

STATE OF NEW YORK
SUPREME COURT : COUNTY OF MONTGOMERY

In the matter of the Application of OTSEGO 2000, INC.;
MOHAWK VALLEY KEEPER, by its President JOHN VALENTINE,
JOHN and MARYANN VALENTINE, Individually,

Petitioners,

For a Judgment Pursuant to Article 78 of the
New York Civil Practice Laws and Rules

VERIFIED PETITION

vs.

Index No. _____

THE PLANNING BOARD OF THE TOWN OF MINDEN,
NEW YORK; and DOMINION TRANSMISSION, INC.,

Respondents.

Petitioners, by their attorneys, LIPPES & LIPPES, Richard J. Lippes, Esq., of
counsel, and Nicole Dillingham, Esq., for their Verified Petition, respectfully allege and
state:

I. INTRODUCTION

1. Petitioners are commencing this special proceeding to challenge the actions of the Respondent Planning Board of the Town of Minden, which has approved the application of Dominion Transmission, Inc. to allow a large expansion of its existing compressor station located at Brookman Corners, in the Town of Minden, New York, by the grant of a special use permit and site plan approval. Petitioners allege that the approval of the expansion of the compressor station was done in violation of the New York State Environmental Quality Review Act, Environmental Conservation Law 8-0101 et. seq. (hereinafter cited as "SEQRA"), by not following the procedural and substantive

requirements of SEQRA. 1. 1. Petitioners also allege that in approving the project and granting a special use permit to Dominion Transmission, Inc., the Town of Minden Planning Board failed to correctly apply the Town of Minden's Zoning Law, and further, its approval of the project was contrary to the Comprehensive Plan of the Town of Minden. Because of these various violations, Petitioners seek to void the determination by the Town of Minden Planning Board to issue a negative declaration indicating there will be no adverse environmental consequences concerning the expansion of the compressor station, and void the grant of the special use permit in violation of the Town of Minden's Zoning Law and the Comprehensive Plan, and to obtain an injunction until such time as the Respondents fully comply with the laws at issue as more fully set forth herein.

II. PARTIES

2. Petitioner, Otsego 2000, Inc., is incorporated in the State of Delaware and is a 501(c)3 public charity registered and operating in New York State, located in Cooperstown, New York. Otsego 2000, Inc., has worked for more than 35 years to protect the historic, agricultural and environmental assets of Otsego County and surrounding areas. It is committed to the protection of agricultural and historic properties, air and water resources, and reduction of negative climate impacts. The proposed expansion of the Brookman Corners compressor station threatens agriculture and organic farming, historic sites, public health and tourism, all of which are crucial to the local economy and quality of life in the region.
3. In furtherance of its purposes, Otsego 2000, Inc. maintains that the Otsego Lake and Mohawk Valley region and the 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 dedicated stewardship of these resources. We advance our mission through informed advocacy, intelligent planning, public education, and development of sustainable economic alternatives.

4. Petitioner, Mohawk Valley Keeper, is an unincorporated association which represents approximately 100 families who own homes, farms, and land surrounding the Brookman Corners compressor station, including thousands of acres in the Town of Minden and neighboring areas of Montgomery, Herkimer, and northern Otsego Counties. The organization has a diverse membership that includes many Amish families. Over the years, its members have purchased fallow farms and redeveloped them into productive businesses. Mohawk Valley Keeper supports sustainable farm practices and certified organic operations that rely on clean air, water, and soil. The area has been identified by New York state and federal agencies for agricultural growth and agri-tourism and contains numerous designated historic sites, including property that directly abuts the Brookman Corners compressor station, known as Slate Creek Farm, which is listed on the State and National Registers of Historic Places. Mohawk Valley Keeper opposes Dominion's expansion of the compressor station due to its conflict with the rural, scenic, and historic character of the region and its serious threat to public health. It brings this proceeding on behalf of its members, who will be adversely affected by increasing toxic emissions, noise, light and other adverse effects, and whose members live nearby or next to the site of the proposed expansion project.

5. Petitioners, John and MaryAnn Valentine own Slate Creek Farm, located directly adjacent to the Brookman Corners facility. They are members of Mohawk Valley Keeper, and John Valentine is its President. They personally restored their home at Slate Creek Farm and secured listing of the property on both the State and National Registers of Historic Places. Their investment in their farm and home, and their health and quiet enjoyment of their environment is threatened by the compressor station expansion. They are concerned about increased toxic emissions from the compressor station, increased noise, increased lighting, and the effect that the compressor station will have on the quiet enjoyment of their property and the environment.
6. Respondent, the Town of Minden Planning Board, is located at 134 Highway 80, in Fort Plain, New York, and is the lead agency to undertake SEQRA compliance responsibilities. As such, it is responsible for assuring that the procedural and substantive mandates of SEQRA are carried out to the fullest extent practicable. After reviewing the Environmental Assessment Form and other documents, and after holding a public hearing, the Town of Minden Planning Board determined that there would be no significant adverse environmental effects caused by the expanded compressor station, and therefore determined that an environmental impact statement need not be drafted, as more fully described in this Petition.
7. Dominion Transmission, Inc., is a large energy transmission company headquartered at 120 Tredeger Street, in the City of Richmond, Virginia. It is the owner of the land upon which the proposed expanded compressor station is to be located, and will be

the owner and operator of the expanded compressor station. As such, it is a necessary party to this proceeding.

III. FACTS

A. BACKGROUND FACTS

8. Dominion Transmission, Inc., (hereinafter cited as “Dominion” or “DTI”), is a large energy transmission company. The proposed expanded compressor station is part of Dominion’s “New Market Project” to expand the carrying capacity of its existing 50-year old pipeline, spanning 200 miles across New York State, from the southern border of New York to Schenectady, New York. Dominion plans to increase the capacity of this pipeline to carry an additional 112,000 dekatherms of natural gas per day (over 100 million cubic feet per day). The gas will be extracted through the process known as hydraulic fracturing, or “fracking,” in Pennsylvania, West Virginia and Ohio. A connection is also proposed between the Dominion Pipeline and the Iroquois Pipeline, which intersects at Minden, to allow gas to be moved from the Dominion Pipeline to the Iroquois Pipeline to facilitate the future export of the gas to Canada. To accommodate the increased capacity, the project requires new and expanded facilities across six New York counties, including new compressor stations in Horseheads (Chemung County) and Sheds (Madison County), and the significant expansion of the existing compressor station in Brookman Corners (Montgomery County).
9. Dominion first applied for a permit to build a small 7,410 horsepower compressor station at Brookman Corners in the Town of Minden in 1999. The application for site plan review and SEQRA compliance indicated in 1999 that the project would have

minimal impact on community character and would not emit noxious or dangerous chemicals or noise.

10. The compressor station permitted in 2000 operates with a single gas-fired turbine and runs infrequently. Dominion reported that it operated only 10% of the time in the year 2015.

B. THE CURRENT EXPANSION PROPOSAL

11. As opposed to the small compressor station built in 2000 that operates only 10% of the time, the expansion now proposed by Dominion would more than double the output of the original compressor. The expansion would add a second turbine, two reciprocating engine compressors, and other equipment for a total of 18,543 horsepower and four exhaust stacks. The project would also create a connection to the Iroquois Pipeline, which will receive three quarters of the gas from Dominion's New Market Project. Since the Iroquois Pipeline operates at a higher pressure, this means that the reciprocating engines at Brookman Corners will need to run almost continuously to move gas from the lower pressure Dominion Pipeline to the higher pressure Iroquois Pipeline. Therefore, the project will expose surrounding residents and communities to much higher levels of pollutants and noise than the existing compressor station.

12. According to Dominion's application, the expanded Brookman Corners facility will pump 96,683 tons of greenhouse gas emissions into the air every year. This corresponds to nearly three times more greenhouse gas emissions than if the current

single-turbine compressor station ran continuously. However, since that turbine currently operates only 10% of the time, the proposed expansion represents almost a 30-fold increase. If all fugitive emissions, blowdowns, and other sources were taken into account, the facility would most certainly exceed the 100,000-ton per year major source threshold for greenhouse gas emissions.

13. Similarly, the emissions of pollutants harmful to human health are projected to be much higher than at the existing facility. Again, since the existing turbine operates only 10% of the time, volatile organic chemical (“VOC”) emissions could increase by two hundred times after the new equipment is installed. In fact, the expanded Brookman Corners station would be by far the most polluting of all of the compressor stations that are part of the New Market Project.

14. Dominion’s application for site plan approval was submitted to the Town of Minden Planning Board on April 30, 2015. On June 2, 2014, Dominion submitted an application to the Federal Energy Regulatory Commission (“FERC”) for a Certificate Granting Construction. At the same time, New York State Facility Air Permit Applications were submitted to the New York State Department of Environmental Conservation. These permits have not yet been issued. An Environmental Assessment was issued by FERC on October 20, 2015. An Order Granting Certificate for Construction was issued by FERC on April 28, 2016, conditioned on issuance of other permits including the New York State Department of Environmental Conservation Air Quality Permits.

15. A Motion for Reconsideration and Petition for Rehearing of Order Issuing Certificate was filed by Petitioners Otsego 2000, Mohawk Valley Keeper and John and

MaryAnn Valentine with FERC on May 31, 2016. This application remains pending.
No construction has yet commenced.

IV. LACK OF SEQRA COMPLIANCE

16. The Town of Minden Planning Board designated itself as the lead agency for SEQRA purposes. The lead agency is the agency responsible to ensure compliance with the procedural and substantive requirements of SEQRA.

17. According to the regulations promulgated pursuant to SEQRA:

“The basic purpose of SEQR is to incorporate the consideration of environmental factors into the existing planning, review and decisionmaking processes of state, regional and local government agencies at the earliest possible time. To accomplish this goal, SEQRA requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.” 6 NYCRR Part 617.1(c).

18. Further, the regulations indicate that:

“In adopting SEQR, it was the Legislature’s intention that all agencies conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.” 6 NYCRR Section 617.1(b)

19. The regulations contained at 6 NYCRR § 617.7 provide that an environmental impact statement must be prepared if the proposed action “may include the potential for at least one significant adverse environmental impact.” 6 NYCRR § 617.7(a)(1) [emphasis added].

20. Conversely, to determine that an EIS will not be required for an action, “the lead agency must determine either that there will be no adverse environmental impacts or

that the identified adverse environmental impacts will not be significant.” 6 NYCRR § 617.7(a)(2).

21. The first issue that must be decided by the lead agency is whether the action is a Type I action, an Unlisted action, or Type II action. As indicated in the regulations at NYCRR § 617.4(a):

“The purpose of the list of Type I actions in this section is to identify, for agencies, project sponsors and the public, those actions and projects that are more likely to require the preparation of an EIS than Unlisted actions. All agencies are subject to this Type I list.

(1) This Type I list is not exhaustive of those actions that an agency determines may have a significant adverse impact on the environment and requires the preparation of an EIS. However, the fact that an action or project has been listed as a Type I action, carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS. For all individual actions which are Type I or Unlisted, the determination of significance must be made by comparing the impacts which may be reasonably expected to result from the proposed action with the criteria listed in subdivision 617.7(c) of this Part.” 6 NYCRR 617.4(a)

22. In the instant action, the Planning Board correctly determined that the action is a Type I action, which carries the presumption of likely significant environmental consequences and the need to prepare an environmental impact statement.

23. The lead agency is required to apply a “hard look standard” in fulfilling its SEQRA responsibilities, which requires an agency to:

“(1) Identify all areas of environmental concerns and
(2) Take a ‘hard look’ at the environmental issues identified;
and
(3) Provide a reasoned elaboration for the decisions that are made, including whether or not to do an Environmental Impact Statement.” 6 NYCRR at 617(b)

24. There are a number of procedures that the Minden Planning Board undertook, which are contrary to the regulatory requirements of SEQRA.
25. First of all, while the applicant prepares Part I of the Environmental Assessment Form, in a Type I action a lead agency is required to prepare, review and analyze Part II of the Environmental Assessment Form. If there is any indication in Part II that particularly identified environmental concerns may have a large adverse consequence, the lead agency must then prepare Part III of the Environmental Assessment Form, analyzing the potential adverse environmental consequences that may ensue, and whether or not the environmental consequence would require an Environmental Impact Statement to be drafted. Part II and Part III of the Environmental Assessment Form must be prepared by the lead agency.
26. However, as was clear at the Minden Planning Board meeting of August 29, 2016, where the Negative Declaration was adopted (hereinafter cited as “Negative Declaration” and attached hereto as Exhibit A), both Part II and Part III of the final proposed Environmental Assessment Form were not actually prepared by the Planning Board as lead agency. Instead counsel for the Planning Board simply handed each Planning Board member the completed forms. Upon receiving the fully completed Part II and Part III forms and prior to their adoption, there was no discussion or questions offered by the members of the Planning Board, and the Negative Declaration was immediately approved by the Planning Board without any further review, analysis, questions, or any other consideration of the environmental consequences of expanding the compressor station, or Part II and III of the Environmental Assessment Form.

27. Another manner in which the Planning Board failed the “hard look” standard required of SEQRA review was its reliance upon the effects of the existing compressor station, in support of the finding that the expanded compressor station will not have any adverse effects on the environment. As previously indicated, the expanded compressor station will be significantly greater in scope, equipment, and operation than the existing compressor station, which is currently only in operation 10% of the time. Therefore, the existing compressor station cannot be considered an adequate reference point for the effects of the proposed expanded compressor station, which not only is much larger, but also will be operated much more often and potentially continuously.
28. In addition, in a number of the identified environmental areas, the Planning Board as lead agency deferred its responsibility for environmental review to other agencies. For example, any air pollution effects were improperly entirely deferred to the New York State Department of Environmental Conservation. The Planning Board also made repeated reference to and reliance upon the actions of FERC. While a lead agency has the right to consider studies, documents and comments from other agencies that have expertise concerning a particular area, they still must independently review and analyze the areas of environmental concern, and not defer the analyses and conclusions to another agency. This is especially true because New York State DEC has not even issued the final air permits for this project.
29. Furthermore, as previously indicated, this proposed expanded compressor station is necessary to bring increased amounts of gas across New York and then transfer it from one pipeline to another, requiring other compressor stations along the entire

pipeline route. However, the Minden Planning Board only considered the adverse effects of the one proposed expanded compressor station at Brookman Corners, ignoring any adverse effects of the larger pipeline project and other compressor stations, even though the Brookman Corners compressor station is clearly only one part of the larger project. By only considering the adverse effects of this proposed expanded compressor station, even in the cavalier manner that they considered those effects, the Planning Board has engaged in improper “segmentation” of the project.

30. The SEQRA regulations require that the SEQRA lead agency not only consider the direct effect of the project under consideration, but the cumulative effects of the project as well. Therefore, the requirement of review of cumulative effects would also require the Minden Planning Board to consider the effects of the entire pipeline project and additional compressor stations.
31. Therefore, in determining whether a project will have a significant effect on the environment, the reviewing agency must consider all reasonably related long-term, short-term and cumulative effects, including other simultaneous or subsequent actions of which the action under consideration is a part.
32. Segmentation is defined in the regulations as “the division of the environmental review of an action such that various activities or stages are addressed under this part as though they were independent, unrelated activities needing individual determinations of significance.” 6 N.Y.C.R.R. § 617.2(a-g). As indicated in the regulations at 6 N.Y.C.R.R. § 617.3(g):

“Actions commonly consist of a set of activities or steps. The entire set of activities or steps must be considered the action, whether the agency decision-making relates to the action as a whole or to only a part of it.

(1) Ensuring only a part or segment of an action is contrary to the intent of SEQRA. If the lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance, and any subsequent EIS, the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.”

33. There is no question that the Dominion New Market Project, which is intended to provide for the transport of 112,000 dekatherms of additional gas per day, and deliver much of that gas to the Iroquois Pipeline, cannot be built without all components of the project, including expansion of the compressor station at Brookman Corners, the construction of new compressor stations in Chemung and Madison counties, and several other modifications elsewhere along the pipeline corridor. For example, if not for the larger project known as the “New Market Project,” there would be no need to connect the Dominion and Iroquois pipelines and no need for an expanded compressor station at Brookman Corners. Clearly, each action is dependent on the other, which is a classic situation of segmentation. Even if the review engaged in was appropriate, the lead agency would have had to indicate that it was segmenting the review, and why such segmentation is “clearly no less protective of the environment.” This was not done.

34. Since the environmental review process conducted by the Minden Planning Board completely ignored the potential impacts of the larger action, the Minden Town Board engaged in improper segmentation of review, and failed to consider the cumulative effects of the entire project.

35. In determining whether or not there may be significant adverse environmental impacts, the regulations at 6 NYCRR § 617.7 list the following factors, among others,

which if they exist, would require the preparation of an environmental impact statement [hereinafter cited as “EIS”]:

“(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

•••

(iv) the creation of a material conflict with a community’s current plans or goals as officially adopted;

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

(vi) a major change in the use of either the quantity or type of energy;

(vii) the creation of a hazard to human health;

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

•••

(x) the creation of a material demand for other actions that would result in one of the above consequences

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment...” 6 NYCRR § 617.7(c)(1).

36. Therefore, a number of impacts present in the instant case required a hard look to be taken, and a reasoned elaboration for the decision made as to whether or not that particular issue may cause a significant adverse environmental consequence.

37. The impacts that require the preparation of an Environmental Impact Statement, include the following:

- a. Noise Impacts – The Planning Board determined that there will be no significant adverse environmental effects due to increased noise, and in its Negative Declaration, the Planning Board indicated that the basis for this determination is that “The existing compressor station has not resulted in any noise related complaints.” The Planning Board also reviewed noise impact information provided by Dominion, and determined that any increased noise levels would be consistent with New York State Department of Environmental Conservation Guidelines for assessing noise impacts. Finally, the Planning Board indicated that the buildings and equipment would be sufficiently buffered so that the sound generated by the compressor engines will meet the noise limitations established by FERC. The Planning Board also required a post construction noise survey required by FERC to mitigate any excess noise that might occur. (See, the “Resolution of the Planning Board of the Town of Minden issuing a Negative Declaration pursuant to the New York State Environmental Quality Review Act for the expansion of the Dominion Transmission, Inc. gas compressor station located at Brookman Corners (Exhibit A, p. 3, subdivision (c).)

The issue of noise is a major concern of the Petitioners, due to the rural, agricultural and quiet nature of the surrounding area. Therefore, if there is excessive noise during the day, and particularly at night, it will provide a significant intrusion upon the residents who live in the surrounding area.

Moreover, the Planning Board continually relied upon the effects, including noise effects, of the existing compressor station. However, as indicated previously, the existing compressor station is so significantly smaller than what is proposed, that any reliance upon the supposed lack of noise complaints regarding the existing compressor is irrelevant to the proposed expansion. The proposed expansion would involve additional equipment that does not presently exist at the site, including reciprocating engine compressors that produce low frequency noise that is particularly disturbing to people. The Planning Board ignored these facts. Similarly, it is improper for the Planning Board to defer studies to post-construction, since SEQRA requires that the lead agency make an independent analysis of potential adverse environmental consequences prior to making a decision concerning the project, and must have all the available information before it in order to determine whether or not there may be at least one significant adverse environmental consequence.

Further, the Planning Board failed to apply the New York State DEC guidelines with respect to allowable increases over ambient noise

levels and measurement of impacts at the property line as required by the New York State DEC guidelines and the Town of Minden Zoning Law.

Finally, regarding noise impacts, the conclusion of the Planning Board was not supported by any empirical data or evidence because Dominion failed to supply the data on which its noise studies were based. The Planning Board ignored this lack of supporting data, even after Petitioners presented evidence supplied by an independent noise consultant that the Dominion noise studies were unreliable.

- b. Lighting - Lighting, like noise, is very important for Petitioners and their members. The lighting proposed for the compressor station is industrial lighting that will be on all night long, and will not be sufficiently shielded to protect the surrounding homes from significant glare intruding on their quiet enjoyment of their property. Moreover, there are other types of lighting that could be used, and would have been developed in an Environmental Impact Statement, to mitigate the significant adverse consequences of the light intrusion. However, this is an area where the Planning Board only reviewed lighting in the context of the site plan approval, but did not review lighting in the context of SEQRA review. Indeed, lighting was not even considered or mentioned in the Negative Declaration, and therefore, even if the Planning Board considered lighting, they have not provided any reasoned elaboration why the lighting plan proposed would not have any significant adverse environmental consequences, which is required.

c. Vegetation and Wildlife – In the Negative Declaration, the Planning Board indicated that the project will not have any potential significant adverse impact to existing vegetation and potential wildlife located in the vicinity of the project site, because the project was previously disturbed by the construction of the existing compressor, and the expanded compressor station will not involve significant new disturbance or interfere with the movement of any resident or migratory fish or wildlife. Apparently, the Planning Board came to this conclusion, again, by improperly relying on the consequences of the existing compressor station, which as previously indicated is improper because of the vast differences between the existing compressor station and the proposed expansion. Moreover, the Planning Board only considered disturbance to include the amount of new acreage (2 acres) that will be needed for the expanded compressor station. However, they failed to take into account the effects of the proposed expanded compressor station on flora or fauna offsite of the disturbed area. Clearly, noise, lighting, fumes or other air pollutants would all potentially affect any wildlife or important plants that are nearby the site of the proposed expansion. This is especially true since there is a jurisdictional wetland adjoining the proposed expansion, as well as the Otsquago Creek, a class C-designated waterway, several hundred feet from the expanded site. Moreover, the Planning Board further failed to take a hard look at the issue, since they never did a reconnaissance of what plants or animals may be in the vicinity of the proposed compressor station, or otherwise whether or not such areas, for example, the wetland, would provide

habitat for such plants or animals, which is generally the case. By not even considering what plants or animals may be present, the Planning Board obviously failed to take a hard look at this issue, and merely provided a conclusion rather than a reasoned elaboration for its determination that there will be no adverse effects on plants or animals.

- d. Aesthetic and Cultural Resources – Again, the Planning Board indicated in its Negative Declaration that the project will not impact aesthetic or cultural resources, because the existing compressor station, in its opinion, has not impacted any cultural or aesthetic resources and the expanded facility will not result in any new impacts. Moreover, the only other basis for such a conclusion is a reliance on FERC’s determinations concerning aesthetic and cultural resources. Therefore, the Planning Board itself undertook no independent analysis of the effects of the expanded compressor station on aesthetic and cultural resources.

In fact, there will be significant adverse environmental effects on both aesthetic and cultural resources. First of all, based upon the landscaping and site plan approved, the buildings, smoke stacks and other equipment will be visible from surrounding properties. The proposed landscaping to buffer the facility is totally inadequate, and in fact is contrary to the requirements of the Minden Zoning Law.

Concerning cultural resources, the Planning Board ignored a historic site that abuts the proposed expanded compressor station site. John and Mary Ann Valentine own Slate Creek Farm, which is located immediately adjacent

to the proposed compressor station, and was constructed on Otsquago Creek in 1834 by John Smith, a German immigrant. The entire 200-acre property, including the farm and adjacent residence and outbuildings, is listed on both the New York State Register of Historic Places and on the National Register of Historic Places.

Historic architectural resources are particularly noted as an area that must be reviewed by the lead agency. By not even mentioning this historic resource, which, as indicated, abuts the site of the proposed expanded compressor station, the Minden Planning Board has certainly failed the hard look test by not even identifying this issue as an area of environmental concern to be reviewed. Furthermore, there is no question that an expanded compressor station will in fact have adverse consequences concerning this historic resource, due to the significant changes in lighting, noise, and air pollutants.

- e. Air Pollution – The Planning Board in its Negative Declaration merely indicated the conclusion that the project is not expected to result in significant impacts to air quality. However, it is clear that the Planning Board did not make an independent analysis concerning whether or not the emissions from the expanded compressor station will cause significant adverse effects to air quality. They merely indicated that the project will be subject to regulatory standards promulgated and implemented by the New York State Department of Environmental Conservation since the compressor station will be subject to a New York State Air Facility Permit. Indeed, at the Planning Board meeting

where the Negative Declaration was adopted, the attorney for the Planning Board indicated that a planning board does not have the power to consider air quality since jurisdiction for such consideration was with the New York State Department of Environmental Conservation, and not with the Planning Board.

While this project is required to obtain an Air Facility Permit from the Department of Environmental Conservation, this does not absolve the Planning Board, as lead agency, from also making its own analysis to determine whether or not there may be significant adverse environmental effects due to air pollution. The conclusion of the Planning Board to entirely defer consideration of air quality to the DEC is even more egregious when the significant amount of pollutants released into the air is considered. In fact Dominion recently disclosed plans to produce electricity from micro-turbines at the site which were not even part of its initial application. The emissions from the micro-turbines are expected to be more than 14,000 tons of greenhouse gas emissions annually, in addition to other pollutants. Added to the greenhouse gas emissions that Dominion included in its application, this could amount to more than 111,000 tons of greenhouse gas and hazardous chemical emissions annually.

Moreover, the emissions modeling performed by Dominion and relied on by the Planning Board did not take into account the unique topography at Brookman Corners. Topography and local meteorology are significant factors that control dispersion of emissions. The Brookman Corners compressor station is located in the center of a drainage basin formed by the Otsquago

Valley and the larger Mohawk Valley. At night, air often stabilizes above cooler waters of the Otsquago Creek, creating a temperature inversion that causes heavy ground fog.

The top of the four proposed exhaust stacks at the project will be at a lower elevation than the valley rim, which will concentrate emissions for longer periods of time near the surface and eventually carry them downwind to Fort Plain. This emissions plume could extend to the nearby Amish schools and the major public school in Fort Plain, exposing children to much more highly concentrated doses of air pollutants than should be allowed. None of these factors were considered by Dominion in its analysis. In fact, Dominion modeled its dispersion of pollutants based on non-representative wind patterns for distant locations with significantly different topography.

In addition to the above, it appears that Dominion improperly withheld key information regarding emissions associated with the planned use of micro-turbines to generate electricity at the Brookman Corners site. According to Dominion, it plans to install micro-turbines at Brookman Corners to generate 4,678 megawatt-hours of electricity annually. The use of micro-turbines at Brookman Corners would significantly increase emissions from the facility, amounting to more than 14,000 tons per year of additional greenhouse gases in addition to other pollutants, including formaldehyde, VOCs, carbon monoxide, and nitrogen oxides that Dominion failed to disclose or include in its air emissions modeling. The Planning Board completely ignored these emissions and did not consider or analyze their impact them in any way.

Therefore, the Planning Board failed to take a “hard look” at this issue, and thereby failed to provide a reasoned elaboration for their conclusion that there will be no significant adverse effects caused by the air pollution.

- f. Impacts on Health – The Planning Board in its Negative Declaration, indicated that the proposed expanded compressor station will not create a hazard to public health. However, the Planning Board deferred any independent analysis of this issue to FERC, which based its health risk assessment only on the improperly modeled emissions, as previously discussed. Again, the Planning Board incorrectly deferred to the New York State DEC. The Planning Board simply assumed that the State Air Facility Permits will assure that all air emissions will comply with state and federal air pollutions control standards. Therefore, yet again, the Planning Board did not independently analyze and consider whether or not there will be significantly adverse public health concerns arising from the expanded compressor station at the Brookman Corners site.

It is well documented that significant acute and chronic health problems have been experienced by people living or working near compressor stations due to elevated levels of VOCs, nitrogen oxides, carbon monoxide, formaldehyde, ground-level ozone, particulate matter and other hazardous air pollutants. Negative health effects of exposure to these chemicals include cardiovascular, respiratory, and neurological damage, birth defects, cancer, leukemia, infertility, and other impairments and ailments. Thimble Creek Research, in a report prepared for the Madison County Department of Health

(dated September 30, 2014), discusses these impacts at length. As discussed in that report, 90% of individuals within two to three miles of compressor stations experience odors and/or adverse health effects. Therefore, failure to consider these impacts or to assume that they are being addressed by other regulatory agencies is not sufficient to comply with SEQRA regulations.

- g. Community Character – The Planning Board, in its Negative Declaration, indicated that the project will not have an adverse impact on the character of the community or neighborhood. The Planning Board again improperly base this conclusion on their determination that the project is consistent with local zoning, which it is not, as will be further explained in this Petition, and that the existing compressor station has not had an adverse impact on the character of the community or neighborhood and the expanded facility will not result in any new impacts.

As previously indicated, relying on the impacts of the existing compressor station is inappropriate due to the vast difference between the existing compressor station and the proposed expanded compressor station. It taxes credulity to assume that the proposed large industrial facility, sited in the midst of rural farmland, will not have any adverse effects on the surrounding community character. Moreover, this determination was made without having completed a visual environmental assessment, which is required by DEC Program Policy DEP-00-2 for SEQR review of the effects of a proposed project on community character. Therefore, again, the Planning Board failed the “hard look” test by relying on the existing compressor station to justify the

expansion and failing to provide any reasonable elaboration concerning why the expanded proposed compressor station will not have adverse effects on community character.

38. For all of the foregoing reasons, the Minden Planning Board failed the procedural requirements of the “hard look” standard and ignored many potential significant adverse effects that may ensue from the expanded compressor station, which would require the preparation of an Environmental Impact Statement.

V. THE EXPANDED COMPRESSOR STATION WILL VIOLATE THE ZONING LAW OF THE TOWN OF MINDEN

39. The compressor station expansion was presented to the Planning Board through an application for a special use permit as a “public utility.” The stated reason for this was that the existing compressor station which was approved in the year 2000 was treated as a “public utility.” However, whatever the basis for treating the initial project as a public utility may have been 16 years ago, this is an error that should not be repeated.

40. The current project, as previously indicated, is dramatically larger and the risks are many orders of magnitude greater. The current project requires that it be considered by applying the current Minden Zoning Law which was adopted on October 18, 2000, after the approval of the existing compressor station.

41. Therefore, since the existing facility was permitted before the current zoning law took effect, relying on the fact that it was treated as a “public utility” under the previous

Zoning Law does not mean that the proposed expanded station would be defined as a “public utility” under the current Zoning Law.

42. The proposed project is located in a district zoned “A” agricultural. Only principal enumerated uses are allowed “as of right” in this district. Any other enumerated permitted use requires a “special” permit. All other uses are “prohibited.” (Minden Zoning Law §§ 90-80 and 90-10). The Dominion compressor station expansion is not an allowed or special permitted use in an agricultural district. Accordingly, the special use permit for construction at the site cannot be granted.
43. Dominion maintains that the compressor station expansion qualifies for a special use permit under the new Zoning Law, because it is a “public utility” station, under § 90-10 D (5) of the Minden Zoning Law. This use is defined as a facility maintained for the provision of electricity, gas, or similar services to the “general public” and “shall not include offices or administrative buildings.” (Zoning Law, Definitions § 90-5)
44. Significantly, the proposed expansion is not intended to provide any electricity or gas to the “general public.” Instead, as described in Dominion’s application to FERC, it will serve only two specified “wholesale” customers of Dominion with no provision whatsoever for local use of the gas.
45. In further support that the expanded compressor station is not intended to provide electricity or gas “to the general public,” the Environmental Assessment originally submitted by Dominion to the Town of Minden for the project in the year 2000 expressly admitted that the project will have “no” effect on the community sources of fuel or energy supply.

46. Additionally, the current plan includes administration buildings, which are not permitted for a facility designated a “public utility” under the Zoning Law.
47. If the project were to be considered a “public utility,” the Zoning Law expressly provides that the facility must include a landscaped area at least 20 feet wide and that “there shall be no equipment visible from surrounding property”. (Zoning Law, § 90-49) The existing site does not comply with this requirement and the landscape plan proposed by Dominion for the expanded facility fails to comply with this provision. Thus, even if the expanded facility met the definition of a “public utility” under the Zoning Law, it will not comply with the Zoning Law and is clearly improperly sited in an agricultural district.
48. For all of these reasons, the Planning Board’s decision to treat this application as a “public utility” because it was originally permitted as such 16 years ago is an error. At most, the existing compressor station is in fact a non-conforming use of land, which, under the new Zoning Law, “must not be enlarged or extended.” Indeed, the law requires the gradual elimination of non-conforming uses, not their expansion. (Zoning Law § 90-1)
49. Furthermore, the Zoning Law specifically provides that a “...non-conforming use of land shall not be enlarged or extended beyond the area of land occupied by such use at the time of adoption of this chapter. A non-conforming use of land may not be moved in whole or in part to any other portion of the lot or parcel of land occupied by such non-conforming use at the time of adoption of this chapter. (§ 90-56)”

50. Therefore, the proposed expansion of the compressor station, and the grant of the special use permit by the Minden Planning Board violates the Town of Minden Zoning Law and must be voided.

VI. THE SITING AND EXPANSION OF THE PROPOSED COMPRESSOR STATION IS INCONSISTENT WITH THE COMPREHENSIVE PLAN OF THE TOWN OF MINDEN

51. Section 263 of the New York State Town Law requires that uses within a town must be consistent with an officially adopted comprehensive plan of that town. The Town of Minden has officially adopted such a Comprehensive Plan.

52. The Minden Comprehensive Plan states that land uses in the Town of Minden should insure the continuing viability of Amish farms, agricultural land uses, historic sites, and the rural character of the town.

53. Moreover, the Comprehensive Plan requires the avoidance of development which does not fit with the rural character of the town, negatively impacts the environment, creates excessive lights, glare, noise, odors, or industrial development in inappropriate locations.

54. The Comprehensive Plan also specifically provides that all outdoor lights used for business are to be fully shielded light fixtures, which is not the case in the lighting plan for the proposed compressor station expansion.

55. The Comprehensive Plan further states that the Town will control ancillary land uses associated with natural gas drilling so that, if gas drilling occurs elsewhere, the ancillary uses will not affect Minden, including specifically “compressor stations.”

56. Therefore, the proposed compressor station is contrary to Minden's Comprehensive Plan for proposed future uses of land within the Town borders. Accordingly, it violates § 263 of the New York State Town Law.

VII. FOR A FIRST CAUSE OF ACTION: VIOLATION OF SEQRA

57. Petitioners repeat and incorporate by reference as though fully set forth herein, each and every paragraph hereinbefore mentioned.

58. The decision to issue a Negative Declaration violated both the procedure and substantive requirements of SEQRA, as previously indicated. The decision to issue a Negative Declaration, and not to require an Environmental Impact Statement, was arbitrary, capricious and otherwise in violation of the law.

59. Therefore, due to the violations of SEQRA, it is necessary to void the approval of the compressor station expansion and to issue an injunction until such time as SEQRA is fully complied with through the drafting of an Environmental Impact Statement.

VIII. FOR A SECOND CAUSE OF ACTION: VIOLATION OF THE TOWN OF MINDEN ZONING LAW

60. Petitioners repeat and incorporate by reference as though fully set forth herein, each and every paragraph hereinbefore mentioned.

61. As addressed in greater detail above, it was a violation of the current Town of Minden Zoning Law to allow excessive noise, lights, glare, vibrations, odors and toxic emissions to impact the surrounding properties and the community, and to treat the

proposed expansion of the compressor station as a public utility, and to fail to adequately screen it from view as required by the Town of Minden Zoning Law.

62. Since the proposed expansion of the compressor station is not a “public utility,” the compressor station is a non-conforming use, which cannot be expanded or moved, pursuant to the restrictions in the Zoning Law.

63. Since the proposed expansion of the compressor station constitutes an expansion of a non-conforming use and violates the Zoning Law in numerous respects as set forth above, the grant of a special use permit to Dominion to expand the compressor station violates the Town of Minden Zoning Law, and is therefore arbitrary and capricious and otherwise in violation of law, requiring that the special use permit be denied.

IX. FOR A THIRD CAUSE OF ACTION: INCONSISTENCY WITH TOWN OF MINDEN’S COMPREHENSIVE PLAN

64. Petitioners repeat and incorporate by reference as though fully set forth herein, each and every paragraph hereinbefore mentioned.

65. Since the proposed expansion of the compressor station is not consistent with the Town of Minden’s Comprehensive Plan, it is in violation of § 263 of the New York State Town Law, and the special use permit must be voided.

66. Petitioners have no adequate remedy of law.

WHEREFORE, due to the foregoing violations of law, it is respectfully requested that the Court void the granting of the special use permit by the Town of Minden Planning Board, and further issue an injunction enjoining any further approval of the proposed expansion of the compressor station, and such injunction should issue until

such time as an Environmental Impact Statement is drafted and SEQRA is fully complied with. No prior request for this relief has been made to this or any other court.

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Respectfully submitted,



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