

154 FERC ¶ 61,080
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Florida Southeast Connection, LLC	Docket Nos. CP14-554-000
Transcontinental Gas Pipe Line Company, LLC	CP15-16-000
Sabal Trail Transmission, LLC	CP15-17-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT

(Issued February 2, 2016)

1. On September 26, 2014, Florida Southeast Connection, LLC (Florida Southeast) filed an application in Docket No. CP14-554-000, pursuant to section 7(c) of the Natural Gas Act¹ (NGA) and Part 157 of the Commission's regulations,² for authorization to construct and operate the Florida Southeast Connection Project (Florida Southeast Project), a new 126-mile natural gas pipeline and related facilities.³ The Florida Southeast Project will provide up to 640,000 dekatherms per day (Dth/d) of firm transportation service. Florida Southeast also requests a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations, and a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open access transportation services.

2. On November 18, 2014, Transcontinental Gas Pipe Line Company, LLC (Transco) filed an application in Docket No. CP15-16-000 under sections 7(b) and 7(c) of the NGA and Part 157 of the Commission's regulations, requesting authorization to

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Pt. 157 (2015).

³ Commission staff's draft and final Environmental Impact Statement for this proceeding refer to Florida Southeast as "FSC" and the Florida Southeast Project as "FSC Project."

construct and operate the Hillabee Expansion Project and abandon the capacity on the Hillabee Expansion Project by lease to Sabal Trail Transmission, LLC (Sabal Trail). The Hillabee Expansion Project will include approximately 43.5 miles of pipeline looping facilities and 88,500 horsepower (hp) of compression at one new and three existing compressor stations in Alabama. Sabal Trail will utilize the project capacity to provide up to 1,131,730 Dth/d of firm transportation service.

3. On November 21, 2014, Sabal Trail filed an application in Docket No. CP15-17-000 requesting a certificate of public convenience and necessity under section 7(c) of the NGA and Part 157 of the Commission's regulations authorizing Sabal Trail to construct and operate the Sabal Trail Project. The Sabal Trail Project will include approximately 515 miles of new pipeline, six compressor stations, and six meter stations in Alabama, Georgia, and Florida to provide up to 1,075,000 Dth/d of firm transportation service. Sabal Trail also requests authorization to lease the capacity created by the Hillabee Expansion Project; a blanket certificate pursuant to Subpart F of Part 157 of the Commission's regulations for Sabal Trail to perform certain routine construction, operation, and abandonment activities; and a blanket certificate pursuant to Subpart G of Part 284 of the Commission's regulations authorizing Sabal Trail to provide open access transportation services.

4. These applications propose three separate but connected natural gas transmission pipeline projects. The upstream project, Transco's Hillabee Expansion Project, will create capacity for Sabal Trail's customers to access upstream natural gas supplies. The middle project, the Sabal Trail Project, will extend from an interconnect with Transco's system at the Tallapoosa Interconnection in Tallapoosa County, Alabama, to an interconnect with the downstream project, the Florida Southeast Project, near Intercession City, Florida. From there, the Florida Southeast Project will extend to a delivery point with Florida Power & Light Company (Florida Power & Light) at its Martin Clean Energy Center near Indiantown, Florida. In total, the projects will involve the construction and operation of approximately 685.5 miles of natural gas transmission pipeline and 339,400 hp of compression to provide transportation service for up to approximately 1.1 billion cubic feet per day of natural gas to markets in Florida and the southeast United States.

5. For the reasons stated below, we grant the requested authorizations, subject to conditions.

I. Background and Proposals

6. Transco is a natural gas pipeline company with a transmission system extending from Texas, Louisiana, and the offshore Gulf of Mexico area through Mississippi, Alabama, Georgia, South Carolina, North Carolina, Virginia, Maryland, Pennsylvania, and New Jersey, to its termini in the New York City metropolitan area.

7. Sabal Trail is a limited liability company organized and existing under the laws of the State of Delaware. Sabal Trail, a joint venture owned by Spectra Energy Partners, LP (Spectra), a newly formed NextEra Energy, Inc. (NextEra) subsidiary named US Southeastern Gas Infrastructure, LLC, and Duke Energy, is a newly formed company and currently does not own any existing pipeline facilities and is not engaged in any natural gas operations. Upon commencing the operations proposed in its application, Sabal Trail will become a natural gas company within the meaning of section 2(6) of the NGA⁴ and will be subject to the Commission's jurisdiction. Sabal Trail states that Sabal Trail Management, LLC will operate the new proposed pipeline.

8. Florida Southeast is a limited liability company organized and existing under the laws of the State of Delaware. Florida Southeast, a wholly owned subsidiary of NextEra, is a newly formed company and currently does not own any existing pipeline facilities and is not engaged in any natural gas operations. Upon commencing the operations proposed in its application, Florida Southeast will become a natural gas company within the meaning of section 2(6) of the NGA⁵ and will be subject to the Commission's jurisdiction.

9. Florida Southeast and Sabal Trail are outgrowths of Florida Power & Light's request for proposals (RFP) announced in December 2012. Florida Power & Light initiated the RFP in response to a 2009 order issued by the Florida Public Service Commission, directing Florida Power & Light to hold an RFP to seek proposals for a new pipeline to accommodate Florida's long-term natural gas needs.⁶

10. Florida Power & Light's RFP requested proposals for an upstream pipeline extending from Transco's Station 85 to central Florida where a new Central Florida Hub would be created to interconnect the new upstream pipeline to the existing Gulfstream Natural Gas System, L.L.C. (Gulfstream) and Florida Gas Transmission Company, LLC (Florida Gas Transmission) pipelines, as well as to a new downstream pipeline from the Central Florida Hub to Florida Power & Light's Martin Clean Energy Center. Of the entities showing interest in constructing a new pipeline, Florida Power & Light selected Sabal Trail to construct the upstream pipeline and Florida Southeast to construct the downstream pipeline.

⁴ 15 U.S.C. § 717a(6) (2012).

⁵ 15 U.S.C. § 717a(6) (2012).

⁶ FPSC Order No. PSC-09-0715-FOF-EI, In re: Petition to determine need for Florida EnergySecure Pipeline by Florida Power & Light Company at 5, FPSC Docket No. 090172-EI (issued October 28, 2009).

A. Hillabee Expansion Project

11. Transco requests authority to construct and operate pipeline looping and compression facilities on its existing mainline to provide a total of 1,131,730 Dth/d of incremental firm transportation service. Transco proposes to lease the capacity to Sabal Trail. Because Sabal Trail seeks to lease the new capacity incrementally over three phases, Transco will construct the project facilities in three phases. Transco estimates that in total the proposed facilities will cost approximately \$459,750,346.

12. In Phase I, Transco will conduct the following activities on its mainline system in order to lease capacity to Sabal Trail sufficient for Sabal Trail to provide 818,410 Dth/day of firm transportation service for its shippers commencing May 1, 2017:

- construct approximately 5.3 miles of 42-inch-diameter pipeline loop from mile post (MP) 911.12 to MP 916.455 in Coosa County, Alabama (Proctor Creek Loop);
- construct approximately 2.6 miles of 42-inch-diameter pipeline loop from MP 924.27 to MP 926.85 in Coosa County, Alabama (Hissop Loop);
- construct approximately 7.5 miles of 42-inch-diameter pipeline loop from MP 941.83 to MP 949.38 in Tallapoosa County, Alabama (Alexander City Loop);
- construct approximately 4.7 miles of 48-inch-diameter pipeline loop from MP 885.95 to MP 890.55 in Autauga and Chilton Counties, Alabama (Billingsley Loop);
- install a new 16,000 hp gas turbine driven compressor unit and rewheel two existing compressors at the existing Compressor Station No. 95 in Dallas County, Alabama (Compressor Station 95);
- install a new 20,500 hp gas turbine driven compressor unit at Transco's existing Compressor Station No. 105 in Coosa County, Alabama (Compressor Station 105);
- construct a new compressor station at MP 782.80 in Choctaw County, Alabama, consisting of two 16,000 hp (ISO) Solar Mars 100 gas turbine driven compressor units (Compressor Station 84);
- install three pipeline taps connecting to the Sabal Trail Meter Station; and
- construct related appurtenant underground and aboveground facilities.

13. In Phase II, Transco will conduct the following activities on its mainline system in order to lease Sabal Trail capacity sufficient to provide an additional 206,660 Dth/day of incremental firm transportation service (total of 1,025,070 Dth/d), commencing May 1, 2020:

- construct approximately 6.7 miles of 42-inch-diameter pipeline loop from MP 784.68 to MP 791.40 in Choctaw County, Alabama (Rock Springs Loop);
- construct approximately 3.9 miles of 42-inch-diameter pipeline loop from MP 905.72 to MP 909.65 in Chilton County, Alabama (Verbena Loop);
- install a new 16,000 hp gas turbine driven compressor unit and rewheel three existing compressors at the existing Compressor Station 95 in Dallas County, Alabama;
- uprate an existing electric motor driven compressor unit from 42,000 hp to 46,000 hp at Transco's existing Compressor Station No. 100 in Chilton County, Alabama (Compressor Station 100); and
- construct related appurtenant underground and aboveground facilities.

14. In Phase III, Transco will conduct the following activities on its mainline system in order to lease Sabal Trail capacity sufficient to provide an additional 106,660 Dth/day of incremental firm transportation service for its shippers (total of 1,131,730 Dth/d), commencing May 1, 2021:

- construct approximately 5.3 miles of 42-inch-diameter pipeline loop from MP 791.40 to MP 796.70 in Choctaw County, Alabama (Butler Loop);
- construct approximately 7.5 miles of 42-inch-diameter pipeline loop from MP 890.67 to MP 898.15 in Autauga and Chilton Counties, Alabama (Autauga Loop);
- rewheel an existing compressor at the existing Compressor Station 100 in Chilton County, Alabama; and
- construct related appurtenant underground and aboveground facilities.

B. Sabal Trail Project

1. Facilities and Service

15. Sabal Trail states that its proposed Sabal Trail Project will enable it to provide up to 1,075,000 Dth/d of firm transportation service. Sabal Trail states it will transport gas

from receipt points upstream of Transco's Compressor Station 85 to a new market interconnection hub, known as the Central Florida Hub, in Osceola County, Florida, utilizing capacity on its Sabal Trail system and leased capacity from Transco.

16. Sabal Trail proposes to construct, install, and operate approximately 516.2 miles of natural gas pipeline, consisting of mainline transmission pipeline and two lateral pipelines. The 36-inch-diameter mainline transmission pipeline will extend roughly 481.6 miles from the Tallapoosa Interconnection in Tallapoosa County, Alabama, through Georgia, and terminate at the Central Florida Hub in Osceola County, Florida. There, the Sabal Trail Project will interconnect with Florida Gas Transmission's and Gulfstream's existing systems, and Florida Southeast's new system.

17. Gulfstream and Florida Southeast's interconnects will be located near Sabal Trail's proposed Reunion Compressor Station in Osceola County. Florida Gas Transmission's interconnect will be located at the end of the new 13.1-mile-long, 36-inch-diameter lateral (Hunter Creek Line), extending from the proposed Reunion Compressor Station to Florida Gas Transmission's system in Orange County, Florida. All interconnections will be bidirectional.

18. Sabal Trail will also construct a 21.5-mile-long, 24-inch-diameter lateral pipeline (Citrus County Line) extending from a point in Marion County, Florida, to Duke Energy Florida's proposed electric generation plant in Citrus County, Florida.

19. In addition, Sabal Trail proposes to construct five compressor stations in Tallapoosa County, Alabama; Dougherty County, Georgia; and Suwannee, Marion, and Osceola Counties, Florida. Sabal Trail will also construct pig launchers/receivers, mainline valves, and six meter and regulating stations. Sabal Trail estimates that the proposed facilities will cost approximately \$3,220,241,225.

20. Sabal Trail will construct the proposed facilities over three phases. In Phase I, Sabal Trail will construct the following facilities to provide an initial design capacity sufficient to provide 830,000 Dth/d of firm transportation service with a proposed in service date of May 1, 2017:

- approximately 474 miles of 36-inch-diameter mainline pipeline extending from the Tallapoosa Interconnection to an interconnection with Florida Southeast's proposed pipeline in Osceola County, Florida;
- the Hunter Creek Line, approximately 13 miles of 36-inch-diameter pipeline extending from the proposed Reunion Compressor Station at MP 474.4 to Florida Gas Transmission's 24-inch-diameter mainline in the Hunters Creek area of Florida;

- the Citrus County Line, approximately 21 miles of 24-inch-diameter pipeline extending from the proposed Dunnellon Compressor Station at MP 389.8 to an interconnection with Duke Energy Florida's proposed electric generation facility in Citrus County, Florida;
- the Alexander City Compressor Station at MP 0.00 near Alexander City in Tallapoosa County, Alabama, with a total of approximately 71,000 hp of gas turbine driven compression;
- the Hildreth Compressor Station at MP 296.3 near Lake City in Suwannee County, Florida, with a total of approximately 20,500 hp of gas turbine driven compression;
- the Reunion Compressor Station at MP 474.4 near Intercession City in Osceola County, Florida, with a total of approximately 36,400 hp of gas turbine driven compression;
- the Transco Hillabee Meter Station in Tallapoosa County, Alabama, at mainline MP 0.0;
- the Florida Gas Transmission Suwannee Meter Station in Suwannee County, Florida, at mainline MP 299.7;
- the Gulfstream Meter Station in Osceola County, Florida, at mainline MP 474.4;
- the Florida Southeast Meter Station in Osceola County, Florida, at mainline MP 474.4;
- the Florida Gas Transmission Meter Station in Orange County, Florida, at MP 13.1 on the Hunter Creek Line; and
- the Duke Energy Florida Citrus County Meter Station in Citrus County, Florida, at MP 21.4 on the Citrus County Line.

21. In Phase II, Sabal Trail will construct the following facilities to provide an additional 169,000 Dth/d of firm transportation service, for a total of 999,000 Dth/d, with a proposed in service date of May 1, 2020:

- the Albany Compressor Station at MP 159.3 near Albany in Dougherty County, Georgia, with a total of approximately 20,500 hp of gas turbine driven compression; and

- the Dunnellon Compressor Station at MP 389.8 near Ocala in Marion County, Florida, with a total of approximately 20,500 hp of gas turbine driven compression.

22. In Phase III, Sabal Trail will construct the following facilities to provide an additional 76,000 Dth/d of transportation service, for a total of 1,075,000 Dth/d, with a proposed in service date of May 1, 2021:

- 20,500 hp of additional gas turbine driven compression at the Albany Compressor Station, for a station total of approximately 41,000 hp of gas turbine driven compression; and
- 20,500 hp of additional gas turbine driven compression at the Hildreth Compressor Station, for a station total of approximately 41,000 hp of gas turbine driven compression.

23. On June 26, 2013, Sabal Trail signed a precedent agreement with Florida Power & Light to provide 600,000 Dth/d of firm transportation service, with 400,000 Dth/d to be provided during Phase I increasing to 600,000 Dth/d in Phase II, for a 25-year primary term. Florida Power & Light's precedent agreement will automatically extend for three successive periods of five years unless Florida Power provides written notice.⁷

24. On July 8, 2013, Sabal Trail signed a 25-year term precedent agreement with Duke Energy Florida for a total of 400,000 Dth/d of firm transportation service, of which 300,000 Dth/d will be provided during Phase I and the additional 100,000 will be provided thereafter.⁸

25. In addition, Sabal Trail held an open season from August 26, 2013, through September 25, 2013, to solicit requests for firm transportation service. Sabal Trail states it has had discussions with potential shippers and end-users in Alabama and Georgia, and

⁷ In addition to the 600,000 Dth/d of firm transportation service that Florida Power & Light committed to, Florida Power & Light has the right to elect up to an additional 200,000 Dth/d of firm transportation service on or before January 1, 2020, and an additional 200,000 Dth/d of firm transportation service on or before January 1, 2024. *See* Sabal Trail Application, Exhibit I, Precedent Agreement at 14.

⁸ Duke Energy's precedent agreement permits Duke Energy to select a date between May 1, 2018, and May 1, 2021, on which the incremental 100,000 Dth/d of firm transportation service will commence. *See* Sabal Trail Application at Exhibit I, Precedent Agreement with Duke Energy, page 8.

has agreed to install two side-taps on its mainline system in Dougherty and Colquitt Counties, Georgia. Sabal Trail, however, did not receive any bids during its open season. In sum, Sabal Trail will provide 700,000 Dth/d of firm transportation service in Phase I and 1,000,000 Dth/d of firm transportation service in Phase II, leaving 75,000 Dth/d of transportation service still available.

26. Sabal Trail proposes to offer cost-based firm transportation service (Rate Schedule FTS), interruptible transportation service (Rate Schedule ITS and Rate Schedule HUB), and park and loan service (Rate Schedule PAL). Sabal Trail states that these services will be provided on an open access, non-discriminatory basis pursuant to Part 284 of the Commission's regulations and the terms and conditions of its proposed FERC Tariff. Sabal Trail states that Florida Power & Light and Duke Energy Florida have agreed to a negotiated rate for their transportation service.

2. Blanket Certificates

27. Sabal Trail requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.⁹

28. Sabal Trail requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing Sabal Trail to provide transportation service to customers requesting and qualifying for transportation service under its proposed FERC Gas Tariff, with pre-granted abandonment authorization.¹⁰

C. Florida Southeast Connection Project

1. Facilities and Service

29. The Florida Southeast Project will enable Florida Southeast to provide 640,000 Dth/d of firm transportation service. Florida Southeast proposes to construct, install, operate, and maintain the following facilities:

⁹ 18 C.F.R. § 157.204 (2015).

¹⁰ 18 C.F.R. § 284.221 (2015).

- approximately 77 miles of 36-inch-diameter pipeline extending from an interconnect with Sabal Trail at the Central Florida Hub in Osceola County, Florida, to Okeechobee, Florida;
- approximately 49 miles of 30-inch-diameter pipeline extending from Okeechobee County, Florida, to an interconnect with the Martin Clean Energy Center in Martin County, Florida;
- a meter station at the Martin Clean Energy Center; and
- pig launching and receiving facilities, mainline valves, and other appurtenant pipeline facilities.

30. Florida Southeast estimates that the proposed facilities will cost approximately \$537,260,000.

31. Florida Southeast entered into a binding precedent agreement with Florida Power & Light for 400,000 Dth/d of firm transportation service beginning May 1, 2017, with Florida Power & Light having the option to increase to 600,000 Dth/d beginning May 1, 2020, for a 25-year primary contract term. Florida Southeast asserts that these commitments represent approximately 94 percent of the Florida Southeast Project's total project design capacity. Florida Southeast also held an open season from August 26, 2013, to September 25, 2013. Florida Southeast, however, did not receive other bids.

32. Florida Southeast proposes to offer cost-based firm transportation service (Rate Schedule FT), interruptible transportation service (Rate Schedule IT), and park and loan service (Rate Schedule PAL). Florida Southeast states that these services will be provided on an open access, non-discriminatory basis pursuant to Part 284 of the Commission's regulations and the terms and conditions of its proposed FERC Tariff. Florida Southeast states it and Florida Power have agreed to a negotiated rate for the contracted transportation service.

2. Blanket Certificates

33. Florida Southeast requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.

34. Florida Southeast requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing Florida Southeast to provide transportation service to customers requesting and qualifying for transportation service under its FERC Gas Tariff, with pre-granted abandonment authorization.

D. Sabal Trail's Lease of Capacity on Transco's System

35. Transco and Sabal Trail have entered into a Capacity Lease Agreement that provides that Transco will construct and operate the Hillabee Expansion Project facilities and abandon by lease to Sabal Trail the incremental capacity associated with the proposed facilities. In turn, Sabal Trail proposes to acquire that capacity to provide transportation service under its open access tariff. As noted above, Sabal Trail will lease capacity incrementally over three phases. In Phase I, Sabal Trail will lease capacity sufficient to provide 818,410 Dth/d of firm transportation service effective May 1, 2017; in Phase II, capacity sufficient to provide 1,025,000 Dth/d of firm transportation service effective May 1, 2020; and in Phase III, capacity sufficient to provide 1,131,730 Dth/d of firm transportation service effective May 1, 2021.

36. As proposed, the leased capacity would extend from three receipt points¹¹ to the proposed interconnection between Transco and Sabal Trail in Tallapoosa County, Alabama. Also, as proposed, Sabal Trail and its shippers would not have rights to receive or deliver gas from any other points on Transco's system. Further, Sabal Trail and its shippers would not have rights to backhaul or reverse flow gas from east to west on the Transco mainline. As discussed below, we find such provisions to be anticompetitive and require the Capacity Lease Agreement to be revised to remove them in accordance with Commission policy.

37. The Capacity Lease Agreement provides for an initial 25-year primary term and will automatically extend for three successive 5-year terms unless Sabal Trail provides prior written notice to terminate the agreement. Thereafter, the Capacity Lease Agreement will extend year to year until terminated by Transco or Sabal Trail.

38. During the primary term, Sabal Trail will pay a monthly lease charge, which is the leased capacity each day during the month multiplied by the applicable rate per dekatherm for each phase. Transco states that the revenues under the Capacity Lease Agreement are less than the Hillabee Expansion Project's annual cost of service. However, Transco states that it will not reflect in its system rates any costs or revenues associated with the leased capacity, and that it will separately account for the costs and revenues associated with the leased capacity and segregate those costs and revenues from

¹¹ The three receipt points are: (1) Transco's existing Zone 4 point of interconnection between Transco's mainline and the Mobile Bay Lateral (generally referred to as Transco's Zone 4 Pool); (2) the point of interconnection between Transco and Midcontinent Express Pipeline LLC's system; and (3) the point of interconnection between Transco and Gulf South Pipeline Company, LLC's system. All three receipt points are located at MP 784.66 in Choctaw County, Alabama.

its other system costs.¹² Further, Transco explains that the lease payment is no higher than a maximum recourse rate would be if Transco were to provide transportation service through the project facilities on a stand-alone basis.

II. Procedural

A. Notice, Interventions, Protests, and Answers

39. Notice of Transco's application in Docket No. CP15-16-000 was published in the *Federal Register* on December 11, 2014 (79 Fed. Reg. 73,571). Notice of Sabal Trail's application in Docket No. CP15-17-000 was published in the *Federal Register* on December 11, 2014 (79 Fed. Reg. 73,570). Notice of Florida Southeast's application in Docket No. CP14-554-000 was published in the *Federal Register* on October 24, 2014 (79 Fed. Reg. 63,613).

40. In each docket, numerous timely and late motions to intervene were filed.¹³ Timely, unopposed motions to intervene are granted automatically pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.¹⁴

41. Florida Southeast opposes all late motions to intervene in its proceeding, Docket No. CP14-554-000, other than the motion by Pivotal Utility Holdings, Inc.¹⁵ Florida Southeast argues that the Commission should deny these late motions to intervene because those seeking intervention demonstrate no genuine interest in the Florida Southeast Project, are not located within the project's vicinity, and do not explain how the project affects them. Florida Southeast asserts that the late intervenors are concerned with the Sabal Trail Project, not the Florida Southeast Project. Florida Southeast adds

¹² Transco Application at 11.

¹³ Commenters state that their interventions are timely up until the comment period of the draft EIS ends. Specifically, our regulations provide that interventions are timely if filed during the comment period on the notice of the application or if filed on environmental grounds during the comment period of the draft EIS. 18 C.F.R. §§ 157.10, 380.15, 214(c) (2015). Thus, if interventions are filed in between these periods, the intervention is late. *See Alcoa Power Generating, Inc.*, 144 FERC ¶ 61,218, at n.4 (2013). As we note below, however, the Commission has a liberal policy of accepting late interventions in natural gas certificate proceedings.

¹⁴ 18 C.F.R. § 385.214(c) (2015).

¹⁵ Florida Southeast January 7, 2015 Answer at n.11.

that the late interventions fail to conform to the Commission's standard for late interventions,¹⁶ and that allowing late intervention at this point in the proceeding would create prejudice. Specifically, Florida Southeast asserts that the late intervenors do not offer nor have an excuse, for filing late, arguing that, as active participants in the Sabal Trail Project, the late intervenors had notice that the Commission combined the environmental review of the three projects.

42. In considering late intervention requests in natural gas certificate proceedings, the Commission typically finds that, at the early stage of the proceeding, granting late intervention will neither disrupt the proceeding nor prejudice the interests of any other party. Thus, the Commission liberally allows late interventions at the early stages of such proceedings, but is more restrictive as a proceeding nears its conclusion.¹⁷

43. While many late intervenors in Docket No. CP14-554-000 direct their comments to the Sabal Trail Project, several late intervenors note that the projects are related and request that the Commission consolidate the proceedings. Thus, we find that all individuals filing late motions to intervene have a demonstrable interest in the respective proceedings. Granting the late interventions at this stage of the proceedings will not cause undue delay or disrupt or otherwise prejudice the applicant or other parties.¹⁸ Accordingly, the Commission grants the late motions to intervene in each proceeding. All parties to each proceeding are listed in Appendix A of this order.

44. In addition to receiving interventions, we received numerous comments, both in support of the proposed projects and raising concerns on environmental and safety matters, including air quality, noise, and property value impacts. Sabal Trail filed multiple answers to the protests, comments, and other pleadings filed in response to this application.¹⁹ Although the Commission's Rules of Practice and Procedure generally do

¹⁶ 18 C.F.R. § 385.214(d) (2015).

¹⁷ *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 15 (2012); *Cameron LNG, LLC*, 118 FERC ¶ 61,019, at PP 21-22 (2007).

¹⁸ 18 C.F.R. § 385.214(d) (2015).

¹⁹ Sabal Trail filed answers in Docket No. CP15-17-000 on January 9, April 1, April 20, May 22, June 15, June 16, June 29, July 8, July 17, July 22, and August 14, 2015. Sabal Trail's answers responded to comments by Kiokee-Flint et al.; Southern Natural Gas Company, L.L.C. (Southern Natural); G.B.A. Associates and Gregory K. Isaacs (G.B.A. Associates); the City of Albany, Georgia; and various landowners.

not permit answers to protests,²⁰ we will accept Sabal Trail's answers because they clarify the concerns raised and provide information that has assisted in our decision making.

45. The environmental and safety concerns raised in this proceeding are addressed in the final Environmental Impact Statement (final EIS), as well as the environmental section of this order.

B. Requests for a Hearing or Technical Conference, Consolidation, and Procedural Schedule for Project Review

46. On December 23, 2014, the Kiokee-Flint Group and its individual members (Kiokee-Flint), the Georgia Chapter of the Sierra Club (Sierra Club), Flint Riverkeeper, and Chattahoochee Riverkeeper (collectively, Kiokee-Flint et al.)²¹ filed a motion requesting an evidentiary, trial-type hearing, the formal consolidation of the certificate proceedings, and a new procedural schedule for review of the three certificate proceedings.²² Florida Southeast and Sabal Trail each filed an answer to Kiokee-Flint et al.'s motions on January 7, and January 9, 2015, respectively.

1. Formal Evidentiary Hearing and Technical Conference

47. Intervenors request an evidentiary, trial-type hearing to address disputed material facts regarding the need for the projects, Sabal Trail's requested return on equity, subsidization of the projects by captive ratepayers, the projects' environmental and safety impacts, and proposed alternatives. In addition, AZ Ocala Ranch LLC (AZ Ocala), a residential developer, recommended that the Commission hold a technical conference in Docket No. CP15-17-000 on Sabal Trail's proposed pipeline route adjustments.²³

²⁰ 18 C.F.R. § 385.213(a)(2) (2015).

²¹ Kiokee-Flint, Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper filed separate motions to intervene and have filed separate and joint pleadings. Where these parties file joint pleadings, we refer to them as Kiokee-Flint et al.

²² Kiokee-Flint et al. December 23, 2015 Motion in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000.

²³ AZ Ocala July 1, 2015 Comments at 3. Southern Natural also requested a technical conference in Docket No. CP15-17-000 to determine the necessity of the number of Sabal Trail Project's proposed crossings of Southern Natural's pipeline.

(continued...)

48. An evidentiary, trial-type hearing and technical conference are necessary only where there are material issues of fact in dispute that cannot be resolved on the basis of the written record.²⁴ Neither Kiokee-Flint et al. nor AZ Ocala has raised a material issue of fact that the Commission cannot resolve on the basis of the written record. As demonstrated by the discussion below, the existing written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. The Commission has satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submission in written form.²⁵

2. Consolidation

49. Intervenors request that the Commission should consolidate these three applications because the projects are dependent on one another. Kiokee-Flint et al. asserts that without consolidation the cumulative environmental impacts of the projects will be downplayed, the rate impacts obfuscated, and the potential to export gas concealed. Kiokee-Flint et al. adds that not consolidating the dockets hampers public participation because members of the public do not know they should intervene in all three dockets.

50. Sabal Trail and Florida Southeast argue that formal consolidation is unwarranted. While both agree that the three projects are related, they argue that there are no common issues of law or fact that cannot be adequately addressed in the individual dockets. Sabal Trail and Florida Southeast state that the projects are submitted by three different entities and have different routes, rates, pipeline sizes, tariffs, and purposes. Moreover, they state that the Commission is already evaluating the projects within the same environmental impact statement as connected actions. In addition, Sabal Trail adds that consolidation is not necessary to understand the potential export of the transported natural gas because there is no proposal to connect facilities to an LNG export terminal.

51. Although the separate applications filed by Sabal Trail, Transco, and Florida Southeast in the three proceedings raise similar issues, the existing records in the three dockets are sufficient for us to consider and address all three contemporaneously.

Southern Natural's recent filing on October 26, 2015, however, indicates that it no longer is concerned with the number of pipeline crossings.

²⁴ See, e.g., *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Dominion Transmission, Inc.*, 141 FERC ¶ 61,183, at P 15 (2012).

²⁵ *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

Therefore, consistent with prior orders, we find no need for formal consolidation.²⁶ Further, we see no purpose in consolidating the three certificate proceedings in view of the fact that we address all issues in each proceeding in this order without need for an evidentiary, trial-type hearing.²⁷

52. Our decision to not formally consolidate the dockets will not prejudice landowners as Kiokee-Flint *et al.* contends. Landowners have had ample notice that the three projects are connected. On February 18, 2014, Commission staff issued a notice stating its intent to prepare an environmental impact statement for all three projects. Landowners had two opportunities to timely intervene in the proceeding: during the initial comment period and during the comment period for the draft EIS. As discussed above, the Commission has also accepted late interventions. In any event, landowners' interests are well represented in the proceeding; over seventy interventions were filed in each docket, many of them by landowners. In addition, landowners can and have participated in the proceeding without formally intervening. Commission staff considered hundreds of comments from landowners throughout the proceeding, without regard to whether the commentators had also submitted motions to intervene.

3. Schedule

53. Kiokee-Flint *et al.* requests that the Commission establish a procedural schedule for the project, including deadlines by which the parties may submit additional comments and expert testimony. Commission staff issued initial and revised procedural schedules for the draft and final EIS. No other procedural schedule is required. Moreover, the draft and final EIS, as well as this order, address timely and late comments to the extent possible.²⁸

²⁶ *Williams Natural Gas Co.*, 67 FERC ¶ 61,252, at 61,826 (1994).

²⁷ *See, e.g., Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 27 (2008), *order denying reh'g and granting clarification*, 127 FERC ¶ 61,164 (2009).

²⁸ Intervenors also requested that the Commission extend the comment period on the projects' applications by 90 days. Commission staff considered late comments throughout the proceeding to the extent possible.

C. Completeness of Application

54. Kiokee-Flint et al. objects to Sabal Trail's "abbreviated application" and asks that the Commission require Sabal Trail to file a "full application."²⁹ Kiokee-Flint et al. states that an abbreviated application is inappropriate given the project's substantial impacts on landowners and the environment.

55. The Commission's regulations provide that a company may file an abbreviated application and omit certain exhibits when those exhibits are not necessary to fully disclose the nature of the proposal.³⁰ The applicant must only file information necessary to fully explain the proposed project, its economic justification, and its effect on the applicant's operations and on the public proposed to be served.³¹ Sabal Trail omitted Exhibit H, which provides for information on total gas supply, specifically a description of the production areas accessible that contain existing or potential supplies for the proposed project.

56. Sabal Trail provided sufficient information relevant to each exhibit to fully disclose the nature of the project, and therefore demonstrated to Commission staff that it met the requirements set forth in the Commission's regulations. There is no question that there is sufficient natural gas accessible through Transco and its interconnected upstream pipelines to supply the proposed projects. Information on total gas supply is not necessary to complete our public convenience and necessity analysis. Moreover, since the advent of open access, natural gas shippers, not natural gas pipelines, have been responsible for obtaining natural gas supplies, and therefore, Exhibit H is not needed to determine whether adequate natural gas is available to supply the proposed project.

D. Request for Fast Tracking and Alternative Dispute Resolution

57. G.B.A. Associates and Gregory K. Isaacs (G.B.A. Associates), a commercial developer and an investor, request to use a fast tracking processing and Alternative Dispute Resolution pursuant to Rule 206 of the Commission's Rules of Practice and Procedure in Docket No. CP15-17-000.³² Specifically, they seek to resolve a

²⁹ Kiokee-Flint et al. December 22, 2014 Comments in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 25-26 (Accession No. 20141222-5162) (Kiokee-Flint et al. December 22, 2014 Filing).

³⁰ 18 C.F.R. § 157.7 (2015).

³¹ *Id.*

³² G.B.A. Associates April 16, 2015 Filing in Docket No. CP15-17-000 at 4.

disagreement regarding Sabal Trail's rerouting its mainline pipeline from colocating with Southern Natural Gas Company, L.L.C. (Southern Natural) to being located on their property.

58. The Commission has specific regulations applicable to complaint proceedings, including a fast tracking process. The Commission also has an Alternative Dispute Resolution process. Complaints are covered under Rule 206 of the Commission's Rules of Practice and Procedure, and the Commission's Alternative Dispute Resolution process is covered under Rule 604.

59. Under Rule 206, entities seeking to file formal complaints must allege a contravention or violation of a statute, rule, or order, or must allege any other wrong over which the Commission may have jurisdiction. In addition, entities seeking to file formal complaints must comply with the relevant regulations that specify the contents of a complaint.³³ G.B.A. Associates fails to satisfy a large number of these requirements. G.B.A. Associates does not allege any contravention or violation of a statute, rule, or order, or any other alleged wrong, but merely notes its disagreement regarding Sabal Trail rerouting its pipeline. In addition, G.B.A. Associates fails to set forth the business, commercial, economic, or other issues presented by the action or inaction as such relate to or affect the complainant; make a good faith effort to quantify the financial impact or burden created for the complainant as a result of the action or inaction complained of; and indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction. Because G.B.A. Associates fails to comply with the Commission's regulations for filing complaints, we conclude that it did not file a formal complaint. Consequently, we address G.B.A. Associates' concerns as a protest to Sabal Trail's application.

60. As for Alternative Dispute Resolution, G.B.A. Associates may submit a written proposal to the Commission to use alternative means of dispute resolution to resolve its disagreement with Sabal Trail.³⁴ Our regulations, however, require that all participants to a pending matter concur in the use of alternative dispute resolution. Here, Sabal Trail has noted its opposition to such a proceeding.³⁵

³³ 18 C.F.R. § 385.206 (2015).

³⁴ 18 C.F.R. § 385.604(d) (2015).

³⁵ Sabal Trail May 22, 2015 Answer to G.B.A. Associates.

III. Discussion

61. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA. In addition, Transco's proposed abandonment of capacity by lease to Sabal Trail and Sabal Trail's acquisition of that capacity are subject to the requirements of sections 7(b) and 7(c) of the NGA, respectively.

A. Application of Certificate Policy Statement

62. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.³⁶ 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 facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

63. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the 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.

³⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

1. Section 7(c) Projects

a. Hillabee Expansion Project

64. Transco's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. While the monthly lease payments Transco will charge Sabal Trail will not recover the full costs of the project, Transco states that during the term of the lease agreement it will not reflect in its system rates any costs or revenues associated with the leased capacity and that it is prepared to financially support the cost of the Hillabee Expansion Project.³⁷ Moreover, Transco will separately account for leased capacity related to fuel and lost and unaccounted-for gas costs when it makes its period tracker filings to ensure that its fuel retention costs are properly allocated between services to existing shippers and the incremental services to the Sabal Trail. As such, the proposed project will not result in any subsidization by Transco's existing shippers.

65. The proposed project will not adversely impact Transco's existing customers or other pipelines and their customers. The proposed facilities are designed to increase the capacity of Transco's system to accommodate the lease agreement with Sabal Trail without degrading the service of Transco's existing customers. There is no evidence that service on other pipelines will be displaced or bypassed, and no pipeline companies have objected to the proposed project. We conclude that Transco's proposal will not have adverse impacts on its existing shippers or other existing pipelines and their captive customers.

66. We also find that Transco's proposed project will have minimal adverse impacts on landowners and communities. Transco states that it expects to negotiate settlements with all affected landowners for all necessary easements and property rights. To the extent parties are unable to reach mutual agreement, it is for the courts to decide the appropriate levels of compensation for necessary property rights.³⁸

³⁷ Transco Application at 11.

³⁸ 15 U.S.C. § 717(f) (h) (2012).

b. Sabal Trail Project

67. Sabal Trail is a new pipeline company that has no existing customers. As such, there is no potential for subsidization on Sabal Trail's system or degradation of service to existing customers.³⁹

68. With regard to adverse economic effects on competing pipelines and such pipelines' captive customers, the Sabal Trail Project should serve to benefit other pipelines and their customers. Through Sabal Trail's new interconnections at the Central Florida Hub, Sabal Trail will be able to deliver gas to existing pipeline systems, i.e., Gulfstream and Florida Gas Transmission, in the event of supply or facility disruption and enhance market competition.

69. In its October 26, 2015 comments, Southern Natural states that because the Sabal Trail pipeline will cross Southern Natural's pipeline system numerous times, Southern Natural may have to pass on to its customers substantial costs for restoration, cathodic protection systems, and maintenance activities.⁴⁰ Southern Natural further indicated that it anticipates that Sabal Trail will reimburse it for such costs through a Parallel Construction Agreement, but that Southern and Sabal Trail had not yet reached agreement.⁴¹ On November 9, 2015, Sabal Trail filed comments stating that it continues to work with Southern Natural on that agreement.⁴² The issues that Southern Natural raises regarding economic impacts to its customers are outside the scope of this proceeding. To the extent Southern Natural and Sabal Trail are unable to reach an agreement, questions regarding damages incurred during construction are for a court of appropriate jurisdiction to adjudicate.

³⁹ Kiokee-Flint et al. states that the Sabal Trail Project will result in subsidization because the Florida Public Service Commission issued an order stating that Florida Power & Light may pass the costs of the pipeline onto its ratepayers. *See* Kiokee-Flint et al. December 22, 2014 Filing at 28. The Commission does not consider it subsidization for Florida Power & Light to pay rates designed to recover the costs of a pipeline system being constructed to provide it with natural gas transportation service. The extent to which it is appropriate for Florida Power & Light to in turn pass those costs through to its rate payers is not with the Commission's jurisdiction.

⁴⁰ Southern Natural Oct. 26, 2015 Comments in Docket No. CP15-17-000 at 3.

⁴¹ *Id.*

⁴² Sabal Trail Nov. 9, 2015 Comments on Draft EIS at 15.

70. Regarding impacts on landowners and communities along the route of the project, Sabal Trail proposes to locate the pipeline within or parallel to existing rights-of-way where feasible.⁴³ Sabal Trail's proposed pipeline route colocates with existing rights-of-way or previously disturbed corridors for approximately 308.1 miles (60 percent) of the total pipeline lengths. The remaining approximately 207.5 miles (40 percent) of the pipeline route will deviate from these rights-of-way and corridors.

71. While we are mindful that Sabal Trail has been unable to reach easement agreements with some landowners, for purposes of our consideration under the Certificate Policy Statement, we find that Sabal Trail has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities. Sabal Trail participated in the Commission's pre-filing process in Docket No. PF14-1-000. During pre-filing and initial project planning, Sabal Trail considered 282 route variations, almost all of which were identified by landowners, government officials, and other stakeholders.⁴⁴ Sabal Trail incorporated 214 of those route variations into its proposed route. Further, in the final EIS, Commission staff considered 12 major route alternatives, many of which were requested by landowners.

72. G.B.A. Associates requested that the Commission not grant Sabal Trail eminent domain authority over its land.⁴⁵ The Commission itself, however, does not confer eminent domain powers. Congress gave the Commission jurisdiction to determine if the construction and operation of proposed pipeline facilities are in the public convenience and necessity. Once the Commission makes that determination, under NGA section 7(h), a certificate holder is authorized by Congress to acquire the necessary land or property to construct the approved facilities by exercising the right of eminent domain if it cannot acquire the easement by an agreement with the landowner.⁴⁶ While the Sabal Trail Project will traverse G.B.A. Associates' land, we note that Sabal Trail incorporated a route variation on G.B.A. Associates' land that will closely follow property lines and reduce impacts on G.B.A. Associates' future development activities.

⁴³ 18 C.F.R. § 380.15 (2015). Section 380.15 of the Commission's regulations requires the Commission to consider a landowner's preferences, not necessarily reach their preferred outcome. *See Impulsora Pipeline, LLC*, 153 FERC ¶ 61,204, at P 12 (2015).

⁴⁴ Final EIS at 4-24.

⁴⁵ G.B.A. Associates April 16, 2015 Filing in Docket No. CP15-17-000 at 4.

⁴⁶ 15 U.S.C. § 717f(h) (2012).

c. Florida Southeast Connection Project

73. Florida Southeast is a new pipeline company that has no existing customers. As such, there is no potential for subsidization on Florida Southeast's system or degradation of service to existing customers.

74. The Florida Southeast Project will transport gas to meet increased demand for natural gas in Florida. No transportation service provider or captive customer in the same market has protested the project. Moreover, the two existing interstate pipelines that serve central and southern Florida, i.e., Florida Gas Transmission and Gulfstream, are either fully or near fully subscribed.

75. Regarding impacts on landowners and communities along the project route, Florida Southeast proposes to locate the pipeline within or parallel to existing rights-of-way where feasible. The Florida Southeast Project pipeline route will be colocated with existing roads and utilities for approximately 101.9 miles (81 percent) of the total pipeline length. The remaining 24.5 miles (19 percent) of the pipeline route will deviate from these rights-of-way or corridors. Florida Southeast proposes to minimize the use of eminent domain to the greatest extent possible by negotiating easement agreements for permanent easements and temporary workspace required for the project. In addition, Florida Southeast participated in the Commission's pre-filing process in Docket No. PF14-2-000, during which Florida Southeast considered 19 route variations and addressed landowners' concerns and questions. We therefore find that Florida Southeast has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities.

d. Need for the Projects

76. Several intervenors challenge the public need for the projects.⁴⁷ Many intervenors assert that project demand can be satisfied by renewable energy alternatives, such as solar and wind power, or energy efficiency gains. Intervenors also contend that other pipelines in Florida, including Florida Gas Transmission's pipeline, are not at full capacity and can provide transportation services. In addition, many intervenors contest that the gas will not be used to satisfy demand in Florida, but will be exported to foreign markets.

77. Kiokee-Flint adds that project need for the Sabal Trail Project is overstated. Kiokee-Flint asserts that Florida Power & Light committed only to 400,000 Dth/d of firm service, with the option to subscribe an additional 200,000 Dth/d of service to be

⁴⁷ Kiokee-Flint filed comments raising this issue both individually and jointly with Sierra Club, Flint Riverkeeper, and Chattahoochee Riverkeeper.

provided in Phase II of the Sabal Trail Project.⁴⁸ Similarly, members of the Gulf Restoration Network assert that the proposed pipeline has over twice the capacity needed to meet Florida Power & Light's projected additional demand through 2021.⁴⁹ Kiokee-Flint also appears to allege that the projects are engaged in self-dealing, as Sabal Trail's and Florida Southeast's precedent agreements are with affiliates: the parent company of Florida Southeast Connection, NextEra, is also the parent of Florida Power & Light, and Duke Energy, the parent company of Duke Energy Florida, has an interest in the Sabal Trail Project.⁵⁰ In addition, Kiokee-Flint argues that Energy Information Administration data does not indicate a need for the project nor will compliance with the Environmental Protection Agency's Clean Power Plan regulations require the project to be built.⁵¹

78. Kiokee-Flint et al. also asserts that Florida Power & Light may have inflated its demand for natural gas.⁵² In support, Kiokee-Flint et al. contends that Florida Power & Light's reserve margin is double the generally approved standard in Florida. Kiokee-Flint et al. also points out that the Florida Public Service Commission may find there is no need for Florida Power & Light's proposed natural gas power generating facility, the Okeechobee Clean Energy Center.

79. In addition, Kiokee-Flint argues that the Certificate Policy Statement only finds that a fully subscribed project is *prima facie* significant evidence of project need, which the Sabal Trail Project does not meet because it is undersubscribed at 93 percent of its total design capacity.⁵³ Parties also cite various cases unrelated to the Commission's

⁴⁸ Kiokee-Flint October 28, 2015 Draft EIS Comments in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 8-9 (Kiokee Flint Oct. 28 Filing).

⁴⁹ Gulf Restoration Network Members and Supporters October 26, 2015 Filing in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 1.

⁵⁰ Kiokee-Flint Oct. 28 Filing at 8-9.

⁵¹ *Id.* at 10-12.

⁵² Kiokee-Flint et al. October 27, 2015 Comments on Draft EIS in Docket Nos. CP14-554-000, CP15-16-000, and CP15-17-000 at 1-4 (Kiokee-Flint et al. Oct. 27 Filing).

⁵³ Kiokee-Flint October 28 Filing at 8.

Certificate Policy Statement to argue that the Commission incorrectly relies on precedent agreements to find project need.⁵⁴

80. The Certificate Policy Statement established a new policy under which the Commission would allow an applicant to rely on a variety of relevant factors to demonstrate need, rather than continuing to require that a percentage of proposed capacity be subscribed under long-term precedent or service agreements.⁵⁵ These factors might include, but are not limited to, precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market.⁵⁶ The Commission stated that it will consider all such evidence submitted by the applicant regarding project need. Nonetheless, the Certificate Policy Statement made clear that, although precedent agreements are no longer required to be submitted, they are still significant evidence of project need or demand.⁵⁷

81. We find that Transco, Sabal Trail, and Florida Southeast have sufficiently demonstrated that there is market demand for their respective projects. Transco has entered into a *pro forma* lease agreement with Sabal Trail to abandon and lease the entire incremental capacity created by the Hillabee Expansion Project to Sabal Trail for a 25-year primary term. Sabal Trail has entered into precedent agreements with Florida Power & Light and Duke Energy Florida for 1,000,000 Dth/d, approximately 93 percent of the 1,075,000 Dth/d of service that will be made available by the Sabal Trail Project, also for a 25-year term. Florida Southeast has entered into a precedent agreement with Florida Power & Light for 400,000 Dth/d of service, 62.5 percent of the total design capacity that will be created by the Florida Southeast Project, with an option to subscribe to an additional 200,000 Dth/d of service, again for a 25-year term.

⁵⁴ Kiokee-Flint cites *1000 Friends of Wisconsin, Inc. v. U.S. Dep't of Transp.*, No. 11-C-0545, 2015 WL 2454271, at *1 (E.D. Wis. 2015) (holding that the environmental impact statement prepared to authorize a highway expansion did not explain the methodology for determining specific traffic volumes and did not explain why it did not use updated population data). See Kiokee-Flint October 28 Filing at 12. Kiokee-Flint et al. cites *Lakehead Pipeline Co., LP v. Ill. Commerce Comm'n*, 296 Ill.App.3d 942, 957 (1998) (involving an oil pipeline's certificate application before the Illinois Commerce Commission). See Kiokee-Flint et al. October 27 Filing at 4.

⁵⁵ Certificate Policy Statement, 88 FERC at 61,747.

⁵⁶ *Id.*

⁵⁷ *Id.*

82. Kiokee-Flint mistakenly asserts that Florida Power & Light committed only to 400,000 Dth/d of service on Sabal Trail with the option to commit to 200,000 Dth/d in 2020. The precedent agreement between Florida Power & Light and Sabal Trail states that Florida Power & Light will subscribe to 600,000 Dth/d, of which 400,000 Dth/d will be provided in Phase I and the additional 200,000 Dth/d to be provided in Phase II.⁵⁸ In addition, the precedent agreement states that Florida Power & Light has the option to subscribe to an additional 200,000 Dth/d by January 1, 2020, and another additional 200,000 Dth/d by January 1, 2024.⁵⁹

83. We note that Duke Energy Florida does have the option to not subscribe to its 100,000 Dth/d of Phase II service.⁶⁰ Our finding that Sabal Trail has demonstrated need for its proposed project is not affected by whether or not Duke Energy Florida exercises its option. Even without Duke Energy Florida's 100,000 Dth/d Phase II increment, we find subscription of 84 percent of the project's total capacity is evidence of sufficient public benefit to outweigh the residual adverse effects on the economic interests as discussed above.⁶¹

84. An affiliation between project shippers and the owners of the pipelines is not, by itself, evidence of self-dealing which might call into question the need for the projects. Sabal Trail and Florida Southeast will be required to execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements before commencing construction. Sabal Trail's and Florida Southeast's recourse rates will be based on the design capacity of their pipelines, thereby placing them at risk for any unsubscribed capacity.

⁵⁸ Sabal Trail Application at Exhibit I, Precedent Agreement by and between Sabal Trail Transmission, LLC and Florida Power & Light Company at 12.

⁵⁹ *Id.* at 15. We note that the proposed Sabal Trail pipeline would not, without future expansion, be able to accommodate an additional 400,000 Dth/d of incremental firm service. No such expansion of the Sabal Trail pipeline could be constructed without prior Commission authorization.

⁶⁰ Sabal Trail Application at Exhibit I, Precedent Agreement with Duke Energy, page 10.

⁶¹ *Cf. Turtle Bayou Gas Storage Co., LLC*, 135 FERC ¶ 61,233, at P 33 (2011), which found that the applicant had not sufficiently demonstrated the need for its particular project where the applicant did not conduct an open season or submit precedent or service agreements for the project's capacity and provided only vague and generalized evidence of need for natural gas at the regional and national level.

85. We also have no reason to contest Florida Power & Light's purported demand for natural gas. The Florida Public Service Commission issued an order finding that Florida Power & Light had demonstrated a need for additional firm capacity.⁶² Florida Power & Light has indicated that its commitments on Sabal Trail's and Florida Southeast's systems are to provide gas to existing natural gas-fired plants.⁶³ Because the Okeechobee Clean Energy Center is not an existing plant, whether the Florida Power Service Commission approves the plant does not bear on Florida Power & Light's specified demand for the Sabal Trail and Florida Southeast Projects set forth in its application.

86. Allegations that the projects will be used to export gas also do not persuade us to find that the applicants have not demonstrated project need. Neither Sabal Trail nor Florida Southeast has proposed to connect to any LNG export facilities. In addition, Florida Power & Light stated that it lacks legal authority to export natural gas, and that it is contracting for capacity to serve its natural gas plants. Florida Power & Light adds that it is not an owner of the Floridian LNG project in Martin County, Florida, nor is any of its affiliates.⁶⁴ Moreover, the Commission does not have jurisdiction over the exportation and importation of natural gas. Such jurisdiction resides with the U.S. Department of Energy (DOE), which must act on any applications for natural gas export and import authority.⁶⁵

⁶² Florida Southeast Application at Exhibit Z-1.

⁶³ Florida Power & Light December 23, 2014 Motion to Intervene and Comments in Docket No. CP15-17-000 at 6.

⁶⁴ *Id.* at 4, 6.

⁶⁵ Section 3(a) of the NGA provides, in part, that "no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so." 15 U.S.C. § 717b(a) (2012). In 1977, the Department of Energy Organization Act transferred the regulatory functions of section 3 of the NGA to the Secretary of Energy. 42 U.S.C. § 7151(b) (2012). Subsequently, the Secretary of Energy delegated to the Commission authority to "[a]pprove or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports." DOE Delegation Order No. 00-004.00A (effective May 16, 2006). The proposed facilities are not located at a potential site of exit for natural gas exports. Moreover, the Secretary of Energy has not delegated to the Commission any authority to approve or disapprove the import or export of the commodity itself, or to consider whether the exportation or importation of natural gas is consistent with the

(continued...)

87. As discussed above, 93 percent of the total design capacity of the Sabal Trail project is subscribed under precedent agreements with initial terms of 25 years. This is persuasive evidence of market need for this project. Even though the market, in its consideration of alternative means for addressing energy needs, could have selected renewable energy alternatives and energy efficiency gains, we find that the precedent agreements sufficiently demonstrate the need for the project.⁶⁶ Florida Power & Light has specifically determined that it needs service from a new pipeline extending from Transco's Station 85 to a new Central Florida Hub where it will interconnect with the existing Gulfstream and Florida Gas Transmission pipelines. The expansion of existing pipelines in Florida will not satisfy the identified need of a new transportation option.

e. Conclusion

88. In view of the considerations above, we find that Transco, Sabal Trail, and Florida Southeast have demonstrated a need for the Hillabee Expansion Project, Sabal Trail Project, and Florida Southeast Project, respectively, and that each project's benefits to the market will outweigh any adverse effects on other pipelines and their captive customers, and on landowners and surrounding communities. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity requires approval of Transco's, Sabal Trail's, and Florida Southeast's proposals, as conditioned in this order.

2. Blanket Certificate

89. Sabal Trail and Florida Southeast have each applied for a Part 157, Subpart F blanket construction certificate, which is generally applicable to all interstate pipelines. A Part 157, Subpart F blanket certificate will authorize Sabal Trail and Florida Southeast to perform certain routine activities and abandon certain services and facilities automatically, or pursuant to simplified prior notice requests, as is specified in sections 157.208 through 157.218 of the Commission's regulations. Each type of blanket

public interest. *See Corpus Christi Liquefaction, LLC*, 149 FERC ¶ 61,283, at P 20 (2014) (*Corpus Christi*). *See also National Steel Corp.*, 45 FERC ¶ 61,100, at 61,332-33 (1988) (observing that DOE, "pursuant to its exclusive jurisdiction, has approved the importation with respect to every aspect of it except the point of importation" and that the "Commission's authority in this matter is limited to consideration of the place of importation, which necessarily includes the technical and environmental aspects of any related facilities").

⁶⁶ Final EIS at 4-1 to 4-2.

certificate project includes requirements for landowners to be notified before construction of the project.

90. Kiokee-Flint *et al.* requests that the Commission deny Sabal Trail's request for a blanket certificate pursuant to Part 157, Subpart F because Sabal Trail is a new pipeline with no proven safety or reliability record. Kiokee-Flint *et al.* also requests that the Commission consider the environmental impacts, including cumulative effects, of the blanket certificate and require mitigation of such impacts in its environmental review pursuant to the National Environmental Policy Act of 1969 (NEPA).⁶⁷

91. The Commission routinely grants a pipeline company a blanket certificate along with the pipeline's certificate to construct and operate its initial facilities. Kiokee-Flint *et al.* provides no adequate explanation for us to depart from Commission practice. In addition, given that Sabal Trail has not proposed to conduct any activity under a Part 157 blanket certificate, it would be premature for Commission staff to assess the environmental impacts of, or require mitigation for, such potential activities. Commission staff has no information regarding the location, scope, or timing of any potential activity on which to base its environmental review. In the event that Sabal Trail proposes to conduct under its blanket certificate an activity that causes ground disturbance or changes to operational air or noise emissions, Sabal Trail must notify landowners and adhere to the guidance set forth in section 380.15(a) and (b) of the Commission's regulations.⁶⁸ Therefore, because Sabal Trail and Florida Southeast will become interstate pipelines with the issuance of a certificate to construct and operate the proposed facilities, we will issue to Sabal Trail and Florida Southeast the requested Part 157, Subpart F blanket certificates.

92. Sabal Trail and Florida Southeast also request Part 284, Subpart G blanket certificates to provide open access transportation services. Under a Part 284 blanket certificate, Sabal Trail and Florida Southeast will not require individual authorizations to provide transportation services to particular customers. Sabal Trail and Florida Southeast

⁶⁷ Kiokee-Flint *et al.* December 22, 2014 Filing at 26-27. Kiokee-Flint also individually argues that the draft EIS does not sufficiently examine the added impacts of a blanket certificate on landowners along the pipeline route. Kiokee-Flint October 28, 2015 Filing at 22-23.

⁶⁸ Section 380.15(a) and (b) state that siting, construction, and maintenance of facilities shall be undertaken in a way that avoids or minimizes effects on scenic, historic, wildlife, and recreational values, and require a pipeline to take into account the desires of landowners in the planning, location, clearing, and maintenance of rights-of-way and the construction of facilities on their property. 18 C.F.R. § 380.15(a)-(b) (2015).

each filed a *pro forma* Part 284 tariff to provide open access transportation services. Since a Part 284 blanket certificate is required for Sabal Trail and Florida Southeast to offer these services, we will grant Sabal Trail and Florida Southeast Part 284 blanket certificates, subject to the conditions imposed in this order.

B. Lease Agreement

93. As explained above, Sabal Trail and Transco have entered into a Capacity Lease Agreement whereby Transco will abandon to Sabal Trail the firm capacity that will be created by Transco's proposed Hillabee Expansion Project. In turn, Sabal Trail will acquire that capacity from Transco and use the leased capacity to provide service under the terms of its FERC Tariff.

94. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.⁶⁹ To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.⁷⁰

95. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.⁷¹ We find that the transportation lease agreement between Sabal Trail and Transco, as modified below, satisfies these requirements.

96. First, the Commission has found that leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize

⁶⁹ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

⁷⁰ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005) (*Texas Gas*).

⁷¹ *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002) (*Islander East*).