

**IN THE SUPERIOR COURT  
OF FULTON COUNTY  
STATE OF GEORGIA**

PALMETTO PRODUCTS PIPE LINE LLC,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No.
	)	
GEORGIA DEPARTMENT OF	)	
TRANSPORTATION, RUSSELL R.	)	
MCMURRY, COMMISSIONER,	)	
	)	
Respondent.	)	
	)	

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**PETITION FOR REVIEW**

Comes Now Petitioner, Palmetto Products Pipe Line LLC (“Palmetto” or “Petitioner”), and pursuant to O.C.G.A. § 22-3-83(c) and O.C.G.A. § 50-13-19, files this petition for judicial review of the Georgia Department of Transportation’s (“GDOT”) May 18, 2015 Final Decision Regarding Palmetto Products Pipe Line LLC’s Application for Certificate of Public Convenience and Necessity (“Final Decision,” attached as Exhibit A). The grounds for this petition are set forth below.

**JURISDICTION**

1. Palmetto is organized under Delaware law and has both an agent and place of business within Fulton County, Georgia.
2. In the Final Decision, the GDOT denied Palmetto’s application for a certificate of public convenience and necessity regarding the Palmetto Pipeline Project.
3. Palmetto seeks review of the Final Decision pursuant to O.C.G.A. § 22-3-83(c) and O.C.G.A. § 50-13-19.

4. Pursuant to O.C.G.A. § 22-3-83(d), this Court has jurisdiction over this matter, and this Court is the proper venue for this case.

**TRANSMITTAL OF THE RECORD**

5. O.C.G.A. §50-13-19(e) requires that the GDOT transmit to the Court the original or a certified copy of the entire record of the proceeding under review within 30 days after service of the petition.

6. Petitioner requests that the Court direct that the record be filed in a time and manner that will permit a timely decision on this petition.

**FACTUAL AND PROCEDURAL BACKGROUND**

**I. THE APPLICANT**

7. Palmetto is a subsidiary of Kinder Morgan, Inc. (“Kinder Morgan”), the largest energy infrastructure company in the United States.

8. Kinder Morgan’s position in this industry is unparalleled. It owns an interest in or operates approximately 80,000 miles of pipelines throughout the United States, including over 3,000 miles of pipelines in Georgia.

9. Through this network of pipelines, Kinder Morgan transports a variety of energy resources, including natural gas, refined petroleum products, crude oil, and carbon dioxide.

10. Kinder Morgan is the largest independent transporter of petroleum products in the United States, transporting about 2.3 million barrels of petroleum products per day.

11. Along with its pipeline assets, Kinder Morgan maintains approximately 165 terminals, including locations where products that have been or will be shipped through pipeline are stored and handled. These terminals store products like gasoline, jet fuel, ethanol, coal, and steel.

## **II. THE PALMETTO PIPELINE PROJECT**

12. To expand Kinder Morgan's capacity to deliver refined petroleum products to Georgia and the southeastern United States, Kinder Morgan has developed its "Palmetto Pipeline Project."

13. Once operational, the Palmetto Pipeline will transport refined petroleum products, including gasoline, petroleum oil distillates, biodiesel blend, and renewable diesel blend, from origin points located in Baton Rouge, Louisiana; Collins and Pascagoula, Mississippi; and Belton, South Carolina to destination points located in North Augusta, South Carolina; Savannah, Georgia; and Jacksonville, Florida. The Palmetto Pipeline will also be capable of transporting denatured fuel ethanol, on a batched basis, from the Belton origin point to each of the destination points.

14. The Palmetto Pipeline would carry refined petroleum products at 150,000 barrels per day (bpd), with an ultimate capacity of 167,000 bpd. Palmetto reasonably estimates that 50%-60% of the pipeline capacity will be used to transport refined product to consumers in the Augusta and Savannah areas.

## **I. THE NECESSITY AND CONVENIENCE FOR THIS PROJECT**

15. Pursuant to O.C.G.A. § 22-3-83, Palmetto must obtain a "certificate of public convenience and necessity" from the Commissioner of the GDOT prior to exercising eminent domain to construct and operate the Palmetto Pipeline. O.C.G.A. § 22-3-83 states that the "certificate shall not be unreasonably withheld."

16. Evidence submitted to GDOT demonstrates that the Palmetto Pipeline is needed to meet existing demands for petroleum products; to increase competition and the reliability of fuel supplies in major markets like Savannah that currently lack access to petroleum pipelines;

and to meet increasing future demands for petroleum-based fuels, which are expected to increase substantially over the lifetime of the project.

**A. The Need for the Pipeline Has Been Proven by the Market**

17. Before Palmetto submitted an application to the GDOT regarding this project, Palmetto conducted an extended “open season,” during which Palmetto solicited and received firm commitments to ship product through the Palmetto Pipeline. These long-term commitments bind Palmetto customers—distributors of fuel and products to be shipped through the Palmetto Pipeline—to use the additional supply of fuel provided by the pipeline for the benefit of consumers and the public.

18. These commitments evidence the belief of sophisticated organizations that consumers in the markets that the Palmetto Pipeline would service will benefit from the influx of supply created by this project.

19. These commitments unequivocally demonstrate a market need for the Palmetto Pipeline.

20. The commitments were not procured with unusual terms, nor do those terms seek to improperly influence market participants. To the contrary, the Federal Energy Regulatory Commission (“FERC”), which regulates the rates and terms of service for this project, has granted Palmetto’s application related to the Palmetto Pipeline, concluding that “the rates, and terms and conditions of service offered to the potential committed shippers . . . are consistent with the ICA and Commission precedent.” *See* May 1, 2015 FERC Order.



**B. The Palmetto Pipeline Is Needed To Meet Existing Fuel Demand and To Increase Limited Supplies in Pipeline-Constrained Markets**

21. The markets the Palmetto Pipeline would serve currently have, and may reasonably be expected to have in the future, a compelling need for an additional source of fuel supply.

22. East and coastal Georgia are pipeline constrained. Currently, there is no pipeline providing fuel directly to Savannah or Jacksonville, Florida, including southeastern Georgia. The Augusta market is currently served by only one pipeline fuel source.

23. Market participants in Savannah, including perhaps the most vocal opponent to the Palmetto Pipeline, Colonial Oil Group, have previously acknowledged the adverse impact on consumers, through increased fuel prices, from a lack of pipeline fuel supply to Savannah-area markets. On April 7, 2013, the Savannah Morning News quoted Colonial Oil's Vice President of Business Development, Ryan Chandler, as follows:

Many Savannah residents complain that gas prices are lower in other Georgia cities, such as Atlanta and Macon, and they're correct . . . .

The reason for the lower prices is that those markets have access to a pipeline supply direct from the U.S. Gulf Coast . . . . Savannah is forced to pay what amounts to a Jones Act penalty to bring gasoline and diesel in from the Gulf Coast, and that's only if there are ships available to carry the cargo . . . . When Jones Act ships aren't available, Colonial is forced to import gasoline and diesel from foreign markets to meet Savannah's needs, which frankly can't compete with pipeline economics plus truck freight to Savannah.

24. The Palmetto Pipeline will fill this already-existing, and acknowledged, critical need for a pipeline to supply fuel to coastal Georgia.

25. Indeed, the Palmetto Pipeline will create competition in the Georgia markets that it would service, particularly in the Savannah area. Increased competition and supply will have an obvious benefit to consumers and, all other things being equal, lead to lower fuel prices than would have existed without this additional source of supply.

**C. The Palmetto Pipeline Is Needed To Meet Increased Fuel Demand in the Future**

26. The markets the Palmetto Pipeline would serve, comprised of twenty-three counties that are either on the proposed pipeline route or are immediately adjoining those counties, are expecting significant population growth. The Governor's Office of Planning and Budget has projected that the population of these counties will grow by 43% over the next twenty-five years. This population growth will coincide with substantial industrial growth in this area, including the expansion of the Port of Savannah.

27. Evidence submitted to the GDOT demonstrates that these increases in population and substantial industrial growth will lead to increased needs for petroleum-based fuels in the future, which will be met, in part, through supplies provided by the Palmetto Pipeline. However, as discussed below, the GDOT improperly ignored this evidence to conclude that demands for fuel would not increase as population and industrial activities grow.

**D. The Palmetto Pipeline Is Needed To Provide Safe and Secure Alternative Fuel Sources**

**1. Alternative to Marine and Truck Transport**

28. The vast majority of fuel used in coastal Georgia is transported by tanker truck from petroleum terminals in Macon and North Augusta, South Carolina. A modest amount of additional supply is provided by tanker truck from marine terminals in Savannah and Jacksonville.

29. In the Savannah market alone, approximately 15,000 barrels per day are delivered by tanker truck from Macon and North Augusta. Considering average tanker-truck capacity, this existing need requires 74 truck trips per day, or about 27,000 trips per year, from Macon or North Augusta.

30. The Palmetto Pipeline will create a pipeline delivery point in Richmond Hill, Georgia and, by locating a terminal site in the Savannah area, will dramatically reduce the impact on East and coastal Georgia roads caused by the 27,000 truck trips per year from Macon or North Augusta that are currently required.

31. The terminal point in Jacksonville, Florida will directly benefit southeastern Georgia in similar ways.

## **2. Safest Mode of Fuel Transportation**

32. Pipelines are the safest mode of transportation to deliver products such as gasoline, jet fuel and diesel.

33. The Palmetto Pipeline would be constructed with state-of-the-art technology, designed to enhance the safety of the pipeline and preserve the integrity of it. The innovative methods used to construct the Palmetto Pipeline include cathodic protection and both automated and manual shut-off valves.

34. Construction of the pipeline will be regulated in all respects by the U.S. Government's Pipeline and Hazardous Material Safety Administration and its Office of Pipeline Safety.

## **E. Additional Benefits of the Pipeline Project**

35. Construction of the Palmetto Pipeline would generate approximately 1,200 temporary construction jobs and twenty-four permanent jobs in Georgia.

36. The construction activity will have a significant positive impact on local businesses, including purchases of certain materials necessary for construction, consumption of housing and support services during construction activity, and the hiring of certain local laborers.

37. The purchase of property rights necessary for construction of the Palmetto Pipeline will also benefit local communities. Palmetto will pay fair market value for all of the

property rights needed to construct and maintain the Palmetto Pipeline, which will result in an influx of capital into local communities and will provide a means for Georgia landowners to realize the cash value of their property. This capital infusion will have a significant positive economic impact.

38. Upon completion, the Palmetto Pipeline will result in an increase of an estimated \$4.5 million in annual tax revenue to state and local taxing bodies in Georgia.

## **II. THE APPLICATION AND PROCEEDINGS BEFORE THE GDOT**

### **A. Palmetto's Application**

39. On February 13, 2015, Palmetto submitted an application to the GDOT pursuant to O.C.G.A. § 22-3-83.

40. Palmetto's verified application met the requirements of O.C.G.A. § 22-3-83 and Ga. Comp. R. & Regs. 672-13-.03. Among other things, it (1) provided general background on Palmetto; (2) identified the proposed route and width of the pipeline corridor; (3) described the public convenience and necessity associated with this project; and (4) demonstrated why eminent domain is necessary to complete the project.

41. After filing the application, Palmetto pursued the process suggested by the GDOT. At the direction of the GDOT, Palmetto provided notice of its application in various newspapers and, in the same notice, informed all interested parties of both an opportunity for hearing and certain informational meetings related to the Palmetto Pipeline.

### **B. Public Comment, Informational Meetings, and GDOT "Hearings"**

42. At the GDOT's direction, Palmetto ultimately scheduled six different informational meetings, at various locations along the proposed route of the Palmetto Pipeline. At each meeting, representatives of Palmetto made opening remarks, explaining this project and the necessity associated with it.

43. Interested individuals had an opportunity to present oral comments at these meetings.

44. All statements were recorded and transmitted to the GDOT.

45. Interested individuals were given the opportunity to submit written comments as well.

46. After these meetings had concluded, and despite the fact that the GDOT had followed this process in considering, and ultimately granting, an application the only other time O.C.G.A. § 22-3-83 had been invoked, the GDOT imposed additional procedural requirements on Palmetto.

47. At the urging of opponents of Palmetto Pipeline, the GDOT scheduled two additional meetings, which the GDOT characterized as “hearings.”

48. Much like the meetings previously scheduled, the GDOT’s “hearings” began with short comments from Palmetto, as the applicant, and then afforded interested individuals an opportunity to comment on Palmetto’s application.

49. Palmetto had no opportunity to respond to the comments made at these hearings.

50. And, while the comments made at these hearings were recorded by a certified court reporter, they were not sworn statements or made under oath.

**C. Palmetto’s Supplemental Data and Information**

51. In response to a letter from the GDOT’s Deputy Commissioner, Palmetto submitted additional information supporting the public convenience and necessity of the Palmetto Pipeline on April 8, 2015.

52. This information described the capacity of the Palmetto Pipeline, the amount of product shipped through the pipeline that would be delivered to Georgia markets, and additional information regarding the public necessity and convenience of this project.

53. Almost one month after this April 8, 2015 submission, and in anticipation of the GDOT's final "hearing" regarding Palmetto's application on May 7, 2015, Palmetto submitted still additional information to the GDOT regarding this project.

54. Palmetto's 98-page filing, delivered to the GDOT on May 7, 2015, provided even more detail regarding the Palmetto Pipeline project. Among other things, Palmetto (i) identified various studies supporting the projected population increase and fuel needs of the markets the pipeline would serve and the safety of pipelines as a means to transport petroleum products; (ii) further described factors supporting Palmetto's application, including the necessity of the project, local benefits associated with it, environmental and safety concerns that Palmetto would address through its construction and operation of the pipeline, and Palmetto's intent to negotiate and pay market value for the property interests necessary to construct the pipeline; and (iii) informed the GDOT that the FERC had approved the rates and terms and conditions for the Palmetto Pipeline.

55. The information Palmetto provided to the GDOT supporting its application far exceeded both the requirements imposed by Georgia law and the information that the GDOT had found sufficient to grant an application in the only other instance where O.C.G.A. § 22-3-83 had been invoked.

#### **D. Comment Deadline and GORA Responses**

56. At the GDOT "hearings" regarding the Palmetto Pipeline, the GDOT announced that it intended to issue a decision on May 18, 2015 and that, in advance of that decision, the GDOT would accept written comment through the close of business on May 15, 2015.

57. Palmetto has become aware that opponents to the Palmetto Pipeline submitted extensive written comments in opposition to the Palmetto Pipeline. These comments include letters written by landowners expressing concerns over the fact that Palmetto may acquire certain

rights to their property, opposition from state legislators to Palmetto's project, and detailed submissions from environmental opponents and Colonial Oil Group purporting to refute Palmetto's demonstration of public convenience and necessity.

58. GDOT did not provide, and Palmetto did not receive, the vast majority of these opposing comments as they were submitted to the GDOT. As such, Palmetto had no opportunity to respond to them.

59. In an effort to become aware of and address these comments, Palmetto submitted a request to the GDOT under Georgia's Open Records Act ("GORA") on April 23, 2015. This request sought all comments and other information provided to or considered by GDOT in evaluating Palmetto's application.

60. GDOT was required to provide its response to Palmetto's GORA request within three business days. The GDOT did not respond until May 11, 2015—twelve business days after Palmetto's request and only four days before the end of the GDOT's comment period on Palmetto's application.

61. Palmetto submitted additional material to the GDOT on May 15, 2015, in an attempt to respond to all substantive comments provided by the GDOT in its May 11, 2015, response to Palmetto's GORA request. Despite these efforts, as discussed below, Palmetto was not provided comments and materials considered by the GDOT, and thus was denied any opportunity to address or respond to these materials.

### **III. THE GDOT DENIES PALMETTO'S APPLICATION**

62. The GDOT issued its Final Decision denying Palmetto's application on May 18, 2015.

63. After the Final Decision, Palmetto submitted an additional GORA request seeking information that related to the GDOT's consideration of the Palmetto Pipeline.

64. The GDOT's response, represented as being the record on Palmetto's application, contains hundreds of pages of documents opposing the Palmetto Pipeline that had never before been sent to Palmetto, despite its prior GORA request.

**LEGAL AND FACTUAL ISSUES REQUIRING REVIEW**

65. The Final Decision prejudices the substantial rights of Palmetto because the Final Decision is:

- a) In violation of statutory provisions, including O.C.G.A. § 22-3-83;
- b) In excess of the statutory authority of the agency;
- c) Made upon unlawful procedure;
- d) Affected by other error of law;
- e) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and
- f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

O.C.G.A. § 50-13-19(h).

66. In addition, the GDOT unreasonably withheld the requested certificate, in violation of O.C.G.A. § 22-3-83.

**COUNT I: IMPROPER PROCEDURE**

67. The GDOT erred and unreasonably withheld the requested certificate by refusing to provide Palmetto sufficient opportunity to address the comments and information on which the agency appears to have relied.



**A. Improper Denial of a Full and Fair Opportunity To Respond to Information Considered by the Agency**

68. The Final Decision expressly relies on data that no one—not Palmetto and not any opponent—submitted to GDOT. For example, the Final Decision refers obliquely to “fuel consumption projection information utilized by the Office of Planning and Budget for budgeting purposes” and “Federal Highway Administration data on past fuel consumption in Georgia.” Final Decision, p. 1.

69. The Final Decision does not attach an exhibit setting forth this data, or provide a publicly available source for the referenced information. As such, neither Palmetto nor the public at large can evaluate this data to determine whether it supports the GDOT’s decision.

70. Palmetto was not provided this data during the 90-day period in which the GDOT considered Palmetto’s application, and Palmetto was denied any opportunity to consider or respond to this information before the GDOT reached its Final Decision.

71. In addition, the Final Decision states that the GDOT’s decision to deny Palmetto’s application was based on “other readily available information.” Final Decision, p. 1. This “other readily available information” considered by the GDOT is not identified in the Final Decision or described in any detail.

72. The GDOT did not provide this “other readily available information” to Palmetto in advance of its decision. Accordingly, the GDOT denied Palmetto any opportunity to respond to this information, whatever it may be.

73. Further, the GDOT accepted comments from opponents of the Palmetto Pipeline through May 15, 2015, just one business day before the Commissioner issued the Final Decision.

74. The GDOT did not provide Palmetto any information it received between its untimely May 11, 2015, response to Palmetto’s GORA request and the date it issued its Final

Decision. As a result, Palmetto was not given any opportunity to consider or respond to any of the material the GDOT received as the comment period closed.

75. Under O.C.G.A. § 22-3-83, Palmetto was entitled to a hearing on its application, with all the procedural protections that entails. *See* O.C.G.A. § 22-3-83(b)(3) (providing for “a hearing on the application and the filing and hearing of any objections to such application”) and O.C.G.A. § 22-3-85 (providing that “[a]ll hearings and appeals on applications for certificates and permits required under this article shall be conducted in accordance with Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act’”).

76. At a minimum, the right to a hearing includes the right to be made aware of and respond to comments made regarding Palmetto’s application. “The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one.” *Gonzales v. U.S.*, 364 U.S. 59, 73-74 (1960); *see also United States v. Dillman*, 146 F.2d 572, 574 (5th Cir. 1944) (“The basic elements of a full and fair hearing include the right of each party to be apprized of all the evidence upon which a factual adjudication rests, plus the right to examine, explain or rebut all such evidence.”) (quotations omitted).

77. By basing its Final Decision on information that was neither identified with specificity nor provided to Palmetto in advance so that Palmetto could respond to the information under consideration by the agency, the GDOT denied Palmetto a fair and objective hearing.

**B. Improper Denial of Procedural Protections**

78. The GDOT's failure to follow *any* of the requirements set forth in the Administrative Procedure Act resulted in a "hearing" procedure that was fundamentally unfair and denied Palmetto required legal protections.

79. As described above, the GDOT did not establish procedures to ensure that Palmetto was provided information to be considered by the agency and/or afforded an opportunity to respond. Instead, as noted above, Palmetto was forced to submit a GORA request in order to obtain information under consideration by the agency.

80. Not only did the GDOT fail to respond within the statutorily required three days, the GDOT's production, when made, failed to include all materials referred to in the Final Decision and failed to include comments that Palmetto now understands the GDOT received related to Palmetto's application. *See* O.C.G.A. § 50-18-71 ("Agencies shall produce for inspection all records responsive to a request within a reasonable amount of time not to exceed three business days of receipt of a request...").

81. The GDOT's failure to adequately respond to Palmetto's GORA request compounded the errors in the GDOT's procedure and further guaranteed that Palmetto would not have a sufficient ability to respond to comments regarding its application.

**C. Improper Refusal To Consider Information Submitted by Palmetto Prior to Decision**

82. As described above, Palmetto made every effort to respond to those comments of which Palmetto was made aware through the GDOT's May 11, 2015 response to Palmetto's GORA request. However, upon information and belief, GDOT reached its decision prior to the close of the comment period, and improperly failed to consider this additional evidence.

83. As a result of GDOT's failure to establish procedures to ensure Palmetto was afforded a full and fair opportunity to respond to information presented to and considered by the agency, Palmetto was forced to submit extensive information on May 15, 2015, just one day before GDOT issued its Final Decision. This information is not referenced in the Final Decision, and there is nothing to indicate that GDOT considered it.

84. Given the length of the material Palmetto submitted, including a point-by-point refutation of objections asserted by Colonial Oil Group, it is unlikely that the GDOT even considered Palmetto's responses. GDOT's failure to provide sufficient opportunity to respond to public comment, coupled with failure to even consider the responses Palmetto was able to provide, does not comport with the requirements of law or due process.

85. The Final Decision, and the GDOT's process that led to it, failed to comply with the law. Specifically, the Final Decision was in violation of the procedural protections afforded Palmetto by O.C.G.A. § 22-3-83, made upon an unlawful procedure, affected by a clear error of law, and the GDOT unreasonably withheld the requested certificate.

86. These procedural irregularities rise to the level of a deprivation of due process and, in light of the GDOT's precedent in issuing a certificate of public convenience and necessity to Colonial Pipeline with much less evidence of public necessity, deny Palmetto equal protection.

#### **COUNT II: INCORRECT LEGAL STANDARD**

87. The GDOT erred and unreasonably withheld the requested certificate by applying the incorrect legal standard.

**A. Improper Application of Statutory Standards Applicable to Intra-State Natural Gas Pipelines**

88. As the Final Decision acknowledges, the narrow review under O.C.G.A. § 22-3-83 “does not empower [the Commissioner] . . . to consider any other factor not listed in the statute.” Final Decision, p. 1.

89. Rather than limit its review to the factors enumerated in O.C.G.A. § 22-3-83, as the GDOT acknowledged in the Final Decision that it must do, or even refer to the GDOT’s own rules to evaluate Palmetto’s application, the Final Decision relies on an entirely different statute to define the standard it applied in rejecting Palmetto’s application.

90. The GDOT referred to O.C.G.A. § 46-4-25, the statute applicable to intra-state natural gas pipelines, and relied on it to define “public convenience and necessity” for purposes of O.C.G.A. § 22-3-83. Final Decision, pp. 1–2.

91. The GDOT’s reliance on the intra-state natural gas pipeline statute is in direct contradiction to the directives of § 22-3-83, and indeed the GDOT’s own analysis of the required review.

92. The GDOT’s reliance on the factors set forth in an inapplicable statute contradicts the reasonable expectations of applicants. It is imperative that applicants pursuing a certificate of public convenience and necessity under one statute know all of the relevant factors that will be considered by the agency; otherwise, applicants will be seriously disadvantaged in developing the record to support an application.

93. There is no instruction in § 22-3-83 to applicants that in reviewing an application for public convenience and necessity for a petroleum pipeline guidance may be found in other statutory provisions of Georgia law.

94. A review of the GDOT's own precedent does not provide an applicant with notice that factors outside § 22-3-83 will be considered. Indeed, GDOT's precedent firmly establishes the sufficiency of Palmetto's submissions as consistent with the requirements of § 22-3-83, and, if followed, would have compelled granting Palmetto a certificate of public convenience and necessity.

95. In 2007, in the only other instance where O.C.G.A. § 22-3-83 was invoked, the GDOT approved an application for a certificate of public convenience and necessity from Colonial Pipeline that set forth a need far less compelling than what Palmetto has identified. (Attached as Exhibit B).

96. Colonial Pipeline's application was granted based on a record establishing that "Colonial's mainline pipeline capacity has become constrained in recent years" and "constraints on Colonial's system are projected to worsen in the coming years." Colonial Pipeline Application, p. 3.

97. No extraneous factors like those utilized in the review of Palmetto's application were relevant to the GDOT when reviewing Colonial Pipeline's application.

98. Perhaps more importantly, Palmetto has demonstrated a much more critical need than did Colonial Pipeline in its application.

99. The need for the Palmetto Pipeline is established based on, among other things, customer demand, the significant expected population increase in the markets the Palmetto Pipeline would serve, the pressing need for competition in the transportation of refined products, including a need for the first pipeline source of refined products for Savannah and coastal Georgia, the need to increase highway safety by reducing tanker truck trips to transport refined

petroleum products, and the need to reduce transportation costs for shipping refined petroleum products to these markets.

100. Based on GDOT precedent, Palmetto provided more than sufficient reasons to justify granting Palmetto the certificate it seeks.

**B. Improper Consideration of Matters Within the Exclusive Jurisdiction of the Federal Energy Regulatory Commission**

101. The Final Decision rejects Palmetto’s application, in part, based on a concern regarding the rate structure of the Palmetto Pipeline. Specifically, the Final Decision appears to question whether the rate structure would negatively impact competition. Final Decision, p. 4.<sup>1</sup>

102. FERC has already considered and approved Palmetto’s proposed rates and terms and conditions of service offered to the potential committed shippers. *See* May 1, 2015 Order (Attached as Exhibit C). This declaratory Order conclusively establishes the fairness of the proposed rates and terms and conditions of service to which the committed shippers will be subject.

103. Palmetto’s rate structure and the impacts of the pipeline on competition are within the exclusive jurisdiction of the Federal Energy Regulatory Commission pursuant to its authority under the Interstate Commerce Act. *See Gulf Central Pipeline Company*, 50 FERC ¶ 61381, 1990 WL 316826, at \*4 (March 20, 1990) (finding that the legislative history of the DOE Act indicates that the purpose of transferring oil pipeline regulation to FERC was “to provide more coordinated and systematic regulation of energy resources” and that before the creation of the DOE “regulation of energy prices was fragmented.”).

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<sup>1</sup> This same objection was raised in two letters to the GDOT from Hunter Maclean, as attorneys for Colonial Oil Group, on April 22, 2015, and May 13, 2015.

104. Nevertheless, the GDOT's Final Decision improperly considers and second-guesses matters that have been conclusively resolved by the federal regulatory agency.

**C. Improper Requirement To Prove Future Reduction in Prices**

105. The Final Decision imposes a requirement not suggested by the GDOT's precedent or Georgia law that clear evidence of price reduction was required to grant Palmetto's application.

106. Nothing in O.C.G.A. § 22-3-83 requires such a showing, nor has the GDOT required it previously when it granted an application under O.C.G.A. § 22-3-83.

107. To require such a definitive showing imposes an unfair and unreasonable burden on Palmetto, especially in the realm of gas prices that are dependent on many factors. Where, as here, Palmetto demonstrated that the Pipeline will increase supply, fundamental principles of economics provide that increased supply will, all else being equal, reduce fuel prices. GDOT unreasonably denied Palmetto's application by requiring Palmetto to prove conclusively that prices will decline if the Pipeline is constructed.

**D. Improper Consideration of Benefits to Florida and Unreasonable Burdens on Interstate Commerce**

108. The Final Decision reflects a concern that Jacksonville, Florida will benefit by being the terminus of the Pipeline, and that a benefit to another state, as opposed to Georgia, justifies denying Palmetto a certificate of public convenience and necessity.<sup>2</sup> GDOT's concern over benefits to other states cannot justify denying Palmetto the application it seeks.

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<sup>2</sup> See, e.g., April 22, 2015 Letter from Hunter Maclean to GDOT; April 23, 2015 Letter from The Savannah Area Chamber of Commerce to GDOT; April 24, 2015 Letter from William Morris to GDOT; May 14, 2015 Letter from the Georgia Conservancy to GDOT.



109. The material before the GDOT makes clear that the Pipeline will have a significant beneficial impact on Georgia. That is what is required by the statute to support the issuance of the certificate.

110. As Palmetto has described to the GDOT, approximately 50%-60% of the pipeline capacity is expected to transport refined product to consumers in the Augusta and Savannah areas, with the potential to be even higher based on Jacksonville's close proximity to coastal Georgia communities.

111. The relative benefit to Georgia compared with other states is irrelevant, and it is not a consideration contemplated by O.C.G.A. § 22-3-83. The statute does not limit the public "need" to only a "need" in Georgia.

112. Any statute that would impose such a limitation would constitute an unconstitutional interference with interstate commerce. U.S. Const. Art. I, § 8, cl. 3; *see, e.g., Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 882 (1985) (promotion of domestic business by discriminating against residents in other states is not a legitimate state purpose to justify placing a burden on interstate commerce); *Bankwest, Inc. v. Baker*, 324 F. Supp. 2d 1333, 1352 (N.D. Ga. 2004), *vacated as moot on other grounds*, 446 F.3d 1358 (11th Cir. 2006) (Commerce Clause prohibits states from engaging in economic protectionism and also functions to keep states from trespassing upon national interests).

113. By imposing on Palmetto a series of requirements and a standard not supported by the law, the Final Decision was in violation of the procedural protections afforded Palmetto by O.C.G.A. § 22-3-83, made upon an unlawful procedure, rose to the level of being clearly erroneous, and the GDOT unreasonably withheld the requested certificate.

**COUNT III: GDOT'S DECISION  
IS NOT SUPPORTED BY EVIDENCE IN THE RECORD**

114. These procedural improprieties are replete in the GDOT's consideration of the material Palmetto provided in support of the Palmetto Pipeline Project.

115. They ultimately led the GDOT to reach a conclusion not supported by evidence in the record and one that is clearly erroneous and arbitrary and capricious.

116. For example, the GDOT relied on estimates of fuel consumption trends that do not account for the impact of population growth in the region that the pipeline will service.

117. The GDOT relied extensively on data from the U.S. Energy Information Agency ("EIA") and ignored evidence from Palmetto regarding existing and projected future fuel growth.

118. The EIA statistics the GDOT considered are nationwide in scope. They are not specific to Georgia, and they do not even begin to address fuel needs for the markets in East and coastal Georgia that the Palmetto Pipeline would serve.

119. Specific regional data is essential for many reasons, including the fact that the areas the Palmetto Pipeline would serve are expected to experience significant population and industry growth in the coming years.

120. As Palmetto described to the GDOT, the population in the twenty-three counties either along the proposed route of the Palmetto Pipeline or immediately adjoining those counties is expected to grow by 43% through 2040. This growth is in addition to the industry growth expected in this area, including expansion of the Port of Savannah.

121. The expected population and industry growth in these markets will have an obvious impact on fuel needs. But they are not considered by the EIA statistics on which the Commissioner relied.

122. To the extent the Final Decision referenced any more specific data, that data (statistics from the Department of Revenue and the Federal Highway Administration) was only statewide.

123. Statistics relevant to the entirety of the State of Georgia are unreliable compared to the specific data Palmetto presented to the GDOT. That data does not account for the substantial growth expected in the markets served by the Palmetto Pipeline.

124. The Final Decision also ignores entirely other facts showing the necessity and convenience of the Palmetto Pipeline including (i) the need for an additional source of fuel supply in this region to reduce the overwhelming market power of existing suppliers (namely, Colonial Oil Group), (ii) the necessity of reducing highway truck trips and the related enhanced safety of the Palmetto Pipeline as a means to deliver fuel, and (iii) the market evidence of customers executing binding commitments to ship refined products through the Palmetto Pipeline.

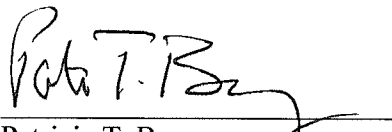
125. The Final Decision makes virtually no mention of the data Palmetto submitted on these issues, and there is no basis for rejecting what this data proves: that the Palmetto Pipeline is within the public convenience and necessity.

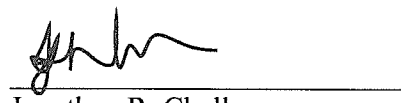
126. By ignoring the only evidence in the record on these points, Palmetto's application was unreasonably denied, and the Final Decision was both clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record and arbitrary and capricious, and the GDOT unreasonably withheld the requested certificate.

WHEREFORE, Palmetto requests that the Final Decision be reversed, as it is in violation of the GDOT's statutory authority, in excess of the statutory authority of the agency, arbitrary and capricious, an abuse of discretion, clearly erroneous in view of the evidence in the record,

and the GDOT unreasonably withheld the requested certificate. *See* O.C.G.A. §§ 22-3-83; 50-13-19(h)(1-6). Palmetto also requests permission to submit briefs, to present oral argument on this appeal, and that the Court schedule a hearing to resolve Palmetto's petition. *See* O.C.G.A. § 50-13-19(g).

Respectfully submitted this 17th day of June, 2015.

  
Patricia T. Barmeyer  
Georgia Bar No. 038500

  
Jonathan R. Chally  
Georgia Bar No. 141392

KING & SPALDING LLP  
1180 Peachtree Street  
Atlanta, Georgia 30309  
(404) 572-4673 – phone  
(404) 572-5139 – fax

# Exhibit A

## **In RE: Palmetto Products Pipe Line LLC's Application for a Certificate of Public Convenience and Necessity**

### **Background**

On February 13, 2015, Palmetto Products Pipe Line LLC ("Palmetto") filed an application for a Certificate of Public Convenience and Necessity, pursuant to O.C.G.A. § 22-3-80, *et seq.* The notice of the application was first advertised and published in several official county news publications on February 18, 2015, and in the *Atlanta Journal Constitution* on February 19, 2015. The required publication of the notice of the application was completed on February 25, 2015. Six public information meetings were held, and two official public hearings were held regarding Palmetto's application. The first public hearing took place on April 21, 2015, in Richmond Hill, Georgia, and the second hearing took place on May 7, 2015, in Waynesboro, Georgia.

The Department has received a considerable amount of information regarding this application. Among the information submitted for consideration is: (1) Palmetto's submissions through its representative and on its own behalf, including its initial application and supplemental information; (2) comments provided during the public information meetings and public hearings, which were transcribed by a court reporter; and (3) approximately 3,000 comments received through regular mail and e-mail. I have also considered publicly available information published by the U.S. Energy Information Administration ("EIA"), fuel consumption projection information utilized by the Office of Planning and Budget for budgeting purposes, which is provided by the State Economist and the Georgia Department of Revenue ("GDOR"), Federal Highway Administration ("FHWA") data on past fuel consumption in Georgia and other readily available information.

As Commissioner and the decision maker in this process, I am fully aware of the impact that my decision will have on affected corporations and individuals. I have given a great deal of thought and consideration to the information that has been provided to the Department in this process, as well as to the level of authority given to me by the governing statute in making this decision. Finally, I have given significant consideration to the voluminous information submitted by Palmetto, and by interested individuals and groups.

It is noted that my review of this matter is focused on whether the pipeline would be a public convenience and necessity and that O.C.G.A. Sec. § 22-3-83 does not empower me to consider the environmental effects of the project, or to review whether pre-existing easements and rights of way should be utilized, or to consider any other factor not listed in the statute. While the statute does not specifically define the term "public convenience and necessity," other Georgia code sections do provide some guidance. Specifically, in a similar subject matter, O.C.G.A. § 46-4-25 provides guidance to the Public Service Commission when determining whether to issue a Certificate of Public Convenience and Necessity for natural gas pipelines. Therefore, when determining whether to grant Palmetto's request for a Certificate of Public Convenience and Necessity, I have tried to determine the overall intent of O.C.G.A. § 22-3-80, *et seq.*, and I have



used O.C.G.A. § 46-4-25 as a general reference related to the phrase “public convenience and necessity” in making my determination.

### **Decision**

Based on all of the information that has been considered, and for the following reasons, I find that there is substantial evidence showing that the pipeline would not constitute a public convenience and necessity. Accordingly, Palmetto’s application for a Certificate of Public Convenience and Necessity is denied.

### **Discussion**

One of Palmetto’s primary arguments in support of the proposed pipeline is that it will meet the future demand for petroleum in the region in both the near-term and long-term. Considering long-term demand and addressing an increase in demand is relevant to my decision. For example, looking at O.C.G.A. § 46-4-25 as guidance, three of the factors to consider with regard to the public convenience and necessity for a natural gas pipeline involve the potential demand and need for the pipeline. Those are: “(1) Whether existing gas pipelines or distribution systems are adequate to meet the reasonable public needs; (2) The volume of demand for such gas, and whether such demand and that reasonably to be anticipated in the future can support already existing gas pipeline and distribution systems, if any, and also the pipeline or distribution system proposed by the applicant; [and] (4) The adequacy of the supply of gas to serve the public [.]”

In support of its forecast for growth in the consumption of fuel, Palmetto relies on data from “*The Motor Use Fuel Tax in Georgia: Collection Efficiency, Trends, and Projects*,” by the University of Georgia’s Carl Vinson Institute of Government (“CVIOG”), December 2010. Citing this document, Palmetto ties increased fuel consumption to projected increases in population and suggests that, in 2020, motor fuel consumption will have increased by 15.4% over the 2011 level of consumption. Palmetto states that motor fuel consumption is expected to increase faster than the state’s population, even when factoring in increases in fuel efficiencies in newer model cars and trucks<sup>1</sup>. However, this information is contradicted by several sources including the forecast by the U.S. Energy Information Administration (“EIA”), which states: “Consumption of petroleum products across all sectors in 2040 is unchanged from 2013 levels, as motor gasoline consumption in the transportation sector declines as a result of a 70% increase in the average efficiency of on-road light-duty vehicles ... which more than offsets projected growth in vehicle miles traveled (VMT).”<sup>2</sup>

Georgia has experienced increased population growth but less fuel consumption over the last few years. In the past 10 years the highest fuel consumption in Georgia occurred in 2006 when it was at 6.5 million gallons per year as noted in the FHWA MF-33 Tables and GDOR data. An analysis of that data indicates the 2016 projection for fuel consumption is approximately 8% lower than the 2006 high, and the 2020 fuel consumption forecast is approximately 9% lower than 2006. Thus, the evidence reflects an overall downward trend in fuel consumption and the

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<sup>1</sup> See Palmetto’s May 6, 2015, Second Supplement to Its Application, at Tab E, Section 1.

<sup>2</sup> U.S. EIA’s *Annual Energy Outlook 2015 with projections to 2040*, page 15.

idea that the pipeline is needed to address current and future increased demands is simply not supported.

In addition to there being little evidence of increasing demand, there also is no evidence that the pipeline would serve to reduce the price of fuel in the region. In fact, Palmetto notes in its May 6, 2015 Second Supplement to Its Application that the pipeline will have no influence over prices. Tab E, Section 4 of that document is entitled, "Palmetto is Needed to Reduce Fuel Transportation Costs to Consumers," yet later it states, in Section 5, "Note: Palmetto will not own the product transported in the pipeline and will not set the price of gasoline at the pump, and therefore has no ability to raise or lower fuel prices."<sup>3</sup> Further, representatives from Palmetto explained at the public information meetings and public hearings that their company would have no control over the ultimate price consumers would pay at the pump for gasoline.<sup>4</sup> Thus, one cannot assume that the mere presence of the pipeline will affect prices in the region.

Currently, the majority of the petroleum available in the region is transported by truck from Macon and North Augusta, S.C. There is no apparent lack of competition in either market. It is generally known that both markets are served by multiple petroleum suppliers and Savannah has two competing ocean terminal petroleum suppliers in the area. There is no reason to believe nor is there any evidence that the presence of the pipeline in the market alone will affect prices in the region.

It is noted that the United States Federal Energy Regulatory Commission ("FERC") granted Palmetto's Petition for Declaratory Order on May 1, 2015. It is also noted by Palmetto that 90% of the volume of the proposed pipeline would be dedicated to committed shippers and 10% to uncommitted shippers. However, Palmetto has not provided the number of committed shippers who make up the 90%. Without any information on the number of committed shippers, it is impossible to determine whether these committed shippers will provide any additional competition to the region, which might, in turn, affect prices. One assumption is that with only one or two committed large petroleum suppliers taking up the full 90% of capacity, competition could actually decrease in the area. Since the proposed volume of fuel that will flow through the pipeline will be as much as 167,000 barrels per day<sup>5</sup>, and since Palmetto estimates that 50-60% of that volume will flow to consumers in Georgia<sup>6</sup>, and since that volume is far greater than the current fuel consumption in the area (only 50,000 bpd)<sup>7</sup>, one could assume that the fuel brought through the pipeline would be of sufficient quantity to replace the current existing fuel supply

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<sup>3</sup> This disclaimer is repeated in Palmetto's May 6, 2015, Second Supplement to Its Application, at Tab I, page 2, statement E.

<sup>4</sup> By way of example, at the public meeting in Brunswick, a representative stated: "[O]ur role in this is the transportation piece. We don't market or sell the gas. We just transport it." (March 12, 2015, Transcript page 21, line 25.) Further, at the public meeting in Rincon, a representative stated: "[N]o, we can't guarantee that prices will go down.... Our piece of this is the transport piece. We don't sell it. We don't drill it. We don't own it. We transport it. So whether the prices are very high or very low doesn't affect the transportation charge. We hope the prices are low. We strongly encourage the price to be low. We don't control that." (March 31, 2015, Transcript page 45, line 22.)

<sup>5</sup> See Palmetto's May 6, 2015, Second Supplement to Its Application, at Tab D.

<sup>6</sup> *Id.*, at Tab C, statement (2); and at Tab E, statement 6.

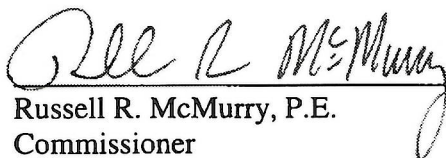
<sup>7</sup> *Id.*, at Tab E, Section 1. "The 23 East and Coastal Georgia counties used ... 50,000 barrels per day (bpd), not counting the large quantities of motor fuels used at Fort Gordon, Fort Stewart, Hunter Army Air Base, and for off-road purposes."



transported by trucks and through the ocean terminals. In that case, those one or two committed shippers could essentially control the supply to the entire area. Conversely, if the 90% committed volume suppliers represent several distinct companies, each with a relatively small portion of the capacity, then that may provide for additional pricing competition. Whether that competition would be equivalent to or greater than the competition that already exists with trucking and ocean terminal transportation is unknown. Therefore, because there are significant unknown facts regarding the potential effect on pricing in the region, I cannot reasonably conclude that the project will provide any benefit to the region in terms of fuel prices.

In coming to my decision to deny the application for a Certificate of Public Convenience and Necessity, I understand that I am not making any determinations as to the importance of the project to Palmetto. I also recognize that, despite the public objections of many who are opposed to the project, there are also a number of individuals who are very much in support of the project.

Georgia law requires me to determine whether the public convenience and necessity of the project is such that the pipeline company should be permitted to use the powers of condemnation to obtain the permanent and temporary easements necessary to accomplish the construction of the pipeline. In this instance, my conclusion is that there is substantial evidence that the construction of the proposed pipeline will not constitute a public convenience and necessity. Accordingly, Palmetto's application is denied.



Russell R. McMurry, P.E.  
Commissioner  
Georgia Department of Transportation

Date: 5/18/2015

# Exhibit B



# Colonial Pipeline Company

---

**Sam Whitehead**  
**Public Affairs Manager**

Phone: 678/762-2333  
Fax: 678/762-2465

July 12, 2007

Commissioner Harold Linnenkohl  
Georgia Department of Transportation  
No. 2 Capitol Square  
Atlanta, Georgia 30334

Dear Commissioner Linnenkohl:

Please accept this application for a Certificate of Public Convenience and Necessity regarding the proposed expansion of Colonial's petroleum products pipeline. The application is pursuant to the provisions of Section 22-3-83 of the official Code of Georgia Annotated, which requires the Certificate before a petroleum products pipeline company may exercise the right of eminent domain for the construction of a pipeline.

The following items are attached:

1. A verified original and five conformed copies of the application
2. A certified copy of Colonial Pipeline Company's articles of incorporation and amendments
3. A check for the application fee of \$200.00
4. Responses to requests for information as detailed in Department of Transportation (DOT) Regulations 672-13-.03
5. Maps indicating the proposed route

Colonial's PROJECT ExCEL team looks forward to working with you and your staff to complete the application process within the regulatory timeframe.

Sincerely,

  
Sam Whitehead


Attachments

**Colonial Pipeline Company**  
**Application for Certificate of Public Convenience and Necessity**  
**July 12, 2007**

**This application responds to Georgia Department of Transportation (DOT) Regulations 672-13-.03 for the purpose of siting a liquid petroleum pipeline. Specific section references appear in parentheses where applicable below.**

**(672-13-.03 (a))**

**Verification of original and five conformed copies of the application by:**

  
\_\_\_\_\_ *sw*  
Kalin Jones, Vice President & General Counsel

**Legal Name of Applicant:** Colonial Pipeline Company

**State of Organization:** Delaware

**Location of principal place of business:**

1185 Sanctuary Parkway, Suite 100  
Alpharetta, GA 30004-4738

P. O. Box 1624  
Alpharetta, GA 30009-9934

**Colonial Pipeline Company is authorized to do business in the following states:**

Alabama, District of Columbia, Delaware, Georgia, Louisiana, Maryland, Mississippi, North Carolina, New Jersey, New York, Pennsylvania, South Carolina, Tennessee, Texas and Virginia

**Description of existing business, operations and properties:**

Colonial Pipeline Company is an interstate common carrier of refined petroleum products. Each day it delivers more than 100 million gallons of gasoline, kerosene, home heating fuels and national defense fuels to shipper terminals in 13 states. The 5500-mile system transports these fuels from Texas, Louisiana, Mississippi and Alabama refineries to marketing terminals located near the major population centers of the Southeast and Eastern Seaboard.

Colonial's corporate headquarters is in Alpharetta, Georgia. The system includes more than 1,000 miles of pipelines in Georgia with a large tankage facility in Austell, and a number of smaller facilities (pumping and delivery stations)



**Colonial Pipeline Company**  
**Application for Certificate of Public Convenience and Necessity**  
**July 12, 2007**

throughout the state. About seventy percent of petroleum products used by Georgians for vehicles, planes, harvesting crops and heating homes are supplied by Georgia-based Colonial Pipeline Company.

Colonial Pipeline provides transportation services for oil refining and marketing companies. Colonial does not own, nor set consumer prices for, the petroleum products it transports.

**(672-13-03 (b))**

**Correspondence or communications should be addressed to:**

Sam Whitehead  
Public Affairs Manager  
Colonial Pipeline Company  
P. O. Box 1624  
Alpharetta, GA 30009-9934

Office: 678-762-2333  
Cell: 404-272-3250

**(672-13-03 (c))**

**Description of the proposed project:**

PROJECT EXCEL proposes to expand Colonial's mainline system by constructing a 36-inch diameter, 460-500 mile pipeline to run parallel to its existing line from Baton Rouge, Louisiana to Austell, Georgia. The proposed expansion, which would use existing right of way easements to the greatest extent practicable, would provide Colonial with the capacity to ship an additional 800,000 barrels per day (more than 33 million gallons), about a 30% increase over current capacity.

The Georgia portion of the total expansion would be 46-50 miles and would run from the Alabama-Georgia state line to the company's existing facility in Austell. The expansion would be limited to four Georgia counties as follows: approximately 19 miles in southern Haralson, 6 miles in northeast Carroll, 14 miles in southeast Paulding and 7 miles in southwest Cobb. Maps of the proposed route are included with this application. Colonial intends to begin actual construction in October 2009 and complete construction in December 2010 or early 2011. The last major expansion of the Colonial pipeline system was in 1980. That project added a second line, in parallel to the first line that was constructed in the early 1960s, from Houston, Texas to Baltimore, Maryland.

**Colonial Pipeline Company**  
**Application for Certificate of Public Convenience and Necessity**  
**July 12, 2007**

The 1980 expansion included the area in Georgia that now requires a third line to meet increasing demand for petroleum products.

All applicable federal and state laws and regulations on the siting of the pipeline will be met. The other three states where the project will be constructed, Louisiana, Mississippi and Alabama, do not require a similar certificate of convenience and necessity. Georgia DOT and EPD are the only agencies with such requirements.

**(672-13-03 (d))**

**Description of the public convenience and necessity which support the proposed pipeline route:**

Colonial owns and operates the largest refined products pipeline system in the United States, serving numerous refineries in the Gulf Coast region as well as consumer markets in the Southeast and Mid-Atlantic states. Demand for petroleum products in Colonial's markets, particularly in Georgia and other Southeastern States, has been increasing, and that trend is expected to continue. As a consequence, Colonial's mainline pipeline capacity has become constrained in recent years at all points downstream (i.e., north and northeast) of Collins, Mississippi. This constraint has resulted in pro-rationing, or allocation, of shipper requests for product movements approximately 25% of the time. Pro-rationing of the line capacity is expected to increase to approximately 50% of the time by 2008 and to be a routine occurrence by 2010. In short, constraints on Colonial's system are projected to worsen in the coming years, as Gulf Coast refinery capacity and consumer demand in Colonial's market region both increase.

To alleviate these system constraints, Colonial proposes to expand its mainline system by construction of an additional line. Because the expansion would relieve specific constraint points along the system, it would provide additional capacity necessary to meet the growing needs of nearly all of Colonial's shippers. Colonial expects this expansion will provide additional capacity sufficient to meet long-term growth expectations throughout Colonial's market area for as much as the next 20 years. In contrast, absent such an expansion, there will be no cost-effective way to handle the increased volumes expected as a result of various announced refinery expansions. In addition, the expansion project will enhance the overall reliability and stability of Georgia's and the nation's energy supply.

The only other pipeline that transports refined petroleum products into Georgia is Plantation Pipe Line. There are natural gas pipelines that serve Georgia, and the Dixie Pipeline transports liquid petroleum gas (LPG), primarily butane and



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**Application for Certificate of Public Convenience and Necessity**  
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propane, which is not the same as the gasoline, diesel fuel and jet fuel that is transported by Colonial Pipeline and Plantation Pipe Line. It would be difficult for any competitor to provide the additional capacity for refined products because this project entails the construction of assets incremental to existing infrastructure. Colonial's project adds a third line only in the bottleneck region and in the existing footprint. Colonial has ample capacity upstream of the bottleneck, which is connected to numerous Gulf Coast refinery origin points, and downstream, to markets beyond Georgia. Any competitor, including Plantation, would need the same connectivity to Gulf Coast refineries, which they currently do not have.

**(672-13-03 (e))**

**Width of the proposed pipeline corridor:**

Colonial, like most pipelines, does not purchase right of way in fee simple. Perpetual, or permanent, easements are acquired to place the pipeline underground. Property owners may continue to use the property with some conditions in place to ensure the safety and security of the pipeline. The existing permanent easement width impacted by the proposed project is approximately 75 feet. The proposed additional permanent easement width is 25 feet. This would make the total permanent easement width after construction 100 feet. The proposed temporary easement width to provide sufficient workspace during construction is an additional 40 feet. The property used for workspace during construction would revert to the original owner without restriction following installation of the pipeline.

**(672-13-03 (f))**

**The power of eminent domain may be necessary to construction of the pipeline:**

Colonial has met with the U. S. Army Corps of Engineers (USACE) in each state to discuss the preferred routing of the pipeline. The USACE is the lead permitting agency for this project. In all cases, USACE indicated that whenever practicable Colonial should site the new pipeline immediately adjacent to the existing pipelines. Exceptions to this siting would be for congested areas, avoidance of protected species, culturally significant areas and historically significant areas. In addition, Georgia law (22-3-84 (c) (2)) requires that the Environmental Protection Division (EPD), in their process for permitting a pipeline to use the power of eminent domain, consider whether routes of public utilities already in existence may be reasonably used for the siting of a pipeline. In this instance, Colonial intends to utilize its own existing route. To fully utilize the



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route, as preferred by both the federal permitting agency and the EPD, the power of eminent domain may be necessary.

The use of eminent domain may become critical if a landowner refuses to accept any offer for an easement across their property. The determination of a reasonable offer would be made by conducting an appraisal of the property in question. Colonial would make several attempts to negotiate with the landowner before attempting to use eminent domain. However, an individual who does not negotiate in good faith with Colonial could force the pipeline to move away from the area where the federal and state permitting agencies would prefer us to build. The permitting requirements of agencies such as the United States Army Corps of Engineers (USACE) are in addition to the Certificate that is required from the Georgia DOT and the permit that is required from the Environmental Protection Division under the code section to which this application refers.

**(672-13-03 (g))**

**The public necessity for the pipeline justifies the use of the power of eminent domain:**

Seventy percent of petroleum products used by Georgians for vehicles, planes, harvesting crops and heating homes are supplied by Georgia-based Colonial Pipeline Company. Colonial's pipeline system is experiencing more and more periods when the demand for shipments on our pipelines exceed our capacity. The existing Colonial mainline system is expected to reach chronic rationing, or allocation, of its available capacity in 2010. Some spur lines, such as Colonial's line that serves middle and southern Georgia, are already on allocation much of the time. Governor Perdue's Energy Policy Council developed a State Energy Strategy in 2006 that recognizes the need to "Enhance Petroleum Infrastructure to Minimize Vulnerability to Supply Interruptions." (A copy of the State Energy Strategy is included with this application.) Colonial's expansion plan is the most immediate and viable method to accomplish this objective.

High prices and spot shortages of gasoline in the aftermath of hurricanes Katrina and Rita in 2005 are examples of how fuel prices can increase during a supply and transportation interruption. A more sustained impact to petroleum supply and transportation would substantially increase the likelihood of prolonged fuel shortages and higher fuel prices.

Alternatives to pipeline fuel transportation in Georgia are severely limited. The only other petroleum pipeline that serves Georgia (Plantation Pipe Line) is a much smaller system than Colonial's. Plantation transports only about 24% of the refined petroleum products used in Georgia. Trucking and the Port of Savannah account for the balance of about 6%. Like Colonial, Plantation does



# **Colonial Pipeline Company**

## **Application for Certificate of Public Convenience and Necessity**

### **July 12, 2007**

not have the capacity to meet growing demand into the future. Other alternatives consist mostly of foreign imports and domestic supply from the Gulf Coast via ships and barges to ports such as Jacksonville and Savannah, with further trucking of this waterborne supply over great distances to interior markets such as Macon and Atlanta.

Use of ships, barges and trucks to transport petroleum products are much more expensive and less safe than pipeline transport over long distances. The approximate Colonial Pipeline transportation cost from Houston to Atlanta is two cents per gallon. The approximate waterborne cost from Houston to Jacksonville (four cents per gallon) plus the approximate trucking cost from Jacksonville to Atlanta (eight cents per gallon) is a total cost from Houston to Atlanta of twelve cents per gallon, which is six times more expensive than equivalent pipeline transportation.

Many markets in Georgia such as Rome, Griffin, Macon, Americus, Albany, Augusta and Bainbridge receive a substantial portion of their petroleum supply via Colonial stublines that branch from the larger mainline system that we need to expand. Without mainline expansion, Colonial cannot economically justify expansions of these smaller stublines and therefore trucking of fuel supplies would likely increase dramatically. The completion of the proposed expansion of Colonial's mainline (PROJECT ExCEL), would make other expansion projects feasible by ensuring adequate supplies to feed the smaller stublines that serve other parts of the state, particularly markets in middle and southern Georgia. The line that runs from Colonial's Austell facility into that area could increase its capacity to meet current and existing demand in the immediate future by adding new pumping stations and no additional pipeline. Further into the future, however, that line would require an additional pipeline to be laid next to the existing one. Before doing that, Colonial would again make an application to the DOT for an additional Certificate, and if issued, would then apply to the EPD for an additional permit for that line.

Pipelines do not overburden congested highways and surface streets like tanker trucks. For example, a Colonial stubline runs south from Austell to Griffin, Macon, Americus, Albany and Bainbridge. If those areas were instead served via trucking out of the Port of Jacksonville, Florida, approximately 200 tanker trucks would be added to Georgia roads operating every day of the year, to all of those same areas.

Normally, the pump price for gasoline in a given market is determined by the cost of the incremental supply. Therefore, large increases in petroleum transportation costs due to marine and trucking could be borne across much of Georgia if this is the only alternative supply of petroleum to the Georgia marketplace when pipeline capacity is constrained.

**Colonial Pipeline Company**  
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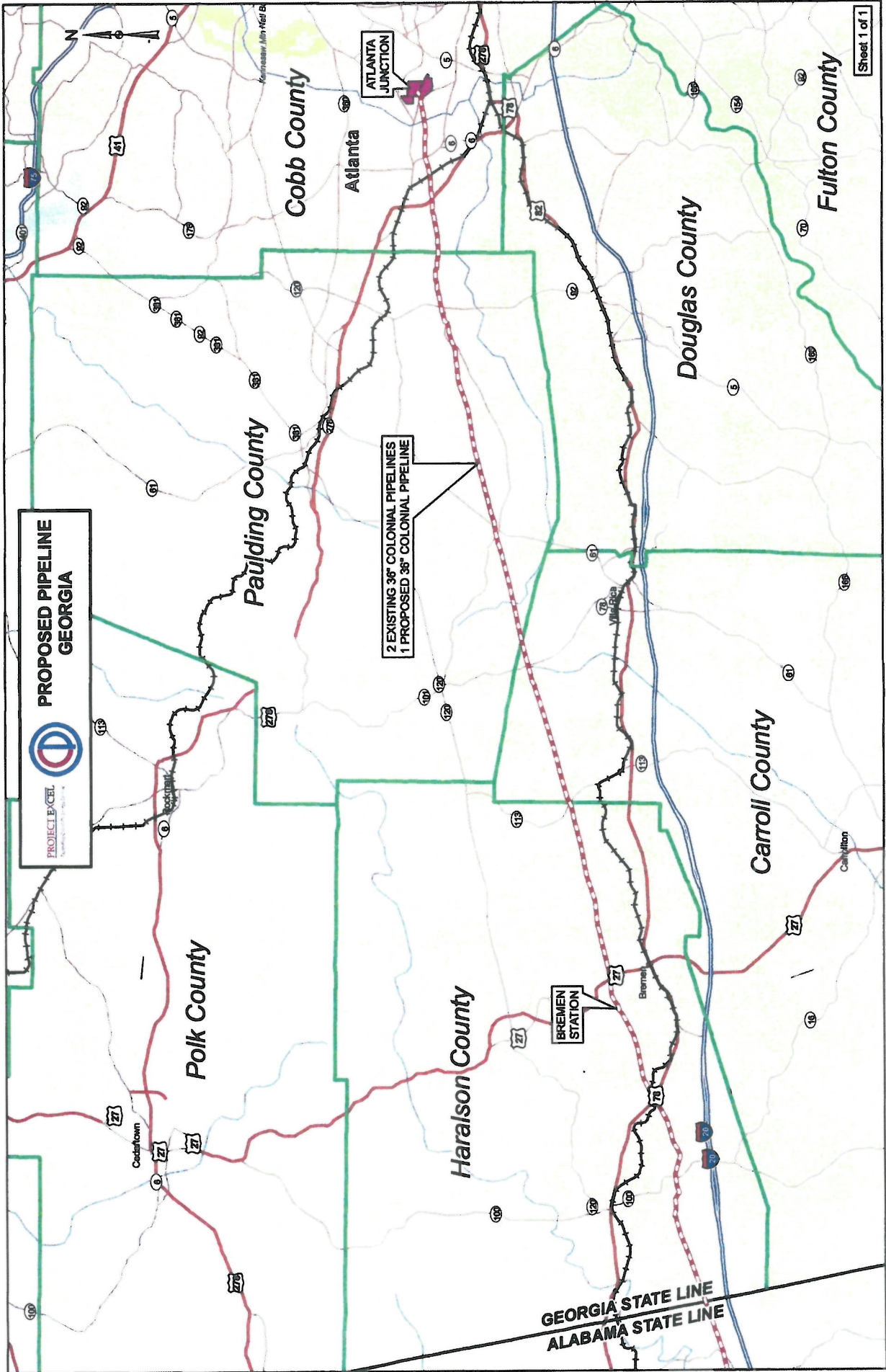
Even with a robust bio-fuels program, hybrid auto program, conservation program and other alternative energy programs, Georgia's need for increased petroleum products is substantial and will continue to grow. Colonial's mainline expansion project will meet that energy need.

The obvious need for petroleum pipeline expansion has been recognized and endorsed by numerous businesses and associations via comments during hearings in support of Senate Bill 173 that was considered in the 2007 Georgia legislative session. These include Delta Air Lines, Georgia Chamber of Commerce, Agri-business Council, BP Oil Company, Georgia Petroleum Council, Georgia Association of Convenience Stores, AAA Auto Club South, Georgia Automobile Dealers Assoc., Georgia Motor Trucking Association and the Georgia Oilmen's Assoc.

For example, Gary W. Black, President of the Georgia Agribusiness Council said, "When hurricane Katrina joined hands with the fuel demands of over 9 million Georgia citizens in a flourishing economy at harvest time, the perfect storm wreaked near perfect disaster for many segments of Georgia agriculture. I have been on the end of the phone searching for fuel for a family farmer to complete the harvest of his crop. The regulatory process must proceed in an orderly fashion, but rest assured, the need is real. The time for increased capacity is now."

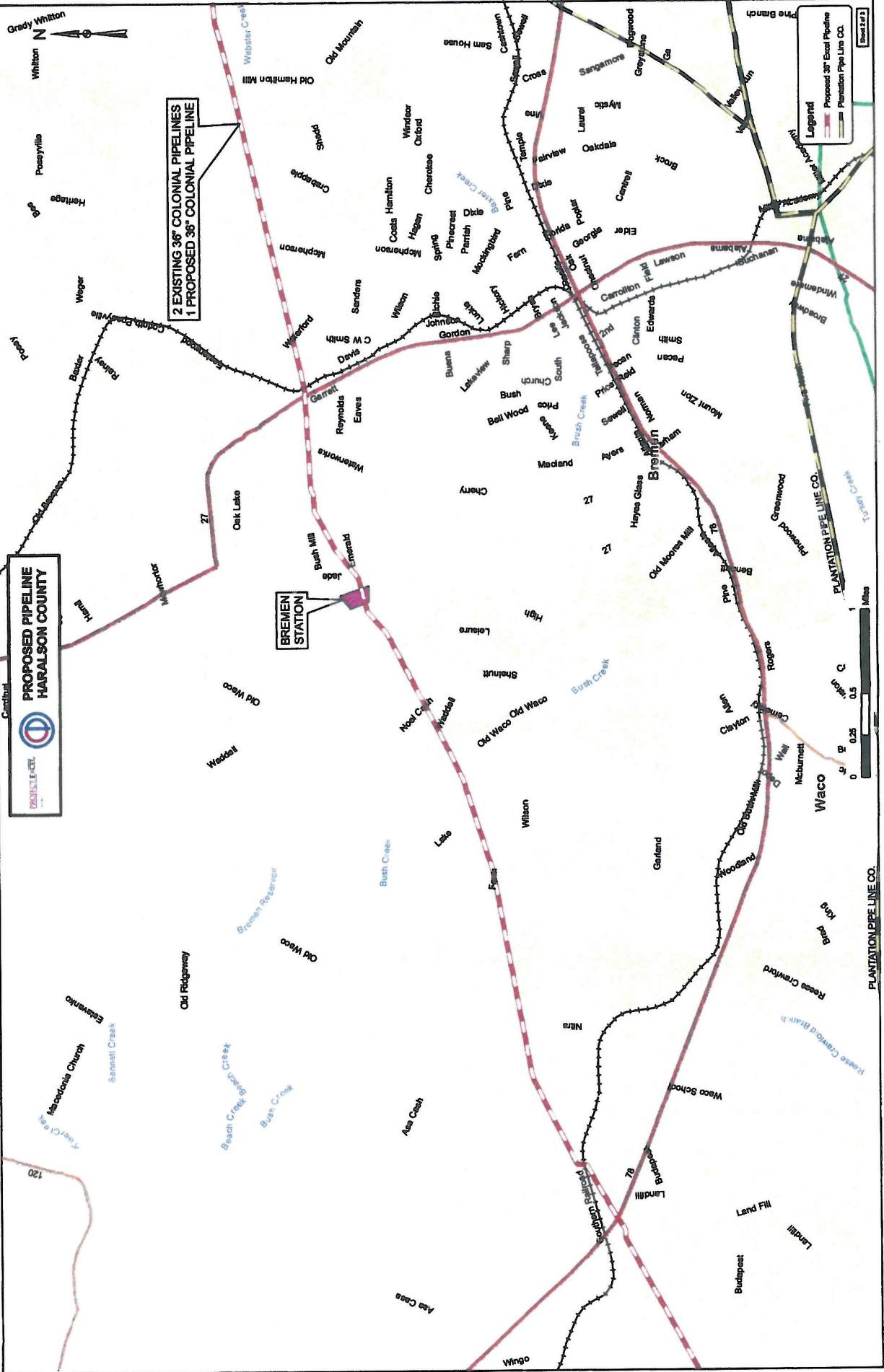
On July 20, 2006, the Federal Energy Regulatory Commission responded to a Colonial Pipeline Company petition regarding a rate structure for expansion of its mainline (Docket No. OR06-8-000). The response noted (Section IV, B, paragraph 43) that "Colonial has demonstrated that the expansion is needed, that the expansion will ensure the reliable transportation of refined product, and that the expansion will reduce congestion (i.e., occurrences of prorationing)." Copies of the Colonial petition and the FERC response are included with this application.











**PROPOSED PIPELINE HARALSON COUNTY**

**2 EXISTING 36" COLONIAL PIPELINES**  
**1 PROPOSED 36" COLONIAL PIPELINE**

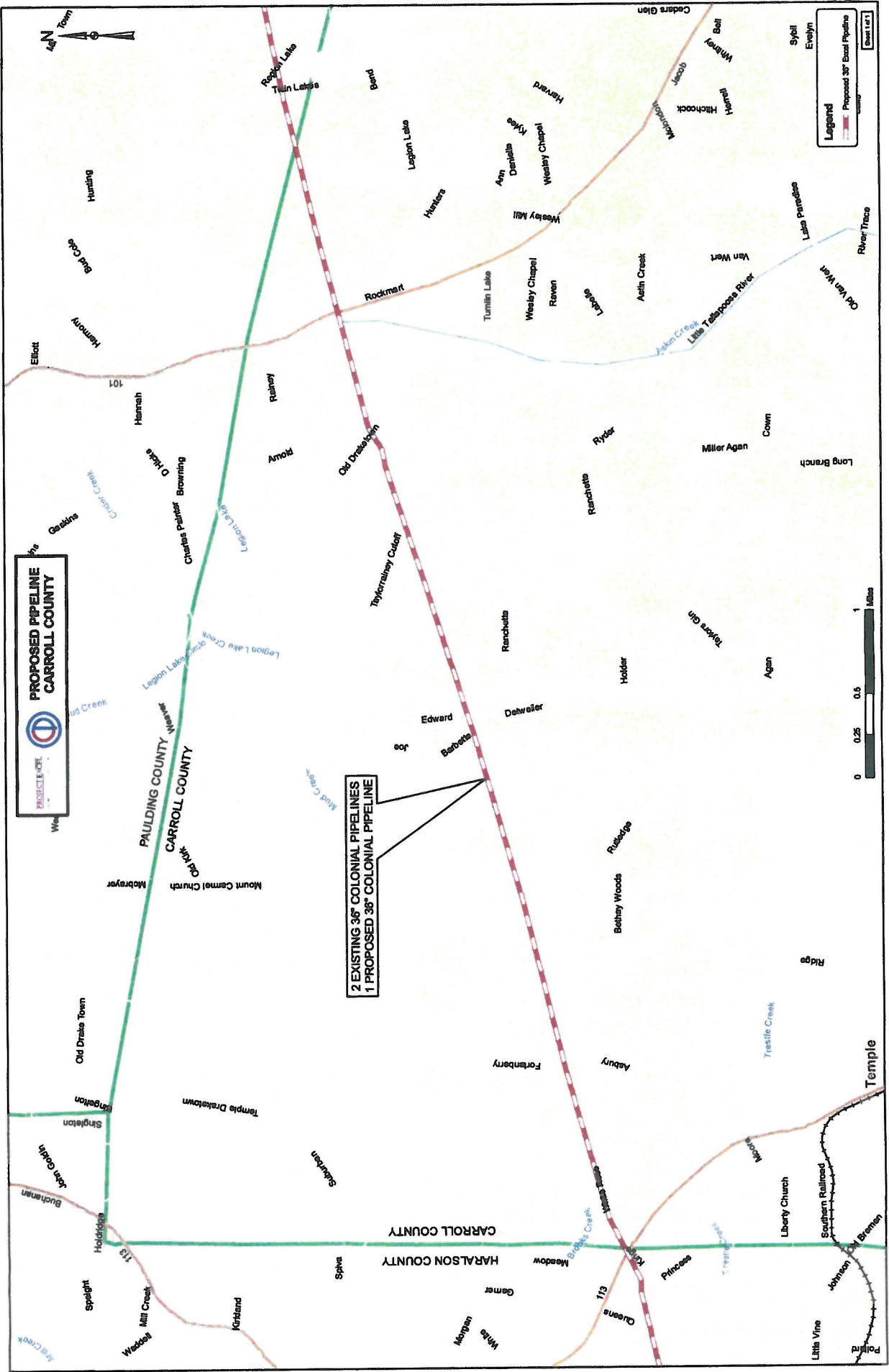
**BREMEN STATION**

**Legend**  
 Proposed 36" Colonial Pipeline  
 Existing 36" Colonial Pipeline  
 Plantation Pipe Line Co.

1 Mile  
 0.5  
 0.25  
 0  
 0.25  
 0.5  
 1  
 Miles

Sheet 2 of 2





**PROPOSED PIPELINE  
CARROLL COUNTY**

**2 EXISTING 36" COLONIAL PIPELINES  
1 PROPOSED 36" COLONIAL PIPELINE**

**Legend**  
 Proposed 36" Colonial Pipeline  
 Existing 36" Colonial Pipeline



**PAULDING COUNTY**  
**CARROLL COUNTY**  
**HARLSON COUNTY**

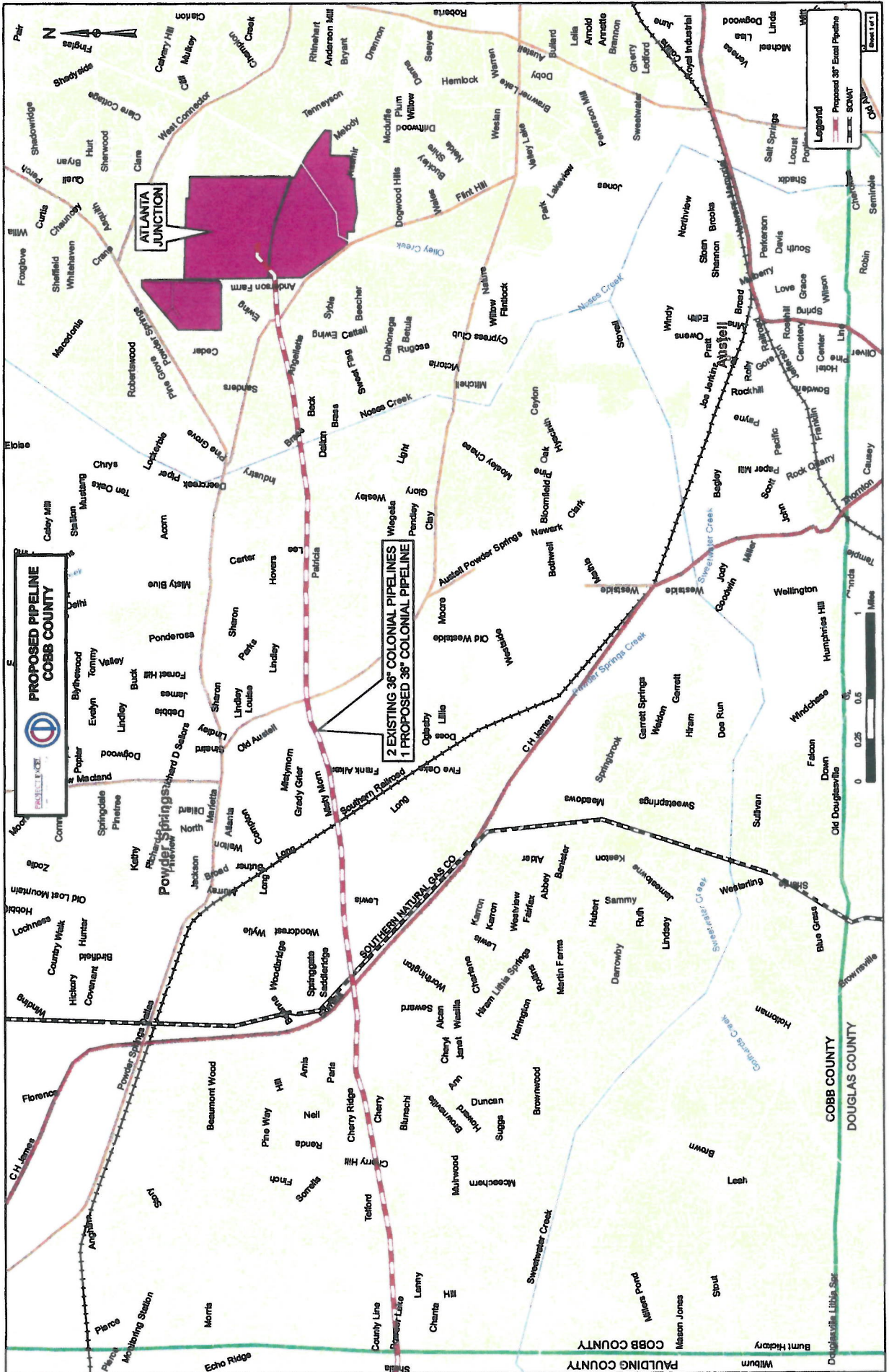
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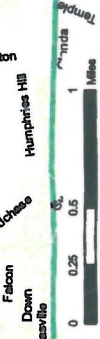
**PROPOSED PIPELINE  
COBB COUNTY**



**ATLANTA  
JUNCTION**

**2 EXISTING 36" COLONIAL PIPELINES  
1 PROPOSED 36" COLONIAL PIPELINE**

**Legend**  
 - - - - - Existing 36" Colonial Pipeline  
 - - - - - Proposed 36" Colonial Pipeline  
 - - - - - 36" S.W.M.T.



Map labels include street names such as: C.H. James, Powder Springs Highway, Atlanta-Fulton County Stadium, and various residential streets like Windy, Northview, and Sweetwater. Water features include Sweetwater Creek, Powder Springs Creek, and Little Creek. The map also shows the locations of Paulding County, Douglas County, and Cobb County.

# Exhibit C



151 FERC ¶ 61,090  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Palmetto Products Pipe Line LLC

Docket No. OR15-13-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 1, 2015)

1. On January 23, 2015, Palmetto Products Pipe Line LLC (Palmetto) filed a petition for declaratory order requesting that the Commission approve the rates, and terms and conditions of service for a new pipeline system that Palmetto is developing to transport refined petroleum products and denatured fuel ethanol from origin points in Louisiana, Mississippi, and South Carolina to destination points in South Carolina, Georgia, and Florida. Palmetto requests that the Commission act on the petition no later than April 30, 2015, to allow Palmetto to meet the requirements for timely completion of the pipeline and to permit Palmetto to meet its transportation service obligations for the pipeline. For the reasons discussed below, the Commission grants Palmetto's petition.

**Background**

2. Palmetto states that it has developed a pipeline project that will provide significant benefits to the energy industry by offering an alternative source of supply, and the first major pipeline source, of refined petroleum products and denatured fuel ethanol to consumers in the southeast portion of the United States. Palmetto states that it will transport refined petroleum products, including gasoline, petroleum oil distillates, biodiesel blend, and renewable diesel blend, from origin points in Baton Rouge, Louisiana; Collins and Pascagoula, Mississippi; and Belton, South Carolina to destination points in North Augusta, South Carolina; Savannah, Georgia; and Jacksonville, Florida. The pipeline will also transport denatured fuel ethanol as a purity product, on a batched basis, from the Belton origin point to each of the destination points.

3. The pipeline will provide approximately 125,000 barrels per day (bpd) of capacity for shipments that originate from Baton Rouge, Collins, and Pascagoula for delivery to the destination points (Segment One Pipeline Capacity). The pipeline will provide an additional 42,000 bpd of capacity for shipments from Belton for delivery to the destination points (Segment Two Pipeline Capacity). The total design capacity of the pipeline is approximately 167,000 bpd.

4. Palmetto states the Segment One Pipeline Capacity will be acquired by Palmetto via a long-term lease with Plantation Pipe Line Company (Plantation). Palmetto will lease two types of capacity from Plantation: (1) capacity that has been historically and consistently underutilized on Plantation's system (Underutilized Capacity), and (2) capacity that Plantation will create on its system through expansion and construction efforts (Expanded Capacity). The Underutilized Capacity that Plantation will lease to Palmetto extends from Pascagoula, Mississippi to Collins, Mississippi and will equal approximately 32,350 bpd. Palmetto submits that this capacity has not been used by any shipper on Plantation's system for at least ten years. The Expanded Capacity that Plantation will lease to Palmetto will consist of approximately 121,000 bpd from Baton Rouge, Louisiana to Collins, Mississippi and approximately 125,000 bpd from Collins, Mississippi to Belton, South Carolina. Plantation will create the Expanded Capacity by constructing and/or modifying existing pump stations, pumps and motors, tankage and appurtenances on its system. Plantation will recover the costs for such Expanded Capacity solely through the lease payments from Palmetto. Palmetto submits that because the leased capacity is either being newly constructed by Plantation or has not been used by any shipper on Plantation's system for an extended period, Plantation's current shippers will not be impacted by Plantation's lease of this capacity to Palmetto.

5. Palmetto asserts that its pipeline will promote competition in the Savannah and Jacksonville markets, which could decrease prices to consumers, because it will provide these markets with their first major pipeline source of refined petroleum products. Palmetto states that these markets are currently only supplied with refined petroleum products via truck or marine transportation. Palmetto also states that the pipeline will help ensure that the supply needs of the markets are served during inclement weather conditions because unlike marine transportation vessels, the pipeline will not be directly affected by such events. Palmetto states that the pipeline will benefit the North Augusta market because it is only served by one pipeline source and as a result the market has experienced supply constraints over the long term. Palmetto submits that the pipeline should help to alleviate such constraints because it is expected to deliver at least 40,000 bpd of refined petroleum products directly into the market. Palmetto states that the pipeline will provide each of the destination markets with their first pipeline source of denatured fuel ethanol. Currently, ethanol is supplied to these markets either by railroad or truck.

6. Palmetto states that it will be required to invest in excess of \$1 billion in order to develop the pipeline. In order to determine interest in the pipeline, Palmetto held an open season from August 4, 2014, to October 30, 2014. The open season was widely publicized through a press release reported through the trade press and extensive marketing efforts by Palmetto. Interested parties were given an Open Season Notice providing a summary of the proposed terms and conditions of service and were also given the opportunity to provide comments on the proposed terms and conditions. Palmetto states that it incorporated many of the comments into the Open Season documents



including the Transportation Services Agreement (TSA). Potential shippers who executed confidentiality agreements were given a *pro forma* TSA, the proposed rates, and the proposed rules and regulations tariff. Palmetto states that by the close of the Open Season it concluded that the level of volume commitments it had received from Committed Shippers was sufficient to proceed forward with the development of the pipeline.<sup>1</sup>

### **Palmetto's Proposed Terms of Service**

7. Under Palmetto's proposal, committed shippers would receive 90 percent of the pipeline capacity and uncommitted shippers would receive 10 percent of the pipeline capacity. Committed shippers make a Volume Commitment to ship-or-pay for a specified volume each year during the term of its TSA. Committed shippers could elect a five-year or ten-year term. A committed shipper's Volume Commitment divided by 12 months equals its Monthly Volume Commitment. In addition to the Volume Commitment, committed shippers will be required to specify the types of products to be shipped and the origin and destination points. This will ensure that there is sufficient capacity to fulfill all Volume Commitments because capacity varies between origin and destination points and depending on the products shipped. Committed shippers will receive firm capacity that is not subject to prorationing except in instances of *force majeure* or operational disruptions. In order to receive firm service, committed shippers will pay higher rates than uncommitted shippers. Similar to committed shippers, uncommitted shippers will pay rates that depend on the volume of products shipped during a particular month. The volume tiers for the committed and uncommitted rates will be the same. The TSA permits Palmetto to adjust the committed rates based on the Commission's indexing methodology and to file the committed rates as settlement rates.

8. Committed shippers will also have the ability to nominate volumes on a firm basis that vary or exceed their Monthly Volume Commitments. Flexible-Service Barrels allows a shipper to change the product types or origin and destination points. Incremental Barrels allows a shipper to exceed its Monthly Volume Commitment. The flexibility provided to committed shippers will only be provided in the event that it is operationally feasible; all committed shippers have been allocated their Monthly Volume Commitment; and 10 percent of capacity always remains reserved for uncommitted

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<sup>1</sup> Palmetto also established a capacity allocation plan in the event that volume commitment by committed shippers exceeded the committed capacity. Implementation of the plan was not necessary and Palmetto gave committed shippers the right to make an additional commitment for a period of seven days following the conclusion of the open season.

shippers. To the extent that a committed shipper's transportation charges do not meet or exceed its yearly contractual commitment, it will be required to make a shortfall payment.

9. Palmetto established a prorationing policy to allocate capacity in the event that it receives more nominations for transportation service in a month than it is able to provide. With respect to committed capacity, Palmetto will first allocate capacity up to the shipper's Monthly Volume Commitment provided that it does not vary by product or origin and/or destination. Any additional nominated capacity will be treated as Flexible-Service Barrels. Capacity will then be allocated to Flexible Service Barrels and such capacity will be allocated on a *pro rata* basis if the Flexible Service Barrels exceeds available capacity. Assuming capacity is available, Palmetto would then allocate Incremental Barrels. Incremental Barrels will be allocated on a *pro rata* basis if there was not enough available capacity. Non-priority capacity will be allocated to uncommitted shippers based on a historical prorationing model. Regular Shippers who ship for 6 months out of a 12-month defined period would receive 90 percent of the non-priority capacity. Regular Shippers would receive the lesser of their nominated volumes or their percentage of capacity shipped during the 12-month base period. New Shippers, who are uncommitted shippers who are not Regular Shippers, would receive 10 percent of the non-priority capacity. New shippers would be allocated their nominations or *pro rata* share. If any capacity remains, Palmetto would allocate Non-Priority Incremental Barrels to committed shippers who had unmet nominations.

10. Palmetto states that the TSA provides that Palmetto and Plantation may agree to establish a joint tariff for movements from origin points on Plantation's system to destination points on Palmetto's system. Palmetto states that joint tariff rates would be similar to the committed rates in the TSA and committed shippers would pay a premium relative to uncommitted rates. Any potential uncommitted joint rates would be offered volume-incentive rates. Palmetto also states that the prorationing policy of each component pipeline would govern allocations of capacity for the portion of the joint movement that occurs on that pipeline.

11. To the extent that certain segments of the pipeline become available for use before other segments, the TSA allows Palmetto to provide transportation service on a limited basis prior to the in-service date of the pipeline. Palmetto would file a tariff with the Commission establishing the rates, rules, and regulations for such interim service and they could differ from those provided in the TSA. There would be no firm service and capacity would be allocated among all potential shippers on a *pro rata* basis.

12. In order to achieve the most efficient use of the leased capacity, the lease between Palmetto and Plantation contemplates that Palmetto will release any portion of the leased capacity that is not used by Palmetto shippers in any month back to Plantation for the potential use by Plantation's shippers during such month. Prior to the in-service date or interim in-service date all the leased capacity that is then available will be released



automatically to Plantation each month. Following the in-service date or interim in-service date, the release will occur each month only if a portion of the leased capacity remains available after Palmetto fulfills all requested nominations. The releases will occur month-to-month and will revert back to Palmetto at the end of each month.

13. In the event Palmetto elects to expand the capacity of the pipeline, the TSA provides that Palmetto will provide all committed shippers a first right to submit binding nominations to ship-or-pay for a committed volume of products on the expansion capacity without first holding an open season for such capacity. The amount of the expansion capacity that will be available for volume commitments will not exceed 90 percent of the total available expansion capacity.

14. Each committed shipper elected an initial term for the agreement of five or ten years. The TSA will automatically renew for a five-year period upon the expiration of the initial term unless Palmetto or the committed shipper terminates the agreement by giving at least one year's notice. After the renewal term ends, the TSA will automatically renew for successive one-year terms unless either party terminates upon at least six months' notice.

#### **Requested Rulings in Palmetto's Petition**

15. Palmetto asks the Commission to approve as just and reasonable and not unduly discriminatory or preferential the requests discussed below.

16. Palmetto requests that the TSA will be honored and its provisions will be upheld and will govern the transportation services Palmetto provides to a committed shipper during the term of the TSA.<sup>2</sup>

17. Palmetto requests that the Commission find that it has jurisdiction over the interstate transportation of denatured fuel ethanol by pipeline and therefore has authority to approve the proposed terms and conditions of service related to the pipeline's transportation of ethanol. To date, the Commission has not ruled on whether its jurisdiction under the Interstate Commerce Act (ICA) extends to interstate transportation of this commodity by pipeline. However, based on the analysis set forth in *Gulf Central*<sup>3</sup>

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<sup>2</sup> Citing, e.g., *Mid-America Pipeline Co.*, 136 FERC ¶ 61,087, at PP 9, 18-19 (2011); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 22 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 17 (2013).

<sup>3</sup> Citing, *Gulf Central Pipeline Co.*, 50 FERC ¶ 61,381 (1990) (*Gulf Central*), *aff'd*, *CF Industries Inc. v. FERC*, 925 F.2d 476 (1991) (*CF Industries*).



regarding the scope of the Commission's jurisdiction under Section 306 of the Department of Energy Organizational Act of 1977 (DOE Act), Palmetto submits that jurisdiction over the interstate transportation of ethanol by pipeline resides with the Commission.

18. Palmetto requests that a committed shipper may receive firm transportation on the pipeline in exchange for paying a premium rate for such transportation, as compared to the rate applicable to a similarly-situated uncommitted shipper.<sup>4</sup>

19. Palmetto requests that it may transport Flexible-Service Barrels and Priority Incremental Barrels on a priority basis, at the committed rates, provided that its transportation of such barrels does not reduce the amount of capacity reserved for uncommitted shippers.<sup>5</sup>

20. Palmetto requests that it may use the leased capacity, including the underutilized capacity, to provide firm transportation services pursuant to the TSA. Palmetto submits that the Commission has approved oil pipelines' offering of firm transportation services on newly constructed capacity in multiple instances, and the Commission should afford the same treatment to the lease of underutilized capacity presented here.<sup>6</sup> In doing so, Palmetto asserts that the Commission should confirm that such a lease of underutilized capacity is separate and distinct from the factual situation presented in *Colonial*,<sup>7</sup> where the Commission rejected the pipeline's attempt to offer preferential capacity rights on an existing, but fully utilized, portion of its system.

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<sup>4</sup> Citing, e.g., *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 24 (2013); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *Shell Pipeline Co.*, 139 FERC ¶ 61,228, at P 21 (2012).

<sup>5</sup> Citing, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 29 (2013); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014).

<sup>6</sup> Citing, e.g., *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095 (2014) (approving firm service on a new greenfield liquids pipeline system); *Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P.*, 141 FERC ¶ 61,005, at P 19 (2012) (approving firm service on a new crude oil pipeline system); *CCPS Transportation, LLC*, 122 FERC ¶ 61,123 (2008) (approving firm service on expansion capacity).

<sup>7</sup> *Colonial Pipeline Company*, 146 FERC ¶ 61,206 (2014) (*Colonial*).

21. Palmetto requests that it may allocate up to 90 percent of the total capacity available on the pipeline to committed shippers, while reserving the remaining 10 percent of capacity for uncommitted shippers.<sup>8</sup>

22. Palmetto requests that it may include the proration policy, as set forth in the TSA, to govern the allocation of capacity on the pipeline during months when the pipeline is in prorationing.<sup>9</sup>

23. Palmetto requests that it may file, at its election, the committed rates as settlement rates during the term of the TSA, including upon the initial filing of the committed rates in Palmetto's tariff, pursuant to section 342.4(c) of the Commission's regulations.<sup>10</sup>

24. Palmetto requests that in the event a joint tariff is established, committed shippers may transport barrels on a priority basis on the pipeline under such joint tariff, provided the committed shippers pay the committed shipper joint rates for such transportation service.

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<sup>8</sup> Citing, *e.g.*, *See, e.g.*, *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 27 (2014); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 12 (2013); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008).

<sup>9</sup> Citing, *e.g.*, *Belle Fourche Pipeline Co.*, 28 FERC ¶ 61,150, at 61,281-82 (1984) (giving pipelines the authority to develop prorationing programs); *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at P 14 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999) and *Total Petroleum, Inc. v. Citgo Products Pipeline Co.*, 76 FERC ¶ 61,164, at 61,947 (1996) (no single allocation method, giving pipelines latitude to meet operational circumstances); *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 15 (2012) (approving proration policy allocating capacity first to Committed Shippers, then New Shippers up to 10 percent of capacity, then Regular Shippers based on historical shipments); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 24 (2006) (approving proration policy that reserved a percentage of available capacity to regular shippers while reserving 10 percent of capacity for new shippers).

<sup>10</sup> Citing, *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18 (2013); *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013); *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 26 (2013).



25. Palmetto requests that it may provide transportation service on the pipeline during the interim service period, subject to the terms outlined in the TSA.<sup>11</sup>

26. Palmetto requests that it may release any unused portion of the leased capacity to Plantation each month, in accordance with the terms of the lease and the TSA.

27. Palmetto request that it may provide a committed shipper with the expansion commitment rights specified in the TSA in the event Palmetto decides to expand the capacity of the pipeline.<sup>12</sup>

28. Palmetto requests that it may implement automatic extensions of the initial term of the TSA in accordance with the provisions of the TSA.<sup>13</sup>

### Discussion

29. In its petition for declaratory order Palmetto is seeking approval of the rates, and terms and conditions of service for its pipeline project that will transport refined petroleum products and denatured fuel ethanol throughout the southeastern part of the United States. In accordance with Commission precedent Palmetto has sought advance guidance through the declaratory order process.<sup>14</sup> Palmetto informed potential shippers of the project through a widely publicized open season. The Commission finds that the rates, and terms and conditions of service offered to the potential committed shippers during the open season are consistent with the ICA and Commission precedent and policy. The various aspects of Palmetto's terms of service such as committed and uncommitted rates, priority service for committed shippers at a premium rate, 10 percent of capacity reserved for uncommitted shippers, treatment of the committed rates as settlement rates, expansion and extension rights for committed shippers, interim service, and the ability to file a joint tariff are consistent with prior Commission rulings. Since many of the issues raised in Palmetto's petition have been addressed by the Commission before, no further discussion is necessary. However, the Commission will separately

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<sup>11</sup> Citing, *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191 (2014).

<sup>12</sup> Citing, *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012).

<sup>13</sup> Citing, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 34 (2013).

<sup>14</sup> *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

discuss its jurisdiction over fuel ethanol, Palmetto's use of the leased and underutilized capacity on Plantation, and the monthly release of unused capacity since these issues have not been addressed before and in order to provide guidance to other pipelines who may seek similar rulings in declaratory orders for future projects.

30. The first issue to be addressed is whether the Commission has jurisdiction under the ICA over the interstate transportation of denatured fuel ethanol, one of the products that Palmetto will transport. Palmetto states that the Commission has not ruled on whether its jurisdiction under the ICA extends to this commodity. As a result of the DOE Act, the Federal Energy Regulatory Commission was given jurisdiction over the rates for the transportation of oil. In the Commission's order in *Gulf Central*, which was later affirmed in *CF Industries*, the Commission addressed the issue of whether it had jurisdiction over the transportation of anhydrous ammonia by pipeline. Anhydrous ammonia is an agricultural fertilizer derived from natural gas or petroleum refinery gas. In its decision to disclaim jurisdiction over anhydrous ammonia the Commission, among other things, determined the meaning of oil and petrochemicals, and investigated the legislative history of the DOE Act for purposes of determining how certain energy resources were to be regulated. As a result of its analysis, the Commission set forth the principles for determining its jurisdiction over the transportation of oil: (1) whether the commodity is a fuel source in that it has heating value and is used for energy-related purposes; (2) whether the cost of transportation will have an impact on energy markets; and (3) whether the commodity will compete with oil or other refined products for capacity in the pipeline.

31. In applying the principles of *Gulf Central* to denatured fuel ethanol, the Commission finds that it has jurisdiction over its transportation under the ICA. Ethanol is a fuel source and is used for energy-related purposes. As Palmetto submits, ethanol is a direct substitute for gasoline and federal law requires ethanol to be blended with transportation fuels prior to the fuels being sold in the market. In addition, the Energy Information Administration has recognized that ethanol has its own energy content and has classified it as a fuel source. The cost of the transportation of ethanol will have an impact on energy markets because, as Palmetto states, ethanol accounts for ten percent of the total volume of motor gasoline, and that volume is likely to increase given federal renewable fuel standards. As ethanol consumption increases, more pipeline capacity will be required causing the cost to transport other liquids to change. Finally, ethanol will compete for the same pipeline capacity as the oil and other refined products regulated by the Commission. In fact, as Palmetto states, it will batch the ethanol on the pipeline in exactly the same manner it batches the other refined products.

32. The next issue to be addressed is whether Palmetto can use the leased and underutilized capacity on Plantation to provide firm transportation services under the TSA. Specifically, Palmetto requests the Commission to confirm that the lease of underutilized capacity is distinguishable from the factual situation presented in *Colonial*.



In *Colonial*, the Commission denied a petition for declaratory order where the pipeline offered contract or committed rates for existing capacity but did not propose any change or expansion to its system. The Commission stated:

[T]he Commission's body of precedent has approved contract rates with respect to new pipelines, expansion projects, or, at the very least, reversals or reconfigurations of existing pipelines in order to serve new markets or respond to changing market conditions. In all of the cases approving contract rates, contractual commitments of shippers were necessary to, among other things, determine support for construction of the project, obtain financing, ensure the initial financial viability of the project, or to determine the support in new or growing markets. Even in the case of existing pipelines seeking to reverse or reconfigure their systems, contract rates ensure that a pipeline's investments to serve new markets are necessary in the long term.<sup>15</sup>

33. In this proceeding, Palmetto proposes a new pipeline project consisting of a combination of its own newly constructed facilities and leased capacity on Plantation comprised of expanded capacity as well as underutilized capacity. Palmetto will provide new transportation services for refined products to new committed and uncommitted shippers on its pipeline. Unlike in *Colonial* where the pipeline was simply trying to convert existing capacity into contract capacity without any changes to the system, Palmetto is creating a new pipeline project, part of which enables use of underutilized existing capacity on an affiliated pipeline. Palmetto's use of the underutilized capacity on Plantation, which has not been used for ten years and will not affect Plantation's existing shippers, is analogous to a reversal or reconfiguration of an existing pipeline to serve new markets or respond to changing market conditions. Accordingly, Palmetto's request is granted as consistent with Commission precedent.

34. The final issue to be addressed is whether Palmetto may release any unused portion of the leased capacity to Plantation each month. The release of the leased capacity would occur automatically each month prior to any in-service date of the pipeline since Palmetto would not be able to provide transportation. After the in-service date, the leased capacity will be released to Plantation each month provided that all of Palmetto's nominations are met and no shipper chooses to use the excess leased capacity. The capacity would revert back to Palmetto at the end of each month. The Commission finds that Palmetto's capacity release process is an efficient use of the leased capacity

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<sup>15</sup> *Colonial*, 146 FERC ¶ 61,206 at P 35.

both prior to and after Palmetto becomes operational because it will allow potential shippers on Plantation to use the leased capacity rather than have it sit idle. As Palmetto stated in its petition, all potential shippers were put on notice during the Open Season of how the capacity lease arrangement would work following the in-service date, and each shipper had an opportunity to submit comments to Palmetto regarding the arrangement. In addition, Palmetto submits that the arrangement will not undermine any of the rights that Palmetto has promised to committed shippers because (i) the leased capacity will only be released to Plantation in the event that no shipper on the pipeline wishes to use such capacity, and (ii) the leased capacity will automatically become available for Palmetto's use the following month. Accordingly, the Commission finds that the capacity release arrangement contemplated in the lease is reasonable and not unduly discriminatory or preferential.

The Commission orders:

Palmetto's petition for declaratory order is granted, consistent with the discussion above.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.