

119 FERC ¶ 61,122  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Florida Gas Transmission Company

Docket No. CP06-429-000

ORDER DENYING PROTEST, GRANTING ABANDONMENT  
AND ISSUING CERTIFICATE

(Issued May 4, 2007)

1. On August 8, 2006, Florida Gas Transmission Company (Florida Gas) filed a prior notice request pursuant to sections 157.2205 and 157.208 of the Commission's blanket certificate regulations for authorization to: replace five sections of its existing 12-inch St. Petersburg lateral, in Pinellas County, Florida (totalling 6.6 miles of pipeline); add a 12-inch pig launcher and receiver; and replace certain block valves to allow passage of a pipeline integrity tool to be run after the segments are replaced. Florida Gas states that the proposed project is required to comply with the U.S. Department of Transportation (DOT) pipeline safety regulations that require operators of pipelines located in high density areas to inspect and, if necessary, upgrade and repair line sections that have been in service for an extended period of time.<sup>1</sup> An individual landowner, Ms. Diane M. Smith (Ms. Smith), filed letters of protest that have not been withdrawn.<sup>2</sup> For the reasons discussed below, we will deny the protest and authorize Florida Gas to construct and operate the facilities pursuant to a Natural Gas Act (NGA) section 7(c) certificate, which is issued herein subject to conditions.

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<sup>1</sup> See 49 CFR §192, *Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)* U.S. Department of Transportation (December 15, 2003), effective on January 14, 2004.

<sup>2</sup> Under section 157.205(f) of the Commission's blanket certificate regulations, if a protest is timely filed and not withdrawn, the prior notice request is processed as an application under section 7(c) of the NGA for case specific authorization. Since Ms. Smith did not withdraw her protest, we have treated the filing as an application for case specific section 7(c) authorization.

## **Background and Proposal**

2. Florida Gas is a Delaware corporation with its principal place of business in Houston, Texas. Florida Gas owns and operates an interstate natural gas pipeline extending along the Gulf Coast from Texas to Florida.

3. Florida Gas states that its 12-inch St. Petersburg Lateral was originally installed in 1959/1960 under Docket No. G-9262. Florida Gas states that it inspected sections of the lateral pipeline located in densely populated areas of Pinellas County, Florida that qualify as high consequence Class 3 areas under DOT regulations<sup>3</sup> and determined that sections of the pipeline show evidence of stress corrosion. Consequently, Florida Gas states, DOT regulations require Florida Gas to: (1) replace the pipeline and related valves; (2) use thicker, stronger pipe for the new facilities; and (3) include modifications in the new pipeline that will allow passage of a pipeline integrity tool for continuous monitoring. Additionally, as a safety measure, DOT required Florida Gas to reduce the pressure in this line until it can be replaced.

4. Therefore, Florida Gas proposes to replace five segments of the St. Petersburg lateral for a total of approximately 6.6 miles.<sup>4</sup> Segment 1 is 3.56 miles; Segment 2 is 0.09 miles; Segment 3 is 0.40 miles; Segment 4 is 2.05 miles; and Segment 5 is 0.51 miles. In addition, Florida Gas intends to install a 12-inch pig launcher and receiver, and replace block valves BV 24-10 and 24-11. Florida Gas states that the replacement pipeline will be located primarily within the existing Florida Gas pipeline corridor and the existing Florida Department of Transportation right-of-way. Florida Gas states that it will construct and operate the proposed project consistent with sound engineering practices and all applicable safety standards, including the DOT Minimum Federal Safety Standards.

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<sup>3</sup> The DOT pipeline safety regulations categorize the geographic areas along natural gas pipelines according to the population densities in the vicinity of pipeline segments. There are four classification levels with areas having the lowest population density designated as Class 1, while areas with the highest population density are designated as Class 4. The DOT regulations impose more stringent pipeline design and operational requirements as the Class location increases.

<sup>4</sup> Florida Gas states that it requests authority for the project pursuant to its Part 157 blanket certificate rather than the replacement provisions in section 2.55(b) of the Commission's regulations because (1) it cannot replace all of the lateral segments within the original construction footprints because Pinellas County is so highly developed and urbanized and (2) the degree of urbanization requires that that over fifty percent of the replacement be done with horizontal directional drilling (HDD).

5. Florida Gas proposes to abandon in place the pipeline segments that it is replacing and fill the abandoned pipe with cement or water. Florida Gas states that the total cost for the project is approximately \$19,987,000.

### **Interventions**

6. Notice of Florida Gas' proposal was published in the *Federal Register* on August 24, 2006 (71 Fed. Reg. 50,056). On August 22, 2006, Ms. Smith filed a comment/protest letter stating her concerns about the safety of a natural gas pipeline on her property. A representative of Florida Gas met with Ms. Smith on September 9, 2006, to discuss her concerns about the project. Florida Gas also contacted Ms. Smith to discuss her concerns on October 5 and 7, and met with her on October 17, 2006. Ms. Smith filed another letter, dated October 18, with the Commission expressing more concerns about the proposed project. Ms. Smith's concerns will be addressed below.

### **Discussion**

7. Since Florida Gas' facilities and services are used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, this proposal is subject to the requirements of subsections (c) and (e) section 7 of the NGA

8. Florida Gas filed a request under its Part 157, Subpart F blanket certificate and the Commission's prior notice procedures to replace facilities pursuant to section 157.208(b) of the Commission's regulations. As holder of a blanket construction certificate, Florida Gas is authorized to undertake various routine activities subject only to certain reporting and notice and protest requirements. These requirements apply to activities that have relatively little impact on ratepayers, pipeline operations, or the environment such that close scrutiny of the nature involved in case-specific deliberation by the Commission is not warranted to ensure compatibility with the public convenience and necessity.

9. However, a protest to the request was filed and not withdrawn. Further, there are environmental concerns that need to be addressed and mitigated. Thus, we have treated the filing as an application for case specific section 7(c) authorization and consequently prepared an Environmental Assessment (EA) for Florida Gas' proposal. After analyzing the proposal and Florida Gas' response to data requests, we have determined that the horizontal directional drilling (HDD) procedures proposed by Florida Gas will be

performed near two apartment buildings and other residences, raising concerns with respect to HDD noise mitigation.<sup>5</sup> Thus, Florida Gas' proposal does not meet the standard environmental qualifications applicable to blanket certificate applications and its request cannot be approved pursuant to its blanket certificate. Therefore, as discussed below, we will issue a certificate of public convenience and necessity to Florida Gas authorizing the proposed activities.

10. The primary purpose of Florida Gas' project is to ensure system integrity in compliance with DOT pipeline safety regulations. The Commission's Certificate Policy Statement provides that increasing rates of existing customers to pay for these kinds of improvements is not a subsidy.<sup>6</sup> The Commission has found that the cost of new or replacement facilities may be rolled into existing rates where such projects are designed to maintain and improve existing service and operations and enhance reliability for the benefit of all customers.<sup>7</sup> Further, the Commission has found that appropriate capital costs attributable to ensuring compliance with DOT safety standards may be rolled-in absent any significant change in circumstances.<sup>8</sup> Accordingly, the Commission will grant a predetermination of rolled-in rate treatment when Florida Gas files to recover the project costs in its next rate case, absent any significant change in circumstances.

11. There is no indication that Florida Gas' project will harm existing customers or other pipelines. Florida Gas states that this replacement is required to continue all services without detriment or disadvantage to its customers. As a safety measure, DOT has required that Florida Gas operate this line at pressures below the maximum allowable operating pressure (MAOP) of 712 psig. Florida Gas states that after the replacement sections have been installed, the MAOP will again be 712 psig and there will be no impact on its peak day or annual gas deliveries.

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<sup>5</sup>Environmental Condition 12 of this order addresses this concern by requiring Florida Gas to file for review and written approval by the Director of OEP prior to construction, a noise mitigation and compliance plan for all HDD locations with nearby noise sensitive areas.

<sup>6</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 at n. 12 (1999).

<sup>7</sup> Certificate Policy Statement, *order clarifying policy*, 90 FERC ¶ 61,128 at 61,391 and 61,393-94 (2000).

<sup>8</sup> *See Algonquin Gas Transmission Co.*, 108 FERC ¶ 61,195 at P 22 (2004).

12. Finally, we find that the impact of the proposed project on landowners and communities will be minimal. Since the replacement pipeline will be located primarily within the existing Florida DOT right-of-way and Florida Gas' existing pipeline corridor, no new permanent right-of-way will be required and there will be only a minor temporary disturbance of property during construction.

13. We find that the project will provide system benefits with minimal adverse impacts and is necessary to meet DOT standards. Therefore, we find that Florida Gas' proposal is required by the public convenience and necessity subject to the conditions below.

### **Protest**

14. As previously stated, Ms. Smith filed a protest to Florida Gas' application on August 22, 2006. Ms. Smith, whose residence is located in Segment 1 of the project, expressed concerns about safety should the abandoned or the replacement pipeline be hit or develop a leak, since the work will be done within 30 feet of her living room. She notes that while there were no houses near the pipeline when the easements were granted years ago, there are now hundreds of houses nearby.

15. Between September 9 and October 17, 2006, Florida Gas' right-of-way agent and Ms. Smith discussed her concerns in an effort to clarify some misunderstanding about the proposed construction techniques. In a letter to the Commission dated October 9, 2006, Ms. Smith reiterated her safety concerns, stating that her fears have doubled since Florida Gas does not plan to remove the old pipe and she will now have two pipelines running through her property. She cited frequent news stories about gas leaks and stated her belief that even if the old pipe is blocked off from the new one, there would still be a danger of gas leaks from the old pipe. Ms. Smith expressed concern that the existing pipeline is three feet from the surface and could be hit by contractors or neighbors if they dig in the area without first checking with the gas company. She points out that there now will be two lines which someone can hit thus doubling the chances of someone accidentally rupturing the pipelines. She is concerned that this risk will lower the value of her property.

16. Ms. Smith states that, should the Commission approve Florida Gas' request to replace the pipeline on her property, the Commission should require Florida Gas to erect an erosion control fence on her property clearly defining the easement and to provide her with plans for the fence prior to any disturbance of her property.

17. Finally, Ms. Smith states that companies who obtained easements long ago should not be allowed a free lifetime pass to do what they wish on the easement.

18. Florida Gas states that at the October 17, 2006 meeting with Ms. Smith it indicated that the replacement pipeline would be installed about 7.5 feet south of the existing pipeline at a depth of 30-32 feet below ground using the HDD method so that impacts to her property would be minimized. To address Ms. Smith's concerns about having two pipelines on her property, Florida Gas informed her that it would abandon the old pipeline in place and fill it with cement or water so that it would no longer be capable of flowing natural gas. Florida Gas has also stated that it would be willing to physically remove the pipe from the property, although doing so would require excavation across about 253 feet of her property and that of adjoining neighbors. In the event Ms. Smith elects to have the abandoned pipeline removed, Florida Gas states that it would install an erosion control fence to avoid impacts to surrounding areas.

### **Commission Response**

19. We believe that Florida Gas' proposal that the abandoned pipe be separated from the new pipeline by seven feet, purged of gas and filled with water or cement should allay Ms. Smith's concerns about gas leaks from the old pipe. There will be no gas to leak should anyone digging near the abandoned pipeline accidentally come in contact with it. The new pipeline will be installed 30 to 32 feet below the surface so the risk of anyone accidentally come in contact with it by digging in Ms. Smith's backyard will be remote.

20. Since the new pipeline will be installed using the HDD method, there will be no disturbance to Ms. Smith's property and placement of an erosion control fence will not be necessary. Although Florida Gas has offered to remove the abandoned pipeline if Ms. Smith requests it, removal will cause unnecessary disturbance to her property and adjoining properties. In the event Ms. Smith elects to have the abandoned pipeline removed, Florida Gas states that it would install an erosion control fence to avoid impacts to surrounding areas.

21. Ms. Smith contends that neither she nor the City of Oldsmar will benefit from this project. However, we believe that there is a clear benefit in that the project will insure that a safer pipeline will be in place. Additionally, since gas leaks will be impossible from the abandoned pipeline and improbable from a replacement pipeline located 30 feet underground, the value of Ms. Smith's property should not be impacted by the risk of gas leaks.

22. Ms. Smith states that companies who obtained easements long ago should not be allowed a lifetime pass to do what they wish on the easement. We note that natural gas companies regulated by the Commission, in their roles as natural gas companies, can do only what the Commission authorizes them to do. The companies can construct, operate and maintain only the specific pipeline facilities authorized by Commission order or

regulation. That the pipeline easements are in use for years is in the nature of the underlying facilities.

23. For the reasons expressed above, we will deny Ms. Smith's protest.

### **Environmental Assessment**

24. Our staff prepared an Environmental Assessment (EA) for Florida Gas' proposal. The EA addresses purpose and need; construction, operation and maintenance; land requirements; permits and approvals; water resources and wetlands; vegetation and wildlife; threatened and endangered species; cultural resources, geology and soils; land use, recreation, and aesthetics; residences; recreation and special interest areas; air and noise quality; alternatives and reliability and safety.

25. Based on the discussion in the EA and herein, the Commission concludes that approval of the proposal, if facilities are replaced and abandoned in accordance with Florida Gas' application and supplements, and the environmental conditions set forth in the Appendix to this order, would not constitute a major federal action significantly affecting the quality of the human environment.

26. Florida Gas shall notify the Commission's environmental staff by telephone, email or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notified Florida Gas. Florida Gas shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

27. 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 the state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the replacement or operation of facilities approved by this Commission.<sup>9</sup>

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

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<sup>9</sup> See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) Florida Gas is granted permission and approval, pursuant to NGA section 7(b), to abandon certain facilities, as discussed more fully above and in the application.

(B) A certificate of public convenience and necessity under NGA section 7(c) is issued, authorizing Florida Gas to construct and operate the proposed facilities, as described more fully above and in the application.

(C) The authorization issued in Ordering Paragraph (A) is conditioned on Florida Gas' compliance with the environmental conditions listed in the Appendix to this order and all relevant parts of the Commission's regulations, in particular with Part 154 and paragraphs (a), (c), (e), and (f) of section 157.20.

(D) The project shall be completed and placed into service within one year of the date of this order in accordance with section 157.20(b) of the Commission's regulations.

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

(F) The protest filed by Ms. Smith is denied, for the reasons discussed in the body of this order.

By the Commission.

( S E A L )

Philis J. Posey,  
Deputy Secretary.

## APPENDIX

### Florida Gas Transmission Company Docket No. CP06-429-000 St. Petersburg Relay Replacement Project

#### ENVIRONMENTAL 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 the 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 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 project. This authority shall allow:
  - a. the modification of conditions of the 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 inspections, 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' 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' 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 filing 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 or 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. **At least 60 days before the anticipated start of 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 would 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 would 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 changes), with the opportunity for OEP staff to participate in the training sessions(s);
  - e. the company personnel (if known) and specific portion of Florida Gas' 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:
    - (i) the completion of all required surveys and reports;
    - (ii) the mitigation training of onsite personnel;
    - (iii) the start of construction; and
    - (iv) the start of completion of restoration.
7. Florida Gas shall develop and implement an environmental complaint resolution procedure. The procedures 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:
    - (i) 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;
    - (ii) instruct the landowners that, if they are not satisfied with the response, they should call Florida Gas' Hotline; the letter should indicate how soon to expect a response; and
    - (iii) instruct the landowners that, if they are still unsatisfied with the response from Florida Gas' Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
  - b. In addition, Florida Gas shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
    - (i) the date of the call;
    - (ii) the identification number from the certified alignment sheets of the affected property;
    - (iii) the description of the problem/concern; and
    - (iv) 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 any 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 **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 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' 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 noise mitigation and compliance plan for all HDD locations with nearby noise sensitive areas.