

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 FOR *AMICUS CURIAE* ROANOKE GAS COMPANY
IN SUPPORT OF APPLICANT**

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INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae Roanoke Gas Company (Roanoke Gas or the Company) is a local, shareholder-owned natural gas distribution corporation serving approximately 63,500 residential, commercial, and industrial customers in the greater Roanoke Valley of southwest Virginia. Roanoke Gas has provided natural gas service to the region for over 139 years, beginning in 1883. It is an anchor shipper on the Mountain Valley Pipeline project and has subscribed to transportation capacity on the Pipeline. The Company is relying on natural gas that a completed Pipeline will supply to meet growing demand for natural gas in the Roanoke Valley and support needed economic growth in the region.

INTRODUCTION AND SUMMARY OF ARGUMENT

Last month, bipartisan majorities in Congress declared that the expeditious completion of the Mountain Valley Pipeline is “required in the national interest.” Fiscal Responsibility Act, Pub. L. No. 118-5, § 324(a), 137 Stat. 10, 47 (June 3, 2023). Congress recognized the “demonstrated natural gas demand” through the Pipeline’s path and acknowledged the need for increased reliability and availability of natural gas supply at reasonable prices. *Id.*

Nowhere is the required completion of the Pipeline more apparent and pressing than in the greater Roanoke Valley, Virginia—the area that Roanoke Gas proudly serves. In contrast to more urban parts of Virginia, economic growth in the

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* certifies that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae* and its counsel, made any monetary contribution toward the preparation or submission of this brief.

Roanoke Valley has been comparatively slow for decades. But through efforts of local citizens and broader trends away from large urban centers in recent years, that has started to change. A reliable supply of natural gas—and the Mountain Valley Pipeline—is a key component of those efforts.

The stay of construction on the Pipeline is undermining those efforts today and every day that the stay remains in place, and the risk of long-term harm to the region increases. Natural gas provides the commercial and industrial businesses that the region seeks to attract an affordable, efficient, and environmentally friendly fuel source for space heating, industrial processes, water heating and steam creation, equipment operation, and backup power generation. It provides individual households many of the same benefits, as well as a cost-effective way to power an increasingly wide array of appliances. For that reason, the vast majority of businesses considering where to build and invest require a reliable source of natural gas that, without the Mountain Valley Pipeline, Roanoke Gas will not be able to feasibly or economically provide as the region continues to grow.

As long as the stay of construction continues, Roanoke Gas's inability to promise and enjoy increased natural gas supply from the Pipeline hinders the Roanoke Valley's current and future economic health. The risk that Roanoke Gas will be unable to meet natural gas demand dependably and economically during the upcoming winter season threatens the well-being of the region's citizens. Though the Roanoke Valley experienced a relatively mild winter last year, insufficient natural gas supplies can create risk to property, health, and human safety and may even

cause death—a sobering reminder in the aftermath of weather events like Winter Storm Uri. And the Roanoke Valley will continue to endure the scars and costs of unfinished construction. Roanoke Gas respectfully urges this Court to intervene to prevent these unnecessary harms.

ARGUMENT

The Fourth Circuit erred in entering the two extraordinary, unreasoned stay orders that are currently blocking the completion of the Mountain Valley Pipeline project. For the reasons that MVP well explains, those orders cannot be squared with Congress’s ratification of all administrative actions “necessary for the construction and initial operation at full capacity” of the Pipeline and its unambiguous statement that “no court shall have jurisdiction to review” any such action. Pub. L. No. 118-5, § 324(c)(1), (e)(1), 137 Stat. 10, 47-48 (2023). *See* Appl. 12-24. Roanoke Gas writes to underscore the harms that the Fourth Circuit’s orders are causing now and threaten in the future, and to urge this Court to intervene.

A. Roanoke Gas Provides a Vital Service to the Roanoke Valley Region

Roanoke Gas has proudly served the Roanoke Valley region for nearly 140 years. App’x 36. Today, Roanoke Gas serves residential, commercial, and industrial customers throughout the cities of Roanoke and Salem and Roanoke County, as well as parts of Bedford, Botetourt, and Montgomery Counties, Virginia. Meanwhile, Franklin County and the remaining portions of Botetourt County receive no natural gas service at all. *See* SCC, Natural Gas Service Territories (2020), <https://bit.ly/>

SCCgasmap; *see also* SCC, Regulated Companies & Service Map (2020–2023), <https://bit.ly/SCCregandservice>.

In contrast to the northern Virginia and Richmond regions, the Roanoke Valley is largely rural. *See* United States Census Bureau, QuickFacts (2022), <https://bit.ly/censusV2022>. Over the past decades, economic growth has been slow in the Roanoke Valley, compared to the breakneck pace of growth in those other areas of Virginia. *See* Joseph P. Williams, *Virginia: 1 State, 2 Vastly Different Regions*, U.S. NEWS: BEST STATES (May 14, 2019), <https://bit.ly/JWvaregions>; Roanoke Regional Partnership, Demographics: Market Data (2023), <https://roanoke.org/data/demographics/market-data/>. But that trend has begun to change for the better in the Roanoke Valley. Investment is increasing—bringing much needed economic development, increased opportunities, and population growth. *See* Maria Howard, *A Roanoke Reawakening; Regional Revitalization Strategies Gain Traction*, VIRGINIA BUSINESS (Aug. 30, 2021), <https://bit.ly/MHroanoke>.

A dependable source of natural gas for the region is vital if that growth is to continue and spread. Natural gas provides an efficient source of energy, with a reduced environmental impact and lower costs than available alternatives. Commercial businesses use natural gas for heating and water heaters and backup power generation for electrical outages. Individual households use natural gas for heating, cooking, and hot water heaters—and for an increasingly wide array of appliances, like dryers, fireplaces, grills, firepits, pool and spa heaters, and backup power generators. *See* Roanoke Gas, *Why Natural Gas? For Commercial*, <https://>

www.roanokegas.com/why-gas/for-commercial/; Roanoke Gas, Why Natural Gas? For Residential, <https://www.roanokegas.com/why-gas/for-residential/>.

Roanoke Gas's largest customers include each of the Roanoke Valley's top three healthcare providers, the U.S. Department of Veterans Affairs, Carilion Clinic, and LewisGale Medical Center; important educational institutions, like Roanoke College and Hollins University; major manufacturers, like Steel Dynamics and Yokohoma; transportation providers like UPS; and municipal governments including the City of Roanoke, Virginia, and Roanoke County, Virginia. See Roanoke Gas Top Customers, 2023 AGA Financial Forum at 6 (May 2023), https://www.rgcreources.com/wp-content/uploads/2023/07/5.2023_FINAL.pdf.

B. Roanoke Gas and the Roanoke Valley Need the Pipeline To Be Completed

1. Roanoke Gas cannot efficiently support the much-needed growth and economic development in the Roanoke Valley without the Pipeline's completion. The Company is currently served by two interstate natural-gas pipelines—the East Tennessee and the Columbia pipelines—and one liquefied natural gas storage facility. See App'x 36; February 5, 2021 Declaration of Paul W. Nester 4, *Sierra Club, et al. v. FERC*, No. 20-1512 (D.C. Cir. Feb. 8, 2021), Dkt. No. 1884312 (“2021 Declaration”). Although Roanoke Gas has requested additional capacity from both these pipelines, additional firm transportation capacity has not been available from either since 2006—when Roanoke Gas was last able to increase its available firm capacity. 2021 Declaration 3-4. In the meantime, the Roanoke Valley's needs have only continued to grow. Between October 2020 and May 2023, Roanoke Gas added

more than 1,500 new customers—approximately 13% of which are commercial and industrial. App’x 37.

This reality led the Virginia State Corporation Commission to conclude that access to a completed Pipeline is needed “to meet Roanoke’s public service obligations.” Final Order 10, Application of Roanoke Gas Company, SCC Case No. PUR-2018-00013 (Jan. 24, 2020). As the Commission concluded, access to the Pipeline (and the construction of additional infrastructure to facilitate that connection) are required “to procure additional capacity to serve firm” demand, “to support economic development and system growth” in the region, and “to serve significant portions of the Company’s certificated service territory.” *Id.* And the Commission rightly recognized that there are “no reasonably comparable alternatives” to that access for the people of the Roanoke Valley. *Id.*

2. These needs are not hypothetical. Consider, for example, Franklin County, Virginia, a rural community just a few miles south of Roanoke within Roanoke Gas’s service territory. The median household income and per capita income in the county are \$59,667 and \$33,739, respectively—both below the Virginia averages. *See* United States Census Bureau, QuickFacts: Franklin County, Virginia (2023), <https://www.census.gov/quickfacts/franklincountyvirginia>. From 2010 to 2020, the population in Franklin County declined, from 56,159 in 2010 to 54,477 in 2020—a roughly 3% decrease during a timeframe in which Virginia’s population increased by 7.9%. *Id.* According to the latest census data, 11.2% of the inhabitants

of Franklin County live in poverty, a figure above the poverty rate for Virginia as a whole. *Id.*

The people of Franklin County are fighting to improve these economic conditions and reverse these trends. The Summit View Business Park is the County's flagship project. Summit View is being planned as a business-recreational park targeted at high-skill, high-wage employers. Building on broader population trends away from traditional urban labor centers, Franklin County touts its proximity to the Blue Ridge Mountains as an opportunity for employers to "make [their] company even more attractive to high-skilled workers that are in high demand." Franklin Cnty., Summit View Business Park (2023), <https://yesfranklincountyva.org/228/Summit-View-Business-Park>.

The County and Roanoke Gas hope the Summit View Business Park will be a major engine of economic change in the region. But that cannot happen without the supply of natural gas that the Pipeline will provide. As part of the pitch to prospective employers, Franklin County emphasizes that the site has access to all major utilities "includ[ing] electricity, natural gas, water/sewer, fiber/broadband." *Id.* And, yet, Franklin County has always lacked economically viable access to natural gas since the early 1960's when the last interstate pipeline was built in the greater Roanoke Valley, which did not reach Franklin County. Only the projected completion of the Pipeline will grant Franklin County the access to natural gas that projects like the Summit View Business Park require. *See* 2021 Declaration 4-5.

3. In addition to enabling growth, the completion of the Pipeline will avoid substantial uncertainty and volatility in consumer costs. In February 2021, for example, Winter Storm Uri caused extreme price volatility for Roanoke Gas customers. The natural gas currently used in the Roanoke Valley is sourced from Gulf Coast and Midwestern production areas, including a portion at the Chicago pricing hub, at wholesale prices. When Winter Storm Uri ripped through those areas and eventually up the eastern seaboard, wholesale natural gas prices spiked throughout the region. To meet local demand, Roanoke Gas's wholesale natural gas prices surged above \$21 per dekatherm during February 2021 from its average price of less than \$3 per dekatherm in January 2021, creating \$3 million in additional costs that Roanoke Gas's customers had to pay to heat their homes and operate their businesses. App'x 38; see Anna Duquiatan, *February Spot Gas Values in Parts of US Grew by 900% Month over Month*, S&P GLOBAL (Mar. 2, 2021), <http://bit.ly/44OSGMt>. Had the Mountain Valley Pipeline been in-service as originally planned, those significant price increases would have been avoided. And Roanoke Valley was comparatively fortunate. Parts of Texas and Oklahoma experienced prices up to \$600 per dekatherm during the same period. App'x 38.

As a result of the global events of early 2022, price volatility and supply uncertainty surged again, rising to levels unseen since the pre-shale revolution, especially in the areas where Roanoke Gas currently sources its natural gas supply. Roanoke Gas's 2022 summer storage and 2022-2023 winter season natural gas supplies were approximately 120% more expensive than the most recent year. Again,

customers bore the entirety of this increase. By contrast, access to a completed and operational Mountain Valley Pipeline is expected to provide price stability and lower the average Roanoke Gas customer's gas cost by at least 20%. App'x 38.

4. Finally, the Roanoke Valley is also uniquely harmed by the current unfinished state of the Pipeline. As MVP explains, despite years of litigation and numerous court-ordered stays, the Pipeline is on the cusp of completion. *See* Appl. 3-4. More than 95% of the trees have been felled and rights of ways have been cleared and graded. *See* App'x 10. More than 90% of the pipeline has been strung and welded. *See id.* All compressor stations and interconnects with existing pipelines are complete. *See id.* at 9-10. Unfortunately, much of the work that remains to be completed is in the Roanoke Valley. *See id.* at 11.

The Pipeline, in its current uncompleted state, is an unnecessary eyesore for the Roanoke Valley community. Large quantities of above-ground pipe are visible. Rights-of-way throughout the area are in various stages of temporary restoration. Laydown and construction yards remain—and, as a result of the Fourth Circuit's orders, currently lie dormant.



David Harrison, *Court Halts Mountain Valley Pipeline Championed by Sen. Joe*

Manchin, WALL STREET JOURNAL (July 11, 2023), <https://on.wsj.com/46Snq11>; David Harrison, *They Fought a Pipeline on Their Land. Then Congress Got Involved*, WALL STREET JOURNAL (June 25, 2023), <https://on.wsj.com/46XaUNS>; see App'x 36.

These visible scars of extended construction create concern for the Roanoke Valley residents and community leaders. And the obvious lack of forward progress discourages business travelers, tourists, and prospective economic developers. The Roanoke Valley needs to move past this tumultuous period of construction in fits and starts and toward final restoration, where the pipeline is buried, vegetation is high and lush, and the right-of-way blends into the surrounding environment.

C. This Court's Intervention Is Needed to Prevent Substantial Harm to the Roanoke Valley

This Court's intervention is urgently needed to stem the harm that the current stay in construction is imposing and threatens on the Roanoke Valley. Every day the stay continues yields immediate harm to the Roanoke Valley and increases the risks that the promised benefits will not be realized for the upcoming winter heating season or potentially for years to come.

1. Until completion, the lack of additional natural gas supply in the Roanoke Valley will continue to constrain economic growth opportunities in southwest Virginia. The Summit View Business Park in Franklin County cannot attract the business and industry desired. And the entire Roanoke Valley region is disadvantaged in the highly competitive arena of economic development because the Pipeline is not completed.

Many manufacturing or industrial companies will not consider siting their facilities at locations where there is not reliable access to natural gas. In recent years, the vast majority of the companies to have considered the Roanoke Valley as a possible location were manufacturers that required reliable access to natural gas. The ever-present risk that the Pipeline might never reach completion discourages potential investors and developers from choosing the Roanoke Valley for even their long-term plans. 2021 Declaration 5.

As a result, if uncertainty remains, new industries and new employers will continue to bypass these communities due to the inaccessibility of natural gas. And the people of Roanoke Valley will be deprived of the increased economic opportunity that would come with those new investments, industrial and manufacturing expansions, and job creation, as well as a significant source of tax revenue for counties along the route of the pipeline.

2. If the stay of construction continues long enough to prevent the Pipeline's completion before this winter, the Roanoke Valley will face additional harms. Demand for natural gas is highest during the winter heating season, which typically begins in November. *See* 2021 Declaration 7. Roanoke Gas thus plans its natural gas supply to be prepared to serve its customers through those cold winter days—to heat their homes and businesses and provide the backup power they need to survive. Last winter, Roanoke Gas's service was aided by unusually warm temperatures in the Roanoke Valley—by one common industry measure (“heating degree days”), the winter was 20% milder than the 30-year average for the region.

See National Oceanic & Atmospheric Administration, Local Climatological Data (Nov. 2022–Mar. 2023), <https://bit.ly/3K2a9t3> (click “+ Select” on first report and “+ Quick Add”). And the natural-gas demand on the coldest day (3 degrees) fell short of the expected demand on a zero-degree day for which Roanoke Gas plans in conjunction with the Virginia State Corporation Commission. *Id.*

Without the completion of the Pipeline before this coming winter, the Roanoke Valley may not be so fortunate. If the 2023-2024 winter is not as mild, Roanoke Gas faces a substantial risk that it will not be capable of meeting customer demand throughout the coldest days without a supply from the Pipeline. Insufficient natural gas supplies can create risk to property, health, and human safety and may even cause death. *See generally* Patrick Svitek, *Texas Puts Final Estimate of Winter Storm Death Toll* at 246, THE TEXAS TRIBUNE (Jan. 22, 2023), <https://www.texastribune.org/2022/01/02/texas-winter-storm-final-death-toll-246/>. If Roanoke Gas experienced insufficient supply during a period of extreme cold, the Company would be forced to activate its curtailment plan, which involves shutting off gas service to large numbers of customers to prevent the entire system from failing. Thousands of customers would be without natural gas and possibly electricity during a period of single digit temperatures. Service restoration could take days or even weeks depending on the number of customers impacted.

And regardless of the winter temperatures in the region, the risk of significant price spikes and supply uncertainty from a Winter Storm Uri-like event or a global disruption remains present until the Pipeline is completed. App’x 39.

3. Finally, apart from the harms posed by the delay or prevention of natural gas, the pause in construction itself poses real harm. And, again, Roanoke Valley is forced to bear the brunt of that harm. The contractors and employees of Roanoke Valley are left without the work they expected from the final construction of the Pipeline through the Roanoke Valley. Neighbors are forced to watch forward progress halted again with an uncertain future. And community leaders are left attempting to explain to visitors why the worksites lie vacant and the work undone.

* * *

Congress left no doubt in the Fiscal Responsibility Act that, in its view, “the timely completion of construction and operation of the Mountain Valley Pipeline is required in the national interest.” 137 Stat. 10, 47. There is no clearer support for that finding than the promise the Pipeline holds for the people of Roanoke Valley and the detrimental impact this litigation and the current stay has had and threatens on its people. Through bipartisan legislation, Congress has lawfully directed an end to these disputes. Every day that direction remains unheeded, the people of the Roanoke Valley suffer irreparable harms. Roanoke Gas respectfully urges this Court to enforce that direction.

CONCLUSION

For the foregoing reasons, the Court should grant the application.

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