

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman  
Maureen K. Ohlhausen  
Terrell McSweeney

_____	)	
<b>In the Matter of</b>	)	
	)	
<b>Energy Transfer Equity, L.P.,</b>	)	<b>Docket No. C-4577</b>
<b>a master limited partnership, and</b>	)	
	)	
<b>The Williams Companies, Inc.,</b>	)	
<b>a corporation.</b>	)	
_____	)	

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”) having initiated an investigation of the proposed merger between Energy Transfer Equity, L.P. (“ETE”) and The Williams Companies, Inc. (“Williams,” and together with ETE, the “Respondents”) and Respondents having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement (“Consent Agreement”) containing consent orders, an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon issued its complaint and its Order to Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and

consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and enters the following Decision and Order (“Order”):

1. Respondent Energy Transfer Equity, L.P. is a master limited partnership organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 8111 Westchester Drive, Dallas, Texas 75225.
2. Respondent The Williams Companies, Inc., is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at One Williams Center, Tulsa, Oklahoma 74172.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent and the proceeding is in the public interest.

## **ORDER**

### **I.**

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “ETE” means Energy Transfer Equity, L.P., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by Energy Transfer Equity, L.P. (including The Williams Companies, Inc., after the Acquisition) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Williams” means The Williams Companies, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by The Williams Companies, Inc. (including Williams Partners L.P.) and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “Commission” means the Federal Trade Commission.
- D. “Acquirer” means the Person that acquires the Pipeline Assets pursuant to this Order.
- E. “Acquisition” means the proposed merger between ETE and Williams described in the Agreement and Plan of Merger dated as of September 28, 2015, among Energy Transfer Corp LP, ETE Corp GP, LLC, Energy Transfer Equity, L.P., LE GP, LLC, Energy Transfer Equity GP, LLC and The Williams Companies, Inc.

- F. “Acquisition Date” means the date the Acquisition is consummated.
- G. “Capacity Lease Agreement” means the Amended and Restated Capacity Lease Agreement dated as of February 25, 2014, by and between Transcontinental Gas Pipe Line Company, LLC and Sabal Trail Transmission, LLC, including the First Amendment to the agreement dated March 2, 2016.
- H. “Confidential Information” means any and all of the following information:
1. all information that is a trade secret under applicable trade secret or other law;
  2. all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, software and computer software and database technologies, systems, structures, and architectures;
  3. all information concerning the relevant business (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants’ materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel, and personnel training techniques and materials); and
  4. all notes, analyses, compilations, studies, summaries, and other material to the extent containing or based, in whole or in part, upon any of the information described above;
- Provided, however,* that Confidential Information shall not include information that (i) was, is, or becomes generally available to the public other than as a result of a breach of this Order; (ii) was or is developed independently of and without reference to any Confidential Information; or (iii) was available, or becomes available, on a non-confidential basis from a third party not bound by a confidentiality agreement or any legal, fiduciary, or other obligation restricting disclosure.
- I. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise, or undertaking (whether written or oral and whether express or implied), whether or not legally binding.
- J. “Corporate Trade Names” means all trademarks, trade names, service marks, trade dress, logos, corporate names, domain names, emblems, signs or insignia, and other source

identifiers whether registered or common law, containing or comprising the brand and mark “Williams” and “1Line.”

- K. “Cost” means the actual cost of raw materials or parts, direct labor, utilities, administrative and third party expenses, and reasonably allocated operations, distribution, and shared corporate services overhead (i.e., administrative and related costs allocated consistent with Respondent’s past practice in the ordinary course) used to develop and supply the relevant service, including employee benefits, materials, resources, and services, plus the actual cost of any third-party charges.
- L. “Divestiture Agreement” means any agreement between Respondents (or a Divestiture Trustee) and the Acquirer that receives the prior approval of the Commission to divest the Pipeline Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto.
- M. “Divestiture Date” means the date on which Respondents (or the Divestiture Trustee) closes on the transaction to divest the Pipeline Assets to the Acquirer.
- N. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph V. of this Order.
- O. “Gulfstream” means the Gulfstream Natural Gas System, a 745-mile interstate transmission pipeline that delivers natural gas across the Gulf of Mexico from Mobile Bay in Alabama to locations in Pinellas, Manatee, Hardee, Polk, Osceola, Okeechobee, St. Lucie, Martin, and Palm Beach counties in Florida.
- P. “Intellectual Property” means all intellectual property, including (i) commercial names, all assumed fictional business names, trade names, “doing business as” (d/b/a names), registered and unregistered trademarks, service marks and applications, and tradenames; (ii) all patents, patent applications and inventions and discoveries that may be patentable; (iii) all registered and unregistered copyrights in both published works and unpublished works; (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (vi) and all rights in internet web sites and internet domain names presently used.
- Q. “License” means a royalty-free, fully paid-up, perpetual, irrevocable, non-exclusive, transferable, and sublicensable license and such tangible embodiments of the licensed rights (including, but not limited to, physical and electronic copies) as may be necessary or appropriate to enable the Acquirer to use the rights.
- R. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a governmental body.

- S. “Pipeline Assets” means all of Respondents’ right, title, and interest in and to all property and assets, real, personal, or mixed, tangible and intangible, of every kind and description, wherever located, relating to operation of the Pipeline Business, including, but not limited to:
1. Williams’ membership interest in (i) Gulfstream Natural Gas System, L.L.C., a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, and (ii) Gulfstream Management & Operating Services, L.L.C., a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware;
  2. all real property interests (including fee simple interests and real property leasehold interests), including all easements, and appurtenances, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;
  3. all Tangible Personal Property, including any Tangible Personal Property removed (outside of the ordinary course of business) from any location of the Pipeline Business since the date of the announcement of the Acquisition, and not replaced;
  4. all inventories;
  5. all Contracts and all outstanding offers or solicitations to enter into any Contract, and all rights thereunder and related thereto;
  6. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefor or renewals thereof, to the extent assignable;
  7. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records, and copies of all personnel Records (to the extent permitted by law);
  8. all intangible rights and property, including Intellectual Property owned or licensed (as licensor or licensee) by Respondent (to the extent transferable or licensable), going concern value, goodwill, and telephone and telecopy listings; and

9. all rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof.

*Provided, however,* that the Pipeline Assets shall not include (i) the Retained Assets, (ii) the Retained Intellectual Property, or (iii) any part of the Pipeline Assets if not needed by the Acquirer and the Commission approves the divestiture without such assets.

- T. “Pipeline Business” means the business of providing natural gas transportation services through, and any related pipeline operating services to, Gulfstream.
- U. “Pipeline Employee” means any individual (i) employed on a full-time, part-time, or contract basis as of and after the date of the announcement of the Acquisition whose job responsibilities primarily relate to the Pipeline Business, or (ii) identified by agreement between Respondents and the Acquirer and made a part of the Divestiture Agreement.
- V. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and includes information, or files that are stored or maintained in traditional paper format, by means of electronic, optical, or magnetic media or devices, photographic or video images, or any other format or media.
- W. “Retained Assets” means:
  1. Corporate Trade Names and portions of website content, domain names, or e-mail addresses that contain Corporate Trade Names;
  2. Software that can readily be purchased or licensed from sources other than Respondents and that has not been materially modified (other than through user preference settings), or enterprise software that Respondents also use to manage and account for businesses other than the Pipeline Business;
  3. Corporate headquarters of Williams;
  4. Assets relating to the Pipeline Business that are shared with, or also pertain to, retained businesses of Respondents, unless such assets primarily relate to the operation of the Pipeline Business;
  5. Data and Records that contain information (a) that relates to both the Pipeline Business and to retained businesses of Respondents, or (b) of which Respondents have a legal, contractual, or fiduciary obligation to retain the original copies; *provided, however,* that Respondents shall provide copies of those portions of such data and Records that relate to the Pipeline Business; and
  6. Insurance benefits, including rights and proceeds.

- X. “Retained Intellectual Property” means any Intellectual Property other than Retained Assets, that relates to the operation of the Pipeline Business and is shared with, or also pertains to, businesses operated by Respondents other than the Pipeline Business unless such Intellectual Property primarily relates to the operation of any or all of the Pipeline Business.
- Y. “Sabal Trail” means Sabal Trail Transmission, LLC, organized, existing, and doing business under, and by virtue of, the laws of Delaware, with its corporate office and principal place of business located at 5400 Westheimer Court, Houston, Texas 77056.
- Z. “Tangible Personal Property” means all machinery, equipment, spare parts, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles, and other items of tangible personal property (other than inventories) of every kind owned or leased, together with any express or implied warranty by the manufacturers or sellers or lessors (to the extent transferable) of any item or component part thereof and all maintenance records and other documents relating thereto.
- AA. “Third Party Consent” means any consent, assignment, license, permit, or other authorization from any Person other than Respondents that is necessary to divest or operate the Pipeline Assets.
- BB. “Transco” means the Transcontinental Gas Pipe Line Company, LLC, a natural gas transmission system that delivers natural gas between Texas, Louisiana, the offshore Gulf of Mexico area, Pennsylvania, and the New York City metropolitan area.
- CC. “Transitional Assistance” means logistical, operational, administrative, and technical services and support.

## II.

### **IT IS FURTHER ORDERED** that:

- A. No later than 180 days after the Acquisition Date, Respondents shall divest the Pipeline Assets, absolutely and in good faith, at no minimum price, as an ongoing business, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission (including execution of a Divestiture Agreement).
- B. No later than the Divestiture Date, Respondents shall secure all Third Party Consents required for the divestiture of any Pipeline Assets; *provided, however*, that if Respondents are unable to obtain any Third Party Consent, Respondents shall (i) provide such assistance as the Acquirer may reasonably request in its efforts to obtain a comparable consent or (ii) with the acceptance of the Acquirer and the prior approval of the Commission, substitute equivalent assets or arrangements.

- C. Respondents shall cooperate with and assist the Acquirer to evaluate and hire any Pipeline Employee in connection with the divestiture of the Pipeline Assets, including, but not limited to:
1. Not later than twenty (20) days before the Divestiture Date, Respondents shall (i) identify the relevant Pipeline Employees, (ii) allow the Acquirer to inspect the personnel files and other documentation of the relevant Pipeline Employees, to the extent permissible under applicable laws, and (iii) allow the Acquirer an opportunity to interview the relevant Pipeline Employee;
  2. Respondents shall (i) not offer any incentive to any Pipeline Employee to decline employment with the Acquirer, (ii) remove any contractual impediments that may deter any Pipeline Employee from accepting employment with the Acquirer, including, but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondents that would affect the ability of such employee to be employed by the Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Pipeline Employee by the Acquirer;
  3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with the Acquirer for any Pipeline Employee who accepts an offer of employment from the Acquirer and (ii) provide each Pipeline Employee with a financial incentive as necessary to accept an offer of employment with the Acquirer; and
  4. For a period of two (2) years after divestiture of any of the Pipeline Assets, Respondents shall not solicit the employment of any Pipeline Employee who becomes employed by the Acquirer at the time any of the Pipeline Assets are divested; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by the Acquirer, (ii) Respondents advertise for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- D. At the option of the Acquirer, Respondents shall, for a period of fifteen (15) months after the divestiture of the Pipeline Assets, provide Transitional Assistance to the Acquirer at a price not to exceed Cost and in quality and quantity sufficient to enable the Acquirer to operate the Pipeline Business in substantially the same manner (including allowing for growth of the Pipeline Business) as Williams prior to the Acquisition; *provided, however*, that the Acquirer may extend the period of time for providing Transitional Assistance under this Paragraph II.D., subject to the prior approval of the Commission, up to three times for a period of three (3) months each, on the same terms as specified in this Paragraph II.D.; *provided further* that, as part of providing such Transitional Assistance, Respondents shall have no role in negotiating or setting rates, terms, or conditions of ser-



vice, making expansion or interconnection decisions, or marketing any services relating to the transportation of natural gas (or related products) through Gulfstream.

- E. With respect to Intellectual Property, Respondents:
1. Shall grant a License to the Acquirer under the Retained Intellectual Property sufficient for the Acquirer to operate the Pipeline Business in substantially the same manner as Williams prior to the Acquisition with the freedom to extend existing products and services and develop new products and services; and
  2. May enter into an agreement with the Acquirer for a License back under any Intellectual Property included in the Pipeline Assets that also relates to operation of a business other than the Pipeline Business for use in such other business.
- F. Respondents' obligations pursuant to Paragraphs II.D. and II.E. of this Order shall be set forth in one or more agreements incorporated into the Divestiture Agreement, subject to the prior approval of the Commission. Respondents shall not terminate their obligations pursuant to Paragraphs II.D. and II.E. because of a material breach by the Acquirer of any such agreement, in the absence of a final order of a court of competent jurisdiction.
- G. The purpose of the divestiture of the Pipeline Assets is to ensure the continued use of the assets in the same businesses in which such assets were engaged at the time of the announcement of the Acquisition by Respondents and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

### III.

**IT IS FURTHER ORDERED** that:

- A. Respondents shall (i) keep confidential (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Pipeline Business or Pipeline Assets; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under this Order, the Order to Maintain Assets, or the Divestiture Agreement; or
  2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Pipeline Business or Pipeline Assets, or as required by law.
- B. If disclosure or use of any Confidential Information relating to the Pipeline Business or Pipeline Assets is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order, Respondents shall limit such disclosure or use (i) only to

the extent such information is required; (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A.; and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

- C. Respondents shall enforce the terms of this Paragraph III. as to its employees or any other Person, and take such action as is necessary to cause each of their employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to protect their own trade secrets and proprietary information.

#### IV.

**IT IS FURTHER ORDERED** that:

- A. At any time after Respondents sign the Consent Agreement, the Commission may appoint a Person to monitor Respondents' compliance with its obligations under this Order ("Monitor"), *provided, however*, that if the Commission appointed a Monitor pursuant to the Order to Maintain Assets, such appointment shall continue pursuant to this Order and *provided further* that the Monitor may be the same person appointed as Monitor under the Order to Maintain Assets issued in this matter.
- B. The Commission shall select the Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld. If Respondents have not opposed in writing, including the reasons for opposing, the selection of any proposed Monitor within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Monitor, Respondents shall be deemed to have consented to the selection of the proposed Monitor.
- C. Respondents shall, no later than five (5) business days after the Commission appoints a Monitor, enter into an agreement with the Monitor, subject to the prior approval of the Commission, that (i) shall become effective no later than one (1) business day after the date the Commission appoints the Monitor, and (ii) confers upon the Monitor all rights, powers, and authority necessary to permit the Monitor to perform his or her duties and responsibilities on the terms set forth in this Order and in consultation with the Commission:
  - 1. The Monitor shall (i) monitor Respondents' compliance with the obligations set forth in this Order, including Paragraph VII. and (ii) act in a fiduciary capacity for the benefit of the Commission;
  - 2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents' personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor

may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform his or her duties pursuant to this Order;

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities set forth in this Order;
  4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his or her duties as set forth in this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability; *provided, however*, that Respondents may decline to indemnify the Monitor for any such losses, claims, damages, liabilities, or expenses that result from the Monitor's gross negligence or willful misconduct; and
  5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff including a final report prior to termination of this Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. The Monitor's power and duties shall terminate when this Order terminates, or at such other time as directed by the Commission.
- G. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor in the manner described in this Paragraph IV.
- H. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

## V.

### **IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Pipeline Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. The Divestiture Trustee may be the same person as the Monitor appointed under this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within ten (10) days after appointment of a Divestiture Trustee, Respondents shall execute an agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the relevant divestiture or other action required by the Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
  1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Pipeline Assets.

2. The Divestiture Trustee shall have twelve (12) months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve (12) month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph V. in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.
4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an the Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further* that Respondents shall select such entity within five (5) days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compen-

sation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph V.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph V.E.5. of this Order.
  7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
  8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.
  9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph V.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

## VI.

### **IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and Respondents shall comply with all terms of such agreements. The Divestiture Agreement shall not limit or contradict, or be construed to limit or contradict, the terms of this Order and nothing in this Order shall be construed to reduce any rights or benefits of the Acquirer or to reduce any obligations of Respondents under the Divestiture Agreement.
- B. If any term of the Divestiture Agreement varies from Paragraphs I.-X. of this Order (“Order Term”), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents’ obligations under this Order. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement without the prior approval of the Commission, except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).

## VII.

### **IT IS FURTHER ORDERED** that:

- A. The Capacity Lease Agreement shall be incorporated by reference into this Order and made a part hereof. Respondents shall comply with all terms of such agreement and shall not modify, replace, or extend the terms of the Capacity Lease Agreement (including any modifications made pursuant to this Paragraph VII.) without the prior approval of the Commission except as otherwise provided in Rule 2.41(f)(5) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(5).
- B. With respect to the Capacity Lease Agreement, Respondents shall allow Sabal Trail to select (i) in-service dates for Phase 4 and Phase 5 expansions that are different from the target effective dates in Section 2.1(a), provided that such in-service dates are between May 1, 2024, and May 1, 2028, and (ii) quantities of capacity for Phase 4 and Phase 5 that are different from the leased capacities shown in Section 2.1(a), provided that the total leased delivered capacity for Phase 4 and Phase 5 combined shall not exceed 400,000 dt/d (unless Respondent and Sabal Trail mutually agree otherwise).
- C. No later than one (1) year after the Acquisition Date, Respondents shall extend an offer (which shall remain open until termination of this Order) to Sabal Trail to modify the Capacity Lease Agreement to provide Sabal Trail additional leased capacity expansions on the portion of Transco between the Receipt Points and the Delivery Point defined in Exhibit A of the Capacity Lease Agreement (the “Hillabee Segment”) beyond the Phase 5 expansion:

1. Respondents shall offer to expand the Hillabee Segment, in as many phases as needed by Sabal Trail to provide for its customers' natural gas transportation requirements, provided that such expansion(s) shall have target effective date(s) beginning at the earlier of (i) the in-service date for the Phase 5 option or (ii) May 1, 2028, if Sabal Trail does not exercise the Phase 5 option (as applicable, the "Start Date"), and ending eight (8) years after the Start Date.
2. Respondents shall offer future expansions under this Paragraph VII.C. on the same terms and conditions as those applying to the Phase 4 and Phase 5 expansions set forth in the Capacity Lease Agreement; *provided, however*, that with respect to any expansion phase under this Paragraph VII.C., if Respondents so choose Sabal Trail shall pay one hundred percent of the expansion capital costs (including any tax gross-up necessary to reimburse Respondents for applicable income taxes) in advance of the incurrence of such expansion capital costs.
3. If Respondents elect for Sabal Trail to pay expansion capital costs as specified in the proviso in Paragraph VII.C.2.:
  - (a) Respondents shall:
    - (i) have the right to charge Sabal Trail an amount that reflects Respondents' operating and maintenance costs directly attributable to the expanded capacity;
    - (ii) have the right to charge Sabal Trail an amount that reflects Respondents' operating and maintenance costs and administrative and general costs, property taxes, and other costs, as may be allocated to the expanded capacity pursuant to proceedings before the Federal Energy Regulatory Commission;
    - (iii) have the right to charge Sabal Trail a management fee if approved by the Federal Energy Regulatory Commission;
    - (iv) calculate capital costs, operating costs, and any applicable service-based recourse rates for expansion using the same methodologies and factors used for incremental expansion projects on Transco's mainline;
    - (v) use cost reimbursement arrangements on a basis consistent with past industry practice, including with respect to frequency of payments and credit support arrangements; and
    - (vi) make project cost and rate information for each expansion available to Sabal Trail in a timely manner.



- (b) Nothing in this Paragraph VII.C.3. shall alter Sabal Trail's rights to challenge Respondents' cost and rate methodology in the course of any review by the Federal Energy Regulatory Commission.
- 4. Respondents need not allow an expansion under this Paragraph VII.C. if (A) Sabal Trail (i) does not have sufficient available downstream natural gas transportation capacity to use a proposed expansion of the Hillabee Segment to serve Sabal Trail's customers located in the state of Florida or (ii) has not entered into binding agreements with customers for transportation of natural gas into the state of Florida that provides sufficient demand for approval of a proposed expansion of the Hillabee Segment by the Federal Energy Regulatory Commission or (B) Sabal Trail has plans to use the Hillabee Segment expansion capacity for any purpose other than to serve customers in the state of Florida.
- D. After the Acquisition Date, Respondents shall comply with Paragraph III. of this Order with respect to Confidential Information relating to any expansion of the Hillabee Segment, whether pursuant to the Capacity Lease Agreement or Paragraph VII. of this Order. For the avoidance of doubt, none of the exceptions for the use or disclosure of any such Confidential Information under Paragraph III. of this Order shall apply to Respondents' employees or any other Person whose job responsibilities relate to the operation, marketing, management, or oversight of the activities of Florida Gas Transmission Company, LLC.
- E. The purpose of this Paragraph VII. is to ensure that Sabal Trail will be an independent pipeline operator with the ability to expand its capacity on the Hillabee Segment as needed to serve its customers located in the state of Florida, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

## **VIII.**

### **IT IS FURTHER ORDERED** that:

- A. Respondents shall file a verified written report with the Commission setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with this Order:
  - 1. Every thirty (30) days from the date this Order is issued until Respondents have fully complied with Paragraph II.D. of this Order; and
  - 2. No later than one (1) year from the date this Order is issued and annually thereafter until this Order terminates, and at such other times as the Commission staff may request.

- B. With respect to any divestiture required by Paragraph II.A. of this Order, Respondents shall include in their compliance reports (i) the status of the divestiture and transfer of the Pipeline Assets; (ii) a description of all substantive contacts with a proposed acquirer; and (iii) as applicable, a statement that the divestiture approved by the Commission has been accomplished, including a description of the manner in which Respondents completed such divestiture and the date the divestiture was accomplished.

## **IX.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of either Respondent;
- B. Any proposed acquisition, merger, or consolidation of either Respondent (other than the Acquisition); or
- C. Any other change in either Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

## **X.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondents, Respondents shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at their expense; and
- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding matters related to compliance with this Order.

**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate twelve (12) years from the date it is issued.

By the Commission.

Donald S. Clark  
Secretary

SEAL:

ISSUED: