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January 27, 2020

Via ECF

Mark J. Langer
Clerk of the Court
United States Court of Appeals for the District
of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Atlantic Coast Pipeline, LLC et al. v. FERC*, Nos. 18-1224 et al.
Rule 28(j) Supplemental Authority

Dear Mr. Langer:

Conservation Petitioners submit for the Court's review *Friends of Buckingham et al. v. State Air Pollution Control Board et al.*, 2020 WL 63295 (4th Cir. Jan. 7, 2020).

In *Friends of Buckingham*, the Fourth Circuit, applying arbitrary-and-capricious review, vacated and remanded the Virginia Air Pollution Control Board's ("Board's") permit for construction of an Atlantic Coast Pipeline compressor station in the historic African-American community of Union Hill in Buckingham County, Virginia. Because the Federal Energy Regulatory Commission's ("FERC's") environmental justice analysis for the Atlantic Coast Pipeline suffered from three flaws highlighted by the Fourth Circuit, *Friends of Buckingham* supports vacatur and remand of FERC's certificate.

First, FERC arbitrarily relied on census-tract data in lieu of local demographic data to conclude that the African-American population around the proposed compressor station did not exceed the threshold for environmental justice populations. *See* Conservation Br. 32-33. In *Friends of Buckingham*, the Fourth Circuit observed that FERC's census-based analysis conflicted with a local demographic study (which the Board's counsel conceded "contained accurate results") indicating that minorities represented over 80% of residents around the compressor station—and that the Board never resolved the discrepancy. 2020 WL 63295, at *15-16.

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Second, the Fourth Circuit found arbitrary the Board’s “fail[ure] to make any findings about the demographics of Union Hill that would have allowed for a meaningful assessment of the likelihood of disproportionate harm.” *Id.* at *15. FERC, too, failed to consider Union Hill’s demographics, *see* Conservation Reply Br. 15-17—a critical omission, because African-American populations have a higher prevalence of health issues exacerbated by compressor station pollution. 2020 WL 63295, at *15.

Third, the Fourth Circuit held that “blindly relying on ambient air standards” that were “not tailored to this specific [environmental justice] community” to reject the likelihood that those living closest to the compressor station would suffer from disproportionate health impacts, as the Board did, “is not a sufficiently searching analysis.” *Id.* at *17, *19. Like the Board, FERC erroneously concluded that the compressor station’s mere compliance with ambient air standards guaranteed that environmental justice populations would not face disproportionate harm. *See* Conservation Br. 35.

Respectfully submitted,

/s/ Mark Sabath

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Mark J. Langer, Clerk of Court

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Piedmont Environmental Council, Shenandoah Valley Battlefields Association, Shenandoah Valley Network, Virginia Wilderness Committee, Sound Rivers, Inc., and Winyah Rivers Foundation

/s/ Benjamin A. Lockett

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CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Federal Rule of Appellate Procedure 28(j) because the body of the letter contains 348 words.

/s/ Mark Sabath

Mark Sabath

SOUTHERN ENVIRONMENTAL LAW CENTER

Dated: January 27, 2020

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2020, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit through this Court's CM/ECF system, which will serve a copy on all registered users.

I served the following counsel via U.S. Mail:

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/s/ Mark Sabath

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