. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the applicable Environmental Conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

Specifically, we have determined that, as to the above-referenced compressor stations, interconnects, extra workspaces, and access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, 24, and 26. The execution of the Programmatic Agreement for the Mountain Valley Project satisfies Condition 15, and Attachment A of Mountain Valley's January 16, 2018 request verified that no historic properties would be adversely affected at the areas being authorized. The Biological Opinion issued by the U.S. Fish and Wildlife satisfies Condition 28.

This letter does **not** authorize any construction activities anywhere else within the project area.

- 2 -

I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,

A handwritten signature in blue ink that reads "Paul Friedman". The signature is written in a cursive, slightly slanted style.

Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 8, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction at Certain Yards and Access Roads in West Virginia

Dear Mr. Eggerding:

I grant your January 17, 2018 request for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction at 7 yards/staging areas and 101 access roads in Braxton, Doddridge, Greenbrier, Harrison, Lewis, Monroe, Nicholas, Summers, and Webster Counties, West Virginia, listed on Attachment A of your request, for which you state that Mountain Valley has received landowner permission for all the requested construction activities. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced yards and access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement for the Mountain Valley Project, in December 2017, and Attachment A indicates that no historic properties would be adversely affected by the authorized construction. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from FERC dated January 21 and 29, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 9, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction from Milepost 0.0 to 9.6, and Certain Extra Workspaces, and Access Roads in West Virginia

Dear Mr. Eggerding:

I grant your January 26, 2018 request (Request for Notice to Proceed No. 4) for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of its pipeline between mileposts 0.0 and 9.6 and at 59 additional temporary workspaces in Wetzel County, and to use 38 access roads in Braxton, Doddridge, Greenbrier, Harrison, Lewis, Monroe, Nicholas, Webster, and Wetzel Counties, West Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segment, extra workspaces, and access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement for the Mountain Valley Project, in December 2017, and Attachment A indicates that no historic properties would be adversely affected by the authorized construction. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from FERC dated January 21 and 29, and February 8, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 12, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction of Pipeline Segments between Mileposts 198.5 to 210.8, and Certain Workspaces and Access Roads in Giles County, Virginia

Dear Mr. Eggerding:

I grant your January 26 request, supplemented on January 30, 2018 (Request for Notice to Proceed No. 5), for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of portions of its pipeline between mileposts (MP) 198.5 and 210.8, at 44 additional temporary workspaces, and 14 staging areas and/or access roads in Giles County, Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segments, workspaces, and access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement (PA) for the Mountain Valley Project, in December 2017. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

You may **not** construct within the boundaries of the Big Stony Creek Historic District (between about MPs 200.2 and 200.5) and the Greater Newport Rural Historic District (between about MPs 210.8. and 216.9) in Giles County, Virginia, until the revised Treatment Plans for these districts, filed February 5, 2018, have been reviewed by

the Virginia Department of Historic Resources, the Federal Energy Regulatory Commission (FERC) provides permission to implement the treatment measures, and Mountain Valley documents the completion of field work, in accordance with the PA. This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from FERC dated January 21 and 29, February 8 and 9, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 13, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction of Pipeline Segments between Mileposts 177.0 to 190.1 and Certain Workspaces in Monroe County, West Virginia

Dear Mr. Eggerding:

I grant your January 31, 2018 request (Request for Notice to Proceed No. 6) for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of portions of its pipeline between mileposts 177.0 and 190.1, and at 45 additional temporary workspaces in Monroe County, West Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segments and workspaces, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement for the Mountain Valley Project, in December 2017. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from the Federal Energy Regulatory Commission dated January 21 and 29, and February 8, 9, and 12, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 14, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction of Pipeline Segments between Mileposts 283.9 and 303.8 and Certain Yards and Workspaces in Virginia

Dear Mr. Eggerding:

I grant your February 2, 2018 request (Request for Notice to Proceed No. 7) for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of portions of its pipeline between mileposts 283.9 and 289.1 and 289.5 and 303.9 in Pittsylvania County, and the Transco Interconnect, and 6 yards, 91 additional temporary workspaces, 11 ancillary areas and points of intersection, and 1 access road in Montgomery, Franklin, and Pittsylvania Counties in Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segments and workspaces, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement for the Mountain Valley Project, in December 2017. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from the Federal Energy Regulatory Commission dated January 21 and 29, and February 8, 9, 12, and 13, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 15, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction of Pipeline Segments between Mileposts 9.3 and 65.5 and Certain Workspaces in West Virginia

Dear Mr. Eggerding:

I grant your February 5, 2018 request (Request for Notice to Proceed No. 8), for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of portions of its pipeline between mileposts (MP) 9.3 and 65.5, and at 267 additional temporary workspaces in Doddridge, Harrison, and Lewis Counties, West Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segments and workspaces, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement for the Mountain Valley Project, in December 2017. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

You may **not** construct within the boundaries of the Underwood Farmstead (Historic Site LE-150) at about MP 44.6 and St. Bernard's Church and Cemetery (Historic Site NR#85001583) at about MP 53.1, in Lewis County, West Virginia, until after Mountain Valley documents the completion of fieldwork via the filing of a Management Summary, as stipulated in our permission to implement treatment measures issued on January 29, 2018.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from the Federal Energy Regulatory Commission issued on January 21 and 29, February 8, 9, 12, 13, and 14, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Mountain Valley Pipeline LLC
Docket No. CP16-10-000

February 16, 2018

Matthew Eggerding, Counsel
Mountain Valley Pipeline LLC
625 Liberty Ave., Suite 1700
Pittsburgh, PA 15222

Re: Notice to Proceed with Construction of Pipeline Segments between Mileposts 217.1 and 283.9 and at Certain Workspaces and Ancillary Areas in Virginia

Dear Mr. Eggerding:

I grant your February 7, 2018 request (Request for Notice to Proceed No. 9), for Mountain Valley Pipeline LLC (Mountain Valley) to commence construction of discontinuous portions of its pipeline between mileposts (MP) 217.1 and 283.9, and at 185 additional temporary workspaces, 62 access roads, 2 yards, 4 anode beds, and 2 points of intersection, in Craig, Franklin, Montgomery, and Roanoke Counties, Virginia, listed on Attachment A of your request. In considering this notice to proceed, we have reviewed your Implementation Plan, filed on October 31, 2017, and its supplements. The Implementation Plan and your supplements included the information necessary to meet the conditions of the Commission's October 13, 2017 *Order Issuing Certificates and Granting Abandonment Authority* (Order) in the above-referenced docket governing commencement of construction.

Specifically, we have determined that, as to the above-referenced pipeline segments, workspaces, yards, ancillary areas, and access roads, Mountain Valley has satisfied Environmental Condition 9 and applicable Conditions 12 through 33 in Appendix C of the Order. Condition 15 is satisfied by the execution of a Programmatic Agreement (PA) for the Mountain Valley Project, in December 2017. Condition 28 is satisfied by the Biological Opinion issued by the U.S. Fish and Wildlife Service in November 2017. The Director of the Office of Energy Projects and Commission staff have reviewed and approved applicable plans, as required by Environmental Conditions 13, 19, 20, 21, 22, and 24. In addition, we have confirmed the receipt of all federal authorizations relevant to the approved activities herein.

You may **not** construct within the Jefferson National Forest between about MPs 196.2 and 197.8, 218.5 and 219.4, and 219.8 and 220.8 until after permission is granted by the U.S. Department of Agriculture Forest Service and the U.S. Department of the Interior (USDO I) Bureau of Land Management and documented in a filing with the

Federal Energy Regulatory Commission (FERC). You may **not** construct within the boundaries of the Blue Ridge Parkway Historic District between about MPs 246.1 and 246.6 until after permission is granted by the USDOJ National Park Service and documented in a filing with the FERC. You may **not** construct within the boundaries of North Fork Valley Rural Historic District between about MPs 226.3 and 228.3, and the Bent Mountain Rural Historic District between about MPs 242.0 and 246.6, until after the Virginia Department of Historic Resources comments on the Treatment Plans filed February 2 and 14, 2018, and Mountain Valley documents the completion of fieldwork via the filing of a Management Summary, as stipulated in the PA. In addition, Mountain Valley will voluntarily withhold construction through skips along the pipeline route between about MPs 219.7 and 219.8, 223.9 and 226.1, 228.3 and 228.7, 234.1 and 234.2, 235.1 and 235.4, 238.1 and 242.0, 248.4 and 249.8, 253.7 and 253.9, 254.7 and 254.9, 257.9 and 258.0, and 258.1 and 258.4, listed on Attachment A.

This letter does **not** authorize any construction activities anywhere else within the project area, that was not previously authorized in letters from the FERC issued on January 21 and 29, and February 8, 9, 12, 13, 14, and 15, 2018. I remind you that Mountain Valley must comply with all applicable remaining terms and conditions of the Order.

Sincerely,



Paul Friedman
Environmental Project Manager

cc: Public File, Docket No. CP16-10-000

Exhibit B – Federal Energy Regulatory Commission Order Denying Rehearing

163 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
and Robert F. Powelson.

Mountain Valley Pipeline, LLC

Docket No. CP16-10-002

ORDER DENYING REHEARING

(Issued May 4, 2018)

1. In January and February 2018, the Director of the Office of Energy Projects (OEP), through his designee, issued nine letter orders granting Mountain Valley Pipeline, LLC (Mountain Valley) authorization to proceed with construction of certain facilities associated with the Mountain Valley Pipeline Project (MVP Project) in West Virginia, and Virginia (Notices to Proceed). On February 23, 2018, the Bold Alliance and Bold Educational Fund (collectively, Bold Alliance) filed a request for rehearing of the Notices to Proceed. Additionally, on February 26, 2018, Preserve Craig filed a motion for reconsideration and clarification of the February 16, 2018 Notice to Proceed. For the reasons discussed below, we will deny the requests for rehearing and reconsideration.

I. Background

2. On October 13, 2017, the Commission issued a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act¹ authorizing Mountain Valley to construct and operate the MVP Project in West Virginia and Virginia.² The project is designed to provide up to 2 million dekatherms per day (Dth/d) of natural gas transportation service from Wetzel County, West Virginia, to Transcontinental Pipe Line Company, LLC's Compressor Station 165 in Pittsylvania County, Virginia. Several parties, including Bold Alliance and Preserve Craig, have filed requests for rehearing and motions to stay the Certificate Order. On December 13, 2017, pursuant to authority delegated by the Commission in 1995,³ the Secretary of the Commission issued a

¹ 15 U.S.C. § 717f(c) (2012).

² *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (Certificate Order).

procedural order tolling that statutory time period “for the limited purpose of further consideration” of the timely-filed requests for rehearing of the Certificate Order.⁴

3. On January 22 and 29, and February 8, 9, 12, 13, 14, 15, and 16, 2018, Commission staff issued notices to proceed with construction of certain facilities associated with the MVP Project. With the exception of the January 22, 2018 Notice to Proceed, each notice to proceed was issued by the environmental project manager for the MVP Project. On February 23, 2018, Bold Alliance filed a request for rehearing of all nine Notices to Proceed.⁵ On February 26, 2018, Preserve Craig filed a motion for reconsideration and clarification of the February 16, 2018 Notice to Proceed. We deem Preserve Craig’s motion to be essentially a request for rehearing.

II. Discussion

A. Untimely Request for Rehearing

4. Bold Alliance seeks rehearing of the January 22, 2018 Notice to Proceed. Pursuant to section 19(a) of the Natural Gas Act, an aggrieved party must file a request for rehearing within thirty days.⁶ The 30-day rehearing deadline is a statutory requirement and cannot be waived or extended. Because Bold Alliance’s request for rehearing of the January 22, 2018 Notice to Proceed was filed after the 30-day deadline of February 22, 2018, we reject the request for rehearing as it relates to the January 22, 2018 notice.

³ See *Delegation of Authority to the Secretary, the Director of the Office of Electric Power Regulation and the General Counsel*, Order No. 585, FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,030 (1995) (“1995 Delegation Order”) (codified in 18 C.F.R. § 375.302(v) (2017)).

⁴ *Mountain Valley Pipeline, LLC*, Docket No. CP16-10-001, *et al.* (Dec. 13, 2017) (Tolling Order).

⁵ The request for rehearing was filed after 5:00 p.m. on February 22, 2018. Pursuant to Rule 2001 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.2001(a)(2) (2017), any document received after regular business hours is considered filed on the next business day. The Commission's regular business hours end at 5:00 p.m., U.S. Eastern Time. 18 C.F.R. § 375.101(c) (2017) (“[T]he offices of the Commission are open each day, except Saturdays, Sundays, and Holidays, from 8:30 a.m. to 5:00 p.m.”). Therefore, the request for rehearing was filed on February 23, 2018.

⁶ 15 U.S.C. § 717r (2012).

B. Delegated Authority to Issue Notices to Proceed

5. Bold Alliance argues that the environmental project manager lacked authority to issue the Notices to Proceed. Bold Alliance states that the Certificate Order only grants the Director of the Office of Energy Project, or the Director's designee, authority to respond to requests for a notice to proceed with construction.⁷ Bold Alliance claims that the Commission's regulations limit those individuals who may be delegated authority to issue notices to proceed to the Deputy Director, the head of a division, or a comparable official.⁸ Bold Alliance asserts that because the environmental project manager is not listed on the Commission's organizational chart, it cannot be categorized as a "comparable official."

6. As we have explained,⁹ while the Commission has, through its regulations, delegated authority to conduct specific enumerated functions to different Commission offices,¹⁰ we also routinely delegate authority through our orders, as in this proceeding.¹¹ As Bold Alliance concedes, here, the Certificate Order explicitly delegated authority to issue notices to proceed with construction to the Director of OEP or the Director's designee. This delegation of authority is not tied to or limited by section 375.301 of the

⁷ Bold Alliance notes that Environmental Condition 9 of the Certificate Order states that Mountain Valley must "receive written authorization from the Director of OEP before commencing construction of any project facilities." Bold Alliance's Request for Rehearing at 5.

⁸ Bold Alliance's Request for Rehearing at 5 (citing 18 C.F.R. § 375.301(b) (2017)).

⁹ *Algonquin Gas Transmission, LLC*, 161 FERC ¶ 61,287, at PP 17-26 (2017) (*Algonquin*) (rejecting claims that a notice to proceed with construction was improperly subdelegated to a branch chief); *Tennessee Gas Pipeline Company, L.L.C.*, 162 FERC ¶ 61,013, at P 22 (2017) (same).

¹⁰ See 18 C.F.R. §§ 375.301 to .375. See also *Streamlining Commission Procedures for Review of Staff Action*, Order No. 530, 55 Fed. Reg. 50,677, 50,678 (1990) (defending the Commission's statutory authority to delegate Commission functions to office directors).

¹¹ Certificate Order, 161 FERC ¶ 61,043 at App. C, Environmental Condition 2 (providing that the "Director of OEP, or the Director's designee, has delegated authority to address any requests for approvals or authorizations necessary to carry out the conditions of the order"). See, e.g., *Rockies Express Pipeline, LLC*, 128 FERC ¶ 61,045, at P 21 (2009) (*Rockies Express*) (affirming the Commission's delegation of authority in a certificate order to the Director of OEP to approve project construction).

Commission's regulations as Bold Alliance suggests. Thus any limitation in our regulations on which staff or Commission officials may be delegated authority is inapplicable. Moreover, the Commission has previously clarified that in certificate proceedings, it "delegates authority to its Directors with the understanding that the Director may further delegate such authority to a designee."¹²

C. Due Process Rights

7. Bold Alliance argues that allowing Mountain Valley to proceed with construction while requests for rehearing and stay are pending violates due process rights. Bold Alliance asserts that allowing construction will effectively moot some of its claims, including its motion to stay the Certificate Order, and foreclose the relief it seeks. Bold Alliance states that once construction has begun on the project any relief, including a combined pipeline with the Atlantic Coast Project, is foreclosed. Similarly, Preserve Craig asserts that by authorizing construction in advance of decisions on motions for stay and requests for rehearing, Preserve Craig is effectively denied its requested relief. Bold Alliance avers that even if the Certificate Order was vacated and Mountain Valley was required to decommission its pipeline, the resulting environmental harm associated with constructing and then deconstructing a project is irreparable and can never be fully remediated.

8. We disagree that the Notices to Proceed violate due process rights or prejudice or foreclose relief on the requests for rehearing of the Certificate Order. The Natural Gas Act is explicit in stating that, unless the Commission grants a stay, a request for rehearing shall not operate as a stay of the Commission's order,¹³ and Courts have agreed that a natural gas certificate goes into effect immediately upon issuance by the Commission.¹⁴

¹² *Rockies Express*, 128 FERC ¶ 61,045 at P 21; *see also East Tennessee Natural Gas Co.*, 106 FERC ¶ 61,159, at P 12 (2004) (rejecting argument that letter order authorizing pipeline to place facilities in service signed by the Director of the Division of Gas — Environment and Engineering was not valid because it was not actually signed by the Director of OEP); *Algonquin*, 161 FERC ¶ 61,287 at PP 19-20 (finding that "[w]ith respect to clearances for environmental conditions and authorization to begin construction, the [Branch Chief] who has direct responsibility for ensuring compliance with the conditions is appropriately situated to evaluate whether those conditions have been met, and therefore is a 'comparable official' to a deputy or division head in this situation, as required by section 375.301(b) of the Commission's regulations").

¹³ 15 U.S.C. § 717r(c) (2012).

¹⁴ *See Panhandle Eastern Line Co. v. FERC*, 881 F.2d 1101, 1119 (D.C. Cir. 1989) (application for rehearing or judicial review does not stay a natural gas certificate).

Docket No. CP16-10-002

- 5 -

Docket No. CP16-10-002

- 6 -

The Commission routinely grants notices to proceed with construction while rehearing requests are pending.¹⁵

9. We also disagree with Bold Alliance's assertion that irreparable harm would occur if the Certificate Order is subsequently vacated. It is well established that to the extent that Mountain Valley elects to proceed with construction of project facilities while rehearing is pending, it bears the risk that we will revise or reverse our initial decision or that our order will be overturned on appeal.¹⁶ If this were to occur, Mountain Valley might not be able to utilize any of the new facilities, and could be required to remove them, change their location, or undertake remediation.¹⁷ Such remediation would help ensure that any resulting environmental effects are minimized.

D. Environmental Impacts Associated with the Notices to Proceed

10. Bold Alliance further contends that because Mountain Valley has not acquired all property rights for the project, granting of the Notices to Proceed will lead to piecemeal tree felling, which can have significant adverse environmental impacts. Bold Alliance states that tree felling may not even be completed within the construction window for tree

¹⁵ See, e.g., *Town of Dedham v. FERC*, No. CV 15-12352-GAO, 2015 WL 4274884, at *1 (D. Mass. July 15, 2015) (Commission granted authority to proceed with construction while request for rehearing of certificate order was pending); see also *Rockies Express*, 128 FERC ¶ 61,045 at PP 1-2, 10 (Commission granted construction order while request to stay and reconsider tree-cutting order was pending); *Transcontinental Gas Pipeline Co., LLC*, 162 FERC ¶ 61,192, at PP 13-15 (2018) (rejecting argument that the Commission wrongfully issued notices to proceed with construction before responding substantively to the party's request for rehearing of the Certificate Order); *Tennessee Gas Pipeline Co., L.L.C.*, 158 FERC ¶ 61,002, at P 12 (2017) (rejecting claim that a stay is necessary to avoid the "state of administrative limbo" created by allowing construction to proceed before the issues raised on rehearing are resolved).

¹⁶ See e.g., *Nw. Pipeline, LLC*, 156 FERC ¶ 61,086, at P 15 (2016); *Transcontinental Gas Pipe Line Co., LLC*, 150 FERC ¶ 61,183, at P 18 (2015) (rejecting argument that the Commission prejudices the outcome of a request for rehearing when it allows construction to proceed before the issues raised in the rehearing are fully resolved).

¹⁷ See *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,022, at PP 17, 21 (2012) (noting that if the Commission modified, on rehearing, a certificate order or if the court eventually remanded the certificate order to the Commission for further proceedings or otherwise ruled in favor of petitioners, the company would not be able to utilize the new facilities, and in the worst case could be required to remove them).

removal, which could result in more extensive environmental harm if trees are removed but the property is not mitigated until construction on the other segments begins. Bold Alliance also avers that the Notices to Proceed have caused confusion among landowners who do not realize that Mountain Valley cannot begin construction on parcels that it has not yet acquired. Bold Alliance request the Commission vacate the Notices to Proceed and prohibit any tree-removal or ground-breaking activity until all pending claims are resolved.

11. Bold Alliance provides no support to demonstrate how “piecemeal tree felling” would have significant environmental impacts different from those already addressed in the Certificate Order and Environmental Impact Statement for the project. Bold Alliance provided no evidence showing that significant environmental harms will be caused if tree felling is not completed prior to the completion of the tree clearing window. Moreover, Mountain Valley must conduct mitigation in accordance with the commitments made in its application, the conditions of the Certificate Order, and its Implementation Plan.

12. To the extent that the Notices to Proceed have caused confusion among landowners, we clarify that the Notices to Proceed do not grant Mountain Valley any additional rights to access land and construct the project beyond what they have acquired through easement negotiations or eminent domain proceedings.

E. February 16, 2018 Notice to Proceed’s Effects on the Adlai Jones Family Farm

13. Preserve Craig argues that the February 16, 2018 Notice to Proceed¹⁸ wrongly approves construction in the area of the Adlai Jones Family Farm (Jones Farm), located in Craig and Giles Counties, Virginia, between mileposts 215 and 218 of the MVP Project mainline. Preserve Craig asserts that the Jones Farm includes several historic structures and resources, and that Mountain Valley has misidentified the proximity of these resources to the project. Preserve Craig states that in response to the Criteria of Effects Report, which identifies the Jones Farm resources, the Virginia State Historic Preservation Office (SHPO) recommended that Mountain Valley and the Commission consult with consulting and interested parties to correct any outstanding deficiencies. Preserve Craig states that neither the Commission nor Mountain Valley have contacted the representatives of the Jones Farm to address the errors.

14. Preserve Craig contends that the Commission has wrongly concluded that no historic properties have been identified in Craig County, Virginia. Specifically, Preserve Craig states that both the Fisher and Jones Cemeteries, and other historic structures that are part of the Jones Farm, are located in Craig County. Preserve Craig argues that

¹⁸ Among other things, the February 16, 2018 Notice to Proceed authorized construction between mileposts 217.1 and 283.9 of the Mountain Valley pipeline.

Docket No. CP16-10-002

- 8 -

Mountain Valley previously mischaracterized the cemeteries as being from the twentieth century, which is contrary to the evidence submitted that shows that the cemeteries contain markers dating to the Civil War era. Preserve Craig avers that because neither the Commission nor Mountain Valley consulted with local governments regarding these properties, section 106 of the National Historic Preservation Act (NHPA) was not followed.

15. Last, Preserve Craig argues that the revised Treatment Plan for the Greater Newport Rural Historic District wrongly finds that the pipeline will have no adverse effect on the Adlai Jones Farm, and does not include any avoidance, minimization, or mitigation measures specific to the farm. Preserve Craig states that the SHPO and Advisory Council on Historic Preservation have not provided review of the revised treatment plan. Therefore, Preserve Craig concludes that the February 16, 2018 Notice to Proceed wrongly authorized construction prior to resolution of the effects on historic properties.

16. Preserve Craig incorrectly concludes that the February 16, 2018 Notice to Proceed authorized construction at the Jones Farm. The Jones Farm is located in Giles County, Virginia, at milepost 216.8, and is within the Greater Newport Rural Historic District. As the February 16, 2018 Notice to Proceed makes clear, Mountain Valley is only authorized to construct between mileposts 217.1 and 283.9. With respect to historic resources within the Greater Newport Rural Historic District, we determined that adverse effects on those historic properties must be mitigated through measures described in the Treatment Plan for the Greater Newport Rural Historic District.¹⁹ This plan was filed on February 23, 2018, and is being reviewed by the Virginia SHPO.

17. With respect to the Fisher Cemetery, Denny Jones Farmstead Ruins, Jones Cemetery, and Bub Jones House Ruins, each of these resources are located in Craig County, Virginia, and outside the Greater Newport Rural Historic District boundaries. During review of the MVP Project, each of these properties was evaluated under the criteria set forth in the regulations²⁰ implementing section 106 of the NHPA for its eligibility for the National Register of Historic Places (NRHP), none were determined to be eligible, and the Virginia SHPO agreed with this determination.²¹ Therefore, the Commission had no further section 106 obligations with respect to the properties.

¹⁹ Certificate Order, 161 FERC ¶ 61,043 at P 252.

²⁰ See 36 C.F.R. pt. 800 (2017) (regulations governing the protection of historic properties).

²¹ Final EIS for the MVP Project at 4-460.

Docket No. CP16-10-002

- 9 -

18. We also disagree with Preserve Craig's assertion that local governments were not afforded the opportunity to review these findings with respect to historic properties or participate as consulting parties pursuant to section 106 of the NHPA. As stated in the Final Environmental Impact Statement (EIS) for the MVP Project, the Commission initiated consultation with local governments crossed by the pipeline route in its April 17, 2015 *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Mountain Valley Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings*.²² As a result we granted the requests of several counties, including Craig County, Virginia, to be consulting parties. Each consulting party that signed a non-disclosure agreement was provided the privileged archeological reports. Additionally, historic architectural reports and Treatment Plans for Historic Districts were publically filed in the docket for the MVP Project, and all parties were provided an opportunity to comment on the filings. Commission staff considered the counties comments on the Treatment Plans prior to their approval and in accordance with the December 2017 Programmatic Agreement for this project, which was also provided to the counties for review and comment. Last, several counties commented on the Draft EIS for the project, and those individual comments were addressed by staff in the Final EIS.²³ Therefore, we find that the Commission properly afforded local governments the opportunity to become consulting parties and participate pursuant to section 106 of the NHPA.

The Commission orders:

(A) Bold Alliance's request for rehearing of staff's January 22, 2018 Notice to Proceed is dismissed.

(B) Bold Alliance's request for rehearing of staff's January 29, and February 8, 9, 12, 13, 14, 15, and 16, 2018, Notices to Proceed is denied.

(C) Preserve Craig's request for rehearing of staff's February 16, 2018 Notice to Proceed is denied.

By the Commission. Commissioner LaFleur is dissenting with a separate statement attached.

Commissioner Glick is not participating.

(S E A L)

²² Final EIS at 4-403.

²³ See Final EIS at Appendix AA.

Docket No. CP16-10-002

- 10 -

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline, LLC

Docket No. CP16-10-002

(Issued May 4, 2018)

LaFLEUR, Commissioner, *dissenting*:

Today's order denies rehearing of the Notices to Proceed on the Mountain Valley Pipeline Project (MVP). I write separately today because I did not support the Commission's original authorization of the project.¹ As explained in my earlier dissent, after a careful balancing of the need for the project and its environmental impacts, I concluded the project as proposed was not in the public interest. As a result, I cannot support the Notices to Proceed to construct this project.²

Therefore, I respectfully dissent.

Cheryl A. LaFleur
Commissioner

¹ *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017) (LaFleur, Comm'r, *dissenting*).

² I note that today's separate statement does not reflect any concern with Commission staff review of the environmental information submitted as part of compliance with the environmental conditions appended to our orders prior to issuing a notice to proceed.

Document Content(s)

CP16-10-002.DOCX.....1-11

Exhibit C – List of Respondents

List of Respondents

Pursuant to Local Rule 15(b), the following is a list of Respondents specifically identifying Respondents' names and the addresses where Respondents and/or their counsel may be served with copies of this Joint Petition for Review.

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