

**CASE DECIDED AUGUST 22, 2017;
REHEARING DENIED JANUARY 31, 2018**

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

Sierra Club, <i>et al.</i> ,)	
Petitioners,)	
)	
v.)	Nos. 16-1329 and 16-1387
)	
Federal Energy Regulatory Commission,)	
Respondent.)	

**REPLY IN SUPPORT OF MOTION OF FEDERAL ENERGY
REGULATORY COMMISSION
TO STAY ISSUANCE OF MANDATE**

Sierra Club’s response seeks both to re-litigate the Court’s August 22, 2017 decision – and pre-litigate the order on remand – while avoiding the narrow focus of the Federal Energy Regulatory Commission’s request for a short (45-day) stay of the mandate.

Sierra Club asserts confidently that there will be no harm to Florida consumers if the pipeline projects at issue suffer a lapse in FERC certificate authority. *See* Response at 14-16. But the Court has already affirmed the Commission’s finding that the pipelines are needed, as they are the only “viable means” to supply the natural gas required to meet the increased demand for electric generation in Florida. *Sierra Club, et al. v. FERC*, 867 F.3d 1357, slip op. at n.9

(D.C. Cir. 2017). Notably, Sierra Club continues to object to the potential greenhouse gas emissions from power plants burning natural gas delivered by the pipeline projects – while simultaneously asserting that those power plants could use the same amount of natural gas from other sources. *See* Response at 15.

Sierra Club also accuses the Commission of asking the Court to “pre-judge” the final supplemental environmental impact statement. Yet Sierra Club goes on to isolate certain issues from that statement in an attempt to preemptively litigate the statement’s adequacy. *See id.* at 10-13. The sufficiency of the final supplemental environmental impact statement is not before the Court. The Commission has not yet considered the statement; it will do so in its order on remand. The Commission only attached the statement to its motion to demonstrate its commitment to timely action on remand and the need for only the additional 45-day stay period that the Commission requested. Should it so choose, Sierra Club will have the opportunity to challenge the Commission’s action on remand at the appropriate time.

The Commission asked the Court for a limited, 45-day stay while the Commission acted to fulfill the mandate of the Court. The Commission filed its motion on February 6, 2018, meaning that the 45-day period would conclude on March 23, 2018. Given that 17 days have passed since that filing, the Commission now only requests a 28-day stay from the date of this reply, so that it can act on remand by March 23, before the Court’s mandate issues.

CONCLUSION

The Commission respectfully requests that the Court stay issuance of the mandate in this case for 28 days, to allow the Commission to issue its order on remand before the Court's mandate issues.

Respectfully submitted,

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February 23, 2018

Sierra Club, et al. v. FERC
Nos. 16-1329 and 16-1387 (consolidated)

Docket Nos. CP14-554,
CP15-16, CP15-17

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d)(2)(A) and D.C. Circuit Rule 27(a)(2), I certify that the foregoing complies with the requirements of Fed. R. App. P. 27(d)(2)(A) and Circuit Rule 27(a)(2) because it contains 422 words.

February 23, 2018

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Sierra Club, et al. v.
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16-1387

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CP 15-16, CP 15-17

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P.25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 23rd day of February 2018, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system, as indicated below:

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