

# The Recorder

IN THE COMMUNITY, ABOUT THE COMMUNITY, SINCE 1877.

2017-09-07 / Top News

## Landmark decision orders new environmental review

BY JOHN BRUCE • STAFF WRITER

MONTEREY – A federal court ruling forcing the Federal Energy Regulatory Commission to conduct a second environmental review has handed pipeline opponents their strongest success so far in the quest to cut greenhouse gas emissions.

The U.S. District Court of Appeals on Aug. 22 ruled 2-1 that FERC failed to adequately review the environmental impacts of the greenhouse gas emissions resulting from the 515-mile Sabal Trail gas pipeline through Alabama, Georgia, and Florida.

According to the Sierra Club, which filed the case, the watershed verdict reinforces the notion FERC serves the interests of investor-owned utilities instead of the public, and approves pipeline construction prematurely.

“For too long, FERC has abandoned its responsibility to consider the public health and environmental impacts of its actions, including climate change,” Sierra Club staff attorney Elly Benson said.

The Aug. 22 “decision requires FERC to fulfill its duties to the public, rather than merely serve as a rubber stamp for corporate polluters’ attempts to construct dangerous and unnecessary fracked gas pipelines.”

The decision — the first to effectively dispute FERC’s greenhouse gas analysis — is expected to broadly influence other pipeline projects. For instance, the Sierra Club says the commission now must also be ordered to stringently weigh emissions potentially resulting from the two giant pipelines proposed to cross Virginia.

Kirk Bowers, Sierra Club Virginia pipelines program coordinator, said the chapter will push to apply the court ruling to the proposed Atlantic Coast and Mountain Valley pipelines, Public News Service reported. Bowers said burning gas from the pipelines would dump more carbon into the atmosphere than all Virginia power plants now emit – nearly 100 million tons a year.

That's almost double the carbon emitted now, at a time when the state can't afford to use more fossil fuels and emit more greenhouse gases, Bowers said.

FERC routinely grants permission for construction even before the application process and court challenges are complete. In fact, the Sabal Trail pipeline was operating before the Aug. 22 court ruling.

The Sierra Club contends the pipeline should have never been approved.

"The D.C. Circuit rejected FERC's excuses for refusing to fully consider the effects of this dirty and dangerous pipeline," Benson said. "Even though this pipeline is intended to deliver fracked gas to Florida power plants, FERC maintained that it could ignore the greenhouse gas pollution from burning the gas. The judges declared that the environmental impact statement for the project was required to either quantify the impact of greenhouse gas resulting from burning the fracked gas transported by the pipeline or explain why it failed to do so."

Since FERC did neither, the commission must go back and conduct a new review of the project.

"Floridians, unlike FERC, have been far too aware of the dangers of this fracked gas project since its inception, and that's why so many of us have spoken out against it," said Sierra Club Florida director Frank Jackalone. "That fear was manifested when this project began leaking into our communities the other week, and it's why a thorough review of this pipeline will show that it must be — and should have been — rejected."

Once the court officially returns the matter to FERC, the pipeline should cease operations while FERC undertakes the new analysis, Benson said.

"Despite the shoddy environmental review, the pipeline was allowed to start operating in June. Noting that 'it's not just the journey, it's also the destination,' the court rejected each of FERC's many excuses for ignoring the emissions from burning the gas.

"The court found FERC is the 'legally relevant cause' of the climate-altering emissions because it has the power to deny a pipeline based on harm to the environment. FERC has estimated that the pipeline will transport 1.1 billion cubic feet per day of gas, and can use this number to estimate greenhouse gas emissions from power plants," Benson explained.

"FERC's vague assertions that 'some' emissions may 'potentially' be offset by coal plant retirements were so devoid of meaningful information that the environmental impact statement 'failed to fulfill its primary purpose.' Even if the power plants are subject to state or federal greenhouse-gas regulations in the future, such requirements cannot substitute for a proper NEPA analysis citing a landmark NEPA case from 1971.

"The court concluded that FERC 'should have either given a quantitative estimate of the downstream greenhouse emissions that will result from burning the natural gas that the pipelines will transport or explained more specifically why it could not have done so.' The court further

noted that the environmental impact statement needed to include a discussion of the significance of the downstream greenhouse gas emissions, as well as their cumulative impact.

“Finally, the court directed FERC to explain, in its new EIS, whether it still maintains that the ‘social cost of carbon’ — a valuable tool that places a dollar value on the harm caused by each ton of carbon emitted — is not useful for NEPA purposes, and why. The decision is a significant victory for pipeline opponents, with far-reaching consequences for gas pipelines and other fossil fuel projects that require federal approval,” Benson said.

“And while Trump tweets that climate change is a hoax and cynically attempts to eliminate climate considerations from federal decision making, the court’s opinion — authored by a George W. Bush appointee — signals that the courts will hold agencies to their NEPA obligations. Environmental Justice Communities of color and low-income communities are disproportionately exposed to environmental hazards and routinely bear the brunt of harmful impacts from polluting industrial facilities. For pipeline projects, those impacts include pipeline ruptures, construction impacts, groundwater contamination, and noise and air pollution from massive compressor stations.

“A staggering 83.7 percent of this pipeline — or approximately 574 miles — runs through or within a mile of environmental justice communities,” Benson said.

The U.S. Environmental Protection Agency defines environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons ... It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.”

“And the compressor station in Albany, Ga. — a huge industrial facility that would release hundreds of thousands of tons of air pollutants each year — is slated to be constructed in a neighborhood that is more than 80 percent African American. As members of Georgia’s congressional delegation pointed out to FERC before the pipeline was approved, these communities are already overburdened with polluting facilities. FERC nonetheless concluded that the project’s impacts would not disproportionately fall on environmental justice populations. While recognizing the ‘grim statistics’ regarding the overburdened nature of these communities, and noting that it is ‘sensitive to Sierra Club’s broader contention that it is unjust to locate a polluting facility in a community that already has a high concentration of polluting facilities,’ the court declined to overturn FERC’s analysis, Benson noted.

ACP opponents in Virginia and North Carolina have voiced similar concerns over the pipeline path and proposed compressor stations.

“The Sabal Trail pipeline has already harmed the communities along its path, and the waterways they depend on,” Benson said. “Most recently, Florida residents were exposed to a mercaptan leak at the Dunnellon compressor station site. According to the emergency report, when the

pipeline company representative arrived at the scene, he informed emergency responders that ‘this was a new system and they are still learning.’ These issues, and the D.C. Circuit’s ruling, are a prime example of why FERC cannot be allowed to continue to rubberstamp dangerous gas pipelines. FERC has consistently allowed pipeline construction to move forward — inflicting environmental damage and taking people’s private property through eminent domain — before the full scope of impacts is understood. In particular, FERC has sought, with a disturbing degree of success, to keep injured parties out of court while allowing pipeline companies to move forward with construction,” he said.

“As is frequently the case, here the pipeline companies are corporate affiliates of the utilities that have contracted to purchase the gas. Instead of sacrificing our communities and environment to build unnecessary pipelines that ‘set up surefire profits’ for pipeline companies at the expense of captive ratepayers, the focus should be on transitioning to clean renewable energy and energy efficiency—especially in the Sunshine State. Forcing federal agencies to grapple with the true climate impacts of dirty fossil fuel projects is a big step in the right direction,” Benson said.

Sabal Trail is a joint venture of Spectra Energy Partners, NextEra Energy Inc. and Duke Energy. The \$3.2 billion interstate natural gas pipeline fuels power generation by Florida Power and Light and Duke Energy of Florida. Sabal Trail consists of 494 miles of 36-inch diameter and 21 miles of 24-inch diameter pipeline.

By comparison, the proposed \$5.1 billion, 42-inch diameter ACP is a venture of Dominion Energy, Duke Energy and Southern Company. The 600-mile currently proposed route would run from northern West Virginia across Bath and Highland counties to southern North Carolina and Hampton Roads and carry gas to fuel power stations.

According to FERC spokeswoman Tamara Young-Allen, the commission never announces when it will make a decision whether to approve a pipeline. The 90-day requested authorization date FERC staff suggested applies only to other federal agencies that may have involvement with this case, for example, the U.S. Forest Service for its record of decision for the route through federal forests, EPA for its Clean Air Act certification, and the U.S. Army Corps of Engineers for its Clean Water Act certification. FERC staff’s requested deadline is an informal request and has no bearing whatsoever on when the commission may act. The commission could issue its decision at any time and, if it approves the project, condition the initiation of construction upon the applicant receiving the other federal authorizations.

Utilities have been converting from coal to natural gas on the contentious premise gas produces a little over half the emissions as coal. But gas combustion, methane leakage from extraction, and transport altogether are believed to eliminate any advantage.

Oil Change International has found that if all the proposed natural gas pipelines get approved and start operating, they would match the emissions of 45 coal-fired power plants. Then, gas combustion would produce enough emissions to prevent the United States from meeting its obligations under the Paris climate accord. President Trump has cast doubt on climate change and has announced the United States for economic reasons would withdraw from the 2015 agreement to reduce emissions in an effort to prevent global warming and its catastrophic effects.