

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1188

September Term, 2018

FILED ON: MAY 9, 2019

OTSEGO 2000, ET AL.,

PETITIONERS

v.

FEDERAL ENERGY REGULATORY COMMISSION,

RESPONDENT

DOMINION ENERGY TRANSMISSION, INC.,

INTERVENOR

On Petition for Review of Orders of the
Federal Energy Regulatory Commission

Before: GARLAND, *Chief Judge*, and TATEL and WILKINS, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the Federal Energy Regulatory Commission (“FERC”) and on the briefs of the parties and oral arguments of counsel. The court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. CIR. R. 36(d). For the reasons stated below, it is

ORDERED and **ADJUDGED** that the petition for review be **DISMISSED** for lack of jurisdiction.

Petitioner Otsego 2000, Inc. (“Otsego”)¹ asks this Court to set aside a FERC order granting a certificate to Intervenor Dominion Transmission Inc. (“Dominion”) to construct and operate compression facilities for its New Market Project (“Project”), which will provide 112,000 dekatherms per day of additional firm transportation service on Dominion’s existing natural gas pipeline network. Otsego contends that, under NEPA, the Commission was required to include an

¹ In addition to Otsego, the Petition for Review included John and Mary Valentine as petitioners. However, as FERC correctly noted, John and Mary Valentine are jurisdictionally-barred from seeking review of the underlying orders because the only timely request for rehearing of the Certificate Order was filed by Otsego. *See* 15 U.S.C. § 717r(a) (“No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.”). Indeed, at oral argument, Otsego conceded that the Valentines are not properly before this Court as petitioners. *See* Oral Arg. Recording at 10:50-10:54.

evaluation of upstream and downstream greenhouse gas emissions in its environmental review of the Project. Petitioners further claim that FERC improperly announced a new policy without notice and an opportunity for public comment when, in its Order Denying Rehearing, the Commission announced it would no longer go beyond the requirements of NEPA and provide information regarding the environmental effects of upstream natural gas production and downstream combustion where it determines such impacts do not qualify as direct or indirect effects of a given project.

We do not reach the merits of Petitioner's challenge because it failed to demonstrate Article III standing to petition this Court. Otsego acknowledged at oral argument that it is not a membership organization, *see* Oral Arg. Recording at 1:12, and it does not suggest that it has associational standing. Its standing in this matter therefore turns on whether it has organizational standing. We find that it does not. Otsego's affidavits do not identify any injury other than the organization's expenditure of time and money related to this litigation. "Our precedent makes clear that an organization's use of resources for litigation, investigation in anticipation of litigation, or advocacy is not sufficient to give rise to an Article III injury." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015).

Although Otsego suggested at oral argument that it has suffered an "information[al] injury," *see* Oral. Arg. Recording at 8:26-9:32, Otsego does not allege informational injury in its standing affidavits or briefs, and therefore that theory of injury is not properly before this court, *see Sierra Club v. EPA*, 292 F.3d 895, 901 (D.C. Cir. 2002) ("Requiring the petitioner to establish its standing at the outset of its case is the most fair and orderly process by which to determine whether the petitioner has standing to invoke the jurisdiction of the court.").

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk