
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 22-0639

**STATE OF WEST VIRGINIA *ex rel.*
MOUNTAINEER GAS COMPANY,**

Petitioner,

v.

**THE HONORABLE R. CRAIG TATTERSON,
Judge of the Circuit Court of Roane County, and
THE ESTATE OF CORY COLTON KEITH CARPER, et al.,**

Respondents,

**From the Circuit Court of
Roane County, West Virginia
Civil Action No. 19-C-9**

BRIEF AMICUS CURIAE BY HOPE GAS, INC.

Counsel for Amicus Curiae

Ancil G. Ramey
WV Bar No. 3013
Steptoe & Johnson PLLC
P.O. Box 2195
Huntington, WV 25722-2195
P. 304.526.8133
ancil.ramey@steptoe-johnson.com

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I. INTRODUCTION

The Amicus Curiae,¹ Hope Gas, Inc. [“Hope Gas”], is a Local Distribution Company (LDC) that provides natural gas service to more than 111,000 residential, industrial, and commercial customers in thirty-five West Virginia counties. Hope Gas monitors and maintains more than 3200 miles of distribution pipeline and approximately 2400 miles of gathering lines that safely deliver West Virginia natural gas to many homes and commercial or industrial sites and employs about 350 employees working in West Virginia. Hope Gas is dedicated to solving its customers’ energy needs in the most affordable and practical manner.

Hope Gas is subject to regulation by the West Virginia Public Service Commission [“PSC”] and relies on the PSC’s authority in providing services to its customers. Like Mountaineer Gas, Hope Gas is subject to a tariff that includes certain liability protections relative to providing what are commonly referred to as “farm taps,” “field taps,” and/or “mainline taps.”² In this matter, the Respondents received natural gas services from Mountaineer Gas via a farm tap.³

Hope Gas provides natural gas services to approximately 15,000 West Virginia customers through a farm, field, or mainline tap. The economic viability of those services which would

¹ Hope Gas submits that its interest in the outcome of this proceeding, its perspective on the legal issues presented, and its reliance on the appendix submitted warrants consideration of its amicus brief pursuant to R. App. P. 30(c). It timely filed its notice of intention to file an amicus curiae brief in conformity with R. App. P. 30(b) and is submitting its brief within a reasonable time of its knowledge of the prohibition petition under R. App. P. 30(d). No counsel for a party authored this brief in whole or in part; no counsel or a party made a monetary contribution specifically intended to fund the preparation or submission of the brief; and no person other than the amicus curiae, its members, or its counsel, who made such a monetary contribution.

² Petition for Writ of Prohibition at 4, 6.

³ *Id.* at 6-7.

otherwise be unavailable to those customers depends on a regulatory framework that accounts for the practical challenges presented to LDCs like Hope Gas. Mountaineer Gas's tariff, like Hope Gas's, provides:

Notwithstanding any provision to the contrary within these Rules and Regulations it is expressly understood that for Mainline Consumers the Company has no control over the quality and quantity of natural gas to be delivered to the Mainline Consumer by the third party pipeline and the Company makes absolutely no warranty, express or implied, that the natural gas will be of pipeline quality or suitable for use by the Mainline Consumer.⁴

There appears to be no disagreement one contributing factor was a customer-installed furnace and the tariff further provides:

The Company does not guarantee or undertake, beyond the exercise of due diligence and its duty as a utility, to furnish a sufficient supply of gas at all times and shall not be liable for failure to do so, beyond its available supply; nor shall it be liable for any injury to person or property from any cause arising inside the Customer's property line not the result of the negligence of the Company; nor shall it be liable for any injury to person or property arising from the use of gas by, or the supply of gas to, the Customer which is not the result of negligence on the part of the Company.⁵ ...

The Company will not be liable for damages to or injuries sustained by Customers or others, or by the equipment of the Customer or others by reason of the condition or character of the Customer's facilities and equipment of others on Customer's premises. The Company will not be responsible for the use, care or handling of the gas service delivered to Customer after same passes beyond the point of the delivery.⁶

Hope Gas agrees with Mountaineer Gas that the Circuit Court exceeded its legitimate powers and committed a substantial legal error when it denied the Mountaineer Gas motion for

⁴ App. 255.

⁵ *Id.*

⁶ *Id.* at 266.

summary judgment and concluded that the PSC exceeded the statutory authority granted to it by the Legislature in approving the Mountaineer Gas tariff.

Hope Gas further agrees that the Circuit Court exceeded its legitimate powers and committed a substantial legal error when it concluded that the PSC approved a tariff that failed to conform to the laws of this State and to all rules, regulations, and orders of the PSC.

Hope Gas customers have expressed concerns about the potential impact of the Circuit Court's ruling on their access to farm, field, or mainline taps. Accordingly, Hope Gas urges this Court to issue a rule in prohibition, reverse the judgment of the Circuit Court of Roane County, and enforce the tariff language approved by the Public Service Commission.

II. DISCUSSION OF LAW

A. THE ECONOMIC VIABILITY OF PROVIDING FARM, FIELD, OR MAINLINE TAPS DEPENDS ON A REASONABLE LIMITATION OF LIABILITY FOR LOCAL DISTRIBUTION COMPANIES.

The economic viability of providing farm, field, or mainline taps⁷ have caused some West Virginia LDCs to seek approval to abandon them.⁸ The Federal Energy Regulatory Commission

⁷ § 5.06. POTENTIAL IMPACTS OF GAS GATHERING REGULATION ON PRODUCTION., 2013 WL 8366691 (“Farm taps are pipelines directly off of production, gathering or transmission pipelines that feed one or more farm, residential or small commercial customers.”) (footnote omitted). “Historically, pipelines provided farm tap service to landowners in exchange for pipeline easements or other land rights.” *Id.* (footnote omitted).

⁸ *Equitrans cleared to abandon natural gas gathering system in W.Va. and Pa.*, 2022 WL 2234471 (“The only part of the system FERC could not reach a final decision on was in Taylor County, W.Va. The 20.1 miles of pipeline in northern West Virginia serves some 125 customers of People’s natural gas on a “farm tap” and the pipeline connects with the utility’s citygate system.”); ¶ 62,277 *Dominion Transmission, Inc.*, Docket No. CP 11-42-000, Fed. Energy Reg. Comm’n Rep. P 62277 (“Currently, Dominion serves two retail consumers of Hope Gas, Inc. (d/b/a Dominion Hope) through existing farm taps off of Line No. TL-404. Dominion is currently negotiating service alternatives for these farm tap locations. One alternative available is to source the supply to these retail consumers from another Dominion pipeline, where any necessary construction would be pursuant to Dominion’s blanket certificate authorization. Dominion is also considering abandoning service to one of Dominion Hope’s farm tap customers (with the consent of Dominion Hope and such affected customer), who will then receive service from Mountaineer Gas

observed relative to the proposed abandonment of these farm, field, or mainline tap customers as follows:

Although some of these end users are located behind the LDCs' city gates and thus receive their gas from the LDCs' distributions lines, there are many "farm tap" customers, *i.e.*, end use customers of the local distribution companies who are attached directly, via a "farm tap," to Equitrans' gathering lines instead of to facilities owned and operated by the LDCs and thus, are currently dependent on the gathering facilities to receive natural gas.⁹

This abandonment of economically unviable farm, field, or mainline taps, which present unique practical challenges,¹⁰ is not limited to West Virginia.¹¹ And, although alternatives like propane

Company, a West Virginia local gas distribution company. Dominion states that any abandonment of this farm tap delivery point will meet the requirements of Section 157.216 of the Commission regulations.").

⁹ ¶ 61,204 *Natural Gas—Equitrans, L.P.*, Fed. Energy Reg. Comm'n Rep. P 61204 (footnotes omitted).

¹⁰ ¶ 31,227 *Revision of Regulations To Require Reporting of Damage To Natural Gas Pipeline Facilities*, Order No. 682, August 29, 2006, Docket No. RM 06-18-000, 18 CFR 260, 71 Fr 51098, Fed. Energy Reg. Comm'n Rep. P 31227 ("As examples of incidents for which immediate reporting generally is not necessary to achieve this objective, the pipeline companies note ... a farmer's plow hitting a farm tap valve ...").

¹¹ 37 No. 6 *Nat. Gas Transp. Info. Serv. Newsl.* 38 ("On April 8, 2021, FERC staff issued an order granting an application filed by Southern Star Central Gas Pipeline, Inc. (Southern Star) on June 30, 2020, 'pursuant to section 7(b) of the Natural Gas Act (NGA) [(15 U.S.C. § 717f(b))] and Part 157 of the Commission's regulations [(18 C.F.R. Part 157 (2020))] requesting authorization to abandon by sale to Fort Cobb Fuel Authority, LLC (Fort Cobb) 388 domestic meters associated with farm taps located in Oklahoma."); ¶ 61,204 *Columbia Gas Transmission, LLC*, Docket No. CP 16-498-000, Fed. Energy Reg. Comm'n Rep. P 61204 ("Columbia proposes to ... remove the mainline 'farm taps' presently attached to the B System in Fairfield and Franklin Counties ...") (footnote omitted); ¶ 62,133 *Dominion Energy Carolina Gas Transmission LLC*, Docket No. CP 17-3-000, Fed. Energy Reg. Comm'n Rep. P 62133 ("Dominion Energy Carolina states that it will no longer serve customers on two of three farm taps located off of Line A after the abandonment of Line A. Dominion Energy Carolina notes that South Carolina Electric & Gas Company, a local distribution company, has agreed to continue service to these customers."); ¶ 61,046 *Columbia Gas Transmission, LLC*, Docket No. CP 15-514-000, Fed. Energy Reg. Comm'n Rep. P 61046 ("Columbia acknowledges that the proposed R-501 pipeline abandonment will affect consumers receiving gas through that section of the pipeline. ... The R-501 pipeline provides gas to customers of Columbia Gas of Ohio, a local distribution company (LDC), and to individual consumers through mainline farm taps."); 32 No. 4 *Nat. Gas Transp. Info. Serv. Newsl.* 13 ("Columbia promised to compensate local consumers currently receiving gas via farm taps attached to segments that will be abandoned such that they can transition to an alternative source of energy or reconnect service to another natural gas pipeline. Columbia estimates the project will cost \$136 million."); ¶ 61,042 *Columbia Gas Transmission, LLC and Ko Transmission Company*, Docket No. CP 15-160-000, Fed. Energy Reg. Comm'n Rep. P 61042 ("The affected consumers are customers of Columbia Gas of Kentucky, a local distribution company, who

exist for some of those customers,¹² they are more expensive, less desirable, and present their own safety issues.

This explains why litigation can be instituted by customers when LDCs terminate farm, field, or mainline services, for example, when the customers cannot demonstrate their compliance with applicable law and regulations.¹³ The frustration of customers is understandable when placed

currently receive gas via mainline “farm” taps that would be removed from the E System as a consequence of the project. The applicants state that they will provide these consumers with propane as an alternative energy supply or will reconnect them to another natural gas pipeline.”); ¶ 61,029 *Columbia Gas Transmission, LLC and Jefferson Gas, LLC*, Docket No. CP 09-65-000, Fed. Energy Reg. Comm’n Rep. P 61029 (“The facilities which Columbia proposes to abandon consist of approximately 31.67 miles of pipeline and appurtenances, ranging in inside pipe diameter from 2 to 10 inches with a maximum allowable operating pressure (MAOP) of 303 pounds per square inch gauge (psig); the South Means Compressor Station, consisting of a 180 horsepower (hp) and a 400 hp compressor unit and various station appurtenances; four measuring stations; and approximately 116 mainline taps. ... Columbia provides transportation service to 83 mainline tap customers of Columbia Gas of Kentucky (CKY). Columbia proposes to abandon this service.”).

¹² ¶ 61,028 *Gulf South Pipeline Company, LP and Tristate NLA, LLC*, Docket Nos. CP 18-66-000 and Docket No. Cp18-69-000, Fed. Energy Reg. Comm’n Rep. P 61028 (“Additionally, CenterPoint states that it must develop a propane alternative to natural gas service for approximately 35 farm tap customers who will no longer be able to receive natural gas due to Tristate’s modifications.”); ¶ 61,068 *Columbia Gas Transmission, LLC*, Docket No. CP 15-95-000, Fed. Energy Reg. Comm’n Rep. P 61068 (“Columbia acknowledges that its proposal will affect some local consumers currently receiving gas through the existing Line 1570, specifically, customers of Columbia Gas of Pennsylvania who currently receive gas via the mainline ‘farm’ taps that are presently attached to the segments of Line 1570 proposed for abandonment. Columbia states that it will compensate these landowners such that they may transition to an alternative source of energy (e.g., propane) or reconnect service to another natural gas pipeline.”); *Columbia Gas Transmission, LLC v. An Easement to Construct, Operate & Maintain a 20-Inch Gas Transmission Pipeline Across Properties in Washington Cnty. & Allegheny Cnty., Pa. by MCC Int’l, Inc.*, No. CV 17-1297, 2018 WL 3209426, at *10 (W.D. Pa. Apr. 25, 2018), report and recommendation adopted as modified sub nom. *Columbia Gas Transmission, LLC v. An Easement to Construct, Operate & Maintain a 20-Inch Gas Transmission Pipeline Across Properties in Washington Cnty. & Allegheny Cnty., Pa.*, No. CV 17-1297, 2018 WL 2111239 (W.D. Pa. May 8, 2018) (“In its reply brief, Columbia further explains that it will provide bottled natural gas to Klaphake and other property owners who will be affected by an outage on May 25, 2018 when service on the existing line is interrupted during construction of the new pipeline. Columbia states that it will continue to provide bottled natural gas to the Klaphake property until a more permanent solution, consistent with the terms of the FERC Certificate, can be effected.”)

¹³ Mark D. Christiansen, *Legal Developments in 2016 Affecting the Oil and Gas Exploration and Production Industry*, 54 Rocky Mountain Min. L. Found. J. 31, 71 (2017) (“Conoco notified certain of the plaintiff landowners that it was going to disconnect their farm taps by a specified date due to the volatile mixture of untreated elements in the gas, and it provided a list of alternate providers of gas. Other landowners were advised that their taps would be disconnected unless they provided proof that they were

in the context of predecessors-in-title having bargained easement rights for those farm, field, or mainline taps sometimes decades earlier.¹⁴

B. THE PUBLIC SERVICE COMMISSION HAS PROPERLY BALANCED THE ECONOMIC VIABILITY OF FARM, FIELD, OR MAINLINE TAPS WITH PUBLIC SAFETY.

The PSC, as regulator, has wisely balanced the economic viability of farm, field, and mainline taps with public safety. An example of specific action by the PSC regarding farm tap service is its May 7, 2015, approval of new terms and conditions to Peoples Gas WV LLC's tariff.¹⁵

in compliance with specified regulations of the U.S. Department of Transportation that are administered by the Oklahoma Corporation Commission. The landowners filed suit in the state district court of Texas County, Oklahoma and sought injunctive relief with respect to seeking a declaratory judgment that Conoco was required to comply with its contractual obligation to make natural gas available to landowners. Conoco sought declaratory relief that, inter alia, it was not obligated to continue providing natural gas under the leases, due to stated concerns, and that it could turn off, disconnect and disable the farm taps. The landowners moved for a preliminary injunction prohibiting Conoco from terminating the supply of natural gas via the farm taps during the pendency of the lawsuit. The court analyzed the pertinent factors required in order for a preliminary injunction to be granted, concluded that the landowners failed to make an adequate showing of irreparable harm and denied the plaintiffs' request. The court did, however, direct Conoco to reasonably assist the landowners in locating and connecting an alternative source of energy, and to temporarily refrain from shutting off the farm taps for a reasonable time in order to allow such alternative sources to be put in place.”); see also Chapter 19, *Oil and Gas*, 2016 “ABA Env't Energy, & Resources L.: Year in Rev.” 211, 238 (2016); *Klaphake v. Columbia Gas Transmission, LLC*, No. CV 17-1359, 2018 WL 4999874, at *2 (W.D. Pa. Oct. 16, 2018), aff'd sub nom. *Columbia Gas Transmission LLC v. An Easement to Construct, Operate & Maintain a 20-Inch Gas Transmission Pipeline Across Properties in Washington Cnty. & Allegheny Cnty., Pennsylvania Owned by MCC Int'l, Inc.*, 797 F. App'x 64 (3d Cir. 2019) (“For the reasons below, the Court concludes that Defendants are not required to install a farm tap on the new pipeline and may cease service through the existing pipeline, abandoning that line in the ground.”).

¹⁴ *Off. of the Consumers' Couns., State of Ohio v. FERC*, 808 F.2d 125, 127 (D.C. Cir. 1987) (The disputed stretch of pipeline consists of the 4.3-mile segment of Line D-75 to the west of Harpster, Ohio. Line D-75 was constructed between 1909 and 1911 by Ohio Fuel Gas Company (“Ohio Fuel”), the predecessor of Columbia, and originally carried gas from Line T-50 eastward to several Ohio towns. Construction of Line D-75 was facilitated by right-of-way agreements with rural consumers, predecessors of the petitioners, who lived between Line T-50 and Harpster. These consumers exchanged easements across their property for the right to receive service directly from the line through what are known as farm taps “[w]hile gas is conveyed through said premises in said pipeline...” (footnotes omitted).

¹⁵ App. 509.

The Peoples Gas tariff provided liability protection with respect to field tap services.¹⁶ The protections that the PSC approved are contained in Section IX of the Peoples Gas Tariff.¹⁷ In connection with this order, the PSC stated as follows:

On March 31, 2015, Commission Staff filed a Final Memorandum, stating that the content of Section IX is very similar to three paragraphs in the Peoples WV TLSA concerning gas delivery to new field tap customers on third party pipelines approved in Case No. 960133-G-C, Commission Order, February 16, 1996. The purpose of Section IX is to inform customers that the gas may be of less than ideal quality and that interruptions may occur. Staff also noted that similar language is included in the Dominion Hope and Mountaineer Gas Company tariffs.

Staff recommended approval of Section IX as an addition to the Peoples WV tariff so that the proposed terms and conditions of service are available to all customers, regardless of whether they are parties to a TLSA and to provide Peoples WV with liability protection.¹⁸

Those “three paragraphs” cannot be clearer relative to balancing the economic viability of farm, field, or mainline taps with public safety:

Notwithstanding any provision to the contrary within these Rules and Regulations it is expressly understood that for Mainline Consumers **the Company has no control over the quality and quantity of natural gas to be delivered to the Mainline Consumer by the third party pipeline and the Company makes absolutely no warranty, express or implied, that the natural gas will be of pipeline quality or suitable for use by the Mainline Consumer.**¹⁹

The Company does not guarantee or undertake, beyond the exercise of due diligence and its duty as a utility, to furnish a sufficient supply of gas at all times and shall not be liable for failure to do so, beyond its available supply; **nor shall it be liable for any injury to person or property from any cause arising inside the Customer’s property line not the result of the negligence of the Company; nor shall it be liable for any injury to person or property arising from the use of gas**

¹⁶ See *Peoples Gas WV LLC, Public Service Commission of West Virginia*, Case No. 15-0258-G-T (May 15, 2015)).

¹⁷ App. 509.

¹⁸ *Peoples Order, supra*, at 1-2.

¹⁹ App. 255 (emphasis supplied).

by, or the supply of gas to, the Customer which is not the result of negligence on the part of the Company.²⁰

The Company will not be liable for damages to or injuries sustained by Customers or others, or by the equipment of the Customer or others by reason of the condition or character of the Customer's facilities and equipment of others on Customer's premises. The Company will not be responsible for the use, care or handling of the gas service delivered to Customer after same passes beyond the point of the delivery.²¹

C. LDC'S ARE ENTITLED TO THE PROTECTION OF LIMITS ON LIABILITY IN THE TARIFFS WHICH GOVERN THE FARM, FIELD, OR MAINLINE SERVICES THEY PROVIDE.

The Supreme Court has held that limitations on liability in a utility's tariff must be enforced: "The limitation of liability [is] an inherent part of the rate. The company could no more depart from it than it could depart from the amount charged for the service rendered."²² "The prescribing of rates is a legislative act. The commission is an instrumentality of the state, exercising delegated powers. Its order is of the same force as would be a like enactment by the legislature."²³ "Once the tariff is approved by the relevant regulatory agency, any deviation from it is strictly prohibited."²⁴ "[A] judicial decision invalidating the 'Limitation of Liability' clause would have effects beyond the clause itself. 'The limitation of liability was an inherent part of the rate' set by the [Department of Public Utilities], and '[t]he company could no more depart from it than it could depart from the amount charged for the service rendered.'"²⁵

²⁰ *Id.* (emphasis supplied).

²¹ *Id.* 266 (emphasis supplied).

²² *Western Union Telegraph Co. v. Esteve Bros. & Co.*, 256 U.S. 566, 570-575 (1921).

²³ *Waterworks & Imp. Co. v. Pub. Serv. Comm'n. of W. Va.*, 262 U.S. 679, 683 (1923).

²⁴ *Maryland Cas. Co. v. NSTAR Elec. Co.*, 471 Mass. 416, 30 N.E.3d 105, 112 (2015).

²⁵ *Id.* at 114.

None of the relevant tariff provisions can be fairly read as immunity provisions. Rather, they establish the following parameters relative to suits against LDCs providing farm, field, and mainline taps:

- An LDC “has no control over the quality and quantity of natural gas to be delivered”
- An LDC “makes absolutely no warranty, express or implied, that the natural gas will be of pipeline quality or suitable for use by the Mainline Consumer”
- An LDC shall not be “liable for any injury to person or property from any cause arising inside the Customer’s property line not the result of the negligence of the Company”
- An LDC shall not be “liable for any injury to person or property arising from the use of gas by, or the supply of gas to, the Customer which is not the result of negligence on the part of the Company”
- An LDC shall not be “liable for damages to or injuries sustained by Customers or others ... by reason of the condition or character of the Customer’s facilities and equipment of others on Customer’s premises”
- An LDC shall not be “responsible for the use, care or handling of the gas service delivered to Customer after same passes beyond the point of the delivery”

In this case, it is undisputed that before the carbon monoxide poisoning incident, the flame rollout switches in the household furnace had been removed,²⁶ and had the switches been properly mounted, they would have shut off the furnace.²⁷ That furnace was “not the result of the negligence of the Company,” involved “the condition or character of the Customer’s facilities,” and was “beyond the point of delivery.”

²⁶ App. 7.

²⁷ *Id.* at 8.

In the Circuit Court’s order, it identified two liability theories: (1) the natural gas sold to the respondent’s was “dangerous”²⁸ and (2) Mountaineer Gas’s perc tank was improperly maintained.²⁹

The first theory is directly contrary to the tariff provision that an LDC “has no control over the quality and quantity of natural gas to be delivered.” If farm, field, and mainline tap customers are permitted to sue LDCs based on the quality of natural gas that is inherently unregulated and uncontrolled due to the inherent nature of farm, field, and mainline tap service, then it will be impossible for LDCs to provide those services.

The second theory is defective for the same reason as the first: “Improper maintenance of the perc tank “resulted in moisture in the ... gas supplied,”³⁰ which again is contrary to the tariff provision that an LDC “has no control over the quality and quantity of natural gas to be delivered.” The allegation that Mountaineer Gas “failed to service the Carper’s perc tank for at least 10 months”³¹ is meaningless as there is no legal requirement for servicing perc tanks on any timeframe, the alleged consequence – wet gas – is inherent in farm, field, or mainline tap service, and the removal of the flame rollout switches was an intervening and superseding cause.³² As in *Harbaugh*, someone in the Carper household

²⁸ *Id.*

²⁹ *Id.* at 11.

³⁰ *Id.*

³¹ *Id.*

³² The Circuit Court erroneously concluded that the issue of intervening or superseding cause is always a jury issue. App. _____. To the contrary, this Court has not infrequently affirmed summary judgment where the proximate cause of a plaintiff’s injury was an intervening or superseding one. See, e.g., *Coffield v. McArdle*, No. 21-0569, 2022 WL 3905239 (W. Va. Aug. 30, 2022) (memorandum) (affirming summary judgment in legal malpractice action where intervening and superseding cause of the plaintiff’s damages was the plaintiff’s negligence); *Caudill v. EAN Holdings LLC*, No. 21-0096, 2022 WL 1223938 (W. Va. Apr. 26, 2022) (memorandum) (affirming summary judgment where intervening and superseding cause was the

was playing Russian Roulette with its furnace when they removed the flame rollout switches that no one disputes would have prevented the tragic accident and it is inappropriate to impose that liability on Mountaineer Gas under the circumstances.

If LDCs can be held liable, including liability for wrongful death, when farm, field, or mainline tap customers improperly install furnaces or other natural gas appliances, install defective appliances, fail to properly maintain those appliances, or remove safety features from those appliances under theories that the natural gas supplied was “dangerous” because it was too “wet”³³ or had “excessive long-chain hydrocarbons,”³⁴ then LDCs will have no choice but to either abandon those customers or, as in the *Conoco* case, demand that those customers provide monthly proof that everything beyond the point of delivery has been properly installed, is not defective, has been maintained, and is fully compliance with all

driver’s voluntary intoxication); *Barb v. Shepherd Univ. Bd. of Governors*, No. 14-1115, 2016 WL 143302 (W. Va. Jan. 8, 2016) (memorandum) (affirming summary judgment where intervening and superseding causes of crosswalk accident where driver admitted to disregarding crosswalk warnings and pedestrian admitted that she failed to look both ways and was wearing earbuds); *Ayers v. Erie Ins. Co.*, No. 14-0843, 2015 WL 3675302 (W. Va. June 12, 2015) (memorandum) (affirming summary judgment where a third-party’s criminal acts were an intervening and superseding cause); *Harbaugh v. Coffinbarger*, 209 W. Va. 57, 543 S.E.2d 338 (2000) (affirming summary judgment where tragic game of Russian Roulette was intervening and superseding cause). Perhaps sensing that its ruling was on shaky ground regarding intervening and superseding cause, the Circuit Court buttresses its denial of summary judgment by speculating, without citing any legal authority, that W. Va. Code § 55-7-13a somehow abolishes the concept. App. _____. First, W. Va. Code § 55-7-13a was adopted in 2015, 2015 W. Va. Acts ch. 59, and *Coffield*, *Caudill*, and *Barb* were all decided after its effective date. Second, W. Va. Code § 55-7-13a(a) defines “comparative fault” as “the degree to which the fault of a person was a proximate cause of an alleged personal injury or death” and an intervening or superseding cause breaks the causal chain necessary to impose liability on a tortfeasor. Finally, W. Va. Code § 55-7-13a(b) provides, “recovery shall be predicated upon principles of comparative fault and the liability of each person, including plaintiffs, defendants and nonparties who proximately caused the damages,” and no one – not a plaintiff, defendant, or nonparty – who did not “proximately cause[] the damages” should be included on any verdict form, including anyone whose causal connection was broken by an intervening or superseding cause.

³³ App. 10.

³⁴ *Id.*

applicable safety laws and regulations, or in the absence of such proof, their services will be terminated.

III. CONCLUSION

WHEREFORE, Hope Gas, Inc., respectfully requests that this Court issue a rule in prohibition, reverse the judgment of the Circuit Court of Roane County, and enforce the tariff language approved by the Public Service Commission.

HOPE GAS, INC.

By Counsel



Ancil G. Ramey
WV Bar No. 3013
Steptoe & Johnson PLLC
P.O. Box 2195
Huntington, WV 25722-2195
P. 304.526.8133
ancil.ramey@steptoe-johnson.com

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2022, I filed a MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE using the E-Filing service, which will provide notice of the same to the following:

Hon. R. Craig Tatterson, Judge
Mason County Courthouse
200 Sixth Street
Point Pleasant, WV 25550
Respondent Judge

Carrie Goodwin Fenwick
GOODWIN & GOODWIN, LLP
300 Summers Street, Suite 1500
Charleston, WV 25301

Eric R. Passeggio
SULLOWAY & HOLLIS PLLC
9 Capitol Street
Concord, NH 03301
Counsel for the Petitioner

L. David Duffield
Chad Lovejoy
Thomas P. Boggs
DUFFIELD, LOVEJOY & BOGGS, PLLC
P.O. Box 608
Huntington, WV 25710-0608
Respondent Carper



Ancil G. Ramey
WV Bar No. 3013
Steptoe & Johnson PLLC
P.O. Box 2195
Huntington, WV 25722-2195
P. 304.526.8133
ancil.ramey@steptoe-johnson.com
Counsel for Amicus Hope Gas, Inc.