

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Florida Gas Transmission Company

Docket No. CP06-9-000

ORDER AUTHORIZING ABANDONMENT AND ISSUING CERTIFICATE

(Issued May 3, 2006)

1. On October 20, 2005, Florida Gas Transmission Company (Florida Gas) filed an application pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA) requesting authorization to abandon a portion of its East Leg mainline system in Broward County, Florida and a certificate to construct and operate replacement pipeline facilities in order to accommodate a widening project of State Road 91 (SR 91) by the Florida Department of Transportation/Florida Turnpike Enterprise (Florida DOT). For the reasons discussed below, we will grant Florida Gas's requests, subject to certain conditions as discussed herein.

**I. Background and Proposal**

2. Florida Gas owns and operates an interstate natural gas pipeline extending along the Gulf Coast from Texas to Florida. A portion of Florida Gas's pipeline system parallels SR 91 in Florida. Florida Gas states that the Florida DOT is planning to add new lanes to approximately 11.3 miles of SR 91 between Griffin Road and Atlantic Boulevard in Broward County, Florida. In order to accommodate the proposed widening project, Florida Gas is requesting authority to relocate the proposed replacement pipeline facilities to an adjacent area within the Florida DOT right-of-way.

3. Florida Gas proposes to replace its existing 18-inch and 24-inch diameter pipelines that currently parallel SR 91 with a single 36-inch diameter pipeline.<sup>1</sup> Florida Gas proposes to abandon the existing pipelines in place, with the exception of pipeline segments that can be safely removed without harm to existing roads. Specifically, Florida Gas requests 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

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<sup>1</sup> Florida Gas states that the proposed replacement will not affect its certificated capacity.

Gas's Sunrise and Plantation Laterals; and (iii) construct and operate various appurtenant facilities.<sup>2</sup> Florida Gas also states that it intends to retain in service an approximately 0.4 mile segment of the existing 24-inch diameter pipeline to allow for future facility bypass connections in the event that Florida DOT requires an additional relocation. Florida Gas estimates that the cost of abandoning the existing facilities and constructing the new facilities will be \$110,240,221. Florida Gas states that it will finance the project with internally generated funds and will seek recovery of the costs from Florida DOT.

## **II. Notice and Interventions**

4. Notice of Florida Gas's application was published in the *Federal Register* on November 7, 2005 (70 *Fed. Reg.* (2005)). Timely motions to intervene were filed by Peoples Gas System, a Division of Tampa Electric and Tampa Electric Company (jointly), the Florida Municipal Gas Association, and Florida Power & Light Company.<sup>3</sup> Seminole Electric Cooperative, Inc. filed an untimely motion to intervene. We will grant the late motion to intervene, as we find that to do so will not delay, disrupt, or otherwise prejudice this proceeding or the parties to this proceeding. In addition to the interventions, Maggie Sainz, a property owner, filed comments raising concerns about land use, noise and dust. Her concerns are addressed in the Environmental Assessment (EA) and below.

## **III. Discussion**

5. Florida Gas's application pertains to facilities to transport natural gas in interstate commerce. Therefore, the abandonment, construction, and operation of these facilities are subject to the jurisdiction of the Commission and to the requirements of NGA sections 7(b) and 7(c).

### **A. Certificate Policy Statement**

6. On September 15, 1999, the Commission issued a Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.<sup>4</sup> The Certificate Policy Statement established criteria for determining

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<sup>2</sup> Three pig launchers and receivers, one regulator station, and two mainline valves.

<sup>3</sup> Timely unopposed motions to intervene are granted by operation of Rule 214.18 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.214 (2005).

<sup>4</sup> *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,277 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000).

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 pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our 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.

7. 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 existing customers. The next step is to determine whether the applicant has made efforts to eliminate 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, we 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 we proceed to complete the environmental analysis where other interests are considered.

8. The threshold requirement under the Certificate Policy Statement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Florida Gas asserts that the pipeline relocation

is required to accommodate the widening of SR 91 and that it intends to seek recovery of

the costs associated with the pipeline relocation from Florida DOT.<sup>5</sup> Therefore, we find that this project satisfies the no-subsidy requirement of the Policy Statement.<sup>6</sup>

9. The proposed replacement of the existing 18-inch and 24-inch diameter pipelines with a single 36-inch diameter pipeline will not adversely impact Florida Gas's operations. Florida Gas's certificated capacity will not be affected by the project and Florida Gas will continue to be able to meet its customers' peak hour and peak day demands. No customers on Florida Gas's system will lose service as a result of the abandonment and relocation. Thus, Florida Gas's existing customers will not be adversely affected by the project. Also, there will not be any adverse impacts on other pipelines and their customers because Florida Gas's proposal does not provide any new services. Finally, landowners will be minimally affected as virtually all of Florida Gas's activities will take place within Florida DOT's extensively disturbed right-of-way.

### **Environment**

10. On June 16, 2005, we issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed SR 91 Widening Project and Request for Comments on Environmental Issues (NOI). In response to our NOI we received comments from Ms. Maggie Sainz, a resident adjacent to the proposed project. Ms. Sainz commented on land requirements for the proposed project and noise and dust minimization measures. Ms. Sainz's comments were addressed in the EA. Construction of this project would occur almost entirely within the existing Florida DOT highway right-of-way; construction will not occur on Ms. Sainz's land, which is adjacent to the proposed project. To address our concerns regarding noise, as well as Ms. Sainz's comments on this subject, we have conducted a thorough analysis of expected noise contributions resulting from the proposed project and based on our analysis, and the location of specific noise sensitive areas, we have made a recommendation to mitigate specific noise

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<sup>5</sup> In its February 8, 2006 response to staff's February 3, 2006 data request, Florida Gas reported that it had filed a complaint in the Ninth Judicial Circuit Court, Orange County, Florida seeking a declaratory judgment order "...finding among other things, that Florida Gas has compensable property interest in certain easements and agreements with the Florida Turnpike Enterprise "FTE" and the FDOT, and that Florida Gas is entitled to recover costs to be incurred for relocation of its pipeline in connection with FDOT's changes to SR 91." Florida Gas stated that the trial date is set for June 16, 2006. Florida Gas stated that any costs associated with the project that are not recovered from the Florida DOT would be included in its Gas Plant in Service. On March 15, 2006, Florida Gas filed a supplement stating that the trial date had been moved to September 12, 2006.

<sup>6</sup> See Certificate Policy Statement, 88 FERC ¶61,227 at n. 12; see also *Northwest Pipeline Corp.*, 104 FERC ¶61,176 at P 23 (2003).

contributions that may affect Ms. Sainz and other landowners. Florida Gas has indicated that normal construction practices would be followed which include the watering of exposed soil surfaces, storage piles and re-vegetating soil. Based on these practices we believe that adverse dust effects would be avoided and/or minimized.

11. We also received comments from the City of Lauderdale, the Florida Department of State, the City of Plantation, and the United States Fish and Wildlife Service. The City of Lauderdale identified its facilities within the project area and offered assistance to Florida Gas. The Florida Department of State indicated that the proposed project would not affect historic properties. The United States Fish and Wildlife Service indicated that the proposed project would not significantly affect fish and wildlife. The City of Plantation stated that it had facilities within the project area and requested that Florida Gas contact it regarding the locations of these facilities, and Florida Gas stated that it will do so.

12. Our staff prepared an EA for Florida Gas's proposal and issued a Notice of Availability of the Environmental Assessment for the Proposed SR 91 Widening Project (NOA) on March 1, 2006. The EA addressed geology and soils, surface water resources, ground water resources, vegetation, wildlife and fisheries, threatened and endangered species, land use, cultural resources, air and noise quality and alternatives. The comment period for this EA closed on March 31, 2006.

13. In response to our NOA we received one comment letter from the applicant, Florida Gas. Florida Gas made four comments to our EA; two comments regarding the clarification of timing requirements in our recommended conditions and two comments regarding the clarification of residential issues. We concur with Florida Gas's comments regarding the clarification of timing in our recommended conditions and have changed our recommendations to reflect these comments. Florida Gas also requested clarification regarding the phrase "residential construction plans". In its comments, Florida Gas put forth its understanding of "residential construction plans" as pertaining only to an occupied structure and not to a shed, detached garage or swimming pool. Based on the nature of the project and the expected construction to be conducted by the Florida DOT, we concur with Florida Gas's understanding for the preparation of "residential construction plans". Since construction of this project would not require the obtainment of easements from landowners, Florida Gas requested that our recommended condition 17 part 3 be modified such that a concurrence from a landowner would not be required. We concur with Florida Gas's assessment and have modified the recommendation.

14. Based upon analysis in this EA, we have determined that if Florida Gas constructs and operates the facilities in accordance with its application, supplements, and our staff's mitigation measures listed below, approval of this project would not constitute a major Federal action significantly affecting the quality of the human environment.

15. 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 of facilities approved by this Commission.<sup>7</sup> Florida Gas shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Florida Gas. Florida Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

**C. Conclusion**

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

The Commission orders:

(A) A certificate of public convenience and necessity is issued in Docket No. CP06-9-000 to Florida Gas under NGA section 7(c), authorizing the construction and operation of the natural gas facilities, as described in this order and more fully in the application, and as conditioned herein, and subject to the environmental conditions set forth in Appendix to this order.

(B) Pursuant to NGA section 7(b), Florida Gas is granted permission and approval to abandon facilities, as described in this order and more fully in the application.

(C) The authorizations granted to Florida Gas above are conditioned on the following:

(1) Florida Gas shall construct and make available for service the facilities described herein within two years of this order, pursuant to paragraph (b) of section 157.20 of the Commission's regulations;

(2) Florida Gas shall comply with all 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 Commission's regulations; and

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<sup>7</sup>See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) Florida Gas shall notify the Commission within 10 days of the date of the abandonment of the facilities.

(4) Florida Gas shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Florida Gas. Florida Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**APPENDIX**Florida Gas Transmission Company  
Docket No. CP06-9-000

## Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Florida Gas shall follow the construction procedures and mitigation measures described in its application and supplemental filings (including responses to staff data requests) and as identified in the EA, unless modified by this Order. Florida Gas must:
  - a. request any modification to these procedures, measures, or conditions in a filing with the 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 the OEP **before using that modification**
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
  - a. the modification of conditions of this Order; and
  - b. the design and implementation of any additional measures 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**, Florida Gas shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 EA, as supplemented by filed alignment sheets and shall include the staff's recommended facility locations, if any. **As soon as they are available, and before the start of construction**, Florida Gas shall file with the Secretary revised detailed survey alignment

maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

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

5. Florida Gas 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 Upland Erosion Control, Revegetation, and Maintenance Plan or minor field realignments per landowner needs and requirements that 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 this certificate and prior to construction,** Florida Gas shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Florida Gas will

implement the mitigation measures required by this Order. Florida Gas must file revisions to the plan as schedules change. The plan shall identify:

- a. how Florida Gas will incorporate these requirements into 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;
  - b. the number of environmental inspectors assigned per project area, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
  - c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
  - d. what training and instructions Florida Gas 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);
  - e. the company personnel (if known) and specific portion of Florida Gas's organization having responsibility for compliance;
  - f. the procedures (including the use of contract penalties) Florida Gas will follow if noncompliance occurs; and
  - g. 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 mitigation training of onsite personnel;
    - 3) the start of construction; and
    - 4) the start and completion of restoration.
7. Florida Gas shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Florida Gas shall mail the complaint procedures to each landowner whose property would be crossed by the project.
- a. In its letter to affected landowners, Florida Gas shall:
    - 1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
    - 2) instruct the landowners that, if they are not satisfied with the response, they should call Florida Gas 's Hotline; the letter should indicate how soon to expect a response; and
    - 3) instruct the landowners that, if they are still not satisfied with the response from Florida Gas's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.

- 1) the date of the call;
        - 2) the identification number from the certificated alignment sheets of the affected property;
        - 3) the description of the problem/concern; and
        - 4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
8. Florida Gas shall employ at least one environmental inspector on its project. The environmental inspector shall be:
  - a. responsible for monitoring and ensuring compliance with all mitigative measures required by this Order and other grants, permits, certificates or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 5 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of this Order, and an other authorizing document;
  - d. a full-time position, separate from all other activity inspectors;
  - e. responsible for documenting compliance with the environmental conditions/permit requirements imposed by other Federal, state, or local agencies; and
  - f. responsible for maintaining status reports.
9. Florida Gas shall file updated status reports prepared by the environmental inspector with the Secretary on a **bi-weekly** basis **until** all construction-related activities, including restoration, 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. the current construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
  - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(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);
  - c. corrective actions implemented in response to all instances of noncompliance, and their cost;

- d. the effectiveness of all corrective actions implemented;
  - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
  - f. copies of any correspondence received by Florida Gas from other Federal, state, or local permitting agencies concerning instances of noncompliance, and Florida Gas's response.
10. Florida Gas must receive written authorization from the Director of OEP **before commencing service** from its project. Such authorization will only be granted following a demonstration that rehabilitation and restoration of the sites are proceeding satisfactorily.
  11. **Within 30 days of placing the certificated facilities in service**, Florida Gas 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 certificate conditions Florida Gas has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
  12. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, a revised Drilling Fluid Management Plan and include in this plan the specific testing procedures and storage methods that will be used to address potential soil and groundwater contamination.
  13. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, an Unanticipated Contaminated Area Plan (UCAP) that includes specific information regarding Florida Gas's testing, storage, disposal and remediation efforts when contaminated soils and groundwater are discovered.
  14. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, a Directional Drill Contingency Plan for each waterbody crossing.

15. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, a plan for the crossing of each waterbody if the directional drill is unsuccessful. This shall be a site-specific plan that includes scaled drawings identifying all areas that would be disturbed by construction. Florida Gas shall file this plan concurrent with its application to the U.S. Army Corps of Engineers (COE) for a permit to construct using this plan.
16. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, specific photo alignment sheets indicating the locations where Florida Gas would place extra work space within 50 feet of a waterbody's edge. Florida Gas may not place work spaces within 25 feet of a waterbody's edge.
17. Florida Gas shall file with the Secretary for review and written approval by the Director of OEP prior to construction, any site specific residential construction plans. These plans shall include:
  - a. a description of construction techniques to be used (such as reduced pipeline separation, centerline adjustment, use of stove-pipe or drag-section techniques, working over existing pipelines, pipeline crossover, bore, etc.), and include a dimensioned site plan that shows:
    - 1) the location of the residence in relation to the new pipeline and, where appropriate, the existing pipelines;
    - 2) the edge of the construction work area;
    - 3) the edge of the new permanent right-of-way; and
    - 4) other nearby residences, structures, roads, or waterbodies.
  - b. a description of how Florida Gas will ensure the trench is not excavated until the pipe is ready for installation and the trench is backfilled immediately after pipe installation; and
  - c. evidence of correspondence(s) with the landowner(s) regarding construction activities, if the construction work area and fencing will be located within 10 feet of a residence.
18. Florida Gas file with the Secretary for review and written approval by the Director of OEP prior to construction, a mitigation and compliance plan for all HDD locations. This plan should minimize noise due to drilling operations at the nearest NSAs and specify all noise mitigation equipment or other mitigation necessary to reduce nighttime noise or its impact as much as practicable.