

**ORAL ARGUMENT NOT YET SCHEDULED**

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

SIERRA CLUB,	)	
	)	
Petitioner,	)	CASE NOS. 17-1236 & 17-1240
	)	(consolidated)
v.	)	
	)	
FEDERAL ENERGY REGULATORY	)	
COMMISSION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**PETITIONER SIERRA CLUB’S COMBINED REPLY TO FEDERAL  
ENERGY REGULATORY COMMISSION’S AND NEXUS GAS  
TRANSMISSION, LLC’S RESPONSES TO PETITIONER’S MOTION FOR  
VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

---

Derek O. Teaney  
Appalachian Mountain Advocates  
P.O. Box 507  
Lewisburg, WV 24901  
(304) 793-9007  
dteaney@appalmad.org

*Counsel for Petitioner*

Pursuant to Rule 27(a)(4) of the Federal Rules of Appellate Procedure, Petitioner Sierra Club (“Petitioner”) submits this combined reply to Respondent Federal Energy Regulatory Commission’s (“FERC”) and Intervenor NEXUS Gas Transmission, LLC’s (“NEXUS”) responses in opposition to Petitioner’s Motion for Voluntary Dismissal Without Prejudice (“Motion”).

The responses filed in opposition to Petitioner’s Motion invite the Court to reach an unrelated jurisdictional issue on a voluntary motion to dismiss. Such an invitation is inappropriate where, as here, Petitioner has moved to dismiss the case because, due to a change in circumstances of its declarant, it can no longer pursue the relief it sought in bringing the case. As NEXUS correctly observes in its Response, Petitioner seeks to dismiss this suit “after learning of infirmities in the declarations it filed . . . .” Intervenor’s Resp. to Sierra Club’s Mot. for Voluntary Dismissal Without Prejudice 1, ECF No. 1705421. NEXUS and FERC’s arguments in their responses are thus unrelated to the basis for Petitioner’s Motion and go to a jurisdictional issue that has not been fully briefed.

It remains Petitioner’s position that FERC’s tolling order does not bar Petitioner’s suit and that the jurisdictional issue raised by NEXUS and FERC in their response to the voluntary motion to dismiss should be resolved in Petitioner’s favor. After the events detailed in Petitioner’s Motion, however, Petitioner no longer believes it can pursue this consolidated action for emergency relief in good

faith. Whether Petitioner's legal theory of the effect of tolling orders is meritorious should be left until that issue has been fully briefed and is properly before the Court.

FERC's and NEXUS' responses attempt to import an unrelated jurisdictional issue into what should be a run-of-the-mill voluntary dismissal. Petitioner based its Motion on certain "infirmities" in the declarations used to support its petitions—not on any of the issues raised in the responses. Accordingly, regardless of what FERC and NEXUS contend on an unrelated legal issue, the Court should grant Petitioner's Motion to Dismiss without prejudice for the reasons stated in Petitioner's Motion.

Dated: November 28, 2017

Respectfully submitted,

/s/ Derek O. Teaney

Derek O. Teaney

Appalachian Mountain Advocates

P.O Box 507

Lewisburg, WV 24901

(304) 973-9007

dteaney@appalmad.org

*Counsel for Petitioner*

### CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of FRAP 32(c)(2) and the word limit of FRAP 21(d) because, excluding the parts of the document exempted by FRAP 32(f) this document contains 339 words.

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this document has been prepared with a proportionally spaced typeface using Microsoft Word 2017 in 14-point font size and Times New Roman type style.

Dated: November 28, 2017

/s/ Derek O. Teaney

Derek O. Teaney

Appalachian Mountain Advocates

P.O. Box 507

Lewisburg, WV 24901

(304) 793-9007

dteaney@appalmad.org

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on November 28, 2017, a copy of the foregoing Combined Reply to Federal Energy Regulatory Commission's and NEXUS Gas Transmission, LLC's Responses to Petitioner's Motion for Voluntary Dismissal Without Prejudice was filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and copies of the foregoing were served via the Court's CM/ECF system upon all ECF-registered counsel.

Dated: November 28, 2017

/s/ Derek O. Teaney

Derek O. Teaney

Appalachian Mountain Advocates

P.O. Box 507

Lewisburg, WV 24901

(304) 793-9007

dteaney@appalmad.org