

WWALS Watershed Coalition advocates for conservation and stewardship of the Withlacoochee, Willacoochee, Alapaha, Little, and Suwannee River watersheds in south Georgia and north Florida through education, awareness, environmental monitoring, and citizen activities.



Date: February 5, 2017

To: Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE, Room 1A
Washington, DC 20426
Via e-filing

Re: **Motion to reject *Sabal Trail et al.* request for reissued or emergency certificates**
FERC Docket Nos. CP14-554-000 *et al.*, CP15-16-000 *et al.*, CP15-17-000 *et al.*

Dear Secretary Bose,

Intervenor WWALS Watershed Coalition, Inc. (“WWALS”) moves for the Federal Energy Regulatory Commission (“FERC”) to reject the “REQUEST FOR EXPEDITED ISSUANCE OF ORDER ON REMAND REISSUING CERTIFICATES, OR IN THE ALTERNATIVE, ABBREVIATED APPLICATION FOR TEMPORARY EMERGENCY CERTIFICATES” (the “Request”) filed late in the day February 5, 2018, by Sabal Trail Transmission, LLC (“Sabal Trail”), Florida Southeast Connection, LLC (“FSC”), and Transcontinental Gas Pipe Line Company, LLC (“Transco”) (collectively “Applicants”).¹ FERC has not yet addressed many previous objections to the incorrect and inadequate Draft Supplemental Environmental Impact Statement (“DSEIS”) for the Southeast Markets Pipeline Project (“SMPP”), including the December 29, 2017, motion by WWALS to reject the DSEIS and to take SMPP out of service at least until a real SEIS is produced, taking into account all of the criteria of FERC’s own rules as outlined herein, and with public hearings, as well as to revoke its permit (“WWALS December Motion”).² The Applicants’ own Request contains many reasons to reject it, many of which are outlined below. For all these reasons WWALS moves for FERC to reject the Applicants’ Request.

In February 2016 FERC issued a Certificate of Convenience and Necessity (the “FERC 2016 Order”)³ for SMPP. In August 2017, the D.C. Circuit Court, deciding for plaintiffs Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper, required FERC to revisit greenhouse gases,⁴ writing (“D.C. Circuit Court Decision”): “The orders under review are vacated and remanded to FERC for the preparation of an environmental impact statement that is consistent with this opinion.” That opinion included accounting for Greenhouse Gases (“GHG”). In September 2017

¹ “Emergency Request for Reissuance and Application for Temporary Certificates of Sabal Trail Transmission, LLC, Florida Southeast Connection, LLC, and Transcontinental Gas Pipe Line Company, LLC under Docket Nos. CP15-17-000, CP15-16-000, CP14-554-000 *et al.*” FERC Accession Number [20180202-5205](https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180202-5205), 4:58 PM, February 2, 2018, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180202-5205

² “Motion to reject FERC DSEIS, to take Sabal Trail out of service, and to revoke its permit, by intervenor WWALS Watershed Coalition, Inc. under CP15-16-003, *et al.*” FERC Accession Number [20171229-5192](https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20171229-5192), December 29, 2017, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20171229-5192

³ “Order issuing certificates and approving abandonment re Florida Southeast Connection, LLC, *et al.* under CP14-554 *et al.*”, FERC Accession Number 20160202-3056, February 2, 2016, https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14425623

⁴ U.S. D.C. Circuit Court of Appeals Case No. 16-1329, *Sierra Club, et al., Petitioners, v. Federal Energy Regulatory Commission, Respondent, Duke Energy Florida, LLC, et al., Intervenor*, decided August 27, 2017, <https://www.cadc.uscourts.gov/internet/opinions.nsf/2747D72C97BE12E285258184004D1D5F/%24file/16-1329-1689670.pdf>

FERC issued a Draft Supplemental Environmental Impact Statement (“DSEIS”).⁵ Many parties objected, including WWALS and seven other Riverkeepers (the “Riverkeepers’ Response”).⁶ In December 2017 Sabal Trail responded to some of those objections (“Sabal Trail’s December Response”).⁷ See above for the WWALS December Motion. Since then, Sabal Trail requested a seven-month construction extension,⁸ and FERC approved that extension.⁹ Now WWALS responds to the Applicants’ Request.

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⁵ “Draft Supplemental Environmental Impact Statement for the Southeast Market Pipelines Project to address 8/22/17 opinion by the US Court of Appeals under CP14-554, et al.” FERC Accession Number [20170927-3025](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14605162), September 27, 2017, https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14605162

⁶ “Opposition to the incorrect and inadequate FERC Sabal Trail SEIS and request for pipeline shut down by Suwannee Riverkeeper (WWALS) and Apalachicola, Ogeechee, Grand, Choctawhatchee, Chattahoochee, Indian, and Flint Riverkeepers.”

FERC Accession number 20171120-5130, November 20, 2017, https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14621198, <http://wwals.net/?p=39222>

⁷ “Response to Comments on Draft SEIS of Sabal Trail Transmission, LLC under CP15-17, et. al.”, FERC Accession Number 20171204-5138, December 4, 2017, https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624589

⁸ “Sabal Trail Transmission, LLC submits a request for extension of time under CP15-17,” FERC Accession Number 20180126-5092, January 26, 2018, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180126-5092

⁹ “Letter order granting Sabal Trail Transmission LLC’s request for an extension of time to complete all three phases of construction re the Sabal Trail Project under CP15-17,” FERC Accession Number [20180131-3033](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=20180131-3033), 31 January 2018

Alleged irreparable harm

The Request alleges various kinds of “irreparable harm,” including financial harm and harm from having to shut down.

Alleged financial harm

The Request says “Applicants would face irreparable financial harm,” yet Sabal Trail left the Bell Brothers with [\\$47,000 in Sabal Trail legal fees](#) for fighting eminent domain from that same FERC certificate the D.C. Circuit Court is likely to void next week.¹⁰ The Applicants, after taking easements from landowners and drilling under rivers through federal eminent domain, causing sinkholes and frac-outs along the way, reducing property values and plowing through burial grounds, causing expense and emotional distress to local taxpayers because of its odorant leaks, now cries “irreparable harm” because they stand to lose money on their bad business deal. Nowhere in FERC’s own rules or the law does it say it is FERC’s job to protect the Applicants against repercussions from investing in stranded assets, at the expense of those to whom it has already caused irreparable harm.

FERC Commissioner Richard Glick wrote in his recent dissent from FERC’s Order of certificates for the PennEast Pipeline (“FERC PennEast Order”):¹¹

“In addition to determining the need for a pipeline, the Natural Gas Act requires the Commission to find that, on balance, the pipeline’s benefits outweigh its harms. This includes weighing the risk of harm to the environment, landowners, and communities, as well as public safety more generally.”⁸ And where, as in this proceeding, there is limited evidence of the need for the proposed project, it is incumbent on the Commission to engage in an especially searching review of the project’s potential harms to ensure that the project is in fact in the public interest. In this case, PennEast’s certificate application lacks evidence that I believe is important to making the public interest determination.”⁹

⁸ As the United States Court of Appeals for the District of Columbia Circuit has explained, “[t]he broad public interest standards in the Commission’s enabling legislation are limited to ‘the purposes that Congress had in mind when it enacted this legislation.’” Pub. Utils. Comm’n of Cal. v. FERC, 900 F.2d 269, 281 (D.C. Cir. 1990) (quoting NAACP v. FERC, 425 U.S. 662, 670 (1976)). The Court explained that, for the Natural Gas Act, these purposes include “‘encourag[ing] the orderly development of plentiful supplies of . . . natural gas at reasonable prices’” as well as “‘conservation, environmental, and antitrust issues’” Id. (quoting NAACP, 425 U.S. at 670 n.6).

⁹ For instance, 68 percent of the project alignment in New Jersey has yet to be surveyed for the existence of historic and cultural resources. PennEast Pipeline Company, LLC, 162 FERC ¶ 61,053 at P 172. In addition, PennEast has not yet completed the geotechnical borings work needed to ensure that the environmental impacts of planned horizontal directional drilling will be adequately minimized. Id. P 120.

There is now ample evidence of “widespread harm to the environment, landowners, and communities, as well as to public safety more generally” by Sabal Trail and FSC. Commissioner Glick continued:

“The Commission addresses this lack of evidence by conditionally granting the certificate, subject to PennEast’s compliance with the environmental conditions. I recognize that the courts have upheld the Commission’s authority to issue conditional certificates. Nevertheless, doing so comes with significant consequences for landowners whose properties lie in the path of the proposed pipeline. Although the certificate is conditional, it gives the pipeline developer the authority to exercise eminent domain and condemn land as needed to develop the pipeline.”¹⁰ In my view, Congress did not intend for the Commission to issue certificates so that certificate holders may use eminent domain to acquire the information needed to determine whether the pipeline is in the public interest.”¹¹ Furthermore, under the Natural Gas Act, this eminent domain authority is not limited to the extent needed to complete the surveys and other assessments used to satisfy the conditions imposed in the Commission’s order. As a result, there will not necessarily be any

¹⁰ “[Mitchell Co. brothers to pay \\$47K in legal fees to Sabal Trail](#),” Melissa Hodges, WALB, Albany, Georgia, and KMOV, St. Louis, Missouri, 18 August 2016, <http://www.kmov.com/story/32789689/sabal-trail-demands-47k-in-legal-fees-from-mitchell-co-brothers>

¹¹ “Commissioner Richard Glick Statement,” The PennEast Project, FERC Docket No. CP15-558-000, January 19, 2018, <https://www.ferc.gov/media/statements-speeches/glick/2018/01-19-18-glick.asp#WndLA-ZG3zN>

restriction on a pipeline developer's ability to exercise eminent domain while the Commission waits to confirm that the pipeline is in the public interest.

¹⁰ 15 U.S.C. § 717f(h) (2012). State supreme courts, including New Jersey's and Pennsylvania's, have long recognized that the power of eminent domain is a harsh and extraordinary power that should be strictly construed. See *Levin v. Twp. Comm. of Twp. of Bridgewater*, 274 A.2d 1, 26 (N.J. 1971) ("Where . . . property is forcibly taken from one party for the purpose of being transferred to another, thereby excluding the consent of the owner and excluding all other prospective ultimate purchasers and developers except the one selected by the municipality, the facts which allegedly give rise to that municipal power should be closely scrutinized."); *Woods v. Greensboro Nat. Gas Co.*, 54 A. 470, 470-72 (Pa. 1903) ("The exercise of the right of eminent domain, whether directly by the state or its authorized grantee, is necessarily in derogation of private right, and the rule in that case is that the authority is to be strictly construed." (internal citations omitted)); see also *Harvey v. Aurora & G. Ry. Co.*, 51 N.E. 163, 166 (Ill. 1898) (similar); *Chesapeake & O. Ry. Co. v. Walker*, 40 S.E. 633, 636 (Va. 1902) (similar); *City of Little Rock v. Sawyer*, 309 S.W.2d 30, 36 (Ark. 1958) (similar); *La. Power & Light Co. v. Lasseigne*, 257 La. 72, 89 (1970) (similar).

¹¹ See, e.g., *Walker v. Gateway Pipeline Co.*, 601 So. 2d 970, 975 (Ala. 1992) (explaining that section 7(h) of the Natural Gas Act addresses eminent domain needed for the "actual construction of facilities, not entries that may take place prior to such construction and in preparation for acquiring a certificate of public convenience and necessity from the FERC").

Using the FERC 2016 Order, Sabal Trail forced access to properties and under rivers in Florida and Georgia for surveying and construction, despite strenuous objections from many affected landowners. Commissioner Glick further wrote:

*I recognize that part of the reason that the record in this proceeding is incomplete is that landowners have denied PennEast access to their land for the purpose of conducting the necessary studies and assessments. However, the question whether landowners should be required to provide pipeline developers with access to their property for the purpose of determining whether it is suitable for a proposed pipeline is one that is and should be left to the states to decide. The Commission should not use the pipeline certification process as an end run around states and landowners that choose not to grant access to their property before a certificate is issued.*¹²

¹² Some states allow prospective interstate pipeline companies to rely on state law to access private property for surveying prior to obtaining a certificate of public convenience and necessity. See, e.g., *Texas E. Transmission, LP v. Barack*, 2014 WL 1408058, at *3 (S.D. Ohio Apr. 11, 2014) (granting a pipeline company access under Ohio law to a property for purpose of surveying, appraising, and conducting any necessary examinations). Other states, including New Jersey and Pennsylvania, do not provide pipeline companies this right prior to obtaining a certificate of public convenience and necessity from the Commission.

Commissioner Glick's concern about misuse of federal eminent domain from a FERC certificate is well-placed. Numerous county and city governments in Florida and Georgia passed resolutions against Sabal Trail,¹² and the Georgia House of Representatives voted 128 to 34 in a historic denial of river-drilling easements from Sabal Trail,¹³ yet Sabal Trail used eminent domain from the FERC 2016 Order to force not only surveying but also construction access to numerous properties, and sued in county Superior Courts and got easements to drill under Georgia rivers,¹⁴ including under the Withlacoochee River in Georgia where Sabal Trail caused a frac-out and a sinkhole, and under the Flint River in Georgia where five sinkholes were still unmitigated months after construction was completed, as well as many others.¹⁵

Commissioner Glick concluded his remarks on the FERC PennEast Order:

"For these reasons, I respectfully dissent."

For those same reasons, Commissioner Glick and all the other FERC Commissioners should deny the Applicants' Request and revoke the February 2016 Order.

¹² "Resolutions," SpectraBusters, accessed February 4, 2018, <http://spectrabusters.org/contact/counties-and-cities/resolutions/>

¹³ "PIPELINES: Ga. lawmakers move to block 2 interstate projects, Kristi E. Swartz, ENews, 28 March 2016, <https://www.eenews.net/energywire/stories/1060034650>, <http://wwals.net/?p=19192>

¹⁴ "Judge Gives Sabal Trail Withlacoochee River Easement 2016-07-29," WWALS, August 18, 2016, <http://wwals.net/?p=21750>

¹⁵ "Sabal Trail Transmission, LLC submits its biweekly status report for the Sabal Trail Project under CP15-17," FERC Accession Number: 20170505-5043, May 5, 2017, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20170505-5043, "Sabal Trail sinkholes 2017-05-05," WWALS, May 8, 2017, <http://wwals.net/?p=32986>

Alleged harm from system shutdown

The Applicants want to “avoid the irreparable impacts of a system shutdown.” Yet Applicant Sabal Trail destroyed world-record-holding soybean farmer Randy Dowdy’s soybean fields, washing his soil into a nearby creek, compounding that damage with wetlands violations.¹⁶



Photo: Kevin Dowdy

As [Randy Dowdy said last May](#),¹⁷ and Sabal Trail’s own reports then say they have done nothing to correct:

“We’ve got loss of production for the future that will take not my lifetime, not my kids’ lifetime, but my kids’ kids’ lifetime to recover from.”

Sabal Trail has caused system shutdown for Randy Dowdy’s farming operation, with irreparable, generations-long harm. This is just one of the most egregious examples of the financial harm Sabal Trail and FSC have caused to local landowners. Financial loss to the Applicants from a bad business venture does not balance such irreparable harm to local citizens.

Commissioner Neil Chatterjee wrote in a concurring opinion on the FERC Penneast Order:¹⁸

But I would like to encourage pipeline companies and landowners to work with the Commission to maximize engagement and minimize the impacts on landowners going forward. I believe that a cooperative process leads to the best results for all stakeholders.

¹⁶ “S.W Georgia Farm Devastated From Pipeline Construction,” Kevin Dowdy, March 14, 2017, SOWEGALive.com,

<http://sowegalive.com/2017/03/14/s-w-georgia-farm-devastated-from-pipeline-construction/>

¹⁷ “Farmer: Sabal Trail devastated farm,” Daniel DeMersseman, Valdosta Daily Times, 5 May 2017,

http://www.valdostadailytimes.com/news/local_news/farmer-sabal-trail-devastated-farm/article_dd59a159-13d1-5d64-886f-143a1a3865e9.html

¹⁸ “ORDER ISSUING CERTIFICATES” for PennEast Pipeline Company, LLC, Docket No. CP15-558-000

FERC, January 19, 2018, <https://www.ferc.gov/CalendarFiles/20180119195524-CP15-558-000.pdf>

Are these the “best results,” Commissioner Chatterjee? Some landowners left with huge legal bills for defending themselves against federal eminent domain enabled by the FERC 2016 Order, and they and many others forced to endure surveys and construction, and, in many cases, sinkholes and erosion: does that encourage landowners targeted by any pipeline project to cooperate?

The new FERC Commissioners can join with Commissioner LaFleur, who was among those who issued the FERC 2016 Order, to deny the Applicants’ Request and to revoke the FERC 2016 Order.

Sabal Trail already has been shut down most of the past six weeks

The Request says on page 2:

Absent a stay of the D.C. Circuit’s mandate, unless the Commission either issues an Order on Remand reissuing the certificates for the SMP Project or grants temporary emergency certificates for the Project by the date the D.C. Circuit’s mandate issues on February 7, 2018, the Applicants will be forced to shut off all gas supplies flowing through their respective facilities certificated in the captioned dockets. To avoid irreparable harm to the public, the shippers on these certificated facilities, and the Applicants from a shutdown, the Applicants respectfully request that the Commission reissue the SMP Project certificates or issue temporary certificates by February 6, 2018, which is one day before the scheduled issuance of the D.C. Circuit’s mandate implementing the August 22 Order.⁵

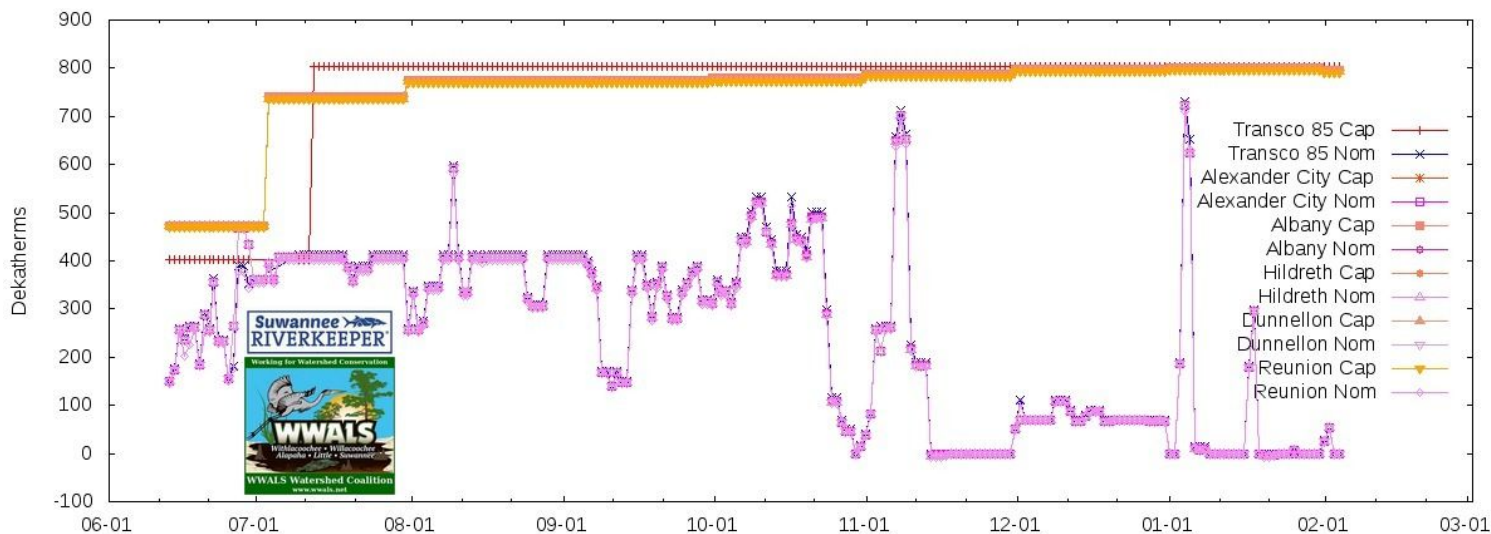
⁵ Pursuant to the Federal Rules of Appellate Procedure, the Court’s mandate is scheduled to issue on February 7, 2018, one week following the D.C. Circuit’s January 31 Order that denied petitions for rehearing. The D.C. Circuit has “previously recognized that agencies [like this Commission] possess authority to address issues identified by the court prior to the issuance of its mandate.” *Chamber of Commerce of the US v. S.E.C.*, 443 F.3d 890, 898 (D.C. Cir. 2006).

Yet, according to [its own FERC-required information postings](#),¹⁹ Sabal Trail already has been shut down for most of the past six weeks, carrying zero gas for much of that time.

Sabal Trail posted a nominated capacity (Nom) of only 53 thousand Dekatherms/day (MDTH/day) on the day of the Applicants’ Request, less than 7% of its posted operational capacity (Cap). Then Sabal Trail’s Nom dropped back to zero.

The graph below shows Sabal Trail’s own data since FERC permitted it to start shipping gas, demonstrating that Sabal Trail’s shipments have been extremely erratic and that it has been shut down completely numerous times, including the last half of November 2017 and most of January 2018.

All Sabal Trail Operational Capacity (2017-06-14 -- 2018-02-04)



¹⁹ “Sabal Trail Transmission Informational Postings,” Enbridge, <https://infopost.spectraenergy.com/infopost/STTHome.asp?Pipe=STT>

Conflict of interest in testimony of alleged need by Sabal Trail partners

The Request is replete with claims that do not match easily-obtainable sources, many of which originate from the Applicants.

FPL is the sole owner of FSC, while DEF and FPL's parent NextEra Energy are partners in Sabal Trail. Testimony from FPL or DEF that Sabal Trail is needed is thus so obviously compromised by conflict of interest that it should not be accepted.

Claims in the Request about DEF that do not match other evidence

The Request claims DEF is an anchor shipper, when Sabal Trail's Informational postings say it is not, and the Request says Sabal Trail is the sole source of gas for DEF's Crystal River gas plant, when DEF previously asserted it would have multiple connections, and would not even need Sabal Trail.

How can DEF be an anchor shipper of Sabal Trail when it is not in the customer index?

On page 8 the Request says:

Furthermore, Duke Energy Florida, LLC ("DEF") another anchor shipper of Sabal Trail, is nearing completion of a new natural gas-fired power plant, located in Citrus County, Florida, that requires service on the SMP Project to timely place the plant into service. Sabal Trail is the only pipeline connected to DEF's plant and will enable DEF to provide electricity to a densely populated region..

How can DEF be an anchor shipper of Sabal Trail, given that DEF is no longer in Sabal Trail's Index of Customers²⁰ since January 1, 2018?²¹ Claiming DEF is going to some day start up its Crystal River plant is not the same as FERC's claim in the February 2, 2016, certificate, which was that Sabal Trail had at that time customers for 93+% of its gas. There were only two customers: DEF and FPL. DEF is no longer a customer, according to Sabal Trail's own FERC-required Informational postings.

Should the parties that object to the February 2, 2016, Certificate say we will some day build a power plant next to FERC's office and then apply to build a pipeline through downtown D.C. to get there? Can we get federal eminent domain to dig under the Metro and through FERC's building?

How many pipelines connect to DEF's Crystal River power plant?

The next sentence on page 8 of the Request says:

Sabal Trail is the only pipeline connected to DEF's plant and will enable DEF to provide electricity to a densely populated region.

That is not what DEF said repeatedly to the media last year and in Florida Public Service Commission (FPSC) hearings, as already spelled out in section II.C. of the WWALS December Motion. See for example FPSC Docket No. 140110-EI.²²

"Issue 3:3 Is the proposed Citrus County Plant needed, taking into account the need for fuel diversity and supply reliability? ... Position of the Parties DEF: ... Additional interconnects between Sabal Trail and FGT will allow DEF to deliver gas to the Plant in the event of Sabal Trail interruptions...."

²⁰ "Index of Customers, Effective Date: 1/1/2018," Informational Postings, Sabal Trail Transmission, Enbridge,

<https://infopost.spectraenergy.com/infopost/IndexOfCustomers.asp?pipe=STT&type=IOC>

²¹ "Sabal Trail admits Duke not customer, ramps up gas anyway 2018-01-04," WWALS, January 4, 2018, <http://wwals.net/?p=40893>

²² "RECOM for 10/2/14 Commission conference, Item 7, from ENG, AFD, ECO, GCL and IDM staff," FPSC Document No: 05311-2014, September 22, 2014, Docket No. 140110-EI, p. 22, <http://www.psc.state.fl.us/library/filings/2014/05311-2014/05311-2014.pdf>

And the next sentence on page 8 of the Request says:

Accordingly, the Commission also needs to authorize the pending in-service request of the Citrus County Lateral that will serve DEF's plant.

The Commission does not need to authorize that pending in-service request, since Sabal Trail is not needed for DEF's Crystal River plant, which itself is not even needed, according to FPL's 2016 Ten Year Plan; see below under "Florida needs no new electricity."

Claims about FSC or Sabal Trail that do not match evidence from FPL or NextEra

The Request has a mismatch of power plants, and asserts shutdown of Sabal Trail would be a problem when FPL has asserted Florida has no need for new electricity. FPL's parent NextEra Energy claimed Sabal Trail is operational and on schedule, while zero gas is not operational, and FERC just granted Sabal Trail a seven-month construction extension.

FSC power plants listed in the Request do not match FSC's own list

On page 7 the Request says:

One of Sabal Trail's anchor shippers, FPL, currently relies in part on gas supplies from the Project to fuel electricity generation at its Martin power plant in Martin County, Florida, and its Riviera Beach power plant in Palm Beach County, Florida. Any interruption in service may hinder FPL's ability to provide electricity to customers who depend on electricity for heating, air conditioning, and other critical uses.

According to FPL's own FERC-required Informational Postings²³, FSC is only shipping gas (when it ships any at all) to FPL's Martin County plant, not to Riviera Beach. And supplies have been zero or barely above for most of the past six weeks, which seems like quite an interruption in service, with no ill effects on electricity for customers.

Florida needs no new electricity until 2024 at the earliest

The next sentences continue the Request:

FPL, DEF and other electric generators which serve the growing electric demand in Florida and the Southeast rely on the availability of both firm and interruptible pipeline capacity at times of high electric demand. Any interruption in service on the SMP Project will risk significant impacts to reliability in the region.

FSC and FPL do not supply gas to anywhere in the rest of the Southeast, nor would the DEF Crystal River plant, so the references in the Request to the Southeast are nonsensical.

FPL admitted in the 2016 Ten Year Site Plan it filed with the Florida Public Service Commission (FPSC), in the Executive Summary, boldfaced and underlined:²⁴

Difference: FPL does not project a significant long-term additional resource need until the years 2024 and 2025.

SMPP, if it were operational, would be a "**significant long-term additional resource**" such as FPL emphasized to FPSC is not needed.

²³ "Informational Postings," Florida Southeast Connection, NextEra Energy, viewed February 5, 2018, <https://fsc.nexteraenergyresources.com/ptms/public/info/post/getInfoPostingHome.do>

²⁴ "Ten Year Power Plant Site Plan 2016-2025", FPL, April 2016, <https://www.nrc.gov/docs/ML1621/ML16216A227.pdf>

Shipping zero gas is not Operational

FPL's corporate parent, NextEra Energy, in its January 26, 2018, Earnings Call ("NEE Earnings Call"), while mentioning Sabal Trail only once, managed to include at least two things that do not match other sources:²⁵

During the year, both the Sable[sic] Trail transmission and Florida Southeast connection natural gas pipeline projects successfully achieved commercial operation on budget and on schedule.

That sentence says Sabal Trail is operational and on schedule. It is neither.

First, the NEE Earnings Call claimed Sabal Trail is operational when it is not, unless FERC considers shipping zero gas to be operational; see above in the section on Sabal Trail already has been shut down most of the past six weeks.

Two days before the NEE Earnings Call, Sabal Trail posted a Critical Notice saying in part:²⁶

Hildreth Compressor Station Outage: February 5—9, 2018:

The Hildreth Compressor Station, not even built, yet the site of repeated leaks of hazardous odorants, now has a scheduled outage in February, starting today.

A seven-month construction extension is not On Schedule

Second, the NEE Earnings Call claimed Sabal Trail was on schedule, when on that same day Sabal Trail filed a request with FERC for a seven-month construction extension.²⁷

Ordering Paragraph (F)(1) of the February 2 Order requires Sabal Trail to complete authorized construction of the Project facilities and make them available for service within twenty-four (24) months from the date of the order, or by February 2, 2018.³ In order to ensure that there is sufficient time to complete construction and place the remaining approved Project facilities into service, Sabal Trail hereby requests the following extensions of time:

- *Remaining Phase I Project facilities – Sabal Trail requests an extension of time until August 31, 2018 to place these facilities into service;*
- *Phase II Project facilities – Sabal Trail requests an extension of time until May 1, 2020, the scheduled in-service date, to place these facilities into service; and*
- *Phase III Project facilities – Sabal Trail requests an extension of time until May 1, 2021, the scheduled in-service date, to place these facilities into service.*

FERC approved that extension at the end of January, thus validating that Sabal Trail is not on schedule, despite what the NEE Earnings Call said.²⁸

²⁵ "NEE earnings call for the period ending December 31, 2017," NextEra Energy, via Motley Fool, 26 January 2018, https://www.fool.com/earnings/call-transcripts/2018/01/26/nextera-energy-inc_-nee-q4-2017-earnings-conferenc.aspx

²⁶ "Sabal Trail Planned Outage," Sabal Trail Information Postings, Critical Notice, January 24, 2018, <https://infopost.spectraenergy.com/infopost/NoticesList.asp?pipe=STT&type=CRI>

²⁷ "Sabal Trail Transmission, LLC submits a request for extension of time under CP15-17," FERC Accession Number 20180126-5092, January 26, 2018, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180126-5092

²⁸ "Letter order granting Sabal Trail Transmission LLC's request for an extension of time to complete all three phases of construction re the Sabal Trail Project under CP15-17," FERC Accession Number [20180131-3033](https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180131-3033), 31 January 2018, https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20180131-3033

Agreements between pipeline developers and affiliates are insufficient to show need

In his recent dissent from FERC's approval of certificates for the PennEast Pipeline, Commissioner Richard Glick wrote:²⁹

"In today's order, the Commission relies exclusively on the existence of precedent agreements with shippers to conclude that the PennEast Project is needed.² Pursuant to these agreements, PennEast's affiliates hold more than 75 percent of the pipeline's subscribed capacity.³ While I agree that precedent and service agreements are one of several measures for assessing the market demand for a pipeline,⁴ contracts among affiliates may be less probative of that need because they are not necessarily the result of an arms-length negotiation.⁵ By itself, the existence of precedent agreements that are in significant part between the pipeline developer and its affiliates is insufficient to carry the developer's burden to show that the pipeline is needed."

² PennEast Pipeline Company, LLC, 162 FERC ¶ 61,053, at P 27 (2018) (explaining that "it is current Commission policy to not look beyond precedent or service agreements to make judgments about the needs of individual shippers"); id. P 29 ("Where, as here, it is demonstrated that specific shippers have entered into precedent agreements for project service, the Commission places substantial reliance on those agreement to find that the project is needed.").

³ Id. P 6.

⁴ Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227, 61,747 (1999) (Certificate Policy Statement) ("[T]he Commission will consider all relevant factors reflecting on the need for the project. These might include, but would not be limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.").

⁵ Certificate Policy Statement at 61,744.

All of Sabal Trail's customers alleged by the Request are Sabal Trail affiliates, as in part owners of Sabal Trail Transmission: Duke Energy Florida and NextEra Energy, which owns Florida Power & Light (FPL). That is more than Commissioner Glick's "in significant part." By Commissioner Glick's standards, the Commissioners before him who approved the FERC 2016 Order should not have done so.

The FERC 2016 Order relied on 93% of Sabal Trail's gas having customers. Since DEF is no longer in Sabal Trail's Index of Customers since New Year's Day 2018, and Sabal Trail's Uncommitted Capacity has gone up accordingly by 300,000 Dekatherms/day, leaving only FPL's 300,000 DTH/day, 4/7 of 93% is more like 53% of Sabal Trail gas with customers, which is less than the 75% Commissioner Glick said was insufficient to approve certificates for PennEast. Furthermore, that remaining 53% is all by FPL, whose parent NextEra is a Sabal Trail partner. Clearly, FERC should revoke that FERC 2016 Order.

Commissioner Glick's dissent about PennEast continued:

"Under these circumstances, I believe that the Commission must consider additional evidence regarding the need for the pipeline. As the Commission explained in the Certificate Policy Statement, this additional evidence might include, among other things, projections of the demand for natural gas, analyses of the available pipeline capacity, and an assessment of the cost savings that the proposed pipeline would provide to consumers.⁶ The Commission, however, does not rely on any such evidence in finding that there is a need for the PennEast Project.⁷ Accordingly, I do not believe that the Commission's order properly concludes that the PennEast Project is needed."

⁶ Id. at 61,747.

⁷ Indeed, the Commission concludes that "the fact that 6 of the 12 shippers on the PennEast Project are affiliated with the project's sponsors does not require the Commission to look behind the precedent agreements to evaluate project need." PennEast Pipeline Company, LLC, 162 FERC ¶ 61,053 at P 33.

The Applicants' Request does not include any evidence that was not supplied by the Applicants. Even that evidence is internally contradictory and does not match evidence provided elsewhere by some of the same Applicants. FERC also still has not revised

²⁹ "Commissioner Richard Glick Statement," The PennEast Project, FERC Docket No. CP15-558-000, January 19, 2018, <https://www.ferc.gov/media/statements-speeches/glick/2018/01-19-18-glick.asp#.WndLA-ZG3zN>

the DSEIS to include GHG and cost comparisons with solar power, as requested in the WWALS December Motion, nor have the Applicants addressed such a comparison. Clearly, the Applicants have failed to lift the burden of proof for need for SMPP, and FERC should deny that Request and revoke the FERC 2016 Order.

One spike for one day does not constitute winter need

On page 9 the Request says:

A shutdown during winter months when pipeline capacity is often at peak usage due to high heating load could be severely damaging to FPL, DEF, and end-users in Florida.

Sabal Trail was shut down during half of November and most of December and January, so if a shutdown causes damage, Sabal Trail already caused it to itself.

That Request paragraph continues:

In January, due to extreme cold temperatures in the Southeast, Sabal Trail experienced load exceeding 800,000 Dth on a single day, which is near the full capacity of the pipeline.

Indeed, on a single day, namely January 4, 2018, and back to nothing two days after, just like nothing two days before and most of the rest of January. Are the Applicants claiming it was only cold in Florida that one day? That does not match the weather record. The Applicants also do not mention the many Florida residents without power in January, who could have been back up as soon as the sun came out if they had had solar panels on their roofs.

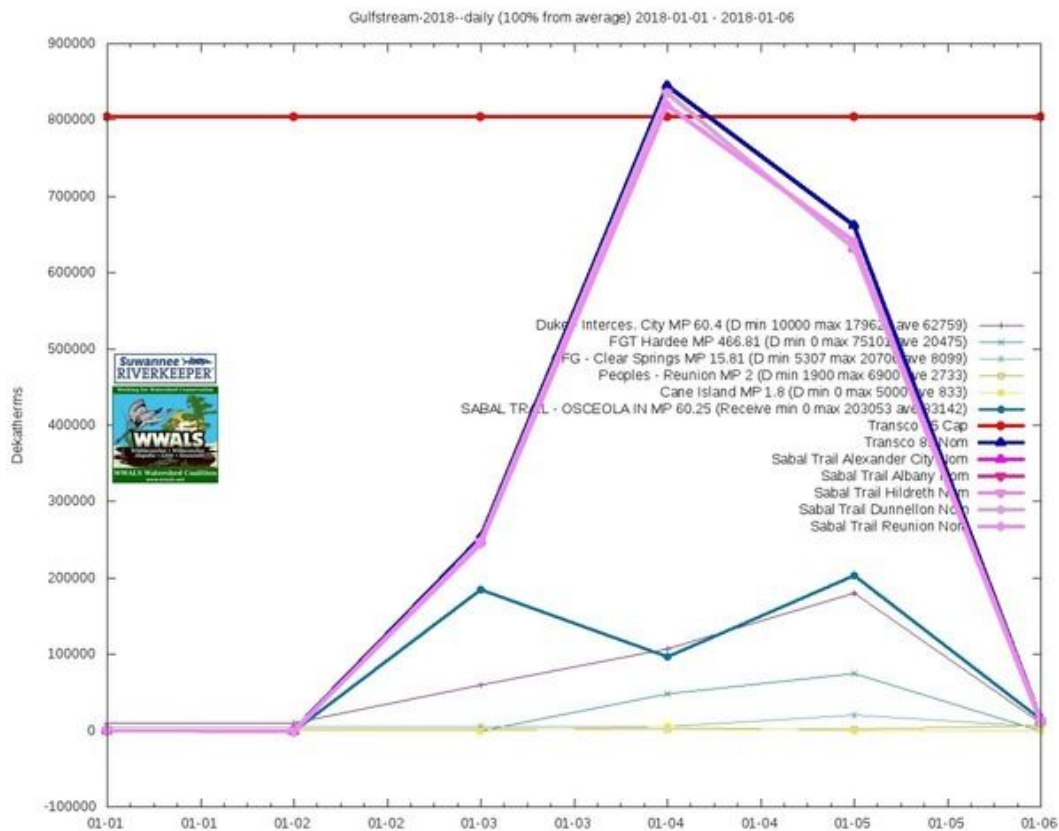
The Request continues:

On this date, FPL has informed Sabal Trail that FPL utilized the Sabal Trail/FSC pipelines to meet its own demand and to generate power to sell to neighboring entities that were experiencing extreme cold weather, both inside and outside of Florida. Sabal Trail served as an important supply source during this period transporting and delivering significant quantities of gas into FSC and Gulfstream Natural Gas System, L.L.C. ("Gulfstream").

Yes, on that single day, much of what was shipped went out of Sabal Trail through Gulfstream, according to the Informational postings of Sabal Trail and Gulfstream,³⁰ perhaps not coincidentally timed with sudden activity at two peaking plants south of Orlando, as illustrated in the graph below made by WWALS from those Informational Postings.³¹

³⁰ "Informational postings, Gulfstream Natural Gas System, <http://www.1line.gulfstreamgas.com/GulfStream/index.html>

³¹ "Sabal Trail gas into Gulfstream, 2018-01-1-6", WWALS, January 8, 2018, <http://wwals.net/?p=40952>



The Request continues:

The other two interstate pipelines serving central and southern Florida, Gulfstream and Florida Gas Company, LLC, were operating between 99 and 100 percent utilization at this time and therefore would not have had adequate capacity to provide an alternative transportation route for gas transported on Sabal Trail.

The Applicants appear to be claiming that Gulfstream and Florida Gas Company, LLC (presumably referring to Energy Transfer's Florida Gas Transmission Company, LLC, commonly known as FGT)³² did not have capacity (for which the Request provides no evidence), yet they could ship Sabal Trail gas. The Request contains no resolution of this contradiction.

The Request then claims that this one-day burst demonstrates the necessity of Sabal Trail. Yet Florida survived last year in January without it, not to mention most of the most recent November, December, and January.

Environmental effects

The Request includes only a bit more than a paragraph related to environmental matters, starting at the bottom of page 8:

Moreover, without such certificates, the Applicants may lose the ability to continue key safety measures such as providing cathodic protection against corrosion. Recommissioning the SMP Project after a shutdown is estimated to take a substantial amount of time before operations could resume. Such a lag would further exacerbate and extend the negative practical impacts from a shutdown.

³² "Informational postiongs, Florida Gas Transmission Company, LLC," Energy Transfer, viewed February 5, 2018, <http://fgttransfer.energytransfer.com/ipost/FGT/main/index>

Why was that not a problem for that past six weeks when Sabal Trail has mostly been shut down? Since the Applicants brought up cathodic protection, it is worth mentioning their long records of cathodic protection failing to detect or prevent corrosion, leaks, and explosions.³³ If there were any negative practical effects of a shutdown, they would be completely obviated by never permitting SMPP to start up again.

Environmental rehabilitation and restoration

In the next paragraph, on page 9:

Without the authorizations requested herein, the Court's vacatur also jeopardizes ongoing maintenance and environmental rehabilitation and restoration work that the Applicants are performing pursuant to the February 2 Order. These mitigation efforts help to reduce the effects of natural phenomena, such as erosion, and decrease risk of environmental damage in karst sensitive areas.

The Applicants thus admit they have not completed the environmental rehabilitation and restoration work they were supposed to have already done by now. If they haven't done it this late in the game, why should we believe a shutdown would have any effect on their lack of progress?

Commissioner Cheryl A. LaFleur, in her concurring opinion on the recent FERC approval of certificates for PennEast, wrote:³⁴

I have carefully considered the environmental impacts of the PennEast Project, and agree with the order's determination that, while the Project will result in some adverse environmental impacts, the environmental conditions imposed in today's order will ensure that such impacts are reduced to acceptable levels. I do share the concerns of my colleagues that the record reflects a significant number of environmental surveys that are incomplete due to lack of access to landowner property. I am persuaded, however, that Commission staff has developed a sufficient record to adequately evaluate the environmental impacts resulting from the PennEast Project.² Moreover, today's order imposes a number of environmental conditions which are intended to specifically allow the Commission and Commission staff to carefully monitor PennEast's ongoing compliance obligations, particularly related to the completion of those surveys, and any necessary avoidance, minimization, and mitigation measures that may be needed.

² *The order explains that the Commission relied upon "PennEast's application and supplements, as well as information developed through Commission staff's data requests, field investigations, the scoping process, literature research, alternative analyses, and contacts with federal, state, and local agencies, as well as with individual members of the public."*

Commissioner LaFleur did not mention the massive opposition to PennEast at FERC Scoping Meetings, nor the numerous protests, including at the FERC meeting at which the Commissioners issued that Order.

Commissioner LaFleur was among the Commissioners who approved the FERC 2016 Order, also over massive opposition. That FERC 2016 Order said in part:

243. The final EIS concludes that impacts on groundwater from overland construction will be short term and localized, and mitigated by implementation of the applicants' construction and restoration plans and adherence to Commission staff recommendations, now included as conditions in Appendix B of this order. Moreover, Commission staff identified only two springs within 0.5 mile of overland pipeline construction in the karst sensitive areas of Georgia and Florida, the nearest of which is about 1,000 feet from the project. Based on these distances and considering that impacts on groundwater resources that could occur in conjunction with overland construction would be temporary, minor, and

³³ "Spectra Safety Violations," SpectraBusters, <http://spectrabusters.org/hazards/spectra-safety-violations/>, "Other Hazards," SpectraBusters, <http://spectrabusters.org/hazards/other-hazards/>

³⁴ "ORDER ISSUING CERTIFICATES" for PennEast Pipeline Company, LLC, Docket No. CP15-558-000 FERC, January 19, 2018, <https://www.ferc.gov/CalendarFiles/20180119195524-CP15-558-000.pdf>

localized, the final EIS concludes, and we agree, that overland construction would not significantly impact the Floridan Aquifer.

244. Regarding the impacts of HDD crossings over groundwater, Commission staff identified five of the 26 HDDs proposed by Sabal Trail as occurring through karst bedrock within the Floridan Aquifer. Sabal Trail sited these HDDs installations in karst sensitive areas to avoid constructing near major springs and public water supply wells.

245. The final EIS describes the detailed site-specific geotechnical and geophysical studies conducted by Sabal Trail to characterize the karst geology at these five HDD crossings.²¹⁰ None of the five HDD crossings will occur in a public wellhead protection area, encounter mapped cave systems, or occur within 0.5 mile of 1st, 2nd, or 3rd magnitude springs.²¹¹ The HDD crossings will be located within 0.5 miles of two 4th magnitude springs, one of which is hydrologically upgradient from the proposed HDD and, therefore, is unlikely to be affected by HDD activity. The other 4th magnitude spring is approximately 0.2 mile downgradient from the HDD crossing of the Suwannee River in Hamilton and Suwannee Counties, Florida, and will be subject to a site-specific monitoring plan during construction.

²¹⁰ *Id.* [FEIS] at 3-4 to 3-12.

²¹¹ *Springs are classified according to the volume of flow per unit time. A 1st magnitude spring discharges more than 64.6 million gallons of water per day (mgpd); a 2nd magnitude spring discharges between 6.46 and 64.6 mgpd; a 3rd magnitude spring discharges between 0.646 and 6.46 mgpd; and a 4th magnitude spring discharges between 100 and 448 gallons per minute. See final EIS at 3-30.*

Despite those promises by Commissioner LaFleur and the other FERC Commissioners, Sabal Trail caused a frac-out from its pilot hole of drilling mud up into the Withlacoochee River in Georgia in karst terrain,³⁵ plus a sinkhole at the drill site in Lowndes County,³⁶ in addition to sinkholes at drill sites next to the Suwannee River in Suwannee County, Florida, next to the Santa Fe River in Gilchrist County, Florida, and at least two sinkholes in Florida public roads. In October, 2017, after completion of construction, WWALS found yet another new sinkhole in Suwannee River State Park in Hamilton County, Florida, within sixty feet of the pipeline, with no visible evidence that Sabal Trail nor FERC even knew about it, much less had done anything to “mitigate” it.³⁷

WWALS respectfully submits that Commissioner LaFleur’s faith in the capabilities of the pipeline company in karst terrain is misplaced. The best way to prevent further damage by Sabal Trail is to deny the Applicants’ Request and to revoke the FERC 2016 Order.

Greenhouse gas emissions

The paragraph on page 9 contains the only few sentences in the Request that actually address greenhouse gas emissions (as contrasted with complaining about having to address them):

A shutdown of pipeline operations also threatens additional environmental harm by forcing reliance on higher emitting fuels for power generation in lieu of the gas supplied by the Project.

Actually, even brief, or, even better, permanent shutdown of SMPP would stop wasting money on obsolete twentieth-century fossil fuel projects and encourage Florida and the rest of the U.S. to get on with twenty-first-century solar and wind power, which renewable energy sources even Applicant NextEra emphasizes at great length in its January 26, 2018 NEE Earnings Call.

The Request continues:

³⁵ “Sabal Trail spill, protests across U.S. spur debate over natural gas pipeline in Florida,” Bruce Ritchie, Politico, November 17, 2016,

<https://www.politico.com/states/florida/story/2016/11/sabal-trail-spill-and-protests-across-the-nation-reignite-natural-gas-pipeline-debate-in-florida-107382>

³⁶ “Sabal Trail Transmission, LLC submits it Biweekly Status Report for the Sabal Trail Project under CP15-17,” FERC [Accession Number: 20161202-5137](https://www.ferc.gov/idmws/file_list.asp?accession_num=20161202-5137), December 2, 2016, page 12, “Depression Features and Mitigation Log, Pipeline — part of an horizontal direction drill,”

https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20161202-5137, <http://wwals.net/?p=27600>

³⁷ “Permit-less Sabal Trail pipeline risked by new sinkhole,” WWALS, October 5, 2017, <http://wwals.net/?p=37714>

Without service from the Project, DEF may be forced to delay the retirement of two 1960's era coal units that are scheduled for retirement in 2018. DEF cannot retire those units until it is able to place into service the Citrus County Combined Cycle Plant, which is entirely dependent on the SMP Project.

This is yet another different set of alleged coal plant “modernizations” after the list in the DSEIS that did not match the list Sabal Trail sold to FPSC in 2013 and FERC in 2016. If the Applications want FERC to take into consideration DEF’s Crystal River coal and gas plants when DEF is no longer on Sabal Trail’s customer index, FERC should take into account Strom Inc.’s Liquid Natural Gas (LNG) export operation also at the end of the Citrus County Pipeline, as WWALS already pointed out in section I.B.iii of the WWALS December Motion.

The Request makes an even more astonishing claim:

Moreover, shutting down the Project increases the risk of integrity problems and other potential environmental impacts. Any required blow down of the pipeline facilities due to shutdown would result in additional air emissions.

Given that Sabal Trail has been shut down numerous times since November 14, 2017, it appears the Applicants thus admit that SMPP has caused numerous air emissions in the past six weeks. The only way to prevent such emissions is to shut down SMPP permanently.

Diversification of energy sources

Multiple gas sources: good or bad?

The request says it is an *Emergency* because Duke Energy Florida (DEF) allegedly has Sabal Trail as its *only* gas source for its not-yet-built Crystal River plant, yet it also claims an *Emergency* because FPL has Sabal Trail as one of *several* gas sources.

Which is the *Emergency*, Applicants? DEF allegedly not having the foresight to organize multiple gas sources (despite what it told FPSC)? Or FPL having multiple sources?

FERC should take into account this and other internal contradictions in the Request, as well as assertions in the Request that do not match other sources, and deny the Request.

Multiple types of energy sources: better

Regarding multiple sources of energy, what U.S. Secretary of State Rex Tillerson recently said in Warsaw, Poland, applies equally to the U.S. Southeast:

Tillerson, speaking to reporters after meeting with Poland's Prime Minister Mateusz Morawiecki on Saturday, said Europe should seek to diversify energy supplies and that the U.S. saw the contested Nord Stream 2 link as “undermining Europe’s overall energy stability and security.”

NATO member Poland has repeatedly tried to block the deal, saying it would leave countries such as itself and Ukraine vulnerable if Russia decided to shut down the gas pipelines running across its territory to western Europe. Foreign Minister Jacek Czaputowicz said Poland wanted U.S. help in stopping Nord Stream 2, which is being built by Russian gas giant Gazprom PJSC.

“It’s not a helpful piece of infrastructure to support stability in Europe,” Tillerson said. “We will continue to take steps as we can.”

Sabal Trail, being built by Canadian gas giant Enbridge, similarly undermines overall energy stability and security of the Southeast.

As Sierra Club pointed out back in March 2014:³⁸

The proposed pipeline would cut a wide swath through pristine lands with resulting negative impacts on endangered species, critical wildlife habitat, invaluable wetlands, longleaf pine forests, the fragile and irreplaceable Floridian Aquifer, streams, rivers, and springs, and private property rights. Furthermore, expanded reliance on fracked natural gas only serves to feed the increasingly destructive effects of drilling for and fracking of shale deposits that have destroyed drinking water resources and entire communities across the country. The Sunshine State, which will be the sole recipient of the fracked natural gas transported through this pipeline, should expand energy efficiency measures and solar power capacity rather than increase its dependence on natural gas which already accounts for more than 60% of Florida's electricity generation.

The pipeline did cut such a swath, and the Sunshine State still does not need another interstate natural gas pipeline when it already gets 60% of its electricity from the ones already in place. What Florida and the Southeast need for energy stability and security is solar power, bringing jobs to rural areas where they are needed, distributed so it cannot fail all at once, and ready to generate after a storm as soon as the sun comes out.

The Request makes a case that shutting down SMPP would cause economic and environmental instability. SMPP thus is not a helpful piece of infrastructure to support stability in Florida and the Southeast. The only way to prevent that instability is to keep Sabal Trail shut down, by denying the Request and revoking the FERC 2016 Order.

WWALS wishes to congratulate the Commission on its recent Order rejecting a request by the Department of Energy to prop up the failing coal and nuclear industries ("FERC January Rulemaking Order").³⁹ Commissioner Richard Glick wrote in his concurring opinion:

The [Energy] Department's own staff Grid Study concluded that changes in the generation mix, including the retirement of coal and nuclear generators, have not diminished the grid's reliability or otherwise posed a significant and immediate threat to the resilience of the electric grid.⁴ To the contrary, the addition of a diverse array of generation resources, including natural gas, solar, wind, and geothermal, as well as maturing technologies, such as energy storage, distributed generation, and demand response, have in many respects contributed to the resilience of the bulk power system. The record in this proceeding does not demonstrate any need for the Commission to interfere with the continued evolution of the bulk power system.

Nor does the record support the Department's proposed remedy: A multi-billion dollar bailout targeted at coal and nuclear generating facilities.⁵

⁴ Staff Report to the Secretary on Electricity Markets and Reliability, United States Department of Energy at 63, 100 (Aug. 2017), available at https://energy.gov/sites/prod/files/2017/08/f36/Staff%20Report%20on%20Electricity%20Markets%20and%20Reliability_0.pdf (Department of Energy Grid Study).

⁵ See, e.g., PJM Independent Market Monitor Comments at 5 (estimating that the Proposed Rule would have cost consumers in PJM an additional \$30 billion in 2015 and \$32 billion in 2016); Joint Industry Commenters, Attachment A at 2, 32 (Battle Group report estimating that the Proposed Rule would result in \$3.7 billion to \$11.2 billion in out-of-market payments annually in PJM, ISO-NE, and NYISO); see also Electricity Consumers Resource Council Reply Comments at 11-15 (summarizing cost estimates submitted to the record, all of which estimated that the Proposed Rule would cost consumers billions of dollars).

³⁸ "TRI-STATE SIERRA CLUB CHAPTERS OPPOSE GAS PIPELINE: Statement of the Georgia, Florida, and Alabama Sierra Club Chapters Opposing the Sabal Trail Pipeline," March 4, 2014, <http://spectrabusters.org/2014/03/04/sierra-club-chapters-oppose-sabal-trail-gas-pipeline/>

³⁹ "ORDER TERMINATING RULEMAKING PROCEEDING, INITIATING NEW PROCEEDING, AND ESTABLISHING ADDITIONAL PROCEDURES," FERC, Docket Nos. RM-18-000, AD-18-000, January 8, 2018, <https://www.ferc.gov/CalendarFiles/20180108161614-RM18-1-000.pdf>

Yet by implicitly refusing to consider solar and wind power in the FERC 2016 Order, and in spelling out that refusal explicitly in the FERC PennEast Order, FERC is propping up natural gas against the market, which has chosen sun and wind power. Approving the Applicants' Request would be a "multi-billion dollar bailout targeted at" natural gas.

Commissioner Cheryl LaFleur wrote in her concurring opinion on that FERC January Rulemaking Order:

I am a strong supporter of competitive markets, which benefit customers by reducing costs, improving efficiency and innovation, and strengthening reliability by deploying resources over a broader footprint.

In the 21st century, against the backdrop of wholesale markets, the pace of technological change in energy has accelerated, resulting in a rapid transformation of the nation's resource mix. This has been driven by (1) the growth in the availability and affordability of domestic natural gas and its increased use for electric generation, (2) the rapid development and deployment of wind, solar, storage, and demand-side technologies, both central and distributed, and (3) a changing understanding of the environmental consequences of energy use, especially climate change, driving state and federal policy and customer choices.

Commissioner LaFleur misses that her (2) and (3) have overtaken her (1), as already examined in the WWALS December Motion, and as supported by Commissioner Chatterjee's concurring opinion on the FERC January Rulemaking Order; see below. Commissioner LaFleur asserted a few paragraphs earlier:

We have moved from reliance on wood and local waterworks in the 19th century to the development of coal-fired steam generators and large-scale hydro in the first half of the 20th century. The mid-20th century saw the commercialization of nuclear generation, followed later in the century by the large-scale introduction of combined cycle gas generation and early-stage non-hydro renewables.

None of these changes in where the nation gets its energy were driven by this Commission or its predecessors.

Yet right now FERC is holding the nation back by propping up natural gas at the expense of the solar and wind power the market and the people have chosen.

Commissioner Neil Chatterjee wrote in his concurring opinion on the FERC January Rulemaking Order:

I believe that the record compiled in this proceeding speaks to the prudence of considering, as soon as practicable, whether interim measures may be needed to avoid near-term bulk power system resilience challenges that could result from the rapid, unprecedented changes in our generation resource mix.

The scale and pace of those changes are staggering. Between 2014 and 2015 alone, the U.S. added approximately 15,800 megawatts (MW) of natural gas, 13,000 MW of wind, 6,200 MW of utility scale solar photovoltaic, and 3,600 MW of distributed solar photovoltaic generating capacity.¹

1 U.S. Energy Information Administration, Electricity, available at <https://www.eia.gov/electricity/annual/backissues.html>.

Commissioner Chatterjee's own numbers show that sun and wind power (13,000 + 6,200 + 3,600 = 22,800 MW) outpaced natural gas (15,800 MW) from 2014 to 2015. He does not mention that sun and wind have pulled even farther ahead since then, in an exponential growth curve, while natural gas continues on a linear pace at best, and coal and nuclear crash.

Meanwhile, nearly 42,000 MW of synchronous generating capacity (e.g., coal, nuclear, and natural gas) retired between 2011 and 2014, with an additional seven nuclear units (representing 10,500 MW of nameplate capacity) planning retirement by 2025.² Commenters express an expectation that those trends will continue in the years ahead, with many nuclear and coal units particularly at risk of economic retirement despite their significant contribution to bulk power system resilience.³

The changing generation resource mix underscores the need to consider whether near-term measures are warranted notwithstanding the actions the Commission has taken in recent years that are outlined in today's order. Specifically, current RTO/ISO market design mechanisms are intended to incent generation resource owners to manage the fuel supply risks they can control -- not the spectrum of fuel supply risks beyond their control.⁴ The record clearly suggests that the latter class of risks are increasingly significant due to shifts in the generation mix and the fast-evolving national security threat environment.⁵

2 Id.; NERC Comments, Docket No. RM18-1-000, at 4-5 (filed Oct. 23, 2017).

3 See, e.g., Reply Comments of Peabody Energy Corporation, Docket No. RM18-1-000, at 10 (filed Nov. 7, 2017); Reply Comments of the Nuclear Energy Institute, Docket No. RM18-1-000, at 6-11 (filed Nov. 7, 2017); see also NERC Comments at 4-6 (noting the resilience contributions of coal and nuclear generation's dependable capacity, inertia and voltage control services, and fuel security).

4 The Commission has approved market constructs providing financial incentives for resource owners to procure firm fuel arrangements either through firm pipeline capacity or dual fuel capability. See, e.g., ISO New England Inc., 147 FERC ¶ 61,172, at P 36 (2014) (endorsing pay-for-performance program); PJM Interconnection, L.L.C., 151 FERC ¶ 61,208, at P 22 (2015) (approving PJM's capacity performance construct). See also Wholesale Competition in Regions with Organized Electric Markets, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), order on reh'g, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), order on reh'g, Order No. 719-B, 129 FERC ¶ 61,252 (2009) (requiring RTO/ISO scarcity pricing that incents firm fuel arrangements). But generation resource owners relying on fuels delivered "just-in-time" from offsite supplies are not capable of managing risks to (1) the infrastructure that transports these fuels (e.g., pipelines); and (2) the infrastructure that supplies these fuels (e.g., natural gas wellheads).

5 See, e.g., Exelon Corporation Comments, Docket No. RM18-1-000, Stockton Test. at 5-6, 13 (filed Oct. 23, 2017); see also Congressional Research Service, Pipeline Cybersecurity: Federal Policy (Apr. 19, 2016).

Commissioner Chatterjee apparently sees sun and wind power as a risk because they do not have fuel supplies under the control of regulations designed for fossil fuels and nuclear. Actually, sun and wind do not have fuel at all. Indeed, solar and wind power are threats to fossil fuel companies such as Enbridge, DEF, and FPL that have unwisely invested in a failed natural gas pipeline venture, leaving them with stranded assets. However, far from being a threat to national security, sun and wind power are just the opposite, with distributed generation that cannot be taken out by attacks on a few pipelines or nuclear plants.

The generation resources of wind and especially solar power are increasingly beyond the control of traditional generation resource owners, and will become increasingly distributed. By propping up natural gas, FERC is trying to preserve horses and buggies in an electric car world.

The body of the FERC January Rulemaking Order does not mention solar or wind power, and Commissioner Robert F. Powelson and Chairman Kevin J. McIntyre did not offer separate concurring opinions. However, it only takes three of five Commissioners to make a decision. WWALS encourages FERC to follow the logic of the above concurring opinions through to SMPP by rejecting the Applicants' Request and revoking the FERC 2016 Order.

Motion

The Request alleges on page 13 that because the Applicants got away with building pipelines without proper environmental oversight, they should continue to get away with it:

Because the requested authorizations are for transportation of natural gas on existing facilities, the Commission is not required to prepare an EA or EIS for issuance of the temporary certificates.

Why? Because the Applicants claim there is an emergency:

Commission and court precedent further confirm that the Commission is not required to undertake analysis under NEPA prior to issuance of a temporary certificate. The courts and the Commission have long recognized that emergencies under the NGA "call for prompt action by the Commission," and that "NEPA does not suspend this duty while an EIS is prepared and filed."

As detailed above, there is no emergency in shutting down a pipeline that has already been shut down for six weeks, and the Request is replete with contradictions both internal and with other sources deriving from the Applicants. All of the customers alleged by the Request are Sabal Trail affiliates, compounding a massive conflict of interest. SMPP no longer meets even the most basic criterion of the FERC 2016 Order of having 90+% of its gas committed to customers, since Sabal Trail dropped DEF from its Index of Customers on January 1, 2018. Thus there is no public benefit to balance the significant financial, systemic, and environmental harms already incurred to landowners and the public by SMPP. The only way to prevent further such harms is to shut SMPP down permanently.

That the Applicants may lose money is merely a risk of investing in a bad business deal. FERC in its FERC January Rulemaking Order refused to prop up the failing coal and nuclear industries, and similarly it should not prop up the natural gas industry, which has already lost in the market to solar and wind power, as documented in Commissioner Chatterjee's concurring opinion on that Order as well as by many other sources, including Applicant NextEra's own NEE Earnings Call. The Applicants' Request would be a "multi-billion dollar bailout targeted at" the natural gas industry: FERC should reject it.

The Applicants' Request says on page 2:

Absent a stay of the D.C. Circuit's mandate, unless the Commission either issues an Order on Remand reissuing the certificates for the SMP Project or grants temporary emergency certificates for the Project by the date the D.C. Circuit's mandate issues on February 7, 2018, the Applicants will be forced to shut off all gas supplies flowing through their respective facilities certificated in the captioned dockets. To avoid irreparable harm to the public, the shippers on these certificated facilities, and the Applicants from a shutdown, the Applicants respectfully request that the Commission reissue the SMP Project certificates or issue temporary certificates by February 6, 2018, which is one day before the scheduled issuance of the D.C. Circuit's mandate implementing the August 22 Order.⁵

⁵ Pursuant to the Federal Rules of Appellate Procedure, the Court's mandate is scheduled to issue on February 7, 2018, one week following the D.C. Circuit's January 31 Order that denied petitions for rehearing....

The Request asks FERC to circumvent the Court's impending mandate through a certificate because of a nonexistent emergency, based on internally contradictory rationales that do not even match what the Applicants have previously told the FPSC, their own investors, or the public.

WHEREFORE, WWALS respectfully requests FERC to reject the Applicants' Request, to enjoin the Sabal Trail pipeline and the rest of SMPP from carrying gas until the corrections indicated in the WWALS December Motion can be made to the DSEIS, and to implement the revocation of the FERC 2016 Order in the D.C. Circuit Court Decision, as the FERC cannot make a decision on the public convenience and necessity of SMPP by balancing alleged public benefits against adverse effects including economy, health, and safety without having a complete and accurate DSEIS for Sabal Trail and the rest of SMPP.

Sincerely,

/S/ John S. Quarterman, Suwannee Riverkeeper

Pro se

President, WWALS Watershed Coalition, Inc.

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