



**ENVIRONMENTAL HEARING BOARD
2nd Floor, Rachel Carson State Office Building
400 Market Street, P.O. Box 8457
Harrisburg, PA 17105-8457**

Katherine McIntosh; L.R.F., a minor, by and through her guardian Ashley Funk; S.D., a minor, by and through her guardian Tina Sumpter; I.P., a minor, by and through his guardian Dawn Predmore; Dimitri Kalu Anya-Vaindiner; S.B., a minor, by and through her guardian Crystal Crawford; E.M., a minor, by and through his guardian Mary Martin; G.K., a minor, by and through his guardian Tracy Russell; V.W., a minor, by and through her guardian Matthew Wood; K.T., a minor, by and through his guardian Antoinette Thomas; K.D.-G., a minor, by and through her guardian Barrett Donna; A.D.-G., a minor, by and through her guardian Barrett Donna; and Kaia Elinich,
Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
Appellee,

and

HOMER CITY GENERATION, LP
Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

**NOTICE OF APPEAL
APPEAL INFORMATION**

1. Name, address, email address, and telephone number of Appellants:

The Appellants' names are as follows:

Katherine McIntosh
L.R.F., a minor, by and through her guardian, Ashley Funk

S.D., a minor, by and through her guardian, Tina Sumpter
I.P., a minor, by and through his guardian, Dawn Predmore
Dimitri Kalu Anya-Vaindiner
S.B., a minor, by and through her guardian, Crystal Crawford
E.M., a minor, by and through his guardian, Mary Martin
G.K., a minor, by and through his guardian, Tracy Russell
V.W., a minor, by and through her guardian, Matthew Wood
K.T., a minor, by and through his guardian, Antoinette Thomas
K.D.-G., a minor, by and through her guardian, Barrett Donna
A.D.-G., a minor, by and through her guardian, Barrett Donna
Kaia Elinich

Appellants may be contacted care of:

M. Jason Asbell, Esq.,
Gibbel Kraybill & Hess
2933 Lititz Pike, P.O. Box 5349, Lancaster, PA, 17606
Email: jasbell@gkh.com; Tel: (717) 291-1700
PA ID No. 304884

Andrew L. Welle*, Avi Lipman*, and David Schwartz*
Our Children's Trust
P.O. Box 5181, Eugene, OR, 97405
Email: andrew@ourchildrenstrust.org; Tel: (541) 321-0277
Email: avi@ourchildrenstrust.org; Tel: (541) 321-8516
Email: david@ourchildrenstrust.org; Tel: (541) 321-0819

**Counsel to Seek Admission Pro Hac Vice*

2. Describe the subject of your appeal:

- (a) What action of the Department do you seek to have the Board review (for example, a permit, license or order issued or denied by the Department, an assessment of a civil penalty or some other determination made by the Department)?

Appellants seek review of the Department of Environmental Protection's ("Department") issuance of Air Quality **Plan Approval No. 32-00457A** (the "Plan Approval") to **Homer City Generation, LP**, 1750 Power Plant Road, Homer City, PA 15748-8009 ("Homer City Generation") for construction of a new 4.5 gigawatt fracked gas-fired power plant (the "Facility"). A copy of the Plan Approval is attached hereto as **Exhibit A**.

- (b) Which Department official took the action (usually the person identified on any written notice that you received)?

Lori L. McNabb, Environmental Program Manager, Northwest Regional Office,
Department of Environmental Protection

- (c) What is the location of the operation or activity which is the subject of the Department's action (the municipality and/or county where the activity takes place or will take place)?

The 3,200-acre site which is the subject of Plan Approval is located in Blacklick Township and Center Township, Indiana County, PA, and is comprised of a proposed fracked gas-fired power plant as well as multiple buildings housing data center infrastructure.

- (d) How, and on what date, did you receive notice of the Department's action? Please specify whether through public notice, a letter or email from the Department, or some other source.

Counsel for Appellants received notice of the Department's issuance of the Plan Approval from Lori L. McNabb, Environmental Program Manager for the Department's Northwest Regional Office via email on November 19, 2025, at 8:24 am PT. Ms. McNabb's email stated in relevant part that "Plan Approval No. 32-00457A was issued to Homer City Generation on November 18, 2025." Notice of the Plan Approval's issuance was published in the Pennsylvania Bulletin Volume 55, No. 48 on Saturday, November 29, 2025, at 55 Pa. B. 8163.

- (e) Did you receive written notification of the Department's action (for example, letter, order or permit that you are appealing)? If yes, you must attach a copy of the notification to this Notice of Appeal. If you are appealing a permit, you may attach the first page rather than the entire document. In lieu of attaching the document, you may provide a link to notice of the action in the *Pennsylvania Bulletin*. See filing instructions for further instruction.

A copy of Ms. McNabb's Nov. 19 email is attached hereto as **Exhibit B**. The link to Pennsylvania Bulletin Volume 55, No. 48 on Saturday, November 29, 2025, at 55 Pa. B. 8163 is: <https://www.pacodeandbulletin.gov/secure/pabulletin/data/vol55/55-48/55-48.pdf>. A copy of the Department's Comment Response Document is attached hereto as **Exhibit C**.

3. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

A related appeal to the Plan Approval is *Clean Air Council, et al., v. Commonwealth of Pennsylvania, Department of Environmental Protection, et al.*, EHB Case No. 2025135 (Dec. 17, 2025).

4. Describe your objections to the Department's action in separate, numbered paragraphs. Rather than use the space on this form, you may type your objections on separate paper if you require more space. **NOTE:** The objections may be factual or legal and must be specific. It is important that you include **ALL** your objections in this section. Although you may be able to amend your appeal to add new objections, you may require permission of the Board to do so, and you may not be able to raise omitted objections later in the appeal process.

See attachment titled "Appellants' Objections."

APPELLANTS' OBJECTIONS

Katherine McIntosh; L.R.F., a minor, by and through her guardian Ashley Funk; S.D., a minor, by and through her guardian Tina Sumpter; I.P., a minor, by and through his guardian Dawn Predmore; Dimitri Kalu Anya-Vaindiner; S.B., a minor, by and through her guardian Crystal Crawford; E.M., a minor, by and through his guardian Mary Martin; G.K., a minor, by and through his guardian Tracy Russell; V.W., a minor, by and through her guardian Matthew Wood; K.T., a minor, by and through his guardian Antoinette Thomas; K.D.-G., a minor, by and through her guardian Barrett Donna; A.D.-G., a minor, by and through her guardian Barrett Donna; and Kaia Elinich (“Appellants”) object to the Pennsylvania Department of Environmental Protection’s (“Department”) November 18, 2025 issuance of Air Quality Plan Approval No. 32-00457A (the “Plan Approval”) to Homer City Generation, LP for construction of a new 4.5 gigawatt fracked gas-fired power plant (the “Facility”).

I. Background

1. Homer City Generation, LP (“Homer City Generation” or the “Permittee”) is a for-profit limited partnership with offices at 1750 Power Plant Rd., Homer City, PA 15748-8009. Homer City Generation is the recipient of the Plan Approval and the owner of the Facility.
2. The Department’s Northwest Regional Office, and specifically Ms. Lori L. McNabb, Environmental Program Manager, approved the Plan Approval under appeal.
3. The action under appeal is the Department’s November 18, 2025, issuance of the Plan Approval to Homer City Generation.
4. The Plan Approval authorizes the construction and initial operation of the Facility, which consists of a new 4.5 gigawatt capacity fracked gas-fired power plant.
5. Previously, the site for the Facility was the largest coal-burning power plant in

Pennsylvania. The coal plant ceased operations and closed in 2023, and thus no greenhouse gas (“GHG”) emissions or other air pollutants have been released from the site since that date.

6. The Facility will be the largest fossil fuel-fired power plant in the Americas.
7. The primary purpose for the Facility is to provide power to data centers. Homer City Generating has stated that up to 4.4 gigawatts of power from operations would support AI-driven¹ hyperscale data centers.² The Department’s website states that the Facility site “will be transformed into a more than 3,200-acre natural gas-powered data center campus[.]”³
8. The Plan Approval authorizes substantial emissions of air and climate pollution that are known to be harmful to children and youth.
9. Air pollution from the Facility consists of particulate matter, nitrogen oxides, carbon monoxide, volatile organic compounds, sulfur oxides, sulfuric acid mist, acetaldehyde, ethylbenzene, formaldehyde, propylene oxide, toluene, and xylene.
10. Climate pollution from the Facility consists of GHG emissions, which include carbon dioxide (“CO₂”), methane, sulfur hexafluoride, and nitrous oxide. Climate pollution from fossil fuel development and combustion is the primary cause of anthropogenic (i.e., human-caused) climate change.
11. On an annual basis, the Plan Approval authorizes the Facility to emit:
 - a. 17,551,454 tons of GHGs, expressed as carbon dioxide equivalent (“CO_{2e}”);⁴

¹ “AI” stands for artificial intelligence.

² <https://www.homercityredevelopment.com/project-overview>.

³ <https://www.pa.gov/agencies/dep/about-dep/regional-office-locations/northwest-regional-office/northwest-community-information/homer-city-generation-redevelopment>.

⁴ CO_{2e} is defined as the equivalent number of tons of CO₂ emissions with the same global warming potential as one ton of another GHG. CO_{2e} includes emissions of CO₂, methane (“CH₄”), sulfur hexafluoride (“SF₆”), and nitrous oxide (“N₂O”).

- b. 843.19 tons of particulate matter;
 - c. 842.23 tons of particulate matter 10 microns in diameter or less;
 - d. 840.02 tons of particulate matter 2.5 microns in diameter or less;
 - e. 1,142.8 tons of nitrogen oxides;
 - f. 1,104.8 tons of carbon monoxide;
 - g. 332.16 tons of volatile organic compounds;
 - h. 211.76 tons of sulfur oxides;
 - i. 165.73 tons of sulfuric acid mist;
 - j. 57.1 tons of total hazardous air pollutants;
 - k. 2.94 tons of acetaldehyde;
 - l. 2.35 tons of ethylbenzene;
 - m. 32.2 tons of formaldehyde;
 - n. 2.13 tons of propylene oxide;
 - o. 9.58 tons of toluene;
 - p. 4.72 tons of xylene.
12. If the Department's issuance of the Plan Approval is overturned and vacated as unconstitutional, Appellants will not be exposed to these substantial amounts of climate and air pollution.
13. The emissions authorized under the Plan Approval will cause substantial harm, degradation, and impairment to the Commonwealth's public natural resources and environment and to the health and safety of Pennsylvania's youth and children, including Appellants.
14. At least one of the Appellants live within the Facility's airshed and will be directly exposed

to the emissions authorized under the Plan Approval, which will impair air quality and harm Appellants' health, safety, and longevity.

15. Because air pollution can travel over long distances, the impacts of the emissions authorized under the Plan Approval will occur locally as well as many miles away, harming youth and children across the state, including Appellants.
16. Each year in the Commonwealth, air pollution from the extraction, transport, processing and combustion of fossil fuels kills about 6,100 adults and causes about 515 preterm births, 80 cases of cancer, and 10,100 incidences of childhood asthma. The pollution authorized under the Plan Approval for the Facility will worsen these harms.
17. The Facility and the data centers it services will require vast quantities of water for cooling, much of which will be evaporated in the process or released as heated and polluted discharge, thereby harming Appellants by depleting and polluting water resources.
18. The GHG emissions authorized under the Plan Approval will cause worsening climate disruption in the Commonwealth, thereby harming Appellants.
19. The release and accumulation of GHGs into the atmosphere, primarily CO₂ from the development and combustion of fossil fuels, is causing more solar energy to be retained in Earth's atmosphere and oceans than radiates back out into space, disrupting Earth's energy balance, and resulting in climate disruption that is harming, degrading, and impairing the Commonwealth's public natural resources and environment and the health and safety of Pennsylvania's youth and children, including Appellants.
20. The higher the atmospheric concentration of CO₂ rises, the hotter Earth will become, and the more climate disruption and degradation the Commonwealth will experience. A substantial portion of every ton of CO₂ emitted persists in the atmosphere for millennia,

continuing to trap heat and drive climate disruption.

21. Atmospheric CO₂ concentrations above 350 ppm mark the threshold of climate instability.
22. Current atmospheric CO₂ concentrations are higher than levels have been in millions of years. The atmospheric CO₂ concentration in 2024 was 424.61 ppm, compared to the pre-industrial concentration of 280 ppm.
23. The concentrations of other GHGs in the atmosphere have also increased. For example, the concentration of CH₄ (methane), a GHG that on a 100-year timescale is 27.0-28.8 times and on a 20-year timescale is 79.7-82.5 times more potent at trapping heat than CO₂, has increased approximately 250% since the mid 1800s.
24. Every additional ton of GHGs emitted causes more heating and disruption to the Commonwealth's climate system, bringing further harm, degradation, and impairment to the Commonwealth's public natural resources and environment and to the health and safety of Pennsylvania's youth and children, including Appellants.
25. Authorizing additional GHG emissions risks crossing climate tipping points and triggering amplifying feedback loops after which runaway, catastrophic climate change becomes unavoidable and irreversible for hundreds of years.
26. The GHG emissions authorized under the Plan Approval are substantial and nationally and globally significant.
27. The annual CO₂e emissions authorized under the Plan Approval are greater than the annual, economy-wide energy and industry CO₂ emissions of over 120 countries.
28. The annual CO₂e emissions authorized under the Plan Approval are greater than the 2023 total energy CO₂ emissions of entire U.S. states, including South Dakota, New Hampshire, Delaware, Rhode Island, Maine, and Vermont.

29. The 17.5 million tons of annual CO₂e authorized under the Plan Approval will increase the energy CO₂ emissions from the Commonwealth's commercial sector, which were 11.4 million tons in 2023, by 153.5%. The 17.5 million tons of annual CO₂e authorized under the Plan Approval is roughly on par with the 2023 energy consumption emissions from the Commonwealth's entire residential sector, 18 million metric tons (i.e., home use for cooking, heating, cooling, etc.).
30. For over a decade, the Department has concluded that climate change is "posing serious economic, health, and equity impacts across the Commonwealth."⁵ The Commonwealth's public natural resources and environment are already being harmed, degraded, and impaired by fossil fuel-driven climate disruption, with resulting harms to the health and safety of Pennsylvania's youth and children, including Appellants.
31. Climate disruption from fossil fuels is resulting in increasing temperatures and heatwaves; increasing frequency and severity of flooding, storms, and droughts; sea level rise; increasing wildfires and wildfire smoke; harm to wildlife species and ecosystems; disruptions to farming; increased risks to human health; and other harms in the Commonwealth.
32. From 1895 through 2024, Pennsylvania temperatures increased by roughly 0.17°F per decade. The rate of warming is accelerating as fossil fuel combustion continues and GHG emissions increase. From 1965 through 2024, the Commonwealth's rate of warming rose to ~0.57°F per decade, which is faster than rates for the contiguous United States (~0.49°F per decade) and the Earth (~0.34°F per decade). 2024 was the warmest year ever recorded

⁵ Department of Environmental Protection, *Pennsylvania Climate Impacts Assessment 2024*, 7200-RE-DEP6046 at 1 (Apr. 2025), www.pa.gov/agencies/dep/residents/climate-change.

for Pennsylvania, which was 4.43°F warmer than the 1895-1904 mean. The years 2024, 2023, 2021, and 2020 account for four of the six hottest years on record for Pennsylvania (the other two are 2012 and 1998). On a 50-year timescale, Pennsylvania is now the warmest it has been in at least 2,000 years. Earth is now warmer than at any point in the last 100,000 years.

33. Increasing temperatures lead to higher concentrations of ground-level ozone, worsening air pollution.
34. The frequency and intensity of heatwaves, as well as the number of days with extreme heat, are increasing in the Commonwealth because of climate change. Due to human-caused global warming since 1850-1900, the median heatwave for 2000-2009 became 20 times more likely to occur while the median heatwave for 2010-2019 became 200 times more likely to occur, with one quarter of these heatwaves being virtually entirely due to human-caused climate change.
35. Higher temperatures and heatwaves resulting from climate pollution increase the risk of heat-related illnesses and death in the Commonwealth. Heatwaves are the deadliest weather events in the United States, causing more fatalities than tornadoes, hurricanes, floods, and earthquakes combined. Extreme heat causes the most heat deaths in the age group 5-24 years old, followed by those less than 5 years old.
36. Every additional ~9,350 tons of CO₂ emitted results in one additional direct death from heat. The 17.5 million tons of CO₂ authorized per year under the Plan Approval will kill about 1,870 people from heat alone for each year the Facility operates, which is an annual death rate 87% greater than the total number of long-term jobs the Facility is estimated to create.

37. The Department concedes that “[c]limate risks and related impacts in Pennsylvania could be severe, potentially causing increased infrastructure disruptions, higher risks to public health, economic impacts, and other changes, unless actions are taken by the Commonwealth to avoid and reduce the consequences of climate change.”⁶ Scientists have found that the only way to avoid and reduce the consequences of climate change is to reduce GHG emissions.
38. Additional climate pollution from the Facility will cause increasing precipitation, extreme rainfall events, and flooding in the Commonwealth. The Department has stated that “[f]looding poses a threat to human health.”⁷ Heavy rainfall increases soil loss and erosion, landslides, and water turbidity. The Commonwealth has already been experiencing record-breaking impacts from floods and landslides. Between 2010 and 2022, the Commonwealth recorded 663 flooding events.⁸ Flooding causes property damage and ecosystem degradation, physically harms and endangers humans, causes deaths, contaminates drinking water, compromises sewage systems, and increases waterborne diseases.
39. Additional climate pollution from the Facility will cause increasing drought conditions during summer months in the Commonwealth. Rising temperatures melt snow earlier in the spring and increase evaporation, drying the soil during summer and fall. Human-caused climate change has caused March snowpack in the Commonwealth to decrease at 7-8% per decade since 1981.
40. Climate change is increasing the risk of wildfires in the Commonwealth by creating hotter, drier conditions, and extending the fire season. Smoke from increasing wildfires driven by

⁶ *Pennsylvania Climate Impacts Assessment 2024*, *supra* note 5, at 6.

⁷ *Id.* at 4.

⁸ *Id.* at 53.

climate change is becoming increasingly prevalent in the Commonwealth. Increasing wildfire smoke has halted air quality improvements for Pennsylvanians. Exposure to wildfire smoke causes and increases the risk of premature death, adverse chronic and acute cardiovascular and respiratory health outcomes, cancer, reproductive problems, premature birth and other birth defects, and other medical harms. Smoke from the Canadian wildfires that caused hazardous air quality across the Commonwealth in 2023 killed more than 37,000 people in the United States.

41. Climate change is increasing the Commonwealth's water temperatures, increasing algal blooms, and causing hypoxic conditions that kill fish.
42. As temperatures rise in the Commonwealth, the breeding season of mosquitoes and ticks is lengthening, leading to increasing populations and increased risk and prevalence of vector-borne diseases like Lyme disease, West Nile virus, and Alpha-gal syndrome.
43. Since 1900, climate driven-sea level rise has caused water levels along the Delaware River in Philadelphia to rise by more than 15 inches. The rate of sea level rise for Philadelphia is accelerating and is unprecedented in the length of the record, increasing about 1.7 inches per decade over 1975-2024. The rising sea levels threaten important infrastructure like the Philadelphia International Airport, Downtown Philadelphia, Penn's Landing, and the Northeast Corridor railroad tracks at 30th Street Station. Due to sea-level rise acceleration, Philadelphia is projected to experience some of the highest amount of sea level rise of anywhere in the world. Relative to 2005, by 2050 local sea level is projected to rise by more than a foot and up to 18 inches.
44. The Commonwealth's ecosystems are being harmed and degraded by climate change and those harms will worsen due to the pollution from the Facility. Climate change, in

interaction with insect pests and pathogens, is already killing off native trees and plants, animals, and rare and endangered species. Increasing temperatures, increased heavy rainfall and flooding, warmer winters, increasing drought conditions, and other disruptions threaten native species, favor invasive species, and alter natural cycles, harming the Commonwealth's plants, animals, and biodiversity.

45. The physiological features, still developing bodies and brains, and behavioral characteristics and tendencies of children and youth, including Appellants, make them uniquely vulnerable to the harms of air pollution and climate disruption caused by the Facility. Children and youth are also uniquely vulnerable to and disproportionately harmed by climate disruption because they will be alive for longer than current generations of adults and experience increasingly severe climate disruption from additional emissions of climate pollution.
46. The Facility is not needed to meet the Commonwealth's energy needs, to provide power to the data centers it intends to serve, or to achieve any compelling government interest.
47. Clean, renewable energy resources are now and have long been technologically and economically available to employ to safely, affordably, and reliably meet the Commonwealth's energy needs.
48. Wind and solar are the cheapest forms of energy in the United States today, even without accounting for the health, climate, and environmental costs of fossil fuels, and especially when considering the levelized cost of energy.
49. Onshore wind energy production has been cheaper than all fossil fuel energy resources since 2011 and solar photovoltaic energy has been cheaper than all fossil fuel energy resources since 2016. Solar power is now 41% cheaper and wind power is 53% cheaper

- than the lowest-cost fossil fuel. The costs for solar and wind continue to decline.
50. The Commonwealth has ample clean, renewable energy resources to reliably meet its energy needs now and into the future, including for the growth of AI and data centers.
 51. The energy uses that will be served by the Facility can be met with clean, renewable energy sources that are not life-threatening to Appellants.
 52. Experts have already concluded the feasibility of, and prepared a roadmap for, the transition of the Commonwealth's all-purpose energy systems (for electricity, transportation, heating/cooling, and industry) to a 100% renewable portfolio, which, in addition to avoiding GHGs, is less expensive than fossil fuel energy systems, will reduce air pollution, and save lives and costs associated with air pollution.
 53. There are multiple ways to power hyperscale AI data centers, like those the Facility is intended to power, through clean, renewable energy.
 54. Fossil fuel energy is the least efficient and secure, as well as the most harmful and unsustainable, form of energy available to the Commonwealth. It also takes up more land than renewable energy infrastructure and mining.
 55. Economic and financial losses in the Commonwealth from air pollution and climate change are wide-ranging and span across many sectors, including healthcare, tourism, sports and recreation, wildlife and fisheries management, forestry, disaster relief, and agriculture, among others. The Department acknowledges that "[t]ransitioning to low-carbon energy sources can provide research and development jobs while providing new streams of income for property owners for hosting clean energy projects. These adaptation measures can lower energy costs to residents and businesses."⁹

⁹ *Id.* at 5.

56. The social cost of carbon is the price of economic damages from the climate impacts from the emission of one metric ton of carbon dioxide. Placing a \$472 social cost of carbon (2025 dollars) on the roughly 17.5 million tons of annual climate pollution authorized under the Plan Approval, the Department's issuance of the Plan Approval authorizes approximately \$8.26 billion in economic harm in 2025. As the social cost of carbon increases by about 1.5% per year, the cost of the Facility's emission of 17.5 million tons of climate pollution in 2030 would be \$8.9 billion (2025 dollars) and \$9.59 billion (2025 dollars) in 2035.
57. Substituting clean, renewable energy for fossil fuels in the Commonwealth would provide for Pennsylvania's energy needs, lower energy bills for consumers, help clean Pennsylvania's air and water, avoid countless deaths and harms to human health, slow climate change and its destructive consequences, begin to stabilize the climate system, improve Pennsylvania's energy security, grow jobs that are safer for Pennsylvania's workers and their families, and enhance Pennsylvania's prosperity.

II. Objections

A. **The Plan Approval Violates Appellants' Rights Under the Pennsylvania Constitution**

58. The Commonwealth has a compelling interest in protecting the lives, health, and safety of Pennsylvania's youth and children and in preserving and protecting public trust resources for them and for future generations.
59. The purpose of the Commonwealth's role in energy regulation and development is to extend, protect, and promote human life, health, and wellbeing, not to harm it. The construction and initial operation of a fossil fuel power plant, in and of itself, is not a compelling state interest.

60. The Department's issuance of the Plan Approval causes unnecessary harm to the health and safety of the Commonwealth's youth and children, including Appellants, and to the environment and public natural resources of the Commonwealth on which their lives, health, and safety depend.
61. The Department's issuance of the Plan Approval violates Appellants' fundamental rights to "clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment" under Article I, Section 27 of the Pennsylvania Constitution (the "Environmental Rights Amendment" or "ERA").
62. The Department's issuance of the Plan Approval violates Appellants' fundamental rights as beneficiaries under the inherent trust relationship recognized in the ERA, under which the government, including the Department, holds and manages public natural resources in trust for the benefit of all people, including youth and future generations. The Department's issuance of the Plan Approval violates the Department's fiduciary duties to Appellants under the ERA to conserve and maintain trust resources; to prevent and remedy the degradation, diminution, and depletion of trust resources; and to act with prudence, loyalty, and impartiality in administering the trust of public natural resources.
63. The Department's issuance of the Plan Approval violates Appellants' fundamental substantive due process rights to life, liberty, property, and the pursuit of happiness under Article I, Section 1 of the Pennsylvania Constitution.
64. The Department's issuance of the Plan Approval violates Appellants' fundamental right to a stable climate system, which is protected under both the ERA and the substantive due process protections enshrined in Article I, Section 1 of the Pennsylvania Constitution.
65. Regardless of whether the Department's authorization for the construction and initial

operation of the Facility – whether through the Plan Approval, any future revision or modification thereto, or any new permit or authorization – complies with applicable statutory or regulatory requirements, such authorization cannot pass constitutional muster.

66. So long as its power generation comes from fossil fuels, the Facility cannot operate without causing substantial emissions of air and climate pollution and resulting harms, degradation, and impairment to the Commonwealth’s public natural resources and environment and to the health and safety of Pennsylvania’s youth and children.
67. So long as the Facility’s power generation comes from fossil fuels, the Department cannot authorize its construction or operation, including thorough the imposition of any conditions, without causing substantial, unnecessary emissions of harmful air and climate pollution and resulting violations of Appellants’ constitutional rights.
68. Where alternative means of providing energy that do not cause harm to the lives, health, and safety of the Commonwealth’s youth and children and the public trust resources on which they depend are readily available, it is a violation of Appellants’ rights under Pennsylvania’s Constitution for the Department to needlessly exacerbate the emergency they face from the Commonwealth’s air pollution and climate crises by authorizing the construction and initial operation of the largest gas-fired power plant in the United States.

B. Appellants

69. Appellants are thirteen Pennsylvania children and youth between the ages of two months and twenty-one years old.
70. Appellant Katherine McIntosh objects to the Department’s issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. Katherine is eighteen years old and is from

Bethlehem, Pennsylvania. Katherine is experiencing injuries to her health and safety from increasingly hot summers and heatwaves; worsening air quality in the Lehigh Valley; and exposure to severe storms, rainfall, and flooding. Within the past five years, Katherine has been experiencing increasingly severe allergic reactions and rashes from sun exposure during the summer and particularly during heatwaves. These events can be debilitating, lasting for extended periods, and have forced Katherine to seek medical treatment at an urgent care given the severity of her symptoms. Katherine's sun sickness reaction causes her to feel very fatigued and has caused her to faint on occasion. As a result of heat exposure, Katherine has been forced to avoid doing the outdoor activities she loves and cherishes such as hiking and exploring nature with her family, swimming, or tending to her aunt's garden. Katherine is also impacted by increasing drought conditions in Pennsylvania, which limit her gardening and mushroom foraging hobbies – killing and drying out her plants and making foraged mushrooms less prevalent and more difficult to locate. Katherine has also noticed a distinct decline in winter snow and snowpack in the Lehigh Valley since she was a child, preventing her from sledding with her family at local parks like she used to. Increasingly severe thunderstorms have damaged Katherine's community, downing trees and impacting travel. Katherine frets about her future and whether she will be able to be safe if climate impacts in Pennsylvania worsen. Every additional ton of climate pollution from the Facility will worsen the harms Katherine is experiencing and cause her further injury.

71. Appellant L.R.F., by and through her guardian Ashley Funk, objects to the Department's issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. L.R.F. is ten months

old and lives in Bolivar, Pennsylvania, within ten miles of the Facility and within the Facility's airshed. L.R.F. is already experiencing injuries to her health, safety, recreation, and access to drinking water from recent and recurring increases in wildfire smoke, ticks, drought, pollen, and other disruptions due to climate change, and faces imminent impacts to her diet. Every additional ton of climate pollution from the Facility will worsen the harms L.R.F. is experiencing and cause her further injury. L.R.F. is already experiencing harms from air pollution from two coal-fired power plants within a ten-mile radius of her home. The Facility will worsen her daily exposure to air pollution.

72. Appellant S.D., by and through her guardian, Tina Sumpter, objects to the Department's issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. S.D. is seventeen years old and is from Murrysville, Pennsylvania. S.D. is experiencing injuries to her health and safety stemming from increasingly hot summers and heatwaves; worsening seasonal allergies; drought; and exposure to severe storms, rainfall, and flooding. Heat waves in recent years have caused S.D. to suffer heat stroke – temporarily impairing her vision, causing sensations of lightheadedness, and on occasion causing her to faint. S.D. is a long-distance runner and recent summer heatwaves have led to the cancellation of several cross-country practices. S.D. suffers from seasonal pollen and grass allergies, and her symptoms have been worsening in recent years due to increasing pollen counts in the Spring. S.D. has been impacted by drought conditions, which harm her family's garden and has prevented her from white water rafting due to abnormally low river flows. Severe storms including thunderstorms and tornadoes are becoming more common, causing flooding and property damage and forcing her family to incur financial expenses to cut down trees surrounding

their home to protect the home and associated power lines. During winters growing up, S.D. has enjoyed skiing, but planned family skiing trips have been negatively impacted by the decline of winter snow cover in western Pennsylvania. S.D. notices a marked reduction of winter snowpack at her favorite skiing spots since she was a child and feels sad, disappointed, and worried she will not improve as a skier when slopes and resorts are closed due to lack of snow. Every additional ton of climate pollution from the Facility will worsen the harms S.D. is experiencing and cause her further injury.

73. Appellant I.P., by and through his guardian Dawn Predmore, objects to the Department's issuance of the Plan Approval because the Plan Approval violates his rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. I.P. is seventeen years old and lives in Pittsburgh, Pennsylvania. I.P. is already experiencing injuries to his health, safety, recreation, and family property from increases in heat, wildfire smoke, and windstorms. I.P. has had to cancel plans to play pickleball, go roller-skating, and play other recreational sports in the summer with friends due to poor air quality, and wildfire smoke-polluted air has impacted family trips. Due to an extreme storm last summer, I.P. lost power for a week, had school canceled, and incurred family financial costs from cutting down trees that were a danger to their home. I.P. enjoys winter sports but declining winter snowpack and ice coverage compared to when I.P. was a child is limiting his ability to sled, ice skate, and ski with his friends and family. Thinking ahead to his future is difficult for I.P. due to climate anxiety. Every additional ton of climate pollution from the Facility will worsen the harms I.P. is experiencing and cause him further injury.
74. Appellant Dimitri Kalu Anya-Vaindiner objects to the Department's issuance of the Plan Approval because the Plan Approval violates his rights under Article I, Section 1 and

Article I, Section 27 of the Pennsylvania Constitution. Dimitri is nineteen years old and lives in Pittsburgh, Pennsylvania. Dimitri is already experiencing injuries to his health and safety from increasingly hot summers, decreased air quality due to wildfire smoke, more extreme rainfall, and other disruptions due to climate change. Extreme heat and smoke from wildfires has forced Dimitri to remain indoors for extended periods to protect his health. Dimitri has anxiety about the viability of his future because of climate change. Every additional ton of climate pollution from the Facility will worsen the harms Dimitri is experiencing and cause him further injury.

75. Appellant S.B., by and through her guardian Crystal Crawford, objects to the Department's issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. S.B. is fifteen years old and lives in Philadelphia, Pennsylvania. S.B. is experiencing injuries to her health and safety from increasingly hotter summers, which causes her to have a rash if she is outside for extended periods, forcing her to stay inside. Having to stay inside makes her feel trapped and she can't do the things vital to her health and wellbeing during her summer break. S.B. has also developed worsening seasonal allergies due to increasing pollen in the spring, making her nose stuffy, have teary eyes, and her throat feels sore, which makes it hard to complete her schoolwork. S.B.'s mom was born in the Cayman Islands and her grandparents are from Jamaica. S.B. has always wanted to move to Florida when she is older so that she could be closer to the Caribbean, but with sea levels rising, she feels that dream will not come true. S.B. worries that things will only get worse for herself, her friends, and her family if her government continues to make decisions to approve projects like the Facility. Every additional ton of climate pollution from the Facility will worsen the

harms S.B. is experiencing and cause her further injury.

76. Appellant E.M., by and through his guardian Mary Martin, objects to the Department's issuance of the Plan Approval because the Plan Approval violates his rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. E.M. is twelve years old and lives in Perkasio, Pennsylvania. E.M. is experiencing injuries to his health and safety from increasing wildfires that threaten his home and wildfire smoke that make it hard to breath and have caused him to have to stay inside; from increasing severe storms, including tornadoes and hurricanes that have caused flooding of his basement, downed trees near his house, power outages that impact his ability to complete his school work; and severe winter snow storms that blocked access to his house and left him stranded in the car for an extended period of time. E.M. used to participate in Boy Scout camp, but one year a terrible storm knocked over his tent and destroyed some of his belongings, which made him stop going for fear of more and bigger storms. E.M. and his family traditionally visit the beach every August, but because of increasingly warm summers it is now too hot to go, and they instead have changed their trips to June. In addition, E.M. has had to take preventative medicine for Lyme disease from tick bites and has noticed an extreme increase in tick populations near his home. E.M.'s injuries will worsen with every additional ton of climate pollution from the Facility.
77. Appellant G.K., by and through his guardian Tracy Russell, objects to the Department's issuance of the Plan Approval because the Plan Approval violates his rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. G.K. is fourteen years old and lives in Riegelsville, Pennsylvania. G.K. is experiencing injuries to his health and safety from extreme rainfall and flooding events that threaten his home and

community; increasing wildfire smoke that forces him to remain indoors for extended periods; drought conditions that increase the risk of wildfires; and increasing severe storms such as tornadoes that cause downed trees and power outages. G.K. and his family were harmed by creek flooding triggered by 2021's Hurricane Ida, which totaled their car and caused severe damage. Wildfire smoke from Canadian wildfires has impacted G.K. during Summer 2023 and 2024, forcing him to spend extended periods of time indoors, which makes him feel trapped and unsafe. G.K. knows that he will be at greater risk of harm if the Facility is allowed to operate and emit climate pollution. Every additional ton of climate pollution from the Facility will worsen the harms G.K. is experiencing and cause him further injury.

78. Appellant V.W., by and through her guardian Matthew Wood, objects to the Department's issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. V.W. is fifteen years old and lives in Doylestown, Pennsylvania. V.W. is experiencing injuries to her health and safety from increasingly hotter summers, which limits her ability to participate in rowing practice and has caused practice to be canceled or moved inside. Smoke from wildfires has also led to canceled rowing practices because the air is too dangerous to breathe and the smoke causes V.W. to feel sick and have headaches due to her asthma. Drought conditions cause low flows in the Delaware River, canceling practices from worry that rowing shells will get stuck or be unable turn around. When V.W. cannot participate in the sports she loves, she does not feel well physically. One year, V.W.'s school had to lockdown because of tornados, which was very scary. V.W. worries about her future especially when she sees her government not making the necessary changes to protect the climate. Every additional

ton of climate pollution from the Facility will worsen the harms V.W. is experiencing and cause her further injury.

79. Appellant K.T., by and through his guardian Antoinette Thomas, objects to the Department's issuance of the Plan Approval because the Plan Approval violates his rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. K.T. is two years old and lives in Philadelphia, Pennsylvania. K.T. is experiencing injuries to his health and safety from increasingly hot summers that have reached temperatures where it is not safe for K.T. to run and play outside forcing him to remain indoors. Wildfire smoke has also forced him inside as it is unsafe for his developing lungs to breath the dangerous air. Extreme fluctuations in weather expose K.T. to dangerous storms such as tornadoes, hurricanes, and severe rain events, which cause power outages and flooding. Visiting and playing in the snow is an important tradition for K.T.'s family, but in K.T.'s lifetime there has been less snow than years past, which means K.T. may not be able to practice the same family traditions. Future sea level rise may impact K.T.'s ability to travel safely within Philadelphia. Every additional ton of climate pollution from the Facility will worsen the harms K.T. is experiencing and cause him further injury.

80. Appellants K.D.-G. and A.D.-G., by and through their guardian Barrett Donna, object to the Department's issuance of the Plan Approval because the Plan Approval violates their rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. K.D.-G. and A.D.-G. are two years old and two months old, respectively, and live in Stroudsburg, Pennsylvania. K.D.-G. is already experiencing injuries to her health, safety, recreation, and family property from recent and recurring increases in wildfires, wildfire smoke, flooding, ticks, and other disruptions due to climate change, as well as harms to her

diet and spiritual practices. These same recent and recurring increases and other disruptions due to climate change are already harming A.D.-G.'s home and her family's diet and spiritual practices. Every additional ton of climate pollution from the Facility will worsen the harms K.D.-G. and A.D.-G. are experiencing and cause them further injury.

81. Appellant Kaia Elinich objects to the Department's issuance of the Plan Approval because the Plan Approval violates her rights under Article I, Section 1 and Article I, Section 27 of the Pennsylvania Constitution. Kaia is twenty-one years old and lives in Coopersburg, Pennsylvania. Kaia is experiencing injuries to her health, safety, and wellbeing from decreased snowfall, increased summer heat, wildfire smoke, and changes in river flows including flooding onto her family property. The air quality in Kaia's community has been badly impacted by wildfire smoke in recent summers, forcing Kaia to limit her time outside to protect her health. Kaia's transportation has been disrupted due to down trees caused by high winds. Kaia notices a distinct decline in the amount of winter snowpack since she was a child. Kaia enjoys hiking but worsening summertime heat and heatwaves have forced her to reschedule planned activities or limited her ability to spend significant time outdoors. Kaia's property is near a creek and the flooding she has endured causes her to fear for her and her family's safety during future extreme rainfall events. Every additional ton of climate pollution from the Facility will worsen the harms Kaia is experiencing and cause her further injury.

82. Appellants reserve the right to amend this Notice of Appeal to include additional objections that may arise during further investigations and discovery in this matter.

WHEREFORE, Appellants respectfully request that the Board overturn and vacate the

Department's issuance of the Plan Approval as unconstitutional and grant such other relief as may be proper.

SIGNATURE PAGE

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated in the Certificate of Service on the date below.

Dated: December 18, 2025

Respectfully submitted,

GIBBEL KRAYBILL & HESS

/s/ Jason Asbell

M. Jason Asbell
2933 Lititz Pike
P.O. Box 5349
Lancaster, PA, 17606
jasbell@gkh.com
(717) 291-1700
PA ID No. 304884

OUR CHILDREN'S TRUST

/s/ Andrew Welle*

Andrew L. Welle*
Avi Lipman*
David Schwartz*
Our Children's Trust
P.O. Box 5181
Eugene, OR 97405
andrew@ourchildrenstrust.org
(541) 321-0277
avi@ourchildrenstrust.org
(541) 321-8516
david@ourchildrenstrust.org
(541) 321-0819

Counsel for Appellants

**Counsel to Seek Admission Pro Hac Vice*



**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE ENVIRONMENTAL HEARING BOARD**

Katherine McIntosh; L.R.F., a minor, by and through her guardian Ashley Funk; S.D., a minor, by and through her guardian Tina Sumpter; I.P., a minor, by and through his guardian Dawn Predmore; Dimitri Kalu Anya-Vaindiner; S.B., a minor, by and through her guardian Crystal Crawford; E.M., a minor, by and through his guardian Mary Martin; G.K., a minor, by and through his guardian Tracy Russell; V.W., a minor, by and through her guardian Matthew Wood; K.T., a minor, by and through his guardian Antoinette Thomas; K.D.-G., a minor, by and through her guardian Barrett Donna; A.D.-G., a minor, by and through her guardian Barrett Donna; and Kaia Elinich,
Appellants,

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
Appellee,

and

HOMER CITY GENERATION, LP
Permittee.

EHB Docket No. _____

ELECTRONICALLY FILED

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Notice of Appeal was filed with the Pennsylvania Environmental Hearing Board and was served on the following on the date listed below:



Electronic Service via the Board

Department of Environmental Protection
Office of Chief Counsel
Rachel Carson State Office Building, 16th Fl.
400 Market Street, P.O. Box 8464
Harrisburg, PA 17105-8464

Lori L. McNabb
Environmental Program Manager
Air Quality Program
Northwest Regional Office
Department of Environmental Protection
230 Chestnut Street
Meadville, PA 16335

Service via Overnight Mail

Homer City Generation LP
Attn: Joel S. Heiser, General Counsel/Secretary
Attn: Shawn T. Simmers, Dir. Of Env. Compliance
1750 Power Plant Rd.
Homer City, PA 15748-8009

Dated: December 18, 2025

/s/ Jason Asbell
M. Jason Asbell