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Green Judges vs. American Gas

The same three-judge panel keeps killing U.S. energy projects.

By The Editorial Board
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Lengths of pipe wait to be laid in the ground along the under-construction Mountain Valley Pipeline near Elliston, Va, Sept. 29, 2019.

PHOTO: CHARLES MOSTOLLER/REUTERS

Here's a hard political reality behind high energy prices: It has become nearly impossible to build a natural gas pipeline in the U.S. Consider West Virginia's Mountain Valley pipeline, which has come under a relentless siege by green groups and activists in judicial robes. While more than 90% complete, the pipeline is in danger of getting cancelled.

The 304-mile interstate pipeline aims to deliver natural gas from Appalachia's Marcellus and Utica shale deposits to the mid- and south-Atlantic regions. A pipeline shortage has reduced the incentive for drillers to produce more natural gas. Yet states in the mid- and south Atlantic desperately need more gas as their populations grow.

Federal regulators have signed off on most of Mountain Valley's environmental permits, but greens have filed lawsuits at every turn. Oddly, their repeated challenges keep landing before the same Fourth Circuit three-judge panel of Roger Gregory, James Wynn and Stephanie Thacker even though cases are supposed to be assigned to judges at random.

These same three judges also blocked a permit for the Atlantic Coast Pipeline, only to be overruled by a 7-2 Supreme Court majority in 2020. A few weeks later, [Duke Energy](#) and [Dominion Energy](#) cancelled the pipeline, blaming exploding costs, delays and uncertainty from future litigation. They probably saw what was happening to Mountain Valley.

The three judges keep nit-picking Mountain Valley's environmental analyses. Each time the company rolls the boulder up the mountain, the judges roll it back down. The protections for endangered species are never good enough. For instance, although the panel found only minor fault with the U.S. Fish and Wildlife Service's study of logperch and candy darter in streams, the judges in February vacated the agency's entire biological opinion. Yet they declined to address several other liberal groups' complaints, inviting them to raise the points in a subsequent challenge to a new biological opinion.

The Mountain Valley pipeline is nearly 95% complete, and most of the remaining work relates to stream and wetland crossings, national forest lands, and final environmental restoration that require federal and state permits. This last 5% could take years since green groups have now also asked the Fourth Circuit to block permits issued by West Virginia and Virginia.

If the pipeline isn't complete by October 2022, and on current course it won't be, its developers will have to ask the Federal Energy Regulatory Commission to extend its Certificate of Public Convenience and Necessity. Green groups will surely challenge the extension.

Mountain Valley was supposed to start operating in 2018, but it may never do so. Its costs have ballooned to \$6.6 billion from \$3.8 billion as a result of the litigation. After the Fourth Circuit's latest decision, MVP investor NextEra announced an \$800 million impairment charge—which followed a \$1.5 billion writedown in 2020—and that it is reevaluating its investment.

“As a result of [our] evaluation, it was determined that the continued legal and regulatory challenges have resulted in a very low probability of pipeline completion,” NextEra said. Its political opponents are ecstatic. “The MVP is not inevitable,” the Sierra Club gloats.

Mountain Valley's Sisyphean struggle will surely discourage new pipeline investment, which is needed to increase U.S. liquefied natural gas exports and provide reliable power. Why are progressives and judges assisting Vladimir Putin's leverage over the world's natural gas market?