

November 9, 2015

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

RE: *Sabal Trail Transmission, LLC*, Docket No. CP15-17-000
Response to Comments on the Draft Environmental Impact Statement

Dear Ms. Bose:

On September 4, 2015, the staff of the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued a draft environmental impact statement (“DEIS”) for the Hillabee Expansion, Sabal Trail, and Florida Southeast Connection Projects as proposed by Transcontinental Gas Pipe Line Company, LLC, Sabal Trail Transmission, LLC (“Sabal Trail”), and Florida Southeast Connection, LLC, respectively. These are separate, but connected, natural gas transmission pipeline projects collectively referred to as the Southeast Market Pipelines Project (“SMP Project” or “Project”). The Commission requested comments within 45 days of the U.S. Environmental Protection Agency’s (“EPA”) Federal Register issuance date on September 11, 2015,¹ making comments due on or before Monday, October 26, 2015. Several comments were received in response to the notice of the DEIS.

Sabal Trail addresses many environmental issues during the National Environmental Policy Act (“NEPA”)² review of the Project in its pre-filing docket, PF14-1-000, and the certificate proceeding docket, CP15-17-000. Accordingly, in the following response, Sabal Trail only addresses certain of the comments received on the DEIS where Sabal Trail has new or additional information to add to the record to assist the Commission in its NEPA review. Additionally, Sabal Trail includes the site plans and profiles for the horizontal directional drill (“HDD”) crossings under the Suwanee River State Park in Attachment A. Sabal Trail also clarifies that Table 6.5-1, filed on the docket on September 30, 2015, is applicable to the current proposed route, including the proposed crossing of the Suwanee River.

1. The DEIS adequately reviews and addresses potential health impacts associated with natural gas compressor stations.

Comments were submitted regarding a study that assesses the health impacts of two Solar Turbine Centaur 50 natural gas turbine compressors on 35 residents living in

¹ Notice of Availability of the Draft Environmental Impact Statement for the Proposed Southeast Market Pipelines Project, 80 Fed. Reg. 54,777 (Sept. 11, 2015).

² 42 U.S.C. §§ 4321 *et seq.*

Minisink, Orange County, New York.³ The study, which was not peer-reviewed, purports to associate adverse health effects with fine particulate matter, or PM 2.5, emissions from compressor stations. These comments, along with several others, urge the Commission to consider the health impacts of the Sabal Trail compressor station that is proposed to be built near Albany, Georgia.

There are many emission sources already in the Dougherty County area. In fact, there are a total of 42 existing operating facilities with air quality permits within the City of Albany alone. Of those 42 existing facilities, five (5) are categorized as major sources. The remainder are minor/minor synthetic sources as will be Sabal Trail's compressor station. Based on a comparative analysis using the 2011 EPA National Emission Inventory data, the Albany Compressor Station would contribute less than 1.0% to the existing emissions sources in Dougherty County.

The DEIS adequately addresses emissions-related health concerns. As the DEIS explains in the Air Quality Impacts section, ambient air quality is protected by federal and state regulations.⁴ As required by the Clean Air Act ("CAA"), the EPA has established National Ambient Air Quality Standards ("NAAQS") for harmful pollutants, including PM 2.5, that are adequate to protect public health.⁵ States are then required to maintain and enforce the NAAQS through state implementation plans ("SIPs").⁶ Under these plans, and through a variety of permitting programs, states and EPA ensure that qualifying sources of emissions will not lead to a violation of the NAAQS. The DEIS fully describes the air-related regulatory requirements and permitting processes applicable to Sabal Trail as well as the rest of the SMP Project.⁷ The DEIS also includes a description of the Project's operational impacts and mitigation measures. With respect to the Albany Compressor Station specifically, it explains that an air quality screening analysis indicated that the station's modeled emissions would maintain air quality in the region well below the applicable NAAQS.⁸ In sum, the DEIS gives a detailed explanation of the CAA regulatory structure's application to the SMP Project, which fully addresses emissions-related health concerns.

The Commission's reliance on the CAA's regulatory process – and the air quality screening models used by the Air Protection Branch of Georgia's Environmental Protection Division under that process – is both logical and proper under well-established NEPA case law. "An agency may fulfill its obligations under NEPA to conduct an

³ See, e.g., Comment of Blue Ridge Environmental Defense League on DEIS at 18 (submitted Oct. 26, 2015); Comment of Roger Marietta of Albany, GA on DEIS (submitted Sept. 15, 2015).

⁴ Southeast Market Pipelines Project Draft Environmental Impact Statement, Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000, at 3-228 (Sept. 4, 2015).

⁵ 42 U.S.C. § 7409.

⁶ 42 U.S.C. § 7410.

⁷ DEIS at 3-228 – 3-253.

⁸ DEIS at 3-251.

independent evaluation of environmental impacts by reviewing and relying on the information, data and conclusions supplied by other federal or state agencies.”⁹ In fact, NEPA allows federal agencies to rely on the conclusions of “other agencies whose area of expertise is superior to their own”¹⁰ In so doing, agencies may incorporate by reference materials prepared outside of the agency, so long as the agency gives a brief description of the material and the material is available for inspection.¹¹

Moreover, the Commission has recently conducted a human health risk assessment for Dominion Transmission Inc.’s (“Dominion”) New Market Project in FERC Docket No. CP14-497-000.¹² The New Market Project consists of a proposal from Dominion to (1) construct and operate two new compressor stations in Chemung and Madison Counties, New York; (2) add compression, a new M&R, and other facilities to one existing compressor station in Montgomery County; (3) add facilities to two existing compressor stations in Tompkins and Herkimer Counties; and (4) modify an existing meter station in Schenectady County. In its assessment, the Commission addressed combustions releases, natural gas releases (fugitives), and natural gas quality, including volatile organic compounds (“VOCs”) in the natural gas. The assessment was conducted in accordance with the U.S. EPA 2005 Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities, as it is a standardized methodology for conducting combustion risk assessments. The Commission concluded that the modeled hazardous air pollutants (“HAPs”) emissions from normal operations and blowdown events from the compressor stations proposed for the New Market Project were below a level of health concern. This conclusion was based on consistently conservative assumptions such as individuals exposed to maximum concentrations from full-capacity facility operation for 24 hours per day, 350 days per year. Short-term maximum concentrations from conservative meteorological conditions were also evaluated and found to be below a level of health concern. VOCs emissions from each of the compressor stations were found to be equivalent to 8 to 70 times the rate of VOCs emitted by a single wood stove. Full station blowdowns were modeled in the study to evaluate the potential to detect natural gas odors near the property lines, and the modeling concluded that the short duration of these blowdowns that would occur approximately every five years would not pose any discomfort, irritation, or mild health effects. The Commission also concluded that there would be no significant impact on health in the Project areas from inhalation of emissions associated with the proposed/modified compressor stations.

⁹ *Stop the Pipeline v. White*, 233 F. Supp. 2d 957, 967-968 (S.D. Ohio 2002).

¹⁰ *Save the Bay, Inc. v. United States Corps of Engineers*, 610 F.2d 322, 325-326 (5th Cir. 1980).

¹¹ 40 C.F.R. § 1502.21.

¹² Environmental Assessment for Dominion Transmission, Inc.’s New Market Project, Docket No. CP14-497-000, at Appendix B (Oct. 20, 2015).

2. Sabal Trail continues to evaluate re-route requests from landowners for feasibility considering all environmental, constructability, and other landowner impacts.

Sabal Trail provides the following updates on certain re-route requests that were discussed by commenters in the comments on the DEIS.

a. Willie Roberts

Mr. Roberts' property is located adjacent to a section of the Flint River that Sabal Trail plans to horizontally drill. In discussions with Mr. Roberts, it was explained that no impacts to the surface of his property were anticipated given that the entry point for the horizontal drill would be located approximately 165 feet from his property, travel at a minimum of approximately 20 feet underneath his property and then cross the Flint River. As requested by Mr. Roberts, Sabal Trail plans to contact Mr. Roberts once the Sabal Trail Project certificate has been received.

b. Gerry and Dinorah Hall

Sabal Trail has been in discussions with the Halls since late 2013, when Sabal Trail first provided the proposed pipeline route for the Sabal Trail Project in its pre-filing documents, Docket No. PF14-1-000. Following a number of meetings and various other communications with the Halls, Sabal Trail was able to accommodate the Halls' request to relocate the proposed route farther away from their home and revised the route to follow the Halls' property line and the adjacent property so that the route remained partially on each landowner's property. Since that time, Sabal Trail has reviewed and evaluated a number of reroutes proposed by the Halls. However, these proposals were not viable alternatives to the relocated route due to environmental, constructability and landowner issues. More recently, the Halls have made a number of reroute requests that would result in the placement of the pipeline route entirely onto an adjacent landowner's property. Reroute discussions between Sabal Trail and the Halls are ongoing.

However, as negotiations continue, should the pipeline be rerouted on the Hall's property, it still would not be possible to completely avoid the PF01F wetland near MP 148.7. The complete avoidance of the wetland would require that the pipeline route be located to a new landowner who was previously not affected by the Project. The relocation to the area under negotiation would reduce the potential effect on the PF01F wetland by approximately 340 feet compared to the currently proposed route. As for all wetland areas, Sabal Trail has reduced the construction right-of-way in the area of the PF01F wetland to 75-feet-wide to minimize potential effects.

c. Galloway/Canaan Ranch

In early 2014, Sabal Trail evaluated the re-route proposed by the Galloways. The evaluation determined that the Galloways' proposed re-route resulted in greater impacts to the environment and landowners than the proposed Sabal Trail route. Specifically, the

Galloways' proposed re-route would have added approximately 1,800 in length and would have brought the pipeline closer in proximity to an existing residence. From an environmental perspective, the additional pipeline length would result in more overall disturbances to the habitat type compared to Sabal Trail's proposed pipeline route. As such, Sabal Trail determined that its proposed route had less potential effects on forested habitat than the Galloways' proposed reroute, and accordingly, Sabal Trail continues to support its proposed route.

d. Arbor Springs

The re-route requested by Arbor Springs Properties and Arbor Springs Development (collectively, "Arbor Springs") relates to potential impacts to Arbor Springs' Bel-Lago Hamlet Residential Subdivision property following a re-route to minimize effects on the adjoining Halpata Tastanaki Preserve ("Halpata"). On December 30, 2014, Sabal Trail submitted a supplemental informational filing that reflected adopted route alternatives, including the Halpata Tastanaki Preserve Route Alternative (HTP Route Alternative). The HTP Route Alternative was adopted to minimize effects on scrub jay habitat and overall impacts to Halpata between MP 384.9 and MP 390.0, resulting in a portion of the pipeline route now following a section of State Road (SR 200). As discussed in the December 30, 2014 supplemental information filing, Sabal Trail adopted this alternative to minimize the length of the route that crossed Halpata, and while the route along SR 200 borders Halpata, that portion of Halpata was of lower quality scrub jay habitat than the originally proposed route through Halpata. Arbor Springs' concerns with the HTP Route Alternative relate to potential impacts to the entrance to its Bel-Lago subdivision, located adjacent to SR 200. To minimize impacts to the subdivision as well as to a number of trees in the area, Sabal Trail agreed to install the pipeline by boring under the entrance of the Bel-Lago subdivision, which also results in a reduction in the amount of trees cleared.

e. AZ Ocala

As indicated in a July 17, 2015 response to comments filed by AZ Ocala Ranch LLC ("AZ Ocala"), Sabal Trail had a number of meetings, telephone conversations and email communications to discuss the location of proposed facilities (compressor station and pipeline) on AZ Ocala's property. As a result of these discussions, as well as other routing considerations, and working with AZ Ocala, Sabal Trail relocated the proposed compressor station off of the AZ Ocala property and adjusted the proposed pipeline route. Subsequent to this adjustment, further potential modifications to the route were investigated based on additional discussions with AZ Ocala as well as other landowners in the area (see "Revised Table A-1 – Summary of Reroutes and Workspace Modifications", filed September 30, 2015). Since these adjustments, AZ Ocala has requested further evaluations and adjustments to the route. To date, Sabal Trail has evaluated these additional requests and has not found the routes to have a reduction in the potential for adverse effects on the environment. In addition to the lack of significant change or reduction in potential environmental effects, the AZ Ocala reroute would be

adjacent to a residential area and about 44 tracts that were not previously affected by the project.

3. Sabal Trail will sufficiently implement mitigation measures and plans related to potential impacts to the habitats of threatened and endangered species.

Sabal Trail has addressed the impacts to each of the following species and their habitats, including mitigation and conservation measures, in the threatened and endangered species survey report submitted to the FERC, the U.S. Fish and Wildlife Service, Alabama Department of Conservation and Natural Resources, Wildlife and Freshwater Fisheries Division, Georgia Department of Natural Resources, Wildlife Resources Division, and the Florida Fish and Wildlife Conservation Commission ("FWC"), and which was relied upon in the Commission's NEPA review. The U.S. Fish and Wildlife Service is in the process of preparing a Biological Opinion which will evaluate the potential effect of the Project (including the mitigation and conservation measures proposed by Sabal Trail) on these species.

a. Scrub jay

Sabal Trail will use specific clearing procedures to minimize potential effects on scrub jay habitat as well as specific operational and maintenance procedures during the operational life of the pipeline to enhance scrub jay habitat.

b. Sandhill cranes

Sabal Trail will conduct pre-construction surveys of the habitats conducive to sand hill crane nesting and will avoid these areas during the nesting season if practical. Sabal Trail will also follow the Florida FWC recommended conservation measures to the extent practical. Discussions are ongoing with the FWC regarding conservation measures for the sandhill crane. Sabal Trail anticipates that these discussions will be completed in January 2016.

c. Alligators

Sabal Trail will use specific crossing methods (HDD and dry crossings) to avoid and minimize potential effects on wetlands and waterbodies that are habitat to the alligator.

d. Gopher tortoises

Gopher tortoises will be temporarily relocated to minimize and mitigate potential effects on the species from construction activities. The pipeline right-of-way will provide excellent gopher tortoise habitat and the gopher tortoises will return once construction is complete. Sabal Trail will document gopher tortoise habitat areas during the operation and maintenance phases of the Project to avoid adverse effects on the tortoises.

e. Wood Storks

Sabal Trail will avoid or minimize the potential effects to wood stork habitat from the Project. Sabal Trail has incorporated a route around the Crevasse Pond in Georgia to avoid an area where wood storks were observed nesting. The wetland and waterbody crossing methods and the adoption of the FERC Procedures will also ensure that minimal effects occur to the nesting habitat of this species.

4. FERC adequately considered all reasonably foreseeable impacts pursuant to the NEPA requirements for the cumulative impacts analysis of the SMP Project.

Commenters stated that the DEIS does not adequately consider reasonably foreseeable future projects that could result in cumulative impacts to the same environment affected by the SMP Project.¹³ Under NEPA, an agency's analysis must address direct, indirect, and cumulative impacts.¹⁴ A cumulative impact is "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."¹⁵ In evaluating cumulative impacts, the agency should consider: 1) the area in which the effects of the proposed project will be felt; 2) the impacts that are expected in that area from the proposed project; 3) other actions – past, present, and reasonably foreseeable – that have had or are expected to have impacts in the same area; 4) the impacts or expected impacts from these other actions; and 5) the overall impact that can be expected if the individual impacts are allowed to accumulate.¹⁶

The Commission's cumulative impacts analysis in the DEIS is consistent with NEPA's requirements. The DEIS identifies five cumulative effects issues and a geographical scope for each issue.¹⁷ It also identifies a timeframe for both construction-related impacts (a five-year period) as well as permanent impacts.¹⁸ Finally, it identifies other projects within the specified geographic and temporal scope.¹⁹

At least one comment expressed particular concern regarding energy projects and forest clearing impacts. Regarding energy projects, the comment alleges that the DEIS

¹³ See, e.g., Comment of Panagioti Tsolkas of Lake Worth, FL on DEIS (submitted Oct. 22, 2015).

¹⁴ 40 C.F.R. § 1508.25(c).

¹⁵ 40 C.F.R. § 1508.7.

¹⁶ See *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 345 (D.C. Cir. 2002); *San Juan Citizens Alliance v. Stiles*, 654 F.3d 1038, 1056 (10th Cir. 2011); *Gulf Restoration Network v. United States Dept. of Transportation*, 452 F.3d 362, 368 (5th Cir. 2006).

¹⁷ DEIS at 3-281.

¹⁸ DEIS at 3-282.

¹⁹ DEIS at 3-283 to 3-287.

fails to identify and address all of the relevant existing power plants. The DEIS identifies and analyzes the potential cumulative impacts from six additional projects (two existing projects and four proposed projects).²⁰ These projects were identified based on the geographic scope established for the five cumulative effects issues.²¹ The Commission concludes that the SMP Project and the other projects will either not result in significant cumulative impacts or that resulting impacts can be sufficiently minimized by project plans.²²

This analysis is sufficient under NEPA. The comment at issue, however, asserts that the DEIS should have addressed cumulative impacts from existing power plants that will likely use gas transported by the SMP Project even if such plants are not geographically located on the SMP Project route. With a single exception (the Crystal River Plant, which was expressly considered in the DEIS as part of a larger development complex), the Commenter identified plants that are outside of the geographic scope identified by the Commission and the Commission need not consider them in the cumulative impacts analysis. To the extent that the comment challenges the Commission's established geographic zone, this concern is misguided. CEQ advises agencies to relate the scope of the analysis to the magnitude of the environmental impacts of the proposed action.²³ The Commission has done so here. For example, the geographic zone for impacts to water resources is established as the HUC 12 sub-watersheds crossed by the SMP Project because the impacts on water resources "would be contained to a relatively small area."²⁴ Moreover, agencies have discretion in defining the scope of the cumulative impacts analysis. The Supreme Court has held that the determination of the extent of cumulative impacts "and particularly the identification of the geographic area within which they may occur, is a task assigned to the special competency of the appropriate agencies."²⁵

In addition to energy projects, the comment alleges that the Commission did not take a sufficiently thorough look at the cumulative impacts of forest clearing because the Commission was unable to quantify impacts. This is incorrect. The DEIS concludes that the SMP Project and other projects will not contribute significantly to impacts on forest resources after considering a variety of factors, including the quality of habitat provided by affected forest, the percentage of forest that would be allowed to revert to pre-construction conditions, the retained environmental value of much of the cleared area, and the ratio of affected forest to the total amount of forest in the region.²⁶ This analysis

²⁰ DEIS at 3-281.

²¹ DEIS at 3-281.

²² DEIS at 3-283 to 3-286.

²³ See *Columbia Gas Transmission, LLC*, 153 FERC ¶ 61,064 at PP 32, 38 (2015) (citing CEQ, *Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2 (June 24, 2005)).

²⁴ DEIS at 3-281.

²⁵ *Kleppe v. Sierra Club*, 427 U.S. 390, 414 (1976).

²⁶ DEIS at 3-287 to 3-288.

satisfies NEPA's requirements. While the DEIS does note that the Commission was unable to quantify impacts, this is because the amount and timing of forest clearing, restoration, and mitigation measures are currently unknown. This does not constitute a failure to take a hard look as required under NEPA, because NEPA does not require detailed analysis when environmental effects are uncertain.²⁷

5. Sabal Trail does not anticipate any potential impacts of the Sabal Trail Project to the Falmouth Cathedral Cave System.

No impacts to the Falmouth Cathedral Cave System are anticipated. In the vicinity of the crossing of the Falmouth Cathedral Cave System, the pipeline is proposed to be installed using the open cut method. The pipeline will be buried at a depth that would provide approximately 3 feet of cover from the surface, and the cave system is at a depth ranging from approximately 100 to 150 feet. The thickness of overburden over the limestone substrate in this vicinity ranges from 50 to 100 feet, so the pipe trench will be dug entirely in the overburden with no excavation of the limestone substrate expected to be required. Even in the north Florida karst geology, the risk of sinkhole development during trenching activities is relatively low. The typical trenched excavation is relatively shallow (6 to 7 feet deep) and the underlying limestone will only be substantially penetrated in the vicinity of the HDD river crossings. If sinkholes do occur during construction, they will most likely be confined to the area designated as the working space for the pipeline and can be addressed consistent with the previously submitted and reviewed karst mitigation plan. Furthermore, sinkholes in the region tend to form slowly and their structure is typically very shallow. Accordingly, the risk of triggering a sinkhole that would extend as deeply as the Falmouth Cathedral Cave System is extremely remote.

6. The Commission's DEIS was performed in accordance with its mandate under the Natural Gas Act and consistent with the requirements of NEPA.

The EPA's October 26, 2015 letter to the Commission regarding the DEIS for the SMP Project raises a number of different issues, which Sabal Trail will address fully as soon as possible. In the interim, this response addresses some of the more high-level issues raised by EPA. In general, EPA's comments on the DEIS for the SMP Project do not accurately reflect the Commission's authority under Section 7 of the Natural Gas Act ("NGA")²⁸, nor how NEPA applies to the Commission's review under the NGA of applications for pipeline projects like the SMP Project.

A. The Commission must fulfill a specific mandate under the Natural Gas Act.

In its letter, EPA expressed concern that the Commission, as a result of precedent agreements and the Commission's process under the NGA for approving pipeline projects, had too narrowly defined the purpose and need of the SMP Project and had

²⁷ *Center for Biological Diversity v. Blank*, 933 F. Supp. 2d 125, 151 (D.D.C. 2013).

²⁸ 15 U.S.C. § 717f.

therefore inappropriately limited the identification of reasonable alternatives. It is not, however, within the Commission's authority under the NGA to reevaluate the specific receipt and delivery points presented in an application.²⁹ Under Section 7 of the NGA, the Commission reviews applications for the construction and operation of natural gas pipeline projects proposed by applicants to determine whether those projects satisfy the conditions for a certificate of public convenience and necessity.³⁰ Specifically, with certain limited exceptions not applicable here, the NGA requires that

a certificate *shall* be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of this chapter and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, *is or will be required by the present or future public convenience and necessity*.³¹

A key criterion that an applicant must demonstrate when presenting a proposed project to FERC is market need for the project. The Commission views precedent agreements, in which prospective customers commit to enter into an agreement for a specified quantity of capacity for the firm transportation of natural gas from specified receipt point(s) to specified delivery point(s) as of a specific date, as evidence of market need.³² Therefore, applications presented to the Commission reflect projects that have *defined capacity* and *defined receipt and delivery points*. These specific projects are the "proposals" for action presented to FERC for analysis under NEPA, and the project parameters define the underlying purpose of and need for the federal action – in this case, whether the proposed project satisfies the requirements for a FERC certificate and, if so, under what conditions.

B. NEPA does not allow the Commission to redefine a Project's underlying purpose and need.

EPA further expressed concern regarding whether the statement of purpose and need reflected in the DEIS impermissibly limited the range of reasonable alternatives to

²⁹ *Texas Eastern Transmission, LP*, 146 FERC ¶ 61,086, at P 46 (2014) (holding that the Commission "respond[s] when an application is presented . . . , and in each application the applicant determines the parameters of the project[, where t]he route presented represents the applicant's proposal to build transmission capacity to serve certain markets").

³⁰ *Id.* (holding that "[t]he Commission's certificate application process permits scrutiny of the proposed project").

³¹ 15 U.S.C. § 707f(e) (emphasis added).

³² Certificate Policy Statement, 88 FERC ¶ 61,227 at p. 61,744 (1999), *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

the proposal considered by the Commission. But the NGA certificate process is not a forum for the Commission to redefine the parameters of a project reflected in an application – the process is designed to allow the Commission to determine whether the proposed project satisfies the conditions for issuance of a certificate of public convenience and necessity.

NEPA vests agencies with significant discretion in defining a proposal's purpose and need, and courts accordingly will uphold "an agency's definition of objectives so long as the objectives that the agency chooses are reasonable[.]"³³ Courts have held that "[a]n agency cannot redefine the goals of the proposal that arouses the call for action; it must evaluate alternative ways of achieving its goals, shaped by the application at issue and by the function that the agency plays in the decision process."³⁴ Moreover, it is appropriate for an agency to consider the economic goals of the project's sponsor in conducting its environmental review.³⁵ "Indeed, it would be bizarre if the [Commission] were to ignore the purpose for which the applicant seeks a [project] and to substitute a purpose [the Commission] deems more suitable."³⁶

Moreover, "[a]n agency may fulfill its obligations under NEPA to conduct an independent evaluation of environmental impacts by reviewing and relying on the information, data and conclusions supplied by other federal or state agencies."³⁷ In fact, NEPA allows federal agencies to rely on the conclusions of "other agencies whose area of expertise is superior to their own."³⁸ In this case, each of the facilities to be served by the proposed SMP Project is a natural gas-fired electric generating unit that *the State of Florida has explicitly found to be needed for electrical energy*, and which has been issued a certification under Florida's Power Plant Siting Act ("PPSA").³⁹ That state-law process considers, among other factors, the State's need for the generating capacity (which is determined by the Florida Public Service Commission), the specific location of the facilities, and compliance with environmental laws (which is determined by the Florida Department of Environmental Protection). Both the Commission and the Army Corps of Engineers ("Corps") lack not only the legal authority, but also the necessary expertise, to second-guess the State of Florida Siting Board's determinations concerning the need for and siting of electric generating facilities in the State of Florida. The underlying purpose of and need for the SMP Project is to provide a firm supply of natural

³³ *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991).

³⁴ *Id.* at 199.

³⁵ *City of Grapevine, Texas v. Dep't of Transp.*, 17 F.3d 1502 (D.C. Cir. 1994).

³⁶ *Louisiana Wildlife Federation, Inc. v. York*, 761 F.2d 1044, 1048 (5th Cir. 1985).

³⁷ *Stop the Pipeline v. White*, 233 F. Supp. 2d 957, 967-968 (S.D. Ohio 2002).

³⁸ *Save the Bay, Inc. v. United States Corps of Engineers*, 601 F.2d 322, 325-326 (5th Cir. 1980).

³⁹ *In re: Petition for determination of need for Citrus County Combined Cycle Power Plant*, by Duke Energy, PSC-14-0557-FOF-OEI, Florida Public Service Commission (Oct. 10, 2014); *In re: Petition for prudence determination regarding new pipeline system by Florida Power & Light Company*, PCS-13-0505-PAA-EI, Florida Public Service Commission (Oct. 28, 2013).

gas to these state-certificated facilities. NEPA requires FERC and the Corps to consider the environmental impacts of the proposed action and reasonable alternatives to the proposal that would also satisfy the purpose and need, but NEPA does not authorize either agency to redefine the underlying purpose of and need for the proposal in the context of their NEPA review.

C. LNG import facilities are not reasonable alternatives to the SMP Project.

EPA also suggests that the Commission more thoroughly consider the possibility that the No Action Alternative would fulfill the purpose and need of the Project as a result of future LNG import terminals. For example, EPA suggests that the Port Dolphin LNG Deepwater Port Project and the Onshore Port Dolphin Pipeline⁴⁰ may meet the demand for natural gas without necessitating the construction of the SMP Project.

Under NEPA, federal agencies must consider reasonable alternatives to proposed actions. CEQ regulations require that an impact statement “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”⁴¹ When an agency evaluates alternatives to a proposed project, it “must answer three questions in order. First, what is the purpose of the proposed project? Second, given that purpose, what are the reasonable alternatives to the project? And third, to what extent should the agency explore each particular alternative?”⁴² Thus, to be considered a reasonable alternative under NEPA, the alternative must satisfy the underlying purpose of and need for the proposal.

Here, LNG import terminals were initially considered as possible alternatives in the DEIS, but the Commission rightly concluded that they are not *reasonable* alternatives to the proposed action. As a preliminary matter, even if an LNG import terminal were considered as part of an alternative that meets the purpose and need of providing gas to the state-certificated generating units, an additional pipeline system would still be necessary to transport natural gas from any such onshore or offshore terminal to the various delivery points served by the SMP Project. Thus, standing alone, an LNG import terminal, such as the Port Dolphin facility, would not satisfy the purpose and need of the SMP Project, and is therefore not a reasonable alternative to the proposed action.

In any event, EPA’s suggestion that the Port Dolphin import facility may fulfill the purpose and need is not feasible. Port Dolphin obtained its FERC and Maritime Administration (“MARAD”) authorizations to construct its offshore terminal and import pipeline in 2008, long before the conception of Sabal Trail. Port Dolphin’s project never materialized, and the project has now been abandoned by its proponents. In September of

⁴⁰ See *Port Dolphin Energy LLC*, 129 FERC ¶ 61,199 (2009) (authorizing the Port Dolphin Deepwater Port Project and the Onshore Port Dolphin Pipeline) *vacated by* 153 FERC ¶ 61,084 (2015).

⁴¹ 40 C.F.R. § 1502.13.

⁴² *Habitat Education Ctr., Inc. v. U.S. Forest Service*, 593 F. Supp. 2d, 1019, 1026-27 (E.D. Wis. 2009), *aff’d*, 609 F.3d 897 (7th Cir. 2010).

this year, Port Dolphin filed a motion with the FERC to vacate the authorization of the LNG import terminal,⁴³ which the Commission granted.⁴⁴ In that motion, Port Dolphin stated,

Since the inception of Port Dolphin's plan for the Deepwater Port, the natural gas industry has substantially changed. These changes resulted in the United States becoming an exporter rather than an importer of natural gas. . . . As a result of the catastrophic changes in circumstances, Port Dolphin is abandoning its plans for the Deepwater Port and all of the associated construction.⁴⁵

Similarly, other LNG import proposals in Florida, which were proposed to and authorized by the Commission over the past decade, have likewise all been abandoned, and their authorizations vacated on the basis that these projects were not being developed.⁴⁶

Moreover, reasonable alternatives under NEPA must be feasible and capable of being done. In its *Guidance Regarding NEPA Regulations*, the CEQ explained that "reasonable alternatives include those that are practical or feasible from the technical and economic standpoint."⁴⁷ "NEPA has never been interpreted to require examination of purely conjectural possibilities whose implementation is deemed remote and speculative."⁴⁸ To be reasonable, an alternative must be "practical or feasible from the technical and economic standpoint and using common sense[.]"⁴⁹

As the developers of Port Dolphin recognized, because the United States is transforming into a net exporter of natural gas, there is no market for commercial contracts to import LNG. The export of natural gas from the United States requires the approval of the U.S. Department of Energy and depending on the type of facility (e.g., LNG terminals) the FERC under Section 3 of the NGA or MARAD under the Deepwater Port Act. Sabal Trail is not seeking any such approvals, nor is it aware that any of its shippers have or will request such authorizations.

⁴³ *Port Dolphin Energy, LLC*, Motion to Vacate Certificate, CP07-191-000 (Sept. 25, 2015) ("Port Dolphin Motion to Vacate").

⁴⁴ *Port Dolphin Energy, LLC*, 153 FERC ¶ 61,084 (2015) (granting Port Dolphin's motion and vacating its certificate because "Port Dolphin no longer plans to construct and operate the previously approved facilities").

⁴⁵ Port Dolphin Motion to Vacate.

⁴⁶ See *Calypso U.S. Pipeline, LLC*, Order Vacating Certificate, Section 3 Authorization, and Presidential Permit, 137 FERC ¶ 61,098 (Oct. 28, 2011); *AES Ocean Express, LLC*, Order Vacating Section 7 Certificates, Section 3 Authorization, and Presidential Permit, 143 FERC ¶ 61,034 (April 11, 2013).

⁴⁷ *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263 at 34,267 (July 28, 1983)("Guidance").

⁴⁸ *Id.*

⁴⁹ *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026, 18,027 (1981).

Thus, there is no need for the Commission to undertake further economic analyses to demonstrate that projects abandoned by their proponents and whose authorizations have been vacated are not feasible. Those projects cannot be reasonable alternatives under NEPA.

D. The EPA comments related to the Clean Water Act will be appropriately reviewed and analyzed by the Corps during the Section 404 permit application process.

While EPA's comments are specifically directed at FERC as the lead federal agency under NEPA, several of its comments also appear to raise concerns with the Corps permit application review under Section 404 of the Clean Water Act ("CWA").

NEPA and the CWA have differing statutory requirements and objectives; however, there are also many similarities. The CWA regulations recognize that an "analysis of alternatives required for NEPA environmental documents will in most cases provide the information for the evaluation of alternatives under [the] guidelines."⁵⁰ Moreover, in accordance with the 2005 Memorandum of Understanding ("MOU") between FERC and the Corps, "the Corps [will] use the FERC record to the maximum extent practicable . . . so that the Corps can satisfy the legal requirements of the . . . CWA as efficiently and expeditiously as possible."⁵¹ As noted in a recent decision, "[a]lthough the Corps has an independent responsibility to enforce the Clean Water Act and so cannot just rubberstamp another agency's assurances concerning practicability and environmental harm, it isn't required to reinvent the wheel. If another agency has conducted a responsible analysis the Corps can rely on it in making its own decision."

Concerns raised by EPA under both NEPA and the CWA should be addressed as efficiently and thoroughly as possible without duplicating resources. To this end, Sabal Trail believes that several of the concerns raised regarding the Section 404 requirements can be remedied by additional CWA-specific analysis that will be provided to the Corps to satisfy the separate CWA requirements.

7. Sabal Trail has worked diligently with Southern Natural Gas Company ("Southern Natural") to reduce the amount of pipeline crossings and ensure safe pipeline crossings at all required crossing locations.

Sabal Trail has been in discussions with Southern Natural since September 2013 to evaluate and minimize the number of times Sabal Trail's pipeline would cross Southern Natural's pipeline. From the originally proposed 73 crossings, the companies have worked together to successfully reduce the number of crossings to 47 with no

⁵⁰ 40 C.F.R. § 230.10(a)(4).

⁵¹ Memorandum of Understanding between the United States Army Corps of Engineers and the Federal Energy Regulatory Commission Supplementing the Interagency Agreement on Early Coordination of Required Environmental and Historic Preservation Reviews conducted in Conjunction with the Issuance of Authorizations to Construct and Operate Interstate Natural Gas Pipelines Certificated by the Federal Energy Regulatory Commission, available at <https://www.ferc.gov/media/news-releases/2005/2005-3/07-13-05-mou.pdf>, at P 7 (June 30, 2005).

further reductions likely due largely to various impacts such changes would have on environmental, constructability and landowner matters. However, Sabal Trail has agreed to bore 42 of the 47 crossings to accommodate Southern Natural's requests. Sabal Trail, in coordination with Southern Natural, is finalizing the crossing techniques for the remaining five crossings based on the information recently provided by Southern Natural. In addition, Sabal Trail continues to work with Southern Natural to finalize the Parallel Construction Agreement.

8. The Commission has provided an appropriate comment period for the DEIS.

Comments were submitted suggesting that the Commission extend the comment period on the DEIS to allow for final submissions from other agencies.⁵² NEPA does not require the Commission to delay the issuance of the Final Environmental Impact Statement ("FEIS") until permits and certifications by other agencies have been issued. An agency's NEPA analysis is not rendered inadequate merely because certifications or permits from other agencies are still pending.⁵³

Nor is the Commission's reliance on the issuance of permits or certifications by other agencies an improper delegation of the Commission's NEPA obligations. CEQ regulations encourage lead agencies to coordinate with state and local agencies "to the fullest extent possible to reduce duplication between NEPA and State and local requirements."⁵⁴ Lead agencies are also encouraged to coordinate with other agencies regarding issues within the other agencies' areas of expertise.⁵⁵ The FEIS's conditional reliance on the Corps' as-yet unissued Section 404 permit does not render the environmental analysis inadequate. Nor does the permit's pending status justify or require the delay of the issuance of the FEIS. In fact, because the NEPA analysis in this instance supports both the issuance of the FERC certificate and the Corps permit, the Corps may not issue any Section 404 permit for the Sabal Trail Project prior to the issuance of the FEIS.

Similarly, the Commission need not delay issuance of the FEIS to allow for a pending ruling relating to state permits. To the extent that that the FEIS incorporates a

⁵² See, e.g., Comment of WWALS Watershed Coalition, Inc. on DEIS (submitted on Oct. 26, 2015); Comment of Spectrabusters, Inc. on DEIS (submitted on Oct. 26, 2015).

⁵³ See *Gunpowder Riverkeeper v. FERC*, No. 14-1062, 2015 WL 4450952, at *11 (D.C. Cir. July 21, 2015) (Rogers, J., concurring) (finding that the Commission's Environmental Assessment was sufficient even though it was completed before a pipeline received a Section 401 state certification under the CWA); see also *Davis Mountains Trans-Pecos Heritage Assoc. v. U.S. Air Force*, 249 F. Supp. 2d 763, 789 (N. D. Tex. 2003), *vacated*, 116 Fed. Appx. 3 (5th Cir. 2004) (vacated on substantive grounds, not timing concerns) (holding that an Air Force FEIS was not invalid because it was issued prior to the completion of an FAA study of the proposed action where the FAA was involved in the Air Force NEPA process starting as early as scoping meetings).

⁵⁴ 40 C.F.R. § 1506.2(b).

⁵⁵ 40 C.F.R. § 1501.6; see also *Public Citizen v. National Highway Traffic Safety Administration*, 848 F.2d 256, 267 (D.C. Cir. 1988) (the lead agency was "surely entitled to seek and cite EPA's expert judgment regarding air quality matters").

state permitting process into its materials, the uncertain status of the permit does not render the FEIS inadequate.⁵⁶

9. Sabal Trail has performed an in-depth study of areas with karst geology along the Project route.

FERC has requested that Sabal Trail conduct an in-depth study of specific areas with karst geology. Sabal Trail evaluated areas of known visible ground collapse and several select closed depressions immediately adjacent to the pipeline and above ground facilities, including proposed HDD river crossings. Areas selected for evaluation were the areas believed to have the highest potential for occurrence of sinkhole development or the potentially greatest negative impact to the pipeline or surrounding area. Geophysical and geotechnical testing was done at the compressor and metering stations, major HDD crossings, and selected and representative areas of interest deemed to require further investigation. In addition to these detailed complex site-specific investigations, LiDAR data was used to evaluate the entire route through karst areas. The LiDAR is a screening tool that was augmented with geophysical and geotechnical evaluations, as well as field surveys, which provide more detailed site specific data.

10. The DEIS adequately addresses the available mitigation measures and plans.

Certain commenters suggest that there were no wetland mitigation measures and plans provided in the DEIS. Sabal Trail notes that wetland mitigation measures completed to date include a number of reroutes to avoid or minimize adverse effects on wetlands, specifically the effort conducted with FDEP and Florida Audubon Society, Inc. in avoiding high quality wetlands in the Green Swamp. In addition, Sabal Trail has purchased wetland mitigation credits for the State of Florida as part of the Environmental Resource Permit process, and FDEP has acknowledged that replanting of disturbed wetland species in the temporary workspaces is not an effective means of restoration, and that the natural restoration is sufficient. The time required for the natural restoration has been included in the wetland credit calculations.

The Corps has not completed its analysis of the wetland delineations. The Savannah District conducted field surveys of delineated wetland boundaries on October 15-16, 2015 and the Mobile District field surveys are scheduled to be conducted on November 16-18, 2015. The final mitigation for the Corps regulated wetlands can only be completed once the individual districts complete their analyses of the information provided in the permit application packages. This is the normal process for Section 404 permitting with the Corps, which does not appear to have been recognized by the comment.

⁵⁶ See *Gunpowder Riverkeeper*, 2015 WL 4450952, at *11 (Rogers, J., concurring).

11. The DEIS properly defines the purpose and need of the SMP Project.

A number of commenters questioned the purpose and need of the Project. The Commission's long-standing policy is to rely on contracts with shippers to establish need.⁵⁷ Sabal Trail has entered into agreements for not less than 900,000 Dth/d and up to 1,000,000 Dth/d of Sabal Trail's total available capacity of 1,075,000 Dth/d, the details of which were provided in Sabal Trail's November 21, 2014 certificate application, in FERC Docket No. CP15-17-000.

Florida Power & Light Company's capacity commitments with Sabal Trail begin in 2017 and are to provide gas to existing gas-fired plants in operation today. Duke Energy Florida Inc.'s ("DEF") capacity commitments with Sabal Trail also begin in 2017 to provide transportation of natural gas to DEF's proposed new power plant to be located in Citrus County, Florida.

In addition to the agreements referenced above, Sabal Trail has had discussions with a number of potential shippers and end-users in Alabama and Georgia. Sabal Trail has agreed to install two side-taps on its mainline facilities to support and facilitate future growth and natural gas utilization for the member cities of the Municipal Gas Authority of Georgia.⁵⁸

Sincerely,

Sabal Trail Transmission, LLC
By: Sabal Trail Management, LLC,
Its Operator

/s/ Lisa A. Connolly
Lisa A. Connolly, General Manager
Rates and Certificates

Enclosure

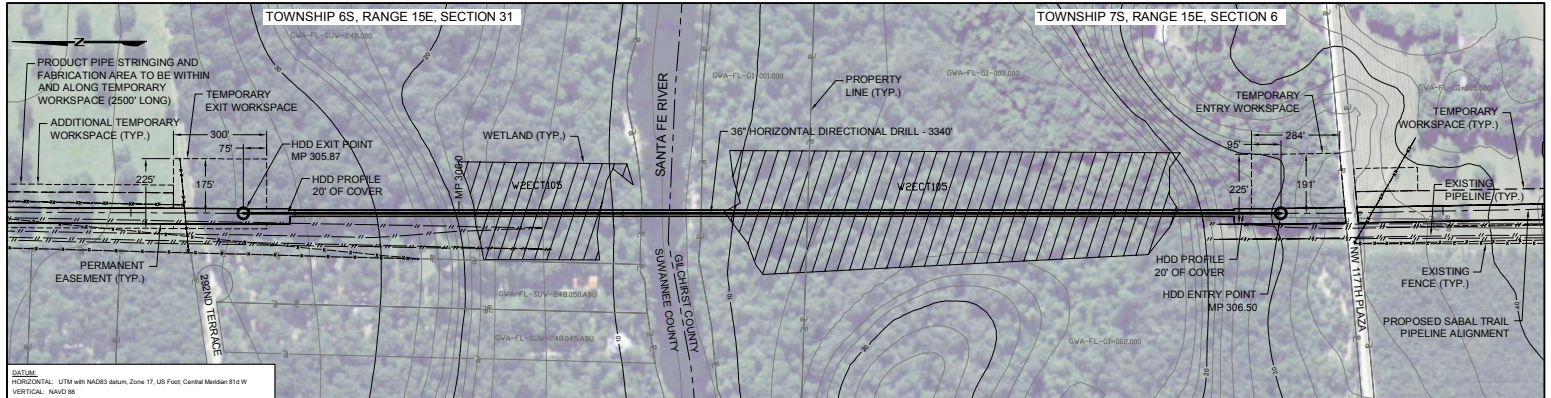
cc: John Peconom (FERC)
Jim Martin (FERC)
All Parties (CP15-17-000)

⁵⁷ Certificate Policy Statement, 88 FERC ¶ 61,227 at p. 61,744 (1999), *orders on clarification*, 90 FERC ¶ 61,128 and 92 FERC ¶ 61,094 (2000).

⁵⁸ See Supplemental Information Filing, Docket No. CP15-17-000 (Feb. 20, 2015) (providing details on the locations of the side-taps to facilitate future growth).

Attachment A

Suwanee River State Park HDD Site Plans and Profiles

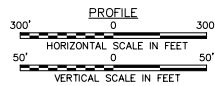


DISCLAIMER: ENGINEER'S SEAL IS ONLY FOR ERP PERMIT SUBMITTAL.
THIS DRAWING IS NOT INTENDED FOR CONSTRUCTION.

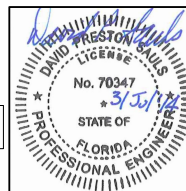
Notes:

1. The locations of all features shown are approximate.
2. This drawing is for information purposes. It is intended to assist in showing features discussed in an attached document. GeoEngineers, Inc. can not guarantee the accuracy and content of electronic files. The master file is stored by GeoEngineers, Inc. and will serve as the official record of this communication.
3. GeoEngineers, Inc. has not verified the field location of the existing utilities.

Reference: Shape and base files and ground surface survey provided by Gulf Interstate Engineering. Aerial photo and ground surface DEM (1/3 arc second) downloaded from <http://viewer.nationalmap.gov/viewer/>.



ISSUED FOR PERMITTING



LEGEND:

- Major Contour - 10' Interval
- Minor Contour - 2' Interval

DRAWN BY:	MWC	DATE:	04/29/14
CHECKED BY:	RDH	DATE:	04/29/14
SCALE:		W.O.:	
D	ISSUED FOR PERMITTING	07/31/14	
C	ISSUED FOR REVIEW	07/18/14	
B	ISSUED FOR REVIEW	07/07/14	
A	ISSUED FOR REVIEW	06/09/14	
REV	DESCRIPTION	DATE	



SABAL TRAIL TRANSMISSION
PROPOSED 36" PIPELINE
SITE PLAN AND PROFILE
MP 306.13 - SANTA FE RIVER HDD

SUWANNEE & GILCHRIST COUNTIES

FLORIDA

1657-PL-DG-30814

SHEET NO. REV D