

October 19, 2016

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

**Re: Draft Environmental Impact Statement for the Mountain Valley Pipeline (Docket No. CP16-10-000) and Equitrans Expansion Project (Docket No. CP16-13-000)**

Dear Secretary Bose:

On behalf of Allegheny Defense Project, Appalachian Mountain Advocates, Appalachian Voices, Chesapeake Climate Action Network, Friends of Nelson, Friends of the Lower Greenbrier River, Greenbrier River Watershed Association, Heartwood, Indian Creek Watershed Association, Mountain Lakes Preservation Alliance, Natural Resources Defense Council, Ohio Valley Environmental Coalition, Preserve Giles County, Preserve Greenbrier County, Preserve Monroe, Preserve Montgomery County Virginia, Preserve Newport Historic Properties, Protect Our Water, Heritage, Rights (POWHR), Save Monroe, Sierra Club, Summers County Residents Against the Pipeline, The Border Conservancy, Virginia Chapter of the Sierra Club, West Virginia Chapter of the Sierra Club, West Virginia Highlands Conservancy, West Virginia Rivers Coalition, and Wild Virginia, we submit the following comments regarding the need for a Revised or Supplemental Draft Environmental Impact Statement (“DEIS”) for the proposed Mountain Valley Pipeline and Equitrans Expansion Projects (collectively, “MVP Project” or “Project”) in the above-referenced dockets. In the comments below, we outline many of the substantial deficiencies in the DEIS that must be corrected through the issuance of a Revised or Supplemental DEIS, including the failure to fully evaluate the need for the MVP Project and the failure to fully evaluate the impacts to water resources, wetlands, cultural resources, threatened and endangered species, and climate change implications. Correcting these deficiencies will require significant new analysis and the incorporation of high quality and accurate information regarding the MVP Project’s impacts. Public scrutiny of environmental decisionmaking, informed by high quality and accurate information, is essential to compliance with the National Environmental Policy Act (“NEPA”). 40 CFR § 1500.1(b). In light of these circumstances, we urge FERC to issue a Revised or Supplemental DEIS for the MVP Project, and provide sufficient opportunity for public comment. FERC must supply information and analysis regarding the MVP Project in a manner that facilitates meaningful analysis and public participation. The Commission should use this as an opportunity to correct the substantial deficiencies in the DEIS, thereby furthering the purposes of NEPA.

**I. Legal Requirements for a Revised or Supplemental Environmental Impact Statement**

NEPA’s EIS requirement “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). Information must be provided in a timely manner to ensure that the public can

meaningfully participate in the decisionmaking process. *League of Wilderness Defenders/Blue Mountain Biodiversity Project v. Connaughton*, 752 F.3d 755, 761 (9th Cir. 2014) (“Informed public participation in reviewing environmental impacts is essential to the proper functioning of NEPA.”). An agency must “not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989).

When an agency publishes a draft EIS, it “must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act.” 40 C.F.R. § 1502.9(a). “If a draft statement is so inadequate as to preclude meaningful analysis, the agency *shall* prepare and circulate a revised draft of the appropriate portion.” *Id.* (emphasis added). “The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.” *Id.* An EIS that fails to provide the public a meaningful opportunity to review and understand the agency’s proposal, methodology, and analysis of potential environmental impacts violates NEPA. *See e.g., California ex rel. Lockyer v. U.S. Forest Service*, 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); *see also Idaho ex rel. Kempthorne v. U.S. Forest Service*, 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) (“NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight.”).

Furthermore, NEPA requires a supplement to an EIS when significant new information or changes in a project implicate significant changes in the environmental analysis. The NEPA regulations require that:

- (1) [Agencies] . . . [s]hall prepare supplements to either draft or final environmental impact statements if: (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (2) [Agencies] may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

40 C.F.R. § 1502.9(c). The use of the word “shall” is mandatory and creates a duty on the part of the agency to prepare a supplemental EIS if substantial changes are made or if there is significant new information relevant to environmental concerns. *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989) (recognizing the duty where there are significant new circumstances or information); *see also Dubois v. U.S. Dep’t. of Agric.*, 102 F.3d 1273, 1292 (1st Cir. 1996).

When determining if new circumstances or new information require an agency to issue a supplemental EIS, the following factors should be considered: (a) the environmental significance of the new information; (b) its probable accuracy; (c) the degree to which the agency considered the new information and considered its impact; and (d) the degree to which the agency supported its decision not to supplement its impact statement with explanation or additional data. *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1025 (9th Cir. 1980); *Commonwealth of Massachusetts v. Watt*, 716 F.2d 946 (1st Cir. 1983).

## **II. FERC must prepare a Revised or Supplemental DEIS for the MVP Project.**

### **A. FERC must prepare a Revised DEIS due to the substantial lack of information in the DEIS regarding the need for the MVP Project and its environmental impacts.**

#### **1. FERC must analyze and discuss the purported need for the MVP Project in the DEIS.**

NEPA regulations require FERC to “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.” 40 C.F.R. § 1502.13. FERC must “exercise a degree of skepticism in dealing with self-serving statements from a prime beneficiary of the project.” *Simmons v. U.S. Army Corps of Eng’s*, 120 F.3d 664, 669 (7th Cir. 1997) (quoting *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 209 (D.C. Cir. 1991) (Buckley, J., dissenting)). FERC “cannot restrict its analysis to those ‘alternative means by which a particular applicant can reach his goals.’” *Id.* (quoting *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986)); see also *Nat’l Parks & Cons. Ass’n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2009) (finding a purpose and need statement that included the agency’s goal to address long-term landfill demand and the applicant’s three private goals was too narrowly drawn and constrained the possible range of alternatives in violation of NEPA).

Despite the clear requirement to discuss the need for the MVP Project in the DEIS, FERC says that it will not address project need until *after* the environmental analysis is over:

[T]his EIS is not a decision document, and it does not address in detail the need or public benefits of either the MVP or the [Equitrans Expansion Project]. The Commission will more fully explain its opinion on project benefits and need *in its Orders* for the MVP and the EEP.

DEIS at 1-9 (emphasis added). FERC has made similar statements in other recent DEIS documents for major greenfield pipelines. See, e.g., Atlantic Sunrise DEIS at 1-2 (“While this EIS briefly describes Transco’s stated purpose, it will not determine whether the need for the Project exists, because this will later be determined by the Commission.”) (Docket No. CP15-138-000). The EPA expressed concern that “project need will not be vetted in the [Atlantic Sunrise] EIS, but outside of the NEPA process by FERC.” EPA, *Comments on the Atlantic Sunrise DEIS – Cover Letter*, at 2 (June 27, 2016) (“EPA Atlantic Sunrise Comments”) (Ex. 1). Without assessing the need for the project in the DEIS, FERC undermines the development of alternatives to the proposed project, which is a “critical component of the NEPA process.” *Id.* EPA has stated that without this information in the DEIS, FERC failed to “provide transparency in the decision-making process,” thereby frustrating the public’s “opportunity to provide comment” on the DEIS. *Id.*

The MVP DEIS suffers from the same deficiencies. Without assessing the need for the MVP Project in the DEIS, FERC undermines the development of reasonable alternatives to the proposed project. The alternatives analysis is the “heart of the [EIS].” 40 C.F.R. § 1508.14.

Without disclosing and discussing the need for the MVP Project, FERC fails to provide transparency in the decisionmaking process and thereby frustrates the public's opportunity to provide meaningful comments on the DEIS. The public's right to weigh in on the assessment of need is particularly critical for a project such as MVP, which would impact both state and federal public lands and require the use of eminent domain over the objections of numerous landowners along the proposed route. In such instances, there must be even greater scrutiny of project need in the DEIS. The procedures of the Natural Gas Act cannot replace the full and fair public participation in the decisionmaking process that NEPA mandates. Therefore, the DEIS is "so inadequate as to preclude meaningful analysis" and FERC "shall prepare and circulate a revised draft[.]" 40 C.F.R. § 1502.9(a).

## **2. Lack of Relevant Environmental Information**

In addition to failing to properly disclose and consider the need for the MVP Project, the DEIS lacks sufficient information about the MVP Project and its potential environmental impacts on a wide variety of resources, including water resources, wetlands, cultural resources, threatened and endangered species, and climate change implications. The DEIS recommends that some of this missing information be supplied by the applicants either by the end of the DEIS comment period or before construction begins. *See* DEIS at 5-20 – 5-24. That means the public will not have an opportunity to meaningfully review and comment on this information before the final EIS is issued. Therefore, this information should have been included in the DEIS.

Only the issuance of a revised or supplemental DEIS that thoroughly analyzes this missing information will satisfy NEPA's public comment procedures, which "[encourage] public participation in the development of information during the decision making process." *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). Simply adding this missing information to the final EIS is insufficient, as it does not allow the same degree of meaningful public participation. *Id.* (citing *California v. Block*, 690 F.2d 753, 770-71 (9th Cir. 1982)) ("It is only at the stage when the draft EIS is circulated that the public and outside agencies have the opportunity to evaluate and comment on the proposal...No such right exists upon issuance of a final EIS."); 40 C.F.R. § 1500.1(b).

FERC's failure to include significant amounts of critical environmental information in the DEIS seems to be part of a recent trend in draft EISs prepared by FERC for major greenfield pipelines. For example, in comments on the DEIS for the Constitution Pipeline, EPA stated that a substantial amount of information was omitted from the DEIS, including information regarding impacts to geology and soils, waterbodies, wetlands, wildlife and vegetation, air emissions, and cumulative impacts. EPA, *Comments on the Constitution Pipeline DEIS* at 3-9 (Apr. 9, 2014) (Ex. 2). EPA repeatedly explained that the lack of information prevented other agencies and the public from meaningfully participating in the NEPA process. *See, e.g., id.* at 3 (The lack of information "negates the ability of agency specialists and the public to review the analysis and comment on it.").

In comments on the Atlantic Sunrise Pipeline DEIS, EPA stated it was "concerned about the amount of detailed information that has yet to be filed and is not evaluated in the DEIS." EPA Atlantic Sunrise Comments at 2. This missing information includes:

surveys for land, rare, species, historic resources, water supplies, air modeling, mitigation measures to manage and dispose of contaminated groundwater, proposed mitigation measures for source water protection areas, geotechnical feasibility studies for HDD crossing locations and mitigation measures to minimize drilling risks, and a detailed aquatic resource compensatory mitigation plan.

*Id.* EPA explained that this information is both “relevant and critical to evaluation of potential impacts” and that “a fully informed decision may not be made without this information.” *Id.* EPA also stressed that this missing information needs to be “disseminated and appropriately evaluated with the resource agencies and public stakeholder participation prior to the issuance of any certificates by FERC.” *Id.* EPA specifically recommends that FERC do this “through the use of a revised DEIS.” *Id.*

In comments on the DEIS for the Sabal Pipeline, EPA said that it had “very significant concerns over the FERC’s process and full and objective compliance with the NEPA regulations at 40 CFR Part 1500.” EPA, *Comments on the Southeast Market Pipeline Project DEIS* at 1 (Oct. 26, 2015) (Ex. 3). EPA even suggested that FERC “appear[ed] to be justifying decisions made prior to implementing the NEPA process.” *Id.* at 9.

In comments on the DEIS for the PennEast Pipeline, EPA said it had “significant concerns regarding the alternatives analysis, a number of important topics for which *information is incomplete*, and the direct, indirect and cumulative impacts of the proposed action on the environment and public health, including impacts to terrestrial resources, including interior forests, aquatic resources, and rare, threatened and endangered species.” EPA, *Comments on the PennEast Pipeline DEIS*, at 1 (Sept. 16, 2016) (Ex. 4) (emphasis added). EPA emphasized that “[a] significant amount of information is omitted from the DEIS and is proposed to be filed by the project proponent at a future date.” *Id.* at 3. EPA stressed that “[f]ailing to consider this information in the DEIS leads to gaps in the data and lack of potentially important information for the decision maker.” *Id.* As it did in comments on the Atlantic Sunrise DEIS, EPA specifically requested that FERC prepare a “revised DEIS” for the PennEast Pipeline to account for these significant deficiencies.

Recent EPA comments indicate that FERC is not remediating these deficiencies before publication of a Final EIS (“FEIS”). For example, in comments on the DEIS for the Leach Xpress Pipeline, EPA said that FERC:

... did not include estimates of the GHG emissions associated with the production, leakage, and combustion of the natural gas transported by this proposal. Because of the causal relationship between this project and the emissions, it is appropriate and consistent with NEPA and CEQ regulations to consider and disclose the emissions levels in NEPA analyses.

EPA, *Comments on the Leach Xpress Pipeline DEIS*, at 20 (June 6, 2016) (Ex. 5). EPA recommended that “the FEIS include estimates of emissions from production, leakage, and

combustion of the natural gas transported by the proposal.” *Id.* EPA also faulted FERC for comparing project-level GHG emissions to State-wide emissions. *Id.*

In comments on the Leach Xpress Pipeline FEIS, EPA said that FERC “perpetuates the significant omission documented through our comments on the DEIS with respect to a proper climate change analysis to inform the decision making process.” EPA, *Comments on the Leach Xpress FEIS*, at 2 (Oct. 11, 2016) (“EPA Leach Xpress FEIS Comments”) (Ex. 6). In particular, EPA said that:

The FEIS did not include estimates of the indirect GHG emissions that would be caused by the proposal and its alternatives, including effects of production, and combustion of the natural gas transported by this proposal. FERC’s response to EPA’s comments on its Draft EIS indicated non-concurrence with the recommendation to calculate the indirect emissions associated with end use product combustion. Combustion of the product is a reasonably foreseeable effect of this project, and falls squarely within the obligation to consider indirect impacts under NEPA. The CEQ GHG Guidance makes this same point, and uses the end use product combustion of fossil fuel as a specific example of the kind of indirect effect that should be considered under NEPA.

*Id.* at 6-7. EPA was also critical of FERC continuing to compare project-level GHG emissions to State-wide emissions when “that concept is not included in the final [CEQ GHG Guidance].” *Id.* at 7. Consequently, EPA says:

We view FERC’s response to our comments as very concerning in light of CEQ’s GHG Guidance and request a headquarters level meeting with us to seek a definitive resolution to this matter before you publish a Record of Decision (ROD) and so that you do not continue to take this approach in additional NEPA documents.

*Id.* EPA’s comments reveal a pattern of FERC publishing significantly deficient draft statements for major greenfield pipelines before it obtains critically important information from the applicant – information that is needed in order to fully understand the project and its environmental consequences. EPA’s comments on the Leach Xpress Pipeline FEIS reveal that those deficiencies are not addressed or remedied in the FEIS.

Here, FERC has published a DEIS for another major greenfield pipeline project, the MVP Project. Once again, there is a substantial amount of critical information and analysis that is omitted from the DEIS. Notably, the MVP DEIS suffers from the same deficiencies regarding GHG emissions that EPA criticized in the Leach Xpress DEIS and FEIS.

For example, FERC estimates total annual emissions of the MVP Project at 40 million tons per year. *See* DEIS at 4-516. FERC claims that gas transported by the MVP Project could “result in the displacement of some coal use, thereby potentially offsetting some regional GHG emissions.” *Id.* At no point, however, does FERC analyze whether the MVP Project emissions are “instead of” or “in addition to” existing emissions. This is an important factor since the total

annual emissions for the MVP Project is larger than emissions from the top three coal-fired power plants (Amos, Harrison, and Mount Storm) in West Virginia. *See* EPA, Air Markets Program Data, available at <https://ampd.epa.gov/ampd/> (Ex. 7).

In addition, FERC does not analyze the significance of the total annual MVP Project GHG emissions in any meaningful way. Instead, FERC compares the total annual GHG emissions of the MVP Project to “the global GHG emission inventory.” DEIS at 4-516. This comparison serves only to minimize the MVP Project’s GHG emissions and does not provide any meaningful information. *See id.* (noting that GHG emissions from MVP Project would be “negligible” compared to the global GHG inventory). EPA recently criticized FERC for comparing the estimated emissions of the Leach Xpress Project “to state GHG emission levels.” EPA Leach Xpress FEIS Comments at 7. EPA explained that “[c]omparing one project’s direct and indirect emissions to aggregated totals is not an appropriate way to consider the impact of emissions” and is inconsistent with the CEQ GHG Guidance. *Id.*

In addition to the significant flaws regarding GHG emissions, there is a significant amount of information regarding other environmental impacts that is missing from the DEIS and will not be provided by the applicants in a manner that facilitates meaningful public disclosure and participation. This includes the following:

- **Information that MVP does not have to provide until the end of the DEIS comment period:**
  - Documentation of continued coordination with the Forest Service and other Appalachian Trail stakeholders regarding the newly adopted pipeline crossing, including visual simulations modeling both “leaf-on” and “leaf-off” scenarios at the crossing.
  - Results of on-site surveys for the Mount Tabor Route Alternative to assess constructability and identify karst features that shall be adopted if the alternative is adopted into the proposed pipeline route.
  - Additional information on the tracts identified in table 3.5.3-1 of the DEIS.
  - A complete list of any locations not already found acceptable by FERC staff where the pipeline route or access road parallels a waterbody within 15 feet or travels linearly within the waterbody channel.
  - Plans and maps that illustrate how permanent impacts on wetlands would be avoided at the WB Interconnect. If such impacts cannot be avoided, MVP shall propose a new upland location for the facility and include new site plans and maps.
  - Site-specific justifications for each of the wetlands for which MVP requests a right-of-way greater than 75 feet.
  - A plan that describes how long-term and permanent impacts on migratory bird habitat would be minimized, with an emphasis on high quality and/or larger intact core interior forest areas.
  
- **Information that Equitrans does not have to provide until the end of the DEIS comment period:**

- The current status of easement negotiations for the Redhook Compressor Station and alternative sites and analysis if those negotiations have been unsuccessful.
- Information regarding the potential construction feasibility of the Cline Route Alternative, including more detailed analysis of potential issues associated with either an open-cut or road crossing at Raccoon Creek and Raccoon Run Road.
- **Information that MVP does not have to provide until after the certificate is issued:**
  - A plan for the avoidance of active mines, or copies of agreements with coal companies regarding compensation for loss of coal resources.
  - A revised Landslide Mitigation Plan that includes:
    - An analysis of the potential landslide hazards at the GCSZ, Peters Mountain, Sinking Creek Mountain, and Brush Mountain based on the results of investigations conducted by Schultz and Southworth (1989), and further identified and discussed in USGS Bulletin 1839-E;
    - An identification of landslide hazards where the pipeline routes through areas comprised of both steep slopes and red shale bedrock of the Conemaugh, Monongahela, Dunkard, and Mauch Chunk Groups;
    - An analysis of a potential debris flow zone within the Jefferson National Forest from MP 195.5 along the Kimballton Branch to the junction of Stoney Creek; and
    - Minor route adjustments as a method to avoid areas of potential slides and debris flows.
  - Results of MVP's fracture trace/lineament analysis.
  - Site-specific plans, including details regarding materials to be used and installation methods, for the use of permanent culverts and permanent fill in waterbodies and wetlands for access roads. MVP shall include a detailed analysis of all reasonable alternatives to the use of culverts and permanent fill.
  - Results of quantitative modeling for turbidity and sedimentation associated with wet open-cut crossings of the Elk River, Gauley River, and Greenbrier River. The analysis shall address the duration, extent, and magnitude of turbidity levels and assess the potential impacts on resident biota. The analysis should also include a discussion on the physical and chemical characteristics of the sediments, the estimated area affected by the transport and redistribution of the sediments, and the effect of the suspension and resettlement on water quality as well as an assessment of the effectiveness of the proposed turbidity curtains.
  - HDD feasibility and geotechnical studies for the alternative alignments identified for the Pigg River crossing at MP 286.8 and the Blackwater River crossing at MP 262.8.
  - Contingency plans outlining measures that would be taken to minimize and mitigate potential impacts on public surface water supplies with intakes within 3 miles downstream of the crossing of the MVP pipeline, and ZCC within 0.25-mile of the pipeline.
  - Results of all remaining environmental surveys (water resources, wetlands, cultural resources, and threatened and endangered species) for all cathodic protection groundbeds.



- Evidence of landowner concurrence with the site-specific residential construction plans for all locations where construction work areas would be within 10 feet of a residence, as indicated in bold in table 4.8.2-1.
  - Documentation that the Weston and Gauley Bridge Turnpike Crossing Plan was reviewed by the COE.
  - Documentation that the Blue Ridge Parkway Crossing Plan was reviewed by the National Park Service.
  - Documentation that the U.S. Highway 50 and North Bend Rail Trail Crossing Plan was reviewed by the WVDOT and WVDNR.
  - Documentation of further coordination with TNC and VDCR of regarding the Mill Creek Springs Natural Area Preserve and include any impact avoidance, minimization, or mitigation measures developed.
  - Documentation that MVP's VOF parcels crossing plans were reviewed by the VOF.
  - Documentation that the TNC Property Crossing Plan was reviewed by TNC.
- **Information that Equitrans does not have to provide until after the certificate is issued:**
    - HDD noise mitigation plan to reduce the projected noise level increase attributable to the proposed drilling operations at the NSAs.
- **Information that neither MVP nor Equitrans has to provide until after the certificate is issued:**
    - The location of all water wells, springs, swallets, and other drinking water sources within 150 feet (500 feet in karst terrain) of the pipeline and aboveground facilities.
- **Information that MVP does not have to provide until after the certificate is issued:**
    - All outstanding biological surveys for federally listed species (*i.e.*, Ellett Valley millipede, bog turtle, and running buffalo clover).
    - Remaining cultural resources survey reports, site evaluation reports, avoidance plans, or treatment plans.

DEIS at 5-20 – 5-24. This list makes clear that FERC has not “ma[d]e every effort to disclose and discuss at appropriate points *in the draft statement* all major points of view on the environmental impacts of the alternatives including the proposed action.” 40 C.F.R. § 1502.9(a) (emphasis added).

The information described above should have been included in the DEIS; without this information, FERC cannot perform a fully informed evaluation of potential impacts and pipeline routing decisions. By publishing the DEIS without the foregoing information, FERC failed to “guarantee[ ] that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The missing information will almost certainly not be disclosed in time for affected landowners and the broader public to adequately review and comment during the DEIS comment period. Thus, the

DEIS is “so inadequate” that it “preclude[s] meaningful analysis” and FERC “shall prepare and circulate a revised draft[.]” 40 C.F.R. § 1502.9(a).

**B. Alternatively, FERC must prepare a Supplemental DEIS after the applicants submit all of the currently missing environmental information.**

As explained above, the DEIS is inadequate due to the substantial amount of incomplete information and analysis, which precludes meaningful review. 40 C.F.R. § 1502.9(a). Thus, FERC must prepare a revised DEIS. Alternatively, due to the sheer volume of information that FERC is not requiring the applicants to provide until either the end of the DEIS comment period or before construction, this information (once submitted) will constitute significant new information for which a Supplemental DEIS “shall” be prepared. 40 C.F.R. § 1502.9(c)(1)(ii). This information is also likely to result in substantial changes to the proposed action for which a Supplemental DEIS “shall” be prepared. *Id.* § 1502.9(c)(1)(i). Moreover, preparing a Supplemental DEIS that considers this new information will further the purposes of NEPA. *Id.* § 1502.9(c)(2).

**C. The issuance of a Final EIS with a comment period is inconsistent with the requirements and purpose of NEPA**

Issuance of a Final EIS with a comment period, in lieu of a Revised or Supplemental DEIS, would not satisfy the requirements and purpose of NEPA. NEPA was enacted to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” 40 CFR § 1500.1(b). It is essential that that environmental information is high quality and based upon “accurate scientific analysis, expert agency comments and public scrutiny.” *Id.* Furthermore, part of the NEPA process includes the public’s opportunity to understand the agency’s response to these comments. Even with a comment period, a Final EIS will not allow informed public scrutiny of and input into the decision making process before a “decision is made and before actions are taken.” *Id.* See also *Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 508 (9th Cir. 1988). For the reasons outlined in this letter, FERC must prepare a Revised or Supplemental DEIS that corrects the significant deficiencies in the DEIS that have been identified above.

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