

No. 21-848

In the Supreme Court of the United States

SPIRE MISSOURI INC., ET AL.,
Petitioners,

v.

ENVIRONMENTAL DEFENSE FUND, ET AL.,
Respondents.

*ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT*

**BRIEF OF *AMICI CURIAE*
AMERICAN GAS ASSOCIATION,
INTERSTATE NATURAL GAS ASSOCIATION OF
AMERICA, NATIONAL ASSOCIATION OF
MANUFACTURERS, AND AMERICAN PUBLIC
GAS ASSOCIATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*

Amici Curiae American Gas Association, Interstate Natural Gas Association of America, National Association of Manufacturers, and American Public Gas Association¹ 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. These companies’ customers depend on the predictable and reliable service of natural gas to heat their homes and to run their businesses. *Amici* urge review because the decision below, by all but ignoring potential disruption as a factor weighing against vacatur, reduces reliability in the natural gas transmission and distribution system.

The **American Gas Association** (“AGA”) was founded in 1918 and represents more than 200 local energy companies that deliver clean natural gas throughout the United States. AGA’s members operate critical infrastructure: there are more than 74 million residential, commercial, and industrial natural gas customers in the Nation, of which 95% receive their gas from AGA members. AGA advocates for natural gas utility companies and their customers, and it 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 more than 30% of the

¹ Pursuant to this Court’s Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amici* and their counsel made such a monetary contribution. Counsel of record for all parties received timely notice of *amici*’s intent to file this brief, and all parties have consented to its filing. See this Court’s Rule 37.2(a).

Nation's energy needs. The local distribution companies that AGA represents own and operate natural gas pipeline systems that typically receive natural gas that has been transported on the interstate pipeline system. These companies deliver natural gas to end users, including residential and commercial users as well as industrial customers and electric generators.

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.

The **National Association of Manufacturers** ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 States. Manufacturing employs more than 12 million men and women, contributes \$2.3 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for nearly two-thirds of all private-sector research and development in the Nation. NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States.

The **American Public Gas Association** ("APGA") is the trade association for approximately 1,000 communities across the U.S. that own and operate retail natural gas distribution entities. These include municipal gas distribution systems, public utility districts, county districts, and other public agencies, all locally accountable to the citizens they serve. Public gas systems operate as not-for-profits and

focus on providing safe, reliable, and affordable natural gas to their customers while supporting their communities by delivering gas to be used for cooking food, drying clothes, heating space and water, and transportation. These fuels are also used for various commercial and industrial applications, including electricity generation.

SUMMARY OF 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://www.phmsa.dot.gov/faqs/general-pipeline-faqs> (last updated Nov. 6, 2018). They move gas that heats millions of American homes and that generates approximately 40% of the Nation’s electricity. Demand for natural gas continues to increase because it is an abundant, affordable, and reliable energy source. Investment in and development of this critical infrastructure will be needed for the foreseeable future. Meeting this demand requires the existence of predictable and consistent policies and regulations affecting pipeline operations.

Federal law allows a natural gas pipeline to operate only if the pipeline operator first obtains a Certificate of Public Convenience and Necessity (“Certificate”) from the Federal Energy Regulatory Commission (“FERC”). These Certificates are required before construction can begin on a pipeline. FERC’s decisionmaking regarding such Certificates is subject to judicial review under the Administrative Procedure Act. But a Certificate may go into effect even before judicial review concludes, and may require, as did the Certificate in this case, that the developer complete construction within a fixed period of time. Once a Certificate is effective, pipelines are entitled to rely on it by beginning construction and by using the pipeline to deliver natural gas. Stakeholders across the supply chain make long-term plans in reliance on FERC’s

Certificates, which significantly affect individuals, businesses, and the companies that serve pipelines.

Any uncertainty regarding the effectiveness of a Certificate for a pipeline that is already operational (such as Spire STL) and delivering gas to a local distribution company (such as Spire Missouri) jeopardizes individuals' ability to obtain the gas needed to heat their homes, and it will ultimately increase the price of natural gas to individuals and businesses. The D.C. Circuit's decision brushed aside these potentially devastating effects and reduced to a near nullity the role that potential "disruptive consequences" play in the analysis of whether to vacate an agency action as opposed to remand. *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 151 (D.C. Cir. 1993). FERC's subsequent intervention, granting a temporary Certificate, has prevented these calamitous effects from occurring. Pet. Supp. 3-4. But that does not excuse the D.C. Circuit's failure to consider them in the first place.

Vacatur of operational authority threatens residential and commercial consumers with drastic and unpredictable disruptions in service. When a pipeline shuts down, alternative sources of natural gas supply can take months to secure. In the end, however, a viable alternative source of energy may not even be available for the pipeline's customers. Even if consumers are able to secure an alternate supply of energy, the process of doing so can take substantial time, and the consumers typically must pay a substantial premium to do so. In the interim, homes go without heat (creating especially dangerous conditions in the winter months) and businesses shut down (often sending workers home without a paycheck).

No court should take such an extreme step—vacating of a Certificate for an already operational pipeline—without fully considering the potential ramifications of its action. The decision below did not weigh, however, and in

fact hardly even acknowledged, the deleterious consequences of vacatur. If disruption of such magnitude does not require serious consideration before vacatur of a Certificate providing operating authority, then the disruption factor itself is meaningless.

Equally concerning, as Petitioners emphasize, there is no uniform standard by which courts can evaluate the disruptive effects of their orders. Pet. 13-14. That citizens in one area of the country may lose access to natural gas under the same set of facts that would leave citizens in another area undisturbed is a powerful factor favoring review by this Court.

ARGUMENT

Amici submit this brief to underscore how dangerous it is to the operation of critical infrastructure that supplies natural gas to America's homes and businesses for courts to do what the D.C. Circuit did below: treat disruptive consequences as an afterthought in analyzing whether to shut down a pipeline while FERC considers challenges to the pipeline's legal authority to operate on remand.

Although the decision below directly affects a single pipeline that supplies natural gas to only one (important) market in the country, the principle at stake is of immense importance. If courts are free to brush aside the disruptive consequences that vacatur of an agency action may have on an operating business, then interstate pipelines and local distribution companies inevitably will have greater difficulty providing a steady and cost-effective supply of natural gas to American homes and businesses. The millions of customers that *Amici*'s members serve cannot afford that result, and this Court should intervene to prevent it.

I. MILLIONS OF AMERICANS DEPEND ON THE PREDICTABLE, DISRUPTION-FREE SUPPLY OF NATURAL GAS FROM INTERSTATE PIPELINES.

The Nation's "natural gas transmission network

consists of around 300,000 miles of pipeline.” Melissa N. Diaz, Cong. Research Ser., R46723, *U.S. Energy in the 21st Century: A Primer* at 13 (2021), <https://crsreports.congress.gov/product/pdf/R/R46723>. “These natural gas lines feed around 2.3 million miles of regional pipelines in some 1,500 local distribution networks which serve nearly 70 million customers.” *Id.* Together, these pipelines form a system that safely and efficiently links natural gas production sources to millions of residential, commercial, and industrial consumers. See *id.* As part of that system, large, typically interstate, pipelines transport natural gas from the companies that produce natural gas to local distribution companies and to community owned natural gas distribution entities who deliver the gas to end users.

A. Local distribution companies are the bridge between pipelines and end users.

The disruptive effects to companies, consumers, and the economy of shutting down an operating pipeline because of an agency’s error are perhaps most apparent at the end of the natural gas supply chain. Local distribution companies are *local*—they operate in specific geographies, within which they are the last link in the natural gas supply system. They bring the gas from interstate pipelines to the local consumers (families, and industrial and commercial users), generally through smaller, local pipelines. Retail customers usually have access to natural gas only through a single local distribution company that serves a specific area. Not only are interstate pipelines the primary source of supply for many local distribution companies, but for many such companies, there is not even a viable alternative. End-users thus feel the impact of any failures in the upstream transportation system on which local distribution companies depend.

Because natural gas service is so important to individual Americans and to the businesses that employ them,

local distribution companies are highly regulated at both the state and local levels. State law generally charges those companies with an obligation to serve. See, *e.g.*, Mo. Rev. Stat. § 393.130.1; 66 Pa. Cons. Stat. § 2207. “The primary duty of a public utility is to serve on reasonable terms all those who desire the service it renders.” *United Fuel Gas Co. v. R.R. Comm’n of Kentucky*, 278 U.S. 300, 309 (1929). This obligation means that the highest priority for a local distribution company is the delivery of natural gas to its customers safely, reliably, responsibly, and at just and reasonable rates. See Federal Energy Regulatory Commission, *Energy Primer: A Handbook for Energy Market Basics* at 127 (Apr. 2020) (hereinafter “*FERC Energy Primer*”), https://www.ferc.gov/sites/default/files/2020-06/energy-primer-2020_Final.pdf (“A[] [local distribution company] * * * is concerned with obtaining sufficient volumes of natural gas to serve variable customer demand at the lowest possible price.”).

Local distribution companies cannot satisfy their obligation to serve—they cannot provide cost effective and reliable service—unless they can depend on safe and reliable transportation of natural gas over interstate pipelines. They thus work with interstate transporters (and with suppliers) to ensure reliable delivery of adequate volumes of natural gas. 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. Natural gas cannot be easily “shifted” across long distances when demand in one part of the country spikes. 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 aimed at, once again,

cost effective and reliable service.

Through these agreements, 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 creates mutual benefit because it brings both local distribution companies and interstate pipelines a measure of confidence regarding future supply and demand.

B. Spire STL transports the gas that Spire Missouri currently provides to end users.

This case is an illustrative example. Spire Missouri, the local distribution company for the St. Louis area, entered into a long-term, 20-year agreement for natural gas from Spire STL’s pipeline. That pipeline, in turn, received a Certificate from FERC, which authorized the pipeline’s construction and operation under Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c). In reliance on the long-term contract (and the Certificate, which required the pipeline to be built in two years), Spire Missouri allowed some of its transportation contracts with other pipelines to expire, and one of the previous physical delivery points that was used under those contracts is no longer operational.

The Spire STL pipeline is a necessary component in the system that enables Spire Missouri to satisfy the obligation to serve that it owes to its customers. For example, Spire Missouri estimates that “without [the] STL Pipeline, up to 133,000 homes and business[es] would have been without gas service as a result of Winter Storm Uri” in February 2021. Pet. App. 392a. Even if alternative supply had been available during the storm, it would have come with a “\$300 million” price tag. *Id.* These avoided disruptions and costs are “concrete historical evidence of the supply security and cost benefits that STL Pipeline provides” now that it is in operation. Pet. App. 394a.

Spire STL’s arrangement with Spire Missouri is not

unique, but rather one example of the countless arrangements between interstate natural gas pipelines and local distribution companies across the country. If other courts follow the precedent established below and vacate Certificates for operational pipelines without due regard for the disruptive consequences thereof, then millions of Americans will face the same damaging service losses and cost increases that are now threatening Spire Missouri and its customers.

II. THE D.C. CIRCUIT’S APPROACH ALL BUT ELIMINATES DISRUPTION AS A FACTOR WEIGHING AGAINST VACATUR.

The D.C. Circuit should have considered, but did not, the gravity of the disruptions that vacatur could cause to Spire Missouri and to its customers. Similar disruptions are threatened anytime a court vacates a Certificate of Public Convenience and Necessity for an operational pipeline, because the Certificate is required for both construction and operation. 15 U.S.C. § 717f(c)(1)(A). Each local distribution company’s mission to provide cost effective and reliable service to consumers usually requires long-term contracts with pipelines that rely on such Certificates.

A. Residential consumers face drastic disruptions when a local distribution company’s supply of natural gas is interrupted.

Disruptions to natural gas supply result in significant consequences for the individuals and families that depend on local distribution companies for residential service. Approximately “half of the homes in the United States use natural gas for space heating.” U.S. Energy Information Administration, *Natural Gas Explained*, <https://www.eia.gov/energyexplained/natural-gas/use-of-natural-gas.php> (last updated Dec. 7, 2021). Families and individuals also use natural gas “to heat their homes and

prepare warm meals for their families.” Letter from Adolphus M. Pruitt, St. Louis City NAACP, to FERC regarding Spire STL Pipeline at 1 (Nov. 2, 2021), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211104-5006 (click “Generate PDF”) (hereinafter “*NAACP Letter*”).

The reliable supply of natural gas is something that many Americans cannot do without. Because customers in many markets have access to supply only through a single local distribution company, the company mission to plan for and provide cost effective and reliable supply is imperative. When supply is unexpectedly interrupted, people suffer. “After the city of Denton, Texas, lost its gas supply, it was forced to cut power to nursing homes and water pumping stations.” FERC & NERC Staff Report, *The February 2021 Cold Weather Outages in Texas and the South Central United States* at 10 (Nov. 2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc> and. In the St. Louis area in particular, “the thousands of households who are living at or below the poverty line” would feel a “disproportionate impact” of supply disruptions due to the “daily inequities” that they already face. *NAACP Letter, supra*, at 1.

The severity of a natural gas disruption cannot be cured instantaneously. Unlike electric outages, natural gas service does not return after a few minutes with the flicker of a bulb. Instead, when there is a disruption (or outage) in gas service, the local distribution company must take several steps to ensure the safety of gas consumers and restore service, a process that may take several days—or even weeks depending on the scope of the outage. Before reinstating service, the local distribution company generally must send a qualified service technician into each home to perform a series of safety inspections to help ensure that there is no risk involved in restoring gas

service to the home or building. See American Gas Association, *Frequently Asked Questions About Natural Gas Market Trends: Natural Gas Pipeline Safety* at 3 (2018), https://www.aga.org/globalassets/research--insights/pipe-line-safety-faq_final.pdf. This process must be performed individually for every home that loses service. *Id.* Once it is safe, a technician then must relight each customer’s pilot lights. *Id.* Disruption can therefore cause ripple effects that last long after the initial disruption is itself cured.

The decision below did not specifically consider (or even mention) these disruptive effects to American families and businesses. Pet. App. 39a. Petitioners recognize that these effects have not arisen, but that is solely because FERC has granted Spire STL a temporary Certificate. Pet. Supp. 3-4. *Amici* emphasize, however, that the D.C. Circuit’s refusal to meaningfully engage with the risk that vacatur of the Certificate poses is an error that could lead to customers losing access to natural gas during the winter months. See Pet. 39a. Instead of discussing those risks, the court held that the undefined potential for “some disruption” could not outweigh the supposedly “serious deficiencies” that the court identified in the record (*i.e.*, in FERC’s error). *Id.* But “some disruption,” *id.*, of service by Spire STL could result in tens of thousands of customers facing life-threatening cold conditions without heat for their homes. FERC’s use of emergency authority does not excuse the D.C. Circuit’s failure to properly analyze the disruptive effects caused by vacatur of a Certificate for an operational pipeline.

An analysis that weighs the gravity—the “serious[ness],” *id.*—of the agency’s error must also weigh the gravity of the disruptive consequences of vacatur. Otherwise, the mismatch all but eliminates potential disruptive consequences as a factor weighing against vacatur. The decision below falls into exactly this trap. See *id.* The D.C. Circuit discussed the “serious[ness]” of what it considered

to be an error in exhaustive detail, Pet. 31a-38a, but then it failed to consider the seriousness of the disruptive consequences of vacatur, *id.* at 39a. This error is especially striking when the potential disruptions at issue included leaving families without heat during winter.

B. Industrial users and electric generators depend on reliable natural gas service.

Demand for natural gas comes from a variety of industrial sectors, including electric generators, and also “manufacturing, construction, agriculture, and mining,” all of which also contribute to “economic activity broadly.” Elizabeth Sendich, *The Importance of Natural Gas in the Industrial Sector* at 2, U.S. Energy Information Administration Working Paper Series (Feb. 28, 2014), https://www.eia.gov/workingpapers/pdf/natgas_indussector.pdf. When supply is unexpectedly interrupted, so too are the critical industrial and manufacturing processes that depend directly on natural gas or indirectly on the electricity that generators supply. Reliable industrial supply is particularly important at present, when supply chains are already stretched thin and many companies use just-in-time delivery and inventory systems.

For example, Curiam, a pharmaceutical company, commented in the FERC proceeding below that it manufactures its “potentially life-saving diagnostic” radiopharmaceuticals “in suburban St. Louis” at a facility that receives natural gas from Spire Missouri. Letter from Roy W. Brown, Vice President, Curiam, to FERC regarding Spire STL Pipeline at 1-2 (Oct. 12, 2021), https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20211013-5190 (click “Generate PDF”). The natural gas that Curiam receives allows it to operate the “critical equipment” without which it is “unable to produce product” for its more than “14 million patients around the world.” *Id.*

The disruptive effects that interruptions in industrial

supply can cause do not stop at a business's walls. Instead, these effects ripple, at minimum, into the local economy. When supply interruptions force businesses to close, hourly and other non-salaried employees risk losing their ability to earn a paycheck. Further, where reliable access to natural gas is less secure, businesses are less likely to open or maintain facilities. And where disruptions affect a large number of users or affect an industry that is particularly important, the negative effects can be felt on an even broader scale.

For example, Winter Storm Uri caused major interruptions of natural gas supply in Texas, and these caused particularly severe disruptions to the “chemical plants[] [that] make up nearly 75 percent of U.S. chemical production and contribute to the manufacture of ingredients necessary for disinfectants, plastic bottles, fertilizer, pesticides and packaging.” Texas Comptroller of Public Accounts, *The Economic Impact of the Storm, 2021 Fiscal Notes: Special Edition* at 5 (Oct. 2021), <https://comptroller.texas.gov/economy/fiscal-notes/2021/oct/docs/fn.pdf>.

As is typical, these disruptions were not solved the moment that upstream service was restored. See *id.* (describing “damaged equipment” and “slowing supply lines”).

The decision below did not expressly consider, much less weigh, any of the disruptions that vacatur could cause to industrial sectors that rely on natural gas. Pet. 39a. Nor did the decision mention the effects that residential users must endure when they lose electricity due to a disruption in the supply of natural gas to generators. That failure sets a troubling precedent that warrants this Court's review.

C. Disruptions in already-operational pipelines significantly increase the cost of capital.

Interstate pipelines, like other large infrastructure projects, are often financed via debt. The cost of that capital is reflected in the debt's interest rate and in the terms

that lenders impose on construction projects. When a project's overall risk increases, the cost of capital for the project increases, too, as lenders demand a return that reflects the risk they bear. See *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944) (“[R]eturn * * * should be sufficient to assure confidence in the financial integrity of the enterprise, so as to * * * attract capital.”).

When the durability of FERC's Certificates of Public Convenience and Necessity becomes less certain, lenders are willing to provide capital for pipelines only at increased rates. Put differently, overall project-finance costs for interstate pipelines will increase if pipelines that are already operational are subject to disruptive shutdowns based on FERC's remediable errors during the certification process. See *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 312 (1989) (warning against risks that “imped[e] [a utility's] ability to raise future capital”).

Local distribution companies also feel the effects of increased capital costs, first in the prices for transport and supply, but also in their *own* capital costs. This is because any additional risk in the interstate pipelines that local distribution companies depend on makes investment in those companies that much riskier. “Credit quality * * * is dependent both on the amount of debt issued by a company as well as *the stability of a company's cash flow.*” *FERC Energy Primer* at 130 (emphasis added).

Nor do these costs stop with the companies. Instead, “risks faced by utility investors are important to utility customers because risks to investors get reflected in the capital costs to the utility which are ultimately paid for by customers.” John D. Quackenbush, *A Cost of Capital and Capital Markets Primer for Utility Regulators* at 8 (April 2020), <https://pubs.naruc.org/pub.cfm?id=CAD801A0-155D-0A36-316A-B9E8C935EE4D>. Even where consumers can bear these increases, prohibitively high capital

costs stifle competition by making it harder for new companies to enter the market. This can dampen innovation and, again, ultimately lead to higher prices for consumers.

D. The D.C. Circuit failed to consider these significant disruptive consequences of vacatur.

The D.C. Circuit acknowledged that “[t]he decision whether to vacate depends on the seriousness of the order’s deficiencies * * * and the disruptive consequences of an interim change that may itself be changed.” Pet. App. 39a (quoting *Allied-Signal*, 988 F.2d at 150-51). Although it considered the “serious[ness]” of the errors that it identified in some detail, Pet. App. 31a-38a, the decision effectively gave no consideration to the potential consequences of vacatur. Instead, the court stated that it understood that “there may be some disruption,” but that disruption “is weighty only insofar as the agency may rehabilitate its rationale.” *Id.* at 39a (quotation omitted).

The court’s unbalanced test—weighing the “serious[ness]” of the error, but ignoring the seriousness of any disruptive consequences—results in a two-factor analysis that only considers one factor. See *id.* The D.C. Circuit’s decision did not address the customers who might go without gas. It did not address impacts on local distribution companies and their long-term supply plans. It did not address industrial users that will face increased costs. It did not address the natural gas utilities that will face higher capital costs. And it did not address the homes and families that risk losing electricity if electric generators do not have access to a reliable supply of natural gas. That failure reduces *Allied Signal*’s second factor to a nullity. See *id.*

The decision below defended its unbalanced test on the theory that disruption on any scale “is weighty only insofar as the agency may be able to rehabilitate its rationale.” *Id.* (citing *Comcast Corp. v. FCC*, 579 F.3d 1, 9 (D.C. Cir. 2009)). But *Comcast Corp.* addressed only “whether

vacatur is likely to be unduly disruptive of *the agency's* regulatory program”—not whether and when a court should consider how disruption would affect hundreds of thousands of citizens that are outside the agency's direct regulatory authority. 579 F.3d at 9 (emphasis added). In any event, because the decision below did not foreclose FERC from rehabilitating its rationale on remand, Pet. App. 39-40a, the D.C. Circuit should have meaningfully weighed vacatur's disruptive consequences rather than brushing them aside.

Amici fear that natural gas companies and the customers that rely on them will face severe disruptions across the country if courts do not adequately address the significant negative impacts that can occur when an agency decision that private parties reasonably relied on gets overturned. Just as the agencies themselves must consider reliance interests before changing course, *Dep't of Homeland Sec. v. Regents of the University of Cal.*, 140 S. Ct. 1891 (2020), so too should the courts.

III. REVIEW IS IMPERATIVE BECAUSE THE D.C. CIRCUIT HEARS THE VAST MAJORITY OF CASES INVOLVING INTERSTATE PIPELINE PERMITTING.

As Petitioners emphasize, the D.C. Circuit hears an outsized majority of administrative law cases. Pet. 25. Cases raising the question presented are unlikely to arise in other circuits. It is therefore imperative that the D.C. Circuit give proper consideration to the potential for disruption before ordering vacatur—especially for critical infrastructure that affects hundreds of thousands of citizens.

Finally, FERC's Temporary Certificate Order does not change the need for review. See Pet. Supp. at 3-7. The possibility of a temporary Certificate played no part in the D.C. Circuit's analysis, and therefore it cannot justify that analysis. On the contrary, FERC's extraordinary intervention occurred only because of the “emergency” that the

court's vacatur caused. But there is no guarantee that FERC will always intervene so actively. This leaves the pipeline industry and those who depend on it, including families, businesses, and others who reasonably rely on final orders like the one at hand facing calamitous risk.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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