

# The Energy Daily

Business and Policy Coverage of the Power, Natural Gas, Oil, Nuclear and Renewable Industries

theenergydaily.com

## New Jersey governor reboots offshore wind program

BY ERIC LINDEMAN

Newly elected New Jersey Democratic Gov. Phil Murphy issued an executive order Wednesday calling for massive offshore wind development and directing state regulators to resurrect an incentive program that likely will put the fully-permitted but long-delayed demonstration project proposed by Fishermen's Energy offshore Atlantic City at the head of the line.

Waiting in the wings will be two developers that hold large federal leases offshore New Jersey and are planning to propose utility-scale projects: Denmark-based Orsted, formerly Dong Energy, and U.S. Wind Inc., the wholly owned unit of Renexia S.p.A., a major

(Continued on p. 4, [click here](#))

## Court ruling could shut down Florida gas pipe over faulty greenhouse review

BY JIM DAY

In a ruling that the Federal Energy Regulatory Commission acknowledges could lead to the unprecedented shutdown of a major natural gas pipeline, a federal appeals court this week denied the commission's request to reconsider an August ruling that vacated FERC's 2016 authorization of the Sabal Trail pipeline in Florida over the agency's failure to conduct an adequate review of the line's greenhouse impacts.

The U.S. Court of Appeals for the District of Columbia Circuit Wednesday denied FERC's request for the full court to review the decision by a three-judge panel of the court to invalidate the FERC certificate that allowed construction and operation of Sabal Trail and

the associated Southeast Market Pipelines.

The court's decision, which was prompted by a lawsuit by the Sierra Club, will take effect when it issues its so-called mandate; that typically takes place within seven days of denial of reconsideration.

FERC wrote in papers filed with the court last year that *vacatur* of Sabal Trail's certificate would force the shutdown of the pipeline, which partially went into service in June 2017. The commission warned that such a shutdown would disrupt fuel deliveries to several gas-fired power plants in Florida and "threatens their ability to generate electricity for Florida customers."

FERC officials declined comment Thursday on whether the pipeline would be forced to shut down.

(Continued on p. 3, [click here](#))

## Scana, Dominion warn lawmakers on move to halt nuke cost recovery

BY GEORGE LOBSENZ

An overwhelming vote by the South Carolina House of Representatives to suspend cost recovery by Scana for its abandoned nuclear reactor project has drawn lawsuit threats from the beleaguered company and a warning by Dominion Energy that the move could bankrupt Scana's regulated utility unit and kill Dominion's offer to buy Scana.

The 119-1 vote by the House Wednesday to suspend cost recovery under the state's Base Load Review Act (BLRA) was immediately challenged by Scana as a legally impermissible intervention by state lawmakers into

BLRA cost recovery proceedings now underway before the South Carolina Public Service Commission (SCPSC) for expenditures on the massively over-budget reactor project at the V.C. Summer nuclear plant.

And while the landslide vote by House members clearly reflected the huge political pressures on state lawmakers to curtail cost recovery by Scana's South Carolina Electric & Gas (SCE&G) unit, House Speaker Jay Lucas (R) tacitly acknowledged the legal problems facing legislative intervention to stop the hefty \$27 per month nuclear charge on SCE&G's 700,000 ratepayers.

Notably, just prior to the vote, Lucas amended the legislation to suspend nuclear

cost recovery pending resolution of the BLRA proceeding by the SCPSC; lawmakers previously had been moving to repeal the BLRA, a move that Lucas and other House leaders indicated would be legally vulnerable as an unconstitutional retroactive rollback of the law.

Under the bill passed by the House, the commission would be ordered to set an "experimental" or "interim" rate for SCE&G that would effectively remove nuclear charges authorized under the BLRA. The lower rates would remain in effect until the commission or the courts resolved all issues over cost recovery and the prudence of SCE&G's expenditures on the two new reactors, a project it undertook with Santee Cooper, the state-owned utility.

Lucas and other lawmakers  
(Continued on p. 2, [click here](#))



## Babcock & Wilcox announces CEO change

**Babcock & Wilcox Enterprises Inc. announced Thursday its longtime chief executive officer, Jim Ferland, is stepping down effective immediately, to be replaced by Leslie Kass, who has been senior vice president in charge of the company's industrial business segment since May 2017.**

Charlotte, N.C.-based B&W said Ferland will remain as executive chairman of its board until June 30, per his current employ-

ment contract.

B&W is a leading manufacturer of boilers and environmental equipment for the power and industrial markets, and is among the firms that has faced recent challenges with the shift in power markets toward renewables.

The company said Kass has more than 20 years of engineering and operational experience with a number of energy and power companies, including Westinghouse, En-

ergy and Duke Energy. She joined B&W in 2013.

"I am excited to...build on the already strong foundation B&W has developed as a leading provider of custom-engineered technologies and solutions and aftermarket services to global power and industrial markets," Kass said in a statement. "We will continue to focus on improving B&W's profitability, cash flow, financial flexibility, and consistency across the organization."

## Scana, Dominion warn lawmakers on move... *(Continued from p. 1)*

said the suspension of the nuclear charges was fully warranted by revelations that SCE&G and Santee Cooper for years hid from state lawmakers and regulators internal audits that showed huge cost overruns and other mismanagement of the new reactor project.

However, Scana wasted no time in warning lawmakers that their action would unacceptably damage SCE&G, derail a merger with Dominion that would help SCE&G ratepayers—and prompt litigation by Scana.

"There is a regulatory process in place for adjudicating the recovery of costs associated with the nuclear project," the company said in a statement. "Scana and Dominion have filed a petition with the Public Service Commission that explains how a combination of the companies would result in significant benefits being provided to customers.

"In the event legislation is passed that interferes with the regulatory process and changes the legal standards for recovery of those costs in a way that would inflict severe damage on the company, the company would have no choice but to seek legal recourse at that time."

Importantly, it was not clear whether the House-passed bill to suspend the nuclear charges had sufficient support to pass the state Senate, which reportedly was scheduled to take up the bill Thursday.

However, South Carolina Gov. Henry McMaster (R) already has announced he would sign a bill to repeal or roll back BLRA to protect ratepayers from nuclear charges that he believes reflect mismanagement by SCE&G.

Meanwhile, Dominion immediately launched an all-out effort to dissuade lawmakers from proceeding with the legislation to suspend the nuclear charges.

In an op-ed in *The State*, South Carolina's largest newspaper, Dominion Chairman, Presi-

dent and Chief Executive Officer Thomas Farrell said the legislation would hurt SCE&G's ratepayers by bankrupting the utility and derailing Dominion's deal to buy Scana, which includes a \$1,000 refund for every SCE&G ratepayer and reductions in the nuclear charges.

When it made its \$14.6 billion bid for Scana last month, Dominion warned that a state effort to prevent nuclear cost recovery by SCE&G would force Dominion to walk away from the merger.

And in his op-ed, Farrell suggested that state lawmakers were ignoring the consequences of rolling back the BLRA—and being led astray by other suitors for Scana that he did not name.

"Every day it becomes more apparent that retroactively repealing the Base Load Review Act—no matter how emotionally appealing—would be a cure far worse than the disease," he said. "It won't resolve the problems with the V.C. Summer nuclear construction project and would only create more problems."

Farrell said a study done for the SCPSC had shown there was a "very real" risk of bankruptcy for SCE&G if it was prevented from recovering billions of dollars spent on the reactors. He added that the study's estimated 35 percent risk of bankruptcy had been shown to be a gross underestimate of the actual risk by an analysis done by *The State*.

"Bankruptcy of the state's largest utility would have deep and lasting repercussions," he said. "But bankruptcy is beside the point. A retroactive rollback of the BLRA would push rates higher no matter what.

"At current levels, SCE&G needs to invest more than \$5 billion over the next 10 years to maintain its system and serve new customers. The repeal would drive SCE&G to 'junk' status in the credit markets, and its costs of raising that money would skyrocket. Those higher

costs would quickly work their way into the bills of both electric and natural gas customers."

Farrell also argued that retroactively repealing the BLRA would not only be legally suspect, but unfairly penalize Scana for billions of dollars it had spent based on promises of state support.

"[T]here is the constitutional question: Can government make something wrong retroactively?" Farrell asked. "Changing the law now would be like driving at the posted speed on Monday, having the speed limit lowered on Wednesday and getting a ticket on Friday for speeding four days earlier."

Farrell said the effort to roll back the BLRA inevitably would bring lengthy and costly litigation that could result in a court decision enabling Scana to recover more costs than it already was collecting.

"Some legislators have warned their colleagues that retroactively reversing the BLRA is sure to be overturned in the courts," he said. "The result would be millions of dollars in legal expenses for taxpayers, years of uncertainty and SCE&G potentially having the right to roll in all the V.C. Summer costs—including those not in bills today."

And Farrell cast doubt on other solutions for Scana's problems, such as rumored buy-out proposals from other companies and suggestions that SCE&G could get a better deal for its ratepayers by securitizing its nuclear costs under a long-term recovery plan.

"Dominion and Scana have a valid and binding agreement," he said. "If there are other suitors for Scana, they can come forward without the need for false fronts and backroom negotiations.

"We have said all along that our proposal is not perfect—just much better than any realistic alternative."

## Court ruling could shut down Florida gas pipe... (Continued from p. 1)

NextEra Energy, one of the largest stakeholders in Sabal Trail and owner of Florida Power & Light (FP&L), also did not comment.

But in a statement late Thursday to *The Energy Daily*, FP&L spokesman David McDermitt said: “We continue to closely monitor the ongoing legal proceedings. The pipeline is operational, and at this time we do not anticipate a curtailment of FP&L operations as a result of the recent court ruling.

“The underground natural gas pipeline system, which has been operating safely since June 2017, remains vital to meeting Florida’s energy needs. If the Sierra Club is successful in its misguided and politically motivated efforts to reduce Florida’s access to clean, U.S.-produced natural gas, the likely outcome would be increased energy costs for consumers and more use of coal and foreign oil to generate electricity.”

Importantly, FERC may still be able to delay issuance of the mandate to buy more time to address the court’s concerns and keep the pipeline running. In October 2017 filings at the court, the commission noted it was working to complete a supplementary environmental review looking at the greenhouse gas (GHG) emission impacts of the pipeline, as required by the court’s August ruling. The court faulted FERC for failing to take a “hard look” at the GHG impacts, thereby failing to meet requirements of the National Environmental Policy Act (NEPA).

In its October 6 request for reconsideration, FERC clearly acknowledged that Sabal Trail was at risk of shutdown in the case, and warned of significant impacts if that were to happen.

“Substantial segments of the pipeline projects at issue here are constructed and operating, providing service to natural gas-fired power plants in Florida since June 2017, well before the court’s decision,” FERC said at the time. “*Vacatur* compromises the supply of natural gas to those customers and, as a result, threatens their ability to generate electricity for Florida consumers.

“The court’s decision appears not to apprehend the disruptive consequences of *vacatur* here, as it does not reconcile the judgment of *vacatur* with the public need for the pipeline projects,” the commission continued. “Under the court’s [August] judgment, the commission has only 52 days to comply with the

court’s mandate, or the pipelines’ certificate authority will be vacated, requiring them, in the absence of further relief, to cease construction and/or operations.”

In its 2-1 decision in August, the three-judge panel of the D.C. Circuit ruled in favor of the Sierra Club, which challenged FERC’s authorization of the Sabal Trail and associated pipelines known collectively as the Southeast Market Pipelines (SMP).

The system—which is owned by Enbridge’s Spectra Energy, NextEra Energy and Duke—was built to carry about 1.1 billion cubic feet per day of gas from an interconnection with the Transco pipeline in Alabama to gas-fired plants operated by Duke and FP&L in heavily gas-dependent Florida.

The court found that FERC’s NEPA analysis was inadequate because it did not take into account greenhouse gas emissions resulting from combustion of gas from Sabal Trail in the power plants. The court flatly rejected FERC’s long-standing argument that such emissions are not “reasonably foreseeable,” and remanded the NEPA analysis to FERC to study the GHG impacts of downstream combustion and explain why it had not used the “social cost of carbon” tool to put a monetary value on the impacts.

The court then took the highly unusual step of vacating the FERC certificate over the flawed NEPA review, prompting FERC, NextEra and Duke to ask for *en banc* review—the request that was denied Wednesday.

Several industry sources said the potential shutdown of a pipeline over the NEPA issue would be unprecedented.

“In the 35 years I have been involved with FERC practice, I can’t remember a single time where an operating FERC pipeline has been shut down under these circumstances,” said William Scherman, a former FERC general counsel who now practices at Gibson Dunn.

However, he added: “Given what FERC has already done on the limited remand issue, it is hard to see how it can be said at this point that there isn’t the serious possibility that FERC can cure the remand issue.”

On Thursday, Sierra Club attorney Elly Benson said time is running out for the pipeline to continue operations.

“The D.C. Circuit’s orders confirm what we

already knew: when a fracked gas pipeline has been constructed without its threats being fully considered, the pipeline should not be allowed to continue operating,” she said.

In court filings, the Sierra Club argued that allowing operations to continue would undermine NEPA’s purpose of addressing environmental concerns before a project gets authorized.

“There is likely to be disruption in any NEPA case where the project proceeds notwithstanding a defective environmental impact statement, but if that prohibited *vacatur* it would nullify the requirement that NEPA analysis occur before the agency decision,” the Sierra Club wrote. “FERC’s violation of law has no consequences unless the certificate is vacated. And the court should not accommodate them by delaying the mandate.”

In determining whether a project’s certificate should be vacated on remand, the D.C. Circuit relies on a 1993 case known as *Allied-Signal v. NRC*, which sets out a balancing test of the likelihood that an agency can adequately address the court’s concerns on remand with the disruptiveness of vacating an order.

In its filings, FERC noted it is finalizing a draft supplementary NEPA review that quantifies the GHG emissions from combustion of the gas carried by Sabal Trail. And both NextEra and Duke told the court that FERC’s work to complete the review should preclude the court from vacating the pipeline’s certificate.

“At a minimum, this court can consider FERC’s judicially noticeable draft supplemental environmental impact statement,” Duke Energy Florida said in its filing.

With its denial of the request for reconsideration of its *vacatur*, however, the court appears to have rejected those arguments. The court has never explained its reasons for vacating the certificate.

Green groups have vehemently contested FERC’s findings in the draft supplemental environmental review, saying the brief five-page document that was completed in a few weeks does not amount to the required “hard look” at GHG impacts. Among other issues, the greens question FERC’s conclusion that the Sabal Trail pipeline would not have “significant” impacts given that it could cause total Florida GHG emissions to increase by up to 9.7 percent.

## EPA reopens comment period on CPP repeal

**The Environmental Protection Administration this week announced it was reopening the public comment period on its proposed repeal of President Obama's Clean Power Plan, further delaying a final decision on that disputed effort.**

The agency announced the extension of the public comment period until April 26 to accommodate three more public hearings it

plans to hold on the CPP repeal proposal.

However, the extension also promises to further delay any further deliberations in the U.S. Court of Appeals for the District of Columbia Circuit on a 2015 lawsuit by states and industry groups challenging the CPP.

The court has repeatedly delayed ruling in the case in response to Trump administration requests, with EPA saying the court

should wait until it completes its CPP repeal proceedings.

However, the new delay in the CPP repeal proceeding could fuel demands by environmentalists that the court should act on the 2015 lawsuit challenging the CPP, saying that case involves the same legal issues likely to be raised by greens in their expected court challenge of any CPP repeal.

## New Jersey governor reboots offshore wind program... (Continued from p. 1)

renewable energy developer in Italy.

While Fishermen's Energy has proposed a small pilot project, Orsted's Ocean Wind project 10 miles offshore Atlantic City will be 1,000 megawatts, while U.S. Wind's project, also offshore Atlantic City, will generate up to 1,500 MW.

The timeline for those offshore wind farms is considerably more drawn out than Fishermen's because both developers have other utility-scale projects ahead in their pipelines—Orsted in Massachusetts and New York and U.S. Wind in Maryland. In addition, the federal and state permitting process is more complicated for large offshore wind projects, and the two projects are farther offshore than Fishermen's effort, making logistical planning far more difficult.

The offshore wind order by Murphy, a Democrat who took office January 16, is just one of several actions he has taken to reverse the energy and environmental policies of Republican Gov. Chris Christie. He also has ordered New Jersey's return to the Regional Greenhouse Gas Initiative, a regional greenhouse reduction program, and remade nuclear aid legislation to include other clean energy initiatives.

The 24 MW project proposed by Fishermen's Energy is notable because it was twice rejected in 2014 by Christie appointees on the state Board of Public Utilities (BPU), which refused to approve a ratepayer-backed power purchase agreement (PPA) for the project. The BPU at that time ruled the project was too risky and could leave New Jersey residents holding the bag for pricey power—a finding that some critics suggested was the result of Christie's political ambitions in a GOP where major donors are opposed to aid to renewable energy.

A state appellate court in June 2015 refused to overturn BPU's decision against Fishermen's Energy, and the state Supreme Court

declined to review the decision that October.

But Fishermen's General Counsel Paul Gallagher told *The Energy Daily* Thursday that the project is still alive and fully permitted, meaning its application is ready to go as soon as the BPU reboots the incentive program. While Fishermen's project is small by comparison to pending offshore wind projects in Massachusetts, New York, and Maryland, he said the developer wants the installation and operating experience before scaling up.

Interestingly, when Christie first took office, he backed initial efforts by New Jersey to solicit expressions of interest in offshore wind development in 2008. Fishermen's responded by submitting a two-phase proposal—the demonstration project to be followed by a 350 MW utility-scale wind farm offshore Atlantic City.

The Democratic-controlled New Jersey legislature then passed the New Jersey Offshore Wind Economic Development Act (OWEDA) in August 2010. That law directed the BPU to establish an offshore renewable energy certificate (OREC) program from which the state would make available financial assistance and tax credits to encourage development of up to 1,100 MW of offshore wind generation by 2020. It also specifically called for pilot-scale demonstration projects to be included in the special rate incentive program.

In his order Wednesday, Murphy directed the BPU to “fully implement” OWEDA and to begin the process of moving the state toward a goal of 3,500 MW of offshore wind energy by 2030. He also directed the board to move forward quickly to establish the OREC program to encourage development of an initial 1,100 MW of offshore wind power, for which the BPU is to issue a solicitation as soon as the OREC is in place.

Significantly, Murphy instructed the BPU to “engage with neighboring states on the potential benefits of regional collaboration on

offshore wind.”

The order also directs newly appointed BPU President Joseph Fiordaliso and New Jersey Department of Environmental Protection Commissioner Catherine McCabe to work together to establish a formal offshore wind strategic plan for New Jersey, which the governor said is to focus on “critical components of offshore wind development, including job growth, workforce development, data collection, and appropriate determination of facilities, as well as ensuring that natural resources are protected.”

“Our goal is to grow offshore wind in a way that creates jobs and reduces our dependence on fossil fuels,” Murphy said. “New Jersey is committed to growing our clean energy sector, and offshore wind is at the crux of increasing that part of our economy.”

“Little progress has been made on offshore wind development in New Jersey despite a pledge from the previous administration to facilitate our growth of offshore wind. We cannot allow for stagnation in this growing sector of our energy economy, and we cannot lose sight of the tremendous opportunity for offshore wind at the Jersey Shore.”

Fiordaliso made clear in December that the BPU would be friendly to offshore wind, especially since its costs have fallen.

“Offshore wind is cost effective...,” he wrote in a December 21 op-ed in the *Asbury Park Press*. “The cost of offshore wind has declined by 32 percent since 2012, and is expected to decline by 70 percent by 2040. There are currently 344,000 acres under federal lease off the coast of New Jersey that can support up to 3,500 megawatts of capacity, representing 20 percent of New Jersey's energy needs....”

“By shifting...investments toward in-state resources such as offshore wind, we can site new generation nearest to New Jersey energy loads. Offshore wind could...ultimately lower the cost of energy throughout the state.”

# Power Up Your Business



## The Energy Daily

Showcase your organization or event to energy executives, members of Congress and high ranking members of government agencies!

You already know The Energy Daily is a must-read for the nation's leading energy players. Take advantage of our highly targeted publication and let your marketing dollars work harder for you.

- We reach over 40,000 readers a day.
- 9 out of 10 subscribers read The Energy Daily 3 or more times per week.
- 7 out of 10 subscribers read The Energy Daily on a daily basis.

**Explore advertising and marketing solutions with The Energy Daily**

[www.theenergydaily.com/advertise](http://www.theenergydaily.com/advertise)

For subscription, group discounts and site license information, contact:

**Sales**

**T** +1 303 858 6551

**E** [TheEnergyDailySales@ihsmarkit.com](mailto:TheEnergyDailySales@ihsmarkit.com)



IHS Markit™