

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

In the Matter Of)	Docket No. CP16-22
NEXUS Gas Transmission, LLC)	Docket No. CP16-23
)	Docket No. CP 16-24
)	August 29, 2016
)	

MOTION TO INTERVENE OF SIERRA CLUB

In accordance with the requirements of Rules 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or the “Commission”), 18 C.F.R. §§ 385.212 and 385.214, and regulations under the Natural Gas Act (“NGA”), 18 C.F.R. § 157.10, the Sierra Club hereby moves to intervene in the above-captioned proceeding on the terms set forth below.

This motion to intervene is timely filed. Intervenor Sierra Club’s participation in this proceeding is in the public interest.

In support of its Motion, the Sierra Club states as follows:

I. CONTACT INFORMATION FOR COMMUNICATIONS AND SERVICE

All communications, pleadings, and orders respecting this proceeding should be sent to:

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II. REQUEST FOR FORMAL ADJUDICATORY HEARING

Pursuant to NGA regulations, 18 C.F.R. § 157.10(a)(1), Sierra Club respectfully requests

a formal hearing on the application of NEXUS Gas Transmission, LLC (“NEXUS” or the “Company”) for a certificate of public convenience and necessity authorizing the construction and operation of the NEXUS pipeline, including the environmental impacts of and public need for the project.

III. SIERRA CLUB’S PARTICIPATION IS IN THE PUBLIC INTEREST

Sierra Club is a national non-profit organization with more than 635,000 members including approximately 18,190 members in Michigan and approximately 18,000 members in Ohio. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Club is headquartered at 2101 Webster Street, Suite 1300, Oakland, CA 94612.

The Club’s particular interests in this case involves the preservation of the natural environment, public health and environmental safety from the proposed NEXUS natural gas megapipeline, which would transport enormous quantities of natural gas extracted via the controversial method known as horizontal hydraulic fracturing, or “fracking,” from western Pennsylvania and eastern Ohio through Ohio and Michigan to a distribution hub in Ontario, Canada and thence for foreign export. Part of the Sierra Club mission is the reduction of all types of pollution, including climate-disrupting greenhouse gas, through equitable public health and environmental safeguards. The Club also supports the rapid transition from fossil fuels to clean energy. The Sierra Club has championed especially those policies and regulations that help overcome barriers to energy efficiency and renewable energy as low-cost, low-risk alternatives to

fossil fuels. The Sierra Club advocates for such policies and regulations nationwide by intervening, submitting comments, providing testimony, and presenting experts in state and federal energy- related proceedings; participating in public hearings and workshops; speaking to students, civic organizations, and other stakeholders; and holding seminars and symposia — all to ensure that fossil fuels are kept in the ground, and that clean energy solutions reach all communities. Specifically, Sierra Club has participated in the FERC draft EIS public meetings and comment periods for the project.

Many Sierra Club members live, work, and recreate in the areas that will be directly affected by the proposed pipeline, including areas along the proposed route and areas overlying the shale plays that would likely see increased production if NEXUS were to build and operate the project. One is Sierra Club member Kathy Schoen, who with her husband Gary Schoen, owns a 46 acre farm that has been in her family for 130 years. It is located at 8508 Tuttle Hill Rd, Washtenaw County, Ypsilanti Michigan 48197. The property includes a home and outbuildings. Some 41.6 acres are farmed for soybeans and corn. The proposed NEXUS pipeline would cross approximately 1,518 feet of the prime farming ground. About 1,320 feet of the western part of the Schoen property lies Paint Creek. State and Federal agencies identify this stretch of Paint Creek as a wetlands area. Historically, Paint Creek was a State of Michigan Designated Trout Stream in the Stoney Creek Basin. The planned proximity of the NEXUS pipeline to the house, well and outbuildings could make them vulnerable to structural damage during construction, as well as to ongoing safety hazards after the project is completed. The Schoens oppose the location of the pipeline route and object to the environmental damage and diminution of property values in the vicinity of their home which will occur if the pipeline is constructed.

Another Sierra Club member with standing to proceed is Nancy Shiffler, a residential electric and gas customer of DTE Energy who resides at 2877 Sorrento Ave., Ann Arbor, MI 48104. DTE Energy is a 50% co-owner of the NEXUS Gas Transmission LLC along with Spectra Energy. Ms. Shiffler has been a residential consumer and ratepayer of DTE gas and electric service for some years, and opposes DTE's requests in pending state utility commission ratemaking cases in which DTE Energy through its affiliates seeks to impose costs on ratepayers which are directly related to the NEXUS pipeline project and the delivery of gas from it to DTE customers over the coming decades.

The NEXUS pipeline project directly and adversely threatens Ohio's and Michigan's lands and waters and other natural resources. For example, construction of the pipeline in the porous, unstable and saturated karst limestone geology of northwest Ohio and southeastern Michigan could contribute to serious changes in groundwater tables and also cause movement and ultimately damage to the ability of the pipeline to serve as a transportation facility for explosive and toxic gas. At the same time, the economics of the pipeline may cause uneven burdens on low and moderate income ratepayers and also, will unfairly cast ratepayers as guarantors of the profitability of the pipeline even if there is a partial or complete failure of the NEXUS business model.

Furthermore, Sierra Club's intervention is in the public interest because Sierra Club and its members represent interests shared with the public at large, as detailed in Sierra Club Michigan Chapter's comments previously filed in this proceeding, which are incorporated here by reference. Therefore, Sierra Club's intervention on behalf of its directly-affected members, Kathy Schoen and Nancy Shiffler is also warranted in the public interest under 18 C.F.R. §

385.214(b)(2)(iii).

There is no question here of the timeliness of this intervention petition, which is being filed during the formal comment period on the NEXUS DEIS. According to 18 C.F.R. § 380.10(a)(1), interventions filed “on the basis of a draft environmental impact statement will be deemed to be timely.”

IV. GROUNDS FOR INTERVENTION

The rapid increase in shale gas drilling in Ohio has altered the mideastern United States’ landscape with new roads, well sites, wastewater disposal pits, pipelines, compressor stations, landfills for the voluminous fracking wastes, and other infrastructure. FERC is facilitating these detrimental environmental effects in Ohio and Michigan by approving the natural gas industry’s plans for a massive build-out of infrastructure, including the NEXUS pipeline project, the REX Zone 3 East-to-West pipeline and E.T. Rover dual pipeline, all of which would connect gas supplies in the Marcellus and Utica shale formations to market areas, with much of the gas bound for export overseas.

FERC’s approval of the NEXUS project will induce and promote a great deal of shale gas drilling in Ohio and will cause associated detrimental environmental effects on Ohio’s forests and wildlife habitat, water, air, and recreation resources. FERC’s approvals of often-greenfield, *ad hoc* pipeline projects such as NEXUS, will cause direct, indirect and cumulative environmental impacts to public resources. Approval of NEXUS is unjustifiable, but it is FERC that conducts the weighing of factors to grant a certificate of convenience and necessity. The Sierra Club grounds for intervention identify several of these factors and the manner in which they are misconstrued and therefore, how they are improperly granted weight in favor of pipeline

approval.

The proposed NEXUS natural gas pipeline would extend approximately 250 miles from southeast Ohio to southeastern Michigan. Approximately 50 miles of the pipeline would run through Michigan, with the final 20 miles or so of involving use of an existing, shared pipeline with E.T. Rover.

The NEXUS pipeline is designed to deliver 1.5 billion cubic feet of gas per day (Bcf/d). According to FERC and Michigan Public Service Commission (“MPSC”) filings, NEXUS plans to transport over half, (51%, .76 Bcf/d) of their 1.5 Bcf/d capacity to Canada. DTE will take up to 150,000 Dth/d or 10% of NEXUS-delivered gas as fuel for natural gas-fired electricity-generating plants and distribution of natural gas to residential, commercial and industrial customers.

The NEXUS pipeline is not needed, according to current economic predictors of redundant transportation capacity. The expected adverse impacts of the project on the exceptional resources of the Lake Erie Basin are unacceptable; NEXUS will cause the needless destruction of thousands of acres of farmland, woodland, wetlands and other aspects of the natural environment, and it will negatively affect hundreds of landowners. Building this pipeline for an expected usage period of 60 years or more will lock in excessive natural gas reliance, expand fracking for extraction of natural gas, and impede the development of renewable energy and energy efficiency. It will also, via wholly-expected leakage from routine operations, contribute enormous volumes of greenhouse gases into the atmosphere. A regional or programmatic environmental impact statement (PEIS) is indicated, which encompasses the multiple pipelines which currently exist or are planned as transportation projects from the

Marcellus shale regions of the Appalachian Basin.

Below are the Sierra Club's specific grounds for intervention, as required by 18 C.F.R. § 385.214(b)(1):

A. Lack of Evidence of Public Convenience and Necessity

Under the Natural Gas Act, FERC must determine whether NEXUS "is or will be required by the present or future public convenience and necessity." 15 U.S.C. § 717f(e). Applying this standard, "the Commission will approve an application for a certificate only if the public benefits from the project outweigh any adverse effects." Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 at 28 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000). Determination of genuine need for a proposed pipeline is a critical part of this balancing test, and the Commission has charged itself with considering "all relevant factors reflecting on the need for the project." *Id.* at 23. The Commission must also weigh the adverse impacts of the project, specified as the interests of existing customers, the interests of competing pipelines, the interests of landowners and surrounding communities. *Id.*

"[I]n deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction." *Natural Gas Pipeline Company of America LLC*, Docket No. CP15-505-000,

Order on Certificate at 3 (March 17, 2016); NEXUS DEIS at 1-3.

FERC's Staff maintains that "the need for the Projects originates from an increase in demand for natural gas in the region for electric generation, home heating, and industrial use, coupled with a decrease of imports of natural gas to the region by traditional supply sources, mainly western Canada and the Gulf Coast. The Projects would meet this need by importing natural gas to the region from newly available sources, mainly the Appalachian Basin." DEIS at ES-2, 1-3.

This conclusory statement is not factual. DTE Energy is a 50% shareholder in the NEXUS pipeline. Demand for electricity and natural gas in Michigan and the DTE service territory has declined and is predicted to continue to decline in the future. From 2000 to 2015, Industrial gas usage actually declined the most (26%). Electric generation accounted for only 21% of all gas consumed in Michigan in 2015. In recent Michigan Public Service Commission rate cases, DTE Electric has predicted a decline in its electric sales at a 2% annual rate, with industrial demand falling by a larger 4% annual rate. DTE does not presently plan to build a new gas-fired electricity generating plant until 2022. Moreover, DTE Gas forecasts declining natural gas sales for all rate classes, including residential, due to energy efficiency.

While demand for natural gas has increased in Ohio, all but one of the new Ohio gas plants are planned along the Ohio River, far from the NEXUS pipeline. Plus, NEXUS has no firm commitments in Ohio. Of the 13 gratuitous "tee taps" NEXUS announced it would install along the route, FERC Staff states in the DEIS, that "we consider the 6 definitive receipt and delivery points on the NGT Project to be essential to the Project's objective, whereas we do not consider the 13 tee-tap sites to be essential." DEIS p. 1-4.

There no longer is a Dawn Hub price premium to be paid for gas delivered to Canada, and Ontario has an alternative source of Marcellus gas through New York pipelines. Demand for gas in Ontario is expected to rise very slowly with substantial production of electricity coming from hydro and growing renewable energy share.

Nor will the situation improve if NEXUS is built. There is already a growing pipeline glut in the Mideast region, including Michigan and Ohio. The U.S. Department of Energy (DOE) in a February 2015 report concluded that only 54% of current U.S. pipeline capacity is being used and that better utilization could reduce the need for new pipelines. (http://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SMI_m.htm). With the largest gas storage capability in the United States, Michigan would not need pipeline capacity beyond existing lines to accomplish proposed conversions of some coal plants to natural gas. In January 2016, electric generation accounted for only 14% of total gas usage in Michigan. Marcellus and Utica gas is already flowing to this region through existing pipelines and new pipeline reversals. There is no shortage of gas in the region, as evidenced by record high natural gas storage levels and relatively low prices.

Top management at Energy Transfer (Rover) and key energy analysts are questioning the need for both the E.T. Rover and NEXUS pipelines because they essentially are duplicates. Analysts report there appears to be less demand for gas in the region than originally anticipated.

There is increasing evidence of a state of overbuild in pipeline infrastructure. (Tom Pawlicki, “FERC deference to pipeline operators seen contributing to overbuild” *SNL* (Mar. 24, 2016), available at (<https://www.snl.com/InteractiveX/article.aspx?cdid=A-35872577-11048&Printable=1>)). Many natural gas pipelines already flow into Michigan and inflow capacity has actually increased 15% from 2000 to 2015, to 10 Bcfd. During the same time, natural gas usage

in Michigan has declined 9%. If both NEXUS (1.5 Bcfd) and Rover (1.3 Bcfd) are built in Michigan, this would increase Michigan inflow capacity by 2.8 Bcfd at the same time that gas demand is dropping. Considerable underutilized capacity will most likely be the result. Pipeline overbuild has a major environmental impact because it unnecessarily damages or destroys thousands of acres of the environment and property. NEXUS would directly add to the overbuilding problem. Overbuilding is evidence of a lack of public need; if there is a lack of public need, then a federal grant of eminent domain authority to the pipeline company would be inappropriate.

Additionally, reports indicate that the financial stability of the project - and thus to both public convenience and need - is increasingly questionable . In Michigan, DTE is attempting to subsidize a considerable share of NEXUS costs by charging its captive customers. The Michigan Attorney General expressed his concerns to the Michigan Public Service Commission (MPSC) that the NEXUS agreement is an affiliate transaction between DTE Electric and the unregulated DTE Pipeline Company, a 50% owner of NEXUS. *In re DTE Electric Co.*, MPSC No. U-17920, Attorney General’s Initial Brief at 11–12, available at <https://efile.mpsc.state.mi.us/efile/docs/17920/0108.pdf>. This will result in the improper subsidization of DTE Pipeline Company by DTE ratepayers in violation of the MPSC Code of Conduct.

The Michigan Attorney General also claims that NEXUS did not adequately consider alternative pipelines. Plus, the AG finds the DTE analysis “shows very clearly that the additional NEXUS pipeline capacity costs exceed any potential benefits from lower gas prices through the year 2024. Any significant savings, if they materialize, would not start until 2030.”

(<https://efile.mpsc.state.mi.us/efile/docs/17920/0066.pdf>).

An internal DTE Energy presentation from August 2015 regarding NEXUS stated, “In addition, based on recent discussions with NEXUS, we believe that an increased commitment is necessary in order to ensure that the project has sufficient customer commitments to justify proceeding with construction.” *Re Application of DTE Electric Company for Authority to Implement a Power Supply Cost Recovery Plan in its Rate Schedules for 2016 Metered Jurisdictional Sales of Electricity,*” Case No U-17920, Exhibit MEC-16, Response to MECSC/DE 1.2, Attachment 1.2b: DTE Energy, DTE Electric – Corporate Fuel Supply, *DTEEC NEXUS Pipeline Analysis*, August 10, 2015, slide 20. This additional take of gas supply will most certainly reduce or eliminate DTE’s take from competitive and existing pipelines such as ANR. Plus, it will lock DTE ratepayers into 20-year NEXUS contracts at the expense of other supply and energy alternatives.

It appears unlikely that NEXUS will be able to fully fund itself with so little capacity fill. NEXUS’ capacity is only 56% filled, with a large share of this DTE. DTE Electric will not be able to use all of its NEXUS capacity until 2022. Also, consider that some shippers, and most likely NEXUS’ largest shipper, Chesapeake, have renegotiated with other pipeline companies for lower volumes and fees.

B. The DEIS Does Not Satisfy NEPA

Under agency policy, the Commission takes up environmental considerations in an evaluation under the National Environmental Policy Act (“NEPA”). The Commission evaluates whether a project “can be constructed and operated in an environmentally acceptable manner” and it has discretion to reject a proposed project on these grounds. *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198 at 27 (Dec. 7, 2012). FERC must balance “public convenience and

necessity” against potential adverse impacts. Many adverse concerns are presented by the NEXUS DEIS.

1. Legally-Insufficient Consideration of Alternatives
and of the No-Build Alternative

The Draft EIS fails to consider alternatives other than different modes of fuel transport. This excludes consideration of cleaner fuels and energy conservation as alternatives. This is exemplified in the dismissive tone in the DEIS § 3.1 discussion of the no-action alternative, which ends with this statement:

Authorizations related to how markets would meet demands for electricity are not part of the applications before the Commission and their consideration is outside the scope of this draft EIS. Therefore, because the purpose of the Projects is to transport natural gas, and the generation of electricity from renewable energy resources or the gains realized from increased energy efficiency and conservation are not transportation alternatives, they are not considered or evaluated further in this analysis.

DEIS at 3-4. However, CEQ regulations implementing NEPA require the discussion of alternatives to “[i]nclude reasonable alternatives *not within the jurisdiction of the lead agency.*” (Emphasis supplied). 40 C.F.R. § 1502.14(c). The above DEIS statement truncates FERC’s discussion of alternatives by confining it to pipelines, *i.e.*, by limiting consideration only to alternatives *within* FERC’s jurisdiction. FERC refuses as a matter of formal policy to consider alternatives to projects submitted to it over which it has no jurisdiction.

According to FERC, “It is important to recognize that not all conceivable alternatives have the ability to meet the objective and *an alternative that does not meet the Projects’ objectives cannot be considered a reasonable alternative and is not considered in our evaluation.*” (Emphasis supplied). FERC’s interpretation of its responsibility respecting alternatives manifests a clear bias in favor of pleasing the investors behind the pipeline by

reducing “need” to consideration merely of the details of the pipeline to be used to deliver whatever volume of gas they wish to transport. Any alternative that does not deliver gas is out of bounds to FERC:

We determined that six existing and three proposed systems potentially could be used in various combinations to transport natural gas to and from the markets served by the Projects; however, *none of the existing pipelines have capacity available for transporting the required volumes of natural gas proposed by the applicants*, nor do they service all the required receipt and delivery points. Consequently, there are no practicable existing or proposed system alternatives that are preferable to the proposed Projects.

DEIS at ES-15. By restricting “purpose” to delivering gas instead of meeting end-use energy needs, FERC has foreclosed any serious consideration of alternatives - the discussion which the Council on Environmental Equality calls the “heart” of the Environmental Impact Statement. 40 C.F.R. § 1502.14.

Consequently, the NEXUS Draft EIS does not meaningfully account for or discuss the potential roles of energy conservation and efficiency and the use of renewable energy in reducing market demand. Current and future reductions in market demand could preserve sufficient capacity in existing pipeline to handle market needs. Improving technology and reduced costs for renewables and efficiency likely will play a greater role in the near term and, thus, should be part of serious consideration of alternatives.

FERC has failed to demonstrate why “No Action” cannot meet the demonstrated need for NEXUS. There are trends in energy conservation improvements, particularly in the industrial and commercial classifications which are whittling away at the claimed Michigan demand for natural gas, especially from a redundant new facility. Under the circumstances, the “No Action” alternative must be fully analyzed, and FERC’s refusal to do so calls for better justification than is currently provided in the Draft EIS. FERC must both describe the negative consequences of

“No Action” - which surely begin with the thousands of acres of land which will be permanently impaired, and surface and groundwater sources threatened or altered by pipeline construction - and demonstrate that granting this particular permit for this particular project is outweighs these negatives.

2. FERC’s Right-of-Way Acquisition Policies Bias
Routing and Preferred Alternative Selection

FERC implicitly encourages landowners to settle with the pipeline company ahead of certificate approval, meaning, well before the company even has eminent domain powers. Landowners are not informed that formal agency policy requires the Staff to use the proportion of negotiated right-of-way agreements as an indicator favoring approval of the project, putting a thumb on the scale that balances public need with adverse impacts.

This evidence of bias is undeniable. FERC has included the following statement in the advisory handbook which it requires pipeline applicants to distribute, entitled, “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” On page 4, in response to the question, “How will I first hear about proposed facility construction?” is this passage:

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned pipeline facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, a condemnation proceeding could be initiated where compensation would be determined in accordance with state law.

This is consistent with FERC’s Certificate Policy Statement (1999), which is not provided directly to landowners:

[T]he Company might minimize the effect of the project on landowners by acquiring as much right-of-way as possible. In that case, the applicant may be called upon to present some evidence of market demand, but under this sliding scale approach the

benefits needed to be shown would be less than in a case where no land rights had been previously acquired by negotiation.

FERC Statement of Policy, 88 FERC ¶ 61,227 at 27 (September 15, 1999). Further evidence of FERC's helping hand to pipeline developers appears in the 2000 "Order Clarifying Statement of Policy:"

The Policy Statement encouraged project sponsors to acquire as much of the right-of-way as possible by negotiation with the landowners and explained how successfully doing so influences the Commission's assessment of public benefits and adverse consequences.

Id., 90 FERC ¶ 61,128 at 19 (February 9, 2000).

Conclusively, FERC's longstanding formal policies have helped create a pressurized situation for property owners who may be initially opposed to losing property and control over property to pipeline projects. Given this institutional and unmistakable bent to help its pipeline clientele, FERC is not entitled to indulge the legal presumption that completed acquisition agreements represent the minimization of the human and natural environment impacts when weighed against supposed public benefits. That is, the presumption that NEPA compliance has been satisfactorily privatized into negotiations between high-pressure buyer and captive seller has been corrupted. The aim of mitigation of environmental effects cannot be deemed to have been attained as a result of FERC's longstanding policy. Official agency pressure on property owners biases the decision which the Commission is supposed to approach without bias.

It is incumbent under the circumstances for the policies to be terminated, agency-wide, and in the specific instance of NEXUS, for all right-of-way agreements to be deemed abrogated, and all acquisitions renegotiated before there is any deliberation whatsoever on a certificate of convenience and necessity.

3. FERC's Hearing and Comment Process Violates NEPA

On August 4, 2016, shortly before the beginning of six scheduled public hearings for taking comments on the DEIS, FERC issued a statement describing the process for the hearings in which it stated there would be no formal informational presentations by FERC, and public testimony would be taken individually in separate rooms in the presence of a court reporter and a FERC official. Consequently, there would be no opportunities for the general public, including landowners recently notified due to route changes, to receive information about the project from FERC or from observing the public commentary of others. This left many members of the general public with little information to prepare written or spoken comments prior to the August 29, 2016 comment deadline.

By 18 C.F.R. § 380.9(a)(1), the Commission must “comply with the requirements of 40 CFR 1506.6 of the regulations of the Council for public involvement in NEPA.” And 40 C.F.R. § 1506.6(c) obligates FERC to “hold or sponsor public hearings or public meetings whenever appropriate” using as criteria whether, among other factors, there is: “Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.”

In February and March 2015, hundreds of people attended required public information sessions put on by NEXUS across Ohio and Michigan. In April and May 2015, hundreds more attended formal scoping hearings convened by the FERC Staff. In February 2016, 250 to 300 people attended, mostly to express opposition, an Ohio Environmental Protection Agency public hearing on a Clean Air Act permit for the proposed Wadsworth, Ohio compressor station, a component of NEXUS. In March 2016, about 500 or more people, almost entirely opponents, attended a second OEPA hearing on the Clean Air Act proposed permit for the NEXUS

compressor station proposed near Waterville, Ohio. FERC Staff are well aware of the very significant opposition to the compressors as well as of the attendance at the FERC-required events. Indeed, a FERC staffer told a member of the public that the one-on-one court reporter meetings would avoid a “free-for-all atmosphere.” But there have been no public meetings or hearings related to NEXUS which could be characterized as “free-for-alls,” and even if there were, there are other means of maintaining order than to abandon the destroy citizens’ First Amendment association right. This abrupt change to the public comment format is an abridgment of the freedom of association of the public and constitutes a denial of due process and the public comment stage must be completely repeated the plenary session method.

Moreover, a serious environmental justice violation occurred within the public comment stage. The decision to hold the only August 2016 Michigan DEIS public comment hearing in Tecumseh, some 30 miles from the lower income areas of the Ypsilanti, Michigan area which lie along the proposed route ran afoul of the CEQ Environmental Justice guidelines. FERC acknowledged the EJ guidelines at § 4.10.10 of the DEIS.

By Executive Order 12898, the CEQ called on federal agencies to actively scrutinize the racial and economic composition of affected communities. According to FERC Staff, EPA environmental justice policies contemplate the enhancement of opportunities for residents to participate in decision making so that

. . . potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that would affect their environment and/or health; (2) the public’s contributions can influence the regulatory agency’s decision; (3) the concerns of all participants involved would be considered in the decision-making process; and (4) the decisionmakers seek out and facilitate the involvement of those potentially affected (EPA, 2011).

DEIS at 4-192.

A significant segment of the NEXUS pipeline would pass through areas of Ypsilanti, Michigan, which have a significant low and moderate income population. Convening a non-plenary public comment event 30 miles away, in a small town and with no provisions for direct mass transit so that low-moderate persons might attend and participate, represents an abysmal failure to adhere to the aspirations of Executive Order 12898. The Sierra Club therefore demands that FERC reopen and extend the deadline for comments, schedule additional hearings in Michigan, and return to the plenary session format to foster qualitatively better citizen participation.

4. Lack of Reasonable Comment Period on Pending Reports

The Draft Environmental Impact Statement is grossly incomplete. It is premature for it to be opened to public comments at this time.

FERC Staff listed 47 proposed conditions which they believe will further mitigate the environmental effects of the pipeline project if included in the final certificate.

We have included several recommendations that require the applicants to provide updated information and/or documents prior to the end of the draft EIS comment period. We do not expect that the applicants' responses would materially change any of the conclusions presented in this draft EIS; instead, the requested information is primarily related to ensuring that our final EIS is complete with up-to-date information on the applicants' ongoing efforts to minimize the impacts of their Projects and to comply with FERC regulations.

DEIS at 5-18. However, quite a few have a deadline that must be completed by the end of the public comment period:

13. Prior to the end of the draft EIS comment period, NEXUS should file with the Secretary:

a. a specific compressor station site on the City of Green Route Alternative between Mps 1.8 and MP 98.7. NEXUS should attempt to avoid or minimize impacts on environmental resources while adequately meeting the requirements of the proposed

pipeline system. NEXUS should identify the range of engineering and hydraulic flexibility it has in moving the compressor station site on the route alternative; and

b. minor route adjustments and realignments to the City of Green Route Alternative in order to minimize impacts on residences, forests, and other environmental resources (*Section 3.3.3*)

14. Prior to the end of the draft EIS comment period, NEXUS shall incorporate into the NGT Project route:

a. the Chippewa Lake C Route Variation between MPs 66.1 and 72.5, as depicted in figure 3.4.10-4 of the draft EIS. NEXUS shall file with the Secretary revised alignment sheets and updated land use and resource tables. NEXUS should also provide documentation that newly affected landowners have been notified in accordance with 18 CFR 157.6(d). (*Section 3.4.10*)

b. the Reserve Road Route Variation between MPs 94.6 and 96.0, as depicted in figure 3.4.12-1 of the draft EIS. NEXUS shall file with the Secretary revised alignment sheets and updated land use and resource tables. NEXUS should also provide documentation that newly affected landowners have been notified in accordance with 18 CFR 157.6(d). (*Section 3.4.12*)

15. Prior to the end of the draft EIS comment period, NEXUS shall file with the Secretary an analysis indicating:

a. whether the proposed Hanoverton Compressor Station site at MP 1.4 could be developed without permanently filling or altering the water body on the site, and if not, the types of permanent water body impacts that would be required; and

b. whether Alternative Site A to the Hanoverton Compressor Station, as depicted on figure 3.5.1-1 of the draft EIS, could be purchased and developed without forest clearing, and what impacts would be associated with realigning the proposed pipeline to the site or building suction/discharge lines from the site to the proposed pipeline (*Section 3.5.1*)

16. Prior to the end of draft EIS comment period, NEXUS shall file with the Secretary geotechnical feasibility studies for the Nimisila Reservoir (MP 41.1), Tuscarawas River (MP 48.1), West Branch of the Black River (MP 92.4), and the U.S. Highway 12/RACER site (MP 254.3). (*Section 4.3.2.2*)

17. Prior to the end of the draft EIS comment period, NEXUS shall file with the Secretary an assessment of why HDD is the preferred crossing method for the Sandusky River (MP 145.9), Maumee River (MP 181.2), and Huron River (MP 250.9), as opposed to an alternative crossing method, such as winter wet trench construction or direct pipe installation. (*Section 4.3.2.2*)

29. **Prior to the end of the draft EIS comment period**, NEXUS shall provide revised *RCPs* that accurately show the distance and direction from the construction workspace and pipeline centerline of all structures on Drawings HANO-P-8004-1B (MP 6.3) and WADS-P-8033-1B (MP 113.2). (*Section 4.9.4.1*)

31. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary site specific Organic Farm Protection Plans developed in coordination with organic farm landowners and applicable certifying agencies for each certified organic farm that would be crossed or immediately adjacent to the Project that has the potential to experience direct and indirect effects as a result of construction or operation (e.g., pesticide drift, water migration, weeds). The plans shall, at a minimum, identify:

- a. prohibited substances (both during construction and operation);
- b. soil handling procedures;
- c. buffer zones;
- d. noxious invasive species control;
- e. erosion control;
- f. off right-of-way water migration;
- g. restoration methods, including seeding and preventing introduction of disease vectors; and
- h. operation and maintenance practices, including avoidance of herbicides or other agency or landowner approved methods.

The plan shall also describe how properties would be monitored for compliance with the provisions of the plan (e.g., use of an agricultural monitor) during construction. (*Section 4.9.5.1*)

33. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary a discussion of how construction and operation of the NGT Project would affect landowners continued participation in the *Conservation Reserve Program*. (*Section 4.9.5.3*)

34. **Prior to the end of the draft EIS comment period**, NEXUS shall file a revised FSA-enrolled lands table and ensure the table includes the mileposts, tract number, type of program, and acres affected. For any FSA-enrolled lands crossed, provide an update on NEXUS' consultations with landowners and local FSA and NRCS officials regarding the landowners' continued participation in the program, and any requested mitigation measures. (*Section 4.9.5.3*)

37. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary an evaluation of the feasibility of crossing the Chippewa Rail Trail, Chippewa Inlet Trail, North Coast Inland Trail, and Creek Bend Farm using the bore method. If the bore method is not feasible, NEXUS shall file a site-specific alternate crossing plans that identifies the location(s) of a detour, public notification, signage, and consideration of avoiding days of peak usage. (*Section 4.9.7.3*)

38. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary an evaluation of the feasibility of extending the bore further west to avoid impacting forest/woodland on the west side of Highway 77. (*Section 4.9.7.3*)

41. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary results of file reviews for the 11 other sites identified by NEXUS and site-specific plans to properly manage any contaminated soil or groundwater in compliance with applicable regulations, if necessary. (*Section 4.9.9*)

43. **Prior to the end of the draft EIS comment period**, NEXUS shall file with the Secretary visual screening plans developed for the Hanoverton, Wadsworth, and Waterville Compressor Stations that would provide screening to nearby residences from the stations. (*Section 4.9.10.2*)

(Emphasis in original). DEIS at 5-22 to 5-26.

While some of the conditions involve the submission by NEXUS of additional fine-tuning information and plans, including reports from other federal, state, or local entities, several are of great concern. The basis for Condition 16, for example, is as follows:

NEXUS was not able to adequately characterize risk at four of the proposed HDD sites, including the Nimisila Reservoir (MP 41.1), Tuscarawas River (MP 48.1), West Branch of the Black River (MP 92.4), and the U.S. Highway 12/RACER site (MP 254.3). **Therefore, we recommend that: Prior to the end of draft EIS comment period, NEXUS should file with the Secretary geotechnical feasibility studies for the Nimisila Reservoir (MP 41.1), Tuscarawas River (MP 48.1), West Branch of the Black River (MP 92.4), and the U.S. Highway 12/RACER site (MP 254.3).**

(Emphasis original) DEIS at 4-50. And in support of Condition 17, the DEIS states:

NEXUS characterized three HDD sites as high risk of experiencing difficulty during construction, including the Sandusky River (MP 145.9), Maumee River (MP 181.6), and Huron River (MP 250.9). Each of these rivers is designated as sensitive for fish, recreation, and/or historic values. Because these water bodies are sensitive and the sites are high risk, **we recommend that: Prior to the end of the draft EIS comment period, NEXUS should file with the Secretary an assessment of why HDD is the preferred crossing method for the Sandusky River (MP 145.9), Maumee River (MP 181.6), and Huron River (MP 250.9), as opposed to an alternative crossing method, such as winter wet trench construction or direct pipe installation.**

(Emphasis original). DEIS at 4-50.

NEXUS' plan is to use horizontal directional drilling (HDD) to install the pipeline underneath these watercourses. In other words, a large tunnel will be drilled through subsurface strata and water tables, theoretically well beneath water courses and water bodies so as not to impair the integrity of their functioning. The pipeline company's assessments of why HDD is the method of installation underneath key water bodies and rivers is something of vital interest to the public, members of which understandably might have legitimate reasons for worry especially when they are more knowledgeable about local geology than a self-interested Houston, Texas pipeline company. For instance, the US 12/RACER site is the location of the former Willow Run Powertrain Plant, which was originally constructed by Henry Ford for the production of B-24 bombers during World War II. After World War II the plant was used to produce automobiles, C-119 and C-123 military aircraft, automobile transmissions as well as the machining, cleaning, and painting of metal parts and products. General Motors renovated the main building in 2005 but ceased operations at the plant in December 2010. In March 2011, Revitalizing Auto Communities Environmental Response (RACER) Trust acquired the property as part of a national program to rehabilitate former General Motors plants and has since been responsible for maintaining and rehabilitating the property. The site is being administered under the EPA's

Resource Conservation Recovery Act and overseen by the Michigan Department of Environmental Quality. Many environmental assessments of the Willow Run site during the past 30 years have identified oil accumulation underneath portions of the main plant building; the presence of polychlorinated biphenyls (PCBs) and some metals in soil around the site; chlorinated volatile organic compounds (VOCs) particularly in areas where parts cleaning units once operated; but recent surveys suggest that the levels; and historic soil and groundwater suggest the presence of benzene, aluminum, mercury, and other pollutants. While NEXUS professes a desire to avoid crossing the site, it appears that site characterization remains ongoing, and it may be difficult to tell whether NEXUS' drilling is avoiding contamination "hot spots." The potential for contamination of the drilling fluids and of dispersal of toxins in the form of inadvertent returns to the surface during drilling are matters that should be identified in publicly-available plans. The risks must be made publicly known for discussion and resolution.

One may be forgiven for seeing the contemporaneous unavailability of these many plans, all involving important water sources, as evidence of collusion between the FERC Staff and NEXUS. It is inherently impossible to allow a meaningful (not to mention legal) public comment opportunity where the FERC Staff seeks important supplemental information inside the period for public comment and orders the supplementation on or before the last day of the comment period. By giving NEXUS until the end of the comment period to submit the information for the record, FERC likely defers availability until the final or nearly-final day. The FERC Staff's opinion that " We do not expect that the applicants' responses would materially change any of the conclusions presented in this draft EIS" (DEIS at 5-18) reveals the Staff's bias in favor of the preferred alternative, but also implicitly says that the public comment opportunity

is meaningless because FERC cannot, and will not, be moved. The volume of missing information is collectively large: there is missing risk analysis data for the horizontal drilling sites affecting at least seven (7) important water sources; missing discussions of possible effects of the pipeline on landowner participation in conservation reserve programs; missing potential alternate sites for the Wadsworth compressor station in the event a Green, Ohio, reroute is adopted; missing data about the Green reroute itself. Members of the public who might not have paid attention earlier, but now realize the route is hardening, are left with nearly zero recourse. Those members of the public, including landowners, who have been closely adhering to deadlines and comment opportunities will now see large voids of information and find themselves blindsided with no way of ensuring FERC attention to public concerns.

The FERC Staff must be required to reopen the public comment period and to establish a new time frame for additional public information, public investigation, and comment following the receipt of all of these reports into the docket. Indeed, NEPA regulations at 40 C.F.R. § 1502.09(a) require that “The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)© of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.” The DEIS is inadequate and precludes meaningful analysis in multiple areas, reflecting the impersonal lockstep march toward permitting that has marked this proceeding from the pre-application period.

5. Safety Provisions Do Not Fully Encompass the Potential Blast Impact Radius

Spectra Energy Partners (DTE’s partner in the NEXUS application) has submitted a petition to the Pipeline Hazardous Materials Safety Agency (PHMSA), found at Docket No.

2016-0009. The petition seeks a waiver of the requirement to odorize gas in pipeline sections passing through densely populated Class 3 HCAs when more than 50% of the downstream segments are also densely populated. Here, that refers to the final 7 miles of the proposed pipeline in Michigan as it proceeds into Canada. The petition further holds open a possibility of extending the waiver zone to the final 20 miles. The 20-mile extension would include the pipeline segments passing Willis and Whitaker Roads near Lincoln Consolidated schools, within 400 feet of three elementary schools.

Odorization is a very critical last line-of-defense safety measure which allows immediate detection of and response to a leak by those in proximity to the leak. The company's concern is the cost of blending odorized gas with non-odorized sources at the pipeline terminus. The petition proposes a series of additional design, materials, construction, and monitoring measures to reduce the risk of a leak in the designated sections. If, in fact, these measures provide an additional margin of safety when the gas is not odorized as claimed, it is unclear why they are not also used in other Class 3 segments of NEXUS that do not fall under the 50% downstream rule.

Risk estimates are small comfort to those living or attending school or working within the blast radius or incineration zone of a large industrial gas pipeline. Instead of obtaining a waiver for an important safety alert and supposedly vitiating the necessity of it by building a safer pipeline, the pipeline should be routed to avoid human-occupied buildings within the radius of effect. The potential for adverse impacts in these situations far outweighs the weakening argument for public need for this project.

6. Greenhouse Gases and Impacts on Climate Change Are Inadequately Addressed

Surprisingly, the FERC Staff claims ignorance respecting the means by which to

measure greenhouse gases (GHSs) and climate change: “Currently, there is no standard methodology to determine how a project’s relatively small incremental contribution to GHGs would translate into physical effects on the global environment.”

The U.S. Environmental Protection Agency has consistently stated in its comments on EIS reviews that there is sufficient relationship and predictability of the GHG impacts to include them in environmental reviews. While dismissing the impact of the Project on global emissions as unmeasurable and negligible, the FERC Staff in several places within the DEIS unabashedly claims lower CO2 emissions from burning natural gas compared to other fossil fuels as a benefit of the Project. The approach is clearly contradictory, slanting in favor of the project. It also runs afoul of the August 1, 2016 Council on Environmental Quality’s “Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews ,” which states:

. . . [A] statement that emissions from a proposed Federal action represent only a small fraction of global emissions is essentially a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether or to what extent to consider climate change impacts under NEPA. Moreover, these comparisons are also not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigations because this approach does not reveal anything beyond the nature of the climate change challenge itself: the fact that diverse individual sources of emissions each make a relatively small addition to global atmospheric GHG concentrations that collectively have a large impact.

(Emphasis supplied). *Id.* at 11.

A recently-released Harvard study (Turner, et al., *Geophys. Res. Lett.*, 43, 2218–2224, doi:10.1002/2016GL067987) reports satellite data showing a 30% increase in U.S. methane emissions from 2002-2014, with the trend being largest in the central part of the country, including Pennsylvania, West Virginia, Ohio and Michigan. The study concludes that, “This

large increase in U.S. methane emissions could account for 30–60% of the global growth of atmospheric methane seen in the past decade.” The trend coincides directly with increased natural gas production in those areas. Recent studies have also indicated that methane emissions and leaks from gas production and transportation facilities have been underestimated.¹

Consequently, the impact of the NEXUS project on GHG’s cannot be dismissed so easily, particularly when considered with the cumulative impact of several pipeline projects proposed for the same region.

The Draft EIS fails to adequately analyze the effects of the proposed project’s greenhouse gas emissions on climate change as required by NEPA. “The impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.” *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 550 (9th Cir. 2007)); *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 508 (9th Cir. 2008); *Border Power Plant Working Group v. DOE*, 260 F.Supp 2d 997 (S.D. Cal. 2003). NEPA calls for a quantification of the “incremental impact[s] that [the proposed project’s] emissions will have on climate change ... in light of other past, present, and reasonably foreseeable actions.” *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1216 (9th Cir. 2008).

Accordingly, the Draft EIS must quantify and evaluate the cumulative and incremental effects of climate change resulting from the proposed project and connected actions in

¹“Leaky Methane Makes Natural Gas Bad for Global Warming,” at <http://www.scientificamerican.com/article/leaky-methane-makes-natural-gas-bad-for-global-warming>

comparison to and in conjunction with the effects of emissions of other reasonable alternatives or actions – past, present and reasonably foreseeable.

7. A Programmatic EIS Is Required

FERC persists in retaining a narrow view of cumulative impacts, both for the pipeline itself over its extended range and in the context of many other polluting projects in the region. FERC focuses on localized effects rather than on the combined effects on broader areas such as watersheds and drainage systems. Likewise, regional farm production and the health of species of concern should be considered cumulatively. A valid cumulative impacts analysis should address upstream extraction in the Marcellus/Utica plays as well as downstream transportation and combustion.

While acknowledging the existence of nine (9) planned, proposed, or existing FERC-related natural gas transmissions projects in the region, FERC limited its consideration of cumulative impacts only to segments of projects within 10 miles of the NEXUS project. FERC should instead be considering the broad impacts of the numerous projects that are emanating from the Marcellus shale region, many of which, such as E.T. Rover, are duplicative.

Disturbingly, the DEIS offers a less reluctant look at broader impacts when they favor construction. On page 4-270 of the DEIS, the FERC Staff states, “We find that the Projects, along with other planned natural gas projects in the Midwest region, may result in the displacement of some coal use or encourage the use of lower carbon fuel for new growth areas, thereby regionally offsetting some GHG emissions.” These are essentially downstream impacts on power plant activities outside of FERC’s jurisdiction, where the GHG offset is not quantified by the Staff and is at best, questionable. FERC should be equally willing to look at upstream

cumulative adverse impacts, such as the increase in green house gas emissions from methane leaks and natural gas production.

Guidance from the Council on Environmental Quality recommends the device of a Programmatic EIS when “several energy development programs proposed in the same region of the country have similar proposed methods of implementation and similar best practices and mitigation measures that can be analyzed in the same document.” Council on Environmental Quality guidance, “Effective Use of Programmatic NEPA Reviews,” December 18, 2014, p. 21/55 of .pdf. The CEQ further notes that “Programmatic NEPA reviews provide an opportunity for agencies to incorporate comprehensive mitigation planning, best management practices, and standard operating procedures, as well as monitoring strategies into the Federal policymaking process at a broad or strategic level.” With the profusion of pipeline projects besetting FERC, the obligation to address cumulative impacts in a systematic way is crucial, not only for avoiding and mitigating adverse impacts, but also for assessing the genuine economic viability of a project such as NEXUS. A Programmatic EIS is obligatory at this point, prior to formal Commission action on NEXUS’ certificate application.

V. CONCLUSION

The Sierra Club has articulated multiple grounds for intervention in this certificate proceeding under the Natural Gas Act and the National Environmental Policy Act. The Club has a history of positive participation in important public decisions such as pipeline permitting, and can solidly represent Michigan and Ohio citizens affected by the NEXUS project proposal on issues of critical economic, environmental and legal interest.

WHEREFORE, the Sierra Club prays the Federal Energy Regulatory Commission grant it leave to participate as a full party in this certificate proceeding.

Respectfully,

August 29, 2016

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CERTIFICATE OF SERVICE

In accordance with the requirements of § 385.2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Commission's Secretary in this proceeding.

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