Volume 4, Number 1 January–February 2026

THE JOURNAL OF FEDERAL AGENCY ACTION

fastcase FULL COURT PRESS

The Journal of Federal Agency Action

Volume 4, No. 1 | January–February 2026

THE JOURNAL OF FEDERAL AGENCY ACTION (ISSN 2834-8818 (online)) at $495.00 annually is published six times per year by Full Court Press, a Fastcase, Inc., imprint.

For customer support, please contact Fastcase, Inc., 729 15th Street, NW, Suite 500, Washington, D.C. 20005, 202.999.4777 (phone), or email customer service at support@fastcase.com.

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Cite this publication as:

The Journal of Federal Agency Action (Fastcase)

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729 15th Street, NW, Suite 500, Washington, D.C. 20005
https://www.fastcase.com/

POSTMASTER: Send address changes to THE JOURNAL OF FEDERAL AGENCY ACTION, 729 15th Street, NW, Suite 500, Washington, D.C. 20005.

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ISSN 2834-8796 (print)
ISSN 2834-8818 (online)

D.C. Circuit Recognizes *Seven County*'s Abrogation of *Sabal Trail*

Deidre G. Duncan and Nathan R. Menard*

In this article, the authors discuss a decision by the U.S. Court of Appeals for the District of Columbia Circuit that took a major step toward closing the door on the Sabal Trail *era of its National Environmental Policy Act jurisprudence.*

The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has issued *Sierra Club v. FERC*,[1] which upheld the Federal Energy Regulatory Commission's (FERC's) authorization of a 32-mile pipeline that will supply natural gas to a Tennessee Valley Authority (TVA) project at which TVA is replacing a coal-fired power unit with a natural gas turbine. The opinion is significant because the D.C. Circuit recognized, for the first time, that its controversial *Sabal Trail* opinion[2] was abrogated by the Supreme Court's recent decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*.

Background

Seven County was the Supreme Court's first major National Environmental Policy Act (NEPA) opinion in over 20 years and constituted a self-described "course correction" for NEPA jurisprudence.[3] In it the Court recognized the need for substantial deference to agency decision-making under NEPA and emphasized that the focus of agencies' analyses should be the environmental effects of the project at issue. Unsurprisingly, the opinion was lauded by many for providing clarity as to NEPA's proper scope and furthering the national zeitgeist to facilitate permitting for critical infrastructure projects.

But *Seven County* is also important for another reason. *Seven County* came before the Court on certiorari as addressing a circuit split over the meaning of the Court's last major NEPA case—*Department of Transportation v. Public Citizen*—which held that an agency

The Journal of Federal Agency Action / January–February 2026, Vol. 4, No. 1, pp. 47–51.

ISSN 2834-8818 (online).

is not required to study environmental effects under NEPA where it lacks the ability to prevent the effects due to limited statutory authority.[4] Whereas other circuits took *Public Citizen* at its word,[5] the D.C. Circuit held in *Sabal Trail* that FERC must consider downstream power plant emissions under NEPA when authorizing a pipeline, despite having no regulatory authority over the power plants.

Sabal Trail's Incompatibility with *Seven County*

Sabal Trail addressed challenges to FERC's authorization of the Southeast Market Pipelines Project, which was comprised of three pipelines in Alabama, Georgia, and Florida intended to supply natural gas for the purpose of electric generation in Florida. The D.C. Circuit held that FERC was a "legally relevant cause" of the end-use emissions—and thus required to consider them under NEPA—because, in the court's view, FERC could deny the pipelines' certificate on the ground that the pipelines would be too harmful to the environment.[6]

In reaching that conclusion, the court needed to reconcile a trio of 2016 liquefied natural gas (LNG) cases—*Sierra Club v. FERC (Freeport), Sierra Club v. FERC* (*Sabine Pass*), and *EarthReports, Inc. v. FERC*—in which the D.C. Circuit relied on *Public Citizen* to hold that FERC need not analyze climate-change impacts of LNG exports because the Department of Energy (DOE), not FERC, authorizes the export of LNG.[7] The court attempted to do so by asserting that FERC is forbidden from considering the effects of LNG exports as a justification for denying an authorization under Section 3 of the Natural Gas Act (NGA) due to the nature of its delegated authority from DOE; whereas, under its Section 7 authority, Congress broadly instructed FERC to consider the public convenience and necessity when authorizing interstate natural gas pipelines.[8]

The court's reliance on *State Farm* to distinguish between FERC's authority under Section 3 versus Section 7 was always suspect because FERC is expressly precluded from regulating electric generators under the Federal Power Act (FPA).[9] So, to the extent that FERC's consideration of emissions for gas exports would run afoul of the factors Congress intended it to consider under its delegated Section 3 authority, FERC would necessarily do the same under Section 7 by considering emissions from generators over which it expressly lacks regulatory authority. Moreover, the Supreme Court has held that authority to regulate for the public

interest "is not a broad license to promote the general welfare," but rather "the words take meaning from the purposes of the regulatory legislation."[10] FERC's authority under the NGA must be understood in light of Congress's principal purpose "to encourage orderly development of plentiful and reasonably priced natural gas."[11]

Seven County closed the door on any daylight that may remain on this issue. The Supreme Court unequivocally held that an agency need not consider the environmental effects of that separate project, even if effects of such project are factually foreseeable.[12] This is because the separation between the project under review and other projects breaks the chain of proximate causation such that the effects of the other projects are not legally relevant to the agency's decision-making process for the project under review.[13] The Court also reiterated *Public Citizen*'s edict that an agency's lack of authority to prevent an effect means that the agency cannot be considered a "legally relevant cause" of the effect.[14]

Sabal Trail's logic failed under both principles. Whether a downstream power plant's emissions are a factually foreseeable consequence of an interstate pipeline is irrelevant for the purpose of NEPA because the power plant is an entirely separate project, which severs the causal relationship with the pipeline for the purpose of an indirect effects analysis. This holds true even "if the project at issue might lead to the construction or increased use of [that] separate project."[15] And, as discussed above, FERC's lack of authority to regulate electric generation means that it cannot be the legally relevant cause of the power plant's emissions. This lack of authority undermines the argument that FERC could be a legally relevant cause because it could theoretically deny a certificate on the basis of environmental considerations. Were FERC to do so on the basis of electric generators' end-use emissions, it would be relying on a factor outside of those which Congress intended it to base its decision.[16]

Cumberland

Setting the tone for the rest of the opinion, *Cumberland* opened with a single, now oft-quoted sentence from *Seven County*: "The bedrock principle of judicial review in NEPA cases can be stated in a word: Deference."[17]

In addition to claims under the NGA, Sierra Club challenged FERC's compliance with NEPA on several grounds, including its

calculation of downstream greenhouse gas (GHG) emissions and its decision not to analyze the pipeline and power plant together as connected actions. In determining that FERC's environmental impact statement (EIS) sufficiently addressed the project's environmental impacts—a conclusion made easier in this case where the pipeline would result in a net emissions reduction due to the project's fuel source migration from coal to natural gas—the court concluded that *Seven County* precluded any future application of *Sabal Trail*.[18] The court went on to explain that FERC's lack of jurisdiction over electric generation precludes the need to study the downstream emissions impacts in the pipeline's EIS, and subsequently recognized that *Seven County* "abrogated" *Sabal Trail*.[19]

Although not writing separately, it is noteworthy that Judge Pillard joined the court's opinion except as to the parts that described *Seven County*'s effect on FERC's connected action analysis and the conclusion that included the statement that *Seven County* abrogated *Sabal Trail*. This may indicate that a range of views still exists on the court as to *Sabal Trail*'s continued viability that will be further borne out in subsequent opinions. Regardless, the D.C. Circuit took a major step in *Cumberland* toward closing the door on the *Sabal Trail* era of its NEPA jurisprudence.[20]

Notes

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1. No. 24-1099, 2025 WL 2779345 (D.C. Cir. Sept. 30, 2025) (Cumberland).
2. Sierra Club v. FERC, 867 F.3d 1357 (D.C. Cir. 2017) (Sabal Trail).
3. Id. at 1514.
4. 541 U.S. 752 (2004).
5. See, e.g., Ctr. for Biological Diversity v. U.S. Army Corps of Eng'rs, 941 F.3d 1288 (11th Cir. 2019); Kentuckians for the Commonwealth v. U.S. Army Corps of Eng'rs, 746 F.3d 698 (6th Cir. 2014); N.J. Dep't of Env't Prot. v. U.S. Nuclear Reg. Comm'n, 561 F.3d 132 (3d. Cir. 2009).
6. Sabal Trail, 867 F.3d at 1373.
7. FERC authorizes only the siting, construction, expansion, or operation of an LNG terminal. See 15 U.S.C. 717b(e)(1).
8. Sabal Trail, 867 F.3d at 1373 (citing Motor Vehicle Mfrs. Ass'n of U.S. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (explaining that an

agency acts arbitrarily and capriciously if it makes a decision based on "factors which Congress had not intended it to consider")).

9. See 16 U.S.C. § 824(b)(1) (stating that the FPA does not apply to "facilities used for the generation of electric energy").

10. NAACP v. FPC, 425 U.S. 662, 669 (1976).

11. Id. at 669-70.

12. Seven County, 145 S. Ct. at 1515-16.

13. Id. at 1516.

14. Id.

15. Id. at 1515.

16. Cf. State Farm, 463 U.S. at 43.

17. Cumberland, 2025 WL 2779345 at *1 (quoting Seven County, 145 S. Ct. at 1515).

18. Id. at *6 ("Regardless of whether, in the past, this Court construed the [Council on Environmental Quality] regulations often to require agencies to consider actions within another agency's regulatory jurisdiction, Seven County held that an agency's duty to consult with other agencies cannot compel it to speculate about the effects of a separate project that is outside its regulatory jurisdiction.") (cleaned up).

19. Id. at *8.

20. It merits noting that FERC has also determined that Seven County obviates its need to consider downstream GHG emissions from sources over which it does not exercise regulatory authority. See, e.g., Transcon. Gas Pipe Line Co., 192 FERC ¶ 61,184, at p. 108 (2025); E. Tenn. Nat. Gas, LLC, 192 FERC ¶ 61,153, at pp. 23, 28 (2025).