IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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| BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE,<br><br>Petitioner,<br><br>FEDERAL ENERGY REGULATORY COMMISSION, and UNITED STATES OF AMERICA,<br>Respondents. | ) | Case No. 18-1002<br>(Consolidated with Cases No. 17-1271 and 18-1006) |

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On Petition for Review of Order of the Federal Energy Regulatory Commission, 161 FERC ¶ 61,043 (October 13, 2017)

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[ORAL ARGUMENT NOT SCHEDULED]

**BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE MOTION FOR STAY AND MEMORANDUM IN SUPPORT OF ALL WRITS ACT PETITION**

## INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 18(a) and Circuit Rule 18, Petitioner Blue Ridge Environmental Defense League ("BREDL") seeks an emergency stay pending review of the October 13, 2017 Federal Energy Regulatory Commission ("FERC") Order issuing Certificates and Granting Abandonment Authority (Order) in *Mountain Valley Pipeline, LLC* (Order), 161

FERC ¶ 61,043 (2017) (FERC Docket Nos. CP16-10-000 and CP16-13-000) (hereinafter referred to a "Certificate"). [1]

BREDL is a non-profit membership organization with chapters in Roanoke and Franklin County, Virginia, founded to serve the principles of earth stewardship, environmental democracy, social justice, and community empowerment. BREDL's members reside near, visit, appreciate and/or own property in the areas to be traversed by the Mountain Valley Pipeline ("MVP"), a 303.5-mile natural gas pipeline that will connect Wetzel County, West Virginia to Pittsylvania County, Virginia. BREDL hereby joins the petitioners Appalachian Mountain Voices, *et al.*, in Case No. 17-1271, in seeking the stay to prevent irreparable injury pending this Court's review of the petitions. BREDL also joins Appalachian Mountain Voices, *et al.*, in Case No. 18-1006 in seeking relief from this Court to preserve the *status quo* and protect this Court's jurisdiction pursuant to the All Writs Act, 16 U.S.C. § 1651, Federal Rule of Appellate Procedure 21(c), and Circuit Rule 21.

[1] As required by Federal Rule of Appellate Procedure 18(a)(1), BREDL moved for a stay of the Order before FERC on November 13, 2017.

# ARGUMENT

## I. Petitioner Satisfies the Requirements for an Emergency Stay.

A stay of an agency's proceedings is warranted where a movant establishes that (1) it is likely to prevail on the merits, (2) it is likely to suffer irreparable harm absent a stay, (3) other parties will be unlikely to suffer substantial harm if the stay is granted; and (4) the public interest lies in granting the stay. Circuit Rule 18(a)(1). The moving party "has the burden to show that all four factors, taken together, weigh in favor of the [stay]." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009). BREDL's stay motion adopts and incorporates by reference each of the arguments advanced in the emergency stay motion in Case No. 17-1271 (Document #1712005) and in the All Writs Act petition filed by Appalachian Mountain Voices *et al.* in Case No 18-1006 (Document #1712017). BREDL hereby provides the following additional reasons and arguments for why the requested emergency relief should be granted.

### A. Petitioners Are Likely to Succeed on the Merits.

#### 1. FERC's Certificate Order Violates Section 106 of the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act ("NHPA") prohibits federal agencies from approving any federally licensed undertaking unless the agency first (1) takes into account the effects of the undertaking on historic properties; and (2) affords the Advisory Council on Historic Preservation

("ACHP") a reasonable opportunity to comment on the undertaking, "prior to" the issuance of a license or the approval of federal assistance.[2] 54 U.S.C. § 306108; 36 C.F.R. Part 800. Completion of Section 106 "prior to" the issuance of a requested license is critical to accomplishing the "action-forcing" purposes of Section 106, similar to other federal statutory schemes, such as the National Environmental Policy Act ("NEPA"). *Cf.* "While Section 106 may seem to be no more than a 'command to consider,' . . . the language is mandatory and the scope is broad." *United States v. 162.20 Acres of Land, More or Less, Etc.*, 639 F.2d 299, 302 (5th Cir.), *cert. denied*, 454 U.S. 828 (1981).

The ACHP has promulgated regulations implementing the requirements of Section 106. 36 C.F.R. Part 800. These regulations, which are binding on all federal agencies, establish a consultation process that agencies must complete before approving any undertaking. Among other things, the federal agency, in consultation with the State Historic Preservation Officer ("SHPO")[3] must assess

[2] The Advisory Council on Historic Preservation ("ACHP") is an independent federal agency responsible for the implementation and enforcement of Section 106 in its entirety. 54 U.S.C. § 304101.

[3] The SHPO is the state official responsible for assisting federal agencies in carrying out their historic preservation responsibilities under Section 106. *See* 54 U.S.C. §302303; 36 C.F.R. § 800.2(c)(1). The Virginia Department of Historic Resources ("VDHR") is the SHPO for the Commonwealth of Virginia.

the effects of the project on historic properties, and seek ways to avoid, minimize, or mitigate any adverse effects. *Id.* §§ 800.1(a), 800.6(a).

The Section 106 process may be completed by the execution of a Memorandum of Agreement ("MOA") between the consulting parties resolving adverse effects, which then becomes a binding obligation and operates to "govern the undertaking and all of its parts." 54 U.S.C. § 306114; 36 C.F.R. § 800.6(c). The Section 106 regulations also provide a process by which an agency may use "alternate procedures" to those set forth in the regulations for complex undertakings, including the development of "programmatic agreements" to govern situations "[w]hen effects on historic properties cannot be fully determined prior to approval of an undertaking." *Id.* §§ 800.14(b), 800.16(t).

In this case, prior to issuance of the Certificate, FERC completed a Final Environmental Impact Statement ("FEIS") pursuant to NEPA, which included the results of a preliminary assessment of cultural resource impacts undertaken by MVP's consultant. *See* Motion for Stay filed by Appalachian Mountain Voices *et al.*, Exhibit A (Document #1712005, pages 90 to 95 of 582). However, as the Certificate, ¶ 269, acknowledges, the "process of compliance with section 106 of the National Historic Preservation Act has not been completed for the projects," including "consultations with [State Historic Preservation Officers]." *Id* (Document #1712005, page 95 of 582). The Certificate indicates that FERC

intends in the future to "consult with appropriate consulting parties regarding the production of an agreement document to resolve adverse effects [on historic properties] in accordance with 36 C.F.R. § 800.6." *Id.*

Recognizing the preliminary nature of the assessment of cultural resource impacts in the FEIS, the Certificate includes Environmental Condition No. 15, which purports to "restrict[] construction until after all additional required surveys and evaluations are completed, survey and evaluation reports and treatment plans have been reviewed by the appropriate consulting parties, the Advisory Council on Historic Preservation has had an opportunity to comment, and the Commission has provided a written notice to proceed." *Id.* (Document #1712005, page 130 of 582). Specific to historic and cultural resources, the Certificate, Appendix C, ¶ 15, requires MVP to file all "remaining cultural resource surveys" with FERC prior to construction, along with "comments" from consulting parties, and to give the ACHP an opportunity to comment on adverse effects. *Id.* This Condition, however, is inadequate to cure FERC's fundamental violation of Section 106.

Notwithstanding Environmental Condition No. 15, FERC's issuance of the Certificate prior to the completion of the Section 106 process – indeed, *long* before completing the Section 106 review – violates the plain language of Section 106 by depriving the ACHP of an opportunity to comment "prior to" the issuance of any license. 54 U.S.C. § 306108. As one court explained,

> [T]he ACHP's regulations, . . . require that NHPA issues be resolved by the time that the license is issued. . . . In this case, the Board's final decision contains a condition requiring [the permit applicant] to comply with whatever future mitigation requirements the Board finally arrives at. *We do not think that this is the type of measure contemplated by the ACHP when it directed agencies to develop measures to "avoid, minimize, or mitigate" adverse effects.*

*Mid States Coalition for Progress v. STB,* 345 F.3d 520, 554 (8th Cir. 2003) (emphasis added). As is the case here, the Court specifically noted that, although the agency had, prior to the issuance of the license, "identified some potentially affected sites," it had "not made a final evaluation or adopted specific measures to avoid or mitigate any adverse effects, *see* 36 C.F.R. § 800.2(d)(3)." *Id.* While the Court noted that the ACHP regulations offer the possibility of a "Programmatic Agreement" for completing the Section 106 reviews and consultations, "the programmatic agreement itself must be in place before the issuance of a license." *Id.*

Here, of course, no Section 106 agreement was executed prior to the issuance of the Certificate. *See* Declaration of Ann Rogers (attached as Exhibit A). It was not until more than two months later, on December 15, 2017, that a Programmatic Agreement purporting to establish a process for future consultations was fully executed by the required consulting parties. *Id.*

However, even if the Programmatic Agreement had been executed prior to the issuance of the Certificate, "merely entering into a programmatic agreement

does not satisfy Section 106's consultation requirements." *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Dept. of Interior*, 755 F. Supp. 2d 1104, 1109 (S.D. Cal. 2010). Instead, the Section 106 process is completed upon actual "*compliance* with the procedures established in an approved programmatic agreement." *Id.* (citing 36 C.F.R. § 800.14(b)(2)(iii)) (emphasis added). The Court explained that "entering into an appropriately-negotiated programmatic agreement can result in deferral of the consulting process, but it would only allow a temporary delay in consultation," and the required consultation must occur "as it becomes feasible." *Id. See also Southern Utah Wilderness Alliance v. Burke*, 981 F. Supp. 2d 1099, 1109 (D. Utah 2013) (Execution of a national programmatic agreement with the Advisory Council was insufficient to demonstrate compliance with Section 106 where consultations with the State Historic Preservation Officer ("SHPO") concerning the specific undertaking had not been adequate).

In this case, it is highly unlikely that the required Section 106 consultations will be completed promptly or before MVP is given a notice to proceed with construction. As BREDL pointed out in its request for rehearing, and as the FERC certificate itself acknowledges, numerous issues concerning the impact of the MVP on historic properties were unresolved at the time FERC issued its Certificate, which issuance allowed the MVP to file actions in federal court in Virginia and West Virginia seeking to exercise its authority under the Natural Gas Act to

condemn private property for construction of the MVP. As part of those proceedings, MVP is now seeking early entry rights to begin "pre-construction" activities to commence prior to February 2018, which activities include the felling of trees and the construction of access roads. *See* Motion to Stay filed by Appalachian Mountain Voices, *et al.*, Ex. B (Document #1712005, page 155 of 582) (Cooper Declaration).

As will be discussed below, the assessment of adverse effects on historic properties contained in the FEIS, which was the basis for the Certificate, is incomplete and inadequate. As a result, the required studies and consultations that will be necessary in order to complete the Section 106 process are extensive. These studies and consultations will inevitably result in the identification of additional historic and cultural resources that will also be adversely affected by the MVP Project, but which were not even identified as of the time the Certificate was issued. The PA then requires that these potential historic districts and sites be evaluated under the PA, and then the adverse effects to all of the identified and as-yet unidentified historic resources must also be assessed, followed by the "develop[ment] and evaluat[ion of] alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties," 36 C.F.R. § 800.6(a).

These "pre-construction" activities are not subject to environmental Condition No. 15, which extends only to the "construction of facilities." *See* Motion to Stay filed by Appalachian Mountain Voices, *et al.*, Ex. A (Document #1712005, page 130 of 582). As will be discussed in more detail below, the commencement of these pre-construction activities prior to the completion of the required Section 106 studies and consultations will irreparably injure historic properties and foreclose the ability of consulting parties to meaningfully comment on ways to resolve adverse effects on those properties, including most notably, shifting the alignment to avoid historic resources that will be adversely affected by the pipelines.

Decisions by this Court, which have upheld in some contexts the "conditional" approval of a license prior to completion of the Section 106 process, are therefore distinguishable. For example, in *City of Grapevine v. FAA*, 17 F.3d 1502 (D.C. Cir.), *cert. denied*, 513 U.S. 1043 (1994), the Court held that the conditional approval of an FAA certificate did not violate Section 106 so long as the FAA conditioned its approval on a requirement that the project applicant refrain from construction until completion of the Section 106 process. However, in that case, the Court specifically noted that the only consequence of this conditional approval was that, "if the regulated party commits its own resources" to the project before the condition is satisfied, "then it does so at the risk of losing its

investment" should the project ultimately not go forward." *Id.* at 1509. In the *Grapevine* case, construction prior to the discharge of the condition would not have resulted in irreparable harm to the historic properties, since the harm to the historic properties was the result of the *operation* of the airport, not its construction, and the noise impact of additional flights on nearby historic resources.[4]

Here, by contrast, as noted above, the issuance of the Certificate by FERC will have an immediate adverse effect on already-identified and as-yet un-identified historic properties, notwithstanding Environmental Condition No. 15, MVP will be able to enter the historic districts and begin removing trees and constructing access roads for the pipeline. As discussed in more detail below, these planned pre-construction activities will irreparably harm historic properties before the Section 106 process is completed, thereby foreclosing any meaningful opportunity for consulting parties to consider alternatives to avoid and minimize impacts on historic properties that are subsequently identified as being adversely affected by the MVP Project. Accordingly, the issuance of the Certificate violates Section 106 of the NHPA.

[4] *See also Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 280 (D.C. Cir. 2015) (FERC's conditional certificate of a pipeline project did not violate Clean Water Act where "no activities [were] authorized by the conditional certificate itself that may result in such discharge prior to the state approval and the Commission's issuance of a Notice to Proceed.").

**2. The Assessment of Impacts on Historic and Cultural Resources in the FEIS and Summarized in the Certificate is Incomplete, Inaccurate, and Cannot Be Reconciled with the Requirements of NEPA and Section 106 of the NHPA.**

NEPA requires federal agencies undertaking an Environmental Impact Statement to evaluate the direct and indirect effects of major federal actions on the environment, including "aesthetic, historic, [and] cultural" effects, and the "unique characteristics of the geographic area such as proximity to historic or cultural resources" or "districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places." 40 C.F.R. §§ 1508.8(b), 1508.27(b)(3), (8). The Certificate makes numerous findings outside of the Section 106 process related to impacts on cultural and historic resources that are inconsistent with the Section 106 regulations and applicable guidance. *See* Declaration of Ann Rogers, Attachment 1 ("Errors and Omissions in the Certificate Relating to Historic and Cultural Resources") (attached hereto as Exhibit A)

Moreover, there are numerous unresolved issues involving the identification of potentially affected historic, cultural, and archaeological resources, and whether those resources will be adverse affected, rendering the discussion of impacts on cultural resources in the FEIS grossly inadequate. *Id.*, Attachment 2 ("Unresolved Section 106 Issues"). Accordingly, in addition to the inadequacies discussed in the stay motion filed by Appalachian Mountain Voices the FEIS's assessment of cultural resource impacts is incomplete and inaccurate, and clearly sweeps this key

issue under the rug, in violation of FERC's responsibilities under NEPA to provide a full and fair discussion of impacts to historic and cultural resources.

### 3. FERC Has Unlawfully Forced Stakeholders to Choose Between Protecting Their Interests as Consulting Parties to the Section 106 Process or Securing Judicial Review of FERC's NHPA Compliance In Violation of NEPA and the Due Process Clause

The Section 106 regulations require agencies to provide the public and specified "consulting parties" with an opportunity to comment throughout the Section 106 process. *See* 36 C.F.R. §§ 800.4(a)-(c), 800.5(a), 800.6(a). In addition to the required "consulting parties," such as the permit applicant and the SHPO, the agency has the option of granting "consulting party" status to other entities that have a demonstrated interest in the undertaking. *Id.* § 800.4(c)(5). "Consulting party" status gives stakeholders heightened rights to review documents and participate in the Section 106 process. *Id.*

However, in this case, FERC has arbitrarily refused to grant consulting party status to persons and organizations such as BREDL who intervened in the FERC proceeding, unlawfully forcing parties to choose between protecting their demonstrated interests through the Section 106 process and protecting their interests through intervening as a party in the FERC proceeding. *See* email to Anita Puckett, Preserve Montgomery County, from Paul Friedman, FERC (Nov. 24, 2015) ("Preserve Montgomery recently filed for [FERC] intervenor status. You cannot be both an intervenor and a consulting party. Therefore you

are disqualified to be a consulting party, because you filed to be an intervenor.") *See* Exhibit B, attached.

The NHPA regulations set forth the interests that qualify a person or organization for consulting party status. Nothing in the Section 106 regulations suggests that a party that successfully intervenes in a federal agency proceeding should be denied consulting party status. To the contrary, the interests that a party must have in order to intervene are similar to the interests needed to be granted consulting party status: *Compare* 18 C.F.R. § 388.214 *and* 36 C.F.R. § 800.2(c)(5). Denial of consulting party status to an intervenor who possesses the requisite interests in the undertaking, simply because that party is already an intervenor in the FERC proceeding, is contrary to the Section 106 regulations, and is arbitrary, capricious, an abuse of discretion, and contrary to law.

FERC's assurance that the public participation procedures will give all stakeholders equivalent participatory rights – has not in fact occurred. As the ACHP pointed out in its letter to FERC dated November 6, 2017, interested stakeholders who were denied consulting party status have not been given an opportunity to comment on the draft Programmatic Agreement. *See* Exhibit C, Attached. These stakeholders, including BREDL, therefore have been deprived of all opportunity to comment on "alternatives or modifications to the undertaking

that could avoid, minimize or mitigate adverse effects on historic properties consulting." *Id.* § 800.6(a).

This practice is also unlawful with respect to persons and organizations who chose to protect their demonstrated interests in the undertaking by becoming consulting parties to the Section 106 process, even though it meant refraining from intervening in the FERC proceeding. Intervention as a party is necessary in order to seek rehearing, and ultimately, judicial review of FERC's compliance with the NHPA. *See* 15 U.S.C. § 717r. FERC's policy has forced these parties to forgo their rights to seek judicial review under the NHPA, which some courts have found grants a private right of action to enforce its provisions. *See* 54 U.S.C. § 307105. *See, e.g.*, *Boarhead Corp. v. Erickson*, 923 F.2d 1011, 1017 (3d Cir. 1991).

Regardless of whether the NHPA creates a separate private right of action, the Courts have uniformly ruled that aggrieved parties have the right to enforce the provisions of Section 106 under the applicable statutory provision governing judicial review of agency action. *Karst Environmental Educ. and Protection, Inc. v. E.P.A.*, 475 F.3d 1291(D.C. Cir. 2007). FERC's refusal to allow affected stakeholders to become intervenors if they are consulting parties has deprived them of their statutory rights to judicial review in violation of the Due Process Clause of the 14th Amendment to the U.S. Constitution. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

**B. Petitioner Will Suffer Irreparable Harm in the Absence of a Stay.**

As noted above, MVP has requested an early right of entry to begin pre-construction activities, including the cutting of trees and the construction of access roads, none of which are barred by Environmental Condition No. 15 in the FERC certificate. These activities could commence as early as February 1, 2018. *See* Motion to Stay filed by Appalachian Mountain Voices, *et al.*, Ex. B (Document #1712005, page 155 of 582) (Cooper Declaration).

As discussed in the attached Declaration of BREDL member and Section 106 coordinator Ann Rogers, these imminent pre-construction activities will result in irreparable injury to the nature and landscape features, including trees and the network of historic roads, that contribute importantly to several rural historic districts that will be traversed by the MVP, including most notably the recently-identified Bent Mountain Orchard Rural Historic District. *See* Declaration of Ann Rogers, Exhibit 1 (attached hereto as Exhibit A).

MVP's pre-construction activities will result in irreparable harm to historic properties prior to the completion of the required Section 106 consultations. As VDHR has explained, at least five National Register historic districts, including the

Bent Mountain Orchard Rural Historic District and the North Fork Valley Rural Historic District ("NFVRHD") in Montgomery County,

> will be adversely affected by the MVP [Project]bisecting them and leaving a permanent fifty-foot wide imprint on their landscapes. This condition is incompatible with the existing rural character of the districts, which derive much of their historic significance and NRHP-eligible status from that very agrarian setting and feeling the undertaking will diminish.

*Id.* Attachment 4, at p. 3 (emphasis in original). VDHR further states with respect specifically to NFVRHD that "We believe that the indirect visual effects of the project will significantly diminish and adversely affect the feeling and setting of the North Fork Valley Rural Historic District." Other identified or as-yet unidentified historic resources may be harmed from construction activities, and from pre-construction activities such as tree-clearing, before the effects on them have even been assessed under the Section 106.).

As the attached Declaration of Ann Rogers demonstrates, MVP intends to undertake clear-cutting activities within the Bent Mountain Orchard Rural Historic District and other rural historic districts. Undoubtedly, the felling of trees within the rural historic districts will result in irreparable harm to these districts. *See Wyoming Outdoor Coordinating Council v. Butz*, 484 F.2d 1244 (10th Cir. 1973) (noting that district court temporarily restrained timber cutting). Moreover, MVP also intends to construct access roads within these historic districts, and in many cases, making alterations to the network of historic roads that are important

contributing features to the historic significance of these rural historic districts, causing irreparable damages to these historic features. *See* Declaration of Ann Rogers, ¶¶ 20-23 (Exhibit A, attached).

These adverse effects cannot be cured by legal remedies. *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). The Supreme Court has recognized that environmental harm, "by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable." *Amoco v. Village of Gambell*, 480 U.S. 531, 545 (1987); *see also Nat'l Audubon Soc'y v. Dep't of Navy*, 422 F.3d 174, 201 (4th Cir. 2005); *New Mexico v. Watkins*, 969 F.2d 1122, 1137 (D.C. Cir. 1992).

Clearing mature trees, altering historic roadways, and spoiling the viewshed of these rural historic districts and areas will cause irreparable harm to the ability of BREDL's members to use, enjoy, and appreciate these aesthetic, recreational, and historic properties that cannot be reversed in a human lifetime. All of these consequences are fundamentally at odds with the requirements of Section 106, in which the timing of compliance "*prior to* the issuance of any license" is crucial to its effectiveness. 54 U.S.C. § 306108 (emphasis added). There is, therefore, no legal remedy for those harms.

### C. A Stay Will Not Cause FERC or MVP Substantial Injury.

A stay pending this Court's resolution of BREDL's petition for review will not result in any irreparable or even substantial injury to MVP and certainly not to FERC. Rather, a short stay will prevent certain and great irreparable injury, while potentially inflicting only undetermined economic harm on MVP. Any such financial that MVP might experience as a result of an injunction "may be self-inflicted" as this harm is directly attributable to FERC's rush to approve and construct the project without completing the environmental and historic reviews required by NEPA and Section 106. *See Davis v. Mineta*, 302 F.3d 1104, 1116 (10th Cir. 2002).

### D. A Stay Pending Review is in the Public Interest.

In cases involving preservation of the environment, the balance of harms generally favors the grant of injunctive relief. *Amoco*, 480 U.S. at 545. There "is no question that the public has an interest in having Congress' mandates in NEPA carried out accurately and completely." *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 26 (D.D.C. 2009). These public interests extend with equal force to the resources protected by the NHPA. Here, the clearing of mature trees and irreparable destruction of contributing features to numerous rural historic districts harms the public interest in protecting these features pursuant to environmental and historic preservation laws. *See Davis v. Mineta,* 302 F.3d at

1116 ("We conclude that the public interest associated with completion of the Project must yield to the obligation to construct the Project in compliance with the relevant environmental laws.")

## CONCLUSION

For the foregoing reasons, BREDL respectfully requests that the Court stay FERC's Certificate.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of FRAP 32(a) and the word limit of FRAP 27(d) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 4333 words.

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this document has been prepared with a proportionally spaced typeface using Microsoft Word 2017 in 14-point font size and Times New Roman type style.

Dated: January 11, 2018

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## Certificate of Parties

In accordance with D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), Petitioner certify that the following persons are parties, movant-intervenors, or *amici curiae* in this Court:

1. **Parties**

   Petitioner Blue Ridge Environmental Defense League

   Petitioners Appalachian Mountain Voices, Chesapeake Climate Action Network, Sierra Club, West Virginia Rivers Coalition, Wild Virginia

   Respondent, Federal Energy Regulatory Commission

2. **Movant-Intervenors**

   At present, no parties have moved to intervene in this action.

3. ***Amici Curiae***

   At present, no parties have moved for leave to participate as *amici curiae*.

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**Corporate Disclosure Statement**

In accordance, with FRAP 26.1 and D.C. Circuit Rule 26.1, Petitioner certifies that it has no parent company, and there are no parent companies that have a ten percent or greater ownership interest in them. Blue Ridge Environmental Defense League, a corporation organized and existing under the laws of the State of North Carolina, is a regional, community-based, non-profit environmental organization founded to serve the principles of earth stewardship, environmental democracy, social justice, and community empowerment.

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2018, I caused to be served the foregoing Motion for Stay upon all ECF-registered counsel via the Court's CM/ECF system.

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