BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

Protecting Air for Waterville, *et al.*,	)	Case No. ERAC 16-6884 Case No. ERAC 16-6885
Appellants,	)	
-vs-	)	**APPELLANTS' RESPONSE IN OPPOSITION TO MOTION TO DISMISS OF WATERVILLE COMPRESSOR STATION**
Craig Butler, Director of Environmental Protection, *et al.*,	)	
Appellees.	)	

* * * * *

Now come Protecting Air for Waterville and Neighbors Against NEXUS ("PAW"), Appellants herein, by and through counsel, and respond in opposition to "Appellee, Waterville Compressor Station's Motion to Dismiss for Lack of Subject Matter Jurisdiction."

SUMMARY OF ARGUMENTS AGAINST MOTION TO DISMISS

The Motion should be denied for the following reasons:

- While the instant proceeding is denominated as an "appeal," it is conducted as a *de novo* evidentiary hearing before a hearing officer at the Environmental Review Appeals Commission (ERAC), with associated discovery and motion proceedings. As such, it is the first and only trial opportunity for opponents to challenge the Ohio Environmental Protection Agency ("Ohio EPA") Director's issuance of a Permit to Install and Operate the Waterville Compressor Station ("PTIO").

- The PTIO was rendered into a nonfinal order of the Director when Appellants filed a timely Notice of Appeal. By that Notice, PAW invoked the right to adjudicate the contentions

enumerated in the Notice. The Notice serves a function analogous to a civil complaint.

- The jurisdiction of federal appellate courts does not attach until there has been a final state agency adjudication. A prerequisite to removal of pendent permitting concerns to a federal appellate court is that there be a final, appealable order under state environmental law. That does not yet exist here.

- Allowing removal to federal circuit court of this timely-challenge to the PTIO, amid active state administrative litigation, improperly transforms the circuit court into a trial court. The federal circuit court weighs the evidence and adjudicates a result, and it will do so on a partial, incomplete administrative record. Removal to the circuit court before there is a final, adjudicated state agency ruling denies the public of the right to create a record which tests the veracity of the agency and pipeline company evidence; to adduce contradictory lay and scientific evidence; to conduct discovery; and to offer arguments of fact and law based upon a fully-developed evidentiary record. The net effect of requiring a final state agency adjudication before removal deprives public litigants of procedural and substantive due process.

Ohio's statutory scheme affords a de novo adjudication hearing to a timely petitioner

The Ohio statutory scheme defines a unitary process for issuance of permits such as the instant PTIO. ERAC is the only forum for adversarial, quasi-judicial scrutiny of the PTIO. O.R.C. § 3745.04(A). Anyone who was a party to a proceeding before the Director may "appeal" to ERAC, *i.e.*, seek a *de novo* adjudication hearing governed by Ohio's Administrative Procedure Act (O.R.C. Chapter 119).

By statute, ERAC may discretionarily issue an order "vacating or modifying the action of the director . . . , or ordering the director . . . to perform an act." § 3745.04(B). Since the PTIO

was issued without an adjudication hearing before a judicial hearing officer of the Ohio EPA, "the commission shall conduct a hearing *de novo* on the appeal." O.R.C. § 3745.05(A). The pending ERAC case, then, comprises Appellants' first, and only, trial-type adjudication of issues of fact and law. Prior to the inception of the ERAC "appeal," public participation in this case was limited to making comments on the proposed PTIO during the Ohio EPA review. By contrast, the adjudication at ERAC encompasses, *de novo,* pertinent factual as well as legal issues raised via the Notice of Appeal. In making its final decision, ERAC owes no deference to the Ohio EPA Director's findings which explain or rationalize issuance of the PTIO. O.R.C. § 3745.05(F).

The timely appeal to ERAC made the PTIO a 'nonfinal' agency action

The perfection of an appeal to ERAC transformed the PTIO into a nonfinal determination subject to change by the Commission following adjudication. ERAC has the power to suspend a PTIO pending determination of the case by ERAC.[1]

Parties to an ERAC appeal are accorded the right to a *de novo* hearing if no adjudication was conducted under Ohio EPA auspices. O.A.C. § 3746-7-01. The parties may present evidence and offer oral or written argument to explain its significance. *Id.* The rules contemplate a quasi-judicial trial. Appealing a Director's order to ERAC converts the PTIO into a nonfinal determination subject to finalization only at the conclusion of the ERAC proceedings.

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[1]OAC § 3746-5-13 Stays.

(A) The filing of an appeal does not suspend or stay execution of the action being appealed. Upon motion by appellant and for compelling reasons justifying it, the commission may suspend or stay such execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

(B) A motion for stay may be filed with the commission at any time during the proceeding and shall set forth the specific reasons for which it is being requested. In granting a stay, the commission may impose such conditions as are warranted by the circumstances including, where appropriate, the filing of a bond or other security as provided for in rule 3746-5-15 of the Administrative Code.

Federal appellate jurisdiction requires finalized state agency orders

The principal issue raised by NEXUS is whether there is a reviewable "order or action of a . . . State administrative agency" at the present moment.

NEXUS says yes, because the language of 15 U.S.C. § 717r(d)(1) need not contain the modifier "final" for an appealable state agency action. To NEXUS, the Ohio EPA Director's PTIO for the Waterville Compressor Station is final even if under direct challenge on its merits in the present proceeding,

PAW says no, that federal appellate judicial policy requires genuine finality of the state agency adjudication as a precondition to appeal state administrative agency orders to federal circuit court.

Section 19(d) of the Natural Gas Act states, pertinently:

> The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action *for the review of an order or action of a . . . State administrative agency* acting pursuant to Federal law to issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as "permit") required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*).

(Emphasis added). 15 U.S.C. § 717r(d)(1). The circuit courts have not defined the phrase "order or action" in 15 U.S.C. § 717r(d)(1), but when interpreting statutes authorizing judicial review of agency decisions, the Supreme Court has emphasized that "[t]he strong presumption is that judicial review will be available only when agency action becomes final." *Bell v. New Jersey* , 461 U.S. 773, 778, 103 S.Ct. 2187.

In a case fairly analogous to the present facts, *Berkshire Environmental Action Team, Inc. v. Tennessee Gas Pipeline Company, LLC,* 851 F.3d 105 (1st Cir. 2017), the First Circuit adhered

to *Bell*, and ruled that a final agency action was required, saying that:

> Here, though, the subject matter is judicial review of agency action, which review Congress created in the context of a long-standing and well-settled "strong presumption . . . that judicial review will be available only when agency action becomes final." *Bell v. New Jersey,* 461 U.S. 773, 778, 103 S.Ct. 2187, 76 L.Ed.2d 312 (1973) (citing *FPC v. Metro. Edison Co.,* 304 U.S. 375, 383-85, 58 S.Ct. 963, 82 L.Ed. 1408 (1938)). To say that [Congress'] silence on the subject implies no requirement of finality would be to recognize this "strong presumption" only when it is of little benefit.

Id. at 109. The *Berkshire* court decided that the Massachusetts Department of Environmental Protection ("MassDEP") had not yet acted with finality on a water quality certification, and that the certification was a prerequisite to invoking federal appellate jurisdiction under 15 U.S.C. § 717r(d)(1). Tennessee Gas Pipeline was given a letter approving its proposed pipeline project by MassDEP that contained over forty conditions on the project's approval, including a condition that forbade Tennessee Gas from conducting any work subject to the certification, including the cutting of trees, until after expiration of the appeal proceedings under state law within the administrative agency. Tennessee Gas argued that by issuing the letter approval, MassDEP had rendered a conditional water quality certification and the state's involvement in the process was at an end, with any further review to be pursued through a petition to the First Circuit federal court of appeals.

The *Berkshire* court, however, noted the existence of "variegated internal review mechanisms deployed by state agencies" and ruled that "the text of § 717r(d)(1), on its own or read alongside § 717r(b), does not rebut the strong presumption that *judicial review is available only following final agency action.*" (Emphasis added). *Berkshire,* 851 F.3d at 109. The court then held that "[f]urther reinforcement for the strong presumption restricting review until an agency has taken final action" lies in "Congress's numerous efforts to prevent states from

unreasonably delaying the performance of their reserved roles in connection with natural gas projects." As an example, the court cited 15 U.S.C. § 717r(d)(2), which empowers the Circuit Court of Appeals for the District of Columbia to issue injunctive relief when a state agency "fail[s] to act" on such a permit in accordance with a schedule established by FERC." *Id.* "A Congress that placed so much emphasis upon avoiding delay in the adjudication of requests for certification of this type," observed the First Circuit in *Berkshire,*, "would not likely have intended to authorize the delay that interlocutory reviews of every state agency action, final or not, would inevitably engender." *Id.* at 110.

In *Columbia Riverkeeper v. U.S. Coast Guard*, 761 F.3d 1084 (9th Cir. 2014), the Ninth Circuit was called upon to rule whether a letter of recommendation issued by the Coast Guard respecting the suitability of a waterway for vessel traffic associated with a proposed liquified natural gas facility was reviewable under 15 U.S.C. § 717r(d)(1). The Ninth Circuit held that the letter was an advisory device and not a "final action" within the meaning of the statute. The court reasoned as follows:

> Neither we nor our sister circuits have defined the phrase "order or action" in § 717r(d)(1). In interpreting statutes authorizing judicial review of agency decisions, however, the Supreme Court has held that "[t]he strong presumption is that judicial review will be available only when agency action becomes final." *Bell v. New Jersey* , 461 U.S. 773, 778, 103 S.Ct. 2187, 76 L.Ed.2d 312 (1983) (holding that a statute allowing judicial review of "any action" by the Secretary of Education gives federal courts jurisdiction only over orders or actions that are final); *see also FPC v. Metro. Edison Co.*, 304 U.S. 375, 383-84, 58 S.Ct. 963, 82 L.Ed. 1408 (1938) (holding that the word "order" in a section of the Federal Power Act substantially identical to § 717r(b) refers only to final orders). This long-standing rule of construction reflects the Supreme Court's inference that Congress generally does not intend to "afford[] opportunity for constant delays in the course of the administrative proceeding," such as would arise if courts could review every interim agency order or action. *Metro. Edison*, 304 U.S. at 383.
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> Nothing in § 717r(d)(1) overcomes this "strong presumption." *Bell*, 461 U.S. at 778. Congress's intent to authorize judicial review over only final orders or actions is

> strongly supported by the language of § 717r(d)(1), which limits judicial review to those agency decisions that "issue, condition, or deny any permit, license, concurrence, or approval," the sort of final decisions that occur at the conclusion of an administrative process. Further, reading § 717r(d)(1) as limiting judicial review to final agency decisions is consistent with the long-standing interpretation of § 717r(b), a related section of the same statute. Although § 717r(b) permits federal court review of "an order" issued by FERC, the Supreme Court (as well as our sister circuits and our own precedents) read this language as authorizing judicial review only over final orders. *See Consol. Gas Supply Corp. v. FERC*, 611 F.2d 951, 958 (4th Cir. 1979) (considering § 717r(b)); *Atlanta Gas Light Co. v. FPC*, 476 F.2d 142, 147 (5th Cir. 1973) (same); *cf. Metro. Edison Co.*, 304 U.S. at 383-84 (considering language in the Federal Power Act, 16 U.S.C. § 825l(b), which is substantially identical to § 717r(b)); *The Steamboaters v. FERC*, 759 F.2d 1382, 1387-88 (9th Cir. 1985) (same); *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 238, 202 U.S.App. D.C. 235 (D.C. Cir. 1980) (same). In adding § 717r(d)(1) to § 717r when it enacted the EPAct, Congress did not give any sign it intended federal courts to exercise a broader scope of review over non-FERC decisions than over FERC decisions. Finally, the presumption that Congress intended to authorize judicial review over only final agency decisions is supported by the same considerations relied on by the Supreme Court in *Metropolitan Edison Co*: construing § 717r(d)(1) as allowing judicial review of every interim action of a state or federal agency would "do violence to the manifest purpose of the provision," 304 U.S. at 384, which was to expedite siting decisions, *see Islander E. Pipeline Co.*, 482 F.3d at 85. Accordingly, we conclude that § 717r(d) authorizes judicial review only over orders or actions that are "final.'" An action or order is "final when it imposes an obligation, denies a right, or fixes some legal relationship." *City of Fremont*, 336 F.3d at 914 (internal quotation marks omitted); *see also Or. Natural Desert Ass'n v. U.S. Forest Serv.*, 465 F.3d 977, 986-87 (9th Cir. 2006) (same); *Atlanta Gas*, 476 F.2d at 147 (noting an order reviewable under § 717r(b) must be "unambiguous in legal effect" and have "some substantial effect on the parties which cannot be altered by subsequent administrative action").

Columbia Riverkeeper v. U.S. Coast Guard, 761 F.3d at 1091-1093.

The Ohio EPA's PTIO in this case is "ambiguous," not "unambiguous," in its legal effect at this juncture. It does not have "some substantial effect on the parties which cannot be altered by subsequent administrative action." The PTIO is a nonfinal order. The ERAC proceeding must proceed to an adjudicated conclusion, the required final state administrative order..

NEXUS' interpretation transforms federal circuit courts into trial courts

Appellants anticipate that NEXUS will respond to this argument of finality along the

lines of the federal district court in *Tennessee Gas Pipeline Co, LLC v. Delaware Riverkeeper Network*, 921 F.Supp.2d 381 (M.D.Pa. 2013). On the nonfinality question, the *Tennessee Gas* district judge observed that the circuit court could order the state environmental agency to "supplement the record with any documents containing written findings issued by" the agency in connection with the permits, "any correspondence to interested parties pertaining to the permits, and any and all other documents or information related to the permits." *Id.* at 394. The district court added, "Thus, it is clear that though the 'record developed' by [Pennsylvania Department of Environmental Protection] is not a formal record in the traditional sense, it is a record nonetheless, and one on which a reviewing federal appellate court can determine whether PADEP acted in an arbitrary and capricious manner in issuing the permits." *Id.* at 394. FERC, according to that judge, was empowered to develop, cooperatively with state agency officials, a "consolidated record of all decisions made or actions taken by the ... State administrative agency ... acting under delegated Federal authority) with respect to any Federal authorization," citing 15 U.S.C. §§ 717n(b), (d), to serve as "the record for judicial review under section 717r(d) . . . of decisions made or actions taken of Federal and State administrative agencies and officials, . . ." *Id.* at § 717n(d)(2). *Id.* at 394. "[T]e NGA expressly has provided a mechanism by which a Circuit Court can obtain 'further development of the consolidated record.'" (citing 15 U.S.C. § 717n(d)(2)).

Termination of state proceedings without a final order denies permit challengers of procedural and substantive due process

The ability to terminate state permitting proceedings at the point the state agency issues a nonfinal permit which lacks adjudication by a state administrative court is an unsupportable procedure which deprives public plaintiffs and challengers of federally-required permits of

procedural and substantive due process. Simple fairness to those who are engaged in the tasks of administration, and to litigants, requires as a general rule that courts should not topple over administrative decisions unless the administrative body not only has erred but has erred against objection made at the time appropriate under its practice. *United States v. L.A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 37, 73 S.Ct. 67, 97 L.Ed. 54 (1952). "As a general rule, claims not presented to [an] agency may not be made for the first time to a reviewing court." *Omnipoint Corp. v. FCC*, 78 F.3d 620, 635, 316 U.S.App.D.C. 259 (D.C. Cir. 1996); *see also Nat'l Wildlife Fed. v. EPA*, 286 F.3d 554, 562, 351 U.S.App.D.C. 42 (D.C. Cir. 2002) (" It is well established that issues not raised in comments before the agency are waived and this Court will not consider them."); *Vill. of Barrington v. Surface Transp. Bd.*, 636 F.3d 650, 655, 394 U.S.App.D.C. 353 (D.C. Cir. 2011) (parties must "forcefully present[] their arguments at the time appropriate under [agency] practice or else waive the right to raise those arguments on appeal" (alterations in original) (citations and internal quotation marks omitted)). But cutting off or interrupting state agency adjudications means that timely objections will neither be raised, nor determined by administrative judges, who are likely to be much more familiar with the facts and legal arguments than federal circuit courts.

Besides depriving the public of its right to articulate objections in a litigation forum at ERAC, removal of an incomplete state agency proceeding to federal appellate court means that the public forfeits the right to present expert scientific, engineering and lay witness testimony, to cross-examine the lay and expert witnesses of the regulatory agency and the pipeline applicant, and to offer other evidence such as contradictory evidence on points unconsidered by the regulatory agency. The public further loses the right to offer argument to connect the opposing

evidentiary dots and legal considerations.

The *Tennessee Gas* judge presumed that a federal appellate court can make a meaningful "arbitrary and capricious" ruling based on a record limited to compilations by a self-interested applicant and a weak, possibly partial or incompetent regulatory agency. In such circumstances, the circuit court's obligatory deference to the unexamined state agency experts and their technical craftiness portends poorly-made appellate decisions. If the court of appeals may not "substitute its judgment for that of the" agency, *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004), and the state agency's judgment is unassailable because of the state adjudication has been shut down, what is the value of the appellate decision except to check off a bureaucratic box upon completing a poorly-informed review? The state agency's evaluation of scientific data within its technical expertise is afforded "an extreme degree of deference." *Washington Gas Light Co. v. FERC*, 532 F.3d 928, 930, 382 U.S.App.D.C. 327 (D.C. Cir. 2008). Such precepts are meaningless if the agency and permit applicant are allowed to compile a record nearly free of public scrutiny and input. At bottom, "impartiality of the tribunal is an essential element of due process." *Withrow v. Larkin*, 421 U.S. 35, 46-47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975). However, an impartial, but uninformed appellate tribunal's ruling denies substantive due process.

The Due Process Clause "provides that certain substantive rights--life, liberty, and property--cannot be deprived except pursuant to constitutionally adequate procedures." *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S.Ct. 1487, 1493 (1985). Those "constitutionally adequate procedures" include notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57, 94

L.Ed. 865 (1950). The *Mullane* court held "that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Courts must balance the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." *Mullane*, 339 U.S. at 314, 70 S.Ct. at 657. This is an "unwavering" obligation. *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 797, 103 S.Ct. 2706, 2710-2711 (1983).

By requiring notice and an opportunity to be heard, the Due Process Clause permits persons whose interests may be adversely affected by government decisions to participate in those decisions. This participation, in turn, reduces the number of erroneous deprivations of life, liberty, or property. *See Block v. Rutherford*, 468 U.S. 576, 605, 104 S.Ct. 3227, 3242-3243, 82 L.Ed.2d 438 (1984) (Marshall, J., dissenting); *Thibodeaux v. Bordelon*, 740 F.2d 329, 336, (5th Cir.1984). Assessing just what process is due involves measuring the importance of the private interest affected by the governmental action; the risk of governmental error through the procedures used; and the magnitude of the governmental interest involved. *Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976). Cutting off or interrupting state agency adjudications endangers the governmental interest in avoiding arbitrariness and injustice.

In *Logan v. Zimmerman Brush Co.*, 455 U.S. at 434, the Court stated:

> The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances. In *Societe Internationale v. Rogers,* 357 U.S. 197 (1958), for example -- where a plaintiff's claim had been dismissed for failure to comply with a trial court's order -- the Court read the "property" component of the Fifth Amendment's Due Process Clause to impose
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> > constitutional limitations upon the power of courts, even in aid of their own valid processes, to dismiss an action without affording a party the opportunity for a hearing on the merits of his cause.

> *Id.* at 209. *See also Hammond Packing Co. v. Arkansas*, 212 U.S. 322, 349-351 (1909) (power to enter default judgment); *Hovey v. Elliott*, 167 U.S. 409 (1897) (same); *Windsor v. McVeigh,* 93 U.S. 274 (1876) (same). *Cf. Wolff v. McDonnell*, 418 U.S. 539, 558 (1974). Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be "the equivalent of denying them an opportunity to be heard upon their claimed right[s]." *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971).
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> In any event, the view that Logan's FEPA [Fair Employment Practices Act] claim is a constitutionally protected one follows logically from the Court's more recent cases analyzing the nature of a property interest. The hallmark of property, the Court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except "for cause." *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 11-12 (1978); *Goss v. Lopez*, 419 U.S. 565, 573-574 (1975); *Board of Regents v. Roth*, 408 U.S. 564, 576-578 (1972). Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating "to the whole domain of social and economic fact." *National Mutual Insurance Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting); *Arnett v. Kennedy*, 416 U.S. 134, 207-208, and n. 2 (1974) (Marshall, J., dissenting); . . . . *See, e.g., Barry v. Barchi*, 443 U.S. 55 (1979) (horse trainer's license protected); *Memphis Light, Gas & Water Div. v. Craft, supra*, (utility service); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (disability benefits); *Goss v. Lopez, supra*, (high school education); *Connell v. Higginbotham*, 403 U.S. 207 (1971) (government employment); *Bell v. Burson*, 402 U.S. 535 (1971) (driver's license); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits).

Logan v. Zimmerman Brush Co., 455 U.S. 429-431.

Thus, even if there is a federal governmental interest in having all objections, challenges and appeals consolidated into one appellate case involving a FERC certificate of convenience and necessity, due process still requires recognition and accommodation of the private interest of persons in pursuing claims related to the adequacy of the Clean Air Act permits. There is a substantial risk of governmental error where citizens lose the right to engage in discovery, to present expert and lay testimony and other evidence, to cross-examine opposing witnesses, and to offer argument to the tribunal in Clean Air Act permitting cases. Due Process is denied where cases such as this one may be shut down and removed prematurely from the statutory ERAC adjudication track without being completed on their merits. The position that the Ohio permitting

process may be deemed to terminate with the EPA Director's version of the PTIO, and that 15 U.S.C. § 717r(d)(1) cuts off timely-requested adjudication by ERAC, is defective because it violates fundamental rights assured by the Due Process Clause.

CONCLUSION: DISMISSAL OF THE MOTION IS REQUIRED

ERAC affords the sole evidentiary hearing opportunity available to the public to challenge a Clean Air Act permit issued by the Ohio EPA. NEXUS' interpretation of 15 U.S.C. § 717r(d)(1) eviscerates the Ohio scheme, produces only a nonfinal order for review by the federal circuit court, and denies Due Process to members of the public who invoke the ERAC proceeding. Treatment of the issuance of the PTIO by the EPA Director as the final event of state permitting authority denies the public the constitutional rights to test the veracity of evidence, to adduce contradictory lay or scientific evidence, to conduct discovery and to proffer argument based upon the resulting evidentiary portrayal. All of these are deprivations of procedural and substantive due process.

The Motion to Dismiss should be denied by ERAC.

Respectfully,

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CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I sent via electronic mail a copy of the foregoing

"Appellants' Response in Opposition to Motion to Dismiss of Waterville Compressor Station" to Cameron Simmons, Esq., Cameron.Simmons@ohioattorneygeneral.gov; John Schriver, Esq., John.Schriver@ohioattorneygeneral.gov; Frank Merrill, Esq., fmerrill@bricker.com; and Elyse Akhbari, Esq.eakhbari@bricker.com.

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