

143 FERC ¶ 61,215
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Florida Gas Transmission Company, LLC

Docket No. CP12-501-000

ORDER GRANTING ABANDONMENT AUTHORITY
AND ISSUING CERTIFICATE

(Issued June 6, 2013)

1. On August 16, 2012, Florida Gas Transmission Company, LLC (Florida Gas) filed an application under sections 7(b) and (c) of the Natural Gas Act (NGA)¹ for: (1) authorization to abandon approximately 1,618 feet of 36-inch diameter pipeline; and (2) a certificate of public convenience and necessity to construct, modify, and operate pipeline facilities to replace the abandoned facilities (I-595 Replacement Project).

2. For the reasons discussed below, we will authorize Florida Gas's proposed I-595 Replacement Project.

I. Background and Proposals

3. Florida Gas is a natural gas company² as defined by section 2(6) of the NGA.³ Florida Gas transports natural gas in interstate commerce by means of its natural gas transmission system extending along the Gulf Coast areas of Texas, Louisiana, Mississippi, Alabama, Florida and the offshore federal domain.

¹ 15 U.S.C. § 717f(b) and (c) (2006).

² Florida Gas is a limited liability company formed under the laws of the State of Delaware, having its principal place of business in Houston, Texas.

³ 15 U.S.C. § 717a(6) (2006).

4. Part of Florida Gas's pipeline system parallels State Road 91 (SR 91) in Broward County, Florida. Florida Gas states that the purpose of the I-595 Replacement Project is to resolve direct conflicts caused by the Florida Department of Transportation/Florida Turnpike Enterprise's (FDOT) I-595 Express Corridor Improvement Project, which includes the reconstruction of the I-595 roadway and associated improvements along SR 91. Florida Gas states that the construction and improvements associated with the FDOT project have encroached into Florida Gas's pipeline easement. Florida Gas states that the current configuration of the highway structures prevents safe and timely access to its pipeline in the immediate area along SR 91 in the event critical repairs or maintenance to its mainline are required.

5. Florida Gas states FDOT's project includes construction of an exit ramp from I-595 to northbound SR 91, widening of the SR 91 overpass of I-595, and reconfiguring the SR 91 northbound entrance ramp onto I-595. As part of its project, Florida Gas states FDOT has already constructed a mechanical stabilization earth (MSE) wall, noise wall, light poles, and drainage features which Florida Gas believes have effectively "entombed" 1,500 feet of its pipeline in a narrow "tunnel" corridor. Florida Gas states FDOT's MSE wall is only a few feet from the western edge of Florida Gas's pipeline, and that the noise wall with concrete foundations is within a few feet of the eastern edge of the pipeline.

6. To ensure safe access to its pipeline system for maintenance and repairs, Florida Gas maintains that it is necessary: (1) to abandon in place approximately 1,618 feet of 36-inch diameter pipeline in the SR 91 right-of-way between approximate MP 881.16 and approximate MP 881.47;⁴ (2) to construct and operate approximately 2,261 feet of new 36-inch diameter pipeline largely within Florida Power and Light's (FPL) high voltage electrical line right-of-way and along an open area at the rear of some residential tracts between MP 881.16 and MP 881.58; and (3) to install stopple and bypass facilities. Florida Gas states that the proposed pipeline replacement project will not increase system capacity.

7. Florida Gas estimates that the I-595 Replacement Project will cost approximately \$24,700,000.

⁴ The 1,618-foot segment of pipeline that Florida Gas proposes to abandon is part of the 11.3 miles of pipeline that it was authorized to construct in 2006 as part of a pipeline relocation project to accommodate a previous road-widening project by FDOT. See *Florida Gas Transmission Company*, 115 FERC ¶ 61,140 (2006).

II. Notice, Interventions and Protest

8. Public notice of Florida Gas's application was published in the *Federal Register* 77 Fed. Reg. 55,207 (2007). Timely, unopposed motions to intervene were filed by FDOT; FPL; Florida Cities & Peoples Gas System (Florida Cities);⁵ Florida Municipal Natural Gas Association (Municipal Association);⁶ Chevron U.S.A. Inc.; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; Florida City Gas; Florida Power Corporation d/b/a Progress Energy Florida, Inc.; and Seminole Electric Cooperative, Inc. These timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁷

9. FDOT's motion to intervene included a protest asserting its construction project has not resulted in any need for Florida Gas to abandon existing pipeline facilities and construct replacement facilities. FPL, the Municipal Association, and Florida Cities included comments stating their opposition to any attempt by Florida Gas to seek recovery of its proposed I-595 Replacement Project's costs from its customers.

10. Florida Gas filed an answer to FDOT's protest and the other parties' comments. FDOT filed a reply to Florida Gas's answer, and Florida Gas filed an answer to the reply.⁸ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits

⁵ Peoples Gas System is the largest gas distribution company in Florida. Florida Cities' members represent gas distribution and/or electric utility distribution systems in Florida, including: City of Lakeland Electric, City of Tallahassee, City of Gainesville d/b/a Gainesville Regional Utilities, JEA, the Orlando Utilities Commission, and Florida Gas Utility. Florida Gas Utility is a Florida inter-local agency, consisting of more than twenty municipally-owned electric and/or gas utilities. Florida Cities' members and Peoples Gas System are all transportation customers of Florida Gas.

⁶ The Municipal Association's members include: City of Chattahoochee, City of DeFuniak Springs, City of Leesburg, City of Live Oak, City of Madison, City of Sunrise, City of Clearwater Gas System, Crescent City Natural Gas, Geneva County Gas District, Lake Apopka Natural Gas District, Okaloosa Gas District, Palatka Gas Authority, and Southeast Alabama Gas District.

⁷ 18 C.F.R. § 385.214(c) (2012).

⁸ The pleadings were filed on October 5 and 19, and November 1, 2012, respectively.

the filing of answers to protests or answers.⁹ However, the Commission finds good cause to waive Rule 213(a)(2), as doing so will not cause undue delay and the pleadings may assist the Commission in its decision-making process.

11. While disputing Florida Gas's assertion that FDOT's construction project has created obstacles that prevent Florida Gas from having safe and timely access to the existing pipeline, FDOT further argues that Florida Gas's proposed replacement project should not be approved until the Commission has adequately considered the options FDOT has prepared for redesigning its project to eliminate any need for Florida Gas to abandon the existing pipeline.¹⁰ FDOT states its first option would remove the MSE wall that it has constructed on one side of the pipeline. FDOT's other option also would remove the MSE wall and move the sound wall FDOT constructed on the other side of the pipeline so that it would be at least 15 feet from the pipeline. FDOT states that Florida Gas has failed to explain why either option would not eliminate the need for Florida Gas's proposed replacement project.

12. FDOT also states that Florida Gas does not and has never owned a permanent easement of any specific width in FDOT's right-of-way, and that FDOT therefore cannot have "encroached" on Florida Gas's easement.¹¹ In view of the options FDOT has presented, FDOT claims that Florida Gas's proposed replacement project would result in unjustified expense, environmental disruption, property condemnation to obtain most or all of the necessary land rights from FPL, Broward County, and other landowners, and substantial inconvenience for homeowners in the area where the pipeline would be relocated.

⁹ 18 C.F.R. § 385.213(a)(2) (2012).

¹⁰ FDOT's September 20, 2012 Protest at note 3.

¹¹ Florida Gas asserts FDOT's arguments in this proceeding may be intended to bolster its position in a pending court proceeding that Florida Gas is not entitled to recover any of the costs of its I-595 Replacement Project under the terms of its easement agreements with FDOT because FDOT's highway improvement project has not made it necessary for Florida Gas to relocate any pipeline facilities. The legal issues surrounding the easement rights in dispute are outside the scope of this order and the Commission's jurisdiction. The court proceeding is the appropriate forum for determining Florida Gas's and FDOT's respective rights under their easement agreements, including whether Florida Gas is entitled to obtain reimbursement for any of the costs of the proposed pipeline relocation project.

13. FDOT asserts the Commission should deny Florida Gas's application because it has failed to demonstrate that its proposed relocation project is needed. Alternatively, FDOT argues the Commission should set the issues raised by FDOT for a full, trial-type evidentiary hearing or schedule a technical conference with staff participation to determine whether such a hearing is required.

14. In response, Florida Gas explains that, after receiving authorization in 2006 to abandon existing pipeline facilities and construct new pipeline facilities, including the 1,618-foot segment it now seeks to abandon, in order to accommodate FDOT's highway project to add two traffic lanes to SR 91, conflicts arose with FDOT over its plans for another highway project that Florida Gas asserts would jeopardize its ability to safely maintain and operate the pipeline facilities authorized in 2006. Florida Gas states that it therefore sought permission in 2008 to keep the older pipeline in service, rather than abandon it as the Commission had authorized. Florida Gas emphasizes that in the 2008 proceeding, FDOT urged the Commission to deny Florida Gas's request to keep the old pipeline in service and assured Florida Gas and the Commission that FDOT's new highway project would not conflict with Florida Gas's safe operation of the replacement pipeline facilities that Florida Gas had constructed. Florida Gas quotes FDOT's statement that "if the issue of relocating the [new pipeline] were to arise, FERC can address that issue at that time."¹² Florida Gas argues that, contrary to FDOT's assurances in 2008, FDOT's most recent highway project has made it unsafe to operate the 1,618-foot segment of replacement pipeline that Florida Gas seeks to abandon, notwithstanding that it is only a few years old.

15. Florida Gas states that after the Commission denied Florida Gas's request in 2008 to keep its old pipeline in service,¹³ FDOT began another highway project, including the MSE wall that FDOT has constructed within a few feet on one side of Florida Gas's pipeline and the noise wall with concrete foundations that FDOT has constructed within a few feet on the other side of the pipeline. Florida Gas asserts FDOT's most recent project is already causing safety issues for regular and emergency maintenance of the section of pipeline that it seeks to abandon and replace with new pipeline in a different location.

¹² Florida Gas's November 1, 2012 Answer at 4 -5 (quoting Florida Gas's June 16, 2008 Protest at 14).

¹³ *Florida Gas Transmission Company*, 125 FERC ¶ 61,032 (2008).

16. Florida Gas also explains its reasons why FDOT's redesign options for its project would be inadequate to alleviate the safety issues raised by continuing to operate the pipeline in FDOT's right-of-way.¹⁴ First, Florida Gas states FDOT has decided against its first option and is now only considering its second option, which would remove the MSE wall that is on one side of the pipeline and move the noise wall on the other side of the pipeline further away so that it is at least 15 feet away from the pipeline. Florida Gas states that, aside from the fact that there still would not be adequate space for it to operate heavy machinery when necessary for maintenance purposes, FDOT's plans have not been finalized, notwithstanding FDOT's suggestions to the contrary, and cannot be finalized unless several outstanding issues can be resolved. For example, Florida Gas states that FDOT has not determined whether a new noise wall on the roadway shoulder could be made sufficiently high to mitigate traffic noise.¹⁵ Furthermore, Florida Gas states FDOT's redesign would have to go through a design variance and exception approvals process. Moreover, even if FDOT determines a sufficiently high noise wall can be constructed on the roadway berm and the necessary design variance approvals are obtained, Florida Gas states FDOT would not tear down the existing noise and MSE walls until fiscal year 2015 at the earliest.¹⁶

17. Florida Gas further states that FDOT is wrong in suggesting that Florida Gas will have to rely on eminent domain to obtain an inordinate amount of the necessary land rights it will need to construct a replacement pipeline in FPL's electric transmission corridor. Florida Gas states it has notified and received survey permission from all affected landowners and is proceeding with negotiations. It emphasizes that its replacement pipeline will be less than a half mile long and that of the 1.77 acres needed as a permanent easement, 1.33 acres (75 percent of the total) is on public property held by Broward County and FDOT. Twenty-five percent of the total acreage required (0.44 acres) will be on six privately-held parcels. Similarly, of the 9.09 acres needed for the temporary workspace, approximately 6.20 acres (68 percent of the total) is on the public property and approximately 2.89 acres (32 percent of the total) is on the six privately-held parcels.

18. FPL's initial comments questioned the need for Florida Gas's proposed pipeline relocation project, which would place most of the replacement pipe in FPL's non-

¹⁴ Florida Gas's November 1, 2012 Answer at 6 - 11.

¹⁵ Florida Gas's November 1, 2012 Answer at 9.

¹⁶ *Id.* at 10.

exclusive easement over Broward County public land and expressed concerns regarding the width of Florida Gas's proposed right-of-way and potential conflicts associated with the use of FPL's right-of-way. However, on May 3, 2013, FPL filed Supplemental Comments stating that it was withdrawing its comments regarding the right-of-way issues as it has now reached an agreement with Florida Gas with respect to the right-of-way width and other issues related to Florida Gas's use of FPL's right-of-way.

19. Florida Cities states they do not have any reason to doubt Florida Gas's representation that access to its pipeline has been compromised by the highway-related features constructed by FDOT, or that Florida Gas's proposed pipeline relocation project represents the best currently-viable alternative for resolving the problem. However, Florida Cities emphasizes that the pipeline facilities that Florida Gas proposes to abandon were authorized in 2006 and have only been in service since 2008. They speculate that the need for this replacement project might have been avoided if Florida Gas had proposed a different route in the 2006 proceeding and if there had been better coordination and communication between Florida Gas and FDOT. The Municipal Association states that Florida Gas's estimated cost (\$24,700,000) for the proposed project to replace 1,618 feet of pipeline is "a very large sum of money for a very short piece of pipeline." The Municipal Association urges the Commission to look carefully at the facts to determine whether there is some way to avoid this expenditure while satisfying both FDOT and Florida Gas. In any event, the Municipal Association states it also would oppose any attempt by Florida Gas to recover the costs of this project by including them in the rates paid by its customers.

20. In response to Florida Cities' and the Municipal Association's comments, Florida Gas emphasizes that it will first seek recovery of its replacement project's costs from FDOT. However, if it is unsuccessful in recovering all of its costs from FDOT, Florida Gas emphasizes that its replacement project is necessary to ensure continued reliable service for its customers by bypassing a segment of pipeline that it can no longer safely access for maintenance. Therefore, Florida Gas states that it reserves all of its rights to seek recovery in its customers' rates in a future rate case.

21. On April 25, 2013, Florida Gas filed a motion to request that the Commission issue an order as soon as possible to approve Florida Gas's proposed project so that it can start construction this summer. On May 2, 2013, FDOT filed an answer asserting the Commission should convene a full evidentiary hearing before an Administrative Law Judge on the need for Florida Gas's proposed pipeline replacement project or, alternatively, convene a technical conference.

III. Discussion

22. The facilities Florida Gas proposes to abandon have been used to transport natural gas in interstate commerce. The replacement facilities that Florida Gas proposes to construct will be used to transport natural gas in interstate commerce. Therefore, Florida Gas's proposals are subject to the Commission's jurisdiction and the requirements of section 7 of the NGA.¹⁷

A. Application of the Certificate Policy Statement

23. The Commission's Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.¹⁸ 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 new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

24. Under this policy, the threshold requirement for existing pipelines proposing construction 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 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 proposed route or location of the new pipeline facilities. 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

¹⁷ 15 U.S.C. §§ 717f (2006).

¹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *clarified*, 90 FERC ¶ 61,128 (2000); *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Commission proceed to complete the environmental analysis where other interests are considered.

25. As noted above, 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 its proposed I-595 Replacement Project is needed to ensure its ability to safely access its mainline pipe in the immediate area along SR 91 for maintenance and potential repair purposes. The pipeline to be installed is intended to replace the capacity of the segment of pipeline proposed to be abandoned; the replacement will not result in any new transportation capacity. As such, the proposed project is intended to ensure the reliability of service to existing customers. Including the costs of such projects in the rates of existing customers does not constitute a subsidy as contemplated by the Certificate Policy Statement.¹⁹ Moreover, Florida Gas emphasizes it is seeking to recover the costs associated with the pipeline relocation project from FDOT.²⁰ Therefore, we find Florida Gas's proposal satisfies the no-subsidy requirement of the Certificate Policy Statement.²¹ Furthermore,

¹⁹ See Certificate Policy Statement, 88 FERC ¶ 61,227 at n.12 (1990).

²⁰ Florida Gas's application at 8 and October 5, 2012 answer at 23. Florida Gas states that in the court proceeding on its lawsuit against FDOT for damages to recover the costs of its replacement project, the presiding judge has rescheduled the trial to allow the Commission time to issue an order in this proceeding. *Id.* at 17-18. On May 24, 2013, Florida Gas filed a notice stating that on June 21, 2013, the court will set a precise date for the trial to take place in July, August or September of 2013.

²¹As discussed herein, we are finding that Florida Gas's replacement project is necessary to ensure continued reliable service for its customers; therefore, Florida Gas is entitled to seek recovery in a future rate case of any reasonably-incurred costs related to the project that it is unsuccessful in recovering from FDOT. The Municipal Association and Florida Cities have stated they will oppose any attempt by Florida Gas to recover project costs from current shippers, and Florida Cities speculates that the need for this replacement project might have been avoided if Florida Gas had proposed a different route in the 2006 certificate proceeding and there had been better coordination and communication between Florida Gas and FDOT. We believe such questions go to the reasonableness of the amount of costs ultimately included in Florida Gas's rates. Accordingly, parties in a future rate case will not be precluded from addressing the appropriate level of costs associated with this replacement and whether it is reasonable for Florida Gas to include these costs in the rates of its existing customers.

the proposal will not adversely affect Florida Gas's existing customers. Florida Gas's certificated capacity will not be affected by the pipeline relocation project and Florida Gas will continue to be able to meet its customers' peak hour and peak day demands. Also, there will not be any adverse impacts on other pipelines and their customers because Florida Gas's proposal only impacts the physical configuration of Florida Gas's facilities and will not change the customer requirements or system capacity.

26. Florida Gas has stated that there will be minimal impacts on landowners and the surrounding community. Florida Gas states that it has received survey permission from all affected landowners, including the owners of the six privately-held parcels, and that it is in the process of negotiating the necessary rights-of-way. Further, FPL, which holds an easement on the Broward County public land where most of the replacement pipeline will be located, states that it and Florida Gas have reached an agreement with respect to their shared use of the right-of-way.

27. It is undisputed that FDOT has constructed highway facilities (including MSE and noise walls) in the immediate vicinity of Florida Gas's existing interstate pipeline. However, FDOT suggests the Commission should either second-guess Florida Gas's assessment that the highway facilities, as currently-constructed, deny Florida Gas safe and timely access to its pipeline for maintenance and repair purposes, or deny Florida Gas authority to remedy the situation pending FDOT's redesign of its highway project in order to relocate the offending facilities. The Commission does not find either of these options to be in the public interest. The Commission presumes that the current location of FDOT's facilities is based on sound highway-engineering principals. Presuming equally-sound alternatives for their replacement could be developed, implementation of those changes will take some time (e.g., FDOT has not disputed Florida Gas's assertion that FDOT could not tear down the existing noise wall and MSE wall until fiscal year 2015 at the earliest) and are outside the authority of the Commission to direct. In the meantime, Florida Gas's access to its pipeline facilities would remain impaired. In view of these considerations, the Commission finds that relocating this section of pipeline is in the public interest to avoid accidents and ensure maintenance of Florida Gas's existing gas services. The Commission finds that there are sufficient facts in the record to reach a determination. Therefore, we will deny FDOT's request for further proceedings.²²

²² The Commission's policy is to hold a trial-type evidentiary hearing only where there are material issues of fact that cannot be resolved on the basis of the written record (see, e.g., *Questar Pipeline Company*, 140 FERC ¶ 61,040 at P 14), and has substantial discretion in deciding whether material issues of fact have been raised. *Id.* at n.11 (citing *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire &*

28. Balancing these benefits against the minimal adverse impacts of Florida Gas's relocation project on existing customers, competitors, and landowners, we find that approving Florida Gas's construction of replacement pipeline is consistent with the Certificate Policy Statement. Based on that finding and the environmental review discussed below, the Commission further finds the public convenience and necessity require issuance of a certificate to authorize Florida Gas's replacement pipeline.

B. Florida Gas's Proposed Abandonment of Facilities

29. With respect to abandonment, section 7(b) allows an interstate pipeline company to abandon jurisdictional facilities only if the abandonment is permitted by the "present or future public convenience or necessity."²³ As discussed above, the Commission is granting Florida Gas certificate authority to construct replacement pipeline to bypass the approximately 1,618-foot segment of pipeline that it proposes to abandon in place. The replacement pipeline will also be 36-diameter and will have the same capacity as the existing pipeline. Therefore, the proposed abandonment will not impact Florida Gas's services for existing customers. Accordingly, the Commission finds that the public convenience and necessity permit Florida Gas's proposed abandonment.

C. Environmental Analysis

30. On February 28, 2012, the Commission's staff issued a Notice of Intent to Prepare an Environmental Assessment for the Planned I-595 Replacement Project and Request for Comments on Environmental Issues (NOI).²⁴ The NOI was mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

31. The Commission received comments in response to the NOI from FDOT, FPL, the Peoples Gas System (PGS), and Broward County, Florida. The issues raised concerned the purpose and need for the project, completeness and accuracy of Florida Gas's filings,

Cable Co. v. FERC, 677 F.2d 124, 128-129 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969)).

²³ 15 U.S.C. §717f(b) (2006).

²⁴ The NOI was issued in Docket No. PF12-5-000 and published in the *Federal Register* 77 Fed. Reg. 13,115 (2012).

project alternatives within FPL's right-of-way, project costs, options presented by FDOT to remove or reconfigure its project-related highway facilities, ongoing litigation between Florida Gas and FDOT, whether the Commission's staff should hold a technical conference to attempt to resolve the issues between Florida Gas and FDOT, and coordination with residents. FDOT, FPL and PGS stated that the project may not be needed and that the EA should address FDOT's options.

32. To satisfy the requirements of the National Environmental Policy Act (NEPA), the Commission's staff prepared an environmental assessment (EA) for Florida Gas's proposal. The analysis in the EA addresses geology and soils, water resources, wetlands, fisheries, vegetation, wildlife, threatened and endangered species, socioeconomics, land use, cultural resources, air quality and noise, safety and reliability, alternatives, and cumulative impacts. All substantive environmental comments received in response to the NOI are addressed in the EA.

33. The EA was issued for a 30-day comment period and placed into the public record on November 30, 2012. The Commission received timely comments on the EA from the U.S. National Park Service (NPS), FPL, and FDOT. The NPS stated that based on the information provided in the EA, it has no comments at this time. FPL has withdrawn its comments regarding its concerns with the proposed right-of-way width and potential conflicts with the use of FPL's right-of-way.²⁵

34. The EA acknowledges that a settlement between Florida Gas and FDOT could result in the project no longer being needed. The EA also states that comments concerning the accuracy of Florida Gas's filings, project cost, and ongoing litigation between FDOT and Florida Gas, and the need for a technical conference to address these issues are outside the scope of the EA,²⁶ and did not address them further.

35. In its comments on the EA, FDOT argues that the EA fails in two respects. First, FDOT asserts the EA fails to properly identify the project's purpose and need. According to FDOT, the EA wrongly concludes that the purpose of Florida Gas's project is to relocate its pipeline and incorrectly states that the "real" purpose (which FDOT

²⁵ FPL's May 3, 2013 Supplemental Comments.

²⁶ The EA at page 3.

posits as “ensuring that the pipeline can be operated consistently with federal safety requirements”) is outside the scope of the EA.²⁷

36. We disagree with FDOT’s characterization of the EA. The EA summarizes Florida Gas’s project purpose as follows: “the purpose of the Project is to relocate a segment of an existing natural gas transmission pipeline to a location where adequate workspace is available to access it and maintain it, and ensure its ability to meet pipeline integrity standards.”²⁸ This is consistent with what FDOT calls the “real” project purpose. Further, the EA nowhere states that consideration of compliance with federal safety requirements is outside its scope.²⁹

37. The Council on Environmental Quality (CEQ) regulations for implementing NEPA³⁰ require only that an EA “briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”³¹ The function of a statement of purpose and need is to define the objectives of a proposed action such that the agency can identify and consider legitimate alternatives.³² As discussed above, the EA has explained the project’s objectives.

38. Second, FDOT contends, the EA fails to analyze a “proper” no-action alternative, which FDOT states “consists of leaving the pipeline in its current location coupled with FDOT’s redesign of the roadway.”³³ In fact, FDOT’s scenario would not be a “no-action

²⁷ FDOT December 31, 2012 Comments on EA at 2.

²⁸ EA at 1; *see also id.* at 26.

²⁹ FDOT quotes the EA to the effect that “[s]ome of the specific points raised in the comments about . . . purpose and need . . . are outside the scope of this EA, and are not addressed further.” FDOT December 31, 2012 Comments at 3, citing EA at 3. This general statement cannot fairly be construed as a conclusion that consideration of federal safety requirements are outside the scope of the EA.

³⁰ Pub. L. No. 91-190, 42 U.S.C. §§ 4321-4327 (2006).

³¹ 40 C.F.R. § 1502.13 (2012).

³² *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1175 (10th Cir. 1999).

³³ FDOT December 31, 2012 Comments at 6, n.15.

alternative” as contemplated by NEPA. Denying Florida Gas’s application as a stand alone matter – the no-action alternative used in the EA – would indeed represent no action, because it would perpetuate the status quo and result in no incremental environmental impacts. However, a scenario in which the Commission denied Florida Gas’s proposal to abandon its pipeline premised on an expectation that FDOT would move various facilities would be an alternative in which the status quo would be modified and the environment affected.³⁴ Accordingly, the EA selected the correct no-action alternative.

39. The EA determines that implementing the No-Action Alternative would eliminate the effects on the environment resulting from the replacement, but would not allow Florida Gas to meet its stated purpose of the project. Additionally, as part of the no-action alternative, the EA also discusses the options presented by FDOT and concludes that the removal of highway-related facilities would result in their own, as yet undetermined, environmental impacts.

40. As discussed above, the Commission finds that Florida Gas’s proposal to relocate its pipeline is a reasonable response to FDOT’s construction of highway facilities in the immediate vicinity of the pipeline and rejects suggestions that it would be in the public interest to delay implementation of the project pending FDOT’s possible redesign/relocation of its highway facilities.

41. The EA also considers two alternative replacement pipeline routes.³⁵ One of those alternatives would locate Florida Gas’s replacement pipeline within FPL’s existing right-of-way but on the western side of FPL’s overhead electrical power transmission lines, rather than on the eastern side as proposed by Florida Gas. The other alternative would keep Florida Gas’s replacement pipeline in FDOT’s right-of-way but would relocate it approximately 10 – 30 feet on the opposite side of the noise wall constructed by FDOT.

³⁴ To the extent that it could be argued (although FDOT does not do so) that FDOT’s proposal should have been considered as, essentially, a project alternative, we conclude that it would be an alternative eliminated from further consideration as overly speculative, given that FDOT has not committed to it and that, as the EA explains, at 26, the removal of the facilities may not be sufficient to resolve Florida Gas’s access and maintenance issues, and highway construction would have as-yet unknown environmental impacts.

³⁵ The EA at page 26.

42. The EA concludes that implementing either of the pipeline route alternatives would not provide a significant environmental advantage over Florida Gas's proposal.

43. The EA addresses construction activities near FPL's electric transmission facilities, and finds that Florida Gas's proposed construction measures should allow construction of the project without significant interference with FPL's facilities or operations. The EA also concludes that Florida Gas's proposed right-of-way width of 34-feet is consistent with industry practices, and is acceptable.³⁶

44. The EA also addresses late comments received in response to the application from the Broadview Park Civic Association (BPCA). The BPCA commented that Florida Gas should coordinate with residents regarding construction activities. The EA recognizes that Florida Gas has been working with the directly affected landowners. The EA also acknowledges that continued communication is important and recommends that Florida Gas develop and implement an environmental complaint resolution procedure. We are including this condition as condition number 8 in the Appendix of this Order

45. The BPCA stated that Florida Gas's project would devalue home prices and have an adverse effect on the local wildlife. The BPCA's concerns regarding residential and wildlife impacts are addressed in the EA.³⁷ The EA determines that construction activities would temporarily increase noise, traffic and dust in the area. Also, as depicted in the Residential Construction Implementation Plan, Appendix C of the EA, some residential features (i.e. fences and sheds) would be temporarily and/or permanently removed and/or relocated.³⁸ The EA determines that residential land use would not be significantly affected by construction and operation of the replacement pipeline. The EA also determines that because the replacement pipeline would be located on developed lands, that wildlife would not be affected.³⁹ However, we acknowledge that construction activities could affect less mobile species, such as small rodents, reptiles, and invertebrates, but based on the developed nature of the lands impacted, we believe wildlife will not be significantly impacted. Regarding construction impacts on property values, while the Commission recognizes the general potential for property values to be negatively impacted by the construction of nearby energy infrastructure, this project is

³⁶ The EA at page 4.

³⁷ The EA at page 9 and 11.

³⁸ Some of these features are encroachments on the existing utility right-of-way.

³⁹ The EA at page 9.

within an existing utility corridor and nearby the Florida Turnpike. Therefore, we do not anticipate that this relatively limited project will further impact property values. Property owners who believe that their property values have been negatively impacted could appeal to the local tax agency for reappraisal and potential reduction of taxes.

46. Based on the analysis in the EA, the Commission finds that Florida Gas's proposed pipeline replacement project is an environmentally acceptable action that would not constitute a major federal action significantly affecting the quality of the human environment if the abandonment and construction activities are conducted in accordance with Florida Gas's application and as described in the EA and in compliance with the environmental conditions in the Appendix to this Order.

47. 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.⁴⁰

48. 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.

49. The Commission, on its own motion, received and made a part of the record all evidence, including the application, and exhibits thereto, submitted in support of the authorization sought herein, upon consideration of the record,

The Commission orders:

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

⁴⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 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).

(B) A certificate of public convenience and necessity is issued to Florida Gas in Docket No. CP12-501-000 to construct and operate facilities associated with the I-595 Replacement Project, as described more fully herein and in the application.

(C) The request for a full, trial-type evidentiary hearing or, alternatively, a technical conference, is denied.

(D) The certificate authority granted in Ordering Paragraph (B) shall be conditioned on the following:

- (1) Florida Gas completing the authorized construction of the proposed facilities and making them available for service within two years of the issuance of this order pursuant to section 157.20(b) of the Commission's regulations.
- (2) Florida Gas complying 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) Florida Gas complying with the environmental conditions in the Appendix to this Order.

(E) Florida Gas shall notify the Commission's environmental staff by telephone, e-mail, 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX
Environmental Conditions
Docket No. CP12-501-000

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, supplements, and as identified in the environmental assessment (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 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 the 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 associated with abandonment, 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 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 activities associated with the abandonment, construction and operation of the project.

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 (EI), 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 EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations identified in the EA. **As soon as they are available, and before the start of construction**, Florida Gas shall file with the Secretary any revised detailed survey alignment maps or 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, and 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, or 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 route variations required herein or extra workspace allowed by Florida Gas's Erosion & Sediment Control 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 construction begins, Florida Gas shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Florida Gas must file revisions to the plan as schedules change.

The plan shall identify:

- a. how Florida Gas will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff environmental information requests), identified in the EA, and required by this Order;
 - b. how Florida Gas 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. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - d. the location and dates of the environmental compliance 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 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 environmental compliance training of onsite personnel;
 - (iii) the start of construction; and
 - (iv) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Florida Gas shall file updated status reports with the Secretary on a weekly 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 Florida Gas's efforts to obtain the necessary federal authorizations;
 - b. the current construction status of each spread, work planned for the following reporting period, and any scheduling 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 during the reporting period (both for the conditions imposed by the Commission and any environmental conditions or 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 that may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Florida Gas from other federal, state or local permitting agencies concerning instances of noncompliance and Florida Gas's responses.
8. 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 right(s)-of-way. **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 and 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 and indicate how soon a landowner should 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 Dispute Resolution Service Helpline at 877-337-2237 or at ferc.adr@ferc.gov.
 - 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 or concern:
 - (1) the identity of the caller and the date of the call;
 - (2) the location by milepost and identification number from the authorized alignment sheet(s) of the affected property;
 - (3) a description of the problem or concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Florida Gas shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. Florida Gas must receive written authorization from the Director of OEP **before placing the project 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.

11. **Within 30 days of placing the authorized 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 or installed 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 affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.