

**ORAL ARGUMENT HELD ON APRIL 18, 2017
DECISION ISSUED AUGUST 22, 2017**

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 16-1329 (consolidated with 16-1387)

SIERRA CLUB, *et al.*,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

DUKE ENERGY FLORIDA, LLC, *et al.*,

Intervenors.

On Petition for Review of Orders of the Federal Energy Regulatory
Commission, 154 FERC ¶ 61,080 (Feb. 2, 2016) and
156 FERC ¶ 61,160 (Sept. 7, 2016)

**PETITIONER SIERRA CLUB, ET AL.'S
SUPPLEMENTAL RESPONSE TO PETITIONS FOR REHEARING**

In the petitions for rehearing filed in this case, there has been no shortage of alarmist statements regarding the consequences of the Court's decision to impose the standard remedy for a violation of the National Environmental Policy Act.

Intervenors insisted in their petition that vacating the unlawful orders "would cause

severe disruption ... for the regional pipeline grid and millions of Florida residents who rely on electricity generated at plants served by the pipelines.” Intervenors’ Pet. at 11; *see also* FERC Pet. at 3. Intervenors have submitted eight declarations purporting to support this claim.¹

Despite these claims, available information indicates that gas stopped flowing in the Sabal Trail pipeline on November 14, 2017,² and thus that a temporary shutdown would not create any reliability issues. For example, publicly available data on Enbridge’s website³ show that the “Total Scheduled Quantity” of gas for Sabal Trail dropped to zero for each delivery and receipt location on November 14, 2017. Ex. A at 2. As of November 27, 2017, the “Total Scheduled Quantity” remained at zero for each location. *Id.* at 4. Similarly, data from S&P Market

¹ Sierra Club objected to Intervenors’ post-opinion evidence, Sierra Club Resp. at 8, and does not waive those objections here. However, to the extent the Court considers this evidence, the Court should consider evidence rebutting it (including new information directly bearing on claims in the rehearing petitions regarding disruption). *See also* Sierra Club Resp. at 10 (Intervenors’ declarations demonstrate there will be no blackouts or interruption of electrical service).

² Sierra Club’s response to the rehearing petitions was filed on November 10, 2017, with a final deadline of November 13, 2017. This information was thus not available to Sierra Club at the time that its response to the petitions for rehearing was due.

³ *See* Exhibit A, attached hereto, *available at* <https://infopost.spectraenergy.com/InfoPost/STTHome.asp?Pipe=STT>. Enbridge is the ultimate parent company of Spectra Energy Partners Sabal Trail Transmission, LLC, which is one of the owners of Sabal Trail Transmission, LLC.

Intelligence⁴ show that the “Scheduled Volume” for Sabal Trail’s delivery and receipt points dropped to zero on November 14, 2017, and has remained there ever since. Ex. B at 1–2. The “Utilization Rate” for these delivery and receipt points similarly dropped to zero percent on November 14, 2017, and has remained at zero percent ever since. Ex. C at 1–2.

This absence of scheduled deliveries and receipts shows that reliability can be maintained in Florida without Sabal Trail. It also indicates that vacatur during remand is technically and financially feasible. As Sierra Club posited in its response brief, Intervenors’ claims of “immediate” need to meet “rapidly expanding” demand are overstated, existing pipelines have adequate capacity to meet current needs, and there is enough gas capacity to serve the power plants while FERC prepares a valid Supplemental Environmental Impact Statement. Sierra Club Resp. at 10.

Sierra Club does not know if the receipt and delivery numbers have dropped to zero due to a leak, mechanical malfunction, shipper contract issue, or other reason. Sierra Club’s counsel first asked opposing counsel for confirmation that gas has stopped flowing through the pipeline (and for an explanation) five days ago, on November 22, 2017. On November 27, 2017, counsel for Sabal Trail Transmission, LLC indicated that “[his] understanding is that the pipeline is not shut down,” such

⁴ See Exhibits B and C, attached hereto, *available at* <https://platform.mi.spglobal.com/web/client?auth=inherit#industry/PipelineZoneSummary>.

that he “can’t confirm that.”⁵ Counsel for FERC and the other Intervenors has not provided any explanation. Accordingly, Sierra Club does not have further details regarding this data. But the available information suggests that gas stopped flowing in the pipeline on November 14, 2017 (and has not flowed since), with no disruptive effect. This directly contradicts Intervenors’ and FERC’s claims regarding the allegedly disruptive consequences of vacatur.

For the foregoing reasons, in addition to those set forth in Sierra Club’s initial response brief, the Court should deny the petitions for rehearing.

Dated: November 27, 2017

Respectfully submitted,

/s/ Elizabeth F. Benson

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⁵ Email from Michael B. Wigmore, dated Nov. 27, 2017.

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CERTIFICATE OF COMPLIANCE

I certify that this supplemental response contains 662 words, excluding the parts exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1). I further certify that this response complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Times New Roman 14-point font using Microsoft Word.

/s/ Elizabeth F. Benson
Elizabeth F. Benson

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2017, I electronically filed the foregoing *Petitioner Sierra Club, et al.'s Supplemental Response to Petitions for Rehearing* with the Clerk of the Court by using the appellate CM/ECF System, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

/s/ Elizabeth F. Benson
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