

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

SABAL TRAIL TRANSMISSION, LLC)	CP15-16-000
FLORIDA SOUTHEAST CONNECTION, LLC)	CP15-17-000
TRANSCO GAS PIPELINE COMPANY, LLC)	CP14-554-000

**REQUEST FOR REHEARING AND RESCISSION
BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.713, The Blue Ridge Environmental Defense League (“BREDL” / “Intervenor”) hereby requests a rehearing and rescission of the Commission’s February 2, 2016 Order Issuing Certificates and Approving Abandonment (“Order”) that granted Florida Southeast Connection, LLC (“FSC”), Transcontinental Gas Pipe Line Company, LLC (“TGPLC”) and Sabal Trail Transmission, LLC (“STT”) authorization under sections 7(b) and 7(c) of the NGA and Part 157 of the Commission’s regulations to construct and operate the Florida Southeast Connection Project (“FSP”), to construct and operate the Hillabee Expansion Project, to abandon the capacity on the Hillabee Expansion Project by lease to Sabal Trail Transmission, LLC and to construct and operate the Sabal Trail Project (“Project”). The Project would include approximately 515 miles of new pipeline, six compressor stations, and six meter stations in Alabama, Georgia, and Florida. The intervenor seeks rehearing and rescission of the Commission’s Order because the environmental review underlying the conclusions in the Order fails to meet the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and its implementing

regulations, 40 C.F.R. Pts. 1500-08. The Order also violates the requirements of Section 401 of the Clean Water Act, and Section 111(d) of the Clean Air Act. There are also grave economic concerns and implications that have not been viably taken into consideration.

STATEMENT OF ISSUES

The FERC has not accurately assessed many factors that would affect this Project. These include, inter alia: Economic factors, environmental justice considerations and eminent domain. It is also evident that the approval of potentially devastating environmental factors does not take into account the significant damage that would be done over the long term even with the attempt to mitigate individual, immediate environmental concerns.

1. Economic issues:

Observed changes and trends in the energy market will render the Project untenable. The emphasis in energy investment for the future is on ventures that privilege clean, renewable energy. This Project would not only contribute to the international problem of global warming, it would also be non-sustainable over the long term as investors continue to pull their money away from fossil fuel and choose to invest in long term solutions for a reliable future in energy production and storage. Technology has made this not only possible, but preferable. If the FERC chooses to approve this project, it is likely that the application for the certificate will be withdrawn by the participating entities based on a lack of investors. There are also economic considerations involving reduced usage of land and farmland, compromised water resources and loss of quality and quantity of life

that were not identified, quantified or enumerated in the economic analysis provided in the approval order. The FERC's position is unsupported by the evidence.

2. Environmental Justice Issues:

When considering any project that would disrupt communities, create dire health risks and threaten a vulnerable population, it is obligatory for those threats, risks and disruptions to be viably taken into consideration. Whether or not the FERC is liable to adhere to the standards set forth in Presidential Executive Order 12898, the agencies that monitor and oversee the activities of the FERC are obligated to adhere to those standards. These stipulations were not adequately addressed in the approval order. The FERC's position is unsupported by the evidence.

3. Eminent Domain Issues:

Georgia law included a bill that was legitimized in 2006 entitled: "Landowner's Bill of Rights." According to the stipulations outlined in this legislation, the Project could not viably utilize eminent domain to construct this pipeline. Without the use of eminent domain laws, the project could not be constructed on the property of those landowners that did not offer permissions. This will make it impossible for the project to be legally constructed. The FERC's position is unsupported by the evidence. Sabal Trail cannot be a public utility in the State of Georgia. Public utilities are regulated by the Georgia Public Service Commission and the GPSC does not and will not regulate Sabal Trail.

4. Environmental Issues:

To date, the permitting necessary to adhere to the Clean Water Act and the Clean Air Act has not been approved or awarded. The FERC cannot, and should not, approve a project without all of the necessary permitting achieved. Moreover, the Resource Conservation

and Recovery Act and the Safe Drinking Water Act were not addressed at all. This project must not be approved without the required “hard look” at these very important considerations.

BASIS FOR REHEARING

Intervenors maintain that the Project is not in the public interest and that the Commission failed to meet its obligations under NEPA by authorizing the Project without properly preparing and evaluating an EIS that appropriately assessed the Project’s potentially significant impacts on the economy, human health, quality of life and the environment. The Commission continues to err in concluding that the Project will not have a significant impact on the quality of the human environment; discounting the economic consequences; continuing to reject alternatives, including the no action alternative; and in failing to ensure the implementation of necessary measures to avoid significant adverse impacts from the Project. Intervenors and other members of the public, including technical experts, have raised substantial questions as to whether the Project will have significant impacts on the human environment. It is also evident that there are economic considerations that have not been accurately analyzed. The Order’s lack of critical consideration of the deficient analysis in the EIS demonstrates that the Commission failed to take the requisite “hard look” at the Project’s impacts, as required by NEPA.

STATEMENT OF PARTIES

Pursuant to 18 CFR 385.214, BREDL filed to intervene in the Project in a timely manner in December of 2014. Furthermore, there were challenges filed by BREDL regarding the draft

EIS on October 26, 2015. This request for a rescission and rehearing is necessary and appropriate pursuant to 16 U.S. Code § 8251.

FACTS

On November 21, 2014, Sabal Trail Transmission, LLC (“Sabal Trail”) filed an application under section 7(c) of the Natural Gas Act, requesting authorization to construct, own, and operate a new natural gas pipeline system (“Project”), including five compressor stations and appurtenances totaling 209,900 horsepower, across Alabama, Georgia, and Florida. If constructed, the Sabal Trail would have approximately 460 miles of 36-inch-diameter natural gas pipeline beginning in Tallapoosa County, Alabama and ending in Osceola County, Florida. Project owner Sabal Trail Transmission, LLC is a joint venture of Spectra Energy Corp and NextEra Energy, Inc.

Sabal Trail also requested 1) a certificate of public convenience and necessity to acquire by lease from Transcontinental Gas Pipe Line Company the capacity that would be created by Transco’s proposed Hillabee Expansion Project, Docket No. CP15-16-000, 2) a blanket certificate pursuant to Part 157, Subpart F of the Commission's regulations, authorizing Sabal Trail to construct, operate, acquire and abandon certain facilities as described in Part 157, Subpart F, and 3) a blanket certificate pursuant to Part 284, Subpart G of the Commission's regulations, authorizing Sabal Trail to provide open-access firm and interruptible interstate natural gas transportation services on a self-implementing basis with pre-granted abandonment for such services.

The pipeline projects outlined and addressed in the EIS for the Sabal Trail Pipeline, SAS-2013-00942, represent a massive assault on the environment and the communities along the

proposed routes. Moreover, the impacts of extraction, transport and combustion of natural gas via the process of hydraulic fracturing have to be taken into consideration. According to the EPA's own estimates up to 140 billion gallons of water are used annually to fracture 35,000 wells in the US. A large variety of chemicals are used in fracking fluids, and many of these fracking fluid chemicals are known to be toxic to humans, and several are known to cause cancer (e.g. formaldehyde, ethylene glycol, methanol, benzene). According to studies by the EPA, the oil and gas industry, and interviews with regulators, anywhere from 20 to 85% of fracking fluids remain in the formation, resembling a source of groundwater contamination for many generations to come in the source areas for the natural gas that would be transmitted via the Sabal Trail Pipeline from Alabama to Florida.¹

The impacts on the land, air and water resources which would occur if this project advances are contrary to the letter and the spirit of the National Environmental Policy Act, which is to prevent or eliminate damage to the environment and the biosphere. The Environmental Impact Study does not begin to alleviate the devastating effects that the Sabal Trail Pipeline would have on Alabama, Georgia and Florida. The impacts of this cannot be mitigated.

Despite concerns, challenges and protests from many different sources, and serious concerns raised by the EPA, amongst other agencies, the FERC still chose to provide a certificate for the Sabal Trail Pipeline Project on Feb 2, 2016. The FERC's position is unsupported by the evidence.

A DOE study found "great uncertainties about how the U.S. natural gas market will evolve" and that "one of the major uncertainties is the availability of shale gas in the United

¹ https://www.earthworksaction.org/issues/detail/hydraulic_fracturing_101#.Vi1QOn6rQdV

States.”² Another DOE study found it lacked “an understanding of where and when additional gas production will arise” and therefore “the environmental impacts resulting from production activity . . . are not ‘reasonably foreseeable’”³ This presents the Commission with a dilemma, because the National Environmental Policy Act (“NEPA”) requires that all federal agencies consider comprehensively the environmental impacts of proposed major actions which come before them. 42 U.S.C. § 4332(2)(C); See *La. Ass'n of Indep. Producers & Royalty Owners v. FERC*, 958 F.2d 1101 (D.C.Cir.1992). Indeed, the FERC is responsible for the NEPA review associated with natural gas pipeline construction. *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 967 (D.C.Cir.2000). Moreover, the analysis under NEPA must be broad as well as deep.

*Delaware Riverkeeper Network v. FERC*⁴ held that,

NEPA review must include both "connected actions" and "similar actions." [40 CFR] § 1508.25(a)(1), (3). Actions are "connected" if they trigger other actions, cannot proceed without previous or simultaneous actions, or are "interdependent parts of a larger action and depend on the larger action for their justification." *Id.* § 1508.25(a)(1). And actions are "similar" if, "when viewed with other reasonably foreseeable or proposed agency actions, [they] have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography." *Id.* § 1508.25(a)(3).

And that:

"The procedures required by NEPA ... are designed to secure the accomplishment of the vital purpose of NEPA. That result can be achieved only if the prescribed procedures are faithfully followed...." *Lathan v. Brinegar*, 506 F.2d 677, 693 (9th Cir.1974).

Also:

² *NERA Economic Consulting's analysis entitled Macroeconomic Impacts of Increased LNG Exports from the United States*, p.111

³ *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014) at 2, available at <http://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf>

⁴ *Delaware Riverkeeper Network, et al., Petitioners v. Federal Energy Regulatory Commission, Respondent. Tennessee Gas Pipeline Company, LLC and Statoil Natural Gas, LLC, Intervenors*. No. 13-1015. United States Court of Appeals, District of Columbia Circuit. Argued February 24, 2014. Decided June 6, 2014. 753 F.3d 1304 (2014)

In preparing an EA or EIS, an "agency need not foresee the unforeseeable, but... [r]easonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as 'crystal ball inquiry.'" *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C.Cir.1973).

Further, "simple, conclusory statements of 'no impact' are not enough to fulfill an agency's duty under NEPA." *Foundation on Economic Trends v. Heckler*, 756 F.2d 143, 154 (D.C.Cir.1985).

Finally, judicial review under NEPA is available "to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious." *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97-98, 103 S.Ct. 2246, 76 L.Ed.2d 437 (1983).

Other environmental laws which the FERC must address include the Clean Air Act, which established National Ambient Air Quality Standards to protect public health and public welfare and to regulate emissions of hazardous air pollutants, 42 U.S.C. §7401 et seq. (1970); the Clean Water Act, which regulates discharges of pollutants into the waters of the United States and sets surface water quality standard 33 U.S.C. §1251 et seq. (1972); the Resource Conservation and Recovery Act, which regulates the generation, transportation, treatment, storage, and disposal of hazardous waste and non-hazardous solid wastes. 42 U.S.C. §6901 et seq. (1976); and the Safe Drinking Water Act, which protects above ground or underground sourced waters actually or potentially designated for drinking use. 42 U.S.C. §300f et seq. (1974)

Neither the Clean Air Act nor the Clean Water Act have been adequately or accurately addressed and permitted in the Order. The Resource Conservation and Recovery Act and the Safe Drinking Water Act were not addressed at all. This project must not be approved without the required "hard look" at these very important considerations.

ARGUMENTS

1. Economics

When considering any project, such as the one recently approved by the Commission, it is necessary to consider whether the project is economically viable. In the case of Sabal Trail, there are many indications that the project will not be financially stable, that there will not be reliable long-term investors, and that the economic considerations of the loss of property along the route would have a significant effect on the communities which stand to be impacted by the project. The Commission's choice to award the certificate is likely to have dire economic consequences.

For the majority of the past decade, "Industry leaders have touted that shale gas, along with burgeoning shale oil production, will lead to America's energy independence, kindle a manufacturing renaissance, lower bills for everyday Americans and create millions of much-needed jobs."⁵ However, it is clear that the shale gas boom is unsubstantiated hype; the shale gas boom that the United States has been experiencing for almost a decade is actually just a bubble.

In economics, a bubble is a term used to refer to a significant, usually rapid, increase in asset prices that typically arises from speculation or enthusiasm rather than intrinsic increases in value.⁶ The issue with all bubbles, however, is that they ultimately pop. Popping the shale gas bubble in the US would leave in its wake a collapse of prices and, potentially, a short-term increase in well drilling as the United States scrambles to find a sliver of profit in an unsustainable economy. Bill Powers, author of the book *Cold, Hungry and in the Dark: Exploring the Natural Gas Supply Myth*, draws a striking parallel between the shale gas boom,

⁵ Powers, Bill. "The Popping of the Shale Gas Bubble." Forbes. September 3, 2014

⁶ New Oxford American Dictionary

and the housing boom in 2007. He writes that similar to the prevailing beliefs about the housing bubble before it burst, "...much of today's thought regarding natural gas supplies has come from people with a vested interest in selling the dream of a 'Shale Gale' that will eliminate foreign energy imports, boost employment and increase GDP."

What could cause such a colossal collapse? Gross overestimates of shale gas reserves and resources in the United States. The United States boasts about its ample supply of natural gas, however, the reality is that natural gas is a finite and depleting commodity. In *Cold, Hungry and in the Dark*, Powers refutes the idea that increasing shale gas production will create a new era in America's economy, and instead, he suggests that it will create a severe deliverability crisis, leading to unsustainable shale gas production. According to Powers, the majority of shale gas basins in America have already begun exhibiting declining production.⁷ Geoscientist and Research Fellow at the Post Carbon Institute J. David Hughes makes the same argument in his report *Drilling Deeper: A Reality Check on US Government Forecasts for a Lasting Tight Oil & Shale Gas Boom*. His report provides an extensive analysis of actual shale gas production data from the top shale gas reservoirs in the US. He concludes that the current boom in domestic oil and gas production is unsustainable at the rates projected by the Energy Information Administration (EIA). He writes, "The EIA's current energy policy—which is largely based on the expectation of domestic oil and natural gas abundance far into the future—is badly misguided and is setting the country up for a painful, costly, and unexpected shock when the boom ends."⁸

While policymakers, media, investors, and the general public look toward DOE reports with little skepticism, the DOE's EIA has a markedly poor record of estimating recoverable shale gas in the United States. In 2011, the EIA had to cut its estimates of technically recoverable shale

⁷ Powers, Bill. "The Popping of the Shale Gas Bubble." *Forbes*. September 3, 2014.

⁸ Hughes, J. David. "Drilling Deeper: A Reality Check on U.S. Government Forecasts for a Lasting Tight Oil & Shale Gas Boom." *Shale Bubble*. October 1, 2014.

gas in the Marcellus formation by 80% and in Poland by 99% after the United States Geological Survey came out with much lower numbers.⁹ Further, in 2014, the EIA had to cut its estimate of recoverable tight oil from California's Monterey Formation by 96%--this came just two years after the agency estimated that the Monterey Formation held two-thirds of all US tight oil.¹⁰ The EIA keeps producing optimistic forecasts for the future of US shale gas production, however, these estimates are largely unfounded and have contributed to a shale gas bubble that have steered policymakers and the American public in a dangerous direction. An article published in *Nature* done by researchers at the University of Texas at Austin, echoes the findings of Hughes. It suggests that while many gas-bearing shale formations are geographically vast, the number of "sweet spots" where fuel can actually be extracted in worthwhile volumes is much smaller than originally thought.¹¹ In other words, there is a strict geological limit for natural gas extraction, which the US is rapidly approaching.

Continuing to exploit shale resources will only lead to high decline rates and declining well quality, as the number of spots where gas can be extracted are exhausted. This means that in order to keep production flat, the United States will have to drill even more wells. As the US scrambles to drill more expensive wells, it will require massive amounts of capital, something that "...can only be supported by high levels of debt or higher prices."¹² Thus, from an economic standpoint, continuing to try to tap into shale gas resources will be detrimental to the US economy, as it creates a bubble that will soon burst and wreak economic havoc.

⁹ Efstathiou Jr., Jim, and Kasia Klimasinska. "U.S. to Slash Marcellus Shale Gas Estimate 80% on Geology Update." Bloomberg. August 23, 2011.

¹⁰ Sahagun, Louis. "U.S. Officials Cut Estimate of Recoverable Monterey Shale Oil by 96%." Los Angeles Times. May 20, 2014.

¹¹ Zeller Jr., Tom. "Does Anyone Really Know How Long the Shale Gas Boom Will Last?" Forbes. January 5, 2015.

¹² Hughes, J. David. "Drilling Deeper: A Reality Check on U.S. Government Forecasts for a Lasting Tight Oil & Shale Gas Boom." Shale Bubble. October 1, 2014.

Furthermore, the Commission has failed to take into account the economic considerations of those persons and communities which stand to be impacted financially by the construction of the Sabal Trail project. Based on an economic analysis recently compiled for four counties threatened by the Atlantic Coast Pipeline in Virginia,¹³ the effect that an interstate pipeline of this magnitude would have on local economies is devastating. It is crucial that we take those costs into account.

For example, Nelson Hoy, an officer with the Cowpasture River Preservation Association, states: “For a domestic well, a landowner would face an estimated out-of-pocket expense of \$35,000 or more to drill into a potable aquifer. For a livestock operation, which needs more water, a contaminated aquifer would be even worse. Dairies and ranches in the Cowpasture River Valley that need to replace their water supply would face an estimated cost of \$50,000, and they would need an emergency supply of 20,000 gallons daily. If a city or town must replace a municipal water supply that becomes contaminated, the costs are even higher; it would take an estimated out-of-pocket cost of \$2.5 million to complete geophysical, hydrological, and engineering studies, purchase land, drill a well, and build the necessary surrounding infrastructure.”¹⁴

The analysis also found that up to \$141 million in lost property value and services, such as water and air quality, would occur across the four-county study area during construction alone. Further, the pipeline would depress area economies, contribute to job loss, reduce quality of life and lower personal incomes in the amount of up to \$109 million annually.

¹³ Economic Costs of the Atlantic Coast Pipeline: Effects on Property Value, Ecosystem Services, and Economic Development in Western and Central Virginia. Feb 2016, Prepared by: Spencer Phillips, Cara Bottorff, Sonia Wang http://keylogeconomics.com/wp1/wpcontent/uploads/2016/02/EconomicCostsOfTheACP_TechnicalReport_20160209.pdf

¹⁴ Ibid.

In the past, it has been necessary for the FERC to reevaluate pipeline projects based on a demonstrated lack of investors. Though the request for a rehearing in the case of Dominion's Greenbrier Pipeline was denied in 2003,¹⁵ it would have behooved the Commission to take the concerns of those who petitioned for such a rehearing into account, given that four years later the FERC was forced to issue an Order Vacating Certificate Authorization.¹⁶ The loss of revenue in the case of the Greenbrier Pipeline is incalculable, not to mention the toll the project took unnecessarily on the communities along the proposed route.

If the commission were to award a certificate to construct the Sabal Trail Pipeline, the results are likely to be similar to the ones demonstrated in the case of Dominion's Greenbrier Pipeline. If the investors were unable to demonstrate market viability nearly a decade ago, the chances of economic viability in the current market are poor if not non-existent.

Considering that the expected life time of Sabal Trail is 60 years and that renewable energy markets throughout the world have seen unprecedented growth while conventional and harmful sources of energy production are being outperformed by solar and wind¹⁷, this project does not make long-term economic sense¹⁸ in the context of global renewable energy markets, a growing fossil fuel divestment movement¹⁹, and the anticipated economic damages of global warming ranging from record droughts to record precipitation events to rising sea water levels.²⁰

¹⁵ ORDER ISSUING CERTIFICATES, DENYING REHEARING, AND CLARIFYING PRIOR ORDER (Issued April 9, 2003) Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Norma Mead Brownell. Greenbrier Pipeline Company, LLC Docket Nos. CP02-396-000, CP02-396-001, CP02-397-000, CP02-397-001, CP02-398-000, CP02-398-001, <https://ferc.gov/media/news-releases/2003/2003-2/cp02-396-04-09-03.pdf>

¹⁶ Order Vacating Certificate Authorization (Issued April 4, 2007) Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellinghoff. Greenbrier Pipeline Company, LLC. Docket No. CP02-396-000 <https://ferc.gov/media/news-releases/2003/2003-2/cp02-396-04-09-03.pdf>

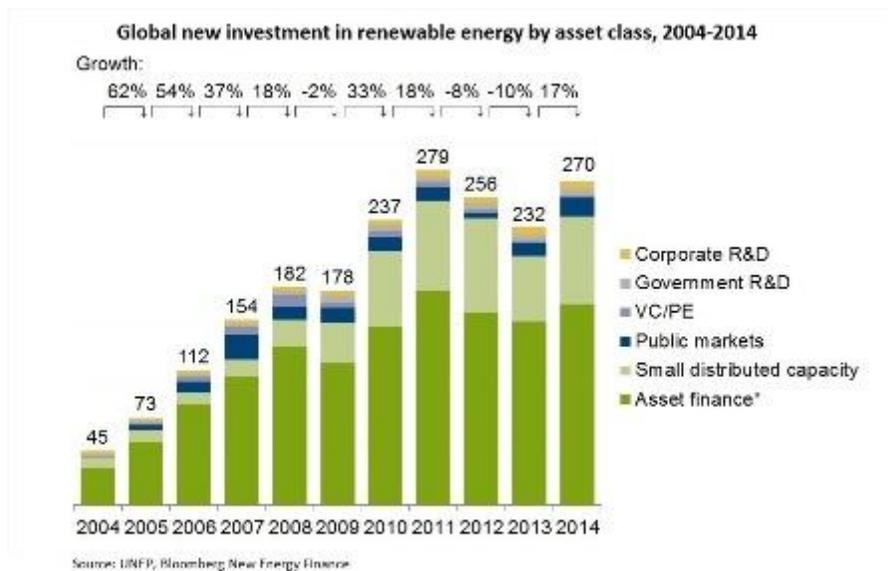
¹⁷ <http://www.sciencealert.com/wind-energy-is-now-as-cheap-as-natural-gas-and-solar-is-getting-close>

¹⁸ <http://www.ft.com/cms/s/0/5974a3ce-52e0-11e5-b029-b9d50a74fd14.html#axzz3l8iOpCye>

¹⁹ <http://thinkprogress.org/climate/2015/09/22/3704205/divestment-movement-50-times-bigger-in-one-year/>

²⁰ <http://www.climatehotmap.org/global-warming-effects/economy.html>

Smart investors know that the place to invest right now is in renewable energy. This has been clearly demonstrated by a dramatic shift in the market. “Equity raising by renewable energy companies on public markets jumped 54% in 2014 to \$15.1 billion, helped by the recovery in sector share prices between mid-2012 and March 2014, and by the popularity with investors of US “yieldcos” and their European equivalents, quoted project funds. These vehicles, owning operating-stage wind, solar and other projects raised a total of \$5 billion from stock market investors on both sides of the Atlantic in 2014.”²¹



With the market clearly shifting towards investments in clean energy and investors overwhelmingly divesting from fossil fuels, the Sabal Trail Pipeline Project is likely to lose investors and find it difficult to convince new ones that natural gas is a viable investment, given the devastating effects on climate, environment, public safety and human rights.

2. Environmental Justice

Though the Commission “concludes that the proposed projects will not have disproportionately high and adverse human health or environmental effects on minority or low-

²¹ “Global Trends in Renewable Energy Investment 2015,” <http://www.fs-unep-centre.org> (Frankfurt am Main) Copyright © Frankfurt School of Finance & Management GmbH 2015. Bloomberg New Energy Finance.

income populations,”²² the FERC’s position is unsupported by the evidence. Sadly, the concerns of those environmental justice communities that stand to be devastated by projects such as Sabal Trail are often overlooked and/or undermined.

Therefore we will refer you to part 1508 of NEPA’s Terminology and Index, which points to effects. The NEPA definition of effects includes:

- (a) Direct effects, which are caused by the action and occur at the same time and place.
- (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.²³

The effects of this project extends to any and all communities that stand to be impacted by its construction, however, it is the communities that are considered Environmental Justice communities that are most likely to lack the resources necessary to effectively challenge projects of this kind. According to the United Nations Development Programme:

Overcoming barriers to environmental justice goals also hinges on our ability to understand the various contextual political-economy factors that drive conditions of social exclusion, resource insecurity and environmental change. For poor and vulnerable communities, the benefit of a legal empowerment approach goes well beyond reform of individual laws and regulations, aspiring rather to change development thinking and policy, and shift from a political-economy of exclusion and ecological decline to a system conducive to their full participation in decision-making over natural resources and the environment.²⁴

²² ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT (Issued February 2, 2016) Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable. Florida Southeast Connection, LLC Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC

²⁴ ENVIRONMENTAL JUSTICE COMPARATIVE EXPERIENCES IN LEGAL EMPOWERMENT, Copyright UNDP June 2014
<http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Environmental-Justice-Comparative-Experiences.pdf>

Despite the Commissions' assertions to the contrary, it remains clear to BREDL that the requisite "hard look" has not been taken in regards to the cumulative effects of the Sabal Trail projects on environmental justice communities such as the one in Albany.

For example, though the Commission states that "air quality modeling indicates that the levels of criteria pollutants emitted from the proposed facilities will not exceed EPA's limits, which are designed to protect the most sensitive populations," the order then states that:

On December 4, 2015, Transco filed air dispersion modeling in response to staff's November 13, 2015 Environmental Information Request. Staff reviewed this information and found that it adequately demonstrated that modeled emissions from Compressor Station 84, plus the ambient background, will result in local concentrations below the NAAQS. Therefore, Environmental Recommendation Condition 25 in the final EIS is no longer needed and is not included as a condition of this order. Because Transco did not provide dispersion modeling for all new and existing equipment at Compressor Stations 95 and 105, the final EIS recommends, and Environmental Condition 24 of this order requires, Transco to provide such modeling to demonstrate compliance with the NAAQS before construction.

Therefore, it would appear that though the FERC asserts that issues of air pollution have been appropriately mitigated, there have actually not been measures taken to provide modeling for the entire number of compressor stations involved.

It should also be noted that the NAAQS guidelines do not suggest test levels for formaldehyde, a highly toxic air pollutant.²⁵ This grave oversight indicates the need for further examination of the impact of the compressor stations. A recent article²⁶ points towards the connection between health issues and rural gas compressor stations. Air contaminants from the Millennium pipeline compressor station, located in Minisink, New York has reached levels that exceed that of a big city. Many residents have complained of health ailments, and a research team from the Southwest Pennsylvania Environmental Health Project, a nonprofit group of

²⁵ <http://www3.epa.gov/ttn/naaqs/criteria.html>

²⁶ "Gas Compressors and Nose Bleeds" <http://www.utne.com/environment/gas-compressors-and-nose-bleeds-zm0z15fzsau.aspx?PageId=2#ArticleContent>

public health experts, facilitated a study from October to December, 2014. The study found that “spikes in air toxins around the compressor coincided with residents’ adverse health symptoms.... Asthma, nosebleeds, headaches, and rashes were common among the 35 participants in eight families living within one mile of the compressor... Six of the 12 children studied had nosebleeds, which health consultant, David Brown, attributed to elevated blood pressure or irritation of mucous membranes by formaldehyde, a carcinogen found in excess around compressors...”

Emissions of formaldehyde from natural gas are 800% higher than from coal. Formaldehyde is a nearly colorless gas with a pungent, irritating odor even at very low concentrations. It is an eye, skin, and respiratory tract irritant. It can produce narrowing of the bronchi and accumulation of fluid in the lungs. Compressor stations release huge amounts of this hazardous air pollutant. The negative effects of airborne formaldehyde occur at very low levels. Exposure to as little as 0.1 to 2 parts per million causes irritation of the eyes, nose and throat. At 5 to 10 ppm, people experience cough, tightness of the chest and eye damage. At 20 ppm breathing becomes difficult, at 30 ppm there is severe injury to the lungs and 100 ppm is immediately dangerous to life. Children are more susceptible to the respiratory effects of formaldehyde than adults.

Despite the FERC’s assertion that “the final EIS evaluates the effects of reasonable project alternatives on environmental justice communities and concludes that the proposed project would not result in a disproportionate impact on environmental justice communities,”²⁷ it is obvious that the “disproportionate impact” has not been fully evaluated. According to legislative research, “EPA has issued guidance with specific instructions on recommended

²⁷ ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT (Issued February 2, 2016) Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable. Florida Southeast Connection, LLC Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC

procedures to incorporate environmental justice into its rule-writing process, providing suggestions on when to consider environmental justice and questions to ask in order to successfully address the relevant issues that arise. Under the guidance, EPA analysts are instructed to “[incorporate] environmental justice into the development of risk assessment, economic analysis, and other scientific input and policy choices during the development of a rule.”²⁸

An example of this can be found in the case of GREENE CITIZENS FOR RESPONSIBLE GROWTH INC v. GREENE COUNTY BOARD OF COMMISSIONERS LLC from 2001, which states:

The primary purpose of both the state and federal environmental statutes is to ensure that government agencies seriously consider the environmental effects of each of the reasonable and realistic alternatives available to them. The standards for the content and adequacy of the [Environmental Impact Study] are articulated in 1 N.C.A.C. § 25.0201 and 23 C.F.R. § 771.18. The courts have subjected such standards to a “Rule of Reason” and have not required highway officials to consider every one of the ‘infinite variety’ of ‘unexplored and undiscovered alternatives that inventive minds can suggest.’ *Fayetteville Area Chamber of Commerce v. Volpe*, 515 F.2d 1021, 1027 (4th Cir.1975), cert. denied, 423 U.S. 912, 96 S.Ct. 216, 46 L.Ed.2d 140 (1975) (holding that statutes requiring consideration of alternatives must be interpreted reasonably in light of limited resources).²⁹

This precedent setting case hinged on the decision of the judges that justice had not been served to a community that was predominantly African-American and in a lower income bracket. More specifically, the court was required to consider “socioeconomic and demographic data”³⁰ in regards to the decision. In regards to Environmental Justice concerns outlined to the FERC in

²⁸ Nondiscrimination in Environmental Regulation: A Legal Analysis by Cynthia Brougher, Legislative Attorney. February 6, 2013. <https://www.fas.org/sgp/crs/misc/R42952.pdf>

²⁹ Court of Appeals of North Carolina. GREENE CITIZENS FOR RESPONSIBLE GROWTH, INC., Henry Grey Fields, Jr., Doyle R. Fosso, Edwin B. Jones, John Lindsey, William H. Lewis, Jr., Franklin P. Harris, George F. Warren, Wallace Tilghman, and Linda Fields, Plaintiffs, v. GREENE COUNTY BOARD OF COMMISSIONERS, Defendant, Addington Environmental, Inc., (now Republic Services of North Carolina, LLC), Intervenor. No. COA99-1467. Decided: June 5, 2001 <http://caselaw.findlaw.com/nc-court-of-appeals/1358030.html>

³⁰ Ibid.

multiple challenges to the draft DEIS, including ones raised by BREDL, the FERC’s response consisted of the assertion that “the siting of linear facilities between two fixed end points is generally based on environmental and engineering factors with no regard to demographics.”³¹ If that is the case, then how is it “that the proposed project would not result in a disproportionate impact on environmental justice communities when compared to the alternatives?”³²

The “alternatives” have obviously not been considered in depth by the FERC in regards to the stipulations expressly outlined in Environmental Justice standards and regulations. In order to accurately assert that there is no significant impact on the Environmental Justice communities affected by the Sabal Trail Project, as required by NEPA, the FERC must take a “hard look” at “risk assessment, economic analysis, and other scientific input and policy choices”³³ before determining that there is sufficient adherence to environmental justice standards and regulations. This will require a rescission of the original Order and a re-hearing of community concerns.

3. Eminent Domain

In order to construct the Sabal Trail Pipeline, it would be necessary to evoke the federal policies of eminent domain. Before those policies can be evoked, they must be demonstrated to be necessary and beneficial for the public good. From FERC Policy: Certification of New Interstate Docket No. PL99-3-000:

In sum, the Commission will approve an application for a certificate **only if the public benefits from the project outweigh any adverse effects**. Under this policy, pipelines seeking a certificate of public convenience and necessity authorizing the construction of facilities are encouraged to submit applications designed to avoid or minimize adverse effects on relevant interests including effects on existing customers of the applicant,

³¹ ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT (Issued February 2, 2016) Before Commissioners: Norman C. Bay, Chairman; Cheryl A. LaFleur, Tony Clark, and Colette D. Honorable. Florida Southeast Connection, LLC Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC

³² Ibid.

³³ Nondiscrimination in Environmental Regulation: A Legal Analysis by Cynthia Brougher, Legislative Attorney. February 6, 2013. <https://www.fas.org/sgp/crs/misc/R42952.pdf>

existing pipelines serving the market and their captive customers, and affected landowners and communities. The threshold requirement for approval, that project sponsors must be prepared to develop the project without relying on subsidization by the sponsor's existing customers, protects all of the relevant interests. Applicants also must submit evidence of the public benefits to be achieved by the proposed project...as contracts, precedent agreements, studies of projected demand in the market to be served, or other evidence of public benefit of the project.

The FERC's approval of the order of February 2, 2016 is in violation of O.C.G.A. 22-3-88. To understand O.C.G.A. 22-3-88, one must revisit the 1929 Georgia Code § 5234(1).³⁴ This code was the original law that granted and conferred eminent domain authority/rights upon certain persons and certain corporations. Code section 5234(1) is commonly known as and will be referred to in this summary as the 1929 law. In the methods of condemnation in Code Section § 5235 (§ 4685).³⁵ of the 1929 law it lists the entities that the authority of Georgia eminent domain was granted to and conferred upon individuals, partnerships, associations, and corporations, domestic or foreign. The 1929 law Section 5235(1) ends with the words "in the State of Georgia; " therefore, all of the actions contained in the code such as constructing, operating, distributing, and furnishing must occur within the bounds of the State of Georgia, in other words, intrastate. Sabal Trail is constructing a pipeline "through" the State of Georgia (interstate) from Alabama to Florida. Although the "persons" who the authority of eminent

³⁴ § 5234(1). Condemnation for gas pipe-lines.—The power of eminent domain is hereby granted to and conferred upon persons who are or may be engaged in constructing or operating pipelines for the transportation and/or distribution of natural or artificial gas; and upon persons who are or may be engaged in furnishing natural or artificial gas for heating, lighting, and/or power purposes in the State of Georgia. Acts 1929, P. 219, § 1.

³⁵ § 5235 (§ 4685). "The method of condemnation of property and assessment of damages hereinbefore provided shall apply to condemnation by cities, counties, railroads, telegraph, canal, mining, and waterworks companies, drainage by counties, tramroads, light-houses, and beacon constructions, and to all persons or corporations having the privilege of exercising the right of eminent domain. The method herein referred to shall also apply to persons who are or may be engaged in constructing or operating pipe-lines for the transportation and/or distribution of natural or artificial gas; and upon persons who are or may be engaged in furnishing natural or artificial gas for lighting, heating and/or power purposes in the State of Georgia."

The word "persons" as herein used in this section and 5234(1) shall include individuals, partnerships, associations, and corporations, domestic or foreign; and shall include the singular as well as the plural. Acts 1929, p. 220, § 2.

domain was conferred upon included Foreign Corporations, those foreign corporations had to be domesticated in the State of Georgia prior to exercising the right of eminent domain.

The 1929 law conferred the authority to gas utilities being “domesticated” in this state and foreign corporations that were domesticated in this state. The domestication statute of 1920 (Ga. L. 1920, p. 151) as amended by the act of 1926 (Ga. L. Ex. Sess. 1926, p. 46) is codified in §§ 22-1601 to 22-1609 and until April 1969 only allowed foreign corporations that were domesticated in this state to impose eminent domain under the 1929 law. The Act was known as Domestication of Foreign Corporations.³⁶

Georgia courts have long recognized that only domestic entities and domesticated foreign corporations were the only "persons" that could exercise eminent domain in the state and not interstate pipeline companies domiciled in other states.

In the case of FLORIDA BLUE RIDGE CORPORATION v. TENNESSEE ELECTRIC POWER CO. 106 F.2d 913 (1939), the Tennessee Company, operating hydro-electric generating and distribution plants in Tennessee, desired to establish one higher on the same stream in Georgia. As a foreign corporation it could not under Georgia law condemn the necessary property. Not only did the courts recognize during the period of foreign corporations domestication that foreign corporations did not have eminent domain authority without domestication, but even today the Federal Energy Regulatory Commission knows and

³⁶ 22-1601. Powers to become domesticated. Powers after domestication; removal of actions.—All foreign corporations doing- business in this State, or which may hereafter do business in this State, and whose business is not against the public policy of this State, shall have the power to become domesticated in the manner hereinafter pointed out; and upon becoming domesticated such corporations and the stockholder thereof shall have the same powers, privileges, and immunity similar corporations created under the laws of this State, and the stockholders thereof have, subject to the same obligations, duties, liabilities, and disabilities as if originally created under the laws of this State, and shall no longer have that power of removing causes to the United States courts which inheres in foreign corporations. (Acts 1920, p. 151; 1926, Extra. Sess., p. 46.)

understands that Georgia eminent domain authority cannot be enforced by an interstate natural gas pipeline company.³⁷

The Federal Energy Regulatory Commission makes it very clear that an interstate natural gas pipeline company cannot enter private property prior to that company receiving its certificate. "State or local trespass and access laws prevail until a certificate is issued by the Commission. Some states have laws that allow a company to get access to property for survey purposes. Procedures vary by state. Once a certificate is issued or an easement/survey agreement or court order is obtained, the company may come onto your land. Usually the company will notify you in advance."³⁸ Georgia is **not** one of the states with a separate right-to-access law for an interstate natural gas pipeline company.

Sabal Trail has stated in court hearings as well as in other official documents, that it is Natural Gas Company under the Natural Gas Act. These statements are false. No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.³⁹ In exercising its authority under this chapter or the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.), the Commission may authorize a natural gas company (or any person that will be a natural gas company on completion

³⁷ DEIS in 07 Section 3 Environmental Analysis Page 3-131 FERC DOCKET No. CP15-17 Georgia eminent domain law, however, does not apply to interstate natural gas pipelines because the NGA would preempt state law. Congress, through the NGA, explicitly vested exclusive jurisdiction in the Commission to regulate interstate pipelines. Thus, an interstate pipeline will receive the right to exercise its eminent domain authority pursuant to the NGA, which we note does not condition eminent domain authority on whether the natural gas transported is consumed within each state the pipeline crosses.

³⁸ FERC's official home website FAQ for landowners.

³⁹ 15 U.S. Code § 717f(c)(1) (A)

of any proposed construction) to provide storage and storage-related services at market-based rates for new storage capacity related to a specific facility placed in service after August 8, 2005, notwithstanding the fact that the company is unable to demonstrate that the company lacks market power, if the Commission determines that.⁴⁰ No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations.⁴¹ Sabal Trail has not yet begun construction of its pipeline, therefore, Sabal Trail cannot presently be a Natural Gas Company under the Natural Gas Act.

Sabal Trail has stated in court hearings and other official documents that it is a "public utility" under Georgia law O.C.G.A. 22-1-1(10). This statement is false. Public Utilities, in Georgia, are under the jurisdiction of and are regulated by the Georgia Public Service Commission. "Utility" means any person who is subject in any way to the lawful jurisdiction of the commission.⁴² The GPSC has no jurisdiction over and does not regulate interstate natural gas pipeline companies.

Sabal Trail has stated in court hearings and other official documents that the words "domestic" and "foreign" applies to all "persons" listed in O.C.G.A. 22-1-1(7). This statement is false. "Domestic" and "foreign" applies only to corporations and can only fall under the category of common sense.

⁴⁰ 15 U.S. Code § 717c(f)(1)

⁴¹ 15 U.S. Code § 717f(c)(1) (A)

⁴² O.C.G.A. § 46-1-1 (9)

Sabal Trail has also stated in court hearings and other official documents that the 1929 law is a two part sentence separated by a semicolon and the first part applies to Sabal Trail with the second part applying only to those persons who furnish gas in the State of Georgia. However, just because the semicolon was removed in 22-3-88, it does not change the fact that 22-3-88 is still a two part sentence and has the same meaning as did the 1929 law. Contrary to Sabal Trail's above assertion, Sabal Trail either does not understand sentence structure, totally misconstrues sentence structure, or intentionally attempts to mislead the courts. First of all, the 1929 law, the 1982 law (O.C.G.A. 22-3-83), and O.C.G.A. 22-3-88 which was enacted in 1995 all are made up of one continuous sentence, though the punctuation may be a little different, which is made up of 2 independent clauses. An independent clause is a clause that can stand alone as a sentence. When a sentence is made up of two independent clauses joined by a conjunction (e.g., and, or, but), it is possible to precede the conjunction with a semicolon if either of the clauses contains a comma(s) as in the 1929 law. In O.C.G.A. 22-3-83 and O.C.G.A. 22-3-88, the word "and", slash, and the semicolon was removed the word "or" remained; however, the wording remained essentially the same and the sentence structure did remain the same. A sentence made up of two independent clauses is called a compound sentence. When there are just two list items, there is no need for a comma before the conjunction. Coordinating conjunctions include: and, but, or, nor, for, so, and yet. Coordinating conjunctions are used to join individual words, phrases, and independent clauses. The 1929 law, 22-3-83, and 22-3-88 are all two-list items, one continuous sentence law. The first item, constructing or operating pipelines for the transportation or distribution of natural or artificial gas with the second item being, furnishing natural or artificial gas for heating, lighting, or power purposes in the State of Georgia. "In the State of Georgia" applies to both independent clauses; therefore, applies to the entire law. Again, Sabal Trail has

no Georgia eminent domain authority because it will be constructing a natural gas pipeline "through" (interstate) the State of Georgia and not "in" (intrastate) the State of Georgia. This particular natural gas pipeline will serve no citizens in Georgia which is another element required under Georgia eminent domain authority.

Take note of the histories of the 1929 law, 22-3-83, and 22-3-88. First, the 1929 law being the originating law has no history; 22-3-83 has only (Ga. L. 1929, p. 219, § i.)⁴³ and 22-3-88 (HISTORY: Code 1981, § 22-3-88, enacted by Ga. L. 1995, p. 161, § 1.) Although the wording in 22-3-88 is exactly the same as it was in 22-3-83, the point being that 22-3-83 was repealed by an Act and 22-3-88 was created by an Act; therefore, the history of 22-3-83 no longer exists. However, should the history of 22-3-83 be allowed, the outcome will be the same. Sabal Trail would still have no Georgia eminent domain authority.

Sabal Trail has not stated in any documents that its interstate pipeline will be of any "public use" to the citizens of Georgia. While Sabal Trail is not condemning property under Georgia Law, it is claiming that because it expressly has been granted Georgia eminent domain authority, it also has the right-to-enter private property incidental to its expressed rights of Georgia eminent domain. If any "person" or "corporation" uses any portion of eminent domain, it must be used for a public use/necessity. Sabal Trail is using its right-to-entry authority incidental to its Georgia eminent domain authority for strictly a Private Economic Development, which is not only contrary to Georgia Law,⁴⁴ but more importantly, the Georgia Constitution.

⁴³ Ga. L. 1995, p. 161, effective July 1, 1995, repealed the Code sections formerly codified at this article and enacted the current article. The former unit consisted of Code Sections 22-3-70 through 22-3-72 (Part 1) and 22-3-80 through 22-3-83 (Part 2) and was based on Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act) and Ga. L. 1994, p. 229, §§ 1 and 2. Ga. L. 1995, p. 161 also enacted an Article 4, effective from March 30, 1995, until July 1, 1995, which consisted of Code Section 22-3-83, containing provisions identical to those in present Code Section 22-3-88.

⁴⁴ § 22-1-1. Definitions: (B) The public benefit of economic development shall not constitute a public use.

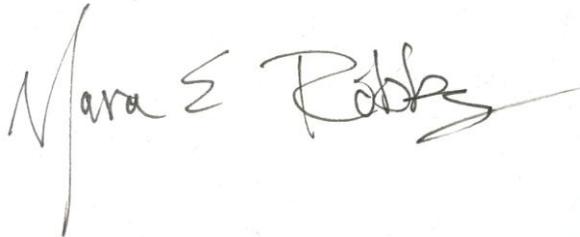
4. Environmental

As stated earlier, the permitting necessary to adhere to the Clean Water Act and the Clean Air Act has not been approved or awarded. The FERC cannot, and should not, approve a project without all of the necessary permitting achieved. Moreover, the Resource Conservation and Recovery Act and the Safe Drinking Water Act were not addressed at all. This project must not proceed without the required “hard look” at these very important considerations.

CONCLUSION

Due to the aforementioned issues, facts, and arguments, inter alia, The Blue Ridge Environmental Defense League respectfully requests the FERC to grant a rehearing and rescission of the Commission’s February 2, 2016 Order Issuing Certificates and Approving Abandonment of the Sabal Trail Pipeline Project.

Respectfully prepared and submitted,

A handwritten signature in black ink that reads "Mara E Robbins". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

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