

ORAL ARGUMENT NOT YET SCHEDULED

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SIERRA CLUB,

Petitioner,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent.

No. 17-1236

(consolidated with 17-1240)

**INTERVENOR NEXUS GAS TRANSMISSION, LLC'S
RESPONSE TO SIERRA CLUB'S
MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

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Pursuant to Rule 27(a)(3)(A) of the Federal Rules of Appellate Procedure, Intervenor NEXUS Gas Transmission, LLC (“NEXUS”) submits this response to petitioner Sierra Club’s November 20, 2017 Motion for Voluntary Dismissal Without Prejudice (“Motion”).

Petitioner’s Motion states that NEXUS opposes Petitioner’s request that the Court dismiss this action without prejudice. NEXUS opposes the Motion only to the extent an order granting dismissal without prejudice would permit Sierra Club to file another petition for review of the Federal Energy Regulatory Commission (“FERC”) order granting certificates of public convenience and necessity to NEXUS (“Certificate Order”) prior to FERC taking final action on the merits of Sierra Club’s petition for rehearing. This Court lacks subject matter jurisdiction over appeals of FERC actions until the petitioner has exhausted administrative remedies. Thus, this Court lacks jurisdiction until FERC has denied requests for rehearing filed by the petitioner in the underlying docket, specifically Sierra Club’s October 10, 2017 request for rehearing of the Certificate Order. Any further petitions for review prior to final FERC action would be, like the petition Sierra Club now seeks to withdraw, “incurably premature.” *Clifton Power Corp. v. FERC*, 294 F.3d 108, 110-11 (D.C. Cir. 2002); *see* 15 U.S.C. § 717r(a) and (b).

While Sierra Club seeks now to dismiss its petition after learning of infirmities in the declarations it filed in support of its emergency motion for stay, these

declarations do not bear on the fatal jurisdictional flaw of the petition. Moreover, Sierra Club has given no indication that it intends to wait until its case is suitably ripe to re-file. *See* Motion at 1. Because “process[ing] [a] petition for review . . . before the agency has acted on the request for reconsideration . . . is a pointless waste of judicial energy,” *Clifton Power*, 294 F.3d at 112 (quoting *TeleSTAR, Inc. v. FCC*, 888 F.2d 132, 134 (D.C. Cir. 1989)), the Court should dismiss Sierra Club’s petition with prejudice as to any other challenges prior to FERC taking final action on Sierra Club’s request for rehearing.

Dated: November 21, 2017

Respectfully submitted,

/s/ David A. Super

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**Certificate of Compliance With Type-Volume Limitation, Typeface
Requirements, And Type Style Requirements**

1. This document complies with the length limitation of Fed. R. App. P. 27(d)(2)(A):
 - this brief contains 337 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f)

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:
 - this brief has been prepared in a proportionally spaced typeface using
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Dated: November 21, 2017

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CERTIFICATE OF SERVICE

Pursuant to FRAP Rules 25(b) through (d), I hereby certify that on this 21st day of November 2017, I electronically filed the foregoing *Intervenor NEXUS Gas Transmission, LLC's Response to Sierra Club's Motion for Voluntary Dismissal Without Prejudice* with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system upon on all ECF-registered counsel.

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