

154 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Florida Southeast Connection, LLC	Docket Nos. CP14-554-000
Transcontinental Gas Pipe Line Company, LLC	CP15-16-000
Sabal Trail Transmission, LLC	CP15-17-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT

(Issued February 2, 2016)

1. On September 26, 2014, Florida Southeast Connection, LLC (Florida Southeast) filed an application in Docket No. CP14-554-000, pursuant to section 7(c) of the Natural Gas Act¹ (NGA) and Part 157 of the Commission's regulations,² for authorization to construct and operate the Florida Southeast Connection Project (Florida Southeast Project), a new 126-mile natural gas pipeline and related facilities.³ The Florida Southeast Project will provide up to 640,000 dekatherms per day (Dth/d) of firm transportation service. Florida Southeast also requests a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations, and a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open access transportation services.

2. On November 18, 2014, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP15-16-000 under sections 7(b) and 7(c) of the NGA and Part 157 of the Commission's regulations, requesting authorization to

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Pt. 157 (2015).

³ Commission staff's draft and final Environmental Impact Statement for this proceeding refer to Florida Southeast as "FSC" and the Florida Southeast Project as "FSC Project."

construct and operate the Hillabee Expansion Project and abandon the capacity on the Hillabee Expansion Project by lease to Sabal Trail Transmission, LLC (Sabal Trail). The Hillabee Expansion Project will include approximately 43.5 miles of pipeline looping facilities and 88,500 horsepower (hp) of compression at one new and three existing compressor stations in Alabama. Sabal Trail will utilize the project capacity to provide up to 1,131,730 Dth/d of firm transportation service.

3. On November 21, 2014, Sabal Trail filed an application in Docket No. CP15-17-000 requesting a certificate of public convenience and necessity under section 7(c) of the NGA and Part 157 of the Commission's regulations authorizing Sabal Trail to construct and operate the Sabal Trail Project. The Sabal Trail Project will include approximately 515 miles of new pipeline, six compressor stations, and six meter stations in Alabama, Georgia, and Florida to provide up to 1,075,000 Dth/d of firm transportation service. Sabal Trail also requests authorization to lease the capacity created by the Hillabee Expansion Project; a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations for Sabal Trail to perform certain routine construction, operation, and abandonment activities; and a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Sabal Trail to provide open access transportation services.

4. These applications propose three separate but connected natural gas transmission pipeline projects. The upstream project, Transco's Hillabee Expansion Project, will create capacity for Sabal Trail's customers to access upstream natural gas supplies. The middle project, the Sabal Trail Project, will extend from an interconnect with Transco's system at the Tallapoosa Interconnection in Tallapoosa County, Alabama, to an interconnect with the downstream project, the Florida Southeast Project, near Intercession City, Florida. From there, the Florida Southeast Project will extend to a delivery point with Florida Power & Light Company (Florida Power & Light) at its Martin Clean Energy Center near Indiantown, Florida. In total, the projects will involve the construction and operation of approximately 685.5 miles of natural gas transmission pipeline and 339,400 hp of compression to provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States.

5. For the reasons stated below, we grant the requested authorizations, subject to conditions.

I. Background and Proposals

6. Transco is a natural gas pipeline company with a transmission system extending from Texas, Louisiana, and the offshore Gulf of Mexico area through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

7. Sabal Trail is a limited liability company organized and existing under the laws of the State of Delaware. Sabal Trail, a joint venture owned by Spectra Energy Partners, LP (Spectra), a newly formed NextEra Energy, Inc. (NextEra) subsidiary named US Southeastern Gas Infrastructure, LLC, and Duke Energy, is a newly formed company and currently does not own any existing pipeline facilities and is not engaged in any natural gas operations. Upon commencing the operations proposed in its application, Sabal Trail will become a natural gas company within the meaning of section 2(6) of the NGA⁴ and will be subject to the Commission's jurisdiction. Sabal Trail states that Sabal Trail Management, LLC will operate the new proposed pipeline.

8. Florida Southeast is a limited liability company organized and existing under the laws of the State of Delaware. Florida Southeast, a wholly owned subsidiary of NextEra, is a newly formed company and currently does not own any existing pipeline facilities and is not engaged in any natural gas operations. Upon commencing the operations proposed in its application, Florida Southeast will become a natural gas company within the meaning of section 2(6) of the NGA⁵ and will be subject to the Commission's jurisdiction.

9. Florida Southeast and Sabal Trail are outgrowths of Florida Power & Light's request for proposals (RFP) announced in December 2012. Florida Power & Light initiated the RFP in response to a 2009 order issued by the Florida Public Service Commission, directing Florida Power & Light to hold an RFP to seek proposals for a new pipeline to accommodate Florida's long-term natural gas needs.⁶

10. Florida Power & Light's RFP requested proposals for an upstream pipeline extending from Transco's Station 85 to central Florida where a new Central Florida Hub would be created to interconnect the new upstream pipeline to the existing Gulfstream Natural Gas System, L.L.C. (Gulfstream) and Florida Gas Transmission Company, LLC (Florida Gas Transmission) pipelines, as well as to a new downstream pipeline from the Central Florida Hub to Florida Power & Light's Martin Clean Energy Center. Of the entities showing interest in constructing a new pipeline, Florida Power & Light selected Sabal Trail to construct the upstream pipeline and Florida Southeast to construct the downstream pipeline.

⁴ 15 U.S.C. § 717a(6) (2012).

⁵ 15 U.S.C. § 717a(6) (2012).

⁶ FPSC Order No. PSC-09-0715-FOF-EI, In re: Petition to determine need for Florida EnergySecure Pipeline by Florida Power & Light Company at 5, FPSC Docket No. 090172-EI (issued October 28, 2009).

A. Hillabee Expansion Project

11. Transco requests authority to construct and operate pipeline looping and compression facilities on its existing mainline to provide a total of 1,131,730 Dth/d of incremental firm transportation service. Transco proposes to lease the capacity to Sabal Trail. Because Sabal Trail seeks to lease the new capacity incrementally over three phases, Transco will construct the project facilities in three phases. Transco estimates that in total the proposed facilities will cost approximately \$459,750,346.

12. In Phase I, Transco will conduct the following activities on its mainline system in order to lease capacity to Sabal Trail sufficient for Sabal Trail to provide 818,410 Dth/day of firm transportation service for its shippers commencing May 1, 2017:

- construct approximately 5.3 miles of 42-inch-diameter pipeline loop from mile post (MP) 911.12 to MP 916.455 in Coosa County, Alabama (Proctor Creek Loop);
- construct approximately 2.6 miles of 42-inch-diameter pipeline loop from MP 924.27 to MP 926.85 in Coosa County, Alabama (Hissop Loop);
- construct approximately 7.5 miles of 42-inch-diameter pipeline loop from MP 941.83 to MP 949.38 in Tallapoosa County, Alabama (Alexander City Loop);
- construct approximately 4.7 miles of 48-inch-diameter pipeline loop from MP 885.95 to MP 890.55 in Autauga and Chilton Counties, Alabama (Billingsley Loop);
- install a new 16,000 hp gas turbine driven compressor unit and rewheel two existing compressors at the existing Compressor Station No. 95 in Dallas County, Alabama (Compressor Station 95);
- install a new 20,500 hp gas turbine driven compressor unit at Transco's existing Compressor Station No. 105 in Coosa County, Alabama (Compressor Station 105);
- construct a new compressor station at MP 782.80 in Choctaw County, Alabama, consisting of two 16,000 hp (ISO) Solar Mars 100 gas turbine driven compressor units (Compressor Station 84);
- install three pipeline taps connecting to the Sabal Trail Meter Station; and
- construct related appurtenant underground and aboveground facilities.

13. In Phase II, Transco will conduct the following activities on its mainline system in order to lease Sabal Trail capacity sufficient to provide an additional 206,660 Dth/day of incremental firm transportation service (total of 1,025,070 Dth/d), commencing May 1, 2020:

- construct approximately 6.7 miles of 42-inch-diameter pipeline loop from MP 784.68 to MP 791.40 in Choctaw County, Alabama (Rock Springs Loop);
- construct approximately 3.9 miles of 42-inch-diameter pipeline loop from MP 905.72 to MP 909.65 in Chilton County, Alabama (Verbena Loop);
- install a new 16,000 hp gas turbine driven compressor unit and rewheel three existing compressors at the existing Compressor Station 95 in Dallas County, Alabama;
- uprate an existing electric motor driven compressor unit from 42,000 hp to 46,000 hp at Transco's existing Compressor Station No. 100 in Chilton County, Alabama (Compressor Station 100); and
- construct related appurtenant underground and aboveground facilities.

14. In Phase III, Transco will conduct the following activities on its mainline system in order to lease Sabal Trail capacity sufficient to provide an additional 106,660 Dth/day of incremental firm transportation service for its shippers (total of 1,131,730 Dth/d), commencing May 1, 2021:

- construct approximately 5.3 miles of 42-inch-diameter pipeline loop from MP 791.40 to MP 796.70 in Choctaw County, Alabama (Butler Loop);
- construct approximately 7.5 miles of 42-inch-diameter pipeline loop from MP 890.67 to MP 898.15 in Autauga and Chilton Counties, Alabama (Autauga Loop);
- rewheel an existing compressor at the existing Compressor Station 100 in Chilton County, Alabama; and
- construct related appurtenant underground and aboveground facilities.

B. Sabal Trail Project

1. Facilities and Service

15. Sabal Trail states that its proposed Sabal Trail Project will enable it to provide up to 1,075,000 Dth/d of firm transportation service. Sabal Trail states it will transport gas

from receipt points upstream of Transco's Compressor Station 85 to a new market interconnection hub, known as the Central Florida Hub, in Osceola County, Florida, utilizing capacity on its Sabal Trail system and leased capacity from Transco.

16. Sabal Trail proposes to construct, install, and operate approximately 516.2 miles of natural gas pipeline, consisting of mainline transmission pipeline and two lateral pipelines. The 36-inch-diameter mainline transmission pipeline will extend roughly 481.6 miles from the Tallapoosa Interconnection in Tallapoosa County, Alabama, through Georgia, and terminate at the Central Florida Hub in Osceola County, Florida. There, the Sabal Trail Project will interconnect with Florida Gas Transmission's and Gulfstream's existing systems, and Florida Southeast's new system.

17. Gulfstream and Florida Southeast's interconnects will be located near Sabal Trail's proposed Reunion Compressor Station in Osceola County. Florida Gas Transmission's interconnect will be located at the end of the new 13.1-mile-long, 36-inch-diameter lateral (Hunter Creek Line), extending from the proposed Reunion Compressor Station to Florida Gas Transmission's system in Orange County, Florida. All interconnections will be bidirectional.

18. Sabal Trail will also construct a 21.5-mile-long, 24-inch-diameter lateral pipeline (Citrus County Line) extending from a point in Marion County, Florida, to Duke Energy Florida's proposed electric generation plant in Citrus County, Florida.

19. In addition, Sabal Trail proposes to construct five compressor stations in Tallapoosa County, Alabama; Dougherty County, Georgia; and Suwannee, Marion, and Osceola Counties, Florida. Sabal Trail will also construct pig launchers/receivers, mainline valves, and six meter and regulating stations. Sabal Trail estimates that the proposed facilities will cost approximately \$3,220,241,225.

20. Sabal Trail will construct the proposed facilities over three phases. In Phase I, Sabal Trail will construct the following facilities to provide an initial design capacity sufficient to provide 830,000 Dth/d of firm transportation service with a proposed in service date of May 1, 2017:

- approximately 474 miles of 36-inch-diameter mainline pipeline extending from the Tallapoosa Interconnection to an interconnection with Florida Southeast's proposed pipeline in Osceola County, Florida;
- the Hunter Creek Line, approximately 13 miles of 36-inch-diameter pipeline extending from the proposed Reunion Compressor Station at MP 474.4 to Florida Gas Transmission's 24-inch-diameter mainline in the Hunters Creek area of Florida;

- the Citrus County Line, approximately 21 miles of 24-inch-diameter pipeline extending from the proposed Dunnellon Compressor Station at MP 389.8 to an interconnection with Duke Energy Florida's proposed electric generation facility in Citrus County, Florida;
- the Alexander City Compressor Station at MP 0.00 near Alexander City in Tallapoosa County, Alabama, with a total of approximately 71,000 hp of gas turbine driven compression;
- the Hildreth Compressor Station at MP 296.3 near Lake City in Suwannee County, Florida, with a total of approximately 20,500 hp of gas turbine driven compression;
- the Reunion Compressor Station at MP 474.4 near Intercession City in Osceola County, Florida, with a total of approximately 36,400 hp of gas turbine driven compression;
- the Transco Hillabee Meter Station in Tallapoosa County, Alabama, at mainline MP 0.0;
- the Florida Gas Transmission Suwannee Meter Station in Suwannee County, Florida, at mainline MP 299.7;
- the Gulfstream Meter Station in Osceola County, Florida, at mainline MP 474.4;
- the Florida Southeast Meter Station in Osceola County, Florida, at mainline MP 474.4;
- the Florida Gas Transmission Meter Station in Orange County, Florida, at MP 13.1 on the Hunter Creek Line; and
- the Duke Energy Florida Citrus County Meter Station in Citrus County, Florida, at MP 21.4 on the Citrus County Line.

21. In Phase II, Sabal Trail will construct the following facilities to provide an additional 169,000 Dth/d of firm transportation service, for a total of 999,000 Dth/d, with a proposed in service date of May 1, 2020:

- the Albany Compressor Station at MP 159.3 near Albany in Dougherty County, Georgia, with a total of approximately 20,500 hp of gas turbine driven compression; and

- the Dunnellon Compressor Station at MP 389.8 near Ocala in Marion County, Florida, with a total of approximately 20,500 hp of gas turbine driven compression.

22. In Phase III, Sabal Trail will construct the following facilities to provide an additional 76,000 Dth/d of transportation service, for a total of 1,075,000 Dth/d, with a proposed in service date of May 1, 2021:

- 20,500 hp of additional gas turbine driven compression at the Albany Compressor Station, for a station total of approximately 41,000 hp of gas turbine driven compression; and
- 20,500 hp of additional gas turbine driven compression at the Hildreth Compressor Station, for a station total of approximately 41,000 hp of gas turbine driven compression.

23. On June 26, 2013, Sabal Trail signed a precedent agreement with Florida Power & Light to provide 600,000 Dth/d of firm transportation service, with 400,000 Dth/d to be provided during Phase I increasing to 600,000 Dth/d in Phase II, for a 25-year primary term. Florida Power & Light's precedent agreement will automatically extend for three successive periods of five years unless Florida Power provides written notice.⁷

24. On July 8, 2013, Sabal Trail signed a 25-year term precedent agreement with Duke Energy Florida for a total of 400,000 Dth/d of firm transportation service, of which 300,000 Dth/d will be provided during Phase I and the additional 100,000 will be provided thereafter.⁸

25. In addition, Sabal Trail held an open season from August 26, 2013, through September 25, 2013, to solicit requests for firm transportation service. Sabal Trail states it has had discussions with potential shippers and end-users in Alabama and Georgia, and

⁷ In addition to the 600,000 Dth/d of firm transportation service that Florida Power & Light committed to, Florida Power & Light has the right to elect up to an additional 200,000 Dth/d of firm transportation service on or before January 1, 2020, and an additional 200,000 Dth/d of firm transportation service on or before January 1, 2024. *See* Sabal Trail Application, Exhibit I, Precedent Agreement at 14.

⁸ Duke Energy's precedent agreement permits Duke Energy to select a date between May 1, 2018, and May 1, 2021, on which the incremental 100,000 Dth/d of firm transportation service will commence. *See* Sabal Trail Application at Exhibit I, Precedent Agreement with Duke Energy, page 8.

has agreed to install two side-taps on its mainline system in Dougherty and Colquitt Counties, Georgia. Sabal Trail, however, did not receive any bids during its open season. In sum, Sabal Trail will provide 700,000 Dth/d of firm transportation service in Phase I and 1,000,000 Dth/d of firm transportation service in Phase II, leaving 75,000 Dth/d of transportation service still available.

26. Sabal Trail proposes to offer cost-based firm transportation service (Rate Schedule FTS), interruptible transportation service (Rate Schedule ITS and Rate Schedule HUB), and park and loan service (Rate Schedule PAL). Sabal Trail states that these services will be provided on an open access, non-discriminatory basis pursuant to Part 284 of the Commission's regulations and the terms and conditions of its proposed FERC Tariff. Sabal Trail states that Florida Power & Light and Duke Energy Florida have agreed to a negotiated rate for their transportation service.

2. Blanket Certificates

27. Sabal Trail requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.⁹

28. Sabal Trail requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing Sabal Trail to provide transportation service to customers requesting and qualifying for transportation service under its proposed FERC Gas Tariff, with pre-granted abandonment authorization.¹⁰

C. Florida Southeast Connection Project

1. Facilities and Service

29. The Florida Southeast Project will enable Florida Southeast to provide 640,000 Dth/d of firm transportation service. Florida Southeast proposes to construct, install, operate, and maintain the following facilities:

⁹ 18 C.F.R. § 157.204 (2015).

¹⁰ 18 C.F.R. § 284.221 (2015).

- approximately 77 miles of 36-inch-diameter pipeline extending from an interconnect with Sabal Trail at the Central Florida Hub in Osceola County, Florida, to Okeechobee, Florida;
- approximately 49 miles of 30-inch-diameter pipeline extending from Okeechobee County, Florida, to an interconnect with the Martin Clean Energy Center in Martin County, Florida;
- a meter station at the Martin Clean Energy Center; and
- pig launching and receiving facilities, mainline valves, and other appurtenant pipeline facilities.

30. Florida Southeast estimates that the proposed facilities will cost approximately \$537,260,000.

31. Florida Southeast entered into a binding precedent agreement with Florida Power & Light for 400,000 Dth/d of firm transportation service beginning May 1, 2017, with Florida Power & Light having the option to increase to 600,000 Dth/d beginning May 1, 2020, for a 25-year primary contract term. Florida Southeast asserts that these commitments represent approximately 94 percent of the Florida Southeast Project's total project design capacity. Florida Southeast also held an open season from August 26, 2013, to September 25, 2013. Florida Southeast, however, did not receive other bids.

32. Florida Southeast proposes to offer cost-based firm transportation service (Rate Schedule FT), interruptible transportation service (Rate Schedule IT), and park and loan service (Rate Schedule PAL). Florida Southeast states that these services will be provided on an open access, non-discriminatory basis pursuant to Part 284 of the Commission's regulations and the terms and conditions of its proposed FERC Tariff. Florida Southeast states it and Florida Power have agreed to a negotiated rate for the contracted transportation service.

2. Blanket Certificates

33. Florida Southeast requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.

34. Florida Southeast requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing Florida Southeast to provide transportation service to customers requesting and qualifying for transportation service under its FERC Gas Tariff, with pre-granted abandonment authorization.

D. Sabal Trail's Lease of Capacity on Transco's System

35. Transco and Sabal Trail have entered into a Capacity Lease Agreement that provides that Transco will construct and operate the Hillabee Expansion Project facilities and abandon by lease to Sabal Trail the incremental capacity associated with the proposed facilities. In turn, Sabal Trail proposes to acquire that capacity to provide transportation service under its open access tariff. As noted above, Sabal Trail will lease capacity incrementally over three phases. In Phase I, Sabal Trail will lease capacity sufficient to provide 818,410 Dth/d of firm transportation service effective May 1, 2017; in Phase II, capacity sufficient to provide 1,025,000 Dth/d of firm transportation service effective May 1, 2020; and in Phase III, capacity sufficient to provide 1,131,730 Dth/d of firm transportation service effective May 1, 2021.

36. As proposed, the leased capacity would extend from three receipt points¹¹ to the proposed interconnection between Transco and Sabal Trail in Tallapoosa County, Alabama. Also, as proposed, Sabal Trail and its shippers would not have rights to receive or deliver gas from any other points on Transco's system. Further, Sabal Trail and its shippers would not have rights to backhaul or reverse flow gas from east to west on the Transco mainline. As discussed below, we find such provisions to be anticompetitive and require the Capacity Lease Agreement to be revised to remove them in accordance with Commission policy.

37. The Capacity Lease Agreement provides for an initial 25-year primary term and will automatically extend for three successive 5-year terms unless Sabal Trail provides prior written notice to terminate the agreement. Thereafter, the Capacity Lease Agreement will extend year to year until terminated by Transco or Sabal Trail.

38. During the primary term, Sabal Trail will pay a monthly lease charge, which is the leased capacity each day during the month multiplied by the applicable rate per dekatherm for each phase. Transco states that the revenues under the Capacity Lease Agreement are less than the Hillabee Expansion Project's annual cost of service. However, Transco states that it will not reflect in its system rates any costs or revenues associated with the leased capacity, and that it will separately account for the costs and revenues associated with the leased capacity and segregate those costs and revenues from

¹¹ The three receipt points are: (1) Transco's existing Zone 4 point of interconnection between Transco's mainline and the Mobile Bay Lateral (generally referred to as Transco's Zone 4 Pool); (2) the point of interconnection between Transco and Midcontinent Express Pipeline LLC's system; and (3) the point of interconnection between Transco and Gulf South Pipeline Company, LLC's system. All three receipt points are located at MP 784.66 in Choctaw County, Alabama.

its other system costs.¹² Further, Transco explains that the lease payment is no higher than a maximum recourse rate would be if Transco were to provide transportation service through the project facilities on a stand-alone basis.

II. Procedural

A. Notice, Interventions, Protests, and Answers

39. Notice of Transco's application in Docket No. CP15-16-000 was published in the *Federal Register* on December 11, 2014 (79 Fed. Reg. 73,571). Notice of Sabal Trail's application in Docket No. CP15-17-000 was published in the *Federal Register* on December 11, 2014 (79 Fed. Reg. 73,570). Notice of Florida Southeast's application in Docket No. CP14-554-000 was published in the *Federal Register* on October 24, 2014 (79 Fed. Reg. 63,613).

40. In each docket, numerous timely and late motions to intervene were filed.¹³ Timely, unopposed motions to intervene are granted automatically pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.¹⁴

41. Florida Southeast opposes all late motions to intervene in its proceeding, Docket No. CP14-554-000, other than the motion by Pivotal Utility Holdings, Inc.¹⁵ Florida Southeast argues that the Commission should deny these late motions to intervene because those seeking intervention demonstrate no genuine interest in the Florida Southeast Project, are not located within the project's vicinity, and do not explain how the project affects them. Florida Southeast asserts that the late intervenors are concerned with the Sabal Trail Project, not the Florida Southeast Project. Florida Southeast adds

¹² Transco Application at 11.

¹³ Commenters state that their interventions are timely up until the comment period of the draft EIS ends. Specifically, our regulations provide that interventions are timely if filed during the comment period on the notice of the application or if filed on environmental grounds during the comment period of the draft EIS. 18 C.F.R. §§ 157.10, 380.15, 214(c) (2015). Thus, if interventions are filed in between these periods, the intervention is late. *See Alcoa Power Generating, Inc.*, 144 FERC ¶ 61,218, at n.4 (2013). As we note below, however, the Commission has a liberal policy of accepting late interventions in natural gas certificate proceedings.

¹⁴ 18 C.F.R. § 385.214(c) (2015).

¹⁵ Florida Southeast January 7, 2015 Answer at n.11.

that the late interventions fail to conform to the Commission's standard for late interventions,¹⁶ and that allowing late intervention at this point in the proceeding would create prejudice. Specifically, Florida Southeast asserts that the late intervenors do not offer nor have an excuse, for filing late, arguing that, as active participants in the Sabal Trail Project, the late intervenors had notice that the Commission combined the environmental review of the three projects.

42. In considering late intervention requests in natural gas certificate proceedings, the Commission typically finds that, at the early stage of the proceeding, granting late intervention will neither disrupt the proceeding nor prejudice the interests of any other party. Thus, the Commission liberally allows late interventions at the early stages of such proceedings, but is more restrictive as a proceeding nears its conclusion.¹⁷

43. While many late intervenors in Docket No. CP14-554-000 direct their comments to the Sabal Trail Project, several late intervenors note that the projects are related and request that the Commission consolidate the proceedings. Thus, we find that all individuals filing late motions to intervene have a demonstrable interest in the respective proceedings. Granting the late interventions at this stage of the proceedings will not cause undue delay or disrupt or otherwise prejudice the applicant or other parties.¹⁸ Accordingly, the Commission grants the late motions to intervene in each proceeding. All parties to each proceeding are listed in Appendix A of this order.

44. In addition to receiving interventions, we received numerous comments, both in support of the proposed projects and raising concerns on environmental and safety matters, including air quality, noise, and property value impacts. Sabal Trail filed multiple answers to the protests, comments, and other pleadings filed in response to this application.¹⁹ Although the Commission's Rules of Practice and Procedure generally do

¹⁶ 18 C.F.R. § 385.214(d) (2015).

¹⁷ *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 15 (2012); *Cameron LNG, LLC*, 118 FERC ¶ 61,019, at PP 21-22 (2007).

¹⁸ 18 C.F.R. § 385.214(d) (2015).

¹⁹ Sabal Trail filed answers in Docket No. CP15-17-000 on January 9, April 1, April 20, May 22, June 15, June 16, June 29, July 8, July 17, July 22, and August 14, 2015. Sabal Trail's answers responded to comments by Kiokee-Flint et al.; Southern Natural Gas Company, L.L.C. (Southern Natural); G.B.A. Associates and Gregory K. Isaacs (G.B.A. Associates); the City of Albany, Georgia; and various landowners.

not permit answers to protests, ²⁰ we will accept Sabal Trail's answers because they clarify the concerns raised and provide information that has assisted in our decision making.

45. The environmental and safety concerns raised in this proceeding are addressed in the final Environmental Impact Statement (final EIS), as well as the environmental section of this order.

B. Requests for a Hearing or Technical Conference, Consolidation, and Procedural Schedule for Project Review

46. On December 23, 2014, the Kiokee-Flint Group and its individual members (Kiokee-Flint), the Georgia Chapter of the Sierra Club (Sierra Club), Flint Riverkeeper, and Chattahoochee Riverkeeper (collectively, Kiokee-Flint et al.)²¹ filed a motion requesting an evidentiary, trial-type hearing, the formal consolidation of the certificate proceedings, and a new procedural schedule for review of the three certificate proceedings.²² Florida Southeast and Sabal Trail each filed an answer to Kiokee-Flint et al.'s motions on January 7, and January 9, 2015, respectively.

1. Formal Evidentiary Hearing and Technical Conference

47. Intervenors request an evidentiary, trial-type hearing to address disputed material facts regarding the need for the projects, Sabal Trail's requested return on equity, subsidization of the projects by captive ratepayers, the projects' environmental and safety impacts, and proposed alternatives. In addition, AZ Ocala Ranch LLC (AZ Ocala), a residential developer, recommended that the Commission hold a technical conference in Docket No. CP15-17-000 on Sabal Trail's proposed pipeline route adjustments.²³

²⁰ 18 C.F.R. § 385.213(a)(2) (2015).

²¹ Kiokee-Flint, Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper filed separate motions to intervene and have filed separate and joint pleadings. Where these parties file joint pleadings, we refer to them as Kiokee-Flint et al.

²² Kiokee-Flint et al. December 23, 2015 Motion in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000.

²³ AZ Ocala July 1, 2015 Comments at 3. Southern Natural also requested a technical conference in Docket No. CP15-17-000 to determine the necessity of the number of Sabal Trail Project's proposed crossings of Southern Natural's pipeline.

48. An evidentiary, trial-type hearing and technical conference are necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.²⁴ Neither Kiokee-Flint *et al.* nor AZ Ocala has raised a material issue of fact that the Commission cannot resolve on the basis of the written record. As demonstrated by the discussion below, the existing written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form.²⁵

2. Consolidation

49. Intervenors request that the Commission should consolidate these three applications because the projects are dependent on one another. Kiokee-Flint *et al.* asserts that without consolidation the cumulative environmental impacts of the projects will be downplayed, the rate impacts obfuscated, and the potential to export gas concealed. Kiokee-Flint *et al.* adds that not consolidating the dockets hampers public participation because members of the public do not know they should intervene in all three dockets.

50. Sabal Trail and Florida Southeast argue that formal consolidation is unwarranted. While both agree that the three projects are related, they argue that there are no common issues of law or fact that cannot be adequately addressed in the individual dockets. Sabal Trail and Florida Southeast state that the projects are submitted by three different entities and have different routes, rates, pipeline sizes, tariffs, and purposes. Moreover, they state that the Commission is already evaluating the projects within the same environmental impact statement as connected actions. In addition, Sabal Trail adds that consolidation is not necessary to understand the potential export of the transported natural gas because there is no proposal to connect facilities to an LNG export terminal.

51. Although the separate applications filed by Sabal Trail, Transco, and Florida Southeast in the three proceedings raise similar issues, the existing records in the three dockets are sufficient for us to consider and address all three contemporaneously.

Southern Natural's recent filing on October 26, 2015, however, indicates that it no longer is concerned with the number of pipeline crossings.

²⁴ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

²⁵ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

Therefore, consistent with prior orders, we find no need for formal consolidation.²⁶ Further, we see no purpose in consolidating the three certificate proceedings in view of the fact that we address all issues in each proceeding in this order without need for an evidentiary, trial-type hearing.²⁷

52. Our decision to not formally consolidate the dockets will not prejudice landowners as Kiokee-Flint *et al.* contends. Landowners have had ample notice that the three projects are connected. On February 18, 2014, Commission staff issued a notice stating its intent to prepare an environmental impact statement for all three projects. Landowners had two opportunities to timely intervene in the proceeding: during the initial comment period and during the comment period for the draft EIS. As discussed above, the Commission has also accepted late interventions. In any event, landowners' interests are well represented in the proceeding; over seventy interventions were filed in each docket, many of them by landowners. In addition, landowners can and have participated in the proceeding without formally intervening. Commission staff considered hundreds of comments from landowners throughout the proceeding, without regard to whether the commentors had also submitted motions to intervene.

3. Schedule

53. Kiokee-Flint *et al.* requests that the Commission establish a procedural schedule for the project, including deadlines by which the parties may submit additional comments and expert testimony. Commission staff issued initial and revised procedural schedules for the draft and final EIS. No other procedural schedule is required. Moreover, the draft and final EIS, as well as this order, address timely and late comments to the extent possible.²⁸

²⁶ *Williams Natural Gas Co.*, 67 FERC ¶ 61,252, at 61,826 (1994).

²⁷ *See, e.g., Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008), *order denying reh'g and granting clarification*, 127 FERC ¶ 61,164 (2009).

²⁸ Intervenors also requested that the Commission extend the comment period on the projects' applications by 90 days. Commission staff considered late comments throughout the proceeding to the extent possible.

C. Completeness of Application

54. Kiokee-Flint et al. objects to Sabal Trail's "abbreviated application" and asks that the Commission require Sabal Trail to file a "full application."²⁹ Kiokee-Flint et al. states that an abbreviated application is inappropriate given the project's substantial impacts on landowners and the environment.

55. The Commission's regulations provide that a company may file an abbreviated application and omit certain exhibits when those exhibits are not necessary to fully disclose the nature of the proposal.³⁰ The applicant must only file information necessary to fully explain the proposed project, its economic justification, and its effect on the applicant's operations and on the public proposed to be served.³¹ Sabal Trail omitted Exhibit H, which provides for information on total gas supply, specifically a description of the production areas accessible that contain existing or potential supplies for the proposed project.

56. Sabal Trail provided sufficient information relevant to each exhibit to fully disclose the nature of the project, and therefore demonstrated to Commission staff that it met the requirements set forth in the Commission's regulations. There is no question that there is sufficient natural gas accessible through Transco and its interconnected upstream pipelines to supply the proposed projects. Information on total gas supply is not necessary to complete our public convenience and necessity analysis. Moreover, since the advent of open access, natural gas shippers, not natural gas pipelines, have been responsible for obtaining natural gas supplies, and therefore, Exhibit H is not needed to determine whether adequate natural gas is available to supply the proposed project.

D. Request for Fast Tracking and Alternative Dispute Resolution

57. G.B.A. Associates and Gregory K. Isaacs (G.B.A. Associates), a commercial developer and an investor, request to use a fast tracking processing and Alternative Dispute Resolution pursuant to Rule 206 of the Commission's Rules of Practice and Procedure in Docket No. CP15-17-000.³² Specifically, they seek to resolve a

²⁹ Kiokee-Flint et al. December 22, 2014 Comments in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 25-26 (Accession No. 20141222-5162) (Kiokee-Flint et al. December 22, 2014 Filing).

³⁰ 18 C.F.R. § 157.7 (2015).

³¹ *Id.*

³² G.B.A. Associates April 16, 2015 Filing in Docket No. CP15-17-000 at 4.

disagreement regarding Sabal Trail's rerouting its mainline pipeline from colocating with Southern Natural Gas Company, L.L.C. (Southern Natural) to being located on their property.

58. The Commission has specific regulations applicable to complaint proceedings, including a fast tracking process. The Commission also has an Alternative Dispute Resolution process. Complaints are covered under Rule 206 of the Commission's Rules of Practice and Procedure, and the Commission's Alternative Dispute Resolution process is covered under Rule 604.

59. Under Rule 206, entities seeking to file formal complaints must allege a contravention or violation of a statute, rule, or order, or must allege any other wrong over which the Commission may have jurisdiction. In addition, entities seeking to file formal complaints must comply with the relevant regulations that specify the contents of a complaint.³³ G.B.A. Associates fails to satisfy a large number of these requirements. G.B.A. Associates does not allege any contravention or violation of a statute, rule, or order, or any other alleged wrong, but merely notes its disagreement regarding Sabal Trail rerouting its pipeline. In addition, G.B.A. Associates fails to set forth the business, commercial, economic, or other issues presented by the action or inaction as such relate to or affect the complainant; make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction complained of; and indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction. Because G.B.A. Associates fails to comply with the Commission's regulations for filing complaints, we conclude that it did not file a formal complaint. Consequently, we address G.B.A. Associates' concerns as a protest to Sabal Trail's application.

60. As for Alternative Dispute Resolution, G.B.A. Associates may submit a written proposal to the Commission to use alternative means of dispute resolution to resolve its disagreement with Sabal Trail.³⁴ Our regulations, however, require that all participants to a pending matter concur in the use of alternative dispute resolution. Here, Sabal Trail has noted its opposition to such a proceeding.³⁵

³³ 18 C.F.R. § 385.206 (2015).

³⁴ 18 C.F.R. § 385.604(d) (2015).

³⁵ Sabal Trail May 22, 2015 Answer to G.B.A. Associates.

III. Discussion

61. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA. In addition, Transco's proposed abandonment of capacity by lease to Sabal Trail and Sabal Trail's acquisition of that capacity are subject to the requirements of sections 7(b) and 7(c) of the NGA, respectively.

A. Application of Certificate Policy Statement

62. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.³⁶ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

63. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

³⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

1. Section 7(c) Projects

a. Hillabee Expansion Project

64. Transco's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. While the monthly lease payments Transco will charge Sabal Trail will not recover the full costs of the project, Transco states that during the term of the lease agreement it will not reflect in its system rates any costs or revenues associated with the leased capacity and that it is prepared to financially support the cost of the Hillabee Expansion Project.³⁷ Moreover, Transco will separately account for leased capacity related to fuel and lost and unaccounted-for gas costs when it makes its period tracker filings to ensure that its fuel retention costs are properly allocated between services to existing shippers and the incremental services to the Sabal Trail. As such, the proposed project will not result in any subsidization by Transco's existing shippers.

65. The proposed project will not adversely impact Transco's existing customers or other pipelines and their customers. The proposed facilities are designed to increase the capacity of Transco's system to accommodate the lease agreement with Sabal Trail without degrading the service of Transco's existing customers. There is no evidence that service on other pipelines will be displaced or bypassed, and no pipeline companies have objected to the proposed project. We conclude that Transco's proposal will not have adverse impacts on its existing shippers or other existing pipelines and their captive customers.

66. We also find that Transco's proposed project will have minimal adverse impacts on landowners and communities. Transco states that it expects to negotiate settlements with all affected landowners for all necessary easements and property rights. To the extent parties are unable to reach mutual agreement, it is for the courts to decide the appropriate levels of compensation for necessary property rights.³⁸

³⁷ Transco Application at 11.

³⁸ 15 U.S.C. § 717(f) (h) (2012).

b. Sabal Trail Project

67. Sabal Trail is a new pipeline company that has no existing customers. As such, there is no potential for subsidization on Sabal Trail's system or degradation of service to existing customers.³⁹

68. With regard to adverse economic effects on competing pipelines and such pipelines' captive customers, the Sabal Trail Project should serve to benefit other pipelines and their customers. Through Sabal Trail's new interconnections at the Central Florida Hub, Sabal Trail will be able to deliver gas to existing pipeline systems, i.e., Gulfstream and Florida Gas Transmission, in the event of supply or facility disruption and enhance market competition.

69. In its October 26, 2015 comments, Southern Natural states that because the Sabal Trail pipeline will cross Southern Natural's pipeline system numerous times, Southern Natural may have to pass on to its customers substantial costs for restoration, cathodic protection systems, and maintenance activities.⁴⁰ Southern Natural further indicated that it anticipates that Sabal Trail will reimburse it for such costs through a Parallel Construction Agreement, but that Southern and Sabal Trail had not yet reached agreement.⁴¹ On November 9, 2015, Sabal Trail filed comments stating that it continues to work with Southern Natural on that agreement.⁴² The issues that Southern Natural raises regarding economic impacts to its customers are outside the scope of this proceeding. To the extent Southern Natural and Sabal Trail are unable to reach an agreement, questions regarding damages incurred during construction are for a court of appropriate jurisdiction to adjudicate.

³⁹ Kiokee-Flint et al. states that the Sabal Trail Project will result in subsidization because the Florida Public Service Commission issued an order stating that Florida Power & Light may pass the costs of the pipeline onto its ratepayers. *See* Kiokee-Flint et al. December 22, 2014 Filing at 28. The Commission does not consider it subsidization for Florida Power & Light to pay rates designed to recover the costs of a pipeline system being constructed to provide it with natural gas transportation service. The extent to which it is appropriate for Florida Power & Light to in turn pass those costs through to its rate payers is not with the Commission's jurisdiction.

⁴⁰ Southern Natural Oct. 26, 2015 Comments in Docket No. CP15-17-000 at 3.

⁴¹ *Id.*

⁴² Sabal Trail Nov. 9, 2015 Comments on Draft EIS at 15.

70. Regarding impacts on landowners and communities along the route of the project, Sabal Trail proposes to locate the pipeline within or parallel to existing rights-of-way where feasible.⁴³ Sabal Trail's proposed pipeline route colocates with existing rights-of-way or previously disturbed corridors for approximately 308.1 miles (60 percent) of the total pipeline lengths. The remaining approximately 207.5 miles (40 percent) of the pipeline route will deviate from these rights-of-way and corridors.

71. While we are mindful that Sabal Trail has been unable to reach easement agreements with some landowners, for purposes of our consideration under the Certificate Policy Statement, we find that Sabal Trail has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities. Sabal Trail participated in the Commission's pre-filing process in Docket No. PF14-1-000. During pre-filing and initial project planning, Sabal Trail considered 282 route variations, almost all of which were identified by landowners, government officials, and other stakeholders.⁴⁴ Sabal Trail incorporated 214 of those route variations into its proposed route. Further, in the final EIS, Commission staff considered 12 major route alternatives, many of which were requested by landowners.

72. G.B.A. Associates requested that the Commission not grant Sabal Trail eminent domain authority over its land.⁴⁵ The Commission itself, however, does not confer eminent domain powers. Congress gave the Commission jurisdiction to determine if the construction and operation of proposed pipeline facilities are in the public convenience and necessity. Once the Commission makes that determination, under NGA section 7(h), a certificate holder is authorized by Congress to acquire the necessary land or property to construct the approved facilities by exercising the right of eminent domain if it cannot acquire the easement by an agreement with the landowner.⁴⁶ While the Sabal Trail Project will traverse G.B.A. Associates' land, we note that Sabal Trail incorporated a route variation on G.B.A. Associates' land that will closely follow property lines and reduce impacts on G.B.A. Associates' future development activities.

⁴³ 18 C.F.R. § 380.15 (2015). Section 380.15 of the Commission's regulations requires the Commission to consider a landowner's preferences, not necessarily reach their preferred outcome. *See Impulsora Pipeline, LLC*, 153 FERC ¶ 61,204, at P 12 (2015).

⁴⁴ Final EIS at 4-24.

⁴⁵ G.B.A. Associates April 16, 2015 Filing in Docket No. CP15-17-000 at 4.

⁴⁶ 15 U.S.C. § 717f(h) (2012).

c. Florida Southeast Connection Project

73. Florida Southeast is a new pipeline company that has no existing customers. As such, there is no potential for subsidization on Florida Southeast's system or degradation of service to existing customers.

74. The Florida Southeast Project will transport gas to meet increased demand for natural gas in Florida. No transportation service provider or captive customer in the same market has protested the project. Moreover, the two existing interstate pipelines that serve central and southern Florida, i.e., Florida Gas Transmission and Gulfstream, are either fully or near fully subscribed.

75. Regarding impacts on landowners and communities along the project route, Florida Southeast proposes to locate the pipeline within or parallel to existing rights-of-way where feasible. The Florida Southeast Project pipeline route will be colocated with existing roads and utilities for approximately 101.9 miles (81 percent) of the total pipeline length. The remaining 24.5 miles (19 percent) of the pipeline route will deviate from these rights-of-way or corridors. Florida Southeast proposes to minimize the use of eminent domain to the greatest extent possible by negotiating easement agreements for permanent easements and temporary workspace required for the project. In addition, Florida Southeast participated in the Commission's pre-filing process in Docket No. PF14-2-000, during which Florida Southeast considered 19 route variations and addressed landowners' concerns and questions. We therefore find that Florida Southeast has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities.

d. Need for the Projects

76. Several intervenors challenge the public need for the projects.⁴⁷ Many intervenors assert that project demand can be satisfied by renewable energy alternatives, such as solar and wind power, or energy efficiency gains. Intervenors also contend that other pipelines in Florida, including Florida Gas Transmission's pipeline, are not at full capacity and can provide transportation services. In addition, many intervenors contest that the gas will not be used to satisfy demand in Florida, but will be exported to foreign markets.

77. Kiokee-Flint adds that project need for the Sabal Trail Project is overstated. Kiokee-Flint asserts that Florida Power & Light committed only to 400,000 Dth/d of firm service, with the option to subscribe an additional 200,000 Dth/d of service to be

⁴⁷ Kiokee-Flint filed comments raising this issue both individually and jointly with Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper.

provided in Phase II of the Sabal Trail Project.⁴⁸ Similarly, members of the Gulf Restoration Network assert that the proposed pipeline has over twice the capacity needed to meet Florida Power & Light's projected additional demand through 2021.⁴⁹ Kiokee-Flint also appears to allege that the projects are engaged in self-dealing, as Sabal Trail's and Florida Southeast's precedent agreements are with affiliates: the parent company of Florida Southeast Connection, NextEra, is also the parent of Florida Power & Light, and Duke Energy, the parent company of Duke Energy Florida, has an interest in the Sabal Trail Project.⁵⁰ In addition, Kiokee-Flint argues that Energy Information Administration data does not indicate a need for the project nor will compliance with the Environmental Protection Agency's Clean Power Plan regulations require the project to be built.⁵¹

78. Kiokee-Flint et al. also asserts that Florida Power & Light may have inflated its demand for natural gas.⁵² In support, Kiokee-Flint et al. contends that Florida Power & Light's reserve margin is double the generally approved standard in Florida. Kiokee-Flint et al. also points out that the Florida Public Service Commission may find there is no need for Florida Power & Light's proposed natural gas power generating facility, the Okeechobee Clean Energy Center.

79. In addition, Kiokee-Flint argues that the Certificate Policy Statement only finds that a fully subscribed project is *prima facie* significant evidence of project need, which the Sabal Trail Project does not meet because it is undersubscribed at 93 percent of its total design capacity.⁵³ Parties also cite various cases unrelated to the Commission's

⁴⁸ Kiokee-Flint October 28, 2015 Draft EIS Comments in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 8-9 (Kiokee Flint Oct. 28 Filing).

⁴⁹ Gulf Restoration Network Members and Supporters October 26, 2015 Filing in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 1.

⁵⁰ Kiokee-Flint Oct. 28 Filing at 8-9.

⁵¹ *Id.* at 10-12.

⁵² Kiokee-Flint et al. October 27, 2015 Comments on Draft EIS in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 1-4 (Kiokee-Flint et al. Oct. 27 Filing).

⁵³ Kiokee-Flint October 28 Filing at 8.

Certificate Policy Statement to argue that the Commission incorrectly relies on precedent agreements to find project need.⁵⁴

80. The Certificate Policy Statement established a new policy under which the Commission would allow an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to require that a percentage of proposed capacity be subscribed under long-term precedent or service agreements.⁵⁵ These factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.⁵⁶ The Commission stated that it will consider all such evidence submitted by the applicant regarding project need. Nonetheless, the Certificate Policy Statement made clear that, although precedent agreements are no longer required to be submitted, they are still significant evidence of project need or demand.⁵⁷

81. We find that Transco, Sabal Trail, and Florida Southeast have sufficiently demonstrated that there is market demand for their respective projects. Transco has entered into a *pro forma* lease agreement with Sabal Trail to abandon and lease the entire incremental capacity created by the Hillabee Expansion Project to Sabal Trail for a 25-year primary term. Sabal Trail has entered into precedent agreements with Florida Power & Light and Duke Energy Florida for 1,000,000 Dth/d, approximately 93 percent of the 1,075,000 Dth/d of service that will be made available by the Sabal Trail Project, also for a 25-year term. Florida Southeast has entered into a precedent agreement with Florida Power & Light for 400,000 Dth/d of service, 62.5 percent of the total design capacity that will be created by the Florida Southeast Project, with an option to subscribe to an additional 200,000 Dth/d of service, again for a 25-year term.

⁵⁴ Kiokee-Flint cites *1000 Friends of Wisconsin, Inc. v. U.S. Dep't of Transp.*, No. 11-C-0545, 2015 WL 2454271, at *1 (E.D. Wis. 2015) (holding that the environmental impact statement prepared to authorize a highway expansion did not explain the methodology for determining specific traffic volumes and did not explain why it did not use updated population data). See Kiokee-Flint October 28 Filing at 12. Kiokee-Flint et al. cites *Lakehead Pipeline Co., LP v. Ill. Commerce Comm'n*, 296 Ill.App.3d 942, 957 (1998) (involving an oil pipeline's certificate application before the Illinois Commerce Commission). See Kiokee-Flint et al. October 27 Filing at 4.

⁵⁵ Certificate Policy Statement, 88 FERC at 61,747.

⁵⁶ *Id.*

⁵⁷ *Id.*

82. Kiokee-Flint mistakenly asserts that Florida Power & Light committed only to 400,000 Dth/d of service on Sabal Trail with the option to commit to 200,000 Dth/d in 2020. The precedent agreement between Florida Power & Light and Sabal Trail states that Florida Power & Light will subscribe to 600,000 Dth/d, of which 400,000 Dth/d will be provided in Phase I and the additional 200,000 Dth/d to be provided in Phase II.⁵⁸ In addition, the precedent agreement states that Florida Power & Light has the option to subscribe to an additional 200,000 Dth/d by January 1, 2020, and another additional 200,000 Dth/d by January 1, 2024.⁵⁹

83. We note that Duke Energy Florida does have the option to not subscribe to its 100,000 Dth/d of Phase II service.⁶⁰ Our finding that Sabal Trail has demonstrated need for its proposed project is not affected by whether or not Duke Energy Florida exercises its option. Even without Duke Energy Florida's 100,000 Dth/d Phase II increment, we find subscription of 84 percent of the project's total capacity is evidence of sufficient public benefit to outweigh the residual adverse effects on the economic interests as discussed above.⁶¹

84. An affiliation between project shippers and the owners of the pipelines is not, by itself, evidence of self-dealing which might call into question the need for the projects. Sabal Trail and Florida Southeast will be required to execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements before commencing construction. Sabal Trail's and Florida Southeast's recourse rates will be based on the design capacity of their pipelines, thereby placing them at risk for any unsubscribed capacity.

⁵⁸ Sabal Trail Application at Exhibit I, Precedent Agreement by and between Sabal Trail Transmission, LLC and Florida Power & Light Company at 12.

⁵⁹ *Id.* at 15. We note that the proposed Sabal Trail pipeline would not, without future expansion, be able to accommodate an additional 400,000 Dth/d of incremental firm service. No such expansion of the Sabal Trail pipeline could be constructed without prior Commission authorization.

⁶⁰ Sabal Trail Application at Exhibit I, Precedent Agreement with Duke Energy, page 10.

⁶¹ *Cf. Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233, at P 33 (2011), which found that the applicant had not sufficiently demonstrated the need for its particular project where the applicant did not conduct an open season or submit precedent or service agreements for the project's capacity and provided only vague and generalized evidence of need for natural gas at the regional and national level.

85. We also have no reason to contest Florida Power & Light's purported demand for natural gas. The Florida Public Service Commission issued an order finding that Florida Power & Light had demonstrated a need for additional firm capacity.⁶² Florida Power & Light has indicated that its commitments on Sabal Trail's and Florida Southeast's systems are to provide gas to existing natural gas-fired plants.⁶³ Because the Okeechobee Clean Energy Center is not an existing plant, whether the Florida Power Service Commission approves the plant does not bear on Florida Power & Light's specified demand for the Sabal Trail and Florida Southeast Projects set forth in its application.

86. Allegations that the projects will be used to export gas also do not persuade us to find that the applicants have not demonstrated project need. Neither Sabal Trail nor Florida Southeast has proposed to connect to any LNG export facilities. In addition, Florida Power & Light stated that it lacks legal authority to export natural gas, and that it is contracting for capacity to serve its natural gas plants. Florida Power & Light adds that it is not an owner of the Floridian LNG project in Martin County, Florida, nor is any of its affiliates.⁶⁴ Moreover, the Commission does not have jurisdiction over the exportation and importation of natural gas. Such jurisdiction resides with the U.S. Department of Energy (DOE), which must act on any applications for natural gas export and import authority.⁶⁵

⁶² Florida Southeast Application at Exhibit Z-1.

⁶³ Florida Power & Light December 23, 2014 Motion to Intervene and Comments in Docket No. CP15-17-000 at 6.

⁶⁴ *Id.* at 4, 6.

⁶⁵ Section 3(a) of the NGA provides, in part, that "no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so." 15 U.S.C. § 717b(a) (2012). In 1977, the Department of Energy Organization Act transferred the regulatory functions of section 3 of the NGA to the Secretary of Energy. 42 U.S.C. § 7151(b) (2012). Subsequently, the Secretary of Energy delegated to the Commission authority to "[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports." DOE Delegation Order No. 00-004.00A (effective May 16, 2006). The proposed facilities are not located at a potential site of exit for natural gas exports. Moreover, the Secretary of Energy has not delegated to the Commission any authority to approve or disapprove the import or export of the commodity itself, or to consider whether the exportation or importation of natural gas is consistent with the

(continued...)

87. As discussed above, 93 percent of the total design capacity of the Sabal Trail project is subscribed under precedent agreements with initial terms of 25 years. This is persuasive evidence of market need for this project. Even though the market, in its consideration of alternative means for addressing energy needs, could have selected renewable energy alternatives and energy efficiency gains, we find that the precedent agreements sufficiently demonstrate the need for the project.⁶⁶ Florida Power & Light has specifically determined that it needs service from a new pipeline extending from Transco's Station 85 to a new Central Florida Hub where it will interconnect with the existing Gulfstream and Florida Gas Transmission pipelines. The expansion of existing pipelines in Florida will not satisfy the identified need of a new transportation option.

e. Conclusion

88. In view of the considerations above, we find that Transco, Sabal Trail, and Florida Southeast have demonstrated a need for the Hillabee Expansion Project, Sabal Trail Project, and Florida Southeast Project, respectively, and that each project's benefits to the market will outweigh any adverse effects on other pipelines and their captive customers, and on landowners and surrounding communities. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity requires approval of Transco's, Sabal Trail's, and Florida Southeast's proposals, as conditioned in this order.

2. Blanket Certificate

89. Sabal Trail and Florida Southeast have each applied for a Part 157, Subpart F blanket construction certificate, which is generally applicable to all interstate pipelines. A Part 157, Subpart F blanket certificate will authorize Sabal Trail and Florida Southeast to perform certain routine activities and abandon certain services and facilities automatically, or pursuant to simplified prior notice requests, as is specified in sections 157.208 through 157.218 of the Commission's regulations. Each type of blanket

public interest. *See Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283, at P 20 (2014) (*Corpus Christi*). *See also National Steel Corp.*, 45 FERC ¶ 61,100, at 61,332-33 (1988) (observing that DOE, "pursuant to its exclusive jurisdiction, has approved the importation with respect to every aspect of it except the point of importation" and that the "Commission's authority in this matter is limited to consideration of the place of importation, which necessarily includes the technical and environmental aspects of any related facilities").

⁶⁶ Final EIS at 4-1 to 4-2.

certificate project includes requirements for landowners to be notified before construction of the project.

90. Kiokee-Flint *et al.* requests that the Commission deny Sabal Trail's request for a blanket certificate pursuant to Part 157, Subpart F because Sabal Trail is a new pipeline with no proven safety or reliability record. Kiokee-Flint *et al.* also requests that the Commission consider the environmental impacts, including cumulative effects, of the blanket certificate and require mitigation of such impacts in its environmental review pursuant to the National Environmental Policy Act of 1969 (NEPA).⁶⁷

91. The Commission routinely grants a pipeline company a blanket certificate along with the pipeline's certificate to construct and operate its initial facilities. Kiokee-Flint *et al.* provides no adequate explanation for us to depart from Commission practice. In addition, given that Sabal Trail has not proposed to conduct any activity under a Part 157 blanket certificate, it would be premature for Commission staff to assess the environmental impacts of, or require mitigation for, such potential activities. Commission staff has no information regarding the location, scope, or timing of any potential activity on which to base its environmental review. In the event that Sabal Trail proposes to conduct under its blanket certificate an activity that causes ground disturbance or changes to operational air or noise emissions, Sabal Trail must notify landowners and adhere to the guidance set forth in section 380.15(a) and (b) of the Commission's regulations.⁶⁸ Therefore, because Sabal Trail and Florida Southeast will become interstate pipelines with the issuance of a certificate to construct and operate the proposed facilities, we will issue to Sabal Trail and Florida Southeast the requested Part 157, Subpart F blanket certificates.

92. Sabal Trail and Florida Southeast also request Part 284, Subpart G blanket certificates to provide open access transportation services. Under a Part 284 blanket certificate, Sabal Trail and Florida Southeast will not require individual authorizations to provide transportation services to particular customers. Sabal Trail and Florida Southeast

⁶⁷ Kiokee-Flint *et al.* December 22, 2014 Filing at 26-27. Kiokee-Flint also individually argues that the draft EIS does not sufficiently examine the added impacts of a blanket certificate on landowners along the pipeline route. Kiokee-Flint October 28, 2015 Filing at 22-23.

⁶⁸ Section 380.15(a) and (b) state that siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values, and require a pipeline to take into account the desires of landowners in the planning, location, clearing, and maintenance of rights-of-way and the construction of facilities on their property. 18 C.F.R. § 380.15(a)-(b) (2015).

each filed a *pro forma* Part 284 tariff to provide open access transportation services. Since a Part 284 blanket certificate is required for Sabal Trail and Florida Southeast to offer these services, we will grant Sabal Trail and Florida Southeast Part 284 blanket certificates, subject to the conditions imposed in this order.

B. Lease Agreement

93. As explained above, Sabal Trail and Transco have entered into a Capacity Lease Agreement whereby Transco will abandon to Sabal Trail the firm capacity that will be created by Transco's proposed Hillabee Expansion Project. In turn, Sabal Trail will acquire that capacity from Transco and use the leased capacity to provide service under the terms of its FERC Tariff.

94. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.⁶⁹ To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.⁷⁰

95. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.⁷¹ We find that the transportation lease agreement between Sabal Trail and Transco, as modified below, satisfies these requirements.

96. First, the Commission has found that leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize

⁶⁹ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

⁷⁰ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005) (*Texas Gas*).

⁷¹ *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002) (*Islander East*).

environmental impacts.⁷² In addition, leases can result in administrative efficiencies for shippers.⁷³ Here, the Capacity Lease Agreement will enable Sabal Trail's shippers to deliver to their facilities in Florida natural gas produced in various basins in Texas, Arkansas, Oklahoma, Louisiana, and the northeast region of the United States. In addition, Sabal Trail will not need to construct a longer greenfield pipeline extending north of the Tallapoosa Interconnection, thus reducing adverse environmental impacts associated with duplicative and unnecessary facilities.

97. Second, as Transco and Sabal Trail explain, the lease payment is no higher than the maximum recourse rate would be for this project on a stand-alone basis.

98. Third, the Capacity Lease Agreement, as modified, will not adversely affect Sabal Trail's customers or Transco's existing customers. While the Capacity Lease Agreement will provide Sabal Trail's customers a cost-effective means of acquiring access to upstream natural gas supplies, the Capacity Lease Agreement, which is privileged, contains anticompetitive provisions that would adversely affect Sabal Trail shippers'. Section 2.2(a) in the Transco Capacity Lease Agreement limits shippers' access to receipt points and shippers' backhaul rights. Section 2.2(b) restricts Sabal Trail shippers' ability to access Sabal Trail capacity within a specified range. Such provisions are contrary to the Commission's policy to support the creation of an integrated pipeline grid that is available to all shippers to access natural gas supplies.

99. In *Panhandle Eastern Pipe Line Corporation (Panhandle)*, the Commission set forth a new interconnection policy requiring a pipeline to accommodate a new interconnection if the proponent of such interconnection satisfied five conditions.⁷⁴ The Commission found that such policy would "allow[] a broader range of entities to have access to the pipeline grid and promote[] competition on open access pipelines."⁷⁵ No

⁷² See, e.g., *Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East*, 100 FERC ¶ 61,276 at P 70.

⁷³ *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

⁷⁴ *Panhandle Eastern Pipe Line Co.*, 79 FERC ¶ 61,016, *order on reh'g*, 81 FERC ¶ 61,295 (1997), *remanded*, *Panhandle Eastern Pipe Line Co. v. FERC*, 196 F.3d 1273 (D.C. Cir. 1999), *order on remand*, 91 FERC ¶ 61,037 (2000) (*Panhandle*).

⁷⁵ *Panhandle*, 91 FERC ¶ 61,037 at 61,142.

longer could a pipeline deny a party's request for an interconnection based on the fact that the party is not a member of a particular class of customer or an existing customer.⁷⁶

100. The Commission finds Transco's anticompetitive provisions in its Capacity Lease Agreement that restrict shippers' interconnections conflict with the Commission's interconnection policy. Therefore, we will require Sabal Trail to revise section 2.2(a) and remove section 2.2(b) from the Transco Capacity Lease Agreement and refile the lease with the Commission at least 30 days before its effective date.

101. Transco's customers should not experience any degradation of service because Transco will construct new facilities to create the incremental capacity that it proposes to lease to Sabal Trail. While Transco's first-year cost and revenue study demonstrates that, at least in the early years, Transco will not recover its full incremental cost of service for the Hillabee Expansion Project through the lease payments, none of Transco's existing customers will bear any of the costs associated with the project. Consistent with Commission policy, Transco will be at risk for the recovery of any costs associated with the lease capacity that are not collected from Sabal Trail.⁷⁷

102. Regarding fuel costs, Transco submitted a study that demonstrates the Hillabee Expansion Project should result in a 5.09 percent decrease in fuel costs in Zone 4 and yield net system benefits to existing system customers. Citing this study, Transco requests that the Commission grant a predetermination that Transco may roll-in fuel costs of the Hillabee Expansion Project into its existing fuel retention tracker mechanism.

103. In view of these considerations, the Commission grants Transco's request for a finding supporting a presumption of rolled-in rate treatment for the Hillabee Expansion Project's fuel costs in Transco's fuel retention tracker mechanism, absent a material change in circumstances.

104. Transco shall treat its capacity lease as an operating lease for accounting purposes.⁷⁸ Transco is directed to record the monthly receipts in Account 489.2,

⁷⁶ *Id.*

⁷⁷ *See, e.g., Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 123 (2008).

⁷⁸ We have authorized similar accounting treatment for transportation capacity lease arrangements in other cases. *See, e.g., Gulf South Pipeline Co, L.P.*, 119 FERC ¶ 61,281, at P 42 (2007); *Rockies Express Pipeline LLC*, 119 FERC ¶ 61,069, at P 66 (2007); *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,211, at P 17 (2007); *Discovery Producer Services LLC*, 117 FERC ¶ 61,243, at P 16 (2006); *Midwestern Gas Transmission Co.*, 73 FERC ¶ 61,320, at 61,886 (1995).

Revenues from Transportation of Gas of Others Through Transmission Facilities.

Further, Transco may not reflect in its system rates any of the costs (i.e., the fully-allocated cost of service, including actual fuel costs) associated with the leased capacity during the lease term.

105. Additionally, Transco's accounting and functionalization of the lease payments and the revenues (i.e., the compensation received by Transco from Sabal Trail for operating the Hillabee Expansion Project and the associated expenses, including Operation and Maintenance, Administrative and General, and Other Taxes) should be separately accounted for and recorded for each jurisdictional entity consistent with the Uniform System of Accounts. Since Transco did not include this accounting information in its application, the Commission will require Transco to file, within 30 days of the date of this order, its proposed accounting procedures to record and track revenues and expenses separately for each jurisdictional entry.

106. To assure that costs are properly allocated between Transco's existing shippers and the incremental services proposed in this proceeding, the Commission will require Transco to keep separate books and accounting of costs attributable to the proposed incremental services. Transco should maintain the books with applicable cross-references, as required by section 154.309 of the Commission regulations.⁷⁹ This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and the information must be provided consistent with Order No. 710.⁸⁰ Such measures protect existing customers from cost overruns and from subsidization that might result from under-collection of the incremental cost of service, as well as help the Commission and parties to future rate proceedings determine the costs of the leased capacity.

107. Consistent with Commission policy, Transco is directed to file with the Commission a notification in this docket within 10 days of the date of abandonment of the capacity leased to Sabal Trail providing the effective date of the abandonment.⁸¹ We also remind the applicants that when the lease terminates, Sabal Trail is required to obtain

⁷⁹ 18 C.F.R. § 154.309 (2015).

⁸⁰ *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. and Regs. ¶ 31,267, at P 23 (2008).

⁸¹ *See, e.g., Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028, at Ordering Para. (D) (2013).

authority to abandon the lease capacity, and Transco is required to obtain certificate authorization to reacquire that capacity.⁸²

C. Rates

1. Sabal Trail Project

a. Initial Rates

108. Sabal Trail proposes to provide firm transportation service (Rate Schedule FTS), interruptible transportation service (Rate Schedule ITS), interruptible parking and lending service (Rate Schedule PALS), and interruptible hub service (Rate Schedule HUB).

109. To derive its firm transportation charges, Sabal Trail uses a straight fixed-variable cost classification that implements two-part reservation and usage rate components. Sabal Trail developed its recourse FTS reservation and usage charges based on a derived cost of service of \$714,642,949.⁸³ Sabal Trail proposes to offer FTS service at two hourly rates: (1) “5% Maximum Hourly Flow Rate” (MHFR) of the Maximum Daily Quantity (MDQ), and (2) “6% MHFR” of MDQ. The 5% MHFR and 6% MHFR services obligate Sabal Trail to deliver up to the stated percentage of the MDQ in any hour to shippers’ primary delivery points.

110. Sabal Trail developed the reservation charges for each of the FTS services by dividing Sabal Trail’s fixed cost of service by billing determinants totaling Sabal Trail’s total project capacity of 1,075,000 Dth per day times 12 months. Sabal Trail derives maximum monthly reservation recourse charges for Rate Schedule FTS of \$51.5013 per Dth per month for 5% MHFR service and \$61.8016 per Dth per month for 6% MHFR service.

⁸² See, e.g., *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

⁸³ Sabal Trail Application at Exhibit P, Schedule 2. Sabal Trail’s proposed cost of service is based on the total capital cost for all three phases. The proposed cost of service includes \$29,934,840 of fixed operation and maintenance expenses, \$834,738 of variable operation and maintenance expenses, \$71,261,304 of lease expenses, \$53,803,134 of depreciation expenses, \$345,833,067 of pre-tax return allowance (overall rate of return of 10.88 percent, based on a 14 percent rate of return on equity and a capital structure of 60 percent equity and 40 percent debt), \$40,192,359 of taxes other than income taxes, and \$172,783,507 of federal and state income taxes, for a derived total cost of service for all three phases of \$714,642,949.

111. Sabal Trail proposes three FTS usage charges: FTS Usage-1; FTS Usage-2 for 5% MFHR; and FTS Usage-2 for 6% MFHR. The FTS Usage-1 charge is assessed on daily deliveries that do not exceed the lower of (a) 110 percent of the scheduled quantities of gas under the agreement for that day, or (b) the MDQ in effect under the agreement for that day.⁸⁴ The FTS Usage-1 charge is \$0.0030 per Dth, which was developed by dividing Sabal Trail's variable cost of service of \$834,738 by billing determinants equal to Sabal Trail's total project design capacity of 1,075,000 Dth per day times 365 days, times a proposed 70 percent load factor. The FTS Usage-2 charges are assessed on daily deliveries greater than the lower of (a) 110 percent of daily scheduled quantities or (b) the MDQ in effect under the agreement for that day.⁸⁵ The FTS Usage-2 charges equal the 100 percent load factor daily derivatives of the 5% MHFR and 6% MHFR FTS reservation charges: \$1.6962 per Dth for 5% MHFR FTS service and \$2.0349 per Dth for 6% MHFR FTS service.

112. For ITS Usage-1 and Usage-2 rates, and for a single daily rate for PALS service, Sabal Trail proposes to charge the 100 percent load factor daily derivative of the 6% MHFR FTS service of \$2.0349 per Dth. Sabal Trail's Rate Schedule HUB will provide interruptible transportation service at the Central Florida Hub Service Point(s), i.e., Sabal Trail's interconnections with Florida Southeast's, Gulfstream's, and Florida Gas Transmission's pipeline systems. Sabal Trail's proposed rate for Rate Schedule HUB is \$0.0362 per delivered Dth. Sabal Trail derived the HUB service rate using an imputed portion of the Reunion Compressor Station costs (46.59 percent) and applying a 17.9 percent cost of service factor and a projected daily volume of 600,000 Dth/d.⁸⁶

113. With the exception of PALS service, which is a single point service, all of Sabal Trail's proposed transportation rates are for both forward hauls and backhauls on the system.

114. The Commission has reviewed Sabal Trail's proposed cost of service, allocation, and rate design, and finds that they generally reflect current Commission policy. The Commission accepts Sabal Trail's proposed recourse rates as initial rates for service on its new pipeline, subject to the modifications and conditions discussed below.

⁸⁴ Rate Schedule FTS, Paragraph 3.2(a).

⁸⁵ *Id.* at Paragraph 3.2(b).

⁸⁶ Sabal Trail's Application at Exhibit P Schedule 2, Lines 54-59 and Schedule 8.

b. Return on Equity and Capital Structure

115. Sabal Trail proposes a return on equity of 14 percent with a capital structure of 60 percent equity and 40 percent debt. Kiokee-Flint et al. asserts that the Commission should deny the proposed 14 percent return on equity because Sabal Trail will cheaply acquire the necessary land rights and such a return will encourage pipelines to propose greenfield pipelines.⁸⁷

116. As an initial matter, we deny Kiokee-Flint et al.'s request. The Commission does not use acquisition costs, such as the cost to purchase land, in determining the appropriate return on equity.

117. We find that the combined return on equity and capital structure proposal, however, does not reflect current Commission policy. For new pipelines, the Commission has approved equity returns of 14 percent, but only where the equity component of the capitalization is no more than 50 percent.⁸⁸ In *MarkWest Pioneer, L.L.C. (MarkWest)*, the Commission approved a greenfield pipeline's proposed 14 percent return on equity but rejected its cost-based rates capital structure of 60 percent equity and 40 percent debt. The Commission found that imputing a capitalization containing such a large equity ratio is more costly to ratepayers, because equity financing is typically more costly than debt financing and the interest incurred on debt is tax deductible.⁸⁹ Consequently, the Commission required that the greenfield pipeline design its cost-based rates on a capital structure that included at least 50 percent debt.⁹⁰

118. Therefore, while the Commission will approve Sabal Trail's proposed 14 percent return on equity, the Commission will require that Sabal Trail design its cost-based rates on a capital structure that includes at least 50 percent debt. Sabal Trail is directed to recalculate its rates in its compliance filing. In our discussion of Sabal Trail's rate design that follows, we will use Sabal Trail's costs and rates as reflected in its application with the understanding that when the costs are changed to reflect the discussion above, the resulting compliance initial rates will also change.

⁸⁷ Kiokee-Flint et al. December 22, 2014 Filing at 27.

⁸⁸ *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 24 (2010) (*Bison*), *vacated in part*, 149 FERC ¶ 61,243 (2014); *MarkWest Pioneer, L.L.C.*, 125 FERC ¶ 61,165, at P 27 (2008) (*MarkWest*).

⁸⁹ *MarkWest*, 125 FERC ¶ 61,165 at P 27.

⁹⁰ *Id.*

c. Rate Schedule FTS Usage-1 Charge Calculation

119. Sabal Trail's FTS Usage-1 charge is designed to recover all variable costs, except for fuel for actual deliveries, up to the lower of a 10 percent tolerance above scheduled quantities or the MDQ in effect under that agreement for the day. Sabal Trail proposes to recover \$834,738 in variable costs. To calculate the usage charge, Sabal Trail proposes to use the total project design capacity of 1,075,000 Dth per day times 365 days, times a 70 percent load factor. The result is a usage charge of \$0.0030 per Dth.

120. The Commission accepts Sabal Trail's estimated variable costs but rejects its proposed billing determinants. Variable costs vary with throughput. Sabal Trail estimates variable costs utilizing a 100 percent load factor of design capacity.⁹¹ Sabal Trail's use of design capacity is consistent with the Commission's intent to review data premised on meeting maximum firm capacity.⁹² However, estimating costs that vary with throughput on the basis of 100 percent load factor of design while proposing to recover those costs on the basis of a 70 percent load factor will over-recover variable costs. The Commission rejects this proposal and requires Sabal Trail to use 100 percent of design capacity as the billing determinants for the FTS Usage-1 charge calculation.

d. ITS and PALS Interruptible Transportation Rates

121. Sabal Trail proposes Usage-1 and Usage-2 interruptible transportation rates for ITS service, as well as a daily Usage Rate for PAL service equal to a 100 percent load factor daily derivative of the 6% MHFR Rate Schedule FTS reservation rate. Sabal Trail's 6% MHFR Rate Schedule FTS rate is for a premium service that permits firm transportation shippers, not interruptible shippers, to receive up to 6 percent of their MDQ in a single hour. Sabal Trail proposes a premium rate for this premium FTS service, which reflects the dedication of additional capacity and costs to provide that service. Sabal Trail uses a billing determinant lower than the cost allocation determinant to calculate a rate that reflects this premium service.⁹³

122. The Commission requires Sabal Trail to re-examine the interruptible services it wishes to offer. It is not appropriate for Sabal Trail to charge ITS or PALS interruptible shippers a premium-based rate if Sabal Trail does not propose to offer those customers premium hourly service. If Sabal Trail does not intend to provide interruptible service

⁹¹ Sabal Trail's Application at Exhibit Z-3, page 1.

⁹² 18 C.F.R. § 157.14(a)(9)(v) (2015).

⁹³ Sabal Trail's Application at Exhibit P, Schedule 2, ll. 18-22.

with the same enhanced hourly delivery rights as Rate Schedule FTS, then Sabal Trail is directed to recalculate the fixed cost component of the interruptible rate to reflect the non-premium nature of the service. The fixed cost component should reflect Sabal Trail's fixed costs and design billing determinants unadjusted for premium service. If Sabal Trail intends to offer the same enhanced hourly services offered under Rate Schedule FTS to interruptible shippers, then Sabal Trail shall modify its tariff accordingly.⁹⁴

123. Sabal Trail proposes to use the same variable cost recovery usage charge for the interruptible rate calculation as it proposes for Rate Schedule FTS. As stated above, Sabal Trail is directed to recalculate its FTS Usage charge for the 6% MHFR. The Commission approves Sabal Trail's proposal to use Sabal Trail's revised FTS usage charge for the recalculated variable cost component of the interruptible rate applicable to Rate Schedules ITS and PALS.

e. Usage-2 Rate

124. Sabal Trail proposes Usage-2 charges for FTS and ITS daily deliveries that are above the lower of two circumstances: (1) 110 percent of scheduled quantities or (2) the MDQ in effect under that agreement for the day.⁹⁵ Commission policy, however, treats these two circumstances separately.

125. The first proposed circumstance is applicable to services provided in excess of scheduled quantities, which the Commission normally treats as scheduling penalties. We discuss scheduling penalties further below.

126. The second proposed circumstance is for volumes in excess of MDQ. Service in excess of MDQ is indistinguishable from a traditional authorized overrun service. The Commission's long-standing policy is that authorized overrun service, even those associated with a firm rate schedule, is an interruptible service.⁹⁶ Because an authorized overrun service is an interruptible service, it is appropriate for Sabal Trail to charge

⁹⁴ Sabal Trail proposes to use Rate Schedule ITS interruptible transportation rate as the rate for Rate Schedule PALS service. Therefore, when Sabal Trail considers its options for the definition of its Rate Schedule ITS services and the accompanying rates, it should also consider Rate Schedule PALS service and rates.

⁹⁵ Sabal Trail's proposed Rate Schedules FTS and ITS, sections 3.1(b) and 3.2, respectively.

⁹⁶ *Perryville Gas Storage LLC*, 139 FERC ¶ 61,032, at P 3 (2012).

authorized overrun service the interruptible transportation rate. The Commission requires Sabal Trail to use the ITS interruptible transportation rate, as modified by this order, for Rate Schedules FTS, ITS and HUB authorized overrun services.

f. Interruptible Revenue Crediting Proposal

127. The Commission recognizes that it is difficult for new pipeline companies with no history to estimate what interruptible transportation services volumes or revenue they will receive. Notwithstanding, the Commission requires that pipelines consider and reflect interruptible transportation services in their initial rate proposals. Commission policy requires new pipelines to allocate costs to all services (including interruptible and short-term firm transportation) or credit 100 percent of the revenues generated by these services to maximum rate shippers.⁹⁷ The purpose of interruptible revenue credits or cost allocation is to protect the pipeline's customers from the under-allocation of costs to interruptible service, which may cause both firm and interruptible maximum rates to be too high.

128. Sabal Trail's proposed interruptible revenue crediting mechanism is provided in the General Terms and Conditions (GT&C) section 22.3 of its *pro forma* tariff. Sabal Trail proposes to share its annual interruptible revenues attributable to Usage-1 charges assessed under Rate Schedules ITS, PALS, and HUB services with both its maximum recourse rate shippers and with its negotiated rate shippers. Annual accumulated eligible interruptible revenues would be allocated between maximum and negotiated rate shippers on the basis of their respective throughputs. Maximum rate shippers would receive 90 percent of the eligible revenues allocated to maximum rate shippers, and negotiated rate shippers would receive 50 percent of the revenues allocated to negotiated rate shippers. Sabal Trail proposes to retain 10 percent and 50 percent of the revenues, respectively.

129. The Commission rejects Sabal Trail's interruptible revenue crediting proposal. As noted above, the purpose for either allocating costs to interruptible transportation or crediting interruptible revenues to maximum rate paying shippers is to ensure that maximum rate paying shippers are not paying a rate in excess of the maximum rate that would have been proposed had better information on interruptible services and revenues been available. Crediting interruptible revenues effectively lowers maximum rates to the level that would result if costs were allocated to interruptible services. Therefore, Sabal Trail's proposal to retain interruptible revenues for itself and to satisfy its negotiated rate agreements effectively increases maximum rates. The Commission has permitted pipelines to share interruptible revenues in cases that either involved rates that already

⁹⁷ *Maritimes & Northeast Pipeline, L.L.C.*, 81 FERC ¶ 61,166, at 61,725 (1997).

had costs allocated to interruptible transportation services, or were in the unique context of Order No. 636 restructuring and the uncertainties created by that order's unbundling and capacity release requirements.⁹⁸ Such circumstances do not apply here.

130. Maximum rate customers must receive proportionate shares of 100 percent of the interruptible revenues.⁹⁹ While Sabal Trail may share interruptible revenues with its negotiated rate shippers, interruptible revenues owed to maximum rate shippers cannot be reduced to reflect negotiated rate provisions.¹⁰⁰ Therefore, Sabal Trail is required to file revised rates or tariff records consistent with the Commission's policy regarding interruptible services on new pipelines. Sabal Trail must either credit 100 percent of the interruptible revenues, net of variable costs, to maximum rate firm and interruptible customers or allocate costs and volumes to these services.

131. In addition, GT&C section 22.3 improperly includes language relating to negotiated rate shippers. Negotiated rate provisions are required to be reported in a tariff record that identifies the negotiated rate provisions.¹⁰¹ Therefore, the Commission will require Sabal Trail to delete references to negotiated rates in GT&C section 22.3.

132. Sabal Trail also defines eligible interruptible revenues as solely Rate Schedules ITS, PALS, and HUB Usage-1 revenues. This definition of interruptible revenues is incomplete in two respects. First, Sabal Trail does not include authorized overrun revenues or short-term firm as interruptible revenues subject to crediting. Second, Sabal Trail proposes to credit interruptible revenues on a yearly basis, but does not propose to pay interest on these funds that it may retain for up to twelve months. The Commission requires Sabal Trail to include authorized overruns and short-term firm as interruptible

⁹⁸ See, e.g., *Wyoming Interstate Co., Ltd.*, 121 FERC ¶ 61,135, at P 10 (2007) (*Wyoming Interstate*).

⁹⁹ *Id.* P 11.

¹⁰⁰ *Id.*; *Cheyenne Plains Gas Pipeline Co., L.L.C.*, 108 FERC ¶ 61,052, at PP 12-13 (2004) (*Cheyenne*).

¹⁰¹ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194, order on reh'g, 75 FERC ¶ 61,024 (1996) (*Alternatives to Traditional Cost-of-Service Ratemaking*).

revenues subject to crediting and to pay interest on the accumulated balances consistent with section 154.501(d) of the Commission's regulations.¹⁰²

133. In GT&C section 22.3(b), Sabal Trail also proposes to net interruptible revenue credits with its proposed System Balancing Surcharge (SBA). The SBA is a system balancing account that includes, among other items, Transco lease surcharges, fuel, and lost and unaccounted-for gas. SBA balances are not created in a similar manner as interruptible revenue, and SBA surcharges are not collected from the same set of shippers that are eligible for interruptible revenue credits. Consequently, the SBA and interruptible revenue credit balances and surcharge and credit calculations should be kept separate. Therefore, the Commission rejects GT&C section 22.3(b).

g. Backhaul Fuel Charge

134. Sabal Trail proposes not to assess fuel charges on backhauls and Rate Schedule PALS. In GT&C section 1, Sabal Trail defines backhaul as follows:

The term "Backhaul" shall mean the movement of Gas from a Receipt Point to a Delivery Point that is *at all times* and at all points along the path in a direction opposite to the actual flow of Gas from the Alexander City compressor station to the Sabal Trail Central Florida Hub Service Point. (Emphasis added).

135. The phrase "at all times" in Sabal Trail's definition of backhaul ambiguously defines the time frame for when Sabal Trail will determine the actual flow of the gas. Depending on what "at all times" means – daily, monthly, contract term, etc. – different fuel charges may apply. The Commission thus requires Sabal Trail to clarify its definition of backhaul.

136. Sabal Trail provides that the fuel retention percentage will be zero for backhaul transportation. Sabal Trail does not explain how backhaul transportation is factored into the calculations of Transporter's Use percentage proposed at GT&C section 22.1, nor does Sabal Trail explain why backhaul transportation should not be subject to at least the lost and unaccounted-for gas component of the fuel retention percentage.

137. Pipelines may propose not to assess fuel charges if it can be shown that no fuel is used in performing a transaction. Because backhauls do not require compression, and therefore no fuel, we have approved rates that exempt shippers from fuel charges for

¹⁰² 18 C.F.R. § 154.501(d) (2015).

backhauls. Even in cases where no fuel component is charged, however, we have required pipelines to charge all shippers for at least the lost and unaccounted-for gas component of the fuel charge.¹⁰³ In *Mississippi River Transmission Corporation*, the Commission rejected the pipeline's proposal to exempt shippers from charges for lost and unaccounted-for gas in certain transactions that did not require compression, finding that the regulations do not permit pipelines to discount variable costs.¹⁰⁴ The Commission has made similar findings with regard to park and loan services.¹⁰⁵

138. The Commission directs Sabal Trail to assess lost and unaccounted-for gas retainage to backhaul transportation and Rate Schedule PALS services. The initial retainage charge will be zero percent and subject to change pursuant to Sabal Trail's GT&C section 22.1.

h. Three-Year Filing Requirements

139. Sabal Trail is required to file a cost and revenue study at the end of its first three years of actual operations after the in-service date of its Phase III facilities to justify its existing recourse rates.¹⁰⁶ In its filing, Sabal Trail's projected units of service should be

¹⁰³ *ANR Pipeline Co.*, 139 FERC ¶ 61,238, at P 160 (2012) (citing *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 (2002) (*Mississippi River*)). See also *Columbia Gas Transmission Corp.*, 101 FERC ¶ 61,378, at PP 10-11 (2002); *Reliant Energy Gas Transmission Co.*, 100 FERC ¶ 61,290, at P 1 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,240, at 61,990 (2002).

¹⁰⁴ *Mississippi River*, 98 FERC at 61,352 n.6 (stating: "In Order No. 436, the Commission announced that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service. Section 284.10 of the Commission's regulations now codifies this policy, stating that the minimum rate 'must be based on the average variable costs which are properly allocated to the service to which the rate applies.'") See also 18 C.F.R. §§ 284.10(c)(4), (5) (2015). See generally *NorAm Gas Transmission Co.*, 84 FERC ¶ 61,006, at 61,021 (1998); *Koch Gateway Pipeline Co.*, 81 FERC ¶ 61,313, at 62,444 (1997); *Williams Natural Gas Co.*, 75 FERC ¶ 61,023, at 61,075 (1996); *Florida Gas Transmission Co.*, 68 FERC ¶ 61,270, at 62,181 (1994).

¹⁰⁵ See, e.g., *Midwestern Gas Transmission Co.*, 139 FERC ¶ 61,276, at P 16 (2012).

¹⁰⁶ *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 (2014) (*Sierrita*); *Bison*, 131 FERC ¶ 61,013 at P 29; *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 57 (2009) (*Ruby*); *MarkWest*, 125 FERC ¶ 61,165 at P 34.

no lower than those upon which its approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.¹⁰⁷ Sabal Trail's cost and revenue study should be filed through the eTariff portal using Type of Filing Code 580. In addition, Sabal Trail should include as part of the eFiling description, a reference to Docket No. CP15-17-000 and the cost and revenue study.¹⁰⁸ After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to investigate whether the rates remain just and reasonable. Alternatively, in lieu of this filing, Sabal Trail may make a NGA general section 4 rate filing to propose alternative recourse rates to be effective no later than three years after the in-service date of its Phase III facilities.

i. Negotiated Transportation Agreements

140. Sabal Trail states that it will provide service to the project shippers under negotiated rate agreements pursuant to negotiated rate authority in its GT&C.¹⁰⁹ Sabal Trail must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement¹¹⁰ and the Commission's negotiated rate policies.¹¹¹ Sabal Trail must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

¹⁰⁷ 18 C.F.R. § 154.313 (2015).

¹⁰⁸ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

¹⁰⁹ GT&C section 30.

¹¹⁰ *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194.

¹¹¹ *Natural Gas Pipeline Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304 (2006) (*Negotiated Rate Policies and Practices*).

j. Sabal Trail's Pro Forma Tariff

i. Rate Schedule FTS – Firm Transportation Service

(a) Enhanced Maximum Daily Receipt Obligation

141. Rate Schedule FTS section 4.1(b) provides for an Enhanced Maximum Daily Receipt Obligation (MDRO) service for precedent agreements executed on or before July 8, 2013. This Enhanced MDRO service applies to the receipt points T-85 Pool, Midcontinent Express, and Gulf South, which are the proposed points accessed through the lease with Transco. Enhanced MDRO is defined at GT&C section 1, Definitions as:

the greatest number of Dekatherms that Transporter is obligated to receive on a Priority Class One basis for or on behalf of Shipper on any Day at the applicable Primary Receipt Point(s).

142. Sabal Trail does not sufficiently explain what Enhanced MDRO is or how it will impact other shippers. The Commission thus rejects Rate Schedule FTS section 4.1(b) as unsupported.

(b) Secondary Delivery Point Restrictions

143. Rate Schedule FTS section 4.2 states that firm shippers shall have the right to use all delivery points as secondary delivery points, except for T-85 Pool, Midcontinent Express, and Gulf South located on Transco's system. Sabal Trail does not explain nor support this restricting secondary point rights.

144. The Commission rejects Sabal Trail's proposal to restrict firm shippers' rights to secondary points on its system as contrary to the Commission's regulations.¹¹² As

¹¹² 18 C.F.R § 284.221(g) (2015) provides for receipt points:

(g) *Flexible receipt point authority.* (1) An interstate pipeline authorized to transport gas under a certificate granted under this section may, at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular receipt point from a supplier; and

(ii) Commence or increase receipts at a particular receipt

(continued...)

explained in *Panhandle*, allowing shippers to establish interconnections for receipt and delivery points is necessary “to ensure that competitive forces operate fairly and that open access pipelines do not impose artificial restrictions on those who seek access to their pipeline systems.”¹¹³ Further, whether the restricted points are located on Transco’s system is immaterial. As the Commission explained in *Texas Gas Transmission*, the lessee in essence owns that capacity and the capacity is subject to the lessee’s tariff.¹¹⁴ The leased capacity is allocated for use by the lessee’s customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.¹¹⁵ Therefore, we reject Rate Schedule FTS section 4.2.

ii. Map

145. Sabal Trail’s proposal to reflect a map of its system in its *pro forma* tariff does not comply with the Commission’s regulations because it does not provide a uniform resource locator (URL).¹¹⁶ The Commission directs Sabal Trail to file a revised tariff that provides a URL designating a location on the Internet for publication of its system maps.

iii. Incidental Purchases and Sales

146. Sabal Trail does not include a GT&C section in the *pro forma* tariff addressing incidental purchases and sales. To the extent Sabal Trail conducts operational sales and

point from that supplier or any other supplier.

....

(3) The receipt points to which natural gas volumes may be reassigned under this paragraph include eligible facilities under §157.208 which are authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

Section 284.221(h) of the Commission’s regulations provides a similar requirement for delivery points. 18 C.F.R § 284.221(h) (2015).

¹¹³ *Panhandle*, 91 FERC ¶ 61,037 at 61,142.

¹¹⁴ *Texas Gas*, 113 FERC ¶ 61,185 at P 10.

¹¹⁵ *Id.*

¹¹⁶ 18 C.F.R. § 154.106 (2015).

purchases of gas, the Commission requires a pipeline to include in its tariff specific provisions addressing the terms by which it can conduct these activities.¹¹⁷ These provisions include: (a) the specific circumstances in which the pipeline will perform an operational purchase or sale; (b) a statement that operational purchases or sales have a lower transportation priority than firm transportation and there will be no transportation service associated with its operational purchases or sales of gas; (c) a statement that operational sales service is unbundled from transportation service; (d) the posting and bidding procedures for the sale of gas for operational purposes; and (e) a commitment to filing an annual report of sales and purchases and revenues derived from the sale of gas. The report must indicate the source of gas, date of the purchase and sale volumes, purchase and sale price, costs and revenues from purchase and sale, and the disposition of the costs and revenues.

147. The Commission directs Sabal Trail to include operational sales and purchases tariff language to the extent that Sabal Trail proposes to conduct operational sales and purchases, consistent with the above discussion.

iv. GT&C Section 5 – Priority of Service, and Section 6 – Scheduling & Curtailment

148. In GT&C sections 5 and 6, Sabal Trail proposes scheduling and curtailment priorities for primary and secondary receipt and delivery points rights, and segment paths rights. Sabal Trail has not included authorized overrun in the priority classes of GT&C section 5. The Commission directs Sabal Trail to revise GT&C section 5 to include authorized overrun transportation assessed at the Usage-2 rate in the same Priority Class as Rate Schedule ITS/PALS/HUB (currently Priority Class Four), consistent with Commission policy that authorized overrun and IT services have the same scheduling and curtailment priority.¹¹⁸ Additionally, Sabal Trail must delete the references in these sections to Enhanced MDRO service, consistent with our finding that Sabal Trail has not supported this service in its FTS Rate Schedule. Sabal Trail should revise GT&C section 6 to the extent that the new language in GT&C section 5 affects these provisions.

¹¹⁷ *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 57 (2005) (*ANR Pipeline*); *Colorado Interstate Gas Co.*, 107 FERC ¶ 61,312, at P 15 (2004), *order on reh'g*, 111 FERC ¶ 61,216, at P 13 (2005) (*Colorado Interstate*); *Dominion Transmission, Inc.*, 106 FERC ¶ 61,029, at P 17 (2004) (*Dominion*).

¹¹⁸ *Sierrita*, 147 FERC ¶ 61,192 at P 73. *See also Central New York Oil and Gas Co., LLC*, 114 FERC ¶ 61,105, at P 9 (2006) (*Central New York*).

v. **GT&C Section 8 – Cashout Indices**

149. GT&C section 8.7(a) of Sabal Trail’s *pro forma* tariff provides for the Cashout Price high/low index determination under Sabal Trail’s Cashout Provision. Sabal Trail provides “Florida city-gates” as published in *Platts Gas Daily* as an index point for cashout prices. In the event there is no price listed at that point, Sabal Trail’s *pro forma* tariff references “Transco Zone 4” as the appropriate pricing point. The Commission approves GT&C section 8.7(a) subject to condition.

150. In the *Price Index Order*,¹¹⁹ the Commission stated that it will presume that the proposed index location will result in just and reasonable charges if the proposed index location meets two qualifications: (1) the index location is published by a price index developer identified in the *Price Index Order*; (2) the index location meets one or more of the applicable criteria for liquidity, i.e., the index must be developed on a sufficient number of reported transactions involving sufficient volumes of natural gas for the appropriate review period.¹²⁰ While the Commission requires a pipeline to demonstrate the liquidity of an index location, the Commission recognizes that liquidity may fluctuate for various price indices due to constant changes in market conditions.

151. As such, the Commission directs Sabal Trail to ensure that its price index meets or exceeds one or more of the minimum criteria for liquidity listed within the *Price Index Order* before implementing this tariff provision.

vi. **Penalties**

152. Section 284.12(b)(2)(v) of the Commission’s regulations provides that pipelines may not retain net penalty revenues, but must credit those revenues to its shippers.¹²¹ The Commission considers cash-outs, imbalance, overrun, scheduling, and Operational Flow Order penalties subject to revenue crediting.¹²² The purpose of penalty revenue

¹¹⁹ *Order Regarding Future Monitoring of Voluntary Price Formation, Use of Price Indices in Jurisdictional Tariffs, and Closing Certain Tariff Dockets*, 109 FERC ¶ 61,184 (2004) (Price Index Order).

¹²⁰ *Id.* P 66 and Ordering Para. (D).

¹²¹ 18 C.F.R. § 284.12(b)(2)(v) (2015).

¹²² *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,315, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh’g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff’d in part and remanded in part*

credits is to eliminate any financial incentive for pipelines to impose penalties.¹²³ The Commission requires that penalties be credited to non-offending shippers.¹²⁴

(a) **Usage-2: Unscheduled Overrun Penalty**

153. As described above, Sabal Trail proposes a Usage-2 charge that is applicable to Rate Schedule FTS or ITS services for deliveries under two different circumstances: (1) deliveries that are above 110 percent of scheduled quantities, or (2) deliveries for volumes in excess of the MDQ. Above, we address the circumstance where deliveries are in excess of MDQ, requiring that such a service be treated as authorized overrun and charged a rate equal to interruptible service. In this section, we address Sabal Trail's proposal to impose a Usage-2 charge on firm and interruptible shippers for deliveries in excess of 110 percent of scheduled quantities.

154. The Commission permits pipelines to assess penalties. In Order No. 637, the Commission stated that the assessment of penalties should be limited to situations necessary to prevent the impairment of reliable service, and thus required pipelines to narrowly design penalties to deter only conduct that is actually harmful to the system.¹²⁵ Pipelines may impose substantial penalties during critical periods. Penalties during non-critical periods, however, should be a nominal amount. The Commission has held that during non-critical periods a scheduling penalty equal to the interruptible rate is an appropriate incentive for shippers to schedule accurately.¹²⁶ As we discuss above, the Commission directs Sabal Trail to recalculate its Usage-2 charge to reflect its interruptible service characteristics. Therefore, the Commission accepts Sabal Trail's Usage-2 charge as its scheduling penalty for volumes in excess of 110 percent of scheduled quantities.

sub nom. Interstate Natural Gas Ass'n of America v. FERC, 285 F.3d 18 (D.C. Cir 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹²³ *Id.* at 31,316.

¹²⁴ *Id.* at 31,315.

¹²⁵ Order No. 637 at 31,307-31,310.

¹²⁶ *MIGC, Inc.*, 96 FERC ¶ 61,042, at 61,107 (2001).

(b) **GT&C Section 23 – Penalties and Penalty Crediting Mechanism**

155. Sabal Trail proposes two sets of penalties. First, for Rate Schedule PALS, Sabal Trail proposes penalties for non-compliance with Sabal Trail's notices and unresolved balances at the termination of the PALS contract. The penalties consist of confiscating gas left on the system or sold to the shipper at 150 percent of the cashout price for negative balances, plus interest. Second, Sabal Trail proposes penalties for Action Alert and Operational Flow Order violations, which will be 200 and 500 percent of the average cashout price. Pursuant to GT&C section 23, Sabal Trail proposes to credit these penalty revenues to its SBA mechanism. The SBA mechanism is located at GT&C section 22, which is part of Sabal Trail's transporter's use adjustment mechanism. The SBA account consists of net transporter balances, penalty revenues, the Transco lease, and electric and other surcharges. Through the SBA account, Sabal Trail may apply a positive or negative surcharge to all shippers on Sabal Trail's system.

156. The Commission finds that Sabal Trail has not proposed to credit all the penalty revenues that it may collect. GT&C sections 7.3 and 7.4 provide for Trespass Gas and Conversion of Gas. The Commission considers these imbalance charges to be penalties.¹²⁷ Further, Sabal Trail does not propose to credit Usage-2 scheduling penalties. All penalty revenues must be credited to non-offending shippers.

157. GT&C section 22.2 SBA surcharge is applied to all shippers on Sabal Trail's system. There is no attempt to distinguish between shippers who incurred penalties and those who did not. This mechanism is inconsistent with the Commission's requirement that penalty revenues should be credited only to non-offending shippers.

158. GT&C section 22.2 proposes to charge shippers interest if they elect to pay the SBA surcharge after 60 days. Sabal Trail, however, does not propose to accrue interest on penalty revenues held before disbursement. The Commission requires Sabal Trail to apply interest consistent with section 154.501(d) of the Commission's regulations.¹²⁸

vii. **GT&C Section 27 – Creditworthiness**

159. GT&C section 27.2(e) provides in part:

¹²⁷ *Corpus Christi*, 149 FERC ¶ 61,283 at P 83.

¹²⁸ 18 C.F.R § 154.501(d) (2015).

[i]f Shipper fails to provide Transporter with the appropriate credit under [GT&C] section 27.3(b) within such fifteen (15) day notice period, then Transporter may, without waiving any rights or remedies it may have, and subject to a 30 day notice to both the Commission and the Shipper, suspend further service until Shipper's compliance with 27.2(b) is obtained, provided, however, that if compliance is not made within the 30 day notice period, Transporter shall no longer be obligated to continue to provide service to such Shipper.

160. The Commission approves the above-quoted language in GT&C section 27.2(e) subject to revision. The Commission directs Sabal Trail to insert additional language specifying that Sabal Trail is not permitted to impose reservation charges during the suspension period. The Commission seeks to deter pipelines from suspending service to avoid terminating a contract. In addition, Sabal Trail is directed to fix a typographical error in GT&C section 27.2(e) referencing GT&C section 27.3(b), which is not in the *pro forma* tariff.

viii. GT&C Section 28 – Right of First Refusal

161. GT&C section 28 sets forth the eligibility and procedural requirements for a firm shipper to continue to receive transportation service by exercising a regulatory right of first refusal (ROFR). The Commission rejects GT&C section 28 due to its lack of clarity and consistency with Commission policy, and directs Sabal Trail to propose revised ROFR provisions consistent with this discussion when it files tariff records to comply with this order.

(a) GT&C Section 28.2 - Eligibility

162. GT&C section 28.2 of Sabal Trail's *pro forma* tariff provides, in part:

Any Shipper with a firm Agreement under a Part 284 Rate Schedule with an initial term of greater than (2) years must give notice to the Transporter that Shipper desires to continue its Agreement at least two (2) years in advance of the end of the primary term of the Agreement, and any Shipper with a firm Agreement under a Part 284 Rate Schedule with a primary term of (i) at least twelve (12) Months of consecutive Transportation Service, or (ii) firm Transportation Agreement with a primary term of more than one (1) year for service which is not available for twelve (12) consecutive months ("seasonal contracts") must give notice to Transporter that Shipper desires to continue its Agreement at least six (6)

months in advance of the end of the primary term of the Agreement. (Emphasis added).

163. The italicized language above regarding the notice that a shipper must give to continue its agreement should be removed from GT&C section 28.2. The termination or expiration of an existing service agreement, not the continuation of the agreement, is a necessary precursor to the exercise of ROFR procedures.¹²⁹ Language on the continuation of the agreement in a ROFR section is unnecessary and could lead to confusion regarding the notice requirements under ROFR procedures.

164. In addition, the second occurrence of the phrase “continue its Agreement” in GT&C section 28.2 should be deleted because it could be misinterpreted as requiring a ROFR shipper to continue its existing level of service under the ROFR process. Rather, ROFR shippers have the opportunity to decide what volumetric portion of their capacity to retain by matching the best third-party bid(s).¹³⁰ Therefore, instead of language describing a notice that a shipper must provide to continue its agreement, the language should describe a notice that the shipper must give stating its intention to exercise its ROFR.

165. GT&C section 28.2 also provides:

Shipper also must agree that it will match (a) the longest term, *up to the maximum term allowed by the Commission*, and (b) the highest rate for such Service, up to the Maximum Recourse Rate, that is offered by any other person desiring such capacity; provided, however, that Transporter shall not be obligated to provide service at less than the Maximum Recourse Rate(s). (Emphasis added).

166. The Commission previously removed the ROFR term-matching cap from its regulations, finding that the cap is not necessary to protect existing long-term shippers

¹²⁹ See, e.g., *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,262, at PP 26, 32 (2003); *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,295, at PP 16-22 (2003) (*Transco I*).

¹³⁰ See, e.g., *Transco I*, at P 20.

from the pipeline's exercise of market power.¹³¹ Thus, Sabal Trail is directed in its tariff compliance filing to delete the phrase italicized above in GT&C sections 28.2 and 28.3.

(b) **GT&C Section 28.3 – Procedure**

167. GT&C section 28.3(a) sets forth the following ROFR procedures:

Transporter shall notify Shipper no later than three (3) Months prior to the expiration of the Agreement whether any outstanding bona fide offers exist for Transporter's capacity at a higher rate and/or for a longer term which could be satisfied by the relinquishment of Shipper's capacity. Offers will be deemed bona fide if made in compliance with Section 26 of these General Terms and Conditions. Any party that has an outstanding request for firm service under Section 26 of these General Terms and Conditions shall be notified and given the opportunity to specify the rate and term it is willing to offer for Shipper's capacity. If Transporter has received any such offers, Transporter shall inform Shipper of the rate, up to the Maximum Recourse Rate, and the term, up to a maximum time [sic] allowable by the Commission, that has been offered for Shipper's capacity. Shipper shall notify Transporter within ten (10) Business Days after notification whether it desires to match the rate and term offered, and, if so, to provide a binding commitment in writing to Transporter to execute a contract containing said terms within the next thirty (30) Business Days. (Emphasis added).

168. The italicized language in GT&C section 28.3(a) does not expressly state that the pipeline will hold an open season after a shipper indicates its intention to exercise ROFR rights. Order No. 636 requires a pipeline to post the expiring ROFR capacity on its electronic bulletin board.¹³² Such posting constitutes an open season solicitation for

¹³¹ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation*, 101 FERC ¶ 61,127 (2002), *aff'd*, *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

¹³² *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 at p. 30,451, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part*

(continued...)

third-party bids in which the pipeline must state the terms and conditions of the solicitation, including the methodology by which bids will be evaluated.¹³³ Furthermore, the tariff must state that the same methodology used by the pipeline for evaluating bids will be used for determining whether the shipper has matched the best bid(s). Sabal Trail must also clearly state in its compliance filing that a shipper does not have to elect how much capacity it will seek to retain through the ROFR process until after receiving notification from Sabal Trail as to the best offer(s), and that the shipper may notify Sabal Trail of its intent to match the best offer(s) for all or only a volumetric portion of its capacity.¹³⁴

ix. GT&C Section 30 – Negotiated Rates

169. Sabal Trail requests negotiated rate authority as reflected at GT&C section 30, pursuant to the Commission’s Alternative Rate Policy Statement.¹³⁵ GT&C section 30.3 lists all of the essential elements on a Statement of Negotiated Rates. GT&C section 30.3 also provides:

Unless Transporter executes and files a non-conforming Agreement, such Statement of Negotiated Rates will contain a statement that the Negotiated Rate Agreement does not deviate in any material respect from the Form of Service Agreement for the applicable Rate Schedule.

170. Sabal Trail must file any service agreement containing non-conforming provisions and disclose and identify any transportation term or agreement in any other separate agreements that survive the execution of the service agreement. In addition, in the event

and remanded in part sub nom. United Distribution Cos. v. FERC, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

¹³³ See, e.g., *Texas Eastern Transmission, LP*, 101 FERC ¶ 61,215, at P 16 (2002) (*Texas Eastern*).

¹³⁴ *Sierrita*, 147 FERC ¶ 61,192 at P 78.

¹³⁵ *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194 (1996), *order on reh’g*, 75 FERC ¶ 61,024; *Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh’g and clarification*, 114 FERC ¶ 61,042.

Sabal Trail negotiates separate fuel rates or surcharges with replacement shippers, Sabal Trail must file with the Commission a tariff record that includes these negotiated rates.¹³⁶

x. **GT&C Section 31- North American Energy Standards Board (NAESB)**

171. In GT&C section 31, Sabal Trail states that it adopted Version 2.0 of the Business Practices and Electronic Communications Standards adopted by the NAESB Wholesale Gas Quadrant. Sabal Trail also identifies those standards that it did not incorporate by reference, along with the tariff record in which those standards are located. In addition, Sabal Trail identifies standards for which it requests waivers or extensions of time. Sabal Trail requests extensions of time to comply with numerous Data Sets related to Storage Information, Nomination Related Standards, Flowing Gas Related Standards, Invoicing Related Standards, and Capacity Release Related Standards.

172. Sabal Trail does not provide a justification for its requests for extensions of time to comply with the referenced NAESB sections. When Sabal Trail files its actual tariff, Sabal Trail must support each requested extension of time for the appropriate elements consistent with Order No. 587-V.¹³⁷ In addition, Sabal Trail must conform with the NAESB version that is in effect at the time it files its actual tariff compliance filing.

xi. **GT&C Section 39 – Reservation Charge Adjustment**

173. GT&C section 39.3 provides Sabal Trail's proposed exemptions to reservation charge adjustments. Specifically, GT&C section 39.3 (i) through 39.3 (iii) entitles Sabal Trail to a decrease in its reservation charge adjustment for its failure to deliver natural gas due to the conduct of a shipper, upstream operator, or downstream operator. In *Sierrita*, the Commission stated that although it allows exemptions from reservation charge crediting, such exemptions are only applicable when the pipeline's failure to perform is caused solely by the conduct of others or events beyond the control of the pipeline.¹³⁸

¹³⁶ *Gulf South Pipeline Co., LP*, 152 FERC ¶ 61,002, at P 1 (2015) (*Gulf South*); *Equitrans L.P.*, 152 FERC ¶ 61,003, at P 1 (2015) (*Equitrans*).

¹³⁷ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-V, FERC Stats. & Regs. ¶ 31,332, at PP 38-41 (2012) (Order No. 587-V).

¹³⁸ *Sierrita*, 147 FERC ¶ 61,192, at P 91.

174. We direct Sabal Trail to revise proposed GT&C section 39.3 to make clear that it is exempt from issuing reservation charge adjustments only when its failure to deliver gas is due solely to the conduct of others or events beyond its control, i.e., operating conditions on upstream or downstream facilities or a shipper's inability to obtain gas supplies or find a purchaser to take delivery of the supplies.¹³⁹ For the same reason, Sabal Trail is directed to revise GT&C section 39.3(i) through 39.3(iii) by adding the word "solely" after the word "due."

175. GT&C section 39.3(x) provides that Sabal Trail does not have to provide reservation charge credits:

(x) if Shipper is provided service pursuant to a Negotiated Rate Agreement executed after July 8, 2013, or any successor Negotiated Rate Agreement thereto, and such agreement does not explicitly require Reservation Charge Credits.

176. The Commission has found that it is unreasonable for a pipeline to apply a new contractual prerequisite for negotiated rate contracts to qualify for reservation charge credits to agreements entered into before the effective date of the proposed tariff language.¹⁴⁰ Although GT&C section 39.3(x) addresses Sabal Trail's agreements with its existing project shippers, Florida Power & Light and Duke Energy Florida, this provision does not address any agreements that may be reached with other potential shippers before the effective date of the tariff. Negotiated rate shippers of such agreements would have no notice that they could be excluded from the benefit of any improved reservation charge crediting provisions that might be included in Sabal Trail's GT&C in the future, unless they negotiated a contractual provision providing for such credits. Therefore, the Commission directs Sabal Trail to revise this language to apply only to negotiated rate contracts entered into after the effective date of that tariff provision.

¹³⁹ See, e.g., *Iroquois Gas Transmission Sys., L.P.*, 145 FERC ¶ 61,233, at PP 43-44 (2013) (*Iroquois*); *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224, at P 84 (2012); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at P 42 (2012) (*GTN*); *Paiute Pipeline Co.*, 139 FERC ¶ 61,089, at P 31 (2012).

¹⁴⁰ *Iroquois*, 145 FERC ¶ 61,233 at PP 67-71.

2. Florida Southeast Project

a. Initial Rates

177. Florida Southeast proposes firm (Rate Schedule FTS), interruptible (Rate Schedule ITS), and park and loan (Rate Schedule PALS) open access transportation services at cost-based recourse rates under Part 284 of the Commission's regulations. Florida Southeast states that its proposed rates reflect a straight fixed-variable rate design. Florida Southeast also requests authority to offer negotiated rates.

178. Florida Southeast states that the proposed FTS recourse rates are derived using a \$104,769,754 first year cost of service.¹⁴¹ Florida Southeast anticipates having no variable costs because its project does not currently have compression facilities. Florida Southeast proposes to calculate the initial FTS reservation charge based on Florida Southeast's maximum daily design capacity of 640,000 Dth. The proposed maximum cost-based FTS reservation charge is \$0.4485 per Dth per day. Florida Southeast proposes a 100 percent load factor equivalent for its ITS, authorized overrun, and PALS rates, making these interruptible service rates the same as the FTS recourse rate. Florida Southeast did not allocate costs to interruptible transportation services, but rather proposes to credit interruptible revenues to maximum rate shippers. While Florida Southeast does not currently have compression on its system, it does propose to have a fuel tracker mechanism in place. The only component of the tracker mechanism that will be effective will be for lost and unaccounted-for gas, for which it projects an initial retention charge of 0.5 percent.

179. The Commission has reviewed the proposed cost of service and proposed initial rates, and generally finds them reasonable for a new pipeline entity such as Florida Southeast, subject to the modifications and conditions discussed below.

b. Interruptible Services Revenue Crediting

180. The Commission's policy regarding new interruptible services requires the pipeline either to credit 100 percent of the interruptible revenues, net of variable costs, to

¹⁴¹ Florida Southeast Application at Exhibit P, Schedule 1. Florida Southeast's proposed first year cost of service of \$104,769,754 consists of \$3,811,503 of operation and maintenance expenses; \$8,954,333 of depreciation expenses (with a 1.67 percent depreciation rate); \$56,432,600 of return allowance (at 13.00 percent return on equity, based on a capital structure of 60 percent equity and 40 percent debt and a 7.00 percent cost of debt); \$26,418,960 of income tax allowance; and \$9,152,357 of taxes other than income taxes.

firm and interruptible customers, or to allocate costs and volumes to these services.¹⁴² Florida Southeast chooses to credit interruptible revenues.

181. Florida Southeast's proposed GT&C section 39 of its *pro forma* tariff addresses how it will calculate the interruptible revenue credit to maximum rate shippers, which include firm and interruptible shippers, and how it will file its schedule on when the credit will be effective. Florida Southeast, however, does not correctly identify revenues subject to the interruptible revenue crediting mechanism. Florida Southeast does not include authorized overrun revenues or PALS revenues as interruptible revenues. The Commission has found that authorized overrun service and PALS are interruptible services that must be included in the interruptible revenue crediting mechanism.¹⁴³

182. In addition, Florida Southeast proposes to credit interruptible revenues on a yearly basis, but does not propose to pay interest on these funds that it will hold for up to a year. The Commission requires Florida Southeast to pay interest on the accumulated balances consistent with section 154.501(d) of the Commission's regulations.¹⁴⁴

183. GT&C section 39 states that shippers eligible for interruptible revenue credits may include negotiated rate shippers. While Florida Southeast is permitted to share interruptible revenues with its negotiated rate shippers,¹⁴⁵ maximum rate customers must receive 100 percent of the interruptible revenues.¹⁴⁶ Interruptible revenues owed to maximum rate shippers cannot be reduced to reflect revenues from negotiated rate agreements.

184. Additionally, Florida Southeast's interruptible revenue credits provision in GT&C section 39.1 improperly includes language relating to negotiated rate shippers. Negotiated rate provisions should only be reported in a tariff record that identifies the

¹⁴² See, e.g., *Creole Trail LNG, L.P.*, 115 FERC ¶ 61,331, at P 27 (2006); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 51 (2005).

¹⁴³; *Bison*, 131 FERC ¶ 61,013 at P 26 (involving authorized overrun service); *Corpus Christi LNG, L.P.*, 111 FERC ¶ 61,081, at P 34 (2005) (involving PALS).

¹⁴⁴ 18 C.F.R. § 154.501(d) (2015).

¹⁴⁵ *Wyoming Interstate*, 121 FERC ¶ 61,135 at P 11; *Cheyenne*, 108 FERC ¶ 61,052 at PP 12-13.

¹⁴⁶ *Id.*

negotiated rate provisions.¹⁴⁷ Therefore, Florida Southeast is required to remove the language in section 39.1 that refers to negotiated rate shippers.

c. Annual Charge Adjustment

185. Florida Southeast's *pro forma* Statement of Additional Charges and Surcharges and GT&C section 22 provide for the Annual Charge Adjustment (ACA) as permitted by section 154.402 of the Commission's regulations.¹⁴⁸ Section 154.402 states that a pipeline may not recover the Commission's annual charge through an ACA charge until it pays the annual charge and records it in Account No. 928.¹⁴⁹ As Florida Southeast has not been assessed an annual charge, the Commission directs Florida Southeast to remove the ACA surcharge of \$0.0018 per Dth from the Statement of Additional Charges and Surcharges.

186. In addition, Florida Southeast's proposed tariff language at GT&C section 22 does not comply with the requirement in section 154.402 to incorporate by reference the ACA unit charge as posted on the Commission website.¹⁵⁰ The Commission directs Florida Southeast to revise its tariff to comply with the requirements of section 154.402.

d. Three-Year Filing Requirement

187. Consistent with Commission precedent, Florida Southeast must file a cost and revenue study at the end of its first three years of actual operation of its facilities.¹⁵¹ In its filing, Florida Southeast's projected units of service should be no lower than those on which Florida Southeast's approved initial recourse rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data.¹⁵² Florida Southeast's cost and

¹⁴⁷ *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194, order on reh'g, 75 FERC ¶ 61,024.

¹⁴⁸ The ACA unit charge quantifies the amount of annual charges to be flowed through per unit of energy sold or transported.

¹⁴⁹ 18 C.F.R. § 154.402(b)(4) (2015).

¹⁵⁰ 18 C.F.R. § 154.402(a) (2015).

¹⁵¹ *Sierrita*, 147 FERC ¶ 61,192 at P 45; *Bison*, 131 FERC ¶ 61,013 at P 29; *Ruby*, 128 FERC ¶ 61,224 at P 57; *MarkWest*, 125 FERC ¶ 61,165 at P 34.

¹⁵² 18 C.F.R. § 154.313 (2015).

revenue study should be filed through the eTariff portal using Type of Filing Code 580. In addition, Florida Southeast should include as part of the eFiling description, a reference to CP14-554-000 and the cost and revenue study.¹⁵³ After reviewing the data, the Commission will determine whether to exercise authority under NGA section 5 to investigate whether the rates remain just and reasonable. Alternatively, in lieu of this filing, Florida Southeast may make an NGA general section 4 filing to propose alternative recourse rates to be effective no later than three years after the actual operation of its facilities.

e. Negotiated Rate Agreement

188. Florida Southeast states that it will provide service to the project shipper under a negotiated rate agreement pursuant to negotiated rate authority in its GT&C section 30. Florida Southeast must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements in accordance with the Alternative Rate Policy Statement¹⁵⁴ and the Commission's negotiated rate policies.¹⁵⁵ Florida Southeast must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

f. Florida Southeast's Pro Forma Tariff

i. Request for Exemption from Segmentation Policies and Flexible Point Policies

189. Florida Southeast requests exemption from section 284.7(d) of the Commission's regulations requiring pipelines to permit shippers to segment firm capacity either for their own use or for the purpose of releasing that capacity to replacement shippers to the extent operationally feasible. Florida Southeast states that such policies are not applicable to its

¹⁵³ *Electronic Tariff Filings*, 130 FERC ¶ 61,047 at P 17.

¹⁵⁴ *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076, *clarification granted*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024.

¹⁵⁵ *Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, *order on reh'g and clarification*, 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied*, 114 FERC ¶ 61,304.

system because it has only one receipt point and one delivery point.¹⁵⁶ Florida Southeast notes that the Commission approved a similar request in *Sierrita*.¹⁵⁷

190. The Commission denies Florida Southeast's waiver request. The Commission's open access regulations require pipelines to permit firm shippers to segment their capacity,¹⁵⁸ to request secondary point rights,¹⁵⁹ and to release capacity.¹⁶⁰ In Order No. 637, the Commission found that segmentation improves competition by increasing the number of capacity alternatives, and that segmentation is important in facilitating the development of market centers and liquid gas trading points.¹⁶¹ Granting Florida Southeast's proposed waiver here would negatively impact this important right.

191. Further, the facts in *Sierrita* are inapposite to the facts here. In *Sierrita*, the pipeline did not have any plans to provide additional receipt and delivery points in the immediate future. In contrast, Florida Southeast and the Florida Public Service Commission anticipate that Florida Southeast will add more receipt and delivery points. Section 6 of Florida Southeast's *pro forma* tariff allows for segmentation to "the extent that Transporter has multiple Receipt Point and/or Delivery Points."¹⁶² The Florida Public Service Commission, in issuing a predetermination permitting Florida Power &

¹⁵⁶ Florida Southeast Application at 9-10.

¹⁵⁷ *Sierrita*, 147 FERC ¶ 61,192 at P 56.

¹⁵⁸ 18 C.F.R. § 284.7(d) (2015). The regulation provides:

Segmentation. An interstate pipeline that offers transportation service under subpart B or G of this part *must permit* a shipper to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible. (Emphasis added).

¹⁵⁹ 18 C.F.R. § 284.221(g) (2015).

¹⁶⁰ 18 C.F.R. § 284.8 (2015).

¹⁶¹ Order No. 637, FERC Stats. & Regs. ¶ 31,091, at 31,303-04; 18 C.F.R. §§ 284.7 (b)(3), (e) (2015).

¹⁶² Florida Southeast *pro forma* tariff, section 6.4.

Light to finance the construction of the Florida Southeast Project, stated that Florida Southeast will increase the diversity of the supply and “promote competition among suppliers” along the Sabal Trail-Florida Southeast path within Florida.¹⁶³ Moreover, even if Florida Southeast will initially only have one receipt and delivery point, a pipeline must accommodate a new interconnection if the proponent of such interconnection satisfies certain conditions.¹⁶⁴

ii. Map

192. Section 154.106 of the Commission’s regulations requires that all pipeline open access tariffs contain a tariff record that states a uniform resource locator on the pipeline’s Internet website, at which the general public may display and download system map(s).¹⁶⁵ Florida Southeast’s proposed tariff record does not comply with this requirement. When Florida Southeast files actual tariff records in compliance with this order, its tariff record must comply with section 154.106 of the Commission’s regulations.

iii. GT&C Sections 1 & 15 – Force Majeure and Reservation Charge Crediting

193. Florida Southeast’s GT&C section 1 defines *force majeure* as:

acts of God, strikes, lockouts, or other industrial disturbances;
acts of the public enemy, terrorist attacks, vandalism, wars,
blockades, insurrections, riots, epidemics, landslides,
lightning, earthquakes, fires, storms (including but not limited
to hurricanes or hurricane warnings), crevasses, sinkholes,
floods, washouts, arrests and restraints of the government,
either Federal or State, civil or military, civil disturbances.
Force Majeure shall also mean shutdowns due to power
outages and/or *for purposes of necessary repairs, relocation,
or construction of facilities*; failure of electronic data

¹⁶³ Florida Southeast Application at Exhibit Z-1, Florida Public Service Commission, *Petition for prudence determination regarding new pipeline system for Florida Power & Light Company*, Order No., PSC-13-0505-PAA-EI, at page 14 (October 28, 2013).

¹⁶⁴ *Panhandle*, 91 FERC ¶ 61,037.

¹⁶⁵ 18 C.F.R. § 154.106 (2015).

capability; breakage or accident to machinery or lines of pipe; *the necessity for testing (as required by governmental authority or as deemed necessary by Transporter for the safe operation thereof), the necessity of making repairs or alterations to machinery or lines of pipe*; failure of surface equipment or pipe lines; accidents, breakdowns, inability to obtain necessary materials, supplies or permits, or labor to perform or comply with any obligation or condition of service, rights of way; and any other causes, whether of the kind herein enumerated or otherwise which are not reasonably in Transporter's control. (Emphasis added).

194. The Commission defines *force majeure* outages as no-fault occurrences that are both unexpected and uncontrollable events.¹⁶⁶ The italicized sections of Florida Southeast's definition of *force majeure* above, however, could include circumstances that do not meet this standard. Tests, maintenance, and repairs to machinery, equipment, facilities, and lines of pipe, as described in the above definition, may constitute routine and scheduled maintenance. While outages to make scheduled and planned pipeline repairs may be "uncontrollable," they are not "unexpected."¹⁶⁷ If Florida Southeast's definition includes the need to make anticipated repairs, such language does not meet the Commission's requirements for *force majeure* events.

195. Similarly, some governmental requirements are considered *force majeure* events while others are not.¹⁶⁸ Outages necessitated by compliance with government standards concerning regular, periodic maintenance that a pipeline must perform in the ordinary course of business to ensure safe pipeline operation are reasonably within the pipeline's control and thus are not *force majeure* events. However, where the circumstances of a particular case justify treating special, one-time testing required by a government order as outside the control of the pipeline, such testing may be a *force majeure* event.¹⁶⁹ To the extent that Florida Southeast's tariff treats all outages for testing, repair, and maintenance

¹⁶⁶ *Natural Gas Supply Association*, 135 FERC ¶ 61,055, at P 3 (2011).

¹⁶⁷ *CenterPoint Energy Gas Transmission Co., LLC*, 144 FERC ¶ 61,195, at P 69 (2013) (citing *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007)).

¹⁶⁸ *Rockies Express Pipeline LLC*, 142 FERC ¶ 61,075, at P 26 (2013).

¹⁶⁹ *TransColorado Gas Transmission Co. LLC*, 144 FERC ¶ 61,175, at P 44 (2013).

to comply with governmental orders as *force majeure* events, it is over-inclusive and conflicts with Commission policy.¹⁷⁰

196. Accordingly, we find that Florida Southeast's inclusion of these instances in the definition of *force majeure* in GT&C section 1 may conflict with Commission precedent. Therefore, we direct Florida Southeast to modify GT&C section 1 to either remove this language or revise it to be consistent with Commission policy.

iv. Reservation Charge Crediting

197. GT&C section 15 provides that *force majeure* events will not "relieve either party from its obligations to make payments of amounts as provided in the applicable Rate Schedule, subject to any credit provided for in the applicable Rate Schedule." Rate Schedule FTS states that Florida Southeast will credit the reservation charge to the shipper for failure to deliver because of a *force majeure* event.¹⁷¹ Rate Schedule FTS clarifies that Florida Southeast shall not be obligated to credit Shipper's invoice when Transporter's failure to deliver occurs within 10 days following a *force majeure* event. Neither GT&C section 15 nor Rate Schedule FTS, however, address failure to provide service in non-*force majeure* circumstances.

198. The Commission has held that when the interruption is the result of a non-*force majeure* event, the pipeline must credit shippers a full reservation charge.¹⁷² Therefore, the Commission directs Florida Southeast to revise its proposed tariff to credit reservation charges following failures to provide service as a result of non-*force majeure* events, consistent with Commission policy.

v. GT&C Section 5 - Priority of Service, and Section 6 - Scheduling and Curtailment

199. GT&C section 5.2 of Florida Southeast's *pro forma* tariff sets forth the scheduling priority for shippers for each nomination cycle. Florida Southeast proposes in section 5.2(e) that its last priority of service be "Make-up Gas scheduled *at Transporter's*

¹⁷⁰ *GTN*, 141 FERC ¶ 61,101 at P 47 (citing *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012)).

¹⁷¹ Florida Southeast *pro forma* tariff, Rate Schedule FTS, section 3.6.

¹⁷² See, e.g., *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006); *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022, at 61,089 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

discretion.” (Emphasis added). The Commission finds the italicized language is overly broad and may be unduly discriminatory. The Commission therefore directs Florida Southeast to rewrite this sentence to clarify the sources of the make-up gas and any priority of service to be consistent with the make-up gas section contained in GT&C section 6.1(a)(v).

200. Furthermore, Order No. 637 requires pipelines to schedule nominations of capacity at secondary points within shippers’ contract paths ahead of nominations to secondary points outside the nominating shippers’ contract paths. This “within the path” policy on allocating capacity applies to both receipt points and delivery points.¹⁷³ The Commission finds that section 5.2(b) addresses the scheduling priorities for secondary receipt points and secondary delivery points but fails to incorporate the necessary language addressing nominations outside a shipper’s contract path. The Commission directs Florida Southeast to modify section 5.2(b) to incorporate language concerning nominations for secondary points outside a contractual path to be consistent with Commission policy.

201. The Commission finds the heading of GT&C section 6.1 contains language that is either unclear or not reflective of industry standard. The Commission orders Florida Southeast to clarify whether the heading “Scheduling Capacity during a Start of Day Nomination Cycle” refers to the timely nomination cycle, or “Intra-day,” or both.

vi. GT&C Section 8 – Cashout Indices

202. GT&C section 8.7(a) of Florida Southeast’s *pro forma* tariff provides for the Cashout Price determination under Florida Southeast’s Cashout Provision. Specifically, Florida Southeast proposes to use the “Florida city-gates” pricing point as published under the “Daily Price Survey” by *Platts Gas Daily* for the determination of Cashout Sell Price and Cashout Buy Price. Florida Southeast, however, proposes that the “average Midpoint price shall be determined by the arithmetical average of *Platts Gas Daily* ‘Daily Price Survey’ ‘Midpoint’ price for ‘*Florida Gates*’ for the Month and the first seven days of the subsequent Month.” (Emphasis added.) The “Florida Gates” price index, however, does not currently exist in *Platts Gas Daily*. The Commission directs Florida Southeast to revise its tariff to reflect an appropriate index.

203. In the *Price Index Order*,¹⁷⁴ the Commission stated that it will presume that the proposed index location will result in just and reasonable charges if the proposed index

¹⁷³ Order No. 637-B, 92 FERC ¶ 61,062 at 61,170.

¹⁷⁴ Price Index Order, 109 FERC ¶ 61,184 (2004).

location meets two qualifications: (1) the index location is published by a price index developer identified in the *Price Index Order*; (2) the index location meets one or more of the applicable criteria for liquidity, i.e., the index must be developed on a sufficient number of reported transactions involving sufficient volumes of natural gas for the appropriate review period.¹⁷⁵ While the Commission requires a pipeline to demonstrate the liquidity of an index location, the Commission recognizes that liquidity may fluctuate for various price indices due to constant changes in market conditions.

204. As such, the Commission directs Florida Southeast to ensure that its price index meets or exceeds one or more of the minimum criteria for liquidity listed within the *Price Index Order* before implementing this tariff provision.

vii. GT&C Section 27 – Creditworthiness

205. GT&C section 27.3(b) provides:

If Shipper fails to provide Transporter with the appropriate credit under this section 27.3(b) within such fifteen (15) day notice period, then Transporter may, without waiving any rights or remedies it may have, and subject to a 30 day notice to both the Commission and the Shipper, suspend further service until Shipper's compliance with 27.2(b) is obtained, provided, however, that if compliance is not made within the 30 day notice period, Transporter shall no longer be obligated to continue to provide service to such Shipper.

206. The Commission approves the above-quoted language in section 27.3(b) subject to further revision. Because the Commission seeks to deter pipelines from suspending service in order to avoid terminating a contract, the Commission directs Florida Southeast to insert additional language specifying that Florida Southeast may not impose reservation charges during the suspension period.

viii. GT&C Section 28 – Right of First Refusal

207. GT&C section 28 sets forth the eligibility and procedural requirements for a firm shipper to continue to receive transportation service by exercising a regulatory ROFR.¹⁷⁶ The Commission rejects GT&C section 28 due to its lack of clarity and consistency with

¹⁷⁵ *Id.* P 66 and Ordering Para. (D).

¹⁷⁶ 18 C.F.R. § 284.221(d)(2)(ii) (2015).

Commission policy, and directs Florida Southeast to propose revised ROFR provisions consistent with the following discussion when it files tariff records to comply with this order.

(a) **GT&C Section 28.2 - Eligibility**

208. Section 28.2 of Florida Southeast's *pro forma* tariff provides, in part:

Any Shipper with a firm Agreement under a Part 284 Rate Schedule with an initial term of greater than (2) years must give notice to the Transporter that Shipper desires to continue its Agreement at least two (2) years in advance of the end of the primary term of the Agreement, and any Shipper with a firm Agreement under a Part 284 Rate Schedule with a primary term of (i) at least twelve (12) Months of consecutive Transportation Service, or (ii) firm Transportation Agreement with a primary term of more than one (1) year for service which is not available for twelve (12) consecutive months ("seasonal contracts") must give notice to Transporter that Shipper desires to continue its Agreement at least six (6) months in advance of the end of the primary term of the Agreement. (Emphasis added).

209. The language italicized above regarding the notice that a shipper must provide to continue its agreement should be removed from GT&C section 28.2 because the termination or expiration of an existing service agreement, not the continuation of the agreement, are the necessary precursors to the exercise of ROFR procedures.¹⁷⁷ Such language in a ROFR section is unnecessary and could lead to confusion regarding the notice requirements under ROFR procedures.

210. In addition, Florida Southeast should delete the second occurrence of the phrase "continue its Agreement" in GT&C section 28.2 because it could be misinterpreted as requiring a ROFR shipper to continue its existing level of service under the ROFR process. Rather, ROFR shippers have the opportunity to decide what volumetric portion of their capacity to retain by matching the best third-party bid(s).¹⁷⁸ Therefore, instead of describing the notice that a shipper must provide to continue its agreement, Florida

¹⁷⁷ *Texas Eastern Transmission, LP*, 102 FERC ¶ 61,262 at PP 26, 32; *Transco I*, 103 FERC ¶ 61,295 at PP 16-22.

¹⁷⁸ *Transco I*, at P 20.

Southeast should describe the notice that the shipper must give stating its intention to exercise its ROFR.

211. GT&C section 28.2 also provides:

Shipper also must agree that it will match (a) *the longest term, up to the maximum term allowed by the Commission,* and (b) the highest rate for such Service, up to the Maximum Recourse Rate, that is offered by any other person desiring such capacity; provided, however, that Transporter shall not be obligated to provide service at less than the Maximum Recourse Rate(s). (Emphasis added).

212. The Commission previously removed the ROFR term-matching cap from its regulations, finding that the cap is not necessary to protect existing long-term shippers from the pipeline's exercise of market power.¹⁷⁹ In its compliance filing, Florida Southeast is directed to delete the italicized phrase above and the same phrase appearing in GT&C section 28.3.

(b) **GT&C Section 28.3 – Procedure**

213. GT&C section 28.3(a) sets forth the following ROFR procedures:

Transporter shall notify Shipper no later than three (3) Months prior to the expiration of the Agreement whether any outstanding bona fide offers exist for Transporter's capacity at a higher rate and/or for a longer term which could be satisfied by the relinquishment of Shipper's capacity. Offers will be deemed bona fide if made in compliance with Section 26 of these General Terms and Conditions. Any party that has an outstanding request for firm service under Section 26 of these General Terms and Conditions shall be notified and given the opportunity to specify the rate and term it is willing to offer for Shipper's capacity. If Transporter has received any such offers, Transporter shall inform Shipper of the rate, up to the Maximum Recourse Rate, and the term, up to a maximum time allowable by the Commission, that has

¹⁷⁹ *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation*, 101 FERC ¶ 61,127, *aff'd*, *American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

been offered for Shipper's capacity. Shipper shall notify Transporter within ten (10) Business Days after notification whether it desires to match the rate and term offered, and, if so, to provide a binding commitment in writing to Transporter to execute a contract containing said terms within the next thirty (30) Business Days. (Emphasis added).

214. The italicized language in GT&C section 28.3(a) does not expressly state that Florida Southeast will hold an open season after a shipper indicates its intention to exercise ROFR rights. Order No. 636 requires pipelines to post the expiring ROFR capacity on their electronic bulletin board.¹⁸⁰ Such posting constitutes an open season solicitation for third-party bids in which the pipeline must state the terms and conditions of the solicitation, including the methodology by which bids will be evaluated.¹⁸¹ The tariff must also state that the same methodology used by the pipeline for evaluating bids will be used for determining whether the shipper has matched the best bid(s).

215. In addition, Florida Southeast must clearly state in its compliance filing that a shipper does not have to elect how much capacity it will seek to retain through the ROFR process until after receiving notification from Florida Southeast as to the best offer(s), and that the shipper may notify Florida Southeast of its intent to match the best offer(s) for all or only a volumetric portion of its capacity.¹⁸²

¹⁸⁰ *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939, at p. 30,451, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272, *order on reh'g*, 62 FERC ¶ 61,007, *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186.

¹⁸¹ *See, e.g., Texas Eastern*, 101 FERC ¶ 61,215 at P 16.

¹⁸² *Sierrita*, 147 FERC ¶ 61,192 at P 78.

ix. GT&C Section 30 – Negotiated Rates

216. Florida Southeast requests negotiated rate authority as reflected at GT&C section 30, pursuant to the Commission’s Alternative Rate Policy Statement.¹⁸³ Section 30.3 lists all of the essential elements on a Statement of Negotiated Rates. Section 30.3 also states:

Unless Transporter executes and files a non-conforming Agreement, such Statement of Negotiated Rates will contain a statement that the Negotiated Rate Agreement does not deviate in any material respect from the Form of Service Agreement for the applicable Rate Schedule.

217. Florida Southeast must file any service agreement containing non-conforming provisions and disclose and identify any transportation term or agreement in any other separate agreements that survives the execution of the service agreement. In addition, in the event Florida Southeast negotiates separate fuel rates or surcharges with replacement shippers, it must file with the Commission a tariff record that includes those negotiated rates.¹⁸⁴

x. GT&C Section 31- NAESB

218. Florida Southeast states that it adopted Version 2.0 and pertinent provisions of Version 2.1 of the Business Practices and Electronic Communications Standards of the NAESB Wholesale Gas Quadrant.¹⁸⁵ Florida Southeast identifies those standards incorporated by reference, as well as those not incorporated by reference. For those standards not incorporated by reference, Florida Southeast provides the number of the tariff record in which they are located. In addition, Florida Southeast identifies those standards for which it requested waivers or extensions of time. Florida Southeast requests extensions of time to comply with numerous Data Sets related to Storage Information, Nomination Related Standards, Flowing Gas Related Standards, Invoicing Related Standards, and Capacity Release Related Standards.

¹⁸³ *Alternatives to Traditional Cost-of-Service Ratemaking*, 74 FERC ¶ 61,076), *clarification granted*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024; *Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134, *order on reh'g and clarification*, 114 FERC ¶ 61,042.

¹⁸⁴ *Gulf South*, 152 FERC ¶ 61,002; *Equitrans*, 152 FERC ¶ 61,003.

¹⁸⁵ Florida Southeast Application at 12.

219. Florida Southeast does not provide a justification for its requests for extensions of time to comply with the referenced NAESB sections. When Florida Southeast files its actual tariff, the Commission requires that Florida Southeast support each requested extension of time for the appropriate elements consistent with Order No. 587-V.¹⁸⁶ Florida Southeast's actual tariff compliance filing must conform with the NAESB version that is in effect when it is filed. Furthermore, Florida Southeast must delete any references to Version 2.1, which the Commission has not adopted.

xi. GT&C Section 38 – Incidental Purchases and Sales

220. Florida Southeast proposes to include language in GT&C section 38 for the purchase and sale of operational gas to the extent necessary to maintain reliable system operations, including system pressure, fuel quantities, and line pack.

221. The Commission requires pipelines to include in their tariffs specific provisions addressing operational sales and purchases of natural gas.¹⁸⁷ These provisions include: (a) the specific circumstances in which the pipeline will perform an operational purchase or sale; (b) a statement that operational purchases or sales have a lower transportation priority than firm transportation and there will be no transportation service associated with its operational purchases or sales of gas; (c) a statement that operational sales service is unbundled from transportation service; (d) posting and bidding procedures for the sale of gas for operational purposes; and (e) a commitment to filing an annual report of sales and purchases and revenues derived from the sale of gas. The report must indicate the source of gas, date of the purchase or sale volumes, purchase or sale price, costs and revenues from purchase or sale, and the disposition of the costs and revenues.

222. Florida Southeast's proposed tariff language generally sets forth the circumstances in which it will perform operational purchases and sales and provides for posting and bidding procedures for the purchase and sale of natural gas for operational purposes. Florida Southeast's proposal, however, fails to include provision (b). The Commission directs Florida Southeast to include a statement that operational purchases or sales have a lower transportation priority than firm transportation.

¹⁸⁶ Order No. 587-V, FERC Stats. & Regs. ¶ 31,332 at PP 38-41.

¹⁸⁷ *ANR Pipeline*, 110 FERC ¶ 61,069 at P 57; *Colorado Interstate*, 107 FERC ¶ 61,312 at P 15, *order on reh'g*, 111 FERC ¶ 61,216 at P 57; *Dominion*, 106 FERC ¶ 61,029 at P 17.

g. Non-Conforming Provisions

223. Florida Southeast identifies one non-conforming term and condition to its Precedent Agreement that will survive the final transportation agreement.¹⁸⁸ Florida Southeast states that Florida Power & Light's service agreement in Exhibit I includes a footnote to the Maximum Daily Hourly Quantity (MDHQ), stating that "Transporter will provide a higher MDHQ, not to exceed six (6) percent, if operationally able to do so consistent with Transporter's Tariff." Florida Southeast acknowledges that its *pro forma* tariff does not discuss hourly flow rights, and therefore states that it will add language to its *pro forma* tariff when it files to make the tariff effective. Florida Southeast states that this language in the tariff would make the footnote a conforming provision.

224. In its application, however, Florida Southeast requests that the Commission find that it is permissible to offer certain rights to Florida Power & Light as an anchor shipper, including a most-favored nation clause, the ability to request future expansions, and a unilateral extension right.¹⁸⁹ Because Florida Southeast did not identify these rights as non-conforming provisions nor provide public versions of the transportation agreements as requested by the Commission,¹⁹⁰ the Commission will not issue a predetermination on their permissibility.

225. At least 30 days, but not more than 60 days, before providing service to any project shipper under a non-conforming agreement, Florida Southeast must file an executed copy of the non-conforming agreement disclosing and reflecting all non-conforming language as part of Florida Southeast's tariff and a tariff record identifying these agreements as non-conforming agreements consistent with section 154.112 of the Commission's regulations.¹⁹¹

¹⁸⁸ Florida Southeast October 13, 2015 Response to October 7, 2015 data request (Florida Southeast October 13, 2015 Data Response).

¹⁸⁹ Florida Southeast Application at 13.

¹⁹⁰ Florida Southeast October 13, 2015 Data Response.

¹⁹¹ 18 C.F.R. § 154.112 (2015).

D. Environmental Analysis

1. Pre-filing and Application Review

226. Commission staff began its pre-filing environmental review of the Hillabee Expansion Project, Sabal Trail Project, and Florida Southeast Project (referred collectively in the draft and final EIS as the Southeast Market Pipelines Project or SMP Project) in the fall of 2013. On February 18, 2014, Commission staff issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Southeast Market Pipelines Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). This notice was published in the *Federal Register* on February 26, 2014,¹⁹² and sent to more than 5,800 interested parties, including representatives of federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; concerned citizens; and local libraries and newspapers. The NOI briefly described the projects and the EIS process, provided a preliminary list of issues identified by staff, invited written comments on the environmental issues that should be addressed in the draft EIS, listed the date and location of 13 public scoping meetings,¹⁹³ and established April 20, 2014, as the deadline for comments.

227. At the public scoping meetings, a total of 199 speakers provided verbal comments about the projects. In addition, the Secretary of the Commission received more than 1,100 letters commenting on the projects.¹⁹⁴

228. On October 15, 2014, Commission staff issued a Supplemental Notice of Intent to Prepare an Environmental Impact Statement for the Planned Southeast Market Pipelines Project and Request for Comments on Environmental Issues Related to New Alternatives Under Consideration that described four route alternatives for the Sabal Trail Project and alternative locations for Sabal Trail's proposed Albany Compressor Station in Dougherty

¹⁹² 79 Fed. Reg. 10,793 (2014).

¹⁹³ Commission staff held the public scoping meetings between September 3 and September 27, 2014, in Butler, Alexander City, and Seale, Alabama; Moultrie, Albany, and Valdosta, Georgia; and Live Oak, Bell, Dunnellon, Clermont, Kissimmee, Lake Wales, and Okeechobee, Florida.

¹⁹⁴ Table 1.3-1 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

County, Georgia.¹⁹⁵ Commission staff sent this supplemental notice to 898 individuals and groups.

229. On June 19, 2015, Commission staff issued another Supplemental Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Southeast Market Pipelines Project and Request for Comments on Environmental Issues Related to the Newly Proposed Albany Compressor Station Location that described a newly proposed location for Sabal Trail's Albany Compressor Station.¹⁹⁶ Commission staff sent this supplemental notice to 167 individuals and groups.

230. To satisfy the requirements of NEPA, Commission staff prepared a draft EIS for the projects. The U.S. Army Corps of Engineers (Corps) participated in the preparation of the draft EIS as a cooperating agency. Commission staff issued the draft EIS on September 4, 2015, which addressed the issues raised during the scoping period and included staff's independent analysis of the environmental impacts of the three projects.

231. Notice of the draft EIS was published in the *Federal Register* on September 11, 2015, establishing a 45-day public comment period that ended on October 26, 2015.¹⁹⁷ The draft EIS was mailed to the staff's environmental mailing list, which included the parties that were mailed the NOIs and additional interested parties. Commission staff held 10 public meetings between September 28 and October 8, 2015, to receive comments on the draft EIS.¹⁹⁸ Approximately 154 speakers provided verbal comments at these meetings, and we received 137 individual comments on the draft EIS before the comment period closed on October 26, 2015. Letters received after October 26, 2015, continued to be posted to the Commission's eLibrary and were reviewed by staff for substantive concerns. Most comments received after October 26, 2015, did not raise any new substantive issues that were not already addressed in previously filed comments. With respect to those comments that did raise new issues, we address them in this order below.

¹⁹⁵ 79 Fed. Reg. 63,115 (2014).

¹⁹⁶ 80 Fed. Reg. 36,798 (2015).

¹⁹⁷ 80 Fed. Reg. 54,777 (2015).

¹⁹⁸ Commission staff held draft EIS comment meetings in Alexander City and Phenix City, Alabama; Albany, Moultrie, and Valdosta, Georgia; and Lake City, Bell, Dunnellon, Davenport, and Okeechobee, Florida.

232. Commission staff issued the final EIS on December 18, 2015, which was published in the *Federal Register* on December 24, 2015.¹⁹⁹ The final EIS addresses comments received on the draft EIS through October 26, 2015.²⁰⁰ Commission staff mailed the final EIS to the same parties as the draft EIS, as well as additional parties.²⁰¹ The final EIS evaluates geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

233. The final EIS concludes that if the projects are constructed and operated in accordance with applicable laws and regulations, the projects will result in some adverse environmental impacts. These impacts, however, will be reduced to less-than-significant levels with the implementation of the applicants' proposed impact avoidance, minimization, and mitigation measures, and Commission staff's recommendations (now adopted as conditions in Appendix B of this order). Notable issues of concern addressed in the final EIS and summarized below include: karst geology, the Floridan Aquifer System (Floridan Aquifer),²⁰² wetlands, visual impacts, property values, environmental justice, air quality and noise, pipeline integrity and public safety, and alternatives.

2. Major Environmental Issues Addressed in the final EIS

a. Karst Geology

234. Many commentors express concern about the location of the Sabal Trail Project in karst sensitive areas of southwest Georgia and north-central Florida. The Florida Southeast Project will also traverse karst in central Florida, but to a substantially less degree than the Sabal Trail Project.²⁰³ Specifically, commentors question the adequacy

¹⁹⁹ 80 Fed. Reg. 80,354 (2015).

²⁰⁰ Volume III of the final EIS includes responses to comments on the draft EIS through October 26, 2015. In addition, the final EIS addresses comments received after October 26, 2015, from landowner Robbie Barkley in Dougherty County, Georgia (Accession No. 20151113-5095) concerning the use of access roads on his property.

²⁰¹ The distribution list is provided in Appendix A of the final EIS.

²⁰² Commission staff's draft and final EIS refer to the Floridan Aquifer as "FAS."

²⁰³ The Hillabee Expansion Project will not cross karst sensitive areas.

of Commission staff's karst assessment and are concerned that the projects may trigger sinkhole development or be adversely affected by sinkholes.

235. The final EIS thoroughly describes existing karst conditions in southwest Georgia and northern Florida; discusses the mechanisms that can trigger karst activity; assesses the potential risks to the project facilities posed by karst activity and the potential impacts on karst resulting from the project facilities; and describes the project-specific studies and construction, monitoring, and mitigation plans that have been and will be implemented to avoid and minimize these risks. The final EIS documents that the project will occur in areas of highly karstic terrain comprised of thousands of karstic features.²⁰⁴ The final EIS's karst assessment is based on site-specific studies including geotechnical and geophysical investigations at horizontal directional drill (HDD) locations and major aboveground facility sites; project-specific analyses; consultations with Georgia and Florida state agency experts; field inspections conducted by Commission staff; and considers information and reports provided by landowners and other stakeholders.²⁰⁵

236. The final EIS assesses the impact that the project may have on sinkhole development that, if unmitigated, could result from stormwater or hydrostatic test water discharges. Appendix F of the final EIS includes the detailed, project-specific plans that Sabal Trail and Florida Southeast will implement to prevent and minimize the potential for sinkhole development on and off the right-of-way. These plans include commonly used methods employed in both Georgia and Florida to mitigate karst features encountered during construction and over the operating life of the facilities.

237. The final EIS also evaluated the adverse effects that sinkhole development may have on pipeline integrity and public safety in karst sensitive areas. The final EIS explains that during pipeline operation Sabal Trail and Florida Southeast will visually monitor their rights-of-way for signs of karst activity and conduct internal inspections of the pipelines for signs of stress or damage in accordance with U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) requirements. Should karst features develop, the applicants will implement necessary mitigation measures. Sabal Trail will also implement common construction practices to support the facilities, such as reinforced concrete beams and slabs or deep pile foundations that extend into competent bedrock. These construction practices are based on geotechnical and geophysical studies at Sabal Trail's proposed aboveground facility sites in karst sensitive areas.

²⁰⁴ Final EIS at 3-6 to 3-9.

²⁰⁵ *Id.* at 3-4 to 3-13.

238. Further, Commission staff reviewed interstate transmission pipeline accident data and contacted PHMSA personnel and the pipeline safety coordinators within the Georgia and Florida public service commissions. Commission staff found that hundreds of miles of interstate transmission pipeline have operated in karst sensitive areas of Georgia and Florida for decades without significant karst-related incident. Additionally, the presence of karst has not precluded the continued development of residential, commercial, and industrial facilities, and other linear infrastructure, such as roads and powerlines²⁰⁶ in southwest Georgia and north-central Florida.

239. The final EIS concludes, and we agree, that the potential for the projects to cause sinkhole development or be affected by karst activity has been adequately minimized and will be appropriately mitigated and monitored following construction.

b. Floridan Aquifer System

240. We received many comments regarding the projects' potential to adversely affect the Floridan Aquifer, springs, and drinking water wells. As stated in the final EIS, the Floridan Aquifer underlies the majority of the Sabal Trail Project and the entire Florida Southeast Project. The aquifer covers a 100,000-square-mile area including all of Florida and portions of Alabama, South Carolina, and Georgia, and is one of the most productive aquifers in the world.²⁰⁷ The Floridan Aquifer provides drinking water to over 10,000,000 people. In 2000, 4 billion gallons of water per day were withdrawn from the Floridan Aquifer each day and an additional 8 billion gallons per day of water discharged from associated springs.

241. The final EIS describes the extent, hydrology, and productivity of the Floridan Aquifer; the proximity of the project facilities to significant springs, springsheds, cave systems, and drinking water supply wells; how construction and operation of the projects could impact the Floridan Aquifer and associated resources; and the project-specific construction, monitoring, and mitigation measures that Sabal Trail and Florida Southeast will implement to avoid and minimize impacts on groundwater resources.²⁰⁸

242. The final EIS notes that 98 percent of the pipeline will be installed using standard overland construction methods, which will generally limit ground disturbance to a depth

²⁰⁶ *Id.* at 3-12 to 3-13.

²⁰⁷ *Id.* at 3-26 to 3-27.

²⁰⁸ *Id.* at 3-25 to 3-44.

of about 6 to 8 feet.²⁰⁹ Sabal Trail will install the remainder of its pipeline facilities using the HDD method.

243. The final EIS concludes that impacts on groundwater from overland construction will be short term and localized, and mitigated by implementation of the applicants' construction and restoration plans and adherence to Commission staff recommendations, now included as conditions in Appendix B of this order. Moreover, Commission staff identified only two springs within 0.5 mile of overland pipeline construction in the karst sensitive areas of Georgia and Florida, the nearest of which is about 1,000 feet from the project. Based on these distances and considering that impacts on groundwater resources that could occur in conjunction with overland construction would be temporary, minor, and localized, the final EIS concludes, and we agree, that overland construction would not significantly impact the Floridan Aquifer.

244. Regarding the impacts of HDD crossings over groundwater, Commission staff identified five of the 26 HDDs proposed by Sabal Trail as occurring through karst bedrock within the Floridan Aquifer. Sabal Trail sited these HDDs installations in karst sensitive areas to avoid constructing near major springs and public water supply wells.

245. The final EIS describes the detailed site-specific geotechnical and geophysical studies conducted by Sabal Trail to characterize the karst geology at these five HDD crossings.²¹⁰ None of the five HDD crossings will occur in a public wellhead protection area, encounter mapped cave systems, or occur within 0.5 mile of 1st, 2nd, or 3rd magnitude springs.²¹¹ The HDD crossings will be located within 0.5 miles of two 4th magnitude springs, one of which is hydrologically upgradient from the proposed HDD and, therefore, is unlikely to be affected by HDD activity. The other 4th magnitude spring is approximately 0.2 mile downgradient from the HDD crossing of the Suwannee River in Hamilton and Suwannee Counties, Florida, and will be subject to a site-specific monitoring plan during construction.

²⁰⁹ *Id.* at 3-39.

²¹⁰ *Id.* at 3-4 to 3-12.

²¹¹ Springs are classified according to the volume of flow per unit time. A 1st magnitude spring discharges more than 64.6 million gallons of water per day (mgpd); a 2nd magnitude spring discharges between 6.46 and 64.6 mgpd; a 3rd magnitude spring discharges between 0.646 and 6.46 mgpd; and a 4th magnitude spring discharges between 100 and 448 gallons per minute. *See* final EIS at 3-30.

246. The final EIS states the HDD method has previously been used to successfully cross waterbodies in karst sensitive areas, including the Florida Gas Transmission's crossing of the Sante Fe River at the same location as the Sabal Trail Project crossing in Suwannee and Gilchrist Counties, Florida. The final EIS explains²¹² that use of the HDD method could increase groundwater turbidity; however, this impact would be temporary and would diminish with time and distance from the point of release. Appendix E of the final EIS includes Sabal Trail's and Florida Southeast's project-specific HDD drilling and contingency plans, which detail the measures the companies will implement to reduce the likelihood of an inadvertent loss of drilling mud. Commission staff reviewed these plans and found them acceptable.

247. The final EIS also discusses the impacts of overland construction and HDD installations on water supply wells. Each applicant identified water supply wells located within 150 feet of their respective construction workspaces. The applicants will provide pre- and post-construction testing of the nearby wells with landowner permission and will repair or replace any wells affected by the project or otherwise compensate the affected landowner. Due to high groundwater flow rates within karst sensitive areas of Georgia and Florida, Sabal Trail will continue to identify water supply wells within 2,000 feet downgradient from HDD locations and will establish baseline turbidity levels in the select wells subject to landowner permission. Sabal Trail will expand its turbidity monitoring to wells up to 2,000 feet downgradient from HDD operations if it detects changes in water quality in more proximal wells and will continue monitoring until turbidity levels return to baseline conditions.

248. The City of Albany, Georgia, and nearby residents expressed concern that the Sabal Trail pipeline could adversely affect a municipal well field on the south side of the City and that the Albany Compressor Station will be constructed nearly on top of a municipal well. The final EIS explains that the Sabal Trail pipeline will be installed in a shallow trench 350 to 450 feet from the municipal wells. The final EIS also notes that the City installed wells near Southern Natural's existing natural gas pipeline and Dixie Pipeline Company LLC's existing natural gas liquids pipeline, both of which pre-date construction of the well field by at least 30 years. The final EIS also states that the City of Albany Wellhead Protection Plan, prepared by the Georgia Department of Natural Resources in February 2015, does not identify the existing pipelines as potential contaminant sources, and that the Commission received no comments from the City documenting any issues with the existing pipelines across the well field.²¹³ Moreover, unlike a spill from a pipeline that conveys a liquid such as oil or gasoline, a release of

²¹² Final EIS at 3-40 to 3-42.

²¹³ *Id.* at 3-43.

natural gas from the proposed pipeline would dissipate quickly into the atmosphere and not contaminate underlying resources.

249. As for the Albany Compressor Station, the final EIS notes that the Wellhead Protection Plan indicates that the nearest City well is 2.2 miles from the compressor station site, and that the compressor station will be located outside of the outer management zone for that well. Therefore, the final EIS concludes, and we agree, that constructing and operating of the Sabal Trail Project will not significantly affect local groundwater resources or wells in the City of Albany area.

c. Wetlands

250. We received many comments about the projects' impacts on wetlands. Constructing the projects will impact approximately 877.7 acres of wetlands, including 562.7 acres of forested wetlands, 45.5 acres of scrub-shrub wetlands, and 269.5 acres of emergent wetlands.²¹⁴ The majority of affected wetlands will return to pre-construction conditions following construction. Pipeline operation, however, will permanently impact some wetlands. The applicants will clear and maintain a 30-foot-wide corridor over the pipeline in forested wetlands, permanently impacting 200.3 acres of wetlands, and will mow a 10-foot-wide corridor in scrub-shrub wetlands, permanently impacting 5.0 acres. Additionally, less than 4 acres of wetlands will be permanently converted to industrial use.

251. In consultation with the Corps and applicable state agencies, the applicants propose to purchase wetland credits from established wetland mitigation banks to mitigate for unavoidable wetland impacts. The final EIS recommends that the applicants file copies of the final mitigation plans and documentation of the Corps' approval before the start of construction. We include this recommendation in this order as Environmental Condition 14.

252. Based on the types and amounts of wetlands that will be affected and the applicants' measures to avoid, minimize, and mitigate wetlands impacts as detailed in their construction and restoration plans, the final EIS finds, and we agree, that the projects will not significantly impact wetlands.²¹⁵

²¹⁴ *Id.* at 3-64 to 3-77.

²¹⁵ *Id.* at 3-78.

d. Visual Impacts

253. Several commentors allege that the location of the Albany Compressor Station near a mobile home park violates section 380.15(g) of the Commission's regulations, which requires that "[u]nobtrusive sites should be selected for the location of aboveground facilities."²¹⁶ The final EIS explains that Sabal Trail has committed to maintaining a minimum 100-foot-wide buffer of existing, approximately 30-foot-tall mature trees around the compressor station site. The tallest proposed structure, the exhaust stack, is approximately 60 feet tall. Based on the site elevation and the tree cover, a structure would need to be at least 85 feet tall to be visible from the mobile home park. Consequently, no part of the compressor station would be visible from the nearby mobile home park and roadways, and the more distant residences and public areas (e.g., fairgrounds, churches, schools).²¹⁷ We thus find that the location of the Albany Compressor Station complies with section 380.15 of the Commission's regulations.

e. Property Values

254. Numerous commentors expressed concerns about the projects' potential impacts on property values. Specifically, they are concerned that if their property is encumbered by a pipeline easement, their property will be devalued and they will sustain negative economic effects resulting from such land use changes. Some commentors argue that the devaluation of their property constitutes a taking under the Fifth and Fourteenth Amendments of the U.S. Constitution.

255. Although the applicants will acquire new temporary and permanent easements for the project, the majority of the pipeline segments, roughly 65 percent, will be installed adjacent to an existing utility right-of-way.²¹⁸ Where new easements on private property are required, the final EIS states that the applicants will compensate landowners for the easements, the temporary loss of land use, and any damages.²¹⁹

256. Section 7(h) of the NGA confers the right to obtain property easements through the power of eminent domain if the certificate holder cannot reach an agreement with the property owner. The courts have uniformly held that a certificate holder's use of

²¹⁶ 18 C.F.R. § 380.15(g) (2015).

²¹⁷ Final EIS at 3-161.

²¹⁸ *Id.* at 3-184.

²¹⁹ *Id.*

eminent domain to acquire necessary property easements does not violate a landowner's constitutional rights.²²⁰ Issues of an unconstitutional taking arise only when the government acts in a way to deprive a citizen of its property without just compensation. Landowners will be compensated through easement negotiations or in an eminent domain proceeding where a court will determine the fair compensation landowners will receive for the use of their lands. We therefore are not persuaded by commentors' argument that the purported devaluation of private property, if it were substantiated, violates either the Fifth or Fourteenth Amendment of the Constitution.

257. In addition, as the final EIS states, affected landowners who believe that their property values have been negatively affected can appeal to local tax agencies for reappraisal and potential tax reductions. As for property outside the pipeline rights-of-way or aboveground facility boundaries, the final EIS concludes that the projects will not significantly affect the value of such property.

258. Commentors also expressed concern about mortgage companies re-categorizing properties based on proximity to pipelines or federally insured mortgages being revoked due to proximity to pipelines. Commission staff is not aware of any such practices and has been unable to confirm such practices exist.

f. Environmental Justice

259. Commentors expressed concerns about the potential impact that the Sabal Trail Project's mainline and Albany Compressor Station would have on environmental justice communities in and near the City of Albany, Dougherty County, Georgia. The commentors state that locating project facilities near environmental justice communities would subject the community to unnecessary safety risks and air and noise pollution.

260. Executive Order 12898 requires that specified federal agencies shall make achieving environmental justice part of their missions by identifying and addressing, as appropriate, disproportionately high and adverse human or environmental health effects of their programs, policies, and activities on minorities and low income populations. Executive Order 12898 applies to the agencies specified in section 1-102 of that order.²²¹

²²⁰ See, e.g., *Thatcher v. Tennessee Gas Transmission Co.*, 180 F.2d 644 (5th Cir. 1950), *cert. denied* 340 U.S. 829 (1950); *Williams v. Transcontinental Gas Pipe Line Corp.*, 89 F. Supp. 485 (W.D. S. C. 1950).

²²¹ Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order 12898 (February 11, 1994), reprinted at 59 Fed. Reg. 7629.

This Commission is not one of the specified agencies, and the provisions of Executive Order 12898 are not binding on this Commission. Nonetheless, in accordance with our usual practice, the final EIS addresses this issue and concludes that the proposed projects will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations.

261. The final EIS finds that the compressor station building will be more than 1 mile from the nearest designated environmental justice tract; will not be visible from the nearest visual receptors or even visible from the closest public road; and that the noise increase at the nearest residences will not be perceptible because the increase above background noise will be less than 3 decibels on the A-weighted scale (dBA). Further, air quality modeling indicates that the levels of criteria pollutants emitted from the proposed facilities will not exceed EPA's limits, which are designed to protect the most sensitive populations. Lastly, the final EIS evaluates the effects of reasonable project alternatives on environmental justice communities and concludes that the proposed project would not result in a disproportionate impact on environmental justice communities when compared to the alternatives.

262. As we have stated in prior cases, the siting of linear facilities between two fixed end points is generally based on environmental and engineering factors with no regard to demographics.²²² The final EIS explains that a majority of the Sabal Trail Project's facilities will be within or adjacent to existing pipeline and utility rights-of-way. While the pipeline segment through Dougherty County will not be colocated with an existing right-of-way, the final EIS explains that the segment was sited to avoid and minimize impacts on residences.²²³

g. Air Quality and Noise

263. Commentors expressed concerns about impacts on air quality and associated health effects resulting from the proposed compressor stations. The final EIS reviews the air quality modeling analyses conducted for all new and modified compressor stations proposed by the applicants. The modeling analyses demonstrate that potential emissions from new and modified compressor stations are not likely to cause or significantly contribute to an exceedance of National Ambient Air Quality Standards (NAAQS), which are protective of human health, including children, the elderly, and sensitive populations. Modeling performed for toxic air pollutants also shows that ambient concentrations are well below health risk-based concentrations established by the American Conference of

²²² See, e.g., *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at p. 16 (2001).

²²³ Final EIS at 3-218.

Governmental and Industrial Hygienists. Therefore, the final EIS concludes that constructing and operating the proposed project facilities will not have a significant impact on air quality in the project area or region.²²⁴

264. On December 4, 2015, Transco filed air dispersion modeling in response to staff's November 13, 2015 Environmental Information Request. Staff reviewed this information and found that it adequately demonstrated that modeled emissions from Compressor Station 84, plus the ambient background, will result in local concentrations below the NAAQS. Therefore, Environmental Recommendation Condition 25 in the final EIS is no longer needed and is not included as a condition of this order. Because Transco did not provide dispersion modeling for all new and existing equipment at Compressor Stations 95 and 105, the final EIS recommends, and Environmental Condition 24 of this order requires, Transco to provide such modeling to demonstrate compliance with the NAAQS before construction.

265. Commentors expressed concerns about noise impacts from the proposed compressor stations. The final EIS reviews noise impact analyses for all new and modified compressor stations related to the projects. These analyses estimate that the projects' operational noise impacts will be below the Commission's 55 dBA day-night sound level guideline and applicable state and local noise regulations. Thus, the final EIS concludes, and we agree, that the projects will not have a significant impact on noise in the project area.²²⁵ In addition, the final EIS recommends, and Environmental Conditions 26 and 27 of this order require, Transco and Sabal Trail to conduct noise monitoring after the new and modified equipment commences operation to ensure that applicants comply with the Commission's noise guidelines.

h. Pipeline Integrity and Public Safety

266. Numerous commentors expressed concern about the integrity of the projects' facilities and potential impacts on public safety. The final EIS states that the proposed facilities will be designed, constructed, operated, and maintained to meet or exceed the DOT's Minimum Federal Safety Standards set forth in Title 49 Code of Federal Regulations (CFR) Part 192 and other applicable federal and state regulations, which are protective of public safety. The Commission has a Memorandum of Understanding on Natural Gas Transportation Facilities with the DOT, which has exclusive authority to promulgate federal safety standards used in the transportation of natural gas. These regulations are implemented by PHMSA. Once a natural gas pipeline is constructed,

²²⁴ *Id.* at 3-260.

²²⁵ *Id.* at 3-274.

PHSMA maintains oversight of safety during operations. Based on available data, the final EIS concludes that the projects will represent only a slight increase in risk to the general public.²²⁶

267. Commentors expressed concern regarding the potential for fires and controlled burns to affect the pipeline facilities. These activities have been permitted and have occurred over pipelines throughout the country. Coordination between entities conducting controlled burns and the applicants is necessary. The final EIS states that the applicants will develop emergency plans that will include establishing and maintaining communication with appropriate fire, police, and other public officials, and developing prompt and effective responses to each type of emergency, including a fire near or directly involving a pipeline facility.²²⁷

268. Commentors also expressed concern regarding the ability to detect leaks in the pipeline system when an odorant has not been introduced into the transported natural gas. The final EIS explains that the applicants will install data acquisition systems that monitor pipeline flows and pressures at various points along the system. In the event an incident occurs along the pipeline, the data acquisition systems system will enable the pipeline to remotely or automatically close mainline valves and will utilize a combination of radio and satellite communications to transmit data from the pipeline to the applicants' current gas control centers.²²⁸

269. Commentors expressed concern regarding potential damage to existing, older pipelines during construction of the projects, and the potential cumulative safety risk of multiple colocated natural gas pipelines. Colocating natural gas transmission facilities is common and encouraged for a variety of reasons, including minimization of environmental impacts. The final EIS states that while the applicants will utilize existing pipeline rights-of-way as temporary workspace to some degree, the impacts of excavation will be minimal: applicants will typically not operate heavy equipment over existing pipeline facilities and will generally install the new facilities at least 25 feet from existing pipelines. The existing and proposed natural gas facilities will also be constructed and operated in accordance with DOT's safety requirements.²²⁹

²²⁶ *Id.* at 3-286.

²²⁷ *Id.* at 3-280.

²²⁸ *Id.*

²²⁹ *Id.* at 3-282.

270. Southern Natural expressed concern regarding the number of times Sabal Trail's pipeline will cross its existing pipeline system. In response, Sabal Trail modified the pipeline route to eliminate more than one-third of the originally proposed crossings; has agreed to install the pipeline beneath the existing Southern Natural's system using the bore method at all but 10 crossings; and has committed to work with Southern Natural on the design and construction methods for the remaining crossings, cathodic protection systems, and future maintenance activities. The final EIS concludes that Sabal Trail's remaining crossings of Southern Natural's pipeline system are sufficiently justified to minimize impacts on residences, cultural resources, and other environmental resources and to address construction constraints (e.g., steep side slopes).

271. We received numerous comments from residents, officials, and concerned citizens in Dougherty County, Georgia, about potential impacts on residences and public safety from the operation of the proposed Albany Compressor Station. As the final EIS explains, Sabal Trail will comply with DOT Minimum Federal Safety Standards in 49 CFR 192, and will implement specific safety measures at its compressor stations, including installing a chain link fence with barbed wire to maintain facility and worker safety; controlling access and alarm systems; ventilating compressor buildings to prevent the accumulation of gas; installing automatic emergency detection and shut-down systems; and maintaining fire protection, first aid, and safety equipment. As such, the final EIS concludes, and we agree, that constructing and operating the Albany Compressor Station will not significantly impact public safety.²³⁰

272. Commentors expressed concern regarding the safety records of Transco and Sabal Trail's parent company, Spectra. The Commission reviews each project based on its own merits. The final EIS also discloses the incidence rate and causes of natural gas transmission pipeline accidents, finding that the minimal number of incidents distributed over more than 300,000 miles of natural gas transmission pipelines indicates the risk is low for any incident at any given location.²³¹ Therefore, the final EIS concludes that pipelines are one of the safest means for transporting hazardous substances.²³²

i. Alternatives

273. We received numerous comments on Commission staff's alternatives analysis, requesting that alternatives be reexamined and additional alternatives be considered. The

²³⁰ *Id.* at 3-283.

²³¹ *Id.* at 3-286.

²³² *Id.*

final EIS evaluates a wide range of alternatives to the projects components, including the no-action alternative, system alternatives, major route alternatives, minor route variations, and aboveground facility site alternatives to determine whether the alternatives meet the stated project purpose, are technically and economically feasible, and offer a significant environmental advantage when compared to the proposed facilities.²³³

274. The final EIS evaluates 12 major pipeline route alternatives, including land-based routes that follow other existing rights-of-way, and several that avoid or largely avoid Georgia, including an alternative across the Gulf of Mexico. As the final EIS states, Commission staff did not recommend these alternatives over the proposed route.²³⁴ The final EIS also evaluates six alternative locations for the Albany Compressor Station and concludes that none offers a significant environmental advantage over the proposed site.²³⁵

275. Moreover, the applicants considered over 300 minor route variations to avoid or minimize impacts on landowners or sensitive environmental resources, of which 229 were incorporated into applicants' proposed actions or otherwise addressed by adopting another route variation.²³⁶ Commission staff reviewed these variations and found them acceptable. In addition, the final EIS recommends, and Environmental Conditions 28 and 29 of this order require, Sabal Trail to adopt the Hall Route Variation in Dougherty County, Georgia, and the AZ Ocala Route Variation in Marion County, Florida.²³⁷ In a filing by Sabal Trail after the issuance of the final EIS, it adopted these variations, as discussed further below.

²³³ *Id.* at 4-1 to 4-7.

²³⁴ *Id.* at 4-8 to 4-24. We note that NEPA only requires that appropriate alternatives be considered; it does not mandate a particular alternative. *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by [NEPA] from deciding that other values outweigh the environmental costs.”)

²³⁵ *See* final EIS at 4-50 to 4-55.

²³⁶ *Id.* at 4-24 and appendix D, table 4.3.2-1.

²³⁷ *Id.* at 4-24 to 4-48.

j. Late Comments Not Addressed in the Final EIS

276. All written comments received from September 4, 2015, to October 26, 2015, were included and addressed in Volume III of the final EIS. Thirty-eight unique comment letters and 177 copies of two form letters were filed after October 26, 2015. Ten of the 38 unique letters were addressed to President Obama. Eight comments were filed after issuance of the final EIS; four of these letters included specific comments on the final EIS. The majority of the late letters, including those addressed to President Obama, discussed issues that had already been raised in previous comment letters and addressed in the final EIS. Comments received after October 26, 2015, from Robbie Barkley, AZ Ocala, and Gerry and Dinorah Hall raised environmental issues and were addressed in the final EIS. Additionally, Sabal Trail, in a supplemental filing, modified its proposal incorporating the final EIS' recommendations concerning the pipeline segments across the AZ Ocala and Hall properties. Therefore, these recommendations are no longer necessary and are not included as conditions to this order. Below we discuss the late letters filed by Kiokee-Flint and EPA that identified new environmental issues.

i. Kiokee-Flint

277. On October 28, 2015, Kiokee-Flint submitted comments regarding project need, impacts on landowners, and additional project information that the applicants filed during the draft EIS comment period. Above, we respond to Kiokee-Flint's comments on project need.

278. Kiokee-Flint asserts that the draft EIS did not adequately mitigate impacts related to invasive species, septic systems, and tree removal. Kiokee-Flint questions the measures of invasive species control in the event landowners deny the use of herbicides. Further, Kiokee-Flint states that the draft EIS does not include meaningful enforcement measures for mitigation of septic system impacts or sufficient mitigation measures for impacts on landowners' trees and forested land.

279. The final EIS states that the applicants will control the spread of invasive species during and after construction with herbicide application or mechanical treatment.²³⁸ In the event that a landowner does not approve the use of herbicides, the applicants will use mechanical methods specified in the invasive species management plans that they

²³⁸ *Id.* at 3-85.

prepared. The final EIS incorporated these invasive species management plans by reference.²³⁹

280. Applicants will attempt to avoid septic systems. If avoidance is not possible, applicants will relocate and protect septic systems before construction. The applicants' commitments, which the final EIS describes, have been filed with the Commission under oath and are legally binding. In addition, the final EIS states that the applicants have prepared landowner complaint resolution procedures, which include contact information for each applicant and Commission staff for landowners to report questions or concerns. Environmental Condition 7 requires the applicants to identify in their biweekly construction status reports any landowner and resident complaints that may relate to the requirements of this order, and the measures that the applicants took to satisfy landowner concerns. Thus, we conclude that these measures will sufficiently address landowner concerns regarding septic systems that may arise during construction.

281. Kiokee-Flint states that the draft EIS lacks sufficient mitigation measures to address the impacts of tree loss on landowners, and that the applicants' proposal to mitigate tree loss through the easement negotiation process is inadequate. Instead, Kiokee-Flint asserts the Commission should require the applicants to fully replace all trees through replanting and to hire arborists to monitor the replanting.

282. The final EIS acknowledges the long-term impacts associated with tree removal. Landowners will have the opportunity to identify mature trees to the applicants before construction, and applicants will attempt to preserve mature trees within the construction work area to the extent possible. Following construction, forest land outside the permanent right-of-way, aboveground facility sites, and new permanent access roads will be allowed to regrow in accordance with the Commission's restoration requirements for natural revegetation of forested land following construction. We decline to impose mitigation measures to address tree loss on an individual landowner's property. Such mitigation or compensation is appropriately raised in easement negotiations or eminent domain proceedings.

283. Kiokee-Flint states that the draft EIS should describe restrictions associated with landowner easement agreements that would limit a landowner's ability to use areas inside and outside the permanent right-of-way. The Commission does not engage in easement negotiations between the company and the landowner, land-managing agency, or other third parties. Easement negotiations for a right-of-way are between a landowner and the pipeline company and are not subject to review by the Commission.

²³⁹ *Id.* at 2-28.

284. Kiokee-Flint asserts that because Spectra is unable to obtain adequate insurance, individual homeowners will bear the burden of insurance coverage, thereby increasing the cost of property insurance or adversely affecting a landowner's ability to obtain insurance. Thus, Kiokee-Flint contends we should require Spectra to procure adequate insurance coverage for its facilities or add landowners to its insurance policy, or compensate landowners for any increased property insurance premiums.

285. We decline to require the applicants to procure insurance. The final EIS concludes that there would be a low risk for an incident to occur when operating the projects. The final EIS further discloses that Commission staff is not aware of any conclusive evidence suggesting that a pipeline easement would result in the cancellation of a landowner's insurance policy or increase in premiums.²⁴⁰ Further, liability or any project-related damages are beyond the Commission's jurisdiction.

286. Kiokee-Flint also states that the draft EIS should have discussed property insurance. In support, Kiokee-Flint cites *Constitution Pipeline Company, LLC (Constitution)*²⁴¹ where the Commission required a greenfield pipeline for two years following construction to report any complaints from a homeowner that a homeowner's insurance policy was cancelled or voided, or materially increased, because of the pipeline right-of-way or pipeline installation. The Commission required documentation of such homeowner complaints in *Constitution* because that project received specific comments from landowners stating their insurance providers were denying coverage or raising premiums. Here, we received no such specific comments from homeowners affected by the projects.

287. Kiokee-Flint comments that more recent evidence than that provided in the draft EIS refutes the conclusion that the projects would not reduce property values. The final EIS acknowledges that various studies have drawn different conclusions regarding the potential impact of natural gas transmission infrastructure on property values, and reiterates that the effect that a pipeline easement may have on property values would depend on many factors and is a damage-related issue that would be negotiated between the parties during the easement acquisition process. Further, on balance we do not find that the residual potential for the projects' construction and operation to negatively affect

²⁴⁰ *Transcontinental Gas Pipe Line Co., LLC*, 149 FERC ¶ 61,258, at P 91 (2014) (stating that Commission staff independently researched the potential for a pipeline easement to impact a landowner's individual homeowner insurance, but did not find conclusive evidence suggesting that a pipeline would result in the cancellation of policy or increase in premiums).

²⁴¹ *Constitution*, 149 FERC ¶ 61,199 (2014).

the economic interests of landowners and the neighboring community is sufficient to foreclose a determination that the proposed project is required by the public convenience and necessity.²⁴²

288. In addition to raising specific environmental issues, Kiokee-Flint contends that, in accordance with the Council on Environmental Quality's NEPA regulations, the draft EIS must be revised and reissued because it did not allow meaningful analysis. In particular, Kiokee-Flint argues that the draft EIS must be reissued or supplemented to take into account subsequently filed information provided by the applicants at Commission staff's request.

289. We disagree. The Commission has a longstanding practice to issue environmental documents along with recommended mitigation measures that request specific documentation of agency consultation, construction plans, and detailed information to supplement baseline data as the Commission did here. The applicants' filings did not present new information that would change any of staff's conclusions of environmental impact or pose substantial changes to the proposed action, and therefore, Commission staff did not reissue a draft EIS or a supplemental EIS.²⁴³

ii. U.S. Environmental Protection Agency

290. The EPA provided comments on the draft EIS regarding karst geology, groundwater, wetlands, environmental justice, air quality, and alternatives analysis. Volume III of the final EIS addressed EPA's comments as comment letter FA2.²⁴⁴

291. Subsequently, on December 18, 2015, the EPA filed with the Commission a copy of its comments to the Corps regarding the Corps' Clean Water Act (CWA) Section 404

²⁴² See, e.g., *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301 (D.C. Cir. 2015) (finding that the Commission took a requisite "hard look" at a proposed compressor station's effect on property values and finding that the Commission appropriately concluded that the negative impact was not sufficient to alter its decision that the project was in the public convenience and necessity).

²⁴³ 40 C.F.R. § 1502.9(c)(1) (2014). Under section 1502.9(c)(1) of the CEQ's regulations, an agency is only required to prepare a supplemental EIS if (1) "the agency makes substantial changes in the proposed action that are relevant to environmental concerns" or (2) "there are significant new circumstances or information relevant to environmental concerns." *Id.*

²⁴⁴ Final EIS at O-2 to O-33.

permit applications. In its letter to the Corps, the EPA indicated that based on further clarifications provided to EPA's staff, several of its comments on the draft EIS regarding wetlands, groundwater, and surface water were resolved. Regarding the impacts under Section 404 of the CWA, the EPA states that it believes the applicants have fully considered avoidance and minimization of impacts during the development of the preferred routes. Specifically, the EPA now acknowledges that the applicants' routes will avoid many of the most sensitive karst areas and that the karst areas along the pipeline routes are unlikely to be significantly affected. Additionally, the EPA now concludes it is unlikely that the pipeline will affect the Floridan Aquifer and that it is highly unlikely the project will impact the City of Albany well field.

3. Environmental Analysis Conclusion

292. We have reviewed the information and analysis contained in the final EIS regarding the potential environmental effects of the projects. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the project, if constructed and operated as described in the final EIS, is an environmentally acceptable action. Except where modified as described above, we are adopting the environmental recommendations in the final EIS and are including them as conditions in Appendix B to this order.

293. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.²⁴⁵

294. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

²⁴⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the NGA to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by the Commission); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Florida Southeast Connection, LLC to construct and operate the Florida Southeast Connection Project, as described in this order and in the application in Docket No. CP14-554-000.

(B) A certificate of public convenience and necessity is issued authorizing Transcontinental Gas Pipeline Company, LLC to construct and operate the Hillabee Expansion Project, as described in this order and in the application in Docket No. CP15-16-000.

(C) A certificate of public convenience and necessity is issued authorizing Sabal Trail Transmission, LLC to construct and operate the Sabal Trail Project, as described in this order and in the application in Docket No. CP15-17-000.

(D) Blanket construction certificates are issued to Florida Southeast Connection, LLC and Sabal Trail Transmission, LLC under Subpart F of Part 157 of the Commission's regulations.

(E) Blanket transportation certificates are issued to Florida Southeast Connection, LLC and Sabal Trail Transmission, LLC under Subpart G of Part 284 of the Commission's regulations.

(F) The certificate authority issued in Ordering Paragraphs (A), (B), and (C) shall be conditioned on the following:

- (1) Florida Southeast Connection, LLC, Sabal Trail Transmission, LLC, and Transcontinental Gas Pipe Line Company, LLC's (Applicants) completion of the authorized construction of the proposed facilities and making them available for service within 24 months from the date of this order, pursuant to section 157.20(b) of the Commission's regulations;
- (2) Applicants' compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;
- (3) Applicants' compliance with the environmental conditions listed in Appendix B of this order.

(G) Authority is granted to Transcontinental Gas Pipe Line Company, LLC under section 7(b) of the NGA to abandon by lease the subject capacity described in the body of this order to Sabal Trail Transmission, LLC.

(H) A certificate of public convenience and necessity is issued to Sabal Trail Transmission, LLC authorizing it to lease capacity from Transcontinental Gas Pipe Line Company, LLC, as described and conditioned herein.

(I) Transcontinental Gas Pipe Line Company, LLC shall notify the Commission within 10 days of the date of abandonment of the capacity leased to Sabal Trail Transmission, LLC.

(J) Transcontinental Gas Pipe Line Company, LLC may roll in the fuel costs associated with the Hillabee Expansion Project in its fuel tracker filings, absent a material change in circumstances.

(K) Florida Southeast Connection, LLC and Sabal Trail Transmission, LLC shall execute firm contracts for the capacity levels and terms of service represented in signed precedent agreements, before commencing construction.

(L) Sabal Trail Transmission, LLC shall execute a Capacity Lease Agreement with Transcontinental Gas Pipe Line Company, LLC as modified in this order, before commencing construction, and file it with the Commission at least 30 days before its effective date.

(M) During the term of the Capacity Lease Agreement, Transcontinental Gas Pipe Line Company, LLC shall not be permitted to shift any of its costs associated with the leased capacity to customers that do not use the leased capacity.

(N) Transcontinental Gas Pipe Line Company, LLC shall adhere to the accounting requirements discussed in the body of this order.

(O) Florida Southeast Connection, LLC's initial rates and the language contained in its *pro forma* tariff are approved, as conditioned and modified in this order.

(P) Florida Southeast Connection, LLC shall file actual tariff records that comply with the requirements contained in the body of this order no less than 30 days and no more than 60 days before the commencement of interstate service consistent with Part 154 of the Commission's regulations.

(Q) Within three years after its in-service date, as discussed herein, Florida Southeast Connection, LLC must make a filing to justify its existing cost-based firm and interruptible recourse rates as described in the body of this order.

(R) Sabal Trail Transmission, LLC's initial rates and the language contained in its *pro forma* tariff are approved, as conditioned and modified in this order.

(S) Sabal Trail Transmission, LLC shall file actual tariff records that comply with the requirements contained in the body of this order no less than 30 days and no more than 60 days before the commencement of interstate service consistent with Part 154 of the Commission's regulations.

(T) Within three years after its in-service date, as discussed herein, Sabal Trail Transmission, LLC must make a filing to justify its existing cost-based firm and interruptible recourse rates as described in the body of this order.

(U) Florida Southeast Connection, LLC; Sabal Trail Transmission, LLC; and Transcontinental Gas Pipe Line Company (Applicants) shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies them. Applicants shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(V) The late motions to intervene out of time in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 are granted pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure.

(W) The requests for a full evidentiary, trial-type hearing and a technical conference are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Docket No. CP14-554-000: Florida Southeast Connection Project

Timely, Unopposed Interventions

- Florida Gas Transmission Company, LLC
- Floridian Natural Gas Storage Company, LLC
- Florida Power & Light Company
- Florida Municipal Natural Gas Association
- Florida Department of Transportation
- Florida Cities
- Peoples Gas System, a division of Tampa Electric Company
- Sabal Trail Transmission, LLC

Late Interventions

- Albany Audubon Society
- Bill and Nanci Kendall
- Bonnie M. Potters
- Carol Singletary
- Chattahoochee Riverkeeper
- Christopher J. Mericle
- City of Albany, Georgia
- Curt and Rebecca Johnson
- Dougherty County, Georgia
- Ecila Plantation, LLC
- Flint Riverkeeper
- Florida Audubon Society, Inc.
- Pivotal Utility Holdings, Inc.
- Georgia Climate Change Coalition
- Gloria Gaines
- Graham Companies
- Gulf Restoration Network, Inc.
- James E. Bell, II
- Jason and Brian Goolsby
- Jim and Belinda Davis
- Jon E. Daniel, Mark A. Daniel, Jon V. Daniel, Daniel & Sons Farms LLC, and

Deertrack Farm LLC

- Kiokee-Flint Group and the Individual Members of the Kiokee-Flint Group²⁴⁶
- Kristine & Michael Rebmann
- Ladd Crittenden Jordan
- Nancy D. Barclay
- Nonami Oglethorpe, LLC
- Orange Audubon Society, Inc.
- Our Santa Fe River, Inc.
- Phillip Singletary
- Pineknoll Pecan Properties, LLC
- Radium Springs Neighborhood Association
- Richard T. Brim
- Robert A. Bell
- Robert L. Dixon Jr. and Marcia Sellars Dixon
- Sandra Jones
- Scott and Sheila Haner
- Sierra Club, Georgia Chapter
- SpectraBusters, Inc.
- Wiregrass Activists for Clean Energy
- WWALS Watershed Coalition, Inc.

²⁴⁶ Individual members of the Kiokee-Flint Group include: The Graham Companies; John T Phillips III and Sarah Earl P. Spurlock; Gerry and Dinorah Hall; Albany Farms LLC; Steve and Debra Wilder; Steve Whately; Barbara Watson; Nanart Properties LLC; Mathew Farms; Robert A. Matthew Testamentary Trust; Clinton Miles; Lemuel Griffin; Stonecypher Family Partnership, LTD; and Wilma Muse.

Docket No. CP15-16-000: Hillabee Expansion Project

Timely, Unopposed Interventions

- Alabama Gas Corporation
- Albany Audubon Society
- Atmos Energy Marketing LLC
- Bill and Nanci Kendall
- Bonnie M. Potters
- Calpine Energy Services, L.P.
- Carol Singletary
- Chattahoochee Riverkeeper
- Christopher J. Mericle
- City of Albany, Georgia
- Consolidated Edison Company of New York, Inc. and Philadelphia Gas Works
- Curt and Rebecca Johnson
- Dougherty County, Georgia
- Duke Energy Progress, Inc.; Duke Energy Florida, Inc.; and Duke Energy Carolinas, LLC
- Dutch Bend LLC
- Ecila Plantation, LLC
- Exelon Corporation
- Flint Riverkeeper
- Florida Audubon Society, Inc.
- Florida Gas Transmission Company, LLC
- Florida Power & Light Company
- Florida Southeast Connection, LLC
- Gloria Gaines
- Graham Companies
- Gulf Restoration Network, Inc.
- James E. Bell, II
- Jason and Brian Goolsby
- Jim and Belinda Davis
- Jon E. Daniel, Mark A. Daniel, Jon V. Daniel, Daniel & Sons Farms LLC, and Deertrack Farm LLC
- Kiokee-Flint Group and the Individual Members of the Kiokee-Flint Group
- Ladd Crittenden Jordan
- Municipal Gas Authority of Georgia and the Transco Municipal Group
- Nancy D. Barclay
- National Grid Gas Delivery Companies
- New Jersey Natural Gas Company

- NJR Energy Services Company
- Nonami Oglethorpe, LLC
- Orange Audubon Society, Inc.
- Our Santa Fe River, Inc.
- Peoples Gas System, a Division of Tampa Electric Company
- Phillip Singletary
- Pineknoll Pecan Properties, LLC
- Pivotal Utility Holdings, Inc.; Atlanta Gas Light Company; and Virginia Natural Gas, Inc.
- Public Service Company of North Carolina; and South Carolina Electric & Gas Company
- Radium Springs Neighborhood Association
- Richard T. Brim
- Robert A. Bell
- Robert L. Dixon, Jr. and Marcia Sellars Dixon
- Sabal Trail Transmission, LLC
- Sandra Jones
- Scott and Sheila Haner
- Sierra Club, Georgia Chapter
- Southern Company Services, Inc.
- SpectraBusters, Inc.
- WWALS Watershed Coalition, Inc.

Late Interventions

- Georgia Climate Change Coalition
- John and Sue Gibson
- Kristine and Michael Rebmann
- National Fuel Gas Distribution Corporation

Docket No. CP15-17-000: Sabal Trail Project

Timely, Unopposed Interventions

- Albany Audubon Society
- Atmos Energy Marketing LLC
- Bill and Nanci Kendall
- Blue Ridge Environmental Defense League, Inc.
- Bonner Peacock Enterprises, LLLP
- Bonnie Potters
- Brooks County Board of Commissioners
- Carol Singletary
- Chattahoochee Riverkeeper
- Christopher J. Mericle
- City of Albany, Georgia
- Curt and Rebecca Johnson
- Dougherty County, Georgia
- Wiregrass Activists for Clean Energy
- Duke Energy Florida, Inc.
- Dutch Bend LLC
- Ecila Plantation, LLC
- Flint Riverkeeper
- Florida Audubon Society, Inc.
- Florida Cities²⁴⁷
- Florida Department of Transportation
- Floridian Natural Gas Storage Company, LLC
- Florida Gas Transmission Company, LLC
- Florida Power & Light Company
- Florida Southeast Connection, LLC
- Gloria Gaines
- Graham Companies
- Gulf Restoration Network, Inc.
- Hamilton County, Florida Board of County Commissioners

²⁴⁷ Florida Cities consists of JEA, the Orlando Utilities Commission, Lakeland Electric, the City of Tallahassee, the City of Gainesville, and Florida Gas Utility (an inter-local agency whose membership consists of more than 20 municipally owned electric and gas utilities).

- J.W. Gibson Company
- James E. Bell, II
- Jason and Brian Goolsby (also intervened on 12/24/14)
- Jim and Belinda Davis
- Jon E. Daniel, Mark A. Daniel, Jon V. Daniel, Daniel & Son Farms LLC, and Deertrack Farm LLC
- Kiokee-Flint Group and the Individual Members of the Kiokee-Flint Group
- Ladd Crittenden Jordan
- Nancy D Barclay
- Nonami Oglethorpe, LLC
- Orange Audubon Society, Inc.
- Our Santa Fe River, Inc.
- Pineknoll Pecan Properties, LLC
- Peoples Gas System, a Division of Tampa Electric
- Phillip Singletary
- Radium Springs Neighborhood Association
- Richard T Brim III
- Robert A. Bell
- Robert L. Dixon Jr. and Marcia Sellars Dixon
- Sandra Jones
- Scott and Sheila Haner
- Seminole Electric Cooperative, Inc.
- Sierra Club, Georgia Chapter
- Southeast Laborers' District Council
- Southern Company Services, Inc.
- Southern Natural Gas Company, L.L.C.
- SpectraBusters, Inc.
- Stonecypher Family Partnership, LTD, and Wilma Muse
- The Municipal Gas Authority of Georgia
- Lowndes County Democratic Party
- TSE Plantation, LLC
- WWALS Watershed Coalition, Inc.

Late, Unopposed Motions to Intervene

- 21 Palms R.V. Resort Inc. and Brenda Dykgraaf
- AZ Ocala Ranch, LLC
- Chapman Garden LLC; Westmont Home Owners Association Inc.; and Hanover Land Company LLC
- Florida Municipal Natural Gas Association
- G.B.A Associates, LLC and Gregory K. Isaacs

- Georgia Climate Change Coalition
- James M. Elliott, III; Elizabeth J. Elliott; Steve James Elliott, and Vance Evans Hall
- Jennifer Maloney and Derek Gray
- John and Sue Gibson
- Kristine and Michael Rebmann
- Mary C. Galloway and Canaan Ranch, LLP
- Russell G. Bland and Sharon E. Bland

Appendix B

Environmental Conditions for the Southeast Market Pipelines Project

Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000

As recommended in the final environmental impact statement (EIS) and otherwise amended herein, this authorization includes the following conditions. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the final EIS. Florida Southeast Connection, LLC; Sabal Trail Transmission, LLC; and Transcontinental Gas Pipe Line Company, LLC are collectively referred to as “Applicants.”

1. The Applicants shall follow the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests) and as identified in the final EIS, unless modified by the Order. The Applicants must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the Hillabee Expansion Project, Sabal Trail Project, and Florida Southeast Connection Project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, the Applicants shall file affirmative statements with the Secretary, certified by a senior company official, that all company personnel,

environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, the Applicants shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

The Applicants' exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. The Applicants' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline/facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. The Applicants shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the Applicants' project-specific construction plans described in the EIS and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;

- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the authorization and before construction begins**, the Applicants shall file Implementation Plans with the Secretary for review and written approval by the Director of OEP. The Applicants must file revisions to the plans as schedules change. The plans shall identify:

- a. how the Applicants will implement the construction procedures and mitigation measures described in their applications and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
- b. how the Applicants will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned per spread, and how the companies will ensure that sufficient personnel are available to implement the environmental mitigation;
- d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- e. the location and dates of the environmental compliance training and instructions the Applicants will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
- f. the company personnel (if known) and specific portion of the Applicants' organizations having responsibility for compliance;
- g. the procedures (including use of contract penalties) the Applicants will follow if noncompliance occurs; and
- h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

- (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of their Implementation Plans, the Applicants shall file updated status reports with the Secretary on a biweekly basis until all construction and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
 - a. an update on the Applicants' efforts to obtain the necessary federal authorizations;
 - b. the construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by the Applicants from other federal, state, or local permitting agencies concerning instances of noncompliance, and the Applicants' response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, the Applicants shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

9. The Applicants must receive written authorization from the Director of OEP **before placing each phase of their respective projects into service.** Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service,** the Applicants shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions in the Order the Applicants have complied with or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction,** Sabal Trail Transmission, LLC (Sabal Trail) shall file, for the review and written approval of the Director of OEP, an Unanticipated Paleontological Resources Discovery Plan that describes how Sabal Trail would recognize and manage significant fossils encountered during construction. This plan shall also describe the notification procedures to the State Geologists in each state crossed by the Sabal Trail Project. (Section 3.1.5.2)
12. **Prior to construction,** Florida Southeast Connection, LLC shall file with the Secretary the locations, rates, and volumes of water that would be discharged following hydrostatic testing activities. This shall include the watershed associated with the source water, and the respective discharge location. (Section 3.3.3.5)
13. **Prior to construction,** the Applicants shall file copies of their final wetland mitigation plans and documentation of U.S. Army Corps of Engineers' approval of the plans. (Sections 3.4.3.1, 3.4.3.2, and 3.4.3.3)
14. **Prior to construction,** the Applicants shall each provide a plan describing the feasibility of incorporating plant seeds that support pollinators into the seed mixes used for restoration of construction workspaces. These plans shall also describe the Applicants' consultations with the relevant federal and/or state regulatory agencies. (Section 3.5.8)

15. The Applicants shall not begin construction **until**:
 - a. all outstanding biological surveys have been completed;
 - b. the staff completes formal consultation with the U.S. Fish and Wildlife Service; and
 - c. the Applicants have received written notification, respectively, from the Director of OEP that construction or use of mitigation may begin. (Section 3.8)

16. Sabal Trail Transmission, LLC (Sabal Trail) and Florida Southeast Connection, LLC (Florida Southeast) shall avoid construction within occupied scrub-jay habitat **between March 1 and June 30**, unless additional surveys confirm that this habitat is unoccupied or Sabal Trail or Florida Southeast receives written confirmation from the Director of OEP that construction activities can occur within this timeframe. (Section 3.8.1)

17. **Prior to construction**, Sabal Trail Transmission, LLC shall file for the review and written approval by the Director of OEP, results of consultation with the U.S. Fish and Wildlife Service indicating the minimization and avoidance measures that will be used for the longspurred mint, including (in the order listed), opportunities for:
 - a. avoidance of plant locations and associated habitat as feasible, including “necking-in” or reducing the construction footprint;
 - b. “temporary” removal of plants and soil profile plugs (which include the A and B horizons) with the intent to replace to original location post construction; and
 - c. transplanting and seed banking (only after all other options are considered). (Section 3.8.1)

18. **Prior to construction**, Florida Southeast Connection, LLC shall file for the review and written approval by the Director of OEP, results of consultation with the U.S. Fish and Wildlife Service indicating the minimization and avoidance measures that would be used for the Florida bonamia, Lewton’s polygala, papery whitlow-wort, scrub buckwheat, scrub mint, and Small’s jointweed including (in the order listed), opportunities for:
 - a. avoidance of plant locations and associated habitat as feasible, including “necking-in” or reducing the construction footprint;

- b. “temporary” removal of plants and soil profile plugs (which include the A and B horizons) with the intent to replace to original location post construction; and
 - c. transplanting and seed banking (only after all other options are considered). (Section 3.8.1)
19. **Prior to construction**, Sabal Trail Transmission, LLC shall file with the Secretary detailed alignment sheets at a scale not smaller than 1:6,000 that demonstrate the removal of access roads TAR-GA-DO-010 and PAR-GA-DO-011, and a revised access road table that excludes these roads. (Section 3.9.2.1)
20. **Prior to construction**, Sabal Trail Transmission, LLC shall file correspondence from the applicable Florida National Scenic Trail (FNST) trail manager(s) (e.g., U.S. Forest Service) regarding the final crossing plans and construction and restoration methods for the designated segments of the FNST crossings at Mainline MPs 267.3R and 384.9. (Section 3.9.2.5)
21. **Prior to construction**, Florida Southeast Connection, LLC shall provide documentation from the Florida Department of Environmental Protection that construction and operation of mainline valve (MLV) 5 and new permanent access road AR 19462 would not be precluded by the conditions of the Tiger Lake Ranch Conservation Easement. (Section 3.9.3.5)
22. **Prior to construction**, Sabal Trail Transmission, LLC and Florida Southeast Connection, LLC shall file documentation of concurrence from the FDEP that their respective projects are consistent with the Coastal Zone Management Act. (Sections 3.9.2.6 and 3.9.3.6)
23. The Applicants shall not begin implementation of any treatment plans or measures (including archaeological data recovery); construction of facilities; or use staging storage, or temporary work areas and new or to-be-improved access roads **until**:
 - a. the Applicants file with the Secretary:
 - (1) all survey reports, including special studies like Ground Penetrating Radar, evaluation reports, avoidance plans, and treatment plans; and
 - (2) comments on survey reports, special studies, evaluation reports, avoidance plans, and treatment plans from the Alabama, Georgia, and Florida State Historic Preservation Officers, as well as any comments from federally recognized Indian tribes, and the Advisory Council on Historic Preservation is afforded an opportunity to comment on the

undertaking if historic properties would be adversely affected;
and

- b. the Commission staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies the Applicants in writing that treatment plans and mitigation measures may be implemented or construction may proceed.

All material filed with the Commission that contains **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering “**CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.**” (Section 3.11.6)

24. **Prior to construction**, Transcontinental Gas Pipe Line Company, LLC shall file the results of an air quality screening (AERSCREEN), or refined modeling analysis (AERMOD or EPA-approved alternative) for all of the emission generating equipment (including existing equipment) at Compressor Stations 95 and 105. The results shall demonstrate that the modeled existing emissions, plus the modeled incremental increase in emissions of criteria pollutants from the modifications either:
 - a. results in local concentrations below the National Ambient Air Quality Standards (NAAQS) where current **modeled** concentrations from the existing compressor station (existing and ambient background) are below the NAAQS; or
 - b. does not cause or contribute to significantly increased local area concentrations above the NAAQS where the ambient background concentrations are currently above the NAAQS. (Section 3.12.1.3)
25. Florida Southeast Connection, LLC shall file **in its construction status reports** the following information for each horizontal directional drill (HDD) entry site:
 - a. noise measurements from HDD activities at the nearest NSA, obtained at the start of drilling operations;
 - b. identification of mitigation measures Florida Southeast Connection, LLC installed if noise impacts exceed 55 A-weighted decibels (dB) or 10 dB above ambient levels; and
 - c. documentation of noise complaints and measures Florida Southeast Connection, LLC took to resolve such complaints. (Section 3.12.2.2)

26. Transcontinental Gas Pipe Line Company, LLC (Transco) shall file noise surveys **no later than 60 days** after placing the equipment at Compressor Stations 84, 95, 100, and 105 into service. If full load condition noise surveys are not possible, Transco shall provide interim surveys at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at each station under interim or full horsepower load exceeds a day-night averaged (L_{dn}) of 55 dBA at the nearest noise sensitive area (NSA), Transco shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Transco shall confirm compliance with the above requirement by filing a second noise survey for each station **no later than 60 days** after it installs the additional noise controls. The timeframes above apply to the in-service dates for each phase of construction at each station. (Section 3.12.2.2)

27. Sabal Trail Transmission, LLC (Sabal Trail) shall file noise surveys **no later than 60 days** after placing the equipment at the Alexander City, Albany, Hildreth, Dunnellon, and Reunion Compressor Stations into service. If full load condition noise surveys are not possible, Sabal Trail shall provide interim surveys at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at each station under interim or full horsepower load exceeds an L_{dn} of 55 dBA at the nearest NSA, Sabal Trail shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Sabal Trail shall confirm compliance with the above requirement by filing a second noise survey for each station **no later than 60 days** after it installs the additional noise controls. The timeframes above apply to the in-service dates for each phase of construction at each station. (Section 3.12.2.2)