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August 14, 2018

Terry L. Turpin
Director, Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Mountain Valley Pipeline, LLC
Mountain Valley Pipeline Project
Docket No. CP16-10-000
Request to Modify Stop Work Order

Dear Mr. Turpin:

The Federal Energy Regulatory Commission issued an order on October 13, 2017, granting a Certificate of Public Convenience and Necessity to Mountain Valley Pipeline, LLC for the construction and operation of the MVP Project.¹ The Commission explicitly found that “the benefits that the MVP Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and landowners or surrounding communities” and that the public convenience and necessity requires approval of [the MVP Project].”² The Commission has also denied numerous rehearing requests of Commission staff’s delegated orders issuing notices to proceed with construction and variances.³

As Mountain Valley explained in an August 2, 2018 letter to the Commission, the United States Court of Appeals for the Fourth Circuit issued an order vacating and remanding decisions issued by the United States Forest Service (“Forest Service”) and the Bureau of Land Management (“BLM”) for the MVP Project on July 27, 2018.⁴ Mountain Valley’s crossing of the Jefferson National Forest consists of two segments of right-of-way totaling approximately 3.7 miles: a 1.86-mile stretch in Montgomery County, Virginia and a 1.85-mile stretch in Giles County, Virginia and Monroe County, West Virginia. As noted in Mountain Valley’s letter, prior to the issuance of the Stop Work Order, Mountain Valley suspended construction progress within the Jefferson National Forest and is limiting activity in the forest to maintaining environmental controls and protecting the safety of the right-of-way. Mountain Valley is

¹ *Mountain Valley Pipeline, LLC*, 161 FERC ¶ 61,043 (2017), *order on reh’g*, 163 FERC ¶ 61,197 (2018) (“Certificate Order”).

² *Id.* at P 64.

³ See *Mountain Valley Pipeline, LLC*, 163 FERC ¶ 61,099 (2018) (denying requests for rehearing and reconsideration of nine Notices to Proceed); *Mountain Valley Pipeline, LLC*, 164 FERC ¶ 61,086 (2018) (denying rehearing of a variance for tree cutting in the Jefferson National Forest).

⁴ *Sierra Club, Inc. v. United States Forest Service*, No. 17-2399 (4th Cir. July 27, 2018) (“*Sierra Club*”).

Mr. Terry L. Turpin
August 14, 2018
Page 2 of 6

diligently working with the Forest Service and BLM to determine the path forward in light of the Fourth Circuit's decision.

Notwithstanding Mountain Valley's suspension of construction activities in the Jefferson National Forest following the Fourth Circuit's decision and the fact that it is actively working with the Forest Service and BLM, the Director of the Office of Energy Projects issued a Notification of Stop Work Order on August 4, 2018. The Stop Work Order is not limited to the Jefferson National Forest activities but applies to the entirety of the 303-mile MVP Project. As explained below, the Commission should modify the Stop Work Order to limit the impact of the work stoppage to only those areas that may be potentially affected by the decisions of the Forest Service and BLM on remand.

1. The Commission Should Modify the Stop Work Order to Protect Environmental Resources

The Commission should modify the Stop Work Order as proposed herein. Modifying the Stop Work Order would be in the public interest and consistent with Condition No. 2 of the Certificate Order as it would "ensure the protection of all environmental resources during the construction period." As the Commission is fully aware, and as explained in its Temporary Stabilization Plan filed on August 8, 2018, Mountain Valley is in the midst of very active construction of the Project. As of today, Mountain Valley has cleared 198 miles of the construction right-of-way, prepared 138 miles of the right-of-way, strung 90 miles of pipe, welded 57 miles of pipe, trenched 48 miles of pipe, laid 21 miles of pipe, and backfilled 14 miles of the pipeline trench. The work stoppage has already had substantial detrimental effects on the environment, landowners, project workers, and the public. Continuing the work stoppage would further exacerbate these detrimental effects.

Continuing an immediate shutdown and stoppage of all work and activities on the Project right-of-way indefinitely, or even into the 2018-19 fall and winter season of precipitation and freeze/thaw events, would lead to significant environmental impacts. The currently fragile state of the right-of-way is intended to be a temporary condition for the limited period required to install the pipeline; it is not a state that should be maintained for prolonged periods, especially considering the steep slopes involved. Across the entire length of the MVP Project, approximately 198 miles of the 125-foot-wide right-of-way have been at least graded. The soil in these areas are exposed to rainfall and other precipitation events (including snowfall, freezing, melting, and thawing if further work is not done before the fall and winter seasons set in), increasing the risk of sedimentation impacts. The temporary erosion and sedimentation controls installed during construction are not intended for long-term use. The construction area also includes numerous spoils piles, which would pose significant sedimentation concerns if left in place for weeks or months. The temporary stabilization measures implemented for spoils piles are also not intended for long-term use, such as long-term use through the periods of higher expected amounts of precipitation and freeze/thaw events.

There also are significant safety concerns that flow from a wholesale work stoppage. Mountain Valley secures its right-of-way during construction and has measures in place that

Mr. Terry L. Turpin
August 14, 2018
Page 3 of 6

limit or prohibit access to the open construction sites. Maintaining these measures may not be possible with a total work stoppage. While the Commission's partial approval of Mountain Valley's Temporary Stabilization Plan has allowed it to mitigate a small portion of the health and safety and environmental concerns caused by the work stoppage, significant concerns remain over the short-term and long-term. Requiring Mountain Valley to maintain the status quo along the right-of-way for weeks or months would likely lead to serious unintended consequences, as Mountain Valley detailed in its Temporary Stabilization Plan.

Mountain Valley will also be required to field a team to maintain erosion and sedimentation controls during the shutdown. Overhead costs for Mountain Valley employees and direct contractors during an extended complete shutdown would add substantial costs. Mountain Valley would also incur additional demobilization costs, as thousands of workers are released from the Project.⁵ Construction of the Project currently supports more than 6,000 jobs in Virginia and West Virginia, and this number is expected to increase to nearly 8,000 jobs during the peak of construction.

2. The Commission Should Modify the Stop Work Order in a Manner that Will Ensure there Is No Unnecessary Construction While the Agencies Reinstate the Permits

There is no need for the work stoppage to apply to the entire Project. The Commission should modify the Stop Work Order and allow Mountain Valley to continue construction from MP 0 to the WB Interconnect with Columbia Gas Transmission, LLC at approximate MP 77 except an exclusion zone around the Weston and Gauley Bridge Turnpike Bridge Trail ("Weston and Gauley Trail") near MP 67. Construction of this segment has independent utility from the rest of the MVP Project and could be placed into service even if the rest of the Project is never constructed.⁶ Mountain Valley already contemplated providing interim service to the WB Interconnect while constructing the remainder of the MVP Project, and the Commission has approved interim transportation rates to the WB Interconnect.⁷ Following construction of this segment, Mountain Valley may be able to deliver up to 1.0 billion cubic feet per day from MP 0 to the WB Interconnect.

Between MP 0 and the WB Interconnect, Mountain Valley has already completed the bore of the Weston and Gauley Trail and, as shown in the table below, has made substantial progress on pipeline construction:

⁵ Considering similar work stoppages, the Commission has found that a "stoppage of construction work . . . would have substantial adverse impacts beyond financial implications to" the project developers. *Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018, at P 59 (2008). The Commission explicitly recognized that the pipeline company "would have to negotiate change orders with their contractors and, based on the current industry environment, it could be difficult to contract with the same or other qualified contractors to complete the [project]." The Commission also explained because pipeline construction was underway a work stoppage during construction "would lengthen the disruption period for many landowners." *Id.*

⁶ See *Tennessee Gas Pipeline Co., L.L.C.*, 156 FERC ¶ 61,157, at P 90 (2016) (citing *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir. 1987)).

⁷ Certificate Order at PP 77-78.

Mr. Terry L. Turpin
 August 14, 2018
 Page 4 of 6

Task	% Complete
Trees felled	99%
Cleared ROW	78%
Graded ROW	59%
Strung	41%
Welded	28%
Trenched	15%
Laid	11%
Backfilled	5%

Mountain Valley has developed a proposed exclusion zone between approximate MP 64 and MP 71 for the Weston and Gauley Trail that addresses the Commission’s concern that “[s]hould the agencies authorize alternative routes, MVP may need to revise substantial portions of the Project route across non-federal lands, possibly requiring further authorizations and environmental review” and that “allowing continued construction poses the risk of expending substantial resources and substantially disturbing the environment by constructing facilities that ultimately might have to be relocated or abandoned.”

An exclusion zone is consistent with the Commission’s concern and the holding of the Fourth Circuit. The statutory language in the Mineral Leasing Act provides that “[i]n order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical[.]”⁸ The court described this language as imposing a higher and more specific bar than the National Environmental Policy Act analysis regarding alternatives in the Commission’s environmental impact statement (“EIS”). BLM argued that by adopting the EIS on which it was a cooperating agency it had met this “extent practical” requirement. The court disagreed, holding that “[BLM] never decided that the utilization of an existing right of way would be impractical.”⁹ Therefore, to authorize the current right-of-way, BLM needs to explain on remand whether certain co-located routes are impractical.

While the Fourth Circuit’s opinion only applies to those permits within the Jefferson National Forest and the EIS does not include alternatives that would co-locate the certificated route with an existing right-of-way across the Weston and Gauley Trail, it is possible BLM could find it necessary to conduct an alternatives analysis with respect to this 60-foot-wide trail. Because BLM may explore co-locating the MVP Project only with respect to an existing right-of-way across the 10-mile-long trail itself, Mountain Valley developed an exclusion zone that encompasses the entirety of the Weston and Gauley Trail. A map showing the certificated route, the Weston and Gauley Trail, and this proposed exclusion zone is attached. This exclusion zone is a reasonable measure that accounts for any possible route shift due to co-location in this small area. This area has no overlap with any route alternatives that could be selected by BLM regarding the Jefferson National Forest. In fact, the MVP Project’s initial entrance into the

⁸ 30 U.S.C. § 185(p).

⁹ *Sierra Club*, slip. Op. at 40-42.

Mr. Terry L. Turpin
August 14, 2018
Page 5 of 6

Jefferson National Forest is approximately 129 miles downstream of the MVP Project's crossing of the Weston and Gauley Trail. Implementing the proposed exclusion zone eliminates the risk of unnecessary construction of facilities that might have to be relocated or abandoned.

Adopting this exclusion zones would allow work to resume on a portion of the route that has independent utility while focusing the stop work order on the limited area that might be relevant to addressing the Fourth Circuit's opinion.¹⁰ Approval of this proposal is especially important to mitigate the detrimental effects on the environment, landowners, project workers, and the public caused by the overly-broad Stop Work Order. It would also recognize that Mountain Valley still has all required federal permits and authorizations for the MVP Project.¹¹ Construction of the MVP Project can continue at risk, just as it has to date. Moreover, there is Commission precedent for imposing an exclusion zone with respect to authorizing pipeline construction.¹²

The Commission should also authorize Mountain Valley to resume full construction at all compressor stations and interconnects. These properties are located on properties owned in fee by Mountain Valley, so there are no landowner impacts associated with this work. The ground has already been disturbed at all compressor stations and interconnects, so there would be no unnecessary impacts associated with allowing construction to continue. In addition, the compressor stations and interconnects would be sited in the same locations regardless of any limited pipeline reroutes required by BLM's practicality analysis.

¹⁰ See note 2.

¹¹ The Stop Work Order noted that due to the Fourth Circuit vacating and remanding decisions of the Forest Service and BLM to those agencies, Mountain Valley "has not obtained the rights-of-way and temporary use permits from the federal government needed for the Project to cross federally owned lands." However, that statement is not accurate. The Fourth Circuit still has control over its judgment and may choose to rescind, amend, or alter the judgment prior to issuance of the mandate. *Alphin v. Henson*, 552 F.2d 1033, 1035 (4th Cir. 1977), *cert. denied*, 434 U.S. 823 (1977). This may occur if one or more parties to the decision seeks rehearing. Mountain Valley and the agencies have the right to seek rehearing or a stay under the federal rules, either of which automatically stays the issuance of the mandate. Mountain Valley is evaluating whether to do so. The Stop Work Order treats the Fourth Circuit's action as being in effect, when by rule it is not.

¹² See *Maritimes & Northeast Pipeline LLC, et al.*, 80 FERC ¶ 61,136 (1997) (certificate order imposing an exclusion zone that would allow construction to begin south of MP 31.5 and north of MP 62.0 while alternatives are being studied if a directional drill of the Piscataqua River were to fail).

Mr. Terry L. Turpin
August 14, 2018
Page 6 of 6

3. Conclusion

In view of the foregoing, Mountain Valley respectfully requests that the Commission authorize construction from MP 0 to the WB Interconnect at approximate MP 77 (except for the proposed exclusion zone) and at all compressor stations and interconnects. If you have any questions or require any additional information, please do not hesitate to contact me at (412) 553-5786 or meggerding@eqt.com. Thank you.

Respectfully submitted,

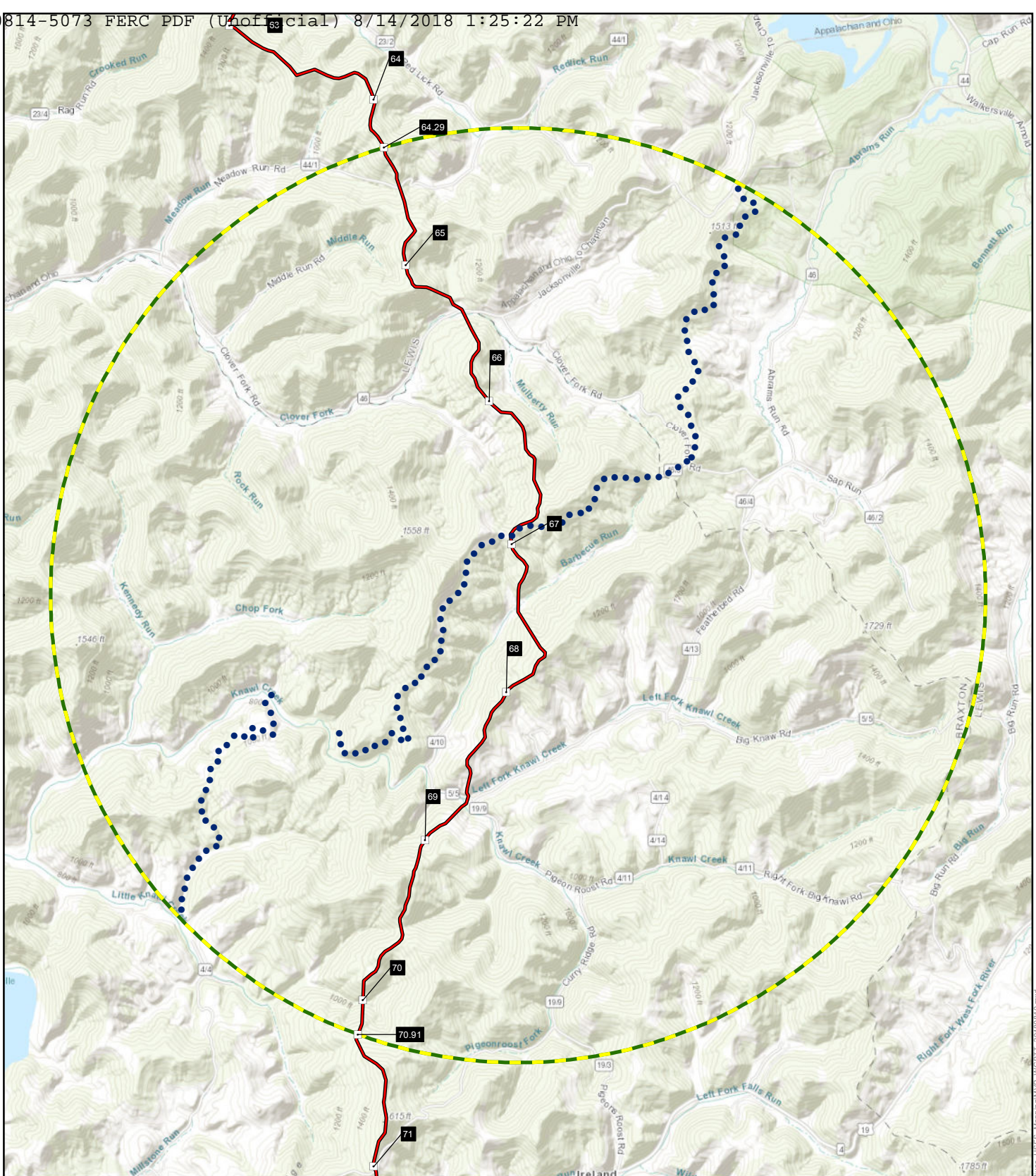
MOUNTAIN VALLEY PIPELINE, LLC
by and through its operator,
EQM Gathering Opco, LLC

By: 


Matthew Eggerding
Senior Counsel, Midstream

Attachment

cc: Chairman Kevin J. McIntyre
Commissioner Cheryl A. LaFleur
Commissioner Neil Chatterjee
Commissioner Richard Glick
Rich McGuire, OEP
James Martin, OEP
All parties



Mountain Valley Pipeline Project NAD 1983 UTM 17N 0 0.25 0.5 1 Miles

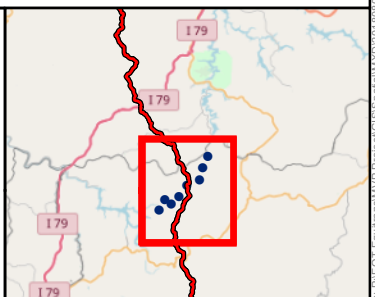


MVP Pipeline Route and the Weston Gauley Bridge Turnpike Trail

August 2018

Legend

- Milepost
- Weston Gauley Bridge Turnpike Trail
- Pipeline Route
- ▬ Proposed Exclusion Zone



Data Sources: ESRI Streaming Data, 2018, ATC 2017,

Document Content(s)

2018-08-14 MVP Request to Modify Stop Work Order.PDF.....1-7