

125 FERC ¶ 61,032
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Florida Gas Transmission Company

Docket No. CP06-9-001

ORDER DENYING APPLICATION FOR AUTHORIZATION
TO DELAY EXERCISE OF ABANDONMENT AUTHORIZATION

(Issued October 10, 2008)

1. On May 3, 2006, Florida Gas Transmission Company (Florida Gas) was granted authorizations under section 7(b) and 7(c) of the Natural Gas Act (NGA) to abandon a portion of its East Leg mainline system in Broward County, Florida, and to construct and operate replacement pipeline facilities in order to accommodate a widening project of State Road 91 by the Florida Department of Transportation/Florida Turnpike Enterprise (Florida DOT).¹ In an application filed on May 2, 2008, Florida Gas requests approval to delay, for a period not to exceed 36 months, exercising its abandonment authority until potential conflicts regarding Florida DOT's future planned highway construction are resolved. For the reasons discussed below, we will deny Florida Gas's request.

I. Background and Proposal

2. Florida Gas owns and operates an interstate natural gas pipeline system extending along the Gulf Coast from Texas to Florida. A portion of Florida Gas's pipeline system parallels State Road 91 in Florida. In its original application, Florida Gas stated that the Florida DOT was planning to add additional lanes to approximately 11.3 miles of State Road 91 between Griffin Road and Atlantic Boulevard in Broward County, Florida. In order to accommodate the proposed widening project, Florida Gas requested authority to abandon its existing pipeline along the lengths of State Road 91 being widened and to construct replacement pipeline facilities in an adjacent area still within the Florida DOT right-of-way but further from the highway.

¹ *Florida Gas Transmission Company, LLC*, 115 FERC ¶ 61,140 (2006). (May 3 Order).

3. Florida Gas proposed to replace its existing 18-inch and 24-inch diameter pipelines that currently parallel State Road 91 with a single 36-inch diameter pipeline. Florida Gas proposed to abandon the existing pipeline in place, with the exception of pipeline segments that can be safely removed without harm to existing roads. Specifically, Florida Gas requested authority to: (i) abandon approximately 11.15 miles of 18-inch diameter mainline and 10.75 miles of 24-inch diameter mainline between Atlantic Boulevard and Griffin Road; (ii) construct and operate 11.15 miles of 36-inch diameter pipeline between Atlantic Boulevard and Griffin Road including tie-ins with Florida Gas's Sunrise and Plantation Laterals; and (iii) construct three pig launchers and receivers, a regulator station, and two mainline valves. Florida Gas also stated that it intended to retain in service an approximately 0.4-mile long segment of the existing 24-inch diameter pipeline to allow for future facility bypass connections in the event that Florida DOT needs the pipeline to be relocated again.

4. Florida Gas estimated that the cost of abandoning the existing facilities and constructing the new facilities would be \$110,240,221. Florida Gas stated that it would finance the project with internally generated funds and would seek recovery of the costs from Florida DOT. The Commission's May 3, 2006 Order granted Florida Gas's requested authorizations.

5. Florida Gas has completed construction of the new 36-inch diameter replacement pipeline and placed it in service. However, in its May 2, 2008 application, Florida Gas requests amendment of the authorizations granted by the May 3, 2006, to provide for continued certificate authority to maintain the old 18- and 24-inch diameter pipelines and to authorize Florida Gas to delay its exercise of the May 3, 2006 Order's grant of authority to abandon those pipeline facilities for a period not to exceed 36 months until conflicts regarding Florida DOT's planned highway construction are resolved. Florida Gas states that uncertainty regarding easement claims may require relocation of the newly constructed 36-inch diameter pipeline. Thus, Florida Gas maintains that it must keep its 18- and 24-inch diameter pipelines available for service.

II. Notice, Interventions and Protest

6. Notice of Florida Gas's application was published in the *Federal Register* on May 16, 2008 (73 Fed. Reg. 28,444 (2008)). Timely motions to intervene were filed by Florida DOT and Florida Power Corporation.² Florida DOT protests the application. Florida Gas filed a motion to dismiss the protest and an alternative motion for leave to answer and an answer to the protest that also requests a technical conference. Florida

² Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008).

DOT filed a response to Florida Gas's motion that opposes the request for a technical conference. Florida Gas filed an answer to that response.³

7. Florida DOT states that resolution of the aforementioned easement issues would not require relocation of the 36-inch diameter pipeline and that the objective of Florida Gas's amendment application is to delay the highway projects in order to gain leverage against Florida DOT with respect to state court litigation regarding Florida Gas's claim against Florida DOT for reimbursement of the pipeline relocation costs. Florida DOT requests that the Commission deny Florida Gas's application to amend its abandonment authority and order Florida Gas to remove the 18- and 24-inch diameter pipelines from service pursuant to the Commission's May 3 Order.

8. Florida Gas states that Florida DOT has threatened to engage in self help activities to remove the old 18- and 24-inch pipe and has been careless in construction-related activities around the pipeline, thereby endangering service to Florida and people located near the pipeline. Florida Gas also states that Florida DOT should accede to Florida Gas's request for written assurance that Florida DOT will not seek to have the new 36-inch diameter pipeline relocated.

9. Florida DOT states that the written assurance requested by Florida Gas would require Florida DOT to acquiesce with respect to ongoing easement litigation. Florida DOT states that it believes that depressurization activities associated with abandonment of the old 18- and 24-inch pipe are best done by Florida Gas, and that Florida DOT has informed Florida Gas that it will not take self help action to decommission the pipeline facilities. Accordingly, Florida DOT states, it urges the Commission to order Florida Gas to do so.

III. Discussion

10. In finding that the public convenience and necessity required granting Florida Gas certificate authority to construct the new 36-inch diameter replacement pipeline, the Commission relied in the May 3 Order on Florida Gas' representation that construction of the replacement pipeline was necessary so that the existing 18- and 24-inch pipeline facilities could be abandoned in order to accommodate Florida DOT's widening of State

³ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests and answers to answers. 18 C.F.R. § 385.213(a)(2) (2008). However, because Florida Gas's and Florida DOT's answers have assisted in our decisionmaking process, we will waive Rule 213 (a)(2) to admit their answers.

Road 91.⁴ Florida Gas has failed to demonstrate that delaying abandonment of the 18- and 24-inch pipeline facilities is reasonable. As Florida DOT notes, Florida Gas has provided no support for its claim that resolution of easement and cost recovery issues could require another relocation of the 36-inch diameter pipeline. In any event, if Florida DOT does request another relocation of the pipeline in the future, the new 36-inch line cannot be taken out of service or relocated without the Commission's prior approval. While the Commission cannot say now what it might do in the future under highly speculative circumstances, it is very unlikely that the Commission would authorize abandonment of the new 36-inch diameter pipeline unless there was assurance that taking it out of service would not adversely affect service to south Florida.

11. Granting Florida Gas's request for amendment of the May 3 Order's certificate authorization so that it can maintain the old 18- and 24-inch pipeline facilities for up to 36 months would create a shield against Florida DOT's efforts to force Florida Gas to undertake depressurization and other steps to ensure that State Road 91 can be safely widened, potentially giving Florida Gas leverage in its pending state court proceedings against Florida DOT for reimbursement of the pipeline relocation costs. While the Commission's May 3 Order anticipated that Florida Gas would seek to recover relocation costs from Florida DOT, delaying abandonment of the 18- and 24-inch diameter lines in an attempt to delay or circumvent state court resolution of the cost recovery issue would be an inappropriate use of Commission process.

12. In view of the above consideration, we will deny Florida Gas's proposals to delay its exercising the authority granted by the May 3 Order for it to abandon the 18- and 24-inch diameter pipeline facilities in the areas where State Road 91 is to be widened. So that the Commission can ensure that Florida Gas is not unnecessarily delaying undertaking the necessary actions to abandon these facilities, we will require that Florida Gas submit bi-weekly status reports until the abandonment has been completed.

13. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

⁴ 115 FERC ¶61,140 at P 8 (2006). In the May 3 Order, the Commission applied its Certificate Policy Statement in approving Florida Gas's proposed construction of the 36-inch diameter replacement pipeline facilities. *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,277 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

The Commission orders:

- (A) Florida Gas's application is denied.
- (B) Florida Gas shall remove the 18- and 24-inch diameter pipelines from service in accordance with the abandonment authorization granted by our May 3, 2006 Order.
- (C) Florida Gas shall submit bi-weekly status reports describing its progress in completing the necessary activities to abandon the 18- and 24-inch diameter pipeline facilities and file a final report within 10 days of the abandonment activities being completed.
- (D) Florida Gas's request for a technical conference is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.