

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Bold Alliance, <i>et al.</i> ,)	
Appellants,)	
)	
v.)	No. 18-5322
)	
Federal Energy Regulatory Commission, <i>et al.</i> ,)	
Appellees.)	

JOINT MOTION TO HOLD THE APPEAL IN ABEYANCE

Pursuant to Fed. R. App. P. 27 and Circuit Rule 27, Appellants Bold Alliance, *et al.*, and Appellees Federal Energy Regulatory Commission and commissioners named in their official capacity (“Federal Appellees”) jointly move this Court to hold this case in abeyance until completion of the pending appeals of the final agency orders related to the applications by Mountain Valley Pipeline (“Mountain Valley”) and Atlantic Coast Pipeline LLC (“Atlantic Coast”) for certificates of public convenience and necessity under the Natural Gas Act. Undersigned counsel has contacted counsel for Mountain Valley and Atlantic Coast, and has been authorized to represent that they consent to this motion.

Appellants here seek review of the dismissal of their amended complaint by the U.S. District Court for the District of Columbia. *Bold Alliance v. FERC*, No. 17-cv-01822, 2018 WL 4681004 (D.D.C. 2018). At the time of filing of the first

complaint, the Commission had not yet issued a certificate for either the MVP or ACP project; plaintiffs filed their amended complaint after the Commission issued the certificates. *Id.* at *3. The amended complaint raised several constitutional and statutory claims, and sought declaratory and injunctive relief in order to prevent ACP and MVP from using their certificates to condemn plaintiffs' land. *Id.* The district court held that it lacked subject matter jurisdiction over plaintiffs' claims because, aside from some noted exceptions, the courts of appeals retain exclusive jurisdiction over such claims under the Natural Gas Act. *Id.* at *5.

Appeals of the Commission's final orders granting certificates to Mountain Valley and Atlantic Coast are underway. This Court has scheduled oral argument in the consolidated appeals of the Mountain Valley orders, Nos. 17-1271, *et al.*, for January 28, 2019. As for the Atlantic Coast orders, multiple petitions for review have been filed in this Court and in the Fourth Circuit. A group of environmental organizations asked this Court to transfer the petitions pending in this Court to the Fourth Circuit. D.C. Cir. Nos. 18-1224, *et al.* (consolidated) (motion filed Oct. 15, 2018). Once this Court acts on the transfer motion, briefing will commence either here or in the Fourth Circuit.

Because of the ongoing appeals of the final agency orders related to the Mountain Valley and Atlantic Coast certificates, Appellants and Federal Appellees here jointly request that the above-captioned appeal be held in abeyance until

completion of the already-pending appeals. Judicial economy favors abeyance of this appeal to avoid the possibility of concurrent judicial review—either in this Court or multiple courts of appeals—of the same underlying agency orders.

Moreover, this appeal and the already-pending appeals involve the same parties.

Bold Alliance and Bold Education Fund, among the Appellants here, also filed a petition for review of the Atlantic Coast orders (D.C. Cir. No. 18-1313, transferred from 4th Cir. No. 18-2185). And their petition for review of the Mountain Valley orders (D.C. Cir. No. 18-1216) is amongst the consolidated petitions scheduled for argument before this Court on January 28, 2019.

Delaying review at this time until the conclusion of the pending cases would not result in irreparable injury to any party. Upon the conclusion of the pending appeals of the Mountain Valley and Atlantic Coast orders, Appellants here may seek to press forward with their appeal of the district court's dismissal of their complaint related to those orders.

Accordingly, Appellants and Federal Appellees jointly request that this Court hold No. 18-5322 in abeyance pending completion of the appeals described above. The parties will file: (1) a status report within 14 days of this Court's ruling on the Mountain Valley appeals; (2) a status report within 14 days of a ruling (by either this Court or the Fourth Circuit, dependent on the outcome of the transfer motion) on the Atlantic Coast appeals; and (3) motions to govern within 30

days after the last judicial ruling in those appeals.

Respectfully submitted,

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December 3, 2018

CERTIFICATE OF COMPLIANCE

I certify that the foregoing complies with Fed. R. App. P. 27(d)(2) because it contains 648 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that the foregoing complies with the requirements of Fed. R. App. P. 27(d)(1)(D)-(E) because it has been prepared in Times New Roman 14-point font using Microsoft Word 2013.

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 3rd day of December 2018, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or via U.S. Mail, as indicated below:

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