

129 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinohoff, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Florida Gas Transmission Company, LLC

Docket Nos. CP09-17-000
AC08-161-000

ORDER ISSUING CERTIFICATE AND DENYING REQUEST
FOR APPROVAL OF PROPOSED ALLOWANCE FOR FUNDS
USED DURING CONSTRUCTION ACCOUNTING

(Issued November 19, 2009)

1. On October 31, 2008, Florida Gas Transmission Company, LLC (Florida Gas) filed an application in Docket No. CP09-17-000 under section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for a certificate of public convenience and necessity authorizing the construction and operation of approximately 483.2 miles of pipeline facilities, the addition of 213,600 horsepower (hp) of compression at eight existing and one new compressor station, the acquisition of 22.7 miles of existing pipeline facilities, the construction and upgrade of metering and regulating (M&R) stations, and the construction of associated auxiliary facilities (the Phase VIII Expansion Project). The Phase VIII Expansion Project is designed to increase the firm transportation capacity of Florida Gas's system in Florida by 820,000 million Btu (MMBtu) per day. Florida Gas proposes to commence service in two phases timed to meet its customers' requirements, with Phase 1 to go into service by July 1, 2010, and Phase 2 to go into service by April 1, 2011.

2. Previously, on August 14, 2008, Florida Gas filed a request with the Commission's Chief Accountant in Docket No. AC08-161-000 for permission to start the accrual period for the Allowance for Funds Used During Construction (AFUDC) for its Phase VIII Expansion Project coincident with its filing of its request to use the Commission's pre-filing process in March 2008.

¹ 15 U.S.C. § 717f(c) (2006).

² 18 C.F.R. Part 157 (2009).

3. For the reasons discussed below, we will authorize the Phase VIII Expansion Project, with appropriate conditions, and deny Florida Gas's request regarding AFUDC.

I. Background and Proposals

4. 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. Florida Gas is a wholly-owned subsidiary of Citrus Corp., the stock of which is owned fifty percent by CrossCountry Citrus, LLC and fifty percent by El Paso Citrus Holdings, Inc. El Paso Citrus Holdings, Inc. is a wholly-owned subsidiary of El Paso Corp. CrossCountry Citrus, LLC is owned by CrossCountry Energy, LLC, which is an indirect wholly-owned subsidiary of Southern Union Company.

5. Florida Gas receives natural gas from suppliers in the Gulf Coast areas of Texas, Louisiana, Mississippi, Alabama, Florida, and Offshore Federal Domain, and transports and delivers gas along its transmission system for consumption or further transportation. Florida Gas is an interstate natural gas company as defined by section 2(6) of the NGA³ and is subject to the jurisdiction of the Commission.

A. Open Season

6. In anticipation of projected demand for natural gas to fuel increased electric generation in the State of Florida, Florida Gas states that it conducted an open season from January 14 through February 15, 2008, to solicit interest in, and obtain commitments for, a proposed mainline expansion for firm transportation capacity under a new incremental Rate Schedule FTS-3.⁴ Prior to the conclusion of the open season, Florida Gas announced that Florida Power & Light Company (FPL) had agreed to become an anchor shipper for the proposed expansion and had entered into a precedent agreement for 400,000 MMBtu per day of firm transportation capacity for a term of twenty-five years. Subsequently, Florida Gas states that five other shippers entered into precedent agreements for an additional 206,000 MMBtu per day of firm transportation capacity, each for twenty-five year terms.

³ 15 U.S.C. § 717a(6) (2006).

⁴ Concurrently with the open season, Florida Gas initiated a notice of open season for turnback capacity, soliciting interest from existing Florida Gas shippers to permanently release their firm transportation capacity. One shipper initially requested a permanent release of firm transportation capacity, but subsequently withdrew its request.

7. The shippers and their respective volumes are as follows: (1) FPL, 400,000 MMBtu per day; (2) Florida Power Corporation d/b/a Progress Energy Florida, Inc. (Progress Energy), 75,000 MMBtu per day;⁵ (3) Seminole Electric Cooperative, Inc. (Seminole), 60,000 MMBtu per day; (4) Tampa Electric Company, 50,000 MMBtu per day; (5) Orlando Utilities Commission, 15,000 MMBtu per day; and (6) the City of Tallahassee, 6,000 MMBtu per day.⁶ According to Florida Gas, the shippers were offered the option of recourse or negotiated rates and all shippers elected to pay negotiated rates fixed for twenty-five years. Florida Gas proposes to make the remaining 214,000 MMBtu per day of unsubscribed capacity available in the future under Rate Schedule FTS-3.

B. Facilities

8. To provide the expansion transportation services, Florida Gas proposes to construct and operate approximately 357.3 miles of various diameter pipeline in eleven mainline loops along its system from Mobile County, Alabama to Miami-Dade County, Florida and 125.9 miles of new mainline pipeline and customer laterals.⁷ In addition, Florida Gas proposes to add 213,600 hp of compression at

⁵ Progress Energy initially entered into precedent agreement for 200,000 MMBtu per day. On March 9, 2009, Florida Gas filed its amended precedent agreement with Progress Energy which reduced Progress Energy's volumes to 75,000 MMBtu per day. Florida Gas states that the reduction was a direct result of the slowing of the economy and the demand for electricity in Progress Energy's market. The amended precedent agreement permits Progress Energy to increase its volumes on or before May 1, 2010 to either: (a) 100,000 MMBtu per day effective April 1, 2011, or (b) 100,000 MMBtu effective April 1, 2012, and 150,000 MMBtu effective April 1, 2013.

⁶ Seminole's volumes increase over a two-year period. The volumes for Tampa Electric Company and the City of Tallahassee increase over a three-year period.

⁷ In conjunction with the expansion, Florida Gas requests Commission authorization to operate certain previously-certificated facilities at higher maximum allowable operating pressures as permitted under Pipeline and Hazardous Materials Safety Administration regulations.

eight existing compressor stations and one new compressor station,⁸ acquire FPL's existing 22.7-mile Martin Lateral, construct three new M&R stations and one new regulator station, upgrade two M&R stations, and construct associated auxiliary facilities. A detailed list of facilities is provided in Appendix A to this order.

9. Florida Gas proposes to place the Phase VIII Expansion Project facilities into service in two phases. In Phase 1, Florida Gas proposes to construct the Manatee Lateral and the FPL Manatee M&R station to serve FPL's Manatee Power Plant by July 1, 2010. Florida Gas states that FPL will have the right to nominate the FPL Manatee M&R station as an additional primary delivery point under FPL's existing FTS-1 and FTS-2 service agreements. In Phase 2, Florida Gas proposes to place the remaining Phase VIII Expansion Project facilities into service by April 1, 2011.

10. To reduce costs and minimize environmental impacts, Florida Gas seeks Commission authorization to operate certain certificated facilities at higher maximum allowable operating pressures (MAOP). Specifically, Florida Gas requests authorization to increase the MAOP of certain pipeline segments from 1,200 pounds per square inch gauge (psig) to 1,333 psig. On March 12, 2008, the Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a proposed rulemaking in Docket No. PHMSA-2005-23447⁹ to amend the pipeline safety regulations to allow for the operation of certain gas transmission pipelines at pressures based upon higher stress levels, thus permitting new and existing

⁸ In Environmental Resource Report 1 of its application, Florida Gas states that it evaluated the implementation of waste heat recovery systems at the new compressor station and the compressor stations being upgraded as part of the Phase VIII Expansion Project. Florida Gas's evaluation, conducted in accordance with the Interstate Natural Gas Association of America's white paper, *Waste Heat Recovery Opportunities for Interstate Natural Gas Pipelines, February 2008* identified two stations, Compressor Station Nos. 11 and 26 as potential sites for waste heat recovery installations. In its February 12, 2009 response to staff's January 23, 2009 data request, Florida Gas explained that both stations following the expansion will have installed gas-fired centrifugal compression in excess of 15,000 hp and are anticipated to operate in excess of a 60 percent load factor. In addition, electrical infrastructure will already be in place due to having large electric-driven compressors installed at the stations. Florida Gas states that the remaining compressor stations affected by the expansion project will not have load factors sufficient to support waste heat recovery.

⁹ *Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines*, 73 Fed. Reg. 13,167 (Mar. 12, 2008).

facilities to be operated at a higher MAOP. Due to the uncertainty of the timing of the Final Rule, Florida Gas, on March 31, 2008, filed a Special Permit Application with PHMSA in Docket No. PHMSA-2008-0077 requesting authorization to operate certain existing pipeline segments at a greater MAOP equal to the levels set forth in the PHMSA rulemaking. On October 17, 2008, PHMSA issued its Final Rule, to be effective November 17, 2008.¹⁰ Florida Gas evaluated the Final Rule and concluded that Florida Gas's pipeline segments covered by the Special Permit Application substantially met the requirements of the Final Rule. Florida Gas states that it worked with PHMSA on variations or Final Rule compliance gaps and on September 23, 2009, PHMSA issued the Special Permit. Florida Gas states that operating at the higher MAOP eliminates the need for approximately 80.5 miles of pipeline.

C. Rates and AFUDC Request

11. Florida Gas estimates that the Phase VIII Expansion Project facilities will cost \$2,455,155,287.

12. Florida Gas proposes to provide firm transportation on the expansion facilities pursuant to new incremental Rate Schedule FTS-3. Florida Gas's proposed recourse reservation and usage rates under Rate Schedule FTS-3 are \$1.5857 per MMBtu per day and \$0.0078 per MMBtu, respectively. Florida Gas anticipates that the annual average fuel consumption will decrease from 3.34 percent to 3.26 percent and therefore proposes that system-wide fuel rates apply to Rate Schedule FTS-3 services.

13. Florida Gas also seeks permission to start the accrual period for AFUDC for its Phase VIII Expansion Project coincident with its filing of its request to use the Commission's pre-filing process on March 6, 2008. On August 14, 2008, Florida Gas filed a request with the Chief Accountant in Docket No. AC08-161-000 for permission to begin capitalizing interest (debt and equity AFUDC) on its Phase VIII Expansion Project approximately eight months prior to filing its certificate application, and continuing through March 2011. Florida Gas argues that such capitalization of interest prior to certificate application filing is justified because Commission guidance regarding the timing of interest capitalization¹¹ was

¹⁰ *Pipeline Safety: Standards for Increasing the Maximum Allowable Operating Pressure for Gas Transmission Pipelines*, 73 Fed. Reg. 62,148 (Oct. 17, 2008).

¹¹ Florida Gas is referring to the guidance in *Accounting Release No. 5 (Revised), Capitalization of Interest During Construction*, FERC Stats. & Regs. ¶ 40,005 (1968).

issued prior to the Commission order providing for a pre-filing review,¹² which, Florida Gas argues necessitates more work prior to certificate application filing, and significant investments are now typically made prior to the certificate application filing. On September 30, 2008, Florida Gas filed additional information supporting its request in response to staff's September 16, 2008 data request.

II. Notice and Interventions

A. Docket No. CP09-17-000

14. Public notice of Florida Gas's application in Docket No. CP09-17-000 was published in the *Federal Register* on November 21, 2008 (73 Fed. Reg. 70,630), with a deadline of December 8, 2008, for filing comments on, or protests to, the application or motions to intervene in this proceeding. A number of timely, unopposed motions to intervene were filed.¹³ Timely, unopposed motions to intervene are granted by operation of Rule 214(a) of the Commission's Rules of Practice and Procedure.¹⁴ The Florida Department of Transportation (Florida DOT) filed a motion to intervene on August 10, 2009, which Florida Gas opposes. One landowner filed a protest to Florida Gas's proposal, as discussed below.

15. FPL filed comments in support of Florida Gas's proposed project. Peoples Gas System, a Division of Tampa Electric Company (Peoples Gas) and the Florida Municipal Natural Gas Association (Florida Municipals) filed comments concerning the rates portion of Florida Gas's proposed Phase VIII Expansion

¹² *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, Order No. 665, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,195 (2005).

¹³ The parties filing timely, unopposed motions to intervene are listed in Appendix B to this order.

¹⁴ 18 C.F.R. § 385.214 (2009).

Project. Florida Gas filed an answer to the comments of Peoples and the Florida Municipals.¹⁵

1. Florida DOT's Motion to Intervene

16. On August 10, 2009, the Florida DOT filed a motion to intervene in this proceeding and comments on the State Route 710 and Canal C-1 Route Variations proposed in the July 10, 2009 notice to affected landowners describing several route variations being considered based on comments filed in response to the draft environmental impact statement (EIS). Florida Gas filed a response to Florida DOT's comments and an answer opposing Florida DOT's motion to intervene. Florida DOT filed an answer to Florida Gas's answer to which Florida Gas filed another answer. Finally, Florida DOT filed a reply to Florida Gas's answer. Although our rules do not permit answers to answers,¹⁶ we will accept Florida Gas's and Florida DOT's responsive pleadings because these they provide information that assists us in our decision making.

17. Florida DOT argues that its motion to intervene is timely under operation of 18 C.F.R. § 380.10(a), which allows any person who files a motion to intervene on the basis of a draft EIS to be deemed to have filed a timely motion as long as the motion is within the comment period for the draft EIS. In the alternative, if the Commission finds that its motion to intervene is not timely, then, Florida DOT argues, its motion to intervene should be granted consistent with the Commission's regulations governing late intervention because good cause exists to grant the motion and it will not prejudice other parties to the proceeding.¹⁷ Florida DOT argues that it is particularly concerned with the effects of the route variations proposed in the July 10, 2009 notice letter and how these proposed modifications implicate Florida DOT regulations. Furthermore, Florida DOT argues that there will be no prejudice to Florida Gas, or any other party, by allowing Florida DOT to intervene out of time because it was still early in the proceeding.

¹⁵ Although the Commission's Rules of Practice and Procedure do not permit this type of responsive pleading, 18 C.F.R. § 385.213(a)(2) (2009), our rules also provide that we may waive this provision for good cause. 18 C.F.R. § 385.101(e) (2009). We do so in this case because Florida Gas's answer provides information that assists us in our decision making. Peoples Gas's and Florida Municipals' comments, as well as Florida Gas's response, are addressed in the rates section of this order.

¹⁶ 18 C.F.R. § 385.213(a)(2) (2009).

¹⁷ 18 C.F.R. § 385.214(d) (2009).

18. Florida Gas argues that Florida DOT's motion to intervene should not be granted because it was filed late and did not show good cause for failing to intervene earlier. Florida Gas argues that Florida DOT is incorrect to assert that its intervention is timely based on 18 C.F.R. § 310.10(a), because it failed to file its motion to intervene by June 8, 2009, the deadline for filing comments on the draft EIS. Florida DOT counters that its motion to intervene is timely because the July 10, 2009 notice effectively modified the draft EIS and extended the comment period to August 10, 2009, the date on which Florida DOT filed its motion to intervene.

19. We agree with Florida Gas that Florida DOT's reliance on section 380.10(a) of the Commission's regulations to argue that its motion to intervene is timely is misplaced since the motion to intervene was not filed during the draft EIS comment period, as required in section 310.10(a). However, despite its lateness, we will grant Florida DOT's untimely motion to intervene.

20. We consider several factors when determining whether to grant a late motion to intervene: whether the intervening party has shown good cause for failing to file the motion within the time prescribed, whether its intervention will disrupt the ongoing proceeding, whether the intervening party's interests are adequately represented by other parties, and whether any prejudice to the existing parties might result from permitting the intervention.¹⁸ Although Florida DOT was already aware of Florida Gas's proposal, and had submitted comments on it, Florida DOT states that it is particularly concerned with the issues that may arise out of the proposed route variations reflected in the July 10, 2009 notice letter. Florida DOT is directly affected by Florida Gas's proposals and, more specifically, two of the route variations proposed in the July 10, 2009 notice letter. In addition, no other party is appropriately situated to represent Florida DOT's position in this proceeding. Furthermore, permitting Florida DOT to intervene now will not disrupt the proceeding or prejudice the rights of any other party. Therefore, we will grant its untimely motion to intervene.

2. Landowner Protest

21. One landowner, Regina Stokes, filed a protest to the application. Ms. Stokes opposed the expansion and granting of new easements across her property and requested that the Commission require Florida Gas to replace an existing 24-inch diameter pipeline on her property, rather than construct a second pipeline through her property.

¹⁸ *Id.*

22. We will dismiss Ms. Stokes's protest as moot since Florida Gas proposes to do as Ms. Stokes suggests. As part of its proposed Loop 3, Florida Gas plans to remove the existing, but previously abandoned, 24-inch diameter pipeline on her property and replace it with a 36-inch diameter pipeline in the space formerly occupied by the 24-inch diameter pipeline.¹⁹

B. Docket No. AC08-161-000

23. Notice of Florida Gas's request in Docket No. AC08-161-000 was published in the *Federal Register* on September 19, 2008 (73 Fed. Reg. 54,395). Peoples Gas, Progress Energy, and Seminole filed timely unopposed motions to intervene. Notice of Florida Gas's September 30, 2008 response to the Chief Accountant's September 16, 2008 data request was published in the *Federal Register* on October 7, 2008 (73 Fed. Reg. 58,578). No comments were filed in reply to Florida Gas's response.

III. Discussion

24. Since the facilities Florida Gas proposes to construct and acquire will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, their construction, acquisition, and operation are subject to the requirements of subsection (c) and (e) of section 7 of the NGA.²⁰

A. Application of the Certificate Policy Statement

25. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.²¹ The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new 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

¹⁹ See Appendix A to this order for a description of Loop 3.

²⁰ 15 U.S.C. §§ 717f(c), (e) (2006).

²¹ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128 (2000); *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

26. Under this policy, the threshold requirement for existing pipelines proposing expansion 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 effect the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

27. Florida Gas's Phase VIII Expansion Project satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As explained below, we are approving Florida Gas's proposal to provide transportation over the expansion facilities at incremental rates pursuant to a new incremental Rate Schedule FTS-3, thereby shielding Florida Gas's existing customers from subsidizing the project. Furthermore, the additional compression proposed by Florida Gas will not increase the system fuel reimbursement percentage. Finally, Florida Gas has assumed the risk for the currently unsubscribed capacity created by the Phase VIII Expansion Project.

28. The Phase VIII Expansion Project will not adversely affect Florida Gas's existing customers or other pipelines and their customers. The proposed facilities are designed to provide incremental service to utilities and generators in Florida without degradation of service to Florida Gas's existing firm customers. In addition, there is no evidence that service on other pipelines will be displaced or bypassed. Thus, we conclude that the proposals will not have adverse impacts on existing pipelines or their customers.

29. Similarly, the evidence does not indicate adverse economic impacts on landowners. Florida Gas has designed the project to minimize impacts. Specifically, the majority of construction of the Phase VIII Expansion Project will occur within or adjacent to Florida Gas's existing right-of-way, thereby limiting the number of additional permanent easements that will be required. In addition, for significant portions of Loops 3 and 4, Florida Gas proposes to remove previously abandoned segments of 24-inch-diameter pipeline and install the proposed 36-inch-diameter pipeline loop in the area previously occupied by the 24-inch-diameter pipeline. Finally, Florida Gas applied for and received a Special

Permit from PHMSA to operate certain segments of its pipeline system at an increased MAOP, which will reduce the amount of pipeline necessary to provide the proposed services, thus minimizing impacts on landowners and communities.

30. Florida Gas has entered into long-term precedent agreements for approximately seventy-four percent of the capacity of the Phase VIII Expansion Project. The proposed expansion of Florida Gas's system is necessary to provide fuel for electric generators and gas supply for utilities. The Commission finds that the Phase VIII Expansion Project will provide substantial benefits to the market, including lowering the fuel rate on Florida Gas's system, without any significant identified adverse impacts on existing customers, other pipelines, and with only limited impacts on landowners and communities. Therefore, the proposal is consistent with the Certificate Policy Statement and section 7(c) of the NGA. Accordingly, balancing the factors set forth in the Certificate Policy Statement, we conclude that approval of the Phase VIII Expansion Project is required by the public convenience and necessity.

31. Consistent with our standard practice, we will condition our certificate authorization so that construction cannot commence until after Florida Gas executes contracts that reflect the levels and terms of service represented in its precedent agreements.²²

B. Florida DOT Comments on Florida State Utility Permits

32. Florida DOT notes that Florida Gas proposes to construct a portion of its Phase VIII Expansion Project facilities in Florida DOT rights-of-way at over fifty locations, including State Road 710. Florida DOT states that Florida Gas must receive utility permits from Florida DOT before Florida Gas can construct facilities in the state highway rights-of-way. Florida DOT points out that, according to Florida law and as embodied in paragraph 8 of Florida DOT's utility permit, any permitted utility within the right-of-way of a state roadway found to be "unreasonably interfering ... with the convenient, safe, or continuous use, or maintenance, improvement, extension, or expansion of such public road ... shall, upon thirty (30) days written notice to the utility ... by FDOT, be removed or relocated by such utility."²³ As specifically relevant in this proceeding, Florida DOT asserts, the utility permit requires the utility to take the necessary steps within the thirty-day period specified in the permit to relocate its facilities if the

²² See, e.g., *Southeast Supply Header, LLC*, 119 FERC ¶ 61,153 (2007), *Gulf South Pipeline Company, L.P.*, 119 FERC ¶ 61,281 (2007).

²³ Fla. Stat. § 337.403(1) (2009) and Florida DOT Utility Permit, par. 8.

roadway must be expanded and the utility's facilities interfere with the planned expansion.

33. Florida DOT acknowledges that as a regulated pipeline, Florida Gas must receive Commission approval to relocate its pipeline facilities. Florida DOT states that rather than requiring Florida Gas to relocate its facilities within thirty days, the relocation requirement in the utility permit would simply require Florida Gas to begin the necessary actions to effectuate relocation within thirty days, in this case requiring Florida Gas to submit plans to Florida DOT for facility relocation and to seek Commission authorization to relocate its facilities during that time. Florida DOT acknowledges that the specifics of the relocation and the ultimate authority to construct and operate the facilities are within the Commission's exclusive jurisdiction; however, it maintains that requiring Florida Gas to take steps towards pipeline relocation within the permitted time frame does not interfere or impinge on the Commission certificate authority because the Commission controls the means by which relocation is ultimately accomplished.

34. Florida DOT requests that the Commission specifically condition Florida Gas's certificate on compliance with Florida DOT's utility permit, including the thirty-day relocation requirement. Florida DOT maintains that if it is expected to issue utility permits to Florida Gas, it must be assured that the Commission's certificate authorization requires Florida Gas to comply with the permit.²⁴

35. Florida Gas states that it fully intends to comply with all state laws and conditions in the utility permit. However, Florida Gas continues, it also intends to comply with federal law and Commission regulations. Florida Gas argues that the Commission's standard condition language regarding natural gas companies' compliance with state and local permits should suffice without any additional, specific condition relating to compliance with Florida DOT permits as Florida DOT requests. Florida Gas asserts that requesting the Commission to require Florida Gas to relocate its facilities when requested to by Florida DOT is equivalent to requesting the Commission to grant pre-granted blanket abandonment authority to Florida Gas without the opportunity to decide whether the present or future public convenience or necessity permit such abandonment.

²⁴ Florida DOT states that it raised the issue of the utility permits and relocation at this time because Florida Gas has taken the position, in both federal and state court, that it need not comply with the requirements of state law to relocate when ordered to do so by Florida DOT.

Therefore, Florida Gas argues, Florida DOT's requested condition is contrary to the NGA.²⁵

36. As routinely stated in our orders, the Commission encourages cooperation between interstate pipelines and local authorities with respect to any necessary state or local permits. We agree with Florida DOT that, as implemented by Florida DOT, the utility permit's relocation requirement is not necessarily inconsistent with our responsibilities under the NGA. As explained by Florida DOT, and notwithstanding the plain language in the utility permit, Florida DOT does not interpret the thirty-day time frame in the permit as requiring Florida Gas to move its affected pipeline within thirty days. Rather, Florida Gas would have thirty days to begin the necessary steps to effectuate relocation, including submitting plans to Florida DOT for facility relocation and requesting any necessary authorization from the Commission for abandonment and relocation of the relevant facilities.²⁶ Interpreted in such a manner, we do not find the requirement to be inconsistent with the conditions of our certificate and we would expect Florida Gas to comply with this provision of its Florida DOT utility permit, if it were invoked.

37. We note, however, that under section 7(b) of the NGA,²⁷ Florida Gas's facilities cannot be abandoned until and unless the Commission finds that the abandonment is permitted by the public convenience or necessity. Although the Commission has authority in appropriate circumstances to permit pre-granted abandonment when so required by the public convenience or necessity,²⁸ the general policy of the Commission weighs against such requests²⁹ because it is

²⁵ Florida Gas argues that the utility permit requirement raises federal preemption issues. Florida DOT responds that it does not. We do not reach the preemption issue.

²⁶ Under certain circumstances, the facilities may be eligible for replacement or abandonment under Florida Gas's blanket certificate without case-specific authorization from the Commission. *See* 18 C.F.R. §§ 157.208, 157.216 (2009).

²⁷ 15 U.S.C. § 717f(b) (2006).

²⁸ For example, our regulations provide for pre-granted abandonment of transportation services for interruptible and short-term (less than one year) firm service at the end of the contract term. 18 C.F.R. § 284.221(d) (2009).

²⁹ *See Southern Natural Gas Co.*, 124 FERC ¶ 61,058 (2008); *Colorado Interstate Gas Co.*, 77 FERC ¶ 61,311 (1996).

generally not possible for the Commission to determine whether abandonment will be in the public interest at some future time.³⁰ We cannot determine now, in this proceeding, that any future request by Florida Gas for abandonment authority of the facilities authorized in this proceeding will be in the public convenience or necessity. Therefore, if, in the future, Florida DOT informs Florida Gas that its pipeline must be relocated due to highway construction, we will determine in the abandonment proceeding filed by Florida Gas at that time whether the specific abandonment sought is in the public convenience or necessity. The Florida DOT utility permit requirements and the state's need for pipeline facilities to be relocated to accommodate a change in the highway will be considerations in our determination of the public interest at that time.

38. We also note that Florida DOT has not informed Florida Gas or the Commission that it intends to make changes to its highway that would necessitate Florida Gas moving, relocating, or abandoning any of the proposed facilities. Although Florida DOT has submitted comments that it is investigating the possibility of widening State Route 710 in the vicinity of MPs 327.65 through 329.15, as discussed in the final EIS, the prospective widening of State Route 710 is neither currently part of Florida DOT's budget nor in any five-year plan for the highway. This is the only portion of the Phase VIII Expansion Project that Florida DOT has identified as potentially affecting highway expansion.

C. Rates

1. Proposed Rates

39. Florida Gas proposes to charge an incremental rate pursuant to new Rate Schedule FTS-3 for service on the Phase VIII Expansion Project. Florida Gas designed the proposed initial incremental recourse rate using a traditional cost of service and utilizing the straight fixed variable (SFV) rate design methodology. Florida Gas proposes a \$1.5857 per MMBtu per day reservation rate and a \$0.0078 per MMBtu usage rate for Rate Schedule FTS-3 service. Florida Gas states that these rates are based on a first year cost of service of \$476,930,339 and annual daily billing determinants of 299,300,000 MMBtu over the first year utilizing a 100 percent load factor of design capacity. According to Florida Gas, the \$476,930,339 annual cost of service reflects a projected estimated plant cost of \$2,455,155,287 and cost-of-service components which include: (1) straight-line depreciation, (2) operation and maintenance expenses, and (3) ad valorem taxes for both Alabama and Florida. Consistent with the last rate case filed by Florida

³⁰ *Colorado Interstate Gas Co.*, 77 FERC ¶ 61,311 (1996).

Gas,³¹ the capital structure Florida Gas utilizes is sixty percent equity and forty percent debt. Florida Gas uses the following figures in the project's cost of service: (1) a return on equity of 13 percent, (2) a 9.5 percent cost of debt, and (3) an effective depreciation rate of 1.67 percent. Additionally, in Docket No. AC08-161-000 Florida Gas requested permission to begin accruing AFUDC at the start of the pre-filing process on March 6, 2008, instead of pursuant to the Commission's method established in Accounting Release No. 5 – Capitalization of Interest During Construction. Finally, Florida Gas does not propose an interruptible revenue credit in calculating the proposed cost of service, nor does it impute interruptible billing determinants in calculating its proposed annual daily billing determinants.

40. Florida Gas states that it estimates fuel costs for the Phase VIII Expansion Project will be lower than its existing system fuel rate. Therefore, Florida Gas proposes to use the system fuel rate for Phase VIII Expansion Project throughput. Further, Florida Gas proposes to revise Section 27 (Fuel Reimbursement Charges) of the General Terms and Conditions of its tariff to reflect the additional electric compression proposed in the expansion.

41. Florida Gas proposes to charge the currently-effective Rate Schedule ITS rate for interruptible transportation. In the next rate case after the Phase VIII Expansion Project facilities are placed into service, Florida Gas proposes to incorporate the Phase VIII Expansion Project into the system interruptible rate.³²

2. Rate Treatment for the Proposed Laterals

42. The Florida Municipals, in comments on Florida Gas's application, state that Florida Gas appears to include in its rate base facilities associated with three laterals that serve single customers, namely, the Manatee and Martin Laterals (serving FPL) and the Suwannee Lateral (serving Progress Energy).³³ The Florida Municipals state that the costs associated with these laterals should be directly assigned to the affected customers and removed from the rate base used to

³¹ Settlement approved at *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 (2004).

³² Florida Gas's February 5, 2009, Response 12. Florida Gas's currently-effective Rate Schedule ITS rate is \$0.5980 per MMBtu (13th Revised Sheet No. 9, Florida Gas's 4th Revised Volume No. 1).

³³ *Citing Florida Gas Application*, page 9.

determine the recourse rate.³⁴ Florida Gas responds that, as it proposes to price service on an incremental basis, there is no subsidization by existing customers, including the Florida Municipals' members. Florida Gas notes that in both the *Tennessee* and *North Baja* cases cited by the Florida Municipals, the applicants proposed incremental pricing and thus the cases do not stand for the proposition that incremental pricing is mandated. Florida Gas also asserts that the laterals are critical to the development of the project. Florida Gas states that the lateral facilities are part of the overall expansion and provide for service to new delivery points.

43. The Commission denies the Florida Municipals' request. Florida Gas is proposing a major mainline expansion serving several new delivery points. All the service provided by the new capacity will be incrementally priced, and there is no proposal to roll in the capacity and services at a later date. Therefore, existing shippers are protected. Florida Gas's proposed incremental Rate Schedule FTS-3 rate for its expansion service is comparable to Rate Schedule FTS-1 and FTS-2 pricing for its existing service. Therefore possible issues of undue preference or discrimination arising from different rate designs for similar services are minimized. Further, the cases cited by the Florida Municipals do not stand for the proposition that the Commission has a policy that mandates incremental rates for lateral lines, which are part of larger expansions.

3. Initial Rates

44. Peoples Gas and the Florida Municipals note that Florida Gas's estimated operation and maintenance (O&M) expenses are low compared to existing expenses for Florida Gas's existing services. Peoples Gas and the Florida Municipals suggest that such estimates may indicate that existing customers would be subsidizing the incremental services. Both parties note that Florida Gas is required to file a general rate case by October 2009. The Florida Municipals request that the Commission condition any certificate issued in this case upon the filing by Florida Gas of an NGA section 4 filing to be effective on the effective date of the Phase VIII Expansion Project rates. Alternatively, the Florida Municipals, joined by Peoples Gas, request that the proper allocation of O&M expenses be addressed in the 2009 rate case, despite the fact that the test year in that case will pre-date the in-service date of the Phase VIII Expansion Project. Florida Gas responds by noting that the Commission lacks the authority to order Florida Gas to file a NGA section 4 rate case. Florida Gas notes that the

³⁴ Citing *Tennessee Gas Pipeline Co.*, 94 FERC ¶ 61,194 (2001), *order on reh'g*, 95 FERC ¶ 61,096 (2001) (*Tennessee*) (incremental pricing for mainline facilities and lateral); *North Baja Pipeline, LLC*, 117 FERC ¶ 61,022 (2006) (*North Baja*) (rolled-in mainline and incremental lateral).

Commission establishes initial rates which remain in effect until altered pursuant to a NGA section 4 or 5 rate proceeding.

45. The Commission rejects the requests of Peoples Gas and the Florida Municipals. As noted, it is beyond the Commission's authority to order Florida Gas to file a NGA section 4 general rate case.³⁵ Further, including the issue of the proper allocation of O&M expenses to the Phase VIII Expansion Project in Florida Gas's pending NGA section 4 proceeding³⁶ would be inappropriate because, as the parties acknowledge, such costs would be incurred well outside of the applicable test period, thus raising significant matching issues.

46. As discussed below, the Commission is rejecting Florida Gas's proposed inclusion of the accrual of AFUDC prior to the date of filing for a certificate to construct the Phase VIII Expansion Project and directing Florida Gas to reverse the AFUDC accrued between March 2008 and October 31, 2008, the date Florida Gas filed its certificate application. Therefore, Florida Gas is directed to adjust all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense to appropriately reflect the effects from the reversal of the AFUDC accrued prior to the date of the certificate application filing. The Commission conditionally approves Florida Gas's proposed initial recourse Rate Schedule FTS-3 rates, as adjusted to reflect the AFUDC and related cost-of-service adjustments. Florida Gas is required to file revised rates and work papers reflecting these adjustments when it files tariff sheets to implement Rate Schedule FTS-3 rates.

47. The Commission notes that Florida Gas projects that the Phase VIII Expansion Project facilities will not result in any interruptible service. If Florida Gas's projection is incorrect and interruptible service is indeed provided, under Florida Gas's proposal, maximum rate shippers (if they exist) may pay an excessive rate and the pipeline may overrecover its costs.³⁷ Therefore, in absence of estimates for interruptible services, the Commission will require Florida Gas to credit interruptible revenues derived from Phase VIII Expansion Project capacity to shippers paying the maximum rate under Rate Schedule FTS-3.

³⁵ *Public Service Comm'n of N.Y. v. FERC*, 866 F.2d 487 (D.C. Cir. 1989); *See, e.g., Pacific Gas Transmission Co.*, 65 FERC ¶ 61,005, at 61,040 (1993).

³⁶ Florida Gas filed an NGA section 4 general rate case in Docket No. RP10-21-000 on October 1, 2009.

³⁷ *See Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136, at 61,475, *order on reh'g*, 81 FERC ¶ 61,166, at 61,725 (1997).

48. The Phase VIII Expansion Project is an extremely large project, the estimated cost of which is almost \$2.5 billion. In addition, while the approval of incremental rates for the expansion service is sufficient to insure that existing customers will not subsidize the project, the fact remains that some 214,000 MMBtu per day, or twenty-six percent, of the capacity created by the project remains unsubscribed. The establishment of incremental recourse rates based on Florida Gas's cost estimates may not be sufficient to fully protect the interests of future shippers who take service at those rates. Therefore, the Commission will require Florida Gas to file a cost and revenue study at the end of its first three years of actual operation to justify the authorized cost-based firm recourse rates under Rate Schedule FTS-3.³⁸ In its filing, the projected units of service should be no lower than those upon which Florida Gas's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost-of-service data.³⁹ After reviewing the filing, the Commission will determine whether to exercise authority under section 5 of the NGA to establish just and reasonable rates. In lieu of this filing, Florida Gas may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

49. Finally, as noted above, all of the current Phase VIII Expansion Project shippers have elected to pay a negotiated rate rather than Florida Gas's proposed recourse rate. Consistent with the Commission's Alternative Rate Policy Statement⁴⁰ and decision in *NorAm Gas Transmission Company*,⁴¹ we direct Florida Gas to file, not less than thirty days or more than sixty days prior to the commencement of service using the expansion facilities, its negotiated rate contracts or numbered tariff sheets. Florida Gas must also disclose any other agreement, understanding, negotiation, or consideration associated with the

³⁸ See, e.g., *Empire State Pipeline.*, 116 FERC ¶ 61,074, at P 133 (2006). See also *Elba Express Company, L.L.C.*, 119 FERC ¶ 61,015, at P 28-29 (2007); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177, at P 52 (2005).

³⁹ 18 C.F.R. § 154.313 (2009).

⁴⁰ *Alternative to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines* (Alternative Rate Policy Statement) 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied sub nom. Burlington Resources Oil & Gas Co. v. FERC*, 172 F.3d 918 (D.C. Cir. 1998).

⁴¹ *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996).

negotiated agreements. Finally, Florida Gas must also maintain separate and identifiable accounts for volumes transported, billing determinants, rate components, surcharges and revenues associated with its negotiated rates in sufficient detail so that they can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate proceeding.

4. Pro Forma Tariff

50. Florida Gas provided a *pro forma* Rate Schedule FTS-3 and several other proposed changes to its existing open-access tariff to reflect the creation and integration of Rate Schedule FTS-3 into Florida Gas's open access tariff. In addition, it proposes to modify Section 27 (Fuel Reimbursement Charge Adjustment) to handle electric compression costs at Compressor Station 13A separately. Further, Florida Gas proposes to modify Section 20.B (Pre-Granted Abandonment and Right of First Refusal) to provide that it may agree to apply Section 20 to non-recourse rate shippers.

51. We will approve Florida Gas's proposed changes with this observation with regard to the proposed change at Section 20. The proposed change is not limited to Rate Schedule FTS-3 shippers, and could be applicable to all firm open-access transportation shippers on the Florida Gas system. Proposed Rate Schedule FTS-3's form of service agreement at Article 5.1 provides for the term of the agreement. That article states that the blanks are to be populated with "any applicable rollover or Right of Refusal details." However, Florida Gas's other firm rate schedules do not have such language, and Florida Gas does not, in this proceeding, propose such a change to the other firm service forms of service agreement.⁴² If Florida Gas chooses not to modify its other firm service forms of service agreement, its compliance filing in this proceeding should explain why.⁴³

D. Accounting

1. AFUDC Accrual Start Date

52. Florida Gas filed its application for a certificate of public convenience and necessity to construct and operate the Phase VIII Expansion Project on October 31, 2008. Florida Gas proposes to start the accrual of AFUDC beginning

⁴² Under 18 C.F.R. Part 157, Florida Gas cannot propose to change terms and conditions of services not related to the certificate application.

⁴³ Florida Gas, if it chooses to modify its other service forms of service agreement to reflect Section 20, cannot incorporate this NGA section 4 change with its NGA section 7 compliance filing. See 18 C.F.R. § 154.203(b) (2009).

March 2008, or eight months prior to the filing of its certificate application, and continuing through March 2011.⁴⁴ The amount of AFUDC accrued prior to Florida Gas's filing of its certificate application is approximately \$6.8 million.

53. Florida Gas asserts that pursuant to Order No. 665, *Regulations Implementing EAct 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*,⁴⁵ applicants are required to incur certain costs prior to filing a certificate application to meet the requirements of the pre-filing process.⁴⁶ Florida Gas indicates that it has incurred costs, prior to filing its certificate application, developing a detailed description of the project, identifying and contacting stakeholders, performing agency consultations and project engineering and route planning, engaging environmental and engineering contractors, and developing a public participation plan. In addition, Florida Gas states that it expects to have made investments in steel coil of approximately \$115 million, and to have incurred outside contractor costs of approximately \$27 million through the end of September 2008. Florida Gas also asserts that prior to implementation of the pre-filing process, most of these activities and associated costs would have taken place after the certificate application was filed, and would have qualified for capitalization of interest. Therefore, Florida Gas proposes to begin accruing AFUDC commensurate with its filing made under the pre-filing process, instead of on the certificate filing date.

54. Under the Commission's accounting regulations, a company may begin accruing AFUDC on construction costs when the costs are continuously incurred on a planned progressive basis, and for a company constructing a natural gas pipeline, the accrual of AFUDC should not begin prior to the time that the company files an application for a certificate to construct the facility. This ruling is in accordance with the requirements of Accounting Release No. 5 (Revised)

⁴⁴ See Florida Gas's February 5, 2009 response to staff's January 15, 2009 data request related to Question No. 4. In addition, in Docket No. AC08-161-000, Florida Gas filed a request for approval of the Chief Accountant to begin capitalizing AFUDC on the project commensurate with the date of its filing to use the pre-filing process.

⁴⁵ *Regulations Implementing Energy Policy Act of 2005; Pre-Filing Procedures for Review of LNG Terminals and Other Natural Gas Facilities*, Order No. 665, FERC Stats. & Regs., Regulations Preambles 2001-2005 ¶ 31,195 (2005).

⁴⁶ On March 18, 2008, Florida Gas received Commission approval to initiate the NEPA pre-filing process in Docket No. PF08-14-000.

(AR-5),⁴⁷ Capitalization of Interest During Construction, which states, in pertinent part,

Interest during construction may be capitalized starting from the date that construction costs are continuously incurred on a planned progressive basis. Interest should not be accrued for the period of time prior to... (2) the date of the application to the Commission for a certificate to construct facilities by a natural gas company. Interest accruals may be allowed by the Commission for the period prior to the above dates if so justified by the company.⁴⁸

55. The information provided by Florida Gas does not support its request to accrue AFUDC on the costs incurred prior to filing the certificate application. Although Florida Gas states that it incurred various costs prior to filing its certificate application, Florida Gas did not provide sufficient detail to demonstrate that the costs incurred before it filed the certificate application on October 31, 2008, were in fact construction costs, rather than costs related to preliminary survey and investigation type activities. Under the Commission's accounting regulations for natural gas pipelines, preliminary surveys, plans, and investigations are properly includable in Account 183.2, *Other Preliminary Survey and Investigation Charges*,⁴⁹ and are not subject to the accrual of AFUDC. The accrual of AFUDC would begin when these costs are transferred from Account 183.2 to Account 107, *Construction Work in Progress*.⁵⁰ Further, AFUDC should not be accrued on expenditures for materials and supplies, including progress and other payments incurred for the manufacture of pipe, purchased prior to the initiation of construction.⁵¹

56. In addition, the fact that Florida Gas participated in the pre-filing process does not, in and of itself, serve as evidence sufficient to justify accrual of AFUDC

⁴⁷ *Accounting Release No. 5 (Revised), Capitalization of Interest During Construction*, FERC Stats. & Regs. ¶ 40,005 (1968).

⁴⁸ *Id.*

⁴⁹ 18 C.F.R. Part 201 (2009).

⁵⁰ *Id.*

⁵¹ *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224, at P 90 (2009), *reh'g pending*.

on the costs incurred during that period.⁵² AFUDC is not available for all costs necessarily incurred to bring a project to fruition. AFUDC can only be accrued on construction costs incurred on a continuous, planned, progressive basis. Preliminary survey and investigation costs, including those which may be incurred during the pre-filing process, are costs incurred prior to the commencement of construction, and therefore would not constitute construction costs eligible for the accrual of AFUDC.

57. For the above reasons, the Commission rejects Florida Gas's proposed inclusion of the accrual of AFUDC prior to the date of filing for a certificate to construct the facility. Florida Gas is directed to reverse the AFUDC accrued between March 2008 and October 31, 2008, the date of the certificate application filing. Additionally, Florida Gas is directed to adjust all cost-of-service items dependent upon Gas Plant in Service such as Income Taxes, Depreciation Expense, Return, and Interest Expense to appropriately reflect the effects from the reversal of the AFUDC accrued prior to the date of the certificate application filing. Florida Gas is required to file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates. We have decided this issue based on the record in this proceeding. However, the question of whether the Commission should generally permit the accrual of AFUDC prior to the filing date of a certificate application has been raised in several recent proceedings. Therefore, it is the Commission's intent to begin examining the issue in the near future, through a public process.

2. Acquisition of FPL's Martin Lateral

58. In its application, Florida Gas requests authorization to acquire FPL's Martin Lateral. Florida Gas proposes to account for the acquisition by recording the original cost of the assets in Account 101, Gas Plant in Service, and the related accumulated depreciation in Account 108, Accumulated Provision for Depreciation of Gas Utility Plant. Florida Gas's proposed journal entries recording the acquisition are not consistent with the requirements of the Commission's Uniform System of Accounts.

59. Florida Gas omitted certain journal entries which are required by Gas Plant Instruction (GPI) No. 5, Gas Plant Purchased or Sold, and Account 102, Gas Plant Purchased or Sold. GPI No. 5, paragraph B, requires the original cost of gas plant and related accumulated depreciation to be recorded on the acquirer's books through Account 102. However, Florida Gas's proposed journal entries to record the acquisition were not cleared through Account 102, and therefore, fail to meet

⁵² *Southern Natural Gas Co.*, 128 FERC ¶ 61,198, at P 43 (2009), *reh'g pending*.

the requirements set forth in the Uniform System of Accounts.⁵³ Account 102 should be used as an interim control account to record all aspects of the acquisition transaction.

60. We will, therefore, require Florida Gas to revise its accounting to record the acquisition consistent with the instructions of GPI No. 5 and the text of Account 102. Florida Gas must make its final accounting entries for the acquisition of the Martin Lateral consistent with the Commission's accounting policies, as discussed above and required in Ordering Paragraph (I) below.

E. Environmental Analysis

61. We evaluated the potential environmental impacts of Florida Gas's proposed Phase VIII Expansion Project in the draft and final EIS to satisfy the requirements of the National Environmental Policy Act of 1969.⁵⁴ The U.S. Army Corps of Engineers (COE) and the U.S. Forest Service (USFS) participated in the preparation of the EISs as cooperating agencies. The EISs address geology; soils; water resources; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

62. Commission staff began its review of the project following Commission approval on March 18, 2008, in Docket No. PF08-14-000, for Florida Gas to use the Pre-filing Process. As part of the pre-filing review, we issued a *Notice of Intent to Prepare an Environmental Impact Statement, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) on May 19, 2008. This notice was published in the *Federal Register*⁵⁵ and sent to 5,410 interested parties including affected landowners, and landowners abutting the project or within a half mile of proposed new or modified compressor stations; federal, state, and local government agencies; elected officials; Native American tribes; environmental and public interest groups; and local libraries and newspapers.

⁵³ 18 C.F.R. Part 201 (2009).

⁵⁴ 42 U.S.C. §§ 4321-4370f (2006).

⁵⁵ 73 Fed. Reg. 30,386 (May 27, 2008).

63. Subsequent to the issuance of the NOI, Commission staff conducted four public scoping meetings in communities along the proposed route.⁵⁶ Staff received written and verbal comments from landowners, concerned citizens, and government agencies regarding impacts of the project on land use, soils, wetlands and waterbodies, water quality, vegetation and wildlife, threatened and endangered species, air quality, noise, cultural resources, future development, property values, state and federally managed lands, as well as potential alternatives to the proposed route and planned facilities.

64. On April 17, 2009, we issued a draft EIS for public comment. Public notice of the availability of the draft EIS was published in the *Federal Register*.⁵⁷ The draft EIS was mailed to entities on the Commission staff's environmental mailing list, including affected landowners who were added to the mailing list after issuance of the NOI, and landowners potentially affected by some of the route alternatives. The public was given forty-five days from the date of publication of the notice of availability in the *Federal Register* to review and comment on the draft EIS. In addition, four draft EIS comment meetings were held at the same locations as the public scoping meetings.⁵⁸

65. Comments on the draft EIS focused on the location of the proposed pipeline relative to existing residences, affects on land use, wetland impacts, safety, cumulative impacts, and project alternatives. Specifically, staff received comment letters from four federal agencies (the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the COE); seven state agencies (the Florida State Historic Preservation Office, the Florida Department of Environmental Protection (Florida DEP), the Northwest, South, and Southwest Florida Water Management Districts, the Suwannee River Water Management District, and the Florida DOT); five local agencies (the Withlacoochee Regional Planning Council, Tampa Bay Water, Pasco County, Hillsborough County, and Miami-Dade County); and seven landowners or interested individuals.

⁵⁶ The public scoping meetings were held in Crestview, Perry, Lutz, and Lake Placid, Florida during the evenings of June 3, 4, 10, and 12, 2008, respectively.

⁵⁷ 74 Fed. Reg. 19,216 (Apr. 24, 2009).

⁵⁸ The comment meetings were held on the evenings of May 12, 14, 19 and 21, 2009.

66. We received late comments on the draft EIS from William Lincoln, Terri Hope, Shelly Sugarman, and landowners expressing interest on the removal of trees along County Line Road on Loop 9.

67. As discussed above, on July 10, 2009, Commission staff issued a letter notice to affected landowners in Florida listing several route variations being considered based on comments to the draft EIS. Comments received based on this letter notice were addressed in the final EIS.

68. On September 18, 2009, we issued the final EIS. Public notice of the availability of the final EIS was published in the *Federal Register*.⁵⁹ The final EIS was mailed to the same parties as the draft EIS, as well as to parties that commented on the draft EIS and landowners newly identified as affected by proposed route variations in the July 10 notice. The distribution list is provided as Appendix A of the final EIS.

69. The final EIS considers and responds to the comments received on the draft EIS. The final EIS concludes that the Phase VIII Expansion Project will result in mostly temporary and short-term environmental impacts. The final EIS also finds that most of these impacts will be reduced to less-than significant levels and the project will be an environmentally-acceptable action if constructed and operated in accordance with applicable laws and regulations, Florida Gas's proposed mitigation measures, and the recommended mitigation measures set forth in the final EIS as adopted in Appendix C of this order.

1. Existing Residences

70. As described in the final EIS, Florida Gas's proposal places the construction work area in close proximity to over 100 residences. Florida Gas proposes special residential construction measures to minimize project impacts on these residences and has developed site-specific residential construction plans. The final EIS finds that Florida Gas's residential plans and mitigation measures adequately minimize impacts. The construction work area will also affect numerous non-residential structures, e.g. garages, sheds, commercial buildings. Similar to the project's effects on residences, the final EIS finds that Florida Gas's site-specific construction plans and mitigation measures for active businesses and commercial facilities adequately minimize impacts. As recommended in the final EIS and in response to landowner comments, Appendix C of this order includes environmental conditions 36 and 37, which require Florida Gas to develop a vegetative visual screening plan on Loop 3 and Loop 9. This condition will

⁵⁹ 74 Fed. Reg. 49,374 (Sept. 28, 2009).

minimize the impact of Florida Gas removing trees between residences and the project right-of-way.

2. Land Use

71. The proposed pipeline facilities will cross about 208 miles of commercial and industrial land, 133 miles of agricultural land, 72 miles of open land, 44 miles of forested areas, 16 miles of planted pine, and 10 miles of residential land. The final EIS concluded that impacts from construction and operation, including maintenance mowing, of the project right-of-way would be temporary or short-term on agricultural and open land, while some impacts on forested areas would be long-term or permanent. The Phase VIII Expansion Project will impact about 970 acres of forested land during construction of the project, with about 285 of those acres being permanently maintained as herbaceous or scrub vegetation.

72. The project would affect Conservation Reserve Program lands in Baldwin and Escambia Counties, Alabama, and Walton and Washington Counties, Florida. Florida Gas will implement erosion controls to contain disturbances within work areas. After construction, all lands affected by the project, with the exception of actively cultivated cropland and inundated wetlands, will be revegetated by Florida Gas.

73. The proposed pipeline route crosses forty public lands, recreation areas, and other special-use areas. These lands are owned or managed by federal, state, regional, and county agencies or are privately-owned lands with designated conservation easements. The final EIS describes temporary impacts on these areas during construction to include clearing of vegetation, noise, dust, and the disruption of recreational uses. Operational impacts, as described in the EIS, include permanent changes in vegetation resulting from right-of-way maintenance. Although, Florida Gas proposes right-of-way restriction measures within these special lands, like fences and gates, following construction, no aboveground facilities are proposed within these areas. However, two facilities are to be located adjacent to existing aboveground facilities within Florida Gas's existing right-of-way bordering the Apalachicola National Forest (Loop 5) and Cypress Creek Preserve (Loop 9) lands. In response to comments from the Florida DEP, and as recommended in the final EIS, Appendix C of this order includes environmental condition 34, which allows Florida Gas to construct within Joe Budd Wildlife Management Area only between the hours of 10:00 AM and 4:00 PM, on the days that it is open for hunting. The final EIS concluded that the project would not significantly impact public land uses because Florida Gas would implement its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures) and because a majority of the proposed facilities parallel existing rights-of-way through these areas.

74. Appendix C of this order includes environmental condition 38, as recommended in the final EIS, to ensure that Florida Gas files documentation of concurrence from the Florida DEP that its project is consistent with the Florida Coastal Management Program to meet our obligation under Section 307 of the Coastal Zone Management Act.⁶⁰

3. **Wetlands, Essential Fish Habitat, and Special Status Species**

75. The final EIS finds that the project would result in both temporary and long-term impacts on wetlands. The impact on the emergent and scrub-shrub wetlands would be temporary because the vegetation would return into a community functioning similar to the pre-construction condition. The final EIS concludes that the clearing of forested wetlands would result in long-term impact because of the slow growth rate of trees. However, Florida Gas would implement the mitigation measures in its procedures to control erosion and restore the grade and hydrology following construction in forested wetlands. Further, Florida Gas would purchase mitigation credits from COE- and state-approved wetland banks to offset temporary and permanent loss of wetland functional value within forested and scrub/shrub wetlands. Environmental condition 19 in Appendix C requires Florida Gas to file its compensatory wetland mitigation plan prior to construction. As recommended in the final EIS, and in response to USFS and Florida Division of Forestry comments, Appendix C of this order also includes environmental condition 20, which requires Florida Gas to consult with those agencies regarding revegetation of wiregrass, longleaf pine, and wetland areas.

76. As recommended in the final EIS, and in response to NMFS comments, Appendix C of this order includes environmental condition 13, which requires Florida Gas to increase the length of the horizontal direction drill (HDD) under the Military Canal on Loop 11 to eliminate most impacts on high quality essential fish habitat (EFH). Although some impacts to low to mid quality EFH may occur, all low- to mid-quality EFH would be expected to regrow relatively quickly, generally within one to five years. Further, Florida Gas has committed to minimizing permanent impacts on EFH by maintaining a vertical clearance of three to five feet over the pipeline as necessary to allow inspections, while minimizing root disturbance of mangroves. No clearing or impacts to the mangroves will occur between the HDD entry and exit pads. NMFS found that these measures adequately addressed its original recommendations to minimize high quality EFH impacts.

⁶⁰ 16 U.S.C. § 1456 (2006).

77. Based on consultations with the FWS under Section 7 of the Endangered Species Act,⁶¹ the final EIS found that fifty-seven federally-listed or proposed-to-be-listed species have the potential to occur in the general vicinity of the project. As a result of surveys and analysis, the final EIS determined that the project would *likely adversely affect* seven federally-threatened species including the eastern indigo snake, the gopher tortoise, the sand skink, the bluetail mole skink, the Florida scrub jay, the Audubon's crested caracara, the papery nail-wort, and one candidate plant species, the sand flax. As recommended in the final EIS, environmental conditions 22 through 29 are included in Appendix C of this order to minimize impact on federally and state-listed species.

4. Cultural Resources

78. Florida Gas has completed cultural resource surveys for the project, with the exception of about 1.5 miles of the proposed route, and some ancillary areas, because landowners denied Florida Gas survey approval. Once eligibility evaluations are complete, Florida Gas will develop a treatment plan for our review and approval to address any historic properties that would be adversely affected. Appendix C of this order includes environmental condition 39, as recommended in the final EIS, to ensure that Florida Gas completes the required studies and appropriate consultations to meet our obligations under Section 106 of the National Historic Preservation Act.⁶²

5. Safety

79. The final EIS also evaluates the safety of the Phase VIII Expansion Project. All project facilities will be designed, constructed, operated, and maintained to meet or exceed the U.S. Department of Transportation's Minimum Federal Safety Standards in Title 49 of the Code of Federal Regulations, Part 192⁶³ and other applicable federal and state regulations. By designing and operating the project in accordance with the applicable standards, the final EIS concludes that the project would not result in a significant public safety risk.

6. Cumulative Impacts

80. The final EIS includes a discussion of potential cumulative impacts of FPL's proposed EnergySecure Line and the Levy County nuclear power plant, as

⁶¹ 16 U.S.C. § 1536 (2006).

⁶² 16 U.S.C. § 470f (2006).

⁶³ 49 C.F.R. Part 192 (2006).

requested by the EPA. FPL's construction of the EnergySecure Line is not proposed to start until 2014. The only portion of FPL's 300-mile-long EnergySecure Line that would be in the vicinity of Florida Gas's project would be at milepost 331.4 on Greenfield 3, near the FPL Martin Power Plant. While some additional loss of trees may occur as a result of cumulative impacts with the EnergySecure Line, the final EIS concluded that these impacts would be minimal in the project area.⁶⁴ The Levy County nuclear power plant would be greater than 200 miles northwest of the proposed project and would not be in service until 2019-2020, more than seven years after the in-service date of the proposed project. Therefore, the final EIS found that any cumulative impacts with Florida Gas's project would be minimal.

7. Alternatives

81. The final EIS evaluated the No Action Alternative, system alternatives, route alternatives, route variations, and aboveground facility site alternatives. The EIS compared these alternatives to the corresponding project segments, to determine if the alternatives offered environmentally preferable advantages. As recommended in the EIS and in response to comments from the South Florida Water Management District (SFWMD), Appendix C includes environmental condition 12 which requires Florida Gas to incorporate a route alternative on Loop 11. The final EIS concluded that this route is environmentally preferable to the proposed route because it is located outside of the SFWMD's C-1 Canal right-of-way, avoiding embankment stabilization concerns and accommodating future canal widening plans. Further, the final EIS found that this option would not significantly increase the pipeline length, cross any wetlands, or permanently affect any nearby residences.

8. Comments not Addressed in the Draft EIS

82. Several landowners filed comments in response to the notice of application that were not specifically addressed in the draft or final EIS. Doyle L. Watson and Melinda C. Harper and Joan Apthorp, jointly, filed comments regarding project impacts to their properties. Mr. Watson questioned the need to widen the existing right-of-way across his property and Ms. Harper and Ms. Apthorp raised concerns about impacts to the development of their property. In the case of Mr. Watson's property, Florida Gas will need additional construction workspace in order to avoid constructing over its existing pipeline and to maintain a twenty-five-foot separation between its existing pipeline and the proposed pipeline. This separation will minimize the likelihood of damage occurring to the existing pipeline and help

⁶⁴ The Florida Public Service Commission, on October 6, 2009, denied FPL's request to construct the EnergySecure Line.

facilitate any maintenance that may need to occur at a later date. The property owned by Ms. Harper and Ms. Aphorp will not be affected by the Florida Gas's expansion. Their property will not be crossed or abutted by any new pipeline facilities.⁶⁵

83. Mr. Watson also questioned the justification for allowing Florida Gas to use the right of eminent domain since it is a private company. As provided by section 7(h) of the NGA, any holder of a certificate of public convenience and necessity may acquire the necessary rights-of-way to construct and operate the pipeline if the certificate holder cannot acquire the rights by agreement with the landowner.⁶⁶ Through the eminent domain process, Florida Gas will be required to compensate the landowner for the pipeline right-of-way. However, issues of compensation for land taken by a pipeline under the eminent domain provisions of the NGA are matters for the appropriate state or federal court. The Commission has no authority to determine what constitutes just compensation.⁶⁷ The potential for the modest exercise of the power of eminent domain by Florida Gas, as allowed through the NGA, does not outweigh the substantial benefits of the Phase VIII Expansion Project.

84. Several comments on the draft EIS were received after issuance of the final EIS. Some residents along Florida Gas's proposed route paralleling County Line Road on Loop 9 oppose the route because it would remove several trees. As explained above, the final EIS included a recommendation, adopted as environmental condition 37 to this order, intended to minimize impacts on these residents and address their concerns.

85. Mr. William Lincoln filed comments on September 26, 2009, regarding karst sink holes on his land and existing pipeline pressures. The final EIS stated that Florida Gas will conduct geophysical surveys and engineering studies if potential sinkholes are encountered during construction. The EIS outlined mitigation measures that Florida Gas must implement if it encounters sinkholes (e.g., remediating the soil dome, rock cavity, or other feature; avoiding releases of large volumes of water onto land prone to sinkhole development; determining potential sinkhole development in areas requiring blasting; and conducting post-construction on-site inspections of the pipeline facilities). Additionally, as

⁶⁵ Specifically, their property is approximately a half-mile away from Florida Gas's existing Compressor Station No. 27 near Tampa, Florida. However, Florida Gas does not propose to expand the footprint of the station.

⁶⁶ 15 U.S.C. § 717f(h) (2006).

⁶⁷ See also Environmental Condition 4 below.

required by PHMSA or Department of Transportation regulations at 49 C.F.R. § 192.613, Florida Gas will conduct route surveillance during operation of the project to monitor for signs of soil movement or subsidence. Should either be identified, the area must be evaluated and remedial action taken to prevent further collapse of the sinkhole and possible stress damage on the pipeline. While the existing pipeline and its operating pressure are not part of this proceeding, we can state that the pipeline is required to be inspected according to the provisions of 49 C.F.R. Part 192, which includes internal inspection, to ensure the safety of the pipeline.

86. We received a comment on the draft EIS from Terri Hope on September 22, 2009, expressing concern over the safety of placing a pipeline within one hundred feet of a home, twenty feet of a barn, and seventy feet of a water well and requesting the setback restrictions for a pipeline. The final EIS stated that Florida Gas has agreed to implement measures to minimize disruption of homes, including site-specific plans for residences within twenty-five feet of construction, and will monitor water wells within 150 feet of construction to ensure no damage will occur to the water yield or quality from a well. Further, since Florida Gas is required to construct its pipeline in accordance with 49 C.F.R. Part 192, the final EIS determined that construction and operation of the project would be safe. We agree.

87. We received a comment letter from Shelly Sugarman stating that construction of bridges over U.S. Coast Guard (USCG) navigable waters would require a permit from the USCG. Florida Gas does not currently propose to construct bridges over USCG navigable waters. However, should Florida Gas propose to construct a bridge over a navigable water, it would be required to obtain the necessary permits.

9. Comments on the Final EIS

88. Several comments on the final EIS were also submitted. Although, most of the issues raised by commentators on the final EIS were addressed previously in section 6 of the final EIS, comments that raise new issues or provide new information, specifically comments submitted by NMFS, EPA, and James and Mabel Bexley, are addressed below.

89. EPA comments that the final EIS did not adequately address its comments on hydrostatic testing with regard to: (1) the total flow or volume information for any of the waterbodies listed as source water for hydrostatic testing; (2) a discussion of the water-withdrawal impacts on waterbodies in terms of their flow, volume, ecology, and downstream impacts, including potential aquatic species impacts such as increased water temperatures, reduced dissolved oxygen levels, and entrainment at the water intakes; and (3) cumulative impacts on source-water associated with seasonal considerations and extended drought situations.

90. Table 2.3.1-1 of the final EIS lists all of the potential source waterbodies and the volumes of water that Florida Gas would withdraw from each waterbody for hydrostatic testing. The volume and flow within each waterbody may vary depending upon rain events at the time of the proposed withdrawals. While the final EIS does not include the flow for each waterbody, it does state Florida Gas's commitment to maintain adequate flow rates to protect aquatic life, provide for all waterbody uses, and provide for downstream withdrawals. This will ensure that impacts on downstream users, including fish, are minimized. By providing for all downstream uses, the likelihood of increasing water temperatures or decreasing dissolved oxygen will also be minimized. Further, Florida Gas's Procedures require the screening of water intakes to minimize the likelihood of fish entrainment. If seasonal considerations or extended drought situations exist to the extent that one or more of these waterbodies can not be used according to the procedures outlined above, Florida Gas must find alternative water sources. While section 4.13.2 of the final EIS does not specifically address the cumulative impacts associated with these conditions, it does adequately address the cumulative impacts associated with Florida Gas's proposed hydrostatic test water withdrawals. We concur with the final EIS's findings regarding hydrostatic test water withdrawal impacts and conclude that these withdrawals would result in minor cumulative impacts on surface water resources.

91. EPA states that Florida Gas's hydrostatic testing plan should include measures to ensure pump intakes minimize disturbance of the stream bed (e.g., the intake hose and screen should be kept off the stream bottom). Additionally, the EPA states that the final EIS did not address EPA's original request that construction and other refueling equipment be conducted and located a minimum distance of 100 feet from any waterbody or wetland. As stated in the final EIS and in Florida Gas's Procedures, Florida Gas is required to obtain state- and locally-issued water withdrawal permits that are expected to approve of the withdrawal design. Also, the final EIS and Florida Gas's Procedures state that Florida Gas must refuel its equipment at a minimum distance of 100 feet from a waterbody or wetland or under the supervision of an environmental inspector.

92. EPA notes that the final EIS was revised in response to agency comments to ensure that Florida Gas minimizes impacts to EFH and mangrove habitat along Loop 11. At the EPA's request, our staff has subsequently submitted additional information regarding the final EIS's EFH analysis to the EPA's South Florida Office.

93. In response to the final EIS, EPA states that some agricultural ditches may be determined jurisdictional by the COE and should be verified to be consistent with current wetlands delineation guidance, and mitigation may be required. We note that the COE is the agency responsible for determining the level of

compensatory mitigation for project impacts on wetlands and Florida Gas must comply with any conditions of the COE's permit.

94. EPA also requests clarification regarding the wetland restoration measures included in Florida Gas's Procedures. Specifically, EPA recommends the Commission clarify if chipping slash and brush and leaving the chips on the right-of-way in wetlands would be an acceptable construction method. As stated in both the final EIS and Florida Gas's Procedures, Florida Gas must remove all cut vegetation from wetlands for disposal.

95. EPA recommends that a 75-foot-wide right-of-way be used in all wetland areas, as opposed to the 100-foot-wide right-of-way that Florida Gas proposed in unsaturated wetlands. The final EIS discussed Florida Gas's request for the 100-foot-wide construction right-of-way and concluded that Florida Gas would need this right-of-way width to accommodate the larger equipment required for installation of the proposed 42-inch-diameter pipeline (due to the greater weight associated with larger diameter pipe and concrete coating), greater volume of trench spoil, and to maintain separation between topsoil and subsoil piles. We believe that Florida Gas's request for a wider right-of-way through these areas is warranted, and that the proposed measures included in Florida Gas's Procedures will minimize wetland impacts to the maximum extent practicable.

96. EPA also states that impacts on forested wetlands should be considered permanent impacts. The EPA further stated that wetlands that are converted from one wetland type to any other type should be considered a permanent impact. The final EIS addresses impacts on forested wetlands and acknowledges that forest clearing would be a long-term impact as trees could take longer than thirty years to return to pre-construction conditions. In the discussion of wetland conversions that would occur as a result of this project, the final EIS determined that the project would result in an alteration of wetland classification and value. However, we restate the final EIS conclusion that the proposed project would not result in a net reduction of wetlands.⁶⁸

97. EPA suggests that Florida Gas conduct revegetation monitoring for five years in wetlands regardless of when revegetation success is achieved. We believe that Florida Gas's proposal to monitor wetlands for three years following construction, or until revegetation is successful, is adequate. However, as stated in Florida Gas's Procedures, if wetland revegetation is not successful after three years, Florida Gas will develop and implement (in consultation with a professional

⁶⁸ As noted in the EIS, a side valve/crossover valve, and associated piping would be located within a wetland on Loop 11. This facility would result in permanent operational impacts, totaling 0.07 acre of emergent wetland fill.

wetland ecologist) a remedial revegetation plan to actively revegetate the wetland and continue revegetation efforts until wetland revegetation is successful.

98. EPA states that Florida Gas should maintain a fifteen-foot separation between its existing pipelines and the proposed pipeline through wetland areas, as Florida Gas proposes in the Apalachicola National Forest (ANF). As stated in the final EIS, Florida Gas has aligned its pipeline within the ANF to avoid sensitive areas (e.g., ephemeral ponds). The final EIS thoroughly analyzed potential wetland impacts resulting from construction and operation of the project, and recommended measures to reduce project-related impacts on wetlands. We believe that the proposed alignment of the pipeline, typically twenty-five feet from the nearest pipeline, will limit the environmental disturbance to the greatest extent practicable, while maintaining safe working conditions around operating pipelines. The final EIS also concluded that Florida Gas's use of a reduced right-of-way width through wetlands (100 feet wide for 42-inch-diameter pipe and 75 feet wide for all other diameters) would adequately minimize the temporary and permanent impacts on wetlands to the maximum extent practicable.

99. EPA also comments that Florida Gas's commitment to monitor the project rights-of-way for at least two years following construction to ensure successful restoration may not be long enough. The EPA states that a standard mitigation practice for monitoring is five years regardless of when "success" is achieved. We note that revegetation success could take longer than two years and Florida Gas must ensure the successful restoration of its project rights-of-way in accordance with its Plan. To ensure Florida Gas's compliance with this requirement, Commission staff will also conduct routine inspections of the project throughout restoration.

100. While the final EIS addressed potential environmental justice impacts, the EPA states that the final EIS did not address its comments on the draft EIS related to environmental justice. As stated in the final EIS, the project would be collocated with existing linear infrastructure almost along its entire length (ninety-nine percent). Therefore, Florida Gas's pipeline routing was not selected to disproportionately impact low income or minority populations. Further, the project will not significantly impact urban or residential areas and we have not identified any disproportionately high and adverse human health or environmental effects on minority or low-income communities or Native American tribes. Section 4.9 of the final EIS provides a discussion of the socioeconomic statistics for the counties crossed by the Project. Detailed data is provided in Appendix H-10 of the final EIS, including population, population density, income data, and employment information. We believe the final EIS adequately addressed EPA's environmental justice concerns and conclude that the Florida Gas Phase VIII Expansion Project would not concentrate an inequitable environmental burden on minority or low-income communities in the project areas.

101. Florida Gas proposes horsepower upgrades at its existing Compressor Stations 13 and 15. The EPA requests that we require the project noise levels from Compressor Station 13 be closer to the 55 decibel (dBA) day-night sound equivalent (L_{dn}) target when measured at the residence identified as noise-sensitive area 1 (NSA 1).

102. As shown in table 4.11.2-15 of the final EIS, the existing noise levels at NSA 1 for Compressor Station 13 is 44.5 dBA L_{dn} . The proposed new compressor units would contribute an additional 48.3 dBA, creating a combined total station noise contribution of 49.8 dBA L_{dn} . The new compressor units and total station noise contribution are projected to be below the 55 dBA L_{dn} threshold. Therefore, we do not believe any additional mitigation is necessary at this compressor station. In addition, environmental condition 42, included in Appendix C of this Order, will ensure that the actual noise levels at all of the NSAs near Compressor Station 13 do not exceed the 55 dBA L_{dn} threshold.

103. While the proposed project upgrades at Compressor Station 15 would not further elevate existing noise levels at this station, the EPA requested that the existing units at Compressor Station 15 be mitigated or upgraded to reduce the existing noise levels to ensure that the entire station meets the 55 dBA threshold. Some of the existing compressor units at Compressor Station 15 (units 1501 through 1506) are currently grandfathered from the existing noise threshold of 55 dBA L_{dn} and are the dominant noise source at several NSAs. To clarify, the compressor station as a whole is not grandfathered. There are also existing newer compressor units (1507 and 1508) which were installed after the 55 dBA L_{dn} threshold became effective, and the noise contribution from these units are below 55 dBA L_{dn} at the NSAs.

104. The proposed new units at Compressor Station 15 evaluated in the final EIS would not exceed the 55 dBA L_{dn} threshold and therefore no additional mitigation or shielding/insulation is necessary. The Commission has no requirements which would compel Florida Gas to replace or modify its grandfathered units as long as those units function to enable Florida Gas to meet its certificated and contractual requirements and the requirements of any permits (e.g., air quality requirements) issued by other agencies. However, should Florida Gas propose any modifications to the grandfathered units themselves (such as uprating or installing turbochargers), the units would then no longer be grandfathered and would be subject to the 55 dBA L_{dn} threshold.

105. Based on EPA's comments regarding the existing noise levels at Compressor Station 15, we will revise staff's recommended environmental condition 42 to not include Compressor Station 15 and require a separate noise condition for Compressor Station 15 (see condition 43 in Appendix C to this Order). Environmental condition 43 will ensure that there would be no increase in total noise levels from the entire compressor station post modifications at all NSAs

near Compressor Station 15. The condition also requires noise levels due to operation of the new equipment in combination with the existing compressor units (1507 and 1508), which are not grandfathered, will need to be below 55 dBA L_{dn} . With this condition, we do not believe the proposed project would contribute any level of noise that would require additional mitigation to reduce noise levels.

106. EPA also comments that the final EIS was unclear in identifying whether the construction noise from pipeline placement and compressor station construction would be mitigated. With the exception of HDD activities where noise would be generated on a 24-hour-per-day basis, all other pipeline and compressor station construction would occur during daylight hours and would be similar to other forms of construction noise. No additional mitigation is being required for daytime only construction noise.

107. The EPA states that the final EIS should have included a thorough review of the FPL proposed Turkey Point Power Plant expansion in the cumulative impacts and alternatives sections. The final EIS did include the FPL Turkey Point Nuclear Power Plant, and stated that the anticipated date of construction is 2018-2020. Because Florida Gas's project should be fully restored by that time, cumulative impacts are not anticipated. The final EIS stated that Phase VIII Expansion Project would provide natural gas to Turkey Point Power Plant's natural gas fired generators to meet the growing energy needs in the project area. However, as noted in the final EIS, the Turkey Point Nuclear Power Plant expansion would not meet the immediate energy needs in the project area.

108. EPA also comments that the final EIS does not provide any detail on the proposed route for Greenfield 1 or how it was selected over the four alternatives reviewed, in particular Alternative A. The final EIS thoroughly analyzed the Greenfield alternatives, and recognized that the wetland impacts associated with the proposed route would be greater than each of the alternatives. However, the final EIS stated that this factor was outweighed by the length of park and recreation land crossings, the length of agricultural land crossings, overall total length, and new impacts on landowners that would all be greater under Alternative A. Further, Florida Gas's use on Greenfield 1 of the HDD under the Suwannee River would avoid impacts to the bed and banks of the waterbody, the Gulf sturgeon, and Gulf sturgeon critical habitat. Therefore, the final EIS determined that there was no clear advantage to Alternative A regarding Greenfield 1, and it was eliminated from further consideration.

109. EPA questions the need of the project given FPL proposed EnergySecure Line, which would end at the Martin County Power Plant, one of the delivery points for Florida Gas's project. As stated in the final EIS (section 3.2.7), the EnergySecure Line would not be in-service until January 2014, at the earliest, more than two and a half years after the in-service date of Florida Gas's project. The shippers on Florida Gas's Phase VIII Expansion Project, including FPL, the

promoter of the EnergySecure Line, require that Florida Gas provide transportation capacity by April 2011 to meet their energy needs. Therefore, the EnergySecure Line would not meet the project objective by providing the shippers with the pipeline capacity they need in 2011. Finally, as noted above, the Florida Public Service Commission recently denied FPL's request to construct the EnergySecure Line, calling into question when, or if, it will be built.

110. NMFS comments on the final EIS focus on EFH impacts that would occur as a result of project construction and operation on Loop 11. Specifically, NMFS maintains that the final EIS should have included a site-specific characterization of the wetlands that would be impacted by the S.W. 107th Avenue Route Alternative along Loop 11.

111. While the final EIS does not include a site-specific characterization of each of the wetlands that would be impacted by the route alternative, it clearly describes the EFH across this route alternative as a low-quality wetland and mangrove system. The final EIS determined that this alternative would not be preferable over the corresponding segment of Loop 11 because it would cross seventeen additional landowners (some of whom have denied Florida Gas access to survey), it would be approximately two miles longer than the proposed route (or thirty percent longer than the proposed loop), and would not totally avoid EFH (one mile of EFH impact). The proposed location for Loop 11 is within a previously disturbed FPL powerline easement for its entire length, while the S.W. 107th Avenue Route Alternative would not be collocated with any existing utility corridors for about 1.2 miles (mostly through EFH). We concur with the final EIS and find this route alternative would result in greater overall environmental impact. Additionally, environmental condition 13 of this order extends the HDD of Military Canal in order to minimize project impacts on high quality EFH to the extent practicable.

112. NMFS also maintains that the final EIS should have described how Florida Gas would complete the monitoring of wetland revegetation and that it should have recommend performance standards to measure the success of the revegetation or described remedial measures that would be triggered to ensure that revegetation is successful or that the project's compensatory mitigation plan is adjusted to take into account the additional permanent impacts. As stated in the final EIS, Florida Gas's commitment to implement its Procedures would ensure successful revegetation. Its Procedures, which are based on Commission staff's Procedures, include performance standards to measure the success of revegetation (i.e., wetland revegetation shall be considered successful if the cover of herbaceous and/or woody species is at least eighty percent of the type, density, and distribution of the vegetation in adjacent wetland areas that were not disturbed by construction). The remedial measures that would be triggered to ensure successful revegetation are also included in the Procedures (i.e., if revegetation is not

successful after three years, Florida Gas must develop, in consultation with a professional wetland ecologist, a remedial revegetation plan to actively revegetate the wetland). Further, as noted in NMFS comments, environmental condition 19 of this order requires Florida Gas to develop a compensatory mitigation plan in consultation with the appropriate agencies that includes the amount, location, and types of mitigation proposed; specific performance standards to measure the success of the mitigation; and remedial measures to ensure compensatory mitigation is successful. We believe this condition will ensure that impacts on wetlands are properly mitigated.

113. Finally, NMFS states that the final EIS should have included a recommendation that on-site mitigation, through removal of non-native, invasive vegetation within the project corridor, be performed as remediation for wetland impacts instead of compensatory mitigation through mitigation banks. Florida Gas's implementation of its Procedures will ensure that on-site mitigation of wetlands will occur. Additionally, and as stated in the final EIS, Florida Gas has committed to conducting on-site post-construction enhancement plantings in coordination with future restoration plan efforts of the Biscayne Bay Coastal Wetland Project. The final EIS also states that Florida Gas must consult with the SFWMD regarding exotic and invasive species management prior to construction of Loop 11 to minimize the likelihood of exotic and invasive species from becoming established on the right-of-way (see environmental condition 21 of this order). Florida Gas would acquire compensatory mitigation from mitigation banks for areas that would be permanently impacted and any additional mitigation as required by the COE and Florida DEP. NMFS asks to be involved in the approval process for Florida Gas's compensatory mitigation. We believe this is a reasonable request and have added them to environmental condition 19.

114. The Bexleys filed late comments on October 29, 2009, stating concerns regarding temporary construction easement impacts on forested areas on their property (from about milepost 130.0-135.1 and 137.7-138.5 on Loop 9). We further learned of the Bexley's concerns regarding how Florida Gas would maintain emergency access to their residence during construction of the project. While we did not receive any comments from the Bexleys during the Commission's environmental review process, we note that the Bexleys have been in contact with Florida Gas. Florida Gas has committed to having at least one roadway lane open to traffic during construction except while it is active lowering-in the road section of the pipeline. We believe this would minimize any vehicle disruption (emergency or otherwise). Florida Gas has also committed to minimizing the overall disturbance during construction of its 36-inch-diameter pipeline (including forested areas) with a typical 100-foot-wide construction right-of-way in uplands and 75-foot-wide construction right-of-way in wetlands. Further, Florida Gas will overlap its existing right-of-way to the extent practicable (typically 20 feet on the Bexley property) and minimize the distance between its

existing pipeline and the proposed pipeline (25 feet on the Bexley property). Because of an existing powerline, State Highway 52, and a CSX railroad right-of-way, Florida Gas cannot construct its pipeline to the north of its existing pipeline. While construction of the pipeline would remove some forested vegetation from the project area, this section of pipeline would not segment forested areas since it is paralleling, and overlapping, its existing pipeline right-of-way for its entire length across the Bexley's property.

10. Conclusion

115. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the project, and we adopt its analysis and its recommendations as our own. Based on our consideration of this information, we agree with the conclusions presented in the final EIS and find that Florida Gas's Phase VIII Expansion Project, if constructed and operated as described in the final EIS, is an environmentally acceptable action. This conclusion is also based on the recommended environmental mitigation measures contained in Appendix C to this order, which will reduce the environmental impact to less-than-significant levels. Thus, we are including the environmental mitigation measures recommended in the final EIS, as modified here, as conditions to the certificate authorization issued to Florida Gas by this order.

116. 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.⁶⁹

117. 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.

118. At a hearing held on November 19, 2009, the Commission, on its own motion, received and made a part of the record all evidence, including the

⁶⁹See, 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).

application, and exhibits thereto, submitted in support of the authorization sought herein, upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Florida Gas in Docket No. CP09-17-000 to construct, acquire, and operate facilities associated with the Phase VIII Expansion Project, as described more fully in the order and application.

(B) Florida Gas's request in Docket Nos. CP09-17-000 and AC08-161-000 to start the accrual of AFUDC prior to the filing of its certificate application for the Phase VIII Expansion Project is denied.

(C) The certificate authority granted in Ordering Paragraph (A) 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 Appendix C to this order.

(D) Florida Gas shall execute firm service agreements reflecting levels and terms of service equivalent to those represented in its precedent agreements prior to commencing construction of the Phase VIII Expansion Project.

(E) Florida Gas's proposed recourse rates under Rate Schedule FTS-3 are approved, subject to these rates being recalculated to reflect the change in the date AFUDC is permitted to accrue as described in the order.

(F) Florida Gas's proposed changes to Sections 20 and 27 of its tariff are approved as discussed in the body of this order.

(G) Florida Gas must file actual tariff sheets to implement its proposed Rate Schedule FTS-3 and other tariff changes no less than thirty days or more than sixty days prior to commencing service. The proposed recourse rate under Rate

Schedule FTS-3 must reflect modifications discussed in Ordering Paragraph (E) and the body of the order. Florida Gas must include work papers that show the adjustments and revised rate calculations as part of the compliance filing required below.

(H) Florida Gas must file its negotiated contract or numbered tariff sheets not less than thirty or more than sixty days prior to commencement of service on the Phase VIII Expansion Project.

(I) Florida Gas shall account for the acquisition transaction in accordance with Gas Plant Instruction No. 5 and Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts. Florida Gas shall submit its final accounting entries within six months of the date that the transaction is consummated, and the accounting submission shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

(J) 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. Commissioner Spitzer, dissenting in part and concurring in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix A

Phase VIII Expansion Project Facilities

Phase 1 Facilities

Manatee Lateral – a 16.1 mile, 24-inch diameter pipeline lateral extending from Florida Gas’s existing St. Pete/Sarasota Connector just north of the Sarasota Lateral and extending to the new FPL Manatee M&R station at FPL’s Manatee Power Plant in Manatee County, Florida.

FPL Manatee M&R Station – a new M&R Station at FPL’s Manatee Power Plant in Manatee County, Florida.

Phase 2 Facilities

Pipeline Loops

Loop 1 – 25.5 miles of 42-inch diameter pipeline loop on Florida Gas’s mainline extending from a point 25.5 miles upstream of, and terminating at, Florida Gas’s existing Compressor Station No. 11 in Mobile County, Alabama.

Loop 2 – 37.2 miles of 36-inch diameter pipeline loop extending from a point on Florida Gas’s mainline in Baldwin County, Alabama and extending through Escambia County, Alabama and Escambia County, Florida and terminating in Santa Rosa County, Florida.

Loop 3 – 40.0 miles of 36-inch diameter pipeline loop beginning at Florida Gas’s existing Compressor Station No. 12 in Santa Rosa County, Florida, extending through Okaloosa County, Florida and ending in Walton County, Florida. For 13.3 miles of this segment, Florida Gas will remove a previously abandoned 24-inch diameter pipeline and place the 36-inch diameter pipeline in the space made available by the removal of the 24-inch diameter pipeline.⁷⁰

Loop 4 – 46.8 miles of 36-inch diameter pipeline loop on Florida Gas’s mainline beginning at Florida Gas existing Compressor Station No. 13 in Washington County, Florida, extending through Jackson and Bay Counties, Florida and terminating in Calhoun County, Florida. For 12.6 miles of this segment, Florida Gas will remove a previously abandoned 24-inch diameter pipeline and place the 36-inch diameter pipeline in the space made available by the removal of the 24-

⁷⁰ The abandonment in place of the 24-inch diameter pipeline was previously approved in *Florida Gas Transmission Co.*, 62 FERC ¶ 61,142 (1993).

inch diameter pipeline.⁷¹

Loop 5 – 56.3 miles of 36-inch diameter pipeline loop on Florida Gas’s mainline extending from Florida Gas’s existing Compressor Station No. 14 in Gadsden County, Florida, continuing through Leon County, Florida and ending in Jefferson County, Florida.

Loop 6 – 19.0 miles of 36-inch diameter pipeline loop on Florida Gas’s mainline beginning at Florida Gas’s existing Compressor Station No. 15 in Taylor County, Florida and terminating in Lafayette County, Florida.

Loop 7 – 12.8 miles of 36-inch diameter pipeline loop beginning at the take-off from Florida Gas’s mainline and looping Florida Gas’s West Leg in Suwannee and Gilchrist Counties, Florida.

Loop 8 – 46.1 miles of 36-inch diameter pipeline loop on Florida Gas’s West Leg beginning in Levy County, Florida and ending at Florida Gas’s existing Compressor Station No. 26 in Citrus County, Florida.

Loop 9 – 42.9 miles of 36-inch diameter pipeline loop on Florida Gas’s West Leg beginning in Hernando County, Florida, extending through Pasco County, Florida and ending in Hillsborough County, Florida.

Loop 10 – 24.1 miles of 36-inch diameter pipeline loop on Florida Gas’s West Leg beginning at Florida Gas’s existing Compressor Station No. 27 and ending in Hillsborough County, Florida.

Loop 11 – 6.6 miles of 24-inch diameter pipeline loop on Florida Gas’s existing Turkey Point Lateral in Miami-Dade County, Florida.

New Mainline

Arcadia to Martin – Two segments joined by the proposed Compressor Station No. 29. Segment 1 will consist of 47.8 miles of 30-inch diameter pipeline in DeSoto and Highlands Counties, Florida commencing at Florida Gas’s existing WestLeg in DeSoto County and ending at proposed Compressor Station No. 29 in Highlands County. Segment 2 will consist of 42.0 miles of 30-inch diameter pipeline beginning at the proposed Compressor Station No. 29, continuing through Okeechobee County and ending at the FPL Martin Power Plant in Martin County.

New Lateral

⁷¹ *Id.*

Suwannee Lateral – a 20.0 mile, 20-inch diameter pipeline lateral extending from the existing Madison Lateral take-off from Florida Gas’s existing Mainline in Lafayette County, Florida, and ending at the proposed Progress Energy M&R Station at Progress Energy’s Suwannee River Power Plant.

Acquired Lateral

Martin Lateral – a 22.7 mile, 20-inch diameter pipeline connecting the Florida Gas mainline with FPL’s Martin Plant in Martin County, Florida to be acquired from FPL.

Compressor Station Modifications

Compressor Station No. 11, Mobile County, Alabama – increase the station hp by 44,000 hp through the installation of two electric motor driven compressor units, re-wheel three existing compressor units, and modify cooling equipment and station piping.

Compressor Station No. 12, Santa Rosa County, Florida – add a single 20,500 hp gas fired turbine compressor unit, re-wheel two existing units, and modify cooling equipment and station piping.

Compressor Station No. 13, Washington County, Florida – increase the total installed hp by 28,000 hp by adding one new 22,000 hp electric motor driven compressor unit and upgrading two existing electric motor driven compressor units from 12,000 to 15,000 hp, re-wheel the two existing units and modify cooling equipment and station piping.

Compressor Station No. 14, Gadsden County, Florida – add one new 20,500 hp gas driven turbine compressor unit, re-wheel one existing unit, and modify cooling equipment and station piping.

Compressor Station No. 15, Taylor County, Florida – add one new 22,000 hp electric motor driven compressor unit, re-wheel two existing units, and modify cooling equipment and station piping.

Compressor Station No. 24, Gilchrist County, Florida – add one new 20,500 hp gas driven turbine compressor unit, re-wheel one existing unit and modify cooling equipment and station piping.

Compressor Station No. 26, Citrus County, Florida – add one new 20,500 hp gas driven turbine compressor unit, and modify cooling equipment and station piping.

Compressor Station No. 27, Hillsborough County, Florida – add one new 22,000 hp electric motor driven compressor unit, re-wheel two existing units, and modify cooling equipment and station piping.

New Compressor Station

Compressor Station No. 29, Highlands County, Florida – a new 15,600 hp compressor station consisting of two gas driven turbine compressor units.

Meter & Regulator Stations

PE Suwannee M&R Station - a new station in Suwannee County, Florida at the Progress Energy Suwannee River Plant.

FPL Martin M&R Station – a new station in Martin County, Florida at the FPL Martin Plant.

Transco-Citronelle M&R Station – upgrade the existing station in Mobile County, Alabama.

Martin North M&R Station – upgrade the existing station in Martin County, Florida.

Suwannee Lateral Regulator Station – a new station at the take-off of the Suwannee Lateral in Lafayette County, Florida.

Appendix B
Parties Filing Timely, Unopposed Interventions

Associated Gas Distributors of Florida, Inc. (AGDF)⁷²
Chevron U.S.A. Inc.
Environmental Protection Commission of Hillsborough County
Florida Cities⁷³
Florida Municipal Natural Gas Association (Florida Municipals)⁷⁴
Florida Power Corporation d/b/a Progress Energy Florida
Florida Power & Light Company
Floridian Natural Gas Storage Company
Hillsborough County, the Board of County Commissioners
Manatee County, Florida
Nature Conservatory
Pasco County Board of County Commissioners
Pivotal Utility Holdings d/b/a Florida City Gas
Port Dolphin Energy LLC
Seminole Electric Cooperative, Inc.
Southern Company Services, Inc.

⁷² Although styled as a motion to intervene out of time, AGDF filed its motion before the comment deadline of December 8, 2008, and is therefore timely. AGDF is an incorporated association of investor-owned natural gas distribution companies, including for purposes of this filing: Chesapeake Utilities Corporation (Florida Division), Florida Public Utilities Company, Indiantown Gas Company, NUI Utilities, Inc. (City Gas Company of Florida), Sebring Gas System, Inc., and St. Joe Natural Gas Company, Inc.

⁷³ Florida Cities own and operate natural gas distribution systems and/or electric utility distribution systems in Florida. Florida Cities, comprising the cities of Lakeland Electric Department, Tallahassee, and Gainesville d/b/a Gainesville Regional Utilities, JEA, the Orlando Utilities Commission, and Florida Gas Utility, filed a joint motion to intervene.

⁷⁴ The Florida Municipals comprising the Florida cities of Chattahoochee, DeFuniak Springs, Leesburg, Live Oak, Madison, and Sunrise, and 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, filed a joint motion to intervene.

Tampa Bay Water

Tampa Electric Company

U.I.L. Family Limited Partnership and Henry Company Homes, Inc.

Appendix C

Environmental Conditions

As recommended in the final EIS, this authorization includes the following conditions. As stated in the conditions, “file” means file with the Secretary of the Commission. The section number in parentheses at the end of a recommended measure corresponds to the section number in which the measure and related resource impact analysis appears in the Environmental Impact Statement.

1. Florida Gas Transmission Company, LLC (Florida Gas) shall follow the construction procedures and mitigation measures described in its application, supplemental filings (including responses to staff information and data requests), and as identified in the Environmental Impact Statement (EIS), unless modified by the Federal Energy Regulatory Commission (FERC or Commission) 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 during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Commission Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Florida Gas shall file an affirmative statement, 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 EIS, as supplemented by filed alignment sheets and shall include all of the staff's recommended facility locations identified in section 3.4.1 of the EIS. **As soon as they are available, and prior to the start of construction,** Florida Gas shall file any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Commission Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Florida Gas's exercise of eminent domain authority granted under the Natural Gas Act, Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Florida Gas's right of eminent domain granted under the Natural Gas Act, 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 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. 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/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 workspaces allowed by Florida Gas's 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 the certificate and before construction** begins, Florida Gas shall file an Implementation Plan for the review and written approval by the Director of OEP. Florida Gas must file revisions to the plan as schedules change. The Implementation 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 data requests), identified in the EIS, and required by the Commission 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. the number of EIs assigned per spread and aboveground facility sites, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate materials;
 - e. 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);
 - f. the company personnel (if known) and specific portion of Florida Gas's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Florida Gas will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Florida Gas shall employ a team of two or more EIs per construction spread. The EIs shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Commission Order and other grants, permits, certificates, or authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the 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 of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, Florida Gas shall file updated status reports 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 construction status of each spread's work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Commission 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 response.
9. Florida Gas shall develop and implement an environmental complaint resolution procedure for **at least two years following** the completion of

- construction. 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 rights-of-way. **Prior to construction**, Florida Gas shall mail the environmental complaint resolution 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 shall 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 shall 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.
 - b. In addition, Florida Gas shall include in its weekly status reports a copy of a table that contains the following information for each problem/concern:
 - (1) the identity of the caller and date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property and the location by milepost (MP);
 - (3) a 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.
10. Florida Gas must receive written authorization from the Director of OEP **before commencing service** from each phase of the project. 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 Certificated facilities in service**, Florida Gas shall file an affirmative statement, certified by a senior company official:
- a. that the facilities have been constructed/abandoned 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.
12. **Prior to construction**, Florida Gas shall incorporate Option 2 of the C-1 Canal route variation into Loop 11 between MP 11.3 and 12.4, and shall file revised alignment sheets for review and written approval by the Director of OEP. (*EIS Section 3.4.1.4*)
13. **Prior to construction**, Florida Gas shall file for the review and written approval by the Director of OEP revised alignment sheets and site-specific Horizontal Directional Drill Plan (HDD Plan) for the Military Canal crossing that avoids all high quality Essential Fish Habitat between MP 15 and MP 17. (*EIS Section 3.4.1.6*)
14. **Prior to construction**, Florida Gas shall revise its Plan for Recognizing and Reporting Paleontological Resources in consultation with the U.S. Forest Service (USFS) to incorporate any paleontological requirements of the USFS for crossing Apalachicola National Forest (ANF) lands. (*EIS Section 4.1.4*)
15. **Prior to conducting any blasting activities**, Florida Gas shall file a Blasting Plan for the review and written approval of the Director of OEP, that describes the applicable local, state, and federal regulations; how these regulations would be followed and implemented; the pre-blasting geotechnical investigations that would be conducted; and the monitoring plans for residential and commercial structures that may be impacted by blasting. The plan should include provisions for repair to any residences and commercial structures damaged by project blasting. (*EIS Section 4.1.5*)
16. **Prior to construction**, Florida Gas shall develop a flood contingency plan in consultation with the U.S. Army Corps of Engineers (COE), Florida Department of Environmental Protection (FDEP), the South Florida Water Management District (SFWMD), and the Northwest Florida Water Management District (NFWMD), as appropriate, and file the plan for the review and written approval by the Director of OEP. The plan shall include a construction timeline that avoids crossing “sensitive” waterbodies during high flow periods and procedures it would follow if flooding does occur while a crossing is underway. (*EIS Section 4.3.2.5*)
17. **Prior to construction**, Florida Gas shall file its revised Spill Prevention and Response Plan (SPAR Plan) to include a list of agencies that Florida Gas would notify, including Water Management Districts and local

- agencies such as Pasco County and Tampa Bay Water, in the event of a spill. (*EIS Section 4.3.2.6*)
18. **Prior to using an alternative waterbody crossing method where the HDD method is proposed**, Florida Gas shall develop an alternative site-specific crossing plan in consultation with the FERC, U.S. National Park Service, Alabama Department of Conservation and Natural Resources (ADCNR), COE, FDEP, U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and Florida Fish and Wildlife Conservation Commission (FWCC), as applicable. The final alternative crossing plan shall be filed for the review and written approval from the Director of OEP **prior to its implementation**. (*EIS Section 4.3.2.7*)
 19. **Prior to construction**, Florida Gas shall complete its consultations with the COE, the FDEP, NMFS, and other applicable agencies and organizations to develop a compensatory wetland mitigation plan. The plan shall include details regarding the amount, location, and types of mitigation proposed; specific performance standards to measure the success of the mitigation; and remedial measures, as necessary, to ensure that compensatory mitigation is successful. Florida Gas shall file the compensatory wetland mitigation plan, including any associated agency agreements or approvals, for the review and written approval of the Director of OEP. (*EIS Section 4.4.4*)
 20. Florida Gas shall complete its consultations with the USFS and Florida Division of Forestry (FDOF) regarding revegetation for wiregrass, longleaf pine, and wetland areas and shall file a summary of the final revegetation measures within the ANF and FDOF lands. (*EIS Section 4.5.4.5*)
 21. **Prior to construction of Loop 11**, Florida Gas shall file the results of its consultation with the SFWMD regarding its exotic/invasive species management plan. (*EIS Section 4.6.2.3*)
 22. **Prior to construction of Greenfield 3**, Florida Gas shall file documentation that it has completed its consultation regarding compensatory mitigation with the FWS for bluetail mole skink, sand skink, and Florida scrub jay habitat. (*EIS Sections 4.7.1.2 and 4.7.1.3*)
 23. **Prior to construction**, Florida Gas shall complete its consultations with the FWS, USFS, and FWCC or ADCNR (as appropriate) regarding its proposed Eastern Indigo Snake Protection Plan and flatwoods salamander survey protocol. A summary of the results of these consultations and Florida Gas's revised plans, if necessary, shall be filed for the review and written approval by the Director of OEP. (*EIS Section 4.7.1.2*)

24. If an active Audubon's crested caracara nest is identified during Florida Gas's pre-construction species surveys along Greenfield 3, Florida Gas **shall not begin construction within the 1,000 foot buffer until** after the young have fledged. Furthermore, if monitoring of bird activities and behavior of active nests beyond 1,000 feet in the secondary buffer (4,920 feet) establishes that nest-threatening disturbance is resulting from the project's construction activities, Florida Gas shall **halt** construction within the secondary buffer **until** after the young have fledged. (*EIS Section 4.7.1.3*)
25. No work activities should occur within 330 feet of a bald eagle nest during the nesting season (October 1-May 15). If Florida Gas's monitoring of bird activities establishes that nest-threatening disturbance is resulting from the project's construction activities between 330 feet to 660 feet (the nest monitoring zone), then Florida Gas should **halt** construction within the nest monitoring zone **until** after the young have fledged. (*EIS Section 4.7.1.3*)
26. **Prior to construction**, Florida Gas shall complete consultation with the FWS, FDOF, the Florida Division of State Lands Acquisition and Restoration Council, and the ANF regarding mitigation measures that would minimize impacts on red-cockaded woodpeckers. A summary of the results of this consultation shall be filed for the review and written approval by the Director of OEP. (*EIS Section 4.7.1.3*)
27. **Prior to construction**, Florida Gas shall file for the review and written approval by the Director of OEP the results of its consultation with the FWS and FWCC or ADCNR (as appropriate) indicating the minimization/avoidance measures that will be used for federally listed plant species (including candidate species) identified during Florida Gas's species specific surveys, including (in the order listed), opportunities for:
 - a. avoidance of plant locations and associated habitat as feasible, including "necking-in" construction footprint;
 - b. depending on plant species and population size, the feasibility of boring or HDD;
 - c. "temporary" removal of plants and soil profile plugs (which include the A and B horizons) with the intent to replace to original location post construction; and
 - d. transplanting and seed banking (only after all other options are considered). (*EIS Section 4.7.1.5*)
28. **Prior to construction**, Florida Gas shall file the results of its consultation with the appropriate state agencies regarding state-listed species. (*EIS Section 4.7.2*)

29. Florida Gas shall **not begin construction** activities for the project **until**:
- a. the FERC staff receives species survey comments from the FWS, USFS, and/or state agencies regarding its proposed action;
 - b. the FERC staff completes formal consultation with the FWS for the sand skink, the blue-tail mole skink, the eastern indigo snake, the Florida scrub jay, the Audubon's crested caracara, the gopher tortoise, and the papery nail-wort; and
 - c. Florida Gas has received written notification from the Director of OEP that construction or use of mitigation may begin. (*EIS Section 4.7.4*)
30. **Prior to construction on Loop 9**, Florida Gas shall file a visual screening plan for the remote vent site located near MP 121.1 for the review and written approval by the Director of OEP. (*EIS Section 4.8.1*)
31. **Prior to construction of the Suncoast Parkway and Hog Island Lake HDDs**, Florida Gas shall notify all residences within 25 feet of the permanent right-of-way along the drill path to ensure that these residences are aware of the actual HDD construction time frames. (*EIS Section 4.8.3.1*)
32. **Prior to construction**, Florida Gas shall consult with the land managers of the nine special land use areas identified since the draft EIS, including: the Lake Arthur Estates Development Conservation Easement; Dever Development Company Conservation Easement; Econfina Creek Water Management Area; Wakulla State Forest; Ichetucknee Conservation Area; Hillsborough Land Holdings, Inc. Conservation Easement; Stormwater Treatment Distribution Area; Model Lands Basin; and Allapattah Flatts, regarding conservation and restoration plans. (*EIS Section 4.8.5*)
33. Florida Gas shall file the results of its consultation efforts with the USFS and FDOF regarding access roads and bridges proposed to be used on their respective properties. (*EIS Section 4.8.5*)
34. Florida Gas shall construct within Joe Budd Wildlife Management Area (WMA) on Loop 5 only during the hours of 10:00 AM to 4:00 PM if it is open for hunting. (*EIS Section 4.8.5.1*)
35. **Prior to construction on Loop 11**, Florida Gas shall file its site-specific plan developed in consultation with the Homestead Air Force Base, U.S. Environmental Protection Agency (EPA), and Miami's Department of Environmental Resource Management (DERM) to address handling and

- disposing of any potentially contaminated sediments or groundwater generated during its HDD of the Military Canal. (*EIS Section 4.8.6*)
36. **Prior to construction on Loop 3**, Florida Gas shall file a vegetative visual screening plan for the review and written approval of the Director of OEP to minimize or avoid the removal of trees on the southeast side of Bull Street on the Boone property located at about MP 293.2. (*EIS Section 4.8.7.1*)
37. **Prior to construction on Loop 9**, Florida Gas shall file a vegetative visual screening plan for the review and written approval by the Director of OEP to minimize the removal of trees and to replace trees that would be removed for pipeline construction on the north side of Old County Line Road between about MPs 143.9 and 144.2. (*EIS Section 4.8.7.1*)
38. **Prior to construction**, Florida Gas shall file documentation of concurrence from the FDEP that its project is consistent with the Florida Coastal Management Program. (*EIS Section 4.8.8*)
39. Florida Gas **shall not begin** implementation of any treatment plan/measures (including archaeological data recovery); construction of facilities; or use of all staging, storage, or extra work areas and new or to-be-improved access roads **until**:
- a. Florida Gas files any USFS comments on the revised report for the ANF;
 - b. Florida Gas files the Florida State Historic Preservation Office's (SHPO) comments on the Phase II evaluation report;
 - c. Florida Gas commits to avoid site 8HE644, or files an additional Phase II evaluation report and the Florida SHPO's comments on the report;
 - d. Florida Gas completes surveys and any required evaluations for the denied access areas, Option 2 of the C-1 Canal route variation on Loop 11, and any other areas (such as access roads, extra work spaces, or newly identified areas) that remain to be surveyed, and files the cultural resources survey and any evaluation reports, and the Alabama and Florida SHPOs' (and USFS, if appropriate) comments on the reports;
 - e. Florida Gas files any required treatment/avoidance plans, and the SHPO's (and USFS, if appropriate) comments on the plan;
 - f. the Advisory Council on Historic Preservation (ACHP) is afforded an opportunity to comment, if historic properties would be adversely affected; and

- g. the Director of OEP notifies Florida Gas in writing that treatment plans may be implemented and/or construction may proceed.

All material filed with the Commission containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **“CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE.”** (*EIS Section 4.10.4*)

40. **Prior to construction at the HDD entry sites for the Chipola River, Withlacoochee River, and the Wetland East of Highway 41**, Florida Gas shall file for the review and written approval of the Director of OEP:
 - a. additional noise mitigation measures to minimize impacts on noise sensitive areas (NSA); and
 - b. the calculated noise levels with these additional measures. (*EIS Section 4.11.2.2*)
41. **Prior to beginning any modified HDD sites or any additional HDD sites that Florida Gas has not previously identified**, Florida Gas shall file a noise analysis, for the review and written approval by the Director of OEP. This analysis shall identify:
 - a. the distance and direction to any NSAs within one-half mile of the HDD entry or exit sites and the proposed length of time HDD activities would occur;
 - b. the background noise levels and estimated drilling noise contributions at the NSAs;
 - c. any noise mitigation measures Florida Gas would implement at each entry or exit site locations where estimated drilling noise contributions would exceed an average day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) at a nearby NSA, and the resulting noise levels with the mitigation measures; and
 - d. site-specific plans identifying any noise walls or barriers, equipment locations, equipment barriers, or any other noise mitigation measures. (*EIS Section 4.11.2.2*)
42. Florida Gas shall make all reasonable efforts to ensure its predicted noise levels from Compressor Stations 11, 12, 13, 14, 24, 26, 27, and 29 are not exceeded at nearby NSAs. Florida Gas shall file noise survey results **no later than 60 days after placing compressor station modifications and new compressor station in service**. If the noise attributable to the operation of any compressor station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Florida Gas shall file a report on what changes are

- needed and shall install additional noise controls to meet that level **within 1 year of the in-service date**. Florida Gas shall confirm compliance with this requirement by filing a second noise survey **no later than 60 days** after it installs the additional noise controls. (*EIS Section 4.11.2.2*)
43. Florida Gas shall conduct a noise survey at Compressor Station 15 to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels at the nearby (NSAs or noise-sensitive areas). The noise survey should also verify that the noise from all new equipment in combination with the existing Compressor Units 1507 and 1508 operated at full capacity does not exceed an L_{dn} of 55 dBA at the nearby NSAs. The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the new units in service. If any of these noise levels are exceeded, Florida Gas shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Florida Gas shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Florida Gas Transmission Co., LLC

Docket Nos. CP09-17-000 and
AC08-161-000

(Issued November 19, 2009)

SPITZER, Commissioner, dissenting in part and concurring in part:

I support the Order as a reasonable outcome. However, I write separately to express my disagreement with requiring Florida Gas Transmission Co., LLC (FGT) to file a cost and revenue study for the expansion of its existing natural gas pipeline facilities. I also write separately to emphasize the importance of the public process that we have announced to undertake a review of whether the Commission should generally permit the accrual of AFUDC prior to the filing of a certificate application.

The majority imposes a requirement on FGT to “file a cost and revenue study at the end of its first three years of actual operation to justify the authorized cost-based firm recourse rates under Rate Schedule FTS-3” for the expansion.¹ As the cases cited in support of this obligation highlight, however, the Commission generally imposes such a condition only on new pipeline entities without an operating history.² The only justification the majority provides for imposing the cost and revenue study requirement is that the expansion project “is an extremely large project” and twenty-six percent of the project remains unsubscribed. These concerns, however, are belied by the Commission’s approval of incremental rates, which will protect existing customers and customers that have contracted for capacity on the expansion. Furthermore, the justification does not constitute reasoned decision-making nor does it explain the majority’s departure from precedent.³

¹ Order at P 48.

² See *Empire State Pipeline*, 116 FERC ¶ 61,074 (2006)(new pipeline); *Entrega Gas Pipeline Inc.*, 112 FERC ¶ 61,177 (2005)(new pipeline); *Elba Express Co., L.L.C.*, 119 FERC P 61,015 (2007)(reactivation of LNG Facility).

³ *ANR Pipeline Co. v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995)(Agencies may not, however, depart from past precedent without explanation. While this Court's review under the APA is a highly deferential one, "[w]here an agency departs from established precedent without a reasoned explanation, its decision will be vacated as arbitrary and capricious."); see also *Greater Boston Television*

Our Certificate Policy Statement addresses how to ensure that expansion rates send proper price signals and not adversely affect consumers.⁴ The majority has not claimed that the incremental pricing approved for the expansion will cause cost shifting or otherwise negatively impact shippers. To the contrary, the order finds that Florida Gas has entered into precedent agreements for approximately seventy-four percent of the expansion capacity. Moreover, consistent with the Commission's Certificate Policy Statement, the order rules that FGT's proposal to provide transportation over expansion facilities at incremental rates pursuant to Rate Schedule FTS-3 "shield[s] Florida Gas's existing customers from subsidizing the project."⁵ Last, the order holds that FGT "has assumed the risk for the currently unsubscribed capacity." *Id.*

Further, as the cases referenced by the Commission indicate, the Commission has historically imposed a cost and revenue requirement when a new project goes into service and there is no history of operations. When the Commission has applied the condition on an existing entity it has done so because, for example, the entity has not done business "in a long time."⁶ Neither scenario is present in the instant case. Here, the majority relies on the fact that twenty-six percent of the expansion capacity is unsubscribed. This fact alone, however, does not provide a sufficient basis to require the submission of a cost and revenue study and does not reflect reasoned decision-making.

Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970)(agencies departing from their own precedent must "supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored").

⁴ *Certification of New Interstate Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999); *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000), *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000). *See also Southern LNG Inc.*, 103 FERC ¶ 61,029 at P 42 (2003)("Since placing existing customers in the position of subsidizing an expansion would send improper price signals, and thereby induce overbuilding and inefficient investment, the Commission will require incremental rates for expansion services in appropriate cases. However, incremental rates are not appropriate when inexpensive expansibility is made possible,....").

⁵ Order at P 27.

⁶ *See Trunkline LNG Co.*, 82 FERC ¶ 61,198 (1998); *affirmed, Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999).

To the extent the majority is concerned with the assumptions made with respect to cost components and other features that support the incremental pricing for the expansion facilities, it could address these matters in a future rate proceeding under NGA § 5. The Commission has consistently rejected the notion that a detailed cost and revenue study is the sole means of justifying an investigation into a pipeline's rates under NGA § 5.⁷ In a subsequent rate case, the Commission and any interested parties will have the opportunity to challenge any revised costs. Therefore, I find no reason to break with our existing policy and require FGT to file a cost and revenue study for the expansion of existing facilities.

I also write separately to express my agreement with the announcement that we will initiate a public forum to discuss "whether the Commission should generally permit the accrual of AFUDC prior to the filing date of a certificate application."⁸ This issue has arisen in a number of proceedings over the last year, and I therefore look forward to a public forum in the near future through which a fulsome record on the issue can be developed and analyzed.

Accordingly, I respectfully dissent in part and concur in part.

Marc Spitzer
Commissioner

⁷ See, e.g., *Natural Gas Pipeline Co. of America*, Docket No. RP10-147 (Nov. 19, 2009); *Great Lakes Gas Transmission LP*, Docket No. RP10-149 (Nov. 19, 2009); and *Northern Natural Gas Co.*, docket No. RP10-148 (Nov. 19, 2009).

⁸ Order at P 57.