

This sea change from fossil fuels to renewable energy is a new circumstance that FERC could have considered back in 2014 when it started the permit process for Sabal Trail, given that former FERC Chair Jon Wellinghoff did predict it in 2013.<sup>38</sup>

Given that FERC has repeatedly refused to consider the growth of solar and wind power, much less batteries, now we have arrived at a circumstance novel and significant compared to the previous Sabal Trail Environmental Impact Statements and permits.

### **10. Court rejection of tolling orders breaks FERC process**

A new circumstance even worse for FERC and new pipelines is the recent D.C. Circuit Court of Appeals rejection of FERC tolling orders, as in postponement of rehearing decisions on natural gas projects, such as requested by landowners.<sup>39</sup> FERC Commissioner Richard Glick said of that decision, "It is important that these parties can go to court before a company can take their land & build a pipeline affecting their communities."

Yet Glick also remarked,<sup>40</sup> "30 days means 30 days. The problem with that is that we have an enormous number of recurring orders and it's really almost impossible if we're going to continue to issue rehearing orders at the same pace for staff to be able to adequately work on these orders."

Further, Commissioner Glick and FERC Chairman Neil Chatterjee issued a statement on FERC's own website:<sup>41</sup>

*"Following the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Allegheny Defense Project v. FERC, we respectfully ask Congress to consider providing FERC with a reasonable amount of additional time to act on rehearing requests involving orders under both the Natural Gas Act and the Federal Power Act. We believe that any such legislation should make clear that, while rehearing requests are pending, the Commission should be prohibited from issuing a notice to proceed with construction and no entity should be able to begin eminent domain proceedings involving the projects addressed in the orders subject to those rehearing requests."*

Thus FERC itself publicly announced that the court prohibition on tolling orders is a novel and significant circumstance.

Sabal Trail never would have been built without tolling orders. It certainly would not have been built through as many environmental justice communities. It should not have been built. It's time for FERC to shut it down.

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<sup>38</sup> "FERC Chair Jon Wellinghoff: Solar 'Is Going to Overtake Everything': One of the country's top regulators explains why he is so bullish on solar," Herman K. Trabish, Green Tech Media, August 21, 2013,

<https://www.greentechmedia.com/articles/read/ferc-chair-wellinghoff-sees-a-solar-future-and-a-utility-of-the-future>

<sup>39</sup> "DC Circuit: FERC can't indefinitely delay action on gas pipeline challenges," Iulia Gheorghiu, Utility Dive, July 1, 2020,

<https://www.utilitydive.com/news/dc-circuit-ferc-cant-indefinitely-delay-action-on-gas-pipeline-challenges/576882/>

<sup>40</sup> "Almost impossible' for FERC to address rehearing orders in 30 days, Glick says," Catherine Morehouse, Utility Dive, July 15, 2020,

<https://www.utilitydive.com/news/almost-impossible-for-ferc-to-address-rehearing-orders-in-30-days-glick/581630/>

<sup>41</sup> "Joint Statement on Allegheny Defense Project v. FERC," FERC, July 02, 2020,

<https://www.ferc.gov/news-events/news/ferc-chairman-neil-chatterjee-and-commissioner-richard-glick-issue-joint-statement>