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April 18, 2019

Mark Langer, Clerk
United States Court of Appeals
for the D.C. Circuit
333 Constitution Avenue NW, Room 5202
Washington D.C. 20001

**Re: *Birckhead v. FERC, No. 18-1218 and Otsego 2000 v. FERC, No. 18-1188;*
both argued April 11, 2019**

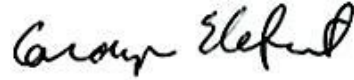
Dear Mr. Langer,

This responds to the Federal Energy Regulatory Commission's letter dated April 11, 2019. There, the Commission sought to correct a purported "misstatement" by Commission Solicitor Robert Solomon during oral argument in *Birckhead v. FERC* concerning the Commission's position on whether jurisdictional limits imposed by the Natural Gas Act break the causal chain necessary to trigger NEPA review of upstream and downstream emissions that this Court has held are indirect effects of the Commission's grant of a gas certificate in *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017).

This Court must reject the Commission's letter as an improper, post-argument submission. Rule 28(j) affords the sole avenue for supplementing the record after a case has been submitted for oral argument and is intended for the limited purpose of citing to newly issued cases and not as here, to enable parties to change their position or reinforce arguments when the opposing parties lack a chance to rebut. Because the Commission's ruling may prejudice the petitioners who lack an opportunity to respond, this Court should reject the Commission's unauthorized submission and rely solely on the record, the parties' briefs and the oral argument transcript in rendering a decision. If this Court intends to consider the substance of the letter, we respectfully request an opportunity to respond on the merits.

I have been authorized to state that Mr. Michael Sussman, counsel for Petitioners in *Otsego 2000 v. FERC* joins in this response.

Respectfully submitted,

A handwritten signature in black ink that reads "Carolyn Elefant". The signature is written in a cursive, flowing style.

Carolyn Elefant
Counsel to Petitioner Birckhead
and Concerned Citizens