IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Catskill Mountainkeeper, Inc., Clean Air Council Delaware-Otsego Audubon Society, Inc. Riverkeeper, Inc., Sierra Club Petitioners, Stop The Pipeline, Inc., Petitioner, v. Federal Energy Regulatory Commission, Respondent. Constitution Pipeline Co., LLC, Iroquois Gas Transmission System, L.P., Intervenors	)	Docket No. 16-345 (L) 16-361 (Con)

REPLY OF NATURAL GAS SUPPLY ASSOCIATION
IN SUPPORT OF MOTION OF FOR LEAVE TO INTERVENE

The Natural Gas Supply Association ("NGSA") has timely moved to intervene in this consolidated proceeding that seeks review of two orders of the Federal Energy Regulatory Commission ("FERC") conditionally authorizing the construction and operation of a natural gas pipeline. FERC and the present intervenors have consented to the motion, and the Petitioners in No. 16-345, Catskill Mountainkeeper, Inc, et al., have not opposed it. Petitioner in the

consolidated proceeding, Stop The Pipeline, Inc. ("STP"), is the only party opposing the motion. STP states expressly, however, that it "does not oppose NGSA filing a brief as amicus curiae." STP Opp. at 2.

STP argues that NGSA lacks a sufficient interest in the matter to justify intervention, and that its interests are in any event adequately represented by existing parties. Neither contention has merit.

1. NGSA has a sufficient interest in the matter

STP does not deny that NGSA's member company SWN Energy Services Company, LLC, has a direct economic interest in use of the authorized pipeline "if it is ever completed," but argues this interest is speculative because it is "entirely contingent on whether Constitution ever obtains the necessary state permits required to construct the pipeline." STP Opp. at 4-5. Of course the same could be said of the intervenors whose interests STP has not questioned, Constitution Pipeline Company, LLC ("Constitution") and Iroquois Gas Transmission System, L.P. ("Iroquois"), who will site, build, and operate the pipeline. And STP does not provide any reason whatsoever to believe that the state will not grant the permits. Indeed, STP does not even identify what these permits are. The "speculation" is thus entirely on STP's side -- it invites the Court to speculate without any basis that state permits will not issue, thus rendering this entire litigation a moot exercise.

In support of this argument, STP relies on *State of Texas v. U.S. Dep't of Energy*, 754 F.2d 550 (5th Cir. 1985), but that case bears no resemblance to this one. The proposed intervenor in that case speculated that the defendant agency might significantly delay the implementation of the program at issue in the proceeding, and thus indirectly cause expense to a fund in which the proposed intervenors had an interest. The proposed intervenors offered no basis for the speculation that such delays might occur. Here by contrast the agency has already acted, and NGSA and its members have a direct interest in that decision, not in some speculative consequence that might flow from it.

In *State of Texas* itself the court acknowledged that intervention would have been appropriate if the agency's "administration of the Fund were being challenged." 754 F.2d at 552. Here it is the agency decision of direct interest to NGSA that is being challenged.

The two cases from this Circuit cited by STP on the general standards for intervention are of no help to it either. *United States v. State of New York*, 820 F.2d. 554, 557-58 (2d Cir. 1987) affirmed a denial of intervention on timeliness grounds where the motion to intervene was filed seven years after the litigation began -- a far cry from the situation here where NGSA timely filed within the 30 days provided by Fed. R. App. P. 15(d). *Floyd v. City of New York*, 770 F.3d

1051, 1057 (2d Cir. 2014) likewise affirmed a denial of intervention where the motion was untimely.

U.S. v. State of New York also noted (albeit in dicta) that the defendant state there did *not* adequately represent the interest of intervenor, and found (again in dicta) that the intervenor lacked a "direct and protectable interest" in his asserted employment right because it was uncontroverted that he had no such right to be employed absent an age waiver that he had not applied for. Here by contrast, the only asserted "contingency" is that the project might not ultimately be built for other reasons, which STP does not try to support or even explain.

2. NGSA's interests are not adequately represented by existing parties.

STP also argues that intervention should be denied on the basis that NGSA's interest is adequately represented by other parties. STP does not argue that NGSA's interest is adequately represented by FERC, but points to the two other intervenors, Constitution and Iroquois.

The sole authority STP cites in support of this argument is a fifty year old case from a distant circuit, *Edmondson v. State of Neb. ex rel. Meyer*, 383 F.2d 123 (8th Cir. 1967), in which (1) the party seeking intervention had died and no proper party substitution has been filed; (2) the intervenor-movant's former attorney (since disbarred) was already a party to the suit and was representing the proposed

intervenor's estate; and (3) there was a suggestion, as might be expected from this unusual state of affairs, that the "intervention has the earmarks of a sham," and was sought for an "improper motive." 383 F.3d at 127. STP's argument on this point is thus entirely unsupported by any applicable authority.

STP's position is also unpersuasive. First, as noted above, STP improperly discounts the interests of NGSA's shipper member, and of its members' strong interests in the authorization of pipeline infrastructure on which its members depend on for marketing natural gas. Moreover, as set out in in NGSA's motion, and as STP does not and cannot deny, Petitioner Sierra Club, which has not opposed NGSA's intervention, is engaged in a nationwide campaign against natural gas and other fossil fuels, and seeks to use litigation such as this as part of its efforts to slow (if not permanently delay or end) the development of such fuels and all forms of infrastructure that transport or utilize them. Sierra Club has, for example, opposed a large number of interstate natural gas pipeline projects and nearly every liquefied natural gas export project at FERC.

STP argues that Constitution and Iroquois have a broad scope of operations, but cannot deny that a national organization such as NGSA is in the best position to respond, from the perspective of a broad array of natural gas producers that rely on natural gas infrastructure to move their product to market, to the nationwide implications of the arguments being advanced by Sierra Club and other petitioners

as a part of this campaign. STP itself may choose to focus on more localized impacts of the projects, but STP is not the only Petitioner in this case. NGSA has thus easily met the "minimal" showing that existing representation "may be" inadequate, *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972), especially given this Circuit's rule that intervention should be denied on this ground only where "adequacy of representation [is] assured." *Brennan v. New York City Bd. of Educ.*, 260 F.3d 123, 132-33 (2d Cir. 2001).

As noted in its motion, NGSA commits to work with the other intervenors to assure that its efforts do not duplicate those of other parties, and seeks no change to the briefing schedule proposed by the existing parties and adopted by the Court. NGSA also plans to file only a single brief, notwithstanding that there are two sets of petitioners in this consolidated action (one of which has not opposed NGSA's intervention).

CONCLUSION

NGSA meets all of the requirements for intervention, and its Motion for Leave to Intervene should be granted. The grant would allow NGSA to file its brief on or before July 12, 2016, on the same schedule as the other intervenors. NGSA also notes that if the Court determines on some basis that NGSA should not

be permitted to intervene, all parties have consented to NGSA's participation as amicus curiae in these consolidated petitions.

Respectfully submitted,

/s/

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March 18, 2016

CERTIFICATE OF SERVICE

I certify that on the 18th day of March, 2016, the foregoing Reply in Support of Motion for Leave to Intervene of the Natural Gas Supply Association was electronically filed through this Court's CM/ECF system, which will send a notice of filing to all registered users.

Respectfully submitted,

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