No. 23A35

In the Supreme Court of the United States

MOUNTAIN VALLEY PIPELINE, LLC
Applicant,

v.

THE WILDERNESS SOCIETY, ET AL.,
Respondents.

MOUNTAIN VALLEY PIPELINE, LLC
Applicant,

v.

APPALACHIAN VOICES, ET AL.,
Respondents.

On Emergency Application to Vacate the Stays of the U.S. Court of Appeals for the Fourth Circuit (Nos. 23-1592, 23-1594, & 23-1384)

BRIEF OF AMERICAN GAS ASSOCIATION, AMERICAN PETROLEUM INSTITUTE, AMERICAN PUBLIC GAS ASSOCIATION, CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA, AND NATURAL GAS SUPPLY ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF EMERGENCY APPLICATION TO VACATE THE STAYS OF AGENCY AUTHORIZATIONS PENDING ADJUDICATION OF THE PETITIONS FOR REVIEW

Andrew B. Davis
William T. Thompson
LEHOTSKY KELLER COHN LLP
919 Congress Avenue
Suite 1100
Austin, TX 78701

Steven P. Lehotsky
Counsel of Record
Michael Schon
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com

Counsel for Amici Curiae
Additional counsel listed below

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INTEREST OF *AMICI CURIAE*

Amici curiae American Gas Association, American Petroleum Institute, American Public Gas Association, Chamber of Commerce of the United States of America, Interstate Natural Gas Association of America, and Natural Gas Supply Association[1] represent hundreds of companies that together transport and distribute the vast majority of the Nation's residential and commercial natural gas supply—and thousands of companies that rely on that supply. *Amici* and their members have a substantial interest in the continued development and operation of interstate natural gas pipelines. Homes, businesses, and manufacturers and other customers depend on the predictable and reliable service of natural gas to heat their homes, run their businesses, and provide a source of energy. *Amici* urge this Court to vacate the Fourth Circuit's stays in light of the impact of potential disruption to the natural gas transmission and distribution system.

The American Gas Association ("AGA") represents critical domestic infrastructure—namely, local natural gas distribution companies that deliver natural gas to homes and businesses. AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 77 million residential, commercial, and industrial natural gas customers in the U.S., of which 96 percent—more than 74 million customers—receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their

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[1] In accordance with Rule 37.6, no counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies, and industry associates. Today, natural gas meets nearly one-third of the United States' energy needs.

The American Petroleum Institute ("API") is a national trade association that represents nearly 600 members involved in the oil and natural gas industry. API's members include corporations that produce, process, store, transport, and market oil and natural gas products, as well as companies that support the oil and natural gas sector. With over 30 active chapters in 12 states, API harnesses its members' expertise to research and advocate for economically efficient and environmentally-sound approaches to the production and supply of energy resources.

The American Public Gas Association ("APGA") is the trade association for more than 730 communities across the U.S. that own and operate their retail natural gas distribution entities. They include not-for-profit gas distribution systems owned by municipalities and other local government entities, all locally accountable to the citizens they serve. Public gas systems focus on providing safe, reliable, and affordable energy to their customers and support their communities by delivering fuel to be used for cooking, clothes drying, and space and water heating, as well as for various commercial and industrial applications, including electricity generation.

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Interstate Natural Gas Association of America ("INGAA") is a trade organization that advocates for regulatory and legislative positions of importance to the natural gas pipeline industry in North America. INGAA's 26 members represent the vast majority of the interstate natural gas transmission pipeline companies in the United States. These companies operate 200,000 miles of pipelines and serve as an indispensable link between natural gas producers and consumers.

Founded in 1965, the Natural Gas Supply Association ("NGSA") represents integrated and independent energy companies that produce and market domestic natural gas and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA encourages the use of natural gas within a balanced national energy policy and has a long-established commitment to promoting a public policy environment that fosters a growing, competitive market for natural gas. NGSA's members trade, transact, and invest in the U.S. natural gas market, as well as supply, and ship billions of cubic feet of natural gas per day on interstate pipelines.

Introduction and Summary of the Argument

Interstate natural gas pipelines are "[t]he arteries of the Nation's energy infrastructure." U.S. Pipeline and Hazardous Materials Safety Admin., *General Pipeline FAQs*, https://bit.ly/3Q05z1W (last updated Nov. 6, 2018). People and businesses depend upon pipelines to reliably deliver the energy that powers their lives and livelihoods. Pipelines move natural gas that heats millions of American homes and businesses, fuels the burners in family kitchens and restaurants, and generates approximately 40 percent of the Nation's electricity. Demand for natural gas continues to increase because it is an affordable and reliable energy source. Indeed, the availability of natural gas often serves as a prerequisite to attracting commercial investments that fuel job growth and tax revenues. But meeting this increasing demand requires the construction, completion, and maintenance of additional pipeline infrastructure across the country, including the Mountain Valley Pipeline.

Congress recognizes this. In the Fiscal Responsibility Act of 2023, Congress expressly declared that "the timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest," because that pipeline will "serve demonstrated natural gas demand in the Northeast, Mid-Atlantic, and Southeast regions," "will increase the reliability of natural gas supplies and the availability of natural gas at reasonable prices," and "will allow natural gas producers to access additional markets for their product." Pub. L. No. 118-5, § 324, 137 Stat. 10, 47.

This Court should recognize it as well. When determining whether to grant an emergency application to vacate a stay, this Court considers "where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 426 (2009) (citation omitted). In this case it unquestionably lies in favor of emergency relief. Absent relief from this Court, the Mountain Valley Pipeline is unlikely to complete construction and deliver natural gas until Spring 2024 at the earliest. This delay will impact millions of individual consumers and businesses in need of a reliable natural gas supply over the upcoming winter—a supply that Congress approved specifically because it will help ensure the reliability and affordability of this critical fuel. Equally concerning is the signal that denying emergency relief would send to the lower courts. The Fourth Circuit's orders disregarded the effect of delaying the pipeline on consumers of natural gas and on the public interest more broadly. And it did so without a single word of explanation, despite an express congressional finding in favor of the pipeline. Vacating the stays would vindicate Congress's determination that the timely completion of the pipeline is in the national interest.

ARGUMENT

The court below delayed completion of the Mountain Valley Pipeline, a critical piece of America's natural gas pipeline infrastructure. Under this Court's precedent, such an order could not issue without a finding that delay of the pipeline is in the public interest. But Congress has already declared that "the timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest." Fiscal Responsibility Act § 324. The public interest therefore favors vacatur of the Fourth Circuit's stays.

Congress is right about the importance of the Mountain Valley Pipeline, but the problem reaches beyond the single pipeline at issue in this case. *Amici* submit this brief to emphasize the important role interstate natural gas pipelines more generally play in supplying America's homes and businesses with natural gas. Americans depend on natural gas to heat their homes, cook their food, and generate their electricity. Without adequate pipelines, Americans would be left cold, hungry, and in the dark. They cannot afford that result. This Court should grant emergency relief here to prevent unreasonable delay of the pipeline that Congress already approved.

A. Millions of Americans Depend on the Predictable and Affordable Supply of Natural Gas from Interstate Pipelines.

Natural gas is delivered to end-use customers through a 2.6-million-mile pipeline network. *See* Am. Gas Ass'n, *2023 AGA Playbook* 19, https://bit.ly/3K3nyB3 [hereinafter, "Am. Gas Ass'n, *2023 AGA Playbook*"]. This includes "approximately 2.3 million miles of local utility distribution pipelines and 300,000 miles of transmission pipelines." *Id.; see also* Melissa N. Diaz, CONG. RESEARCH SER., R46723, *U.S. Energy in the 21st Century: A Primer* 13 (2021), https://bit.ly/44vh1ai. Together, these pipelines form a system that safely and efficiently links natural gas production sources to nearly 187 million individuals—nearly half of all Americans—and 5.8 million businesses. *See* Am. Gas Ass'n, *2023 AGA Playbook* at 2. The large, typically interstate, pipelines in this system, like the Mountain Valley Pipeline, transport natural gas from the companies that produce it to local distribution companies, including not-for-profit community-owned natural gas distribution entities that deliver the gas to end-users (families and industrial and commercial users), as well as manufacturers and industrial and gas-fired electric generators (who use natural gas to produce electricity).

These local distribution companies—and their supply from interstate pipelines—are critical to the communities they serve. This is because consumers typically have access to natural gas only through a single local distribution company that serves a specific area. And local distribution companies, in turn, receive the vast majority, if not all, of their natural gas supply from interstate pipelines. Indeed, for most local distribution networks, there is no viable alternative to interstate pipelines for procuring the natural gas that their customers demand and rely upon. As a result, end-users are beholden to the functionality and availability of the interstate pipeline system. When events deprive end-users of adequate access to natural gas, such as anticipated capacity failing to come on-line, end-users feel the impact with full force.

Because natural gas service is so important to individual Americans and to the businesses that employ them, the highest priority for local distribution companies is delivering natural gas to their customers safely, reliably, responsibly, and at just and reasonable rates. *See* FERC, *Energy Primer: A Handbook for Energy Market Basics* 127 (Apr. 2020), https://bit.ly/44Lk1iH ("A[] [local distribution company] . . . is concerned with obtaining sufficient volumes of natural gas to serve variable customer demand at the lowest possible price.").

Equally important, providing reliable natural gas service to consumers is a legal obligation. Local distribution companies are obligated under state law and regulatory requirements to distribute natural gas transported by interstate pipelines to retail, residential, commercial, governmental, and industrial customers. Most laws or regulations that govern utility services include the concept of the "obligation to serve." *See, e.g.*, 66 PA. STAT. AND CONS. STAT. ANN. § 2207 (West 1999) (stating that "the natural gas distribution company shall serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers and any other customer classes determined by the commission"); NEV. ADMIN. CODE § 704.499 (1982) (stating that each utility shall "[e]xercise reasonable diligence and care" to provide customers with natural gas and "[t]o the extent possible," should "avoid any shortage or interruption"); *Re Equitable Gas Co.*, 12 P.U.R.4th 184, 188 (W. Va. P.S.C. 1975) (enforcing a natural gas company's "obligation to serve" despite an alleged "supply deficiency"). And this duty to serve stems from the reality that there is a public interest, an essential life interest, in helping to ensure reliable service in every service territory established by a state or regulatory entity.

Meeting this statutory obligation to serve requires that local distribution companies develop detailed supply and transportation plans to help ensure that they can reliably meet the physical demand for service on peak days both now and in the future. They work with interstate transporters (and with suppliers) to help ensure reliable delivery of adequate volumes of natural gas. And if the interstate pipeline does not have enough capacity to meet the local distribution company's requirements, the pipeline will work with the customer to expand its system to accommodate the increased load. A local distribution company's supply must always be sufficient to meet demand, not only on ordinary days but also on "peak-days," when demand for natural gas is at the maximum. Meeting peak and ordinary demand requires long-term coordination and planning. It takes several years, from planning through construction, to build or expand an interstate gas pipeline, particularly with the number of local, state, and federal permits required. Accordingly, local distribution companies must predict (often through sophisticated models) how much gas their customers will need and when. This culminates in long-term supply plans between the distributors and the transporters, including contracts of up to 20-years in length. But all are aimed at helping to ensure cost-effective, reliable service to end-use customers who depend on it as an essential life service.

Through these agreements, when a new or expanded pipeline is needed to meet the customer's transportation requirements, local distribution companies can commit to using a pipeline to transport natural gas before a pipeline is built and thus serve as "anchor shippers" for interstate pipelines. This arrangement benefits both local distribution companies and interstate pipelines by providing a measure of confidence regarding future supply and demand. But that public confidence is undermined by unexplained court orders delaying pipeline completion, in direct conflict with Congressional directives.

B. Emergency Relief is Required to Help Ensure an Affordable and Reliable Supply of Natural Gas to Millions of Americans.

The Fourth Circuit's stay orders jeopardize the affordable and reliable supply of natural gas to millions of Americans by pulling the rug out from underneath the local distribution companies who serve them. Congress recognized this danger explicitly. In findings signed into law, Congress stated that the "timely completion" of the pipeline is necessary to "serve demonstrated natural gas demand" and "increase the reliability of natural gas supplies and the availability of natural gas at reasonable prices." Fiscal Responsibility Act of 2023 § 324.

These findings are well supported. As explained above, local distribution companies satisfy their legal obligation to serve end-use customers by contracting with natural gas suppliers in advance for natural gas delivery through interstate pipelines to meet anticipated demand at reasonable prices. That is why, as Applicant rightly notes, project capacity for the Pipeline has been fully subscribed since 2014. Emergency Application at 26 (citing App'x 60). The local distribution companies that have planned their operations with the expectation that they would be able to use Mountain Valley Pipeline transportation capacity will thus face significant challenges providing reliable and affordable natural gas to their customers or expanding service to new customers if the stays are not lifted and construction completed.

Take, for example, Roanoke Gas Company, a local distribution company serving residential, commercial, and industrial customers in the greater Roanoke Valley area of Virginia. Roanoke Gas is an anchor shipper on the Mountain Valley Pipeline Project because the project is necessary for it to meet customer demand for natural gas reliably and affordably. Roanoke Gas Company, Comment Letter in Support of Mountain Valley Pipeline, FERC (July 8, 2022), https://bit.ly/43piei8. Similarly, Virginia Natural Gas, Inc. has explained previously that the Mountain Valley Pipeline project will benefit customers located in its service area and help dampen price increases and volatility in the market. *See* Virginia Natural Gas, Inc., Comment Letter in Support of Extension of Construction Deadline, FERC (July 28, 2022), bit.ly/3XUlyRc.

The lack of anticipated capacity from the pipeline during the peak winter demand months if the stays are not lifted is particularly concerning. A secure, continuous supply of natural gas is vitally important in the winter for people to heat their homes and businesses. The interconnected nature of the gas pipeline network means that the entire network's resiliency and reliability is destabilized when capacity is limited. Peak demand season only exacerbates the destabilization. And other pipelines in the region lack the capacity to replace the additional deliveries of natural gas which will be provided by Mountain Valley Pipeline. By contrast, the addition of a new pipeline alleviates these problems. A new pipeline typically decreases consumer prices by removing supply bottlenecks and opening access to new markets. *See* Fiscal Responsibility Act § 324 ("The Mountain Valley Pipeline . . . will increase the reliability of natural gas supplies and the availability of natural gas at reasonable prices [and] will allow natural gas producers to access additional markets for their product . . . ."). This includes markets outside of the direct area served by the pipeline because pipelines must generally allow other systems, including competitors, to interconnect. *See Panhandle E. Pipe Line Co.*, 91 FERC ¶61,037, 61,140-41 (2000) (FERC encourages interconnections between pipelines to promote competition and lower prices for consumers).

The lack of capacity and access to diverse supplies can result in dire consequences when people rely on natural gas to heat their homes in extreme weather conditions. During Winter Storm Uri in 2021, the supply of natural gas from Texas was severely disrupted, particularly for the generation of electricity, which ultimately resulted in the tragic loss of life. FERC, NERC, and Regional Entity Joint Staff Inquiry, *The February 2021 Cold Weather Outages in Texas and the South Central United States* (November 2021), https://bit.ly/3NVabEa.

Local distribution companies do everything in their power to help ensure the availability of natural gas to all their customers, regardless of constraints. Sufficient transportation capacity, such as the Mountain Valley Pipeline would provide over the winter, is critical to meeting this goal. *See, e.g.*, Applicant's App'x 23 ("Customers will see an immediate benefit from the presence of MVP natural gas . . . this winter as natural gas delivered from MVP will not be subject to the same competitive market forces, including higher prices and constrained availability caused by the diversion of natural gas . . . to other locations during extreme weather events as demonstrated during Winter Storm Elliott.").

C. Emergency Relief Will Ensure Consideration of the Effects on Consumers from Disrupting Natural Gas Transportation.

When considering whether to grant temporary relief, courts must consider "the balance of the equities" and whether "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Fourth Circuit, however, failed to explain its decision to grant stays that would delay the Mountain Valley Pipeline. The Court nowhere addressed how stays could possibly be appropriate when they will harm millions of natural gas and electric customers. And this reflexive decision is far from a unique occurrence. The Fourth Circuit has previously entered relief temporarily halting construction of the Mountain Valley Pipeline while it adjudicates petitions from plaintiffs who see delaying a pipeline project as a stepping-stone to killing it. *See* Order, *Wild Va. v. U.S. Dep't of Interior*, No. 19-1866 (4th Cir. Oct. 11, 2019) (staying Biological Opinion and Incidental Take Statement pending appeal and holding appeal in abeyance).

Particularly where, as here, Congress has decided that completion of the Pipeline is in the Nation's interest, this Court's emergency intervention vacating the stays will ensure consideration of the deleterious consequences this would cause to residential and commercial consumers. Millions of Americans rely on existing pipelines and the construction of new pipelines for their basic energy needs, and their interests must be given substantial weight.

CONCLUSION

This Court should vacate the Fourth Circuit's orders staying agency authorizations pending adjudication of the petitions for review.

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Respectfully submitted,

/S/ Steven P. Lehotsky
Steven P. Lehotsky
Counsel of Record
Michael Schon
LEHOTSKY KELLER COHN LLP
200 Massachusetts Avenue, NW
Washington, DC 20001
(512) 693-8350
steve@lkcfirm.com

Andrew B. Davis
William T. Thompson
LEHOTSKY KELLER COHN LLP
919 Congress Avenue
Suite 1100
Austin, TX 78701

Counsel for Amici Curiae

Michael Murray
Matthew Agen
AMERICAN GAS ASSOCIATION
400 N. Capitol Street, NW
Washington, DC 20001

Counsel for the American Gas Association

Grace D. Soderberg
AMERICAN PETROLEUM INSTITUTE
200 Massachusetts Avenue, NW
Washington, DC 20001

Counsel for the American Petroleum Institute

Tara S. Morrissey
Kevin R. Palmer*
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062

Counsel for the Chamber of Commerce of the United States of America

** Admitted in Massachusetts only. Practicing under the supervision of members of the D.C. Bar.*

Joan Dreskin
Christopher Smith
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA
25 Massachusetts Avenue, NW
Suite 500N
Washington, DC 20001
(202) 216-5900

Counsel for Interstate Natural Gas Association of America

Dena E. Wiggins
NATURAL GAS SUPPLY ASSOCIATION
900 17th Street, NW
Suite 500
Washington DC 20006
Counsel for the Natural Gas Supply Association