

Given These “Significant New Circumstances,” FERC Must Prepare a Supplemental EIS

The NEPA regulations require that:

- (1) [Agencies] . . . [s]hall prepare supplements to either draft or final environmental impact statements if:
 - ...
 - (ii) There are *significant new circumstances* or information relevant to environmental concerns and bearing on the proposed action or its impacts.
- (2) [Agencies] may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

40 C.F.R. § 1502.9(c) (emphasis added). The use of the word “shall” is mandatory and creates a duty on the part of the agency to prepare a supplement to the EIS if there are significant new circumstances or information relevant to environmental concerns. *See Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 372 (1989). Albany’s emergence as a Covid-19 global hotspot constitutes “significant new circumstances” that require a supplement to the EIS to examine, *inter alia*, the public health and environmental justice implications of completing construction of and operating a compressor station that would further burden vulnerable populations. In addition, for the reasons set forth above, construction and operation of the compressor stations should be halted pending the outcome of the supplemental EIS.

* * *

African American populations are particularly vulnerable to asthma and other illnesses that are exacerbated by increased air pollution. These underlying conditions result in more severe cases of Covid-19, including increased death rates. African American communities “have been infected and their residents killed at a disproportionate rate across the country.”²⁷ FERC should deny Sabal Trail’s request to begin operating a non-essential compressor station that would increase harmful air pollution in a predominantly African American community that is currently a global hotspot for the Covid-19 crisis.

Sincerely,



Elly Benson
Senior Attorney, Sierra Club

²⁷ Elizabeth Thomas and Nancy Anoruo, *Coronavirus is disproportionately killing the black community. Here’s what experts say can be done about it: Numbers broken down by race have shocked the nation*, ABC News, April 9, 2020, <https://abcnews.go.com/Politics/coronavirus-disproportionately-killing-black-community-experts/story?id=70011986>.