

**SUPPLEMENTAL BRIEFING UNDERWAY;
EXPEDITIOUS CONSIDERATION OF MOTION REQUESTED**

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

Cletus Woodrow and Beverly Ann Bohon, <i>et al.</i> ,)	
)	
Appellants,)	
)	
v.)	No. 20-5203
)	
Federal Energy Regulatory Commission, <i>et al.</i> ,)	
)	
Appellees.)	

**MOTION OF APPELLEE FEDERAL ENERGY REGULATORY
COMMISSION TO EXTEND DEADLINE FOR FILING
SUPPLEMENTAL BRIEFS**

Pursuant to Federal Rule of Appellate Procedure 27 and Circuit Rule 27, and this Court’s September 27, 2023 Order allowing for supplemental response briefs, Defendant-Appellee Federal Energy Regulatory Commission requests that the Court extend the current

October 11, 2023 deadline for supplemental briefs by 30 additional days, i.e. to November 13, 2023.¹

Undersigned counsel has consulted with counsel for the other parties in this case. Plaintiffs-Appellants (Cletus and Beverly Bohon and two other families (Bohons)) oppose this motion; Defendant-Appellee (Mountain Valley Pipeline) consents to this motion.

This Court's September 27 Order permitted the parties to file, at Mountain Valley Pipeline's request, supplemental briefs in response to the constitutional challenges that the Bohons made to the Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, § 324, 137 Stat 10 ("Act"). See Bohons' August 7, 2023 Supplemental Brief at 13-19 (arguing that the Act violates principles of separation of powers, laws of general applicability, titles of nobility, degrees of citizenship, unequal protection of law, and ex post facto laws); see also *id.* at 9-12 (arguing that the Act does not apply to the circumstances of this case).

The Commission requests additional time to address these many, complex issues. It is Mountain Valley Pipeline that requested an

¹ Thirty days from October 11, 2023, is Veterans Day, a federal holiday. The next non-holiday, non-weekend day is Monday, November 13, 2023.

abbreviated two-week response period, and Mountain Valley now consents to the requested extension. While the Bohons now oppose the requested extension, they also opposed Mountain Valley's earlier motion for supplemental briefing, which the Court nevertheless granted in its September 27 Order. The Court should similarly grant this motion.

An extension of time is especially appropriate in light of the constitutional nature of the issues now presented. *See* Aug. 18, 2023 Mountain Valley Pipeline Motion for Leave to Submit Supplemental Response Brief at 1 (noting that the Bohons raise “several facial challenges to the constitutionality of Section 324 of the” Act). Additional time is appropriate to allow the Commission to coordinate its new arguments with arguments concerning the “legal significance of the Act,” recently made in other filings by the U.S. Government in other cases (involving other federal agencies) before the Fourth Circuit and the Supreme Court. *See* FERC August 7, 2023 Supplemental Brief at 19 n.2 (citing *Appalachian Voices v. Dep't of Interior*, 4th Cir. Nos. 23-1384, *et al.*; *Mountain Valley Pipeline, LLC v. Wilderness Soc'y, et al.*,

No. 23A35, 2023 WL 4770018 (U.S. July 27, 2023) (vacating two stays of construction entered by the Fourth Circuit after passage of the Act)).

Accordingly, the Commission requests that this Court extend the deadline for filing supplemental briefs to November 13, 2023.

Respectfully submitted,

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October 3, 2023

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 290 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Century Schoolbook 14-point font using Word.

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October 3, 2023

CERTIFICATE OF SERVICE

I hereby certify that, on October 3, 2023, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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