

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

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| In the Matter of |) | Docket No. CP16-22 |
| NEXUS Gas Transmission, LLC |) | |

**MOTION FOR LEAVE TO ANSWER AND ANSWER TO PROTEST OF NEIGHBORS
AGAINST NEXUS, FRESHWATER ACCOUNTABILITY PROJECT AND
SUSTAINABLE MEDINA COUNTY
AND ANSWER OF CONSUMER ENERGY ALLIANCE**

Consumer Energy Alliance (“CEA”) respectfully submits this Motion for Leave to Answer and Answer to the Protest filed by Neighbors Against NEXUS, Freshwater Accountability Project and Sustainable Medina County (“Neighbors”) in the above-captioned proceeding.

CEA respectfully requests that the Commission decline to address Neighbors’ protest (the “Protest”) as its contentions are false and have no merit. Accordingly, the relief sought should be denied.

I. BACKGROUND

On November 20, 2015, NEXUS Gas Transmission, LLC (“NEXUS”) filed an application pursuant to Section 7(c) of the Natural Gas Act (“NGA”) for authorization to construct a new interstate pipeline and other related facilities in Ohio and Michigan (the “Project”). On July 14, 2016, the staff of the Commission issued a Notice of Availability of the Draft Environmental Impact Statement (“EIS”) which it prepared for the Project. The notice solicited public comments on the Draft EIS.

CEA, the leading consumer advocate for affordable reliable energy, activated its grassroots network to demonstrate the widespread support for the Project among the residents of Ohio before the Commission. To that end, CEA contacted its members and members of the

general public in counties which would likely be affected by the Project through an automated phone survey. Of those who completed the survey, 347 replied affirmatively to the questions of whether they supported the Project and whether they authorized that their support be relayed to the Commission. Upon the completion of the survey, those comments, in the form of supporting letters, were filed in this docket.

On August 31, 2016, two days after the comment period for the Draft EIS ended, Neighbors filed its Protest claiming that 15 letters which were generated as a result of the survey were “fraudulent and forged” and that someone has “undertaken widespread criminal fraud to influence the outcome” of the Project. The Protest requests that the Commission, among other things, convene an independent audit of all public comment statements submitted in this proceeding since the opening of the comment period for the Draft EIS and strike the 15 letters identified in the Protest.

As discussed below, Neighbors’ contentions are without merit and the Commission should decline to further address these unsubstantiated and inaccurate allegations.

II. MOTION FOR LEAVE TO ANSWER PROTEST

CEA requests leave to file an answer to the Protest filed by Neighbors in this proceeding. Rule 213 of the Commission’s Rules of Practice and Procedure generally precludes filing an answer to a protest unless otherwise ordered by the decisional authority. 18 CFR § 385.213(a)(2) (2016). However, the Commission has previously accepted answers to protests where it believed that the answers would clarify matters under consideration, assist the Commission’s understanding and resolution of the issues raised in the protest or materially aid the Commission’s disposition of the matter.¹ CEA believes that its answer will provide clarity

¹ See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, 62,417 (2006) (accepting an answer to a protest as it assisted the Commission in its understanding and resolution of the issues raised), *El Paso Nat. Gas Co.*, 82 FERC ¶ 61,052,

with respect to the issues raised by Neighbors, assist in the Commission's disposition of the Protest, and should therefore be accepted.

III. ANSWER

As an energy consumer advocacy organization, CEA has developed a process of gathering grassroots support for affordable, reliable energy projects. As part of that widely accepted business process, CEA conducts automated telephone surveys with selected individuals. When an automated call is placed, and consistent with accepted industry practice, the call is directed to the individual listed in phone company records. The individual who participates in the survey is asked a series of questions from a scripted questionnaire to which he or she is requested to answer by pressing on the phone's keyboard "1" for "yes" and "2" for "no". But, it is the nature of automated surveys that the questions are not asked by a live person and there is no process to identify and confirm who answers the phone and responds to the question.

The survey used here began with an introductory statement telling the respondent that the Commission is considering whether or not to grant a permit to build the NEXUS pipeline and explaining the benefits of the pipeline, including creation of jobs in the region and reduction of energy costs for manufacturers and consumers. The survey continued with the express question on whether or not the respondent would give his or her permission to relay to the Commission his support for the pipeline. If the respondent replied with "no", the survey would ask another question reiterating the importance of the Project and again ask the respondent if he or she would support the pipeline and authorize CEA to pass that view on to the Commission. On behalf of those respondents who indicated their support for the project and authorized CEA to forward that

61,200 (1998) (concluding that the answer to the protest was appropriate as it materially aided the disposition of the proceeding), *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,124, 61,591 (Aug. 4, 2006) (accepting the answer to the protest because it has provided additional information that assisted the Commission in its decision-making process).

viewpoint to the Commission, CEA then generated the letter for the 347 individuals that were filed.²

Neighbors claims that 15 of the letters generated by CEA and submitted in this docket are “forged and/or falsified.” Neighbors alleges that one of its members personally investigated the letters and discovered that persons identified in those letters did not authorize the submission of those letters to the Commission. For example, Neighbors contends that in some cases, a person identified as the commentator could not have been able to respond to the questionnaire as she lacked mental capacity to do so or, as it turned out in one case, was deceased. In other cases, the person Neighbors contacted allegedly denied having authorized anyone to represent that they supported the Project. Neighbors, on this basis, argues that those letters were submitted fraudulently.

As relevant here, CEA discovered that once support letters were filed, many individuals who expressed support for the Project in letters to the Commission received multiple phone calls from project opponents questioning their position and harassing those individuals into retracting or altering their support. It may be that in response to such calls some of the respondents to the survey may have chosen to rescind their approval of the Project.

Moreover, it is implicit in the nature of any automated phone survey that from time to time there will be instances where the person who answers the phone and responds to the survey is not the person listed in the telephone company’s records as the householder. This would explain the inadvertent error that can occur when a supporting letter is generated in the name of the person listed as householder, but someone else actually answers the phone. So, even though the householder – in whose name the support letter was generated – may not be competent or

² If the respondent indicated that he or she either did not support the Project or did not authorize CEA to relay that support to the Commission, no support letter was generated.

even in agreement, the person who answered did respond affirmatively and authorize support for the Project. Similarly, in some instances the respondent may not fully understand the presented question, unintentionally answer it in the wrong way and later change his or her mind. Or, in some cases, the respondent may forget that the survey even took place, let alone that he or she gave the authorization for his comments to be filed with the Commission. CEA regrets any such misunderstanding or miscommunication that may have occurred.

None of these examples, however, suggests that the discrepancies described by Neighbors invalidate the majority of the survey's results, and specifically do not support the wildly overblown allegation of forgery, fraud or false statements. To the contrary, the hyperbolic allegations of Neighbors only represent an attempt by an anti-development group to distort public opinion with respect to the NEXUS pipeline and thereby unduly influence the Commission's decision on whether or not to approve the Project.

In closing, the Commission should be aware that CEA has engaged in a host of public forums, including other requests for comment, in support of wind, solar and conservation projects. CEA supports energy projects that help reduce costs for households and small businesses and create economic opportunity. What is clear and beyond dispute regarding the NEXUS project is that without NEXUS energy prices for families and small business will increase due to lack of infrastructure and supply.

IV. CONCLUSION

In light of foregoing, CEA respectfully requests that the Commission deny the relief requested by Neighbors.

Respectfully Submitted,

/s/ Edward D. Greenberg

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September 2, 2016

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy, by first class mail, of the foregoing document on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 2nd day of September, 2016.

/s/ Edward D. Greenberg
Edward D. Greenberg