

In the Supreme Court of the United States

MOUNTAIN VALLEY PIPELINE, LLC,
APPLICANT,

v.

THE WILDERNESS SOCIETY, ET AL.

*TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT
OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FOURTH CIRCUIT, ON
EMERGENCY APPLICATION TO VACATE THE STAYS OF THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT (NOS. 23-1592, 23-1594, & 23-1384)*

**BRIEF OF *AMICI CURIAE* DUKE ENERGY CAROLINAS, LLC, DUKE
ENERGY PROGRESS, LLC, PUBLIC SERVICE COMPANY OF NORTH
CAROLINA, INC., DOMINION ENERGY SOUTH CAROLINA, INC.,
SOUTHERN COMPANY SERVICES, INC., AND SOUTHERN COMPANY
GAS IN SUPPORT OF APPLICANT**

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are regulated utilities that supply energy throughout the Southeastern United States:

Amici Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke Energy”) provide electric service to 4.53 million customers over a 56,000-square-mile area in North and South Carolina, with more than 30,000 megawatts of electric generating capacity. Duke Energy has experienced significant growth in natural gas demand for power generation and expects that trend to continue as coal generation is retired. To address its existing generation fleet’s need for incremental natural gas supply, Duke Energy has entered into a definitive agreement with a third party that relies on the services to be provided by the Mountain Valley Pipeline Project (“MVP Project”).

Amicus Public Service Company of North Carolina, Inc., doing business as Dominion Energy North Carolina (“PSNC”), is a local distribution company primarily engaged in the purchase, transportation, distribution, and sale of natural gas to more than 600,000 customers in North Carolina. PSNC’s system is directly connected to Transcontinental Gas Pipe Line Company, LLC (“Transco”). PSNC faces projected

¹ Pursuant to Rule 37.6, *Amici* affirms that no counsel for a party authored this brief in whole or in part, and that no party, counsel for a party, or any person other than *Amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this amicus brief.

supply shortfalls and has entered into a precedent agreement to obtain, for a 20-year term, 250,000 MMBtu² per day of firm transportation service on the MVP Project.

Amicus Dominion Energy South Carolina, Inc. (“DESC”), formerly known as South Carolina Electric & Gas Company, is a vertically integrated electric utility company and local gas distribution company that serves more than 770,000 electric customers and more than 425,000 natural gas customers in South Carolina. DESC has contracted to receive 125,000 MMBtu per day of firm transportation service on the MVP Project for a 20-year term. This capacity is necessary for DESC to maintain service to its firm gas distribution customers in coming years, and the capacity will also serve DESC’s gas-fired generation fleet.

Amicus Southern Company Services, Inc., acting as agent for the electric operating companies of The Southern Company, including Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Southern Power Company (collectively, “Southern Company”), is a vertically integrated public utility system, serving the electricity needs of more than 4.4 million retail customers across the Southeastern states of Alabama, Georgia, and Mississippi, as well as wholesale customers throughout the Southeast and elsewhere. Southern Company relies upon a diverse generating portfolio, with gas-fueled resources providing the largest single source of energy production. Because of the locations of its service territories,

² One British thermal unit (“Btu”) is the amount of energy needed to heat one pound of water one degree at sea level. One million Btu is abbreviated as MMBtu and also known as a “dekatherm.”

Southern Company holds substantial capacity on Transco's interstate pipeline system and competes with other customers for capacity and natural gas volumes.

Amicus Southern Company Gas, representing the Atlanta Gas Light Company ("AGLC"), Chattanooga Gas Company, Nicor Gas, and Virginia Natural Gas ("VNG") local distribution companies, serves approximately 4.3 million natural gas utility customers through those regulated distribution companies and more than 600,000 retail customers through its companies that market natural gas. Other of Southern Company Gas's nonutility businesses include investments in interstate pipelines and ownership and operation of natural gas storage facilities. Because of the locations of their service territories, AGLC and VNG hold substantial capacity on Transco's interstate pipeline system and compete with other customers for capacity and natural gas volumes, including in the Transco pipeline segments that serve parts of the Southeast region. The completion of the MVP Project is expected to provide AGLC and VNG with improved access to reliable, resilient, and economically priced natural gas supply for a Southeastern and Mid-Atlantic market that is currently constrained and subject to meaningful price volatility.

Amici share an interest in ensuring that construction of the MVP Project resumes and continues to completion, so that the Project can deliver natural gas to the Southeastern region, including for the upcoming winter season. *Amici* are relying upon the natural gas supply capacity that the MVP Project will provide to help serve their customer bases and have included the MVP Project capacity as part of their

resource planning. If the MVP Project cannot be completed by this winter due to the Fourth Circuit's stay orders, both *Amici* and the customers they serve will be harmed.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The prompt completion of the MVP Project is critical to *Amici's* mission of providing clean, reliable, and affordable energy to their customers in the Southeastern United States. This particular region's current natural gas supply is insufficient, leaving parts of the Southeast with some of the highest and most volatile natural gas prices in the country. Without reliable and adequate gas supply, the Southeast will be less prepared to handle extreme weather events and poorly positioned to reap the benefits associated with a sufficient natural gas supply. Natural gas is the key energy resource capable of providing the flexibility necessary to transition away from coal and expand *Amici's* renewable resource infrastructure. Obtaining timely access to natural gas via the MVP Project is thus vital to resolving the Southeast's natural gas supply issues and ensuring the reliability and flexibility of its energy grid.

Vacatur of the Fourth Circuit's orders halting the MVP Project is necessary to prevent the irreparable harm that *Amici* and their customers will suffer if the Project's natural gas supply is not available this winter. The Southeast experienced the costly, and in some areas harmful, effects of an insufficient fuel supply last winter when its access to natural gas supply was severely challenged by the extreme cold weather conditions of Winter Storm Elliott. Without the gas supply and transportation made available by the MVP Project, *Amici* and the customers that

they serve will continue to be subject to deficient market volumes of gas supply and higher gas prices this winter season. A months-long delay in the MVP Project's completion would also hamper *Amici's* efforts to build new natural gas generation facilities—facilities that are vital to supporting the Southeast's energy grid, transitioning the region away from coal, and onboarding renewable energy resources to the electric grid.

This Court should grant the Emergency Application and vacate the Fourth Circuit's orders staying construction on the MVP Project.

ARGUMENT

I. The MVP Project Will Help *Amici* Provide Clean, Affordable, And Reliable Energy To Customers In The Southeast

The MVP Project is critical infrastructure for the Southeastern region, promising substantial benefits for *Amici* and their customers. Once completed, the MVP Project will expand Equitrans Midstream's transmission system and the availability of gas supply to Transco Zone 5. *See* Letter from Jennifer M. Granholm, Sec'y, Dept. of Energy, to the Federal Energy Regulatory Commission (Apr. 21, 2023).³ Transco Zone 5, which serves North Carolina, South Carolina, and Virginia, currently faces significant capacity constraints, particularly during periods of high demand and need. *See id.* The MVP Project is the only natural gas pipeline project currently positioned to address the supply and capacity shortfalls in Transco Zone 5.

³ Available at https://elibrary.ferc.gov/eLibrary/filelist?accession_num=20230424-4000 (all websites last visited July 19, 2023).

When completed, the MVP Project will offer a much-needed increase in energy supply and reliability throughout the Southeast. With population growth outpacing every other region in the United States over the past two decades, the Southeast will only continue to need additional sources of energy to meet increased load demand while serving vital economic development. See Erika Coombs, *Southeast Power Demand Feels the Effects of LNG Growth*, BTU Analytics (Oct. 18, 2022).⁴ The MVP Project will help fill that demand, giving the region access to the abundant and affordable gas reserves of the Marcellus and Utica shales in West Virginia, Pennsylvania, and Ohio; delivering two million MMBtu of additional quantities of gas into the Southeast; and enhancing access to a critical source of reliable gas supply for *Amici* and others in the region.

By increasing the supply of natural gas to Transco Zone 5, the MVP Project will also help stabilize gas prices in the Southeast and ultimately decrease costs for *Amici* and their customers. In recent years, the daily price for delivered natural gas in Transco Zone 5 has been consistently among the highest and most volatile in the country. Daily prices in Transco Zone 5 are regularly higher—and sometimes significantly higher—than natural gas prices to the south in Transco Zone 4 (Georgia) and to the north in Transco Zone 6 (Maryland). Extreme price swings are common. To take just one example, on January 5, 2018, Transco Zone 5 prices averaged \$127.00 per MMBtu while Appalachia prices averaged \$4.08 per MMBtu. By providing

⁴ Available at <https://btuanalytics.com/natural-gas-pricing/southeast-power-demand-feels-the-effects-of-lng-growth/>.

additional pipeline capacity to a wide swath of the eastern United States, the MVP Project will provide *Amici* access to a new supply source of reliable, affordable natural gas, bringing stability to the Southeastern natural gas market and benefiting *Amici* and their customers.

Access to the MVP Project’s natural gas supply will also reduce the Southeast’s dependence on Transco and provide diversity in the region’s gas supply. Diversification of the Southeast’s energy infrastructure is, in turn, key to protecting the region from energy disruptions and strengthening its energy security, as evidenced by the region’s experience last season with Winter Storm Elliott, described in further detail below. *See infra* pp.9–11.

The MVP Project also stands to enable a more reliable and flexible energy grid by facilitating the implementation of additional renewable energy sources. The intermittency of renewable resources—such as wind or solar—and electric load increases have created a “reliability gap” within the country’s bulk power system. Zack Hale, *Joint Inquiry Finds Same 3 Causes Driving US Generator Outages in Extreme Cold*, S&P Global (June 15, 2023) (quoting Willie Phillips, Acting Chairman, FERC).⁵ Renewables like wind and solar are dependent upon favorable weather conditions, meaning that they are not continuously available and cannot always generate power when called upon—such as when the wind is not blowing, or the sun

⁵ Available at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/joint-inquiry-finds-same-3-causes-driving-us-generator-outages-in-extreme-cold-76195520>.

is not shining. *See Reliability, Resiliency, and Affordability of Electric Service in the United States Amid the Changing Energy Mix and Extreme Weather Events Before the S. Comm. on Energy and Nat. Res.*, 117th Cong. 10 (Mar. 11, 2021) (testimony of James B. Robb, President & Chief Exec. Officer, NERC).⁶ These are also the times when the energy supply can be most taxed because it is, for example, colder outside when the sun is not out. This “mismatch” between variable resource availability and “the electric load peak necessitates a very flexible generation resource to fill the gap.” *Id.* Natural gas “is best positioned to play that role.” *See id.* at 10; NERC, 2023 State of Reliability Technical Assessment 36–37 (June 2023) (observing that the country “has never been more dependent upon the round-the-clock continuity of just in time natural gas delivery”).⁷ By enabling new natural gas electric generation, the MVP Project will support continued investments in renewable resources and provide *Amici* and the region needed grid reliability and flexibility.

II. Prompt Vacatur Of The Fourth Circuit’s Stay Orders Is Necessary To Prevent Harm To *Amici* And Their Customers

Absent prompt relief from this Court, the Fourth Circuit’s orders staying construction of the MVP Project will impose irreparable harm on *Amici* and their customers. If construction on the MVP Project does not resume by around July 26, 2023, *Amici* understand that the MVP Project will very likely be stalled until at least

⁶ Available at <https://www.energy.senate.gov/services/files/EB1D7E02-BC93-4DFF-A6A9-002341DA34CF>.

⁷ Available at https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_SOR_2023_Technical_Assessment.pdf.

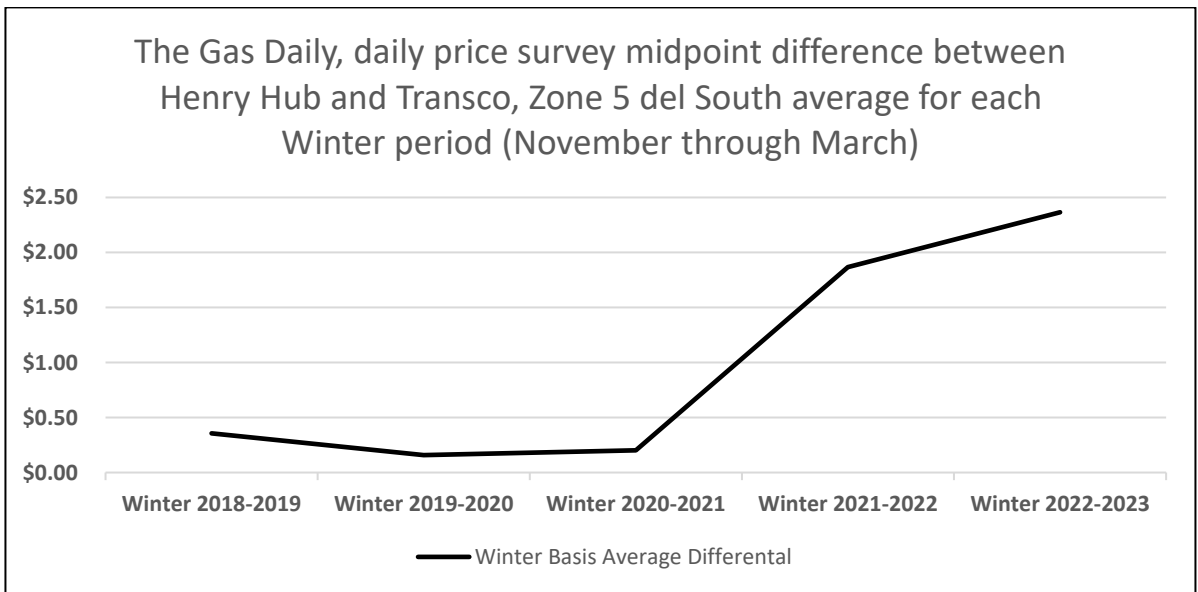
spring 2024. App'x 58. That means the MVP Project's natural gas supply would not be available this winter season, when it is critical that *Amici* and the customers that they serve have access to this important supply of affordable and reliable energy.

The regions that much of *Amici* serve in the Southeast are already experiencing a fuel-security challenge, which will worsen if the MVP Project is not in service by this winter. As noted above, the MVP Project will deliver fuel to address the high demand in Transco Zone 5. Transco Zone 5 is, in turn, a primary fuel source for *Amici* and does not currently supply enough natural gas for the region in times of high need, such as during the colder months of January, February, and March. The MVP Project is the only natural gas pipeline project currently positioned to alleviate the Southeast's fuel-security concerns.

Without access to the MVP Project's natural gas supply, *Amici* and the Southeastern region are more likely to experience gas supply shortages this winter, the brunt of which will be borne by the region's energy consumers. By way of illustration, in late December 2022, Winter Storm Elliott brought high winds and severe cold temperatures to the Southeast. These temperatures were much lower than is typical in the region and dropped at a very fast rate. The sudden and extreme drop in temperature resulted in increased natural gas heating demand. With the increased demand, the natural gas pipeline pressure in Transco Zone 5 dropped to historically low levels and caused reliability issues. Without the MVP Project's additional gas supply, Transco Zone 5 could very well experience similar operational challenges this upcoming winter, as another extended period of extreme cold will

again put significant operational strain on this particular segment of Transco. Notably, if the MVP Project is completed prior to the winter months, *Amicus* DESC will be able to redeliver gas on Transco from the MVP Project on day one, to help meet peak demand during the winter season.

If the MVP Project is not in service this winter, *Amici* and their customers are also likely to suffer increased energy costs and price volatility, as the Southeast’s demand for natural gas continues to outpace supply. Due to the cancellation or delay of new interstate natural gas infrastructure, the price of natural gas in Transco Zone 5 has increased significantly since winter 2020-2021, as compared to the Henry Hub national benchmark:



Indeed, the region’s high gas prices last season demonstrate what the Southeast may face this upcoming winter if the MVP Project’s gas supply is unavailable. On December 22, 2022—during Winter Storm Elliott—the midpoint gas price in Transco Zone 5 was \$62.33 per MMBtu, whereas Appalachia’s average gas price was only

\$6.53 per MMBtu. That same day, prices in Transco Zone 4 were \$8.22 per MMBtu, and prices in Transco Zone 6 were \$32.62 per MMBtu. The extreme temperature drops caused by Winter Storm Elliott combined in large part with the region's insufficient natural gas supply exposed customers relying on Transco Zone 5 delivered gas to the highest cost natural gas reported in the country for the flow date of December 23, 2022, just before Christmas Eve.

There is a correlation between the price of natural gas and the completion of the MVP Project, and every price increase and decrease has tangible and immediate cost implications for *Amici* and their customers. The regional component of winter pricing for January to March 2024 for Transco Zone 5 decreased by approximately one-third between mid-May 2023 and the end of May 2023, when the Senate approved the Fiscal Responsibility Act and its directives relating to the MVP Project. Conversely, January to March 2024 delivered gas prices for Transco Zone 5 increased following the Fourth Circuit's July 10, 2023 stay orders, rising from \$6.52 per MMBtu on June 30, 2023 to \$7.38 per MMBtu by July 14, 2023. This rise in future gas prices translates in additional costs for *Amici's* customers over the first three months of 2024.

In addition to increased gas costs and price volatility, certain *Amici's* immediate resource planning will be hindered if the MVP Project's gas supply is not available this upcoming winter. *Amicus* PSNC, for instance, has experienced shortfalls of assets available to serve forecasted firm peak-day demand each winter season since the winter of 2019-2020, requiring it to acquire short-term peaking

services—that is, contracts for a specified volume of supply for a limited number of days—to remedy these shortfalls. PSNC currently relies upon these services as a stop-gap measure until additional interstate pipeline capacity from the MVP Project becomes available. But as the demand for incremental deliverability resources increases, the availability of these short-term resources grows more and more uncertain. For *Amicus* Duke Energy, its base natural gas supply to meet demand outlined in its resource plans relies upon achieving incremental interstate pipeline capacity to increase natural gas supply into the region. If the MVP Project is stalled and Duke Energy is unable to obtain incremental access to natural gas, it will need to rely upon an alternate fuel supply that is estimated to result in increased costs and price volatility for customers.

Relatedly, the Fourth Circuit’s orders will, absent prompt vacatur, have immediate and lasting negative effects on *Amici*’s ability to support the Southeast’s energy grid and transition away from coal and toward renewables. New natural gas electric generation is required to keep the Southeast on track to achieve carbon neutrality. *See, e.g.*, N.C. Energy Regulatory Process, *Performance Based Regulation: PBR Regulatory Guidance* 5–6 (Dec. 2020) (noting North Carolina’s plan to attain carbon neutrality by 2050).⁸ But uncertainty in the gas supply could hamper approvals for new natural gas generation facilities, which in turn will delay the

⁸ Available at <https://www.deq.nc.gov/environmental-assistance-and-customer-service/climate-change/clean-energy-plan/pbr-study-group-work-products-final/download>.

region's efforts to onboard increased renewable power resources. That uncertainty could also result in *Amici's* coal facilities being retired at a slower pace. Indeed, without a sufficient natural gas supply, coal—which is a significantly less clean-burning fossil fuel than natural gas—will need to be burned at higher levels this winter. By contrast, if construction on the MVP Project is able to resume and is completed prior to the winter months, it will provide a critical bridge to onboarding increased renewable power sources.

CONCLUSION

For the foregoing reasons, this Court should grant the Emergency Application and vacate the Fourth Circuit's orders staying construction on the MVP Project.

Respectfully submitted,

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