

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

OTSEGO 2000 JOHN & MARYANN VALENTINE, <i>Petitioners</i>	)	
	)	
.	)	Docket No. _____
	)	
FEDERAL ENERGY REGULATORY COMMISSION, <i>Respondent</i>	)	
	)	

**OTSEGO 2000 AND JOHN AND MARYANN VALENTINE  
JOINT PETITION FOR REVIEW**

Pursuant to the Natural Gas Act, 15 U.S.C. § 717r(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, Otsego 2000 and John and Maryann Valentine (Valentines), hereby petition this Court for review of final actions taken by the Federal Energy Regulatory Commission (FERC) granting a certificate authorizing construction and operation of the New Market Project under Section 7 of the Natural Gas Act, 15 U.S.C. §717f(e). Petitioners seek review of the orders designated below:

1. *Dominion Transmission, Inc.*, FERC Docket No. CP14-497-000, Order Issuing Certificate, 155 FERC ¶61,106 (April 28, 2016);

2. *Dominion Transmission, Inc.*, FERC Docket No. CP14-497-001, Order Denying Rehearing, 163 FERC ¶ 61,128 (May 18, 2018).

This Court has jurisdiction under Section 717r of the Natural Gas Act, 15 U.S.C. §717r over this Petition for Review. Otsego 2000 and the Valentines were directly aggrieved by the Commission's orders approving the project. *See* Declarations of Standing (Attachment 1). Otsego 2000 and the Valentines intervened and participated in the certificate proceeding before the Commission,<sup>1</sup> and filed a timely joint Request for Rehearing<sup>2</sup> of the Commission order granting the certificate on May 31, 2016.<sup>3</sup>

On May 18, 2018, the Commission denied all rehearing requests, thus rendering the Certificate Order final for judicial review under Section 15 U.S.C.

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<sup>1</sup> Valentine Doc-less Out-of-Time Motion to Intervene, Access No. 201411145097 (November 14, 2014); Otsego2000 Motion to Intervene, October 24, 2014, Accession No. 20141024-5025.

<sup>2</sup> Otsego 2000 Request for Rehearing, FERC Docket CP14-497, (May 31, 2016), Access No. 201605315685.

<sup>3</sup> Valentine Amended Request for Rehearing, FERC Docket CP14-497, (June 2, 2016), Access No. 201606025377.

§717r(a). This Petition for Review is timely filed within sixty days of the Commission's order on rehearing. *See* 15 U.S.C. §717r(b).

This Petition raises several challenges to the Commission's approval of the New Market Project, including whether the Commission arbitrarily and capriciously departed from this Court's precedent in *Sierra Club v. FERC*, 867 F.3d 1357 (2017) which ruled that the National Environmental Policy Act requires the Commission to evaluate greenhouse gas emissions from fossil fuel production and transportation projects. The Court's ruling left no ground for the Commission to shirk its obligations under NEPA and yet, that is precisely what the Commission majority has done in these orders - over the vehement dissent of Commissioners LaFleur and Glick. The Commission's ruling is so shocking that it prompted the New York Attorney General's office to weigh in with a letter chastising the Commission for refusing to undertake the same evaluation of project emissions that it was ordered to do by this Court in *Sierra Club v. FERC* and failing to announce this policy about face so as to allow New York and other states to comment. (Attachment 2)

Accordingly Otsego 2000 and the Valentines petition set aside the Commission orders on review, compel the Commission to comply with this Court's rulings and grant such other relief as may be appropriate.

Respectfully submitted,

*/s/Carolyn Elefant*

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**Attachment 1**  
**Declarations in Support of Standing**

Declaration of Ellen Pope.....	000001
Declaration of Nicole Dillingham.....	000007
Declaration of Keith Schue.....	000013
Declaration of Julie Huntsman.....	000029
Declaration of John Valentine.....	000035

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<b>v.</b>	)	
	)	
<b>FEDERAL ENERGY REGULATORY</b>	)	
<b>COMMISSION</b>	)	
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<b>Respondents.</b>	)	
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**28 U.S.C. §1746 DECLARATION OF ELLEN POPE  
IN SUPPORT OF STANDING**

My name is Ellen Pope. I am over the age of 18, competent to testify and have personal knowledge of the facts set forth in this Declaration. Under penalty of perjury, I declare the following:

1. I am the Executive Director of Otsego 2000, Inc., a not-for-profit 501(c)(3) organization located in Cooperstown, New York.
2. Otsego 2000 was founded in 1981 to work to protect the environmental, scenic, cultural, historic, and agricultural resources of the Otsego Lake Region.

3. The Otsego Lake Region and its surrounding landscapes, valleys, villages and farms constitute a unique confluence of historic, environmental, cultural, agricultural, rural and scenic resources. The long-term economic wellbeing of the region and the quality of life for its residents derive from our stewardship of these resources. Otsego 2000, seeks to protect these assets for the benefit of present and future generations. We advance our mission through informed advocacy, intelligent planning, public education, and development of sustainable economic alternatives.

4. Otsego 2000's activities are not limited to Otsego County. Its environmental stewardship and historic preservation advocacy work extends to the larger region encompassed within a roughly 25-mile radius of Cooperstown, New York and including the Leatherstocking region, the Catskill foothills and the Mohawk Valley. In its 37 years of existence, Otsego 2000 has worked to protect environmental, historic, cultural, and agricultural resources not only of Otsego County, but also in the surrounding counties of Herkimer, Montgomery, Schoharie, and Delaware Counties.

5. Notably, Otsego 2000 led the effort to protect the National Register-listed Holy Trinity Russian Orthodox Monastery, seat of the Russian Orthodox Church during Soviet rule of Russia, from encroachment by a utility-scale wind turbine project; opposed the plans proposed by the New York State Department of Environmental Conservation which would have allowed extraction of natural gas through the process of fracking in New



York State; opposed the Constitution Pipeline that, as proposed, would traverse dozens of federally and state-protected streams, wetlands and conservation properties in Delaware and Schoharie Counties; and currently is seeking review of an improperly permitted CNG fueling station in the Town of Manheim, Herkimer County, that is endangering communities along a 200-mile route from southern New York to Manheim.

6. Otsego 2000's work is made possible through grants from private foundations, the New York State Council of the Arts, program-related revenue generated from the Cooperstown Farmers' Market and Glimmerglass Film Days, fundraising events, and most importantly, donations from over 400 individuals annually, overwhelmingly from New York State.

7. In 2013, Otsego 2000 learned of the proposed expansion of the Brookman Corners Compressor Station which is part of Dominion Gas Transmission Inc.'s "New Market Project." The proposed expansion directly threatened state and nationally-recognized historic resources including John and Maryann Valentine's historic Slate Creek Farm and the Erie Canalway National Heritage Corridor. It would also adversely affect the air quality in the Otsquago Creek valley, putting residents at risk. The proposed expansion would also increase extraction and combustion of natural gas, leading to a significant increase in greenhouse gas emissions which contribute to climate change. For



these reasons, Otsego 2000 intervened in the Commission's proceedings related to the Dominion New Market project and submitted extensive comments to the Commission.

8. Significantly, Otsego 2000 did not simply oppose expansion of the compressor station. Realizing that the compressor station might be approved, Otsego 2000 also researched and developed mitigation measures to reduce adverse environmental and health impacts, including proposed mitigation of harmful air emissions, noise, vibrations, intrusive lighting and public safety concerns. Otsego 2000 incurred substantial costs for legal fees and expert witnesses regarding air emissions, noise, and landscaping as summarized below.

9. On April 28, 2016, the Commission granted a certificate for the Dominion New Market Project, including the Brookman Expansion Project. The Commission's Certificate Order rejected all of the mitigation measures that Otsego 2000 proposed.

10. Accordingly, on May 31, 2016, Otsego 2000, along with John and Maryann Valentine, filed a Rehearing Request, seeking reconsideration of the Commission Certificate Order due to its failure to fully consider the extent of harmful project impacts, including air quality and climate impacts, and failure to require necessary mitigation. The Petition for Rehearing was prepared with the assistance of counsel and through extensive involvement of Otsego 2000 volunteers and Board members who donated their time and expertise.

11. The Commission did not act on the Rehearing Request for almost two years. During this time, the expansion was in fact completed by Dominion. At the same time, Otsego 2000 undertook work to install air monitors and document air quality and noise levels at the facility. Substantial funds and volunteer hours were expended in this effort as well.

12. The Commission's approval of the compressor station expansion imposed significant costs on Otsego 2000 in terms of out-of-pocket expenses and volunteer time. The following out of pocket costs were incurred:

<b>Otsego 2000 Expenses Related to Dominion New Market Project Expansion –</b>	
Legal Fees	\$23,102.73
Acoustic Modeling and Mitigation Studies	\$7,421.41
Visual Impact Analysis and Mitigation Study	\$1,150.00
Videotaping of Public Meetings	\$500.00
Speck Air Quality Monitors	\$1,627.00
Printing/Copying	\$3,004.44
Conference Calls	\$67.35
Postage/Shipping	\$674.90
Supplies	\$197.46
Staff Travel	\$63.76
<b>TOTAL</b>	<b>\$37,764.05</b>

13. Due to Otsego 2000's limited financial resources, and its small staff (full-time Executive Director and Office Manager, part-time Farmers' Market Manager) the organization relies heavily on the expertise and volunteer hours donated by its Board Members and consultants. They provide critical professional services and expertise to Otsego 2000 particularly in responding to environmental threats in the region.



14. Declarations submitted by Keith Schue, Technical Advisor to Otsego 2000, Julie Huntsman, DVM, Member of Otsego 2000's Board of Directors, and Nicole A. Dillingham, JD, Board President, show the substantial commitment of time dedicated to the opposition to this project by Otsego 2000, development of mitigation measures, and baseline measurements of air quality and noise. Much of this work will need to continue due to the need to monitor conditions on an ongoing basis. As a result, Otsego 2000's ability to respond to other potential environmental threats in the region was, and remains, significantly diminished.

15. A court ruling vacating the Commission's Order and requiring the Commission to study upstream and downstream air impacts, and/or incorporate Otsego 2000's proposed mitigation would address Otsego 2000's concerns and relieve the burdens that Otsego 2000 has experienced and expects to continue to endure in the coming years if Certificate Order remains unchanged.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge.

Executed at: Cooperstown, NY

Dated: 7/13/13



Ellen Pope, Executive Director Otsego 2000, Inc.

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**28 U.S.C. §1746 DECLARATION OF NICOLE A. DILLINGHAM  
IN SUPPORT OF STANDING**

My name is Nicole A. Dillingham. I am over the age of 18, competent to testify and have personal knowledge of the facts set forth in this Declaration. Under penalty of perjury, I declare the following:

1. I reside in Springfield Center, New York, in Otsego County, about 10 miles from the site of the Brookman Corners compressor station owned by Dominion Transmission, Inc. I am an attorney licensed to practice in California and New York, and for the past 10 years have served as Board President of Otsego 2000, Inc.

2. I am actively involved in all aspects of implementing the Otsego 2000 mission for the preservation of the environmental, and historic and agricultural

resources of the Otsego Lake Region, including the Leatherstocking Region, the Catskill foothills and the Mohawk Valley. As Board President, I am responsible for managing Board relations and development, long-range planning, financial oversight, and fundraising. I sit on all of the Committees of the Board and assist in the coordination of their work.

2. Since joining the Board of Otsego 2000 more than a decade ago, I have been actively involved in all aspects of our Environmental Stewardship Committee. Under my leadership, Otsego 2000 became a founding member of a regional coalition to prohibit fracking in New York State and we have opposed construction of fossil fuel infrastructure that will damage air quality and cause negative impacts on agriculture, health, the environment, historic properties, and climate in the region.

3. I first learned about the Dominion New Market Project and the planned expansion of the compressor station at the Brookman Corners site in Minden, New York, in 2014. I was immediately concerned about the impact of this development on public health, prime agricultural land, historic assets, including the State and Nationally listed historic farm owned by John and Maryann Valentine, known as Slate Creek Farm, and the Erie Canalway National Heritage Corridor. I was also concerned about the climate impacts, both upstream and downstream, of expansion of reliance on fracked natural gas. Significantly, this project is located at the base of the Otsquago Creek valley, which experiences frequent temperature inversions



leading to heavy ground fog that interferes with air emission dispersion. This made expansion at the Brookman Corners site, without stringent mitigation controls, a unique threat to the region, including most particularly risk of harm to children attending the large public school complex downwind from the facility at Fort Plain, New York, and several Amish schools in the vicinity.

4. For these reasons, Otsego 2000 made the decision to oppose the proposed expansion of the compressor station and the New Market Project and intervened in the Certificate proceedings before FERC. We demanded significant mitigation if the project were allowed to proceed. On behalf of Otsego 2000, I assisted in the preparation of scoping comments in 2014 and attended scoping hearings. I also participated in meetings with the New York State Department of Environmental Conservation (DEC”), met directly with Dominion to discuss our concerns, and gave testimony and filed comments at meetings and hearings of the Minden Town Board, Minden Planning Board, Montgomery County Board, Montgomery County Planning Board, and other local governing boards in the region. See Declaration of Keith Schue, filed herewith, describing the filings prepared and meetings attended on behalf of Otsego 2000 in which I participated. I adopt and incorporate the facts stated in the Schue Declaration by reference, as though fully set forth herein.

5. On April 28, 2016, despite Otsego 2000’s efforts, FERC granted a Certificate for the New Market Project without requiring any of the mitigation we



urged be adopted. Thereafter I participated in Otsego 2000's efforts to secure rejection or modification of air quality permits under the jurisdiction of the DEC and participated in the drafting of submissions to the DEC and meetings with DEC staff on this issue. I also worked on preparation of the Request for Rehearing and a Stay of construction before FERC. The Request for Rehearing was filed on May 31, 2016. FERC stayed consideration of the Request for Rehearing and allowed construction to commence. The Request for Rehearing was denied almost two years later, on May 18, 2018, after the project was completed.

6. When it became apparent that our efforts to stop the project or secure needed mitigation might fail, Otsego 2000 began to document baseline conditions at the site for air quality and noise levels, purchased equipment to conduct air monitoring, installed air monitors, and undertook to develop health histories of the families in the study program. The effort to document changes from the baseline, as the expanded facility has been put in operation, is now ongoing. See Declaration of Julie Huntsman, DVM, filed herewith, describing the extensive work done by Otsego 2000 to document baseline air quality and health status of nearby residents both before the expanded facility was placed in operation and continuing. I adopt and incorporate the facts stated in Dr. Huntsman's Declaration by reference, as though fully set forth herein.

7. The work to oppose the project and develop mitigation measures also required the direct expenditure of significant funds by Otsego 2000 in addition to the hours devoted and expenses incurred as a result of this effort by our Board members and consultants. This included the retention of an air emissions expert, noise experts and landscaping experts, and the purchase of air quality monitoring equipment. See the Declaration of Ellen Pope, Executive Director of Otsego 2000, filed herewith. I adopt and incorporate by reference the facts stated in the Pope Declaration by reference, as though fully set forth herein.

8. During the last four years, Otsego 2000 called on me to take on significant responsibilities in the effort to oppose this project. The time devoted to this project by me placed a heavy burden on our organization and undermined our organization's ability to pursue many other programs and goals. We are a small, local organization with limited financial support. The value of the work volunteered by our Board members, officers, and consultants cannot be duplicated or paid for through outside sources and is a huge drain on an organization such as ours.

9. I estimate that I personally spent approximately 350 hours supporting Otsego 2000's efforts to oppose the New Market Project and develop mitigation strategies before FERC granted the Certificate. I estimate that since April 28, 2016, when the project received FERC approval, I spent approximately another 350 hours assisting in the preparation of the Petition for Rehearing, in efforts to oppose the



issuance of air permits, and secure local Planning Board action to stop or mitigate the project. In addition, I spent an additional 20 percent of my time supervising the work of our volunteers and staff engaged in this effort and coordinating with other organizations, including Mothers Out Front, who opposed the project, for an additional 140 hours. Lastly, I personally incurred travel expenses, printing costs, telephone, and postage costs, which I spent on this project and which reduced other contributions I could have made to Otsego 2000, in the sum of at least \$1,300.

10. A favorable ruling by this Court, vacating the Certificate, and requiring FERC to evaluate the full scope of upstream and downstream climate impacts and public health impacts of this project and/or requiring more stringent mitigation measures would relieve Otsego 2000, me personally, our Board members, consultants, staff and volunteers, of the ongoing time and resource investment required to continue this effort.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge.

Executed at: *Carpenterstown, New York*

Dated: *July 14, 2018*

  
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Nicole A. Dillingham, J.D.

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<b>COMMISSION,</b>	)	
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<b>Respondents.</b>	)	
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**28 U.S.C. §1746 DECLARATION OF KEITH SCHUE  
IN SUPPORT OF STANDING**

My name is Keith Schue. I am over the age of 18, competent to testify and have personal knowledge of the facts set forth in this declaration. Under penalty of perjury, I declare the following:

1. I reside in Cherry Valley, Otsego County, New York. I have bachelor and master degrees in electrical engineering, in the past worked for The Nature Conservancy on environmental conservation, and presently volunteer my time with environmental organizations, focusing largely on energy issues.

2. I first became involved with Otsego 2000 in 2012 as a volunteer in the preparation of technical comments on potential harm associated with high-volume hydraulic fracturing in New York State. Since then, I have provided professional comments for Otsego 2000 on many aspects of energy planning and regulation at both the state and federal level. I have also researched and prepared comments for Otsego 2000 on specific natural gas infrastructure projects. I contribute by volunteering time, money, and in-kind donation of materials.

3. I understand that Otsego 2000's mission is to protect the environmental, scenic, agricultural, and historic values of central upstate New York, including the Leatherstocking region, Mohawk Valley, and Catskill foothills. Natural gas infrastructure threatens these values with land, ecosystem, air and water quality, public health, and noise impacts. It also exacerbates human-induced climate change by the production of greenhouse gases that can alter growing seasons, precipitation patterns, and crop viability; proliferate pests and disease; disrupt ecosystems; and degrade quality of life. This relationship between human actions and the natural world interests me professionally. It also concerns me personally since upstate New York is where I have chosen to live, and poor energy decisions threaten our planet's future.

4. I first learned of Dominion Gas Transmission's New Market Project in August, 2014 from residents concerned with the proposed construction of a 10,880 horsepower compressor station in Madison County, NY. Upon further investigation, I

came to understand that the Madison County facility was one part of the proposed New Market Project, which included the construction or expansion of facilities at multiple locations along the Dominion pipeline to enable the daily transport of 112,000 dekatherms of additional natural gas (over 100 million cubic feet) into New York State. Among these facilities was the Brookman Corners compressor station in the town of Minden, NY that was proposed for expansion to become an 18,643 horsepower facility with interconnection to the Iroquois Pipeline.

5. The Brookman Corners compressor station is located approximately five miles from Otsego County and the Town of Cherry Valley where I live. Because the facility and project is located within the region that Otsego 2000 operates, I recommended that Otsego 2000 intervene as a party in the FERC proceeding (CP14-497), which it did on October 24, 2014.

6. My initial work in this proceeding involved the preparation of scoping comments on behalf of Otsego 2000. I testified at public scoping meetings on October 8, 2014 and November 20, 2014, both in Madison County. I also drafted scoping comments for Otsego 2000 that were submitted in December 2014, along with supplementation scoping comments that were submitted in January 2015. Relating to this, I also drafted a letter requesting that additional scoping hearings be scheduled since the first one was poorly advertised and administered. During the end of 2014, I encouraged several towns in Montgomery County, Otsego County, and Schoharie County to adopt resolutions



requesting that FERC hold additional scoping hearings within impacted communities and prepare a full Environmental Impact Statement.

7. Following the scoping process, I began to comprehensively study various aspects of Dominion's project, with particular focus on the compressor station at Brookman Corners. This included research and analysis of proposed development and facility expansions, anticipated air pollution and potential public health impacts, potential increases in greenhouse gas emissions including carbon dioxide from combustion and methane from venting and leakage, noise and light pollution, water quality, wildlife species that could be adversely impacted, and safety issues. This also required that I review relevant federal, state, and local rules and regulations. In addition, I researched and analyzed mitigation measures to eliminate or reduce harm, such as design alternatives, better emission controls, practices to reduce pollution and natural gas leakage, noise and light mitigation, and landscape buffers.

8. Otsego 2000 additionally sought the assistance of consultants with specific expertise, so I helped to coordinate those services and assisted in the documentation of findings. This included coordination and review of material prepared by a dispersion modeling consultant during the summer of 2015, as well as a noise consultant and landscape planner during the spring of 2016.

9. Prior to FERC's issuance of a certificate, I met on several occasions with the NYS Department of Environmental Conservation (DEC), which has air permitting

authority for the project. On March 6 and March 18 of 2015, I and other Otsego 2000 representatives met with DEC staff involved in the issuance of air permits for the compressor station at Brookman Corners and two other sites associated with the project. On December 4, 2015, I met with the DEC Deputy Commissioner of Air Quality and Climate Change, DEC permitting staff, and DEC legal counsel. On March 23, 2016, I met with the Deputy Community Commissioner of Air Quality and Climate Change again to discuss methane capture technology.

10. Prior to FERC's issuance of a certificate, I frequently attended and presented information on behalf of Otsego 2000 at public meetings of the Town of Minden governing board and planning board about the Brookman Corners expansion project, its potential impacts, alternatives, and opportunities for mitigation. Between September and November of 2015, I also encouraged Montgomery County and nearby towns to adopt resolutions that called for maximum mitigation of impacts and independent analysis of design objectives, air models, and safety. On April 11, 2016, I provided formal testimony on behalf of Otsego 2000 at the first of two public hearing by the Town of Minden planning board to consider a special use permit and site plan for the Brookman Corners compressor station.

11. On December 18, 2015, I and other representatives of Otsego 2000 met with Dominion Gas Transmission to discuss our concerns with the project, but agreement regarding appropriate mitigation was not achieved.

12. From the outset, community outreach to inform the public about Dominion's project and Otsego 2000's concerns was an important part of my work. This required coordination with Mohawk Valley Keeper (whose spokesperson is John Valentine), communication with affected residents including the substantially Amish community that surrounds Brookman Corners, and communication with individuals and organizations elsewhere along the pipeline corridor and around the state. I attended community meetings, gave public presentations, and prepared material for distribution in person and through various media. During late 2014 and early 2015, I also assisted individuals and organization to intervene in the CP14-497 proceeding.

13. Early in 2015, Otsego 2000 realized that independent air quality and public health data should be collected to document current conditions and assess future impacts if expansion of the Brookman Corners compressor station were to be approved. Julie Huntsman, a board member of Otsego 2000, worked with two research groups that obtained grants to pursue air quality monitoring at properties surrounding the compressor station. One research group collected hydrocarbon samples during the summer of 2015 using passive chemical detectors. A portable meteorological station was also installed. The other research group collected real-time data on particulate matter during the fall of 2015 using small electronic monitors that require electricity. Because several participating land owners were Amish or Mennonite farmers without electricity, Otsego 2000 purchased a set of custom-made solar power supply stations. I worked with a local

solar installer to develop the systems for Otsego 2000 and assisted Julie Huntsman in their deployment. The second research group also coordinated with a local nurse practitioner to conduct a health survey of families in the area.

14. During the summer of 2015, I coordinated with a non-profit center to conduct water quality sampling of Otsquago Creek, which abuts the Brookman Corners compressor station site.

15. On April 28, 2016, I was disappointed to learn that despite effort by Otsego2000, FERC granted a certificate for the New Market Project.

16. Otsego 2000 decided to seek rehearing of the FERC certificate. I reviewed the FERC order granting certification, assessed its deficiencies, and provided input on content for the rehearing request, informed by research and analysis that I had conducted since 2014. The rehearing request was filed on May 31, 2016.

17. The Commission did not rule on Otsego 2000's rehearing request until May 2018. While the rehearing request was pending, Otsego 2000 continued to take steps to challenge the Dominion New Market Project and Brookman Corners compressor station expansion in other proceedings.

18. On May 9, 2016 I testified and presented material on behalf of Otsego 2000 during the second of two public hearings held by the Town of Minden Planning Board to consider a special use permit and site plan for expansion of the Brookman Corners compressor station. During this hearing the Planning Board also decided to forward the

project to Montgomery County for review. I testified and presented material on behalf of Otsego 2000 during the Montgomery County Planning Board hearing which occurred on May 26, 2016. The Town of Minden Planning Board approved a special use permit and site plan for the Brookman Corners compressor station on August 29, 2016. 19.

During the 2016 timeframe, I also prepared information that was submitted by or with Otsego 2000 to the Governor, DEC, NYS Attorney General, Public Service Commission, and State Comptroller regarding safety issues with increased gas flow through the Dominion pipeline and inaccurate or misleading information supplied by Dominion in its analysis of noise. I also assisted in the coordination of professional independent noise measurements around the Brookman Corners compressor station.

20. In July of 2016, the New York State DEC initiated a public review process for draft air state facility permits associated with the Dominion New Market Project, including the Brookman Corners, Sheds, and Horseheads compressor stations. Citing evidence of public notice irregularities, I submitted letters requesting an extension of time and public hearings, which were granted. Otsego 2000 submitted comments jointly with Mohawk Valley Keeper, Madison County Neighbors for Environmental Preservation, and Mothers Out Front. I was the lead preparer of those comments and the package of material submitted which brought together technical information, expert analysis, input from affected parties, and legal analysis from attorneys who volunteered their time. I also testified on behalf of Otsego 2000 at public hearings that were held in Corning, NY on

August 30, 2016 and in Canajoharie, NY on September 1, 2016. Air permits were issued by DEC on December 23, 2016. Following this, evidence was found that public comments had not been properly collected and considered, so I helped prepare letters and material submitted by Otsego 2000 and others documenting this problem and requesting that the permits be rescinded.

21. In January 2017, FERC submitted a request for substantial variances simultaneously with a request for a Notice to Proceed. I prepared letters and material objecting to this that were submitted by or with Otsego 2000 and others to FERC, the Governor, DEC, and NYS Attorney General. During this process, I also found significant flaws in the Stormwater Pollution Prevention Plan for the Brookman Corners expansion project, which I analyzed and submitted.

22. On May 18, 2018, FERC issued an order denying Otsego 2000's request for rehearing of the Dominion New Market Project that included an improper and illegal announcement that FERC would not evaluate the upstream or downstream greenhouse gas impacts of pipeline projects. Delaware Riverkeeper Network prepared a letter that was signed by Otsego 2000 and numerous organizations from across the county objecting to this action. I also prepared a letter which was submitted to the Governor and NYS Attorney General on behalf of Otsego 2000, Delaware Riverkeeper Network, and Mothers Out Front.



23. As a direct result of FERC's approval of the Brookman Corners compressor station expansion, Otsego2000 has called on me to take on additional responsibilities in an attempt to mitigate the compressor station's impacts and address health impacts. After the certificate was issued by FERC, I pursued the actions described above in an effort to prevent the project from moving forward or at least compel Dominion to modify the project consistent with comments that had been provided by Otsego 2000, for example by installing more effective emission controls, noise dampening, better landscape buffers, or other measures that could reduce harm. Already this summer I have had to help plan for and assist in the continued monitoring of air quality surrounding the Brookman Corners site, coordinating with surrounding land owners and research groups.

24. Otsego 2000's role in both the FERC proceeding and in addressing impacts of the New Market Project has placed a significant burden on my time.

25. Between October 2014 and April 2016, I estimate that I spent approximately 1500 hours supporting Otsego 2000's efforts to oppose the New Market Project before FERC and other regulatory proceedings.

26. As I mentioned earlier, even after FERC granted a certificate for the New Market Project, my volunteer work continued. I estimate that since April 28, 2016 when the project was approved, I spent approximately 30 hours assisting with preparation of the rehearing request and 1000 hours on research and other activities identified in Paragraphs 17 - 23 (describing post-certificate approval activities).

27. Because I have had to devote significant time to opposing the Dominion New Market Project and Brookman Corners compressor station expansion, I have been unable to give much time to other activities in support of Otsego 2000's mission, such as encouraging the development of clean renewable energy alternatives, developing climate mitigation strategies applicable to the region, advocating for sustainable land use and development, or protecting environmental, scenic, and historically valuable sites. These are activities with which I have some experience, enjoy, and could have potentially pursued as a volunteer with Otsego 2000. I was also unable to spend much time on other gas infrastructure related threats to the region.

28. In addition to volunteering my time, I have incurred significant monetary expenses. I estimate these as follows:

Printing (paper and ink cartridges)	\$2000
Professional copies	\$300
Postage	\$300
Travel @ 14 cents/mile	\$200
Miscellaneous supplies	\$100
TOTAL	\$2900

29. As the Dominion pipeline carries more gas and the operation of compressors, fans, and other equipment at the Brookman Corners compressor station increases, I

anticipate that Otsego 2000's work and my work as a volunteer will increase. I believe Otsego 2000 will need to commit to continued air quality monitoring and health surveys for many years in order to effectively document and assess changes. I also expect that the duration and scope of air quality monitoring will have to increase. This will likely require dedicated funding and perhaps involve paid staff. Otsego 2000 may also need to invest in a permanent air monitoring station and meteorological station capable of continuous sampling of pollutants. I expect that independent noise measurements will have to be repeated at Otsego 2000's expense as well. These investments and activities will require coordination either by me, other volunteers, or staff of Otsego 2000.

30. A favorable ruling by the court either vacating the FERC certificate entirely, or requiring FERC to evaluate the full scope of impacts on air quality, downstream and upstream greenhouse gas emissions, public health and safety, and to adopt more stringent mitigation measures would relieve Otsego 2000 -- and me personally -- of the ongoing time and resource investments required to attempt to reduce the impacts of this project.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge.

Executed at: *Cherry Valley, NY*

Dated: *7/14/18*

  
\_\_\_\_\_  
Keith Schue

**FILINGS PREPARED BY OR WITH KEITH SCHUE  
ON BEHALF OF OTSEGO 2000**

- Otsego 2000 letter to FERC requesting additional scoping hearings; 10-16-14
- Otsego 2000 Motion to Intervene; 10-24-14
- Keith Schue Motion to Intervene; 12-2-14
- Otsego 2000 scoping comments to FERC; 12-3-14
- Otsego 2000 supplemental scoping comments to FERC; 1-13-15
- Otsego 2000 letter to DEC regarding Otsquago Creek and water quality; 3-6-15
- Otsego 2000/Mohawk Valley Keeper presentation to Minden Planning Board; 3-9-15
- Otsego 2000 letter to DEC regarding air pollution and mitigation measures; 3-19-15
- Otsego 2000 letter to Governor, DEC Commissioner, and NYS Department of Health Commissioner regarding impacts and mitigation measures; 3-24-15
- Otsego 2000 letter to FERC regarding impacts and mitigation measures; 4-15-15
- Otsego 2000/Mohawk Valley Keeper Presentation to Minden Town Board; 6-18-15
- Review of Dispersion Modeling for Otsego 2000 by Egan Environmental; 7-6-15
- Mohawk Valley Keeper letter to Town of Minden regarding town consultant scope of work; 8-6-15
- Otsego 2000/Mohawk Valley Keeper Presentation to Montgomery County Legislature; 8-24-15

- Otsego Comments to FERC on Environmental Assessment by FERC; 11-18-15
- Otsego 2000 letter to NYS-DEC Commissioner; 1-11-16
- Memo regarding Slip-Stream natural gas vapor recovery technology; 2-2-16
- Mohawk Valley Keeper letter to Minden Planning Board regarding unresolved issues; 3-14-16
- Otsego 2000 Preliminary comments to NYS-DEC on Brookman Corners Air Permit; 3-30-16
- Joint letter by Otsego 2000, Mohawk Valley Keeper, and Madison County Neighbors for Environmental Preservation to NYS-PSC regarding Dominion pipeline safety issues; 4-6-16
- Brookman Corners Landscape Plan for Otsego 2000 by Walker Planning & Design; 4-7-16
- Otsego 2000 Testimony on Noise Issues by Nicole Dillingham with report by E-Coustic Solutions; 4-11-16
- Mohawk Valley Keeper letter to Minden Planning Board on unresolved issues; 4-11-16
- Otsego 2000 letter to Town of Minden regarding response by Dominion to public hearing comments; 5-9-16
- Joint letter by 94 organizations to NYS Comptroller calling for independent inspection and analysis of New Market Project safety issues; 5-9-16
- Otsego 2000 comments to Montgomery County Planning Board on Special Use Permit for expansion of the Brookman Corners compressor station; 5-24-16
- Otsego 2000 testimony by Nicole Dillingham to Minden Planning Board on Dominion noise measurements; 7-11-16

- Letter from residents to NYS Attorney General regarding false or misleading information by Dominion on compressor station noise; including independent noise assessment by Aurora Acoustic; 7-14-16
- Otsego 2000 letter to DEC requesting extension of comment period and public hearings on New Market Project air and water permits; 7-21-16
- Otsego 2000 letter to DEC regarding due process flaws in air state facility permit notices; 8-1-16
- Otsego 2000 letter to Minden Planning Board Chairman in response to Dominion letter on Aurora Acoustic analysis; 8-12-16
- Joint letter by Otsego 2000, Mohawk Valley Keeper, and Madison County Neighbors for Environmental Preservation to NYS-PSC requesting investigation of safety and leakage of Dominion Pipeline; 8-15-16
- Otsego 2000 letter by Nicole Dillingham to Minden legal counsel regarding Dominion response to noise analysis by Aurora Acoustical; 8-15-16
- Joint comments by Otsego 2000, Mohawk Valley Keeper, Madison County Neighbors for Environmental Preservation, and Mothers Out to DEC on New Market Project air state facility permits; 9-12-16
- Joint letter by 90 organizations requesting that DEC deny New Market Project air state facility permits; 9-12-16
- Otsego 2000 letter to DEC regarding temporarily posted air permits and supplemental comments; 12-30-16
- Joint letter by Otsego 2000, Mohawk Valley Keeper, Madison County Neighbors for Environmental Preservation, and Mothers Out Front to DEC Commissioner documenting failure to consider public comments and requesting that air permits for New Market Project be rescinded; 1-25-17
- Joint letter by 69 organizations to Governor and DEC Commissioner requesting that air permits for New Market Project be rescinded; 1-25-17
- Otsego 2000 letter to DEC regarding response to improper review of public comments; 1-31-17

- Joint letter by Otsego 2000, Mohawk Valley Keeper, Madison County Neighbors for Environmental Preservation, and Mothers Out to Front to Governor and DEC Commissioner regarding substantial variances and Notice to Proceed; 2-2-17
- Joint letter by Otsego 2000, Mohawk Valley Keeper, Madison County Neighbors for Environmental Preservation, and Mothers Out to FERC objecting to substantial variances and Notice to Proceed; 2-2-17
- Otsego 2000 letter to Governor, DEC Commissioner, and NYS Attorney General regarding Brookman Corners compressor station water quality issues and inadequate Stormwater Pollution Prevention Plan; 3-9-17
- Otsego 2000 letter to FERC regarding New Market Project water quality issues and inadequate Stormwater Pollution Prevention Plan for Brookman Corners compressor station; 3-11-17
- Joint letter by Otsego 2000, Delaware Riverkeeper Network, and Mothers Out Front regarding improper policy announcement to not consider greenhouse gas impacts in order denying rehearing of New Market Project; 6-19-18





am now Secretary of the Board of Directors and Chair of its Environmental Stewardship Committee.

2. I have been involved in outreach and educational efforts on the issue of high volume hydro-fracking and its attendant environmental and health hazards since 2010. The environment and human and animal health are inextricably linked; therefore, this involvement came naturally to me and is consistent with my professional training to safeguard animal and public health.

3. I became aware of the planned expansion of the compressor station at Brookman Corners in Minden, New York, in the fall of 2014, while I was an elected Councilwoman serving on the Otsego Town Board. Due to the scope of the proposed expansion, the lack of advanced pollution controls, and the unique topography at the site which hampers dispersion of harmful emissions, I prepared a draft "template" of a resolution opposing the project. The grounds for opposition to the project were the likelihood of degradation of regional air quality and its effects on crops, animals, and people. My draft resolution or a similar version was adopted by the Otsego Town Board and that of seven other regional municipal entities including the towns of Cherry Valley, Roseboom, Springfield, Middlefield, Sharon Springs, Ulysses, and Montgomery County.

4. I soon realized the importance of gathering baseline air quality and health data prior to the expansion of the compression station. I reached out to a research group, the Southwest Pennsylvania Environmental Health Project ("EHP") which works closely

with Dr. David Carpenter of the School of Public Health at SUNY-Albany. I urged EHP to make the community around Brookman's Corner one of their study sites, and recruited eight families living near the site to be participants. I explained the monitoring plan to the Otsego 2000 Board, which authorized the purchase of eight additional particulate matter monitors (Speck monitors) which enabled monitoring at the eight sites.

5. From late spring 2015 through the fall of 2016, I worked to gather data regarding the indoor and outdoor air quality at the eight study sites. I also recruited a nurse practitioner to assist me in completing a health questionnaire with respect to every family member at each site. I made many repeated visits to the study families homes over these months, each trip approximately a 60-mile roundtrip. All of this time and travel expense was donated by me, as a board member of Otsego 2000.

6. In addition, three of the study families are Amish or Mennonite and lacked household electricity, which the Speck monitors required. This involved working with a local solar provider to design a battery apparatus powered by solar panels to provide the needed electricity for the monitoring. I worked closely with Otsego 2000 Technical Advisor and engineer Keith Schue in setting up these systems at these three households.

7. I also helped Otsego 2000 prepare its comments to FERC with respect to concerns for the health of the nearby community prior to the issuance of the Certificate. Additionally, along with Mr. Schue and Otsego 2000 Board President, Nicole



Dillingham, I met with representatives of Dominion to urge the company to incorporate the best possible pollution controls at the expansion site.

8. On April 28, 2016, FERC granted a Certificate for the New Market Project rejecting the necessary mitigation which we had urged. I participated in the preparation of a Petition for Rehearing and Request for Stay on behalf of Otsego 2000 and the Valentines, filed on May 31, 2016.

9. While our Rehearing Petition was pending for almost two years, Otsego 2000 continued its efforts to try to reduce the impacts of the compressor station. I prepared and submitted a letter to the New York DEC from medical professionals concerned about this project's air impacts. I also testified at the public hearing on the draft air permit in Canajoharie, New York, in September 2016. Again, all of this time and effort was donated.

10. Between the fall of 2014 and May of 2018, I estimate that I spent approximately 400 hours of time and drove approximately 2,400 miles supporting Otsego 2000's efforts to oppose the project: recruiting and meeting with community members enrolled in the EHP study, setting up air monitoring equipment, engaging with EHP researchers, preparing comments to FERC and the DEC, preparing testimony for County and Town Boards, and meeting with state and federal representatives. None of this time or expense was compensated.

11. Otsego 2000's work regarding this project remains ongoing. I am now involved in post-construction air and health monitoring. I arranged a community meeting in Minden in May 2018 to begin this process with the participating families. Again, the air monitoring for the Amish and Mennonite families requires the set-up of solar panels and the battery installation to provide power for the monitors. This will be a multi-year continuing effort on behalf of Otsego 2000 which I will lead.

12. There is no doubt that the time and resources I dedicated to opposing this project and will continue to expend working to mitigate its impacts could have been spent on other initiatives on behalf of Otsego 2000. As one example, the development of renewable energy initiatives is of paramount importance to our region and organization. Working to facilitate adoption of these technologies is crucial work that is now lagging, due to the time and resources consumed in working to stop and/or mitigate the impacts of the New Market Project.

13. The Brookman Corners expanded compressor station is now operational, but not yet at full capacity. It is not clear whether the compressor station will be operated at maximum capacity for longer and longer periods, perhaps constantly, thereby emitting even more pollutants. Otsego 2000 must continue to monitor emissions at the site and potential health impacts. This will require further expenditure of Otsego 2000's time and resources.

14. A favorable ruling by the Court either vacating the Certificate, or requiring FERC to evaluate the full scope of impacts on air quality, health, and climate change and requiring Dominion to adopt more stringent mitigation measures would be enormously helpful. The best medicine is preventative. Requiring the installation of the most up-to-date pollution control measures, which Dominion refused to do, would help to alleviate the ongoing time and resource commitments for Otsego 2000.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge.

Executed at: *Fly Creek, NY.*

Dated: *7/12/18*

*Julie Huntsman, D.V.M.*

Julie Huntsman, DVM



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

<b>OTSEGO 2000 <i>et. al.</i>,</b>	)	
	)	
<b>Petitioners</b>	)	<b>Docket No. _____</b>
	)	
<b>v.</b>	)	
	)	
	)	
<b>FEDERAL ENERGY REGULATORY</b>	)	
<b>COMMISSION,</b>	)	
	)	
	)	
<b>Respondents.</b>	)	
_____	)	

**28 U.S.C. §1746 DECLARATION OF JOHN VALENTINE**

**IN SUPPORT OF STANDING**

My name is John Valentine. I am over the age of 18, competent to testify and have personal knowledge of the facts set forth in this Declaration. Under penalty of perjury, I declare the following:

1. I reside at 244 Maple Avenue, Smithtown, New York, 11787.
2. My wife, Maryann Valentine, and I are owners of a historic, 198-acre farm and residence known as Slate Creek Farm, located at 1059 State Highway 80, Fort Plain, New York, 13339. Our farm and home directly abuts the Brookman Corners Compressor

Station, owned and operated by Dominion Transmission, Inc. As part of its New Market Project, Dominion proposed to expand an existing compressor station at this location by 11,000 horsepower, converting it to an 18,600 horsepower facility with the addition of three additional compressor units, three additional smokestacks, enlarged coolers, and other equipment.

3. Our Slate Creek Farm property, including the farm, residence, and outbuildings, are listed on the National and New York State Registries of Historic Places. In addition, the property is located in the Erie Canalway National Heritage Corridor and the Mohawk River basin, near hundreds of national and state-recognized historic sites. The farm is proudly operated as a certified organic farm. It is surrounded by other farms, many operated by Amish families, with several Amish schools in the immediately surrounding area. It is about 5 miles from Otsego County, home to Cooperstown, New York, and 6 miles to the Mohawk River at Fort Plain.

4. Dominion's compressor station expansion will severely and adversely impact our historic property and farm, and the surrounding region. The presence of the expanded industrial facility in this historic, bucolic setting will create an eyesore and a threat to health.

5. The expansion of the compressor station directly impacts the value and enjoyment our property. For this reason, we intervened in the Certificate proceeding

before the Commission. We opposed the expansion of the compressor station, and asked the Commission to require additional mitigation measures to protect our historic property if the project were allowed to proceed. The Commission ignored our comments and granted the Certificate without any of the necessary mitigation measures we sought.

6. In May 2016, we agreed to join Otsego 2000 in filing a Request for Rehearing of the Commission decision. The Rehearing Request raised our concerns about the project, including excessive noise, vibrations, hazardous air emissions, and negative impacts on climate change that harm both our property and the surrounding region.

7. The Rehearing Request plainly states that it was filed on our behalf.

8. I declare, under penalty of perjury of the laws of New York, that the foregoing Declaration is true and accurate to the best of my knowledge.

Executed at: 1059 State Highway 80 Ft Plain N.Y.  
13339

Dated: 07-12-2018

  
John Valentine



Attachment 2  
NY AG Letter



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

BARBARA D. UNDERWOOD  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
ENVIRONMENTAL PROTECTION BUREAU

July 10, 2018

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: *Dominion Transmission, Inc.*, Docket No. CP14-497-001  
Order Denying Rehearing issued May 18, 2018

Dear Ms. Bose:

On May 18, 2018, the Federal Energy Regulatory Commission (FERC), by a 3-2 vote, issued an Order Denying Rehearing of a certificate of public convenience and necessity issued to Dominion Transmission, Inc. pursuant to Natural Gas Act § 7(c). *See* 163 FERC ¶ 61,128 (the Rehearing Denial). The majority opinion announced a sudden and unprompted departure from FERC's practice of evaluating the environmental impact of downstream greenhouse gas emissions from natural gas infrastructure projects, and announced a new policy of not evaluating upstream or downstream greenhouse gas emissions in the vast majority of cases. The Rehearing Denial is procedurally and substantively wrong, and FERC should not adhere to it in the future.

**I. The Rehearing Denial Announced a Major Policy Change in a Manner Designed to Frustrate Judicial Review**

The Rehearing Denial announced a major policy change on an issue of nationwide concern in a context that makes it virtually impossible to review. The FERC majority concluded that it was not required to evaluate upstream or downstream greenhouse gas emissions caused by the project as cumulative impacts pursuant to the National Environmental Policy Act (NEPA), because such emissions were not “reasonably foreseeable” project effects and would not be limited to the precise “geographic scope” of the project. *Id.* at ¶¶30-41. The FERC majority then noted that “[n]o party” raised the issue of indirect upstream or downstream greenhouse gas emissions. 164 FERC ¶61,128, at ¶41. Nonetheless, the FERC majority took a further step – completely unnecessary to resolving the rehearing petition at issue – by ending its policy of quantifying downstream greenhouse gas emissions for *future* projects. *Id.* at ¶¶ 41-44. The Rehearing Denial also announced a cramped understanding of FERC's obligation to evaluate upstream greenhouse gas emissions, making it unlikely that FERC will evaluate such emissions in future proceedings. *Id.* at ¶¶37-38.

The Rehearing Denial announced a policy change with far-reaching ramifications. As one of the dissenting FERC Commissioners put it, “the majority has decided as a matter of policy to remove, in most instances, any consideration of upstream or downstream impacts associated with a proposed project.” 163 FERC ¶ 61,128, Dissent of Commissioner LaFleur, at 3. Indeed, the same FERC majority has already relied on the Rehearing Denial in justifying its refusal to consider the impacts of greenhouse gas emissions in the Mountain Valley Pipeline proceeding. *See* Order on Rehearing, *Mountain Valley Pipeline, LLC*, Docket Nos. CP16-10-001, CP16-13-001, 163 FERC ¶61,197, at ¶271 n.740.

By interjecting and resolving an issue that no one raised, the Rehearing Denial appears designed to avoid judicial review of the FERC majority’s decision. Only one party sought rehearing of the FERC certificate of public convenience and necessity at issue. 163 FERC ¶ 61,128, ¶1. Accordingly, only that party – Otsego 2000, Inc. – can seek judicial review of the Rehearing Denial under Natural Gas Act § 19(b). *See* 15 U.S.C. §717r(b). Otsego 2000, Inc. represents just one set of interests. The State of New York and others that will be affected by the policy change have therefore had their rights to seek review of this broad policy change curtailed.

The State of New York has consistently taken the position that the environmental evaluation of the construction and operation of facilities and infrastructure designed to increase the supply of natural gas must take into account greenhouse gas emissions. In *Millennium Pipeline Company, L.L.C.*, FERC Docket No. CP16-17-001, the State declined to issue a Clean Water Act section 401 certification to the applicant until FERC re-opened its environmental review of the project to include an evaluation of downstream greenhouse gas emissions. *See* Motion for Reopening and Stay or, in the Alternative, Request for Rehearing and Stay (Aug. 30, 2017). FERC denied the State’s motion to reopen the environmental review without reaching the merits of the State’s position. *See* 161 FERC ¶61,194, ¶13. The Rehearing Denial appears to address the merits of the State’s request in *Millennium*, but in a manner that impairs the State from obtaining review.

Likewise, in *Transcontinental Gas Pipe Line Company, LLC*, FERC Docket No. CP17-101, DEC submitted a comment letter on FERC’s Draft Environmental Impact Statement, urging FERC to consider upstream and downstream greenhouse gas emissions. *See* DEC Comments on Draft Environmental Impact Statement, at 8-9 (May 14, 2018). DEC noted that upstream and downstream emissions were reasonably foreseeable effects of the construction of natural gas pipeline infrastructure. *Id.* With respect to downstream emissions, DEC also noted that such an evaluation appeared to be required by *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). Again, the Rehearing Denial here announced a policy change that directly impacts the *Transcontinental Gas Pipe Line* proceeding, but in a manner that restricts the State’s effective participation.

By unilaterally announcing a major policy change that affects the rights of States and members of the public in this manner, FERC has violated the Administrative Procedure Act (APA). FERC has improperly grafted a major policy change onto its fact-based resolution of a rehearing petition brought by just one party, thus minimizing the opportunity for affected parties to challenge – or even comment upon – the change. *See generally N.L.R.B. v. Bell Aerospace Co. Div. of Textron, Inc.*, 416 U.S. 267, 294-95 (1974) (noting that an agency’s discretion to announce a new policy in an adjudicatory hearing under 5 U.S.C. § 554 is limited). If FERC wishes to modify

its policy regarding upstream and downstream greenhouse gas emissions, it should do so with notice and an opportunity for comment under 5 U.S.C. § 553(b), as it has already tacitly acknowledged by raising the issue in its Notice of Inquiry regarding possible changes to FERC's Natural Gas Act certification procedures. *See* Notice of Inquiry, Docket No. PL18-1-000, 83 Fed. Reg. 18,020, 18,032.

## **II. Upstream and Downstream Greenhouse Gas Emissions from Natural Gas Facilities Are Reasonably Foreseeable Environmental Impacts under NEPA**

Not only is the Rehearing Denial procedurally improper, it is legally wrong. Federal courts have repeatedly held that increases to greenhouse gas emissions are a reasonably foreseeable environmental impact of projects dedicated to the production or transportation of fossil fuels. *See, e.g.,* Memorandum Opinion and Order, *San Juan Citizens Alliance v. U.S. Bureau of Land Management*, Slip Op. at 21-24, 2018 WL 2994406 (D. N.M. June 14, 2018) (collecting cases and concluding greenhouse gas emissions are reasonably foreseeable effect of oil and gas leases on federal land); *Montana Environmental Information Center v. U.S. Office of Surface Mining*, 274 F.Supp.3d 1074, 1097-99 (D. Mt. Aug. 14, 2017) (concluding greenhouse gas emissions are reasonably foreseeable indirect and cumulative effect of a coal mine expansion).

Just last year, the D.C. Circuit Court of Appeals rejected FERC's long-standing position that greenhouse gas emissions are not a reasonable foreseeable effect of the transportation of natural gas. *See Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). The Court concluded that it was reasonably foreseeable that natural gas transported by the project at issue would be burned in power plants "generating both electricity and carbon dioxide" and contributing to global climate change. *Id.* at 1371-72. The Court rejected FERC's arguments that (1) greenhouse gas emissions were outside of its control, (2) the quantity of emissions would be "impossible" to predict, (3) emissions would be partially offset by reductions elsewhere, and (4) other entities would regulate the power plants that would actually emit greenhouse gases. *Id.* at 1372-75. As noted by a dissenting Commissioner, the *Sierra Club v. FERC* decision "clearly signaled that [FERC] should be doing more as part of its environmental reviews." 163 FERC ¶ 61,128, Dissent of Commissioner LaFleur, at 3.

Notwithstanding the wealth of recent Court decisions holding that an evaluation of greenhouse gas emissions from fossil-fuel production and transportation projects is required under NEPA, the FERC majority in the Rehearing Denial refused to conduct such an evaluation. 163 FERC ¶ 61,128, ¶40. The FERC majority offered a variety of excuses for not conducting such an evaluation. *See, e.g.,* 164 FERC ¶61,128, ¶38 (declining to consider upstream greenhouse gas emissions because FERC "does not have more detailed information" regarding those emissions); *id.* ¶41 (asserting that greenhouse gas emission increases would not be "causally related to our action in approving the Project"). These are largely the same excuses considered and rejected by the D.C. Circuit in *Sierra Club v. FERC*.

### **Conclusion**

In the Rehearing Denial, the FERC majority announced a major policy shift and rejected recent judicial precedent in a manner designed to insulate that decision from judicial review.

Coming only a few weeks after FERC initiated an open-ended proceeding soliciting comments on how it should consider upstream and downstream greenhouse gas emissions in its review of pipeline applications, the Rehearing Denial suggests that the agency has pre-judged the outcome of that proceeding. *Compare* 83 Fed. Reg. 18,020, 18,032 (asking how FERC should consider upstream and downstream greenhouse gas emissions from natural gas projects), *with* 163 FERC ¶61,128, ¶¶38-40 (stating that FERC is not required to consider upstream or downstream impacts of the project). To preserve the integrity of the certification policy change proceeding, and mitigate the violation of the APA, FERC should disavow the majority opinion of the Rehearing Denial and limit the determination to the instant proceeding.

DATED: July 10, 2018  
Albany, New York

BARBARA D. UNDERWOOD  
Attorney General of the  
State of New York  
The Capitol  
Albany, NY 12224



By: \_\_\_\_\_  
Brian Lusignan  
Assistant Attorney General  
Environmental Protection Bureau  
(518) 776-2400



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

<b>OTSEGO2000 <i>et. al.</i>,</b>	)	
	)	
<b>Petitioners</b>	)	<b>Docket No.</b> _____
	)	
<b>v.</b>	)	
	)	
	)	
<b>FEDERAL ENERGY REGULATORY</b>	)	
<b>COMMISSION</b>	)	
	)	
	)	
<b>Respondents.</b>	)	
_____	)	

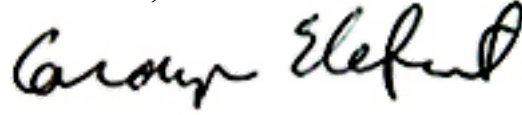
**RULE 26.1 CORPORATE DISCLOSURE FOR OTSEGO 2000**

Pursuant to Local Rule 15 of the D.C. Circuit Rules and Federal Rule of Appellate Procedure 26.1, Otsego2000, petitioners in the above captioned case submit this Corporate Disclosure Statement.

Otsego2000 is a is a not-for-profit organization founded in 1981 to ensure the Otsego Lake region remains a masterpiece of nature by protecting and supporting its environmental, scenic, cultural, historic, and agricultural resources and its economic wellbeing. Otsego2000 has no parent companies, and there are no publicly held corporations that have a ten-percent or greater ownership interest in Otsego2000.

Respectfully submitted,

LAW OFFICES OF CAROLYN  
ELEFANT, PLLC



By:

---

Carolyn Elefant  
1440 G Street NW, 8th Floor  
Washington D.C. 20037  
Phone: 202-297-6100  
carolyn@carolynelefant.com

July 16, 2018

## **CERTIFICATE OF COMPLIANCE**

I certify that the foregoing Petition for Review, Rule 26.1 Corporate Disclosure Statement and Declarations of Standing are in 14-point font and otherwise satisfy this Court's filing requirements.

Respectfully submitted,

*/s/Carolyn Elefant*

---

Carolyn Elefant  
LAW OFFICES OF CAROLYN ELEFANT  
1440 G Street N.W., Eighth Floor  
Washington D.C. 20005  
202-297-6100  
[carolyn@carolynelefant.com](mailto:carolyn@carolynelefant.com)

## CERTIFICATE OF SERVICE

I certify that on the 16th day of June 2018, I caused to be served the Otsego 2000 *et. al.* Petition for Review, Rule 26.1 Corporate Disclosure Statement and Declarations of Standing on the Solicitor, Federal Energy Regulatory Commission, 888 First Street NE, Washington D.C. 20426 and the parties listed on the attached service list.

Respectfully submitted,

*/s/Carolyn Elefant*

---

Carolyn Elefant  
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[carolyn@carolynelefant.com](mailto:carolyn@carolynelefant.com)