

Pursuant to the Court's Order dated October 4, 2019 (Dkt. 1809511), Conservation Petitioners¹ and Landowner Petitioners² jointly submit this motion to govern future proceedings in these consolidated petitions for review of the Federal Energy Regulatory Commission's ("FERC's") issuance of a certificate of public convenience and necessity ("Certificate Order") for the Atlantic Coast Pipeline ("Project").

On October 4, 2019, in response to the Supreme Court's granting of petitions for writ of certiorari in *U.S. Forest Service v. Cowpasture River Preservation Ass'n*, the Court ordered that these consolidated cases be removed from the October 16, 2019 oral argument calendar and held in abeyance. Dkt.

¹ Conservation Petitioners (Petitioners in Nos. 18-1308 and 18-1312, collectively) are Alliance for the Shenandoah Valley, Appalachian Voices, Chesapeake Bay Foundation, Inc., Chesapeake Climate Action Network, Cowpasture River Preservation Association, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Piedmont Environmental Council, Shenandoah Valley Battlefields Foundation, Sierra Club, Sound Rivers, Inc., Virginia Wilderness Committee, Wild Virginia, Inc., and Winyah Rivers Foundation.

² Landowner Petitioners (Petitioners in No. 18-1313) are Bold Alliance, Bold Educational Fund, Nancy Kassam-Adams, Shahir Kassam-Adams, Peter A. Agelasto III (individually and as chairman of Rockfish Valley Foundation), Judith Allen, Eleanor M. Amidon, Jill Averitt, Richard Averitt, Richard G. Averitt III, Dr. Sandra Smith Averitt, James R. Bolton, Constance Brennan, Joyce D. Burton, Carolyn L. Fischer, Bridget K. Hamre, Charles R. Hickox, Demian K. Jackson, Janice Jackson, Lisa Y. Lefferts, William Limpert, David Drake Makel, Carolyn Jane Maki, Nelson County Creekside, LLC, Rockfish Valley Foundation, Rockfish Valley Investments, Victoria C. Sabin, Alice Rowe Scruby, Timothy Mark Scruby, Marilyn M. Shifflett, Sharon Summers, Chapin Wilson, Jr., Wintergreen Country Store Land Trust, and Kenneth M. Wyner.

1809511 at 1. The Supreme Court has now issued its decision in *Cowpasture*, 2020 WL 3146692 (U.S. June 15, 2020). Conservation and Landowner Petitioners accordingly request that the Court remove these cases from abeyance, promptly calendar the cases for oral argument, and adopt the format for oral argument set forth in the Joint Proposal of Petitioners, Petitioner-Intervenors, and Respondent-Intervenors to Establish Format for Oral Argument filed September 6, 2019 (Dkt. 1805402) (“Joint Proposal”).

In its June 15, 2020 *Cowpasture* decision, the Supreme Court reversed the judgment of the Fourth Circuit, holding that the U.S. Forest Service has authority under the Mineral Leasing Act to grant a right-of-way and special use permit for the Project through lands within national forests traversed by the Appalachian Trail, and remanded to the Fourth Circuit for further proceedings consistent with its opinion. 2020 WL 3146692.³ To the extent the grant of certiorari in *Cowpasture* raised questions about these cases’ fitness for review, the Supreme Court’s decision resolves them.

³ The *Cowpasture* petitioners did not seek Supreme Court review of the Fourth Circuit’s decision so far as it vacated the Forest Service’s issuance of the right-of-way and special use permit on three other, independent grounds. See *Cowpasture River Pres. Ass’n v. Forest Serv.*, 811 F.3d 150, 161–67, 169–73, 174 (4th Cir. 2018), *rev’d on other grounds*, 2020 WL 3146692. Remand proceedings for those three issues are under way; the Forest Service has announced that it plans to issue a draft Supplemental Environmental Impact Statement for the Project in July 2020. 85 Fed. Reg. 35,634 (June 11, 2020).

All parties previously argued that these cases were ripe for review notwithstanding the filing of petitions for certiorari in *Cowpasture*.⁴ The petitions by Conservation and Landowner Petitioners assert purely legal challenges to final agency action: FERC's issuance of the Certificate Order. *See Devia v. Nuclear Regulatory Comm'n*, 492 F.3d 421, 424 (D.C. Cir. 2007); Suppl. Br. at 4. Further, Conservation and Landowner Petitioners have suffered, and will continue to suffer, significant and immediate hardship from the deferral of review. *See Devia*, 492 F.3d at 427; Suppl. Br. at 5–8. Although construction currently remains halted due to the Fourth Circuit's stay, and subsequent vacatur, of a Biological Opinion issued by the U.S. Fish and Wildlife Service,⁵ the Project's joint partners have announced that they expect a new Biological Opinion to be issued in short order.⁶ And the developers continue to pursue condemnation proceedings against landowners in the

⁴ *See* Suppl. Br. of Pet'r N.C. Utils. Comm'n (Dkt. 1807329); Suppl. Br. of Intervenors Lora Baum et al. (Dkt. 1807330); Joint Suppl. Br. on Ripeness Wintergreen Prop. Owners Ass'n et al. (Dkt. 1807404); Suppl. Br. on Ripeness for Atl. Coast Pipeline, LLC et al. (Dkt. 1807432); Suppl. Br. for Resp't FERC (Dkt. 1807437); Suppl. Br. of Conservation Pet'rs & Landowner Pet'rs (Dkt. 1807448) ("Suppl. Br.") (all filed Sept. 20, 2019).

⁵ *See* Letter from Matthew R. Bley, Dominion Energy Transmission, Inc. to Kimberly D. Bose, FERC, *Atl. Coast Pipeline, LLC*, Dkt. Nos. CP15-554 et al. (Dec. 7, 2018) (FERC eLibrary No. 20181207-5147) (announcing suspension of construction due to stay of Biological Opinion); *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339 (4th Cir. 2019) (vacating Biological Opinion).

⁶ Dominion Energy, Q1 2020 Earnings Call (May 5, 2020), <https://bit.ly/2ArFu7f> (listing Biological Opinion's "Expected resolution" as "1H 2020"); Duke Energy, Earnings Review & Business Update 18 (May 12, 2020), <https://bit.ly/2BiyNoo> (predicting Biological Opinion's "reissuance mid-2020").

Project's path. *See, e.g., Atl. Coast Pipeline, LLC v. 4.93 Acres*, No. 3:18-cv-79 (W.D. Va.); *Atl. Coast Pipeline, LLC v. 4.19 Acres*, No. 3:18-cv-98 (W.D. Va.). Accordingly, the petitions are ripe for review.⁷

Because the reason for holding this case in abeyance has been resolved, Conservation and Landowner Petitioners respectfully request that the Court (1) remove these consolidated cases from abeyance; (2) promptly calendar the cases for oral argument; and (3) adopt the format for oral argument set forth in the Joint Proposal.

Respectfully submitted,

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⁷ On May 30, 2020, Conservation Petitioners filed a motion in FERC's administrative docket seeking the supplementation of FERC's Environmental Impact Statement for the Project based on significant new information bearing on the Project's environmental impacts. *Mot. to Suppl. Emtl. Impact Statement by Alliance for the Shenandoah Valley et al., Atl. Coast Pipeline, LLC*, Dkt. Nos. CP15-554 et al. (May 30, 2020) (FERC eLibrary No. 20200601-5038). Although the motion seeks supplementation of the same Environmental Impact Statement that Conservation Petitioners argue in these cases is itself deficient under the National Environmental Policy Act, *see Conservation Br. at 20–41* (Dkt. 1798686), FERC's obligation to supplement that statement in light of new information is not at issue here.

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Dated: June 18, 2020

CERTIFICATE OF COMPLIANCE

1. This document complies with Fed. R. App. P. 27(d)(2) because it contains 1,049 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

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Dated: June 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 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 email:

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