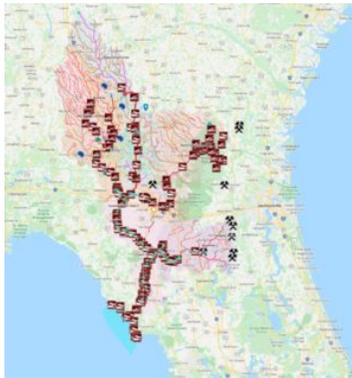


June 20, 2020

To: Nathaniel J. Davis, Sr., Deputy Secretary.
Federal Energy Regulatory Commission (FERC)
Via e-filing

Re: Brief of WWALS Watershed Coalition, Inc. in the Rehearing of Sabal Trail Transmission, LLC Phase II under CP15-17-005

Dear Secretary Davis and FERC Commissioners,



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WWALS is an IRS 501(c)(3)
nonprofit charity est. June 2012

Suwannee Riverkeeper on behalf of WWALS Watershed Coalition, Inc. (“WWALS”) files this brief under 18 C.F.R. § 385.713(d)(2)¹ in the “Rehearing for Further Consideration re Sabal Trail Transmission, LLC under CP15-17” granted by FERC on June 19, 2020.² In this brief, WWALS supports WWALS’ own request of April 13, 2020 for independent third-party inspection of Sabal Trail’s work before accepting it,³ as well as Sierra Club’s May 22, 2020 request⁴ for rescission of FERC’s letter order of April 22, 2020 granting⁵ Sabal Trail’s request to place into service the Sabal Trail Project II Facilities, as well as Sierra Club’s motion in its same letter for a stay on Sabal Trail Phase II operations while the Commission conducts supplemental environmental review of the public health and environmental justice impacts of placing the facilities into service, in a manner that complies with the Commission’s obligations under the National Environmental Policy Act (“NEPA”) and the Natural Gas Act.

WWALS is an Intervenor both in the underlying process of Docket No. CP15-17,⁶ as well as in⁷ the comment period⁸ on the March 26, 2020, request⁹ by Sabal Trail Transmission, LLC (“Sabal Trail”) for an extension of time to construct and place into service its Phase II project facilities for its Sabal Trail Project authorized on February 2, 2016.

On May 1, 2020, FERC declared moot¹⁰ that comment period on Sabal Trail’s request for an extension of time because of FERC’s April 22, 2020, letter order granting Sabal Trail permission to place Phase II into service, and because of Sabal Trail’s letter to FERC of

¹ 18 C.F.R. § 385.713(d)(2) “The [Commission](#) may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.” <https://www.law.cornell.edu/cfr/text/18/385.713>

² “Order Granting Rehearing for Further Consideration re Sabal Trail Transmission, LLC under CP15-17,” FERC, June 19, 2020, FERC [Accession Number 20200619-3050](#)

³ “Motion to Halt Sabal Trail Phase II and to Invoke Penalties, by WWALS Watershed Coalition, Inc. under CP15-17.” WWALS, April 13, 2020, [FERC Accession Number 20200413-5269](#)

⁴ “Sierra Club request for rehearing and stay of FERC’s April 22, 2020 letter order under CP15-17.” Sierra Club, May 22, 2020, [FERC Accession Number 20200522-5342](#).

⁵ “Letter order granting Sabal Trail Transmission, LLC’s 04/08/2020 request to place into service the Sabal Trail Project Phase II Facilities, etc. under CP15-17,” FERC, April 22, 2020, [FERC Accession Number 20200422-3020](#).

⁶ “Motion to Intervene of WWALS Watershed Coalition, Inc. under CP15-17, et. al.” WWALS, December 22, 2014, [FERC Accession Number 20141222-5054](#)

⁷ “Motion to Intervene by WWALS Watershed Coalition, Inc., in proceeding on Request for Extension by Sabal Trail Transmission, LLC under CP15-17.” WWALS, April 6, 2020, [FERC Accession Number 20200406-5070](#)

⁸ “Notice of Extension of Time Request re Sabal Trail Transmission, LLC under CP15-17,” FERC, March 27, 2020, [FERC Accession Number 20200327-3095](#)

⁹ “Sabal Trail Transmission, LLC submits its request for extension of time to complete construction of certificated facilities under CP15-17.” Sabal Trail, March 26, 2020, FERC Accession Number [20200326-5147](#)

¹⁰ “Notice Dismissing Request for Extension of Time As Moot re Sabal Trail Transmission, LLC under CP15-17.” FERC, May 1, 2020, [FERC Accession Number 20200501-3043](#).

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

May 1, 2020, claiming the facilities had been timely placed into service.¹¹

On May 22, 2020, Sierra Club filed a request for rehearing and stay of FERC's April 22, 2020 letter order.¹²

On June 8, 2020, Sabal Trail Transmission, LLC (Sabal Trail) filed a Motion for Leave to Answer and Answer (“Sabal Trail’s Answer”).¹³

On June 19, 2020, FERC granted Sierra Club’s request for rehearing.¹⁴ That FERC Order stated, “As provided in 18 C.F.R. § 385.713(d), no answers to the rehearing requests will be entertained.” However, Sabal Trail had already answered. Therefore, in this Brief WWALS addresses some of Sabal Trail’s Answer.

If FERC should try to claim Sabal Trail’s Answer moot, all these same points below should be considered on the basis of new and significant events in the outside world since Sabal Trail was permitted, and mostly since Sierra Club last won a case against Sabal Trail and FERC, as well as since the SEIS that resulted from that case.

1. Unreasonable standard of evidence for Sierra Club

Sabal Trail in its answer attempted to hold Sierra Club to an absurdly high standard of evidence for harm from compressor station gases, requiring direct links from gas emissions to specific human harms. In doing so, Sabal Trail relied on pre-pandemic standards of evidence, discounting Sierra Club’s references to the Novel Coronavirus COVID-19 pandemic. More people have died in the U.S. from this pandemic than U.S. deaths in World War I.¹⁵ That is a new circumstance and significant information, especially for Dougherty County, which is an epicenter of the pandemic.

Even before the brunt of the pandemic, in March, 2020. the Fourth Circuit Court ruled about the Atlantic Coast Pipeline (“ACP”), “Environmental Justice Is Not Merely a Box to Be Checked.”¹⁶ Dominion Energy, Duke Energy, et al. apparently found the hurdle of environmental justice too high, because in July they abandoned their attempts to build the ACP.¹⁷

FERC should start a Supplemental Environmental Impact Statement (“SEIS”) about Sabal Trail. Then we shall see if Sabal Trail partners Enbridge Inc. (“Enbridge”), NextEra Energy (“NextEra”), and Duke Energy (“Duke”) can clear that hurdle.

¹¹ “Sabal Trail Transmission, LLC Notice of Commencement of Service and Acquisition of Lease Capacity for Phase II Project facilities under CP15-17.” Sabal Trail, May 1, 2020, FERC Accession Number [20200501-5115](#)

¹² “Sierra Club request for rehearing and stay of FERC’s April 22, 2020 letter order under CP15-17.” Sierra Club, May 22, 2020, [FERC Accession Number 20200522-5342](#)

¹³ “Motion for Leave to Answer and Answer of Sabal Trail Transmission, LLC under CP15-17, et al.” Sabal Trail, June 8, 2020, [FERC Accession Number 20200608-5183](#).

¹⁴ “Order Granting Rehearing for Further Consideration re Sabal Trail Transmission, LLC under CP15-17,” FERC, June 19, 2020, FERC [Accession Number 20200619-3050](#)

¹⁵ “The coronavirus death toll in the U.S. has officially surpassed that of WWI,” Lance Lambert, Fortune, June 16, 2020, <https://fortune.com/2020/06/16/coronavirus-deaths-us-covid-19-death-toll-higher-wwi-total-how-many-dead/>

¹⁶ “INSIGHT: Fourth Circuit Rules ‘Environmental Justice Is Not Merely a Box to Be Checked,’” Simone Jones and Nicole Noëlliste, Bloomberg Law, March 5, 2020, <https://news.bloomberglaw.com/environment-and-energy/insight-fourth-circuit-rules-environmental-justice-is-not-merely-a-box-to-be-checked>

¹⁷ “Atlantic Coast Pipeline canceled after years of delays, accusations of environmental injustice,” Erik Ortiz, NBC News, July 6, 2020, <https://www.nbcnews.com/news/us-news/atlantic-coast-pipeline-canceled-after-years-delays-accusations-environmental-injustice-n1232987>

2. Avoidance of Sabal Trail's own track record

Sabal Trail's Answer did not mention its own track record of leaking drilling fluid up into the Withlacoochee River from its pilot hole near Quitman, Georgia, in 2016, nor its repeated leaks of odorant from the site of its Dunnellon Compressor Station in 2017 and 2018, even before Phase II construction started, nor its methane leak from its Hildreth Compressor Station in Suwannee County, Florida, in 2018, nor the five reported sinkholes near the Flint River and Sabal Trail's Albany Compressor Station, and in many other locations, apparently caused by construction of the Sabal Trail pipeline.. WWALS (and in some cases Sabal Trail) had filed evidence of all these things with FERC as they happened, and had reminded FERC and Sabal Trail in the WWALS motion to Intervene of April 6, 2020,¹⁸ in which see 3. Basis for Intervening, b., c., d., and e.

Also in July, the D.C. U.S. District Court ordered the Dakota Access Pipeline ("DAPL") to be shut down and emptied while the U.S. Army Corps of Engineers produces the environmental review.¹⁹ especially regarding stream crossings and water quality, that the court had already ordered back in March.²⁰ DAPL and Sabal Trail have many of the same investors. If the state of Georgia had chosen to defend the decision of the Georgia House of Representatives to deny river-crossing permits for Sabal Trail,²¹ Sabal Trail might never have been built through economically disadvantaged and environmental justice communities. In light of these recent court decisions, which are a novel and significant circumstance, FERC should revisit those Sabal Trail river crossings.

In February 2020, Williams Company announced it was ceasing investment in its Constitution Pipeline, which was greatly delayed due largely to New York State years before denying a water permit.²² Williams stated:²³ "Williams – with support from its partners, Duke, Cabot and AltaGas – has halted investment in the proposed Constitution project. While Constitution did receive positive outcomes in recent court proceedings and permit applications, the underlying risk adjusted return for this greenfield pipeline project has diminished in such a way that further development is no longer supported." Duke is a partner in Sabal Trail and Williams built the Hillabee Expansion Project of its Transco Pipeline that feeds Sabal Trail in Alabama. If the same standards of water quality had been applied by Alabama, Georgia, or Florida, as were applied by New York, Sabal Trail and its related pipelines probably never would have been built. Thus the cancellation of the Constitution Pipeline is a new and significant development.

Most of these Sabal Trail sinkholes and leaks occurred in economically disadvantaged areas, and some in minority-majority areas. All should be considered in a SEIS.

¹⁸ "Motion to Intervene by WWALS Watershed Coalition, Inc., in proceeding on Request for Extension by Sabal Trail Transmission, LLC under CP15-17." WWALS, April 6, 2020, [FERC Accession Number 20200406-5070](https://www.ferc.gov/whats-new/2020/04/06/wwals-motion-to-intervene)

¹⁹ "Court Rules Dakota Access Pipeline Must Be Emptied For Now," [Laurel Wamsley](https://www.npr.org/2020/07/06/887593775/court-rules-that-dakota-access-pipeline-must-be-emptied-for-now), NPR, July 6, 2020, <https://www.npr.org/2020/07/06/887593775/court-rules-that-dakota-access-pipeline-must-be-emptied-for-now>

²⁰ "Dakota access pipeline: court strikes down permits in victory for Standing Rock Sioux: Army corps of engineers ordered to conduct full environmental review, which could take years," [Nina Lakhani](https://www.theguardian.com/us-news/2020/mar/25/dakota-access-pipeline-permits-court-standing-rock), The Guardian, 25 March 2020, <https://www.theguardian.com/us-news/2020/mar/25/dakota-access-pipeline-permits-court-standing-rock>

²¹ "FERC Authorization for Sabal Trail to Commence Drilling under Georgia Rivers 2016-08-25," John S. Quarterman, WWALS, August 27, 2016, <http://wwals.net/?p=21993>

²² "Williams Cancels N.Y. Constitution Pipeline," Reuters, Pipeline & Gas Journal," February 24, 2020, <https://pgionline.com/news/2020/02-february/williams-cancels-ny-constitution-pipeline>

²³ "Feb. 24 Media Statement," Williams Company, Constitution Pipeline, February 24, 2020, <https://constitutionpipeline.com/>

3. Lack of evidence for need from Sabal Trail

FERC said when it opened the comment period on Sabal Trail's request for a six-month extension,²⁴ that the Commission would not entertain discussions on need. However, Sabal Trail reopened that discussion in its Answer of June 8, 2020.²⁵ Also note that since FERC has declared that comment process moot,²⁶ apparently FERC's attempted prohibition on discussing need is also moot. FERC has not explicitly addressed Sabal Trail's motion for leave to answer nor Sabal Trail's Answer, so apparently that Answer was admitted to the record.

Meanwhile, the collapse in Liquid Natural Gas (LNG) prices and the bankruptcies of major shale gas drillers and the exponential increase in wind and solar power capacity each are novel and significant circumstances that question any need for Sabal Trail.

Sabal Trail has provided no evidence for its alleged need for its Phase II gas other than that Florida Power and Light ("FPL") has signed up as a customer. Since FPL's parent NextEra Energy ("NextEra") is a partner in Sabal Trail, more evidence than self-dealing is needed. In fact, numerous statements of FPL and Sabal Trail partners Duke Energy and NextEra Energy assert that solar and wind are what are needed, not gas pipelines.

4. FPL's evidence of need for renewables, not fossil fuels

FPL's Ten Year Power Plant Site Plan, 2020 – 2029,²⁷ in Schedule 3.1: FPL History of Summer Peak Demand (MW), shows very little increase in summer peak demand.

Instead, that Plan shows decreases in Net Firm Demand in 2017 and 2018, and only a 4.8% increase in 2019, with a decade-long average of only about 1% annual increase.

Sabal Trail did not mention winter demand, and that's no wonder. Schedule 3.2: FPL History of Winter Peak Demand (MW) shows a clear trend of *decreased* Net Firm Demand for the past decade.

Further, Schedule 3.3: FPL History of Annual Net Energy for Load (GWh), shows less than 1% average annual increase in Actual Total Retail Sales (GWh) Load.

FPL's Ten Year Plan only mentions Sabal Trail twice, on pages 89 and 143.

On page 89 that Plan says:

"Natural gas sourcing and delivery: In 2013, the FPSC approved FPL's contracts to bring more natural gas into FPL's service territory through a third natural gas pipeline system into Florida. The process by the pipeline companies to obtain approval from the Federal Energy Regulatory Commission (FERC) for the new pipeline system, consisting of the Sabal Trail and Florida Southeast Connection pipelines, culminated in receiving a FERC certificate of approval on February 2, 2016. The new pipeline system has been constructed and is now in

²⁴ "Notice of Extension of Time Request re Sabal Trail Transmission, LLC under CP15-17," FERC, March 27, 2020, [FERC Accession Number 20200327-3095](#)

²⁵ "Motion for Leave to Answer and Answer of Sabal Trail Transmission, LLC under CP15-17, et al." Sabal Trail, June 8, 2020, [FERC Accession Number 20200608-5183](#).

²⁶ "Notice Dismissing Request for Extension of Time As Moot re Sabal Trail Transmission, LLC under CP15-17." FERC, May 1, 2020, [FERC Accession Number 20200501-3043](#).

²⁷ "Ten Year Power Plant Site Plan 2020-2029," FPL, April 2020, <https://www.fpl.com/about/10-year-site-plan.html>

service. This pipeline is necessary to fuel the FPSC-approved Okeechobee CC unit. The new pipeline system utilizes an independent route that will result in a more reliable, economic, and diverse natural gas supply for FPL customers and the State of Florida.”

On Page 143 that Plan says:

“FPL has historically purchased the gas transportation capacity required for new natural gas supply from two existing natural gas pipeline companies: FGT and Gulfstream. In mid-2017, a third new pipeline system, consisting of the Sabal Trail and Florida Southeast Connection pipelines, went into operation. This new pipeline system is now providing fuel for FPL’s Riviera and Martin plants. The new pipeline system also provides the primary fuel for the recently added Okeechobee CC unit. The new pipeline system will also allow needed support for gas-fueled FPL generation facilities in several counties.”

Yet in the previous paragraph that Plan says:

“Significant reliance upon natural gas to produce electricity for FPL’s customers is projected to continue over the long-term due to FPL’s growing load. The addition of highly fuel-efficient CC units at Cape Canaveral, Riviera Beach, Port Everglades, and Okeechobee, plus the additional CC capacity at the Dania Beach site that will come in-service in 2022, will reduce the growth in natural gas use from what it otherwise might have been due to the high fuel-efficiency levels of these new CC units. In addition, as discussed above, FPL currently plans to add significantly more solar PV facilities that utilize no fossil fuel.”

Even FPL admits it plans to *“reduce the growth in natural gas use from what it otherwise might have been.”* Building still more fossil-fuel-burning natural gas power plants is not a good way to do that.

FPL admits there is a better way, *“to add significantly more solar PV facilities that utilize no fossil fuel.”* FPL is making quite a bit of progress in solar power, with numerous 74.5 MW solar installations in numerous counties throughout Florida. See Schedule 8, Planned And Prospective Generating Facility Additions And Changes.

The sheer geographical distribution of those solar installations glaringly exposes the weakness of one of FPL’s three original and continued excuses for Sabal Trail: *“The new pipeline system utilizes an independent route that will result in a more reliable, economic, and diverse natural gas supply for FPL customers and the State of Florida.”* No pipeline can have as independent a route as distributed solar power production, and Sabal Trail certainly does not. Far from being more reliable, a massive interstate pipeline is a hundreds-of-miles-long line of potential failure, which if it breaks at any point shuts off all power from it. Meanwhile, if one set of solar panels is shaded or otherwise diminished, others continue.

What FPL customers need is electricity, not natural gas. Solar power is less expensive, faster to deploy, burns no fossil fuels, uses no cooling water, and emits no pollutants. In the years FPL wasted in the Sabal Trail permitting process, FPL could have already built enough solar installations to provide more electricity than Sabal Trail ever will.

Thus FPL’s Ten Year Plan does not support Sabal Trail’s assertion of need for additional

gas to meet summer demand, nor for that matter, to meet any increased demand. Additional gas would instead serve to subvert the significant progress FPL has made in load management and conservation; see Schedule 3.1. Additional gas would also serve to subvert the significant progress FPL (and its parent NextEra Energy) has made in deploying solar power.

Even FPL, in its Schedule 6.1 Forecasted, projects decreased use of natural gas over the decade through 2029 while solar power will increase by five or six times. Natural gas is not a bridge fuel. It is an impediment to getting on with the solar future now.

FPL and Sabal Trail do not appear to be on the same page. FPL has for more than a year been publicising its shift to clean energy, as for example in March 2019: **“FPL announces plan to build the world's largest solar-powered battery and drive accelerated retirement of fossil fuel generation,”**²⁸

- Innovative modernization plan will replace a pair of aging natural gas power generating units with clean and renewable energy, saving FPL customers more than \$100 million while eliminating more than 1 million tons of carbon dioxide emissions

- The FPL Manatee Energy Storage Center's battery system is projected to have four times the capacity of the world's largest battery system currently in operation

- Charged by an existing, co-located FPL solar power plant, the planned battery storage center will increase the predictability of solar - extending its benefits even when the sun is not shining

JUNO BEACH, Fla., March 28, 2019 / [PRNewswire](#)/ -- Florida Power & Light Company, one of the nation's cleanest energy companies, today announced a plan to build the world's largest solar-powered battery system – four times the capacity of the largest battery system in operation – as part of an innovative modernization plan that will accelerate the retirement of two fossil fuel generation units.

FPL’s move to renewable energy and away from fossil fuels is a novel and significant circumstance that should be considered in a new SEIS.

5. Duke’s evidence of need for renewables, not fossil fuels

Sabal Trail’s other big customer, Duke Energy, after the cancellation of ACP, also emphasized renewable energy and battery storage:

"Sustainability and the reduction of carbon emissions are closely tied to our region's success," said Lynn Good, Duke Energy Chair, President and CEO. "In our recent Climate Report, we shared a vision of a cleaner energy future with an increasing focus on renewables and battery storage in addition to a diverse mix of zero-carbon nuclear, natural gas, hydro and energy efficiency programs.

"Achieving this clean energy vision will require all of us working together to develop a plan that is smart, equitable and ensures the reliability and

²⁸ “FPL announces plan to build the world's largest solar-powered battery and drive accelerated retirement of fossil fuel generation,” FPL, March 8, 2019, <http://newsroom.fpl.com/2019-03-28-FPL-announces-plan-to-build-the-worlds-largest-solar-powered-battery-and-drive-accelerated-retirement-of-fossil-fuel-generation>

affordability that will spur economic growth in the region. While we're disappointed that we're not able to move forward with ACP, we will continue exploring ways to help our customers and communities, particularly in eastern North Carolina where the need is great," said Good.

Duke, like FPL, says renewable energy is what is needed, not fossil fuels: that is a novel and significant circumstance that should be considered in a new SEIS.

6. LNG export instead of domestic need

Since there is no evidence of domestic need for Sabal Trail's Phase II gas, where would that gas go? One obvious answer would be Liquid Natural Gas (LNG) export. Sabal Trail gas can go through Florida Gas Transmission (FGT)'s Jacksonville Expansion Project (JEP), which FERC permitted, to Eagle Maxville LNG and Eagle LNG in Jacksonville, for export through Crowley Maritime. Or through the proposed Floridian Natural Gas Storage Facility, FPL's neighbor in Martin County, Florida, or through the mesh of pipelines in Florida to other LNG export facilities. See the attached summary of LNG exports authorized by the U.S. Department of Energy. Sabal Trail provided no evidence that this will not happen.

FERC abdicated Congressional jurisdictional authority it had previously acknowledged since 1987:

18 CFR § 2.80 - Detailed environmental statement.

(a) It will be the general policy of the Federal Energy Regulatory Commission to adopt and to adhere to the objectives and aims of the National Environmental Policy Act of 1969 (NEPA) in its regulations promulgated for statutes under the jurisdiction of the Commission, including the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act. The National Environmental Policy Act of 1969 requires, among other things, all Federal agencies to include a detailed environmental statement in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Therefore, in compliance with the National Environmental Policy Act of 1969, the Commission staff will make a detailed environmental statement when the regulatory action taken by the Commission under the statutes under the jurisdiction of the Commission will have a significant environmental impact. The specific regulations implementing NEPA are contained in part 380 of the Commission's regulations.

[Order 486, [52 FR 47910](#), Dec. 17, 1987]

Several of the current and proposed LNG export projects are not under FERC jurisdiction, because in 2015 FERC disclaimed jurisdiction without a formal Rulemaking.²⁹ Thus they have probably undergone even less environmental justice review than FERC-jurisdiction project, and thus may be at more risk of successful lawsuits against them.

In fact, the Hialeah LNG export facility that began exporting LNG on February 5, 2016, from the Ports of Miami and Everglades in Florida, actually escaped NEPA review by the

²⁹ "Order on Petition for Declaratory Order re Pivotal LNG, Inc under RP15-259. Commissioner Bay is dissenting with a separate statement attached," FERC Accession Number 20150402-3057, April 2, 2015, https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14320613

U. S. Department of Energy by claiming a Categorical Exclusion that the company was not eligible to claim.

FERC appears to be shirking its duty according to its own FERC Strategic Plan FY2018 - 2022:³⁰

Objective 2.2: Minimize risks to the public associated with FERC-jurisdictional energy infrastructure.

Core Function 2.2.1: Conduct comprehensive and timely inspections of hydropower and LNG facilities to ensure compliance with the Federal Power Act, the Natural Gas Act, and Commission orders.

Please note these points:

1. We have no assurance that none of the natural gas coming through the Southeast Markets Pipelines including Sabal Trail is going to find its way to our deep water ports for export, instead of to FPL's customers; and
2. LNG is being produced, stored, and distributed at export facilities where FERC did not satisfy Core Function 2.2.1 (above) because the Commission disclaimed jurisdiction over inland LNG export facilities.

The overarching issue is that the LNG that is being transported through cities and counties on its way to our deep water ports is most likely being produced, stored and distributed from inland LNG facilities where FERC has abdicated Congressional authority under the Natural Gas Act by arbitrarily and capriciously disclaiming jurisdiction. To compound the problem, the U. S. Department of Energy has usurped FERC's authority by determining whether an LNG export project is FERC-jurisdictional. Emergency Response Plans have to be approved by the Director of the Office of Energy Projects.

Here is an example from a rehearing before FERC,³¹ page 51, item 13:

*Freeport LNG shall update its Emergency Response Plan to address a potential LNG truck accident at any location along the truck route on Quintana Island and to coordinate procedures with state, county, and local emergency planning groups, fire departments, state and local law enforcement, and appropriate federal agencies. The updates to the Emergency Response Plan shall be prepared in consultation with appropriate agencies and filed with the Secretary [of the Commission] for review and written approval by the Director of OEP [FERC Office of Energy Projects] **prior to initial site preparation.***

Without FERC oversight for an LNG export operation, there is no Emergency Response Plan.

Leaks at every step of the export process add to environmental damage and environmental justice infractions. Lack of an Emergency Response plan compounds those problems.

The recent approval of LNG transportation in rail tank cars by the Pipeline and Hazardous

³⁰ "Strategic Plan FY 2018-2022," FERC, September 2018, <https://www.ferc.gov/sites/default/files/2020-04/FY-2018-FY-2022-strat-plan.pdf>

³¹ "FREEPORT LNG EXPORT PROJECT and BOG/TRUCK PROJECT, Environmental Assessment," Freeport LNG Development, L.P., March 2009, FERC Docket Nos. CP03-75-003, CP03-75-004, CP05-361-001, and CP05-361-002, Cooperating Agency: U.S. Department of Energy DOE/EA – 1650 DOE Docket No. FE-08-70-LN, https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/EA-1650-FEA-2009.pdf

Materials Safety Administration (PHMSA),³² creating a virtual rolling natural gas pipeline on wheels, is another novel and significant circumstance that was not considered in earlier SMPP or Sabal Trail Environmental Impact Statements or Orders.

Regarding need, according to industry press, the U.S. LNG industry needs prices to double to be solvent.³³ Thus insofar as Sabal Trail does depend on LNG exports, that need has evaporated, in another novel and significant circumstance.

7. Frackers going bankrupt because of lack of need

At the other end of the natural gas supply chain, the fracking source,³⁴ “Chesapeake Energy, a shale drilling pioneer that helped to turn the United States into a global energy powerhouse, has filed for bankruptcy protection.”

And that’s not the only one,³⁵ “West Texas Fracker Sable Permian Files for Bankruptcy Amid Restructuring Talks: Out-of-court restructurings kept the oil-and-gas operator afloat for years, but 2020 proved too much.”

Clearly bankruptcies of companies at the beginning of the fracked methane supply chain constitute a novel and significant circumstance.

8. FERC’s own data shows solar and wind are winning

FERC’s own most recent Energy Infrastructure Update³⁶ shows for January through May 2020 cumulative new installed natural gas capacity at 5,682 megawatts (MW) lagging the total of wind (3,449) and solar (2,661). Natural gas at 44.71% of total installed capacity still generates about 4.3 times as much as wind (9.09%) and solar (3.85%) combined (12.94%).

But FERC includes projections for June 2020 through May 2023 showing new wind and solar each alone beating natural gas by a long shot in new installed capacity, with nothing else coming close.

FERC does not include a table of projected total capacity in May 2023, but by simple addition natural gas would still have about 39.5% of total electricity generation. Yet solar plus wind by then will have increased from 12.9% to 24%, just about doubling percentage in three years. How is this possible? FERC projects much retirement of oil, nuclear, and especially coal electricity generation. The real numbers for solar will be higher, since FERC does not include rooftop solar in its numbers; only utility-scale solar. Plus as solar, wind, and batteries win, fossil fuel and nuclear retirements will accelerate.

Thus FERC’s own data helps document the novel and significant circumstance that renewable wind and solar power are indeed already winning over natural gas.

³² “U.S. Department of Transportation Issues Final Rule for the Safe Transportation of Liquefied Natural Gas by Rail Tank Car,” PHMSA, June 19, 2020, [PHMSA 05-20](#)

³³ “U.S. LNG Industry Needs Prices To Double,” Irina Slav, Oilprice.com, June 28, 2020, <https://oilprice.com/Energy/Natural-Gas/US-LNG-Industry-Needs-Prices-To-Double.html>

³⁴ “Chesapeake Energy Files For Bankruptcy Protection,” [Associated Press](#), June 29, 2020, <https://www.publicradiotulsa.org/post/chesapeake-energy-files-bankruptcy-protection>

³⁵ “West Texas Fracker Sable Permian Files for Bankruptcy Amid Restructuring Talks,” Peg Brickley, June 26, 2020, <https://www.wsj.com/articles/west-texas-fracker-sable-permian-files-for-bankruptcy-amid-restructuring-talks-11593195413>

³⁶ “Office of Energy Projects Energy Infrastructure Update For May 2020,” FERC, July 2020, <https://cms.ferc.gov/sites/default/files/2020-07/MayMIR%202020.pdf>

9. FPL's parent NextEra says solar, wind, and batteries

That renewable energy is already winning over fossil fuels is supported by the earnings calls of FPL's parent NextEra Energy, including the one of April 22, 2020, for Q1 2020,³⁷ which includes only a few paragraphs about pipelines, and a parade of senior executives saying fossil fuels are on the way out and renewables are winning:

James L. Robo -- Chairman and Chief Executive Officer

Yeah. No drop off, no slowdown. ...

Knowing that even if we are in a recessionary environment, being able to pivot to renewables not only brings a clean energy story but it also makes their economies more competitive and lowers bills for customers at a time they need it most. And so that's what's really driving demand. ...

Rebecca J. Kujawa -- Executive Vice President, Finance and Chief Financial Officer

Yeah. They definitely have come down, but you would hope that someone making a long-term planning decision will think about prices over a long period of time. And as we highlighted for FPL's Ten Year Site Plan, and we looked at what the costs are that we're anticipating at Florida Power & Light and Gulf Power together. Solar paired with battery storage are the least cost form of generation. We've kind of put our -- put all that to pen to paper and included that in our Ten Year Site Plan. And have now removed the two combined cycle natural gas plants that we had previously in the forecast in the mid-2020s as a reflection of where we think costs are. ...

John W. Ketchum -- President and Chief Executive Officer, NextEra Energy Resources

Yeah. And Michael, this is John. One thing I would add to that is, remember, as oil prices have come down, rig counts have come down in the Permian, which means there's a lot less associated gas, which has really actually helped natural gas prices. And we've seen a bit of an uptick in natural gas prices, particularly recently. And so when we are out originating new renewables, we really have not seen competition from gas-fired units for that reason. They still remain kind of in that \$30 to \$40 a megawatt hour range versus wind, which is still in the teens in most parts of the country, and then solar kind of in that mid-20 range. So very, very competitive when you look at renewables versus gas-fired generation.

And then the last thing I would add is just peakers. Remember, gas-fired peakers not only are targets for new renewables, but also for battery storage. Battery storage costs have come down such that we mentioned the large stand-alone storage build that we have, the \$1 billion going in '21. There is a significant opportunity in almost every part of the country where batteries are now more economic than gas-fired peakers, even at today's natural gas prices.

Michael Weinstein -- Credit Suisse -- Analyst

Good news. Thank you.

³⁷ "NextEra Energy Inc (NEE) Q1 2020 Earnings Call Transcript: NEE earnings call for the period ending March 31, 2020," [Motley Fool Transcribers](https://www.fool.com/earnings/call-transcripts/2020/04/22/nextera-energy-inc-nee-q1-2020-earnings-call-trans.aspx), Apr 22, 2020 at 2:30PM, <https://www.fool.com/earnings/call-transcripts/2020/04/22/nextera-energy-inc-nee-q1-2020-earnings-call-trans.aspx>

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 2013.³⁸

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.³⁹ 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,⁴⁰ "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:⁴¹

"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.

³⁸ "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>

³⁹ "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/>

⁴⁰ "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/>

⁴¹ "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>

11. Historic new circumstances add up

The sun never set on the British Empire. Until it did.

No one circumstance ended that Empire, but it is easy to point at major events that accelerated its demise, such as the independence of India and the Suez Incident. Its fall started after the illusion of its invincibility was shattered by Gandhi's campaign of civil disobedience and other events such as World War II.

The illusion of invincibility of the inland colonial empire of pipelines has been shattered by recent court orders about the ACP, DAPL, and others, and especially by the shut down of the Dakota Access Pipeline and the shuttering of the Constitution Pipeline and the Atlantic Coast Pipeline. All of those pipelines were expected to be built, and DAPL actually was built before being ordered to shut down and empty. Now the world knows that pipelines are not inevitable.

All these pipeline projects, like Sabal Trail, were opposed by nonviolent protests and political and legal actions. All those methods of opposition, combined with the sea-change in progress to renewable energy, eventually added up to a new and significantly different world than that in which Sabal Trail was permitted or re-permitted.

The shut down of DAPL and the abandonment of ACP as well as the court rejection of tolling orders make it a new world even since FERC's June 19, 2020, Order granting a rehearing on Sierra Club's motion.

FERC should initiate a new EIS that should take into account Sabal Trail's own track record of leaks and sinkholes, as well as leaks and accidents from LNG export and LNG transport in rail cars, the speeding demise of fossil fuels as evidenced by record low LNG export prices and bankruptcies of frackers, the court rejections of DAPL, ACP, and tolling orders and how much of Sabal Trail could never have been built through environmental justice communities without tolling orders, the coronavirus pandemic, and the rapid rise of renewable solar, wind, and battery power as evidenced by FPL and Sabal Trail partners Duke and NextEra, as well as by FERC's own numbers. All of those new and significant circumstances make pipelines such as Sabal Trail toxic stranded assets, dangerous to the bank accounts of their investors, as well as to the environment, justice, and human health.

Conclusion

For the reasons stated above, WWALS asks FERC to grant Sierra Club's motion for stay of the Commission's letter order of April 22, 2020, to halt Sabal Trail Phase II, and to commence a Supplemental Environmental Impact Statement (SEIS) taking into account all of the above new and significant circumstances.

Thank you for your consideration.

For the rivers and the aquifer,

John S. Quarterman

/s

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Attachment: Summary of LNG exports authorized by the U.S. Department of Energy