

Mountain Valley Pipeline Project

Docket No. CP16-10-000

Attachment DR5 Geology 6

resources beneath the Project are entirely speculative and not appropriate for the Commission's consideration in the current environmental review. Further, to the extent that Mountain Valley and Coronado are unable to reach agreement, the appropriate venue to resolve compensation issues is the courts and not before the Commission.

MOTION TO ANSWER

Although the Commission's Rules generally do not allow answers to answers,⁵ the Commission may waive this prohibition where there is good cause.⁶ The Commission permits the filing of answers that facilitate the Commission's decisional process, aid in the explanation of issues, or correct the record.⁷ Good cause exists to permit Mountain Valley to file this Answer because it will help ensure a complete record upon which the Commission can base its decision on the merits of the Project and will aid the Commission in its disposition of issues raised in this proceeding, including those raised by Coronado. Additionally, on March 20, 2017, the Commission issued a Post-DEIS Environmental Information Request to Mountain Valley, in which it requests that Mountain Valley respond to the Coronado Answer.⁸ Mountain Valley, therefore, provides this Answer in compliance with the March 20 Information Request. For these

⁵ 18 C.F.R. § 385.213(a)(2).

⁶ See, e.g., *Transcon. Gas Pipe Line Co., LLC*, 158 FERC ¶ 61,125, at P 18 (2017) (finding good cause to waive rules and allowing answer to answer); *Rover Pipeline LLC*, 158 FERC ¶ 61,109, at P 24 n.11 (2017) (accepting answer to answer that "clarifie[d] concerns raised and provide[d] information that [] assisted in [the Commission's] decision making."); *Tenn. Gas Pipeline Co., L.L.C.*, 157 FERC ¶ 61,254, at P 11 (2016) (finding good cause to waive rules and accepting answers to answers).

⁷ See, e.g., *Sea Robin Pipeline Co.*, 132 FERC ¶ 61,277, at P 10 (2010); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303, at P 11 (2003); *Kern River Gas Transmission Co.*, 103 FERC ¶ 61,341, at P 9 (2003); *Transwestern Pipeline Co.*, 75 FERC ¶ 61,107, at p. 61,351 n.20 (1996), *order on reh'g*, 80 FERC ¶ 61,008, at p. 61,022 n.4 (1997); *Equitrans, Inc.*, 75 FERC ¶ 61,203, at p. 61,664 n.8 (1996); *Tenn. Gas Pipeline Co.*, 55 FERC ¶ 61,437, at p. 62,306 n.7 (1991), *reh'g denied*, 58 FERC ¶ 61,004 (1992).

⁸ Mountain Valley Pipeline, LLC, Post-DEIS Environmental Information Request #2, Geology Request No. 6, Docket No. CP16-10 (Mar. 20, 2017).

reasons, Mountain Valley submits this Answer and respectfully requests that the Commission permit Mountain Valley to respond to the Coronado Answer to aid the Commission in its decision-making process.

ANSWER

The Project does not create an impact on any of Coronado’s active mines—none. And the impact Coronado alleges to future potential mining in the vicinity of the Project is far too speculative for the Commission to consider in its review of the Project. Even if the Commission were required to look at the alleged impact of the Project on Coronado’s future, speculative mining operations, it should conclude, consistent with the Natural Gas Act (“NGA”) and its precedent, that the venue for determining compensation is the courts, and not the Commission. Coronado argues the Commission should require Mountain Valley to compensate Coronado for impacts to coal resources prior to the construction of the Project and that Mountain Valley is obligated to do so pursuant to the DEIS.⁹ However, as further explained below, the DEIS does not require Mountain Valley to reach an agreement with Coronado regarding compensation at any time, either prior to or after construction, since Coronado does not have active mines in the Project corridor. In addition, to the extent that the DEIS’s recommendation suggests that Mountain Valley should file copies of such an agreement, the recommendation is inconsistent with Commission precedent establishing that compensation is a matter of state law to be resolved in the courts.

⁹ Coronado Answer at 1-2.

I. The DEIS's Recommendation Addresses Active Mines Directly Affected by the Project's Proposed Route, Which Does Not Include Any of Coronado's Mines.

Mountain Valley has demonstrated the Project's limited impact on coal mining and coal resources on numerous occasions throughout this proceeding. On December 24, 2015, the Commission issued an Environmental Information Request to Mountain Valley in which it requested Mountain Valley to:

Provide maps that depict the location of all surface and subsurface coal mines (permitted, active, closed, reclaimed or currently in the reclamation process, and known abandoned) within 0.25 mile of the pipeline alignment and aboveground facilities.¹⁰

On January 27, 2016, Mountain Valley responded to the Commission and provided a map depicting the location of all such mines, along with a table listing mineral resources within 0.25 mile of the MVP Project.¹¹ None of the identified mines are owned or operated by Coronado. In comments submitted to the Commission on August 4, 2016, Coronado confirmed it did not have active or permitted mines within 0.25 miles of the Project corridor.¹² In fact, the maps Coronado filed simply demonstrated that the distance from the nearest edge of the "Currently Permitted" area of the seam to the Project corridor is approximately 1.3 miles for the Pocahontas 6 seam and approximately 1.4 miles for the Pocahontas 7 seam.

¹⁰ Mountain Valley Pipeline, LLC, Environmental Information Request, Docket No. CP16-10-000 (Dec. 24, 2015).

¹¹ Mountain Valley Pipeline, LLC, Responses to Environmental Information Request, Resource Report 6-Geologic Resources, Attachments 6-8 and RR6-5, Docket No. CP16-10-000 (Jan. 27, 2016).

¹² See Coronado Answer at 7-8; Comments of Coronado Coal, LLC, Attachment A, Docket No. CP16-10-000 (Aug. 4, 2016) ("Coronado Comments").

The Commission incorporated Mountain Valley's table in the DEIS's environmental analysis of geology, noting that "62 mining operations were identified within proximity of the MVP [Project]."¹³ Of the 21 mines that would be actually crossed by the MVP Project's proposed route, only four were identified as active. None of these mines are owned and operated by Coronado. The DEIS explicitly and appropriately recognized that the MVP Project "was routed to avoid mines to the extent possible."¹⁴ For the remaining active and historic mines directly within the proposed route, Mountain Valley developed and filed with the Commission a *Mining Area Construction Plan*, which describes how Mountain Valley will monitor and mitigate hazards to mines crossed by the MVP Project.¹⁵

As noted in the DEIS, Coronado filed with the Commission an objection to Mountain Valley's *Mining Area Construction Plan*, claiming a loss of coal it would be unable to mine because it is located under the proposed pipeline.¹⁶ Commission staff recommended in the DEIS that Mountain Valley either file a plan for the avoidance of *active* mines, or copies of agreements with coal companies regarding compensation for loss of coal resources.¹⁷ As explained in the Executive Summary of the DEIS, Commission staff "recommend[ed] that Mountain Valley file a plan to avoid or compensate for impacts on *active* mines."¹⁸ Therefore, Mountain Valley may do one of two things prior to construction: (1) file a plan for the avoidance of active mines; or (2)

¹³ DEIS at 4-13.

¹⁴ *Id.* at 4-41.

¹⁵ DEIS at 4-41; Mountain Valley Pipeline, LLC, *Mining Area Construction Plan, Responses to Environmental Information Request, Attachment General 1j* (Jan. 27, 2016).

¹⁶ DEIS at 4-16; Coronado Comments at 2.

¹⁷ DEIS at 5-21 (Recommendation 23) (emphasis added).

¹⁸ DEIS at ES-3 (emphasis added).

file copies of agreements with coal companies on compensation where avoidance of active mines is not feasible. Coronado incorrectly interprets this recommendation as obligating Mountain Valley to reach an agreement with Coronado regarding compensation for alleged loss of its coal resources—coal reserves that are not being actively mined or permitted—prior to construction of the pipeline.¹⁹ However, the DEIS recommendation is limited to active coal mining, which Coronado is not even permitted to do within at least approximately 1.3 miles of the Project corridor.

Furthermore, to the extent the DEIS recommendation would require Mountain Valley to file copies of agreements with coal companies that do not have active mines or all permits to mine resources beneath the Project, such recommendation must be informed by the context of the Commission’s concerns—which is with active or historic mines within 0.25 miles of the proposed route of the MVP Project.²⁰ Although Coronado may have certain permits for mines within a portion of the Pocahontas 6 and 7 seams,²¹ the areas identified by Coronado are not directly affected by the MVP Project’s proposed route, or within 0.25 miles of the Project. As mentioned above, Coronado’s own maps confirm that the distance from the nearest edge of the “Currently Permitted” area of the seam to the Project corridor is approximately 1.3 miles for the Pocahontas 6 seam and approximately 1.4 miles for the Pocahontas 7 seam. Further, Coronado has admitted it does not have the applicable permits to mine in proximity to the Project, stating that only

¹⁹ Coronado Answer at 2.

²⁰ See Mountain Valley Pipeline, LLC, Responses to FERC Staff’s Recommended Mitigation in Draft Environmental Impact Statement at 10, Docket No. CP16-10-000 (Oct. 27, 2016) (Response to Recommendation 23).

²¹ See Coronado Answer at 7-8; Comments of Coronado Coal, LLC at 8, Attachment A, Docket No. CP16-10-000 (Aug. 4, 2016) (citing West Virginia Permit No. U-3012-05, Greenbrier Smokeless Mining, LLC, Pocahontas No. 6, Greenbrier County).

a “portion of the Pocahontas 6 and 7 seams are currently subject to valid and effective permits issued by the West Virginia Department of Environmental Protection” and “additional subsidence control plans . . . will be filed by Coronado as mining advances.”²² For purposes of this Answer, Mountain Valley does not take a position as to whether Coronado has obtained all necessary permits and clearances from federal and state agencies (including the West Virginia Department of Environmental Protection (“WVDEP”), the West Virginia Office of Miners’ Health Safety and Training, and the federal Mine Safety and Health Administration) to mine discrete portions of either the Pocahontas 6 seam or the Pocahontas 7 seam because any permits in those areas are not relevant to the Project. The proper inquiry is whether the area *in close proximity to the Project corridor* is subject to active mining, regardless of whether a different area of the same coal seam is currently permitted. That is simply not the case with respect to Coronado’s mining activities. “Permitted” mining areas located at least approximately 1.3 miles from the Project corridor are not the types of mining areas to which the DEIS’s recommendation was directed.

II. Coronado’s Future, Speculative Mining Plans Are Not Appropriate for the Commission’s Consideration.

In addition to having no active mines in the vicinity of the Project corridor, the coal reserves identified by Coronado as permitted are too far away from the Project, and Coronado’s internal future mining plans are too speculative for the Commission to consider in its review of the Project. As noted above, while Coronado may have certain permits for mining within discrete areas of the Pocahontas 6 and 7 seams, Coronado has

²² Coronado Answer at 8.

not argued, because they cannot, that they have any of the necessary federal and state permits to mine within approximately 1.3 miles of the Project corridor.

In addition, the Project was well under consideration by the Commission before Coronado even submitted permit applications for the newly-permitted areas with the WVDEP. Coronado did not submit a plan to WVDEP with projections for the Pocahontas No. 7 seam until May 2016—nearly 29 months after Mountain Valley initiated the pre-filing process, and over 17 months after Mountain Valley filed its Application.²³ In any event, these discrete areas are at least approximately 1.3 miles from the Project corridor. To the extent that Coronado has internal plans to obtain permits for additional areas closer to or beneath the Project, these plans are entirely too speculative for the Commission to consider for safety and environmental purposes. The Commission has explained that a coal company’s future, speculative mining plans are insufficient to deny a certificate application.²⁴ This is because a coal company’s future, speculative mining plans are not “reasonably foreseeable future actions” that the Commission is required to consider in its review under the National Environmental Policy Act (“NEPA”).²⁵ Although Coronado is correct that “where coal mining . . . is a reasonably foreseeable action,” the Commission considers the impacts of such mining

²³ Commission staff granted Mountain Valley’s request to use the pre-filing process on October 31, 2014, Docket No. PF15-3-000. Mountain Valley filed its Certificate Application on October 23, 2015.

²⁴ See *Tex. E. Transmission, LP*, 129 FERC ¶ 61,151 (2009), *order on reh’g*, 131 FERC ¶ 61,164 (2010); *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239 (2011).

²⁵ See *Tex. E. Transmission, LP*, 129 FERC ¶ 61,151 at P 71 (“The Council of Environmental Quality’s implementing regulations for NEPA requires that reasonably-foreseeable future actions be evaluated. [The coal company] has not provided a reasonably-foreseeable timeframe in which it plans to mine coal reserves under other areas of Texas Eastern’s facilities. Future mine subsidence not currently planned or permitted that could impact Texas Eastern’s . . . new facilities would be more properly addressed through the [state regulatory agency’s] administrative process for pending mining permit applications.”) (internal citation omitted) (“*Texas Eastern*”).

activities on the proposed pipeline as part of the environmental review;²⁶ Coronado is incorrect in asserting that its unpermitted, future internal plans to mine in areas closer to or beneath the Project is a reasonably foreseeable action that must be considered by the Commission.

In *Texas Eastern*, a coal company argued that the Commission should deny a certificate application because of mining-related safety concerns.²⁷ In rejecting the coal company's arguments and authorizing the proposed facilities, the Commission's analysis focused on the fact that the coal company did not have any current or permitted mining activities in the project area.²⁸ The Commission distinguished the coal company's situation from one where "ongoing and imminent coal mining activities were of acute concern," and noted that the existing right-of-way for the proposed route did "not cross land under which active coal mines . . . are being operated as construction begins."²⁹ The Commission found that if the coal company engaged in mining beneath the proposed facilities in the future, the state regulatory agency would be the "appropriate forum with jurisdiction over potential subsidence mitigation issues that may evolve at some time in

²⁶ Coronado Answer at 8 (citing *Dominion Transmission, Inc.*, 135 FERC ¶ 61,239 at P 46 (2011)).

²⁷ *Tex. E. Transmission, LP*, 131 FERC ¶ 61,164 at P 17 (arguing that application was insufficient because it did not provide for mitigation measures "for as-yet potential subsidence issues that could emerge in the future if active mining were to take place beneath the facilities").

²⁸ *Id.* at PP 18-19.

²⁹ *Id.* (noting that "in the absence of specific information about the details of how potential mining activities would go forward, and what they would involve, and how they would likely be affected by the construction of the projects, the pipeline mitigation plans [the coal company] would have us require would be based only on vague speculation"). In the case of *Texas Eastern*, the coal company had even submitted a permit application, yet this future mining activity still did not rise to the level of reasonably foreseeable. *See id.* at P 19 n.34.

the future.”³⁰ The same rationales used in *Texas Eastern* to reject the coal company’s arguments apply to Coronado’s protest here.

Similarly, Coronado’s reliance on *Dominion Transmission* is misplaced.³¹ Coronado is concerned with compensation for impacts on Coronado’s ability to conduct underground mining at some unknown point in the future. However, the Commission observed that “while certain surface mining activities must be curtailed, if proper safeguards are in place, most types of underground mining can proceed while overlaying pipelines remain in service.”³² Although the Commission explained that it would consider the impacts of mining activities on the proposed pipeline as part of its environmental review, such review is still limited to reasonably foreseeable future actions, which Coronado’s plans are not. Unlike the coal company in *Dominion*, Coronado does not raise concerns germane to environmental or safety issues—Coronado is concerned solely with compensation. To the extent that Coronado’s concerns are peripherally related to environmental or safety issues associated with underground mining beneath pipeline facilities, the Commission in *Dominion* appropriately dismissed similar concerns because the impacts on mining were not reasonably foreseeable.

³⁰ *Id.* at P 24. See also *Texas Eastern Transmission, LP, Environmental Assessment*, Docket No. CP09-68-000 at 29 (Sept. 11, 2009) (“We understand that the issues of mine subsidence rights; the liability for damage to landowners’ surface facilities; and the responsibility for subsidence mitigation costs, are complex issues that depend on the landowners’ rights, and applicable federal and [state] mining regulations. Those issues are beyond the scope of this EA. We believe that [the state regulatory agency] has the specific expertise in governing state and federal regulations involving mine subsidence mitigation activities, and this issue should be resolved through [the state regulatory agency’s] administrative process for pending mining permit applications . . . or, if necessary, by a court of jurisdiction.”) (internal citation omitted).

³¹ Coronado Answer at 8 (citing *Dominion Transmission*, 135 FERC ¶ 61,239).

³² *Dominion Transmission*, 135 FERC ¶ 61,239 at P 46.

Therefore, Coronado’s arguments about proper compensation for future potential—and entirely speculative—mining losses are not a matter for the Commission’s consideration.

III. Compensation for Potential Loss of Coal Reserves Is Not a Matter for the Commission.

In the event an agreement is not reached, *compensation* issues are a not a matter for the Commission’s review and are instead addressed by state law and the courts.³³

Therefore, it is not appropriate to include a condition in the Final Environmental Impact Statement or the Commission’s Certificate Order requiring compensation agreements.

Commission staff’s recommendation in the DEIS with respect to agreements with coal companies over compensation is contrary to the Commission’s own precedent clearly establishing that the Commission lacks authority to determine the sufficiency of compensation, and that compensation is a matter of state law. As the Commission explained in *Dominion*:

[T]he Commission does not seek to resolve concerns regarding potential economic losses or constraints on current or future uses of property attributable to the proposed pipeline. Determining compensation for necessary rights-of-way is a matter for negotiation among the applicant and affected property owners. If negotiations are not successful, the appropriate forum for establishing compensation is in court.³⁴

The Commission has consistently stated that it “plays no role in assessing surface or mineral property values, or in determining the appropriate compensation for the transfer of such rights.”³⁵ “Although the Commission encourages pipelines to enter into fair

³³ 15 U.S.C. § 717f(h) (2012).

³⁴ *Dominion Transmission*, 135 FERC ¶ 61,239 at P 45 (citing NGA section 7(h)).

³⁵ *Columbia Gas Transmission Corp.*, 128 FERC ¶ 61,179, at P 6 (2009); *see also Transwestern Pipeline Co., LLC*, 122 FERC ¶ 61,165, at P 40 (2008) (The Commission “does not play a role in assessing land values in negotiations between landowners and a company, or in determining compensation due to landowners as a result of a project’s intrusion on the use of their property”). Property owners are “by law . .

negotiations with landowners regarding the use of their property, it does not intervene in such negotiations when the parties cannot reach an agreement.”³⁶ The Commission has explained further that “sufficiency of compensation is a contractual matter between [the pipeline] and the landowners or, if agreement is not reached, a matter for a court with appropriate jurisdiction and not an issue over which the Commission has jurisdiction.”³⁷

Therefore, as recognized by the NGA and the Commission, if negotiations regarding compensation between Mountain Valley and Coronado are not successful, “the appropriate forum for establishing compensation is in court.”³⁸ It is, therefore, inconsistent with Commission precedent to require Mountain Valley to file copies of agreements relating to compensation prior to beginning construction of the Project when the Commission is not the appropriate venue to resolve such compensation matters. Because issues relating to compensation are not appropriate for the Commission’s determination—according to the Commission’s own precedent—the status and outcome of negotiations and agreements regarding compensation are likewise not germane to the Commission’s role in this proceeding.

. afforded the opportunity to obtain a fair value by presenting their case before a court,” but the Commission “lack[s] [the] authority to determine the outcome of [an] eminent domain process.” *Id.*

³⁶ *Tenn. Gas Pipeline Co.*, 110 FERC ¶ 61,047, at P 31, *reh’g denied*, 111 FERC ¶ 61,094 (2005).

³⁷ *Columbia Gas Transmission*, 128 FERC ¶ 61,050 at P 47 (“[I]f the parties cannot reach agreement, issues of compensation . . . are matters for state or federal court.”). *Id.* at n.54; *see also Tenn. Gas Pipeline Co.*, 110 FERC ¶ 61,047 at P 31 (noting that if no agreement is reached, “eminent domain action in the appropriate state or federal courts [] will determine fair compensation.”).

³⁸ *Dominion Transmission*, 135 FERC ¶ 61239 at P 45 (citing NGA section 7(h)).

CONCLUSION

For the reasons set forth above, Mountain Valley respectfully requests the Commission to grant this Motion and accept this Answer, and to dismiss Coronado's February 22, 2017 Answer, as more fully explained within.

Respectfully submitted,

MOUNTAIN VALLEY PIPELINE, LLC

/s/ Brian D. O'Neill

Brian D. O'Neill

Michael R. Pincus

Frances Bishop Morris

Van Ness Feldman LLP

1050 Thomas Jefferson Street N.W.

Seventh Floor

Washington, D.C. 20007

202-298-1800

202-338-2416

bdo@vnf.com

mrp@vnf.com

ftb@vnf.com

Matthew Eggerding

Counsel, Midstream

Mountain Valley Pipeline, LLC

625 Liberty Avenue

Suite 1700

Pittsburgh, PA 15222

412-553-5786 (phone)

412-553-7781 (fax)

meggerding@eqt.com

Counsel for Mountain Valley Pipeline, LLC

Dated: March 30, 2017

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2016), I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 30th day of March 2017.

/s/ Marco Bracamonte
Marco Bracamonte, Paralegal
Van Ness Feldman LLP
1050 Thomas Jefferson St., N.W.
Seventh Floor
Washington, D.C. 20007-3877
(202) 298-1800