STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WWALS WATERSHED COALITION, INC.,

Petitioner,

vs. Case No. 15-4975

SABAL TRAIL TRANSMISSION, LLC,
AND DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

ORDER

This cause came before the Administrative Law Judge on Petitioner WWALS Watershed Coalition, Inc.’s, Amended Motion to Take Judicial Notice of EPA Report to FERC Dated October 26, 2015 and to Supplement the Record With Evidence Unavailable at the Time of the Hearing. Responses in opposition to the motion were filed by Respondents.

Judicial notice only recognizes the action taken or determination made, as described in a document, not the truth of the matters asserted. Therefore, judicial notice of the EPA letter containing comments of the United States Environmental Protection Agency to the Federal Energy Regulatory Commission (“FERC”) on the Draft Environmental Impact Statement (“EIS”) for the proposed Sabal Trail natural gas transmission pipeline, would only establish that EPA had concerns about the EIS and the pipeline. Judicial notice would not establish the validity of EPA’s concerns. The fact that EPA expressed concerns to FERC is not material in this state administrative proceeding.

Petitioner contends the EPA Report is admissible under multiple exceptions to the hearsay rule, but only names the public records exception. The EPA letter does not qualify for the hearsay exception for public records. It is a public record in the context of the right of citizens to review agency documents, but it is not a public record under the hearsay rule, which establishes a narrow exception for statements in certain public documents that are of a ministerial nature and,
therefore, likely to be true. No other hearsay exception appears applicable. EPA’s statements are hearsay.

Section 120.57(1)(c), Florida Statutes, allows for the use of hearsay evidence to supplement or explain other evidence, but hearsay evidence cannot independently prove a material fact. The EPA letter has little value to Petitioner with that limitation except as cumulative evidence, which is offset by the problems associated with its late submittal. Accordingly, it is

ORDERED that the motion for judicial notice is DENIED. The document shall be placed in the record as a proffer, but shall not be considered by the Administrative Law Judge in the preparation of the Recommended Order.

DONE AND ORDERED this 9th day of November, 2015, in Tallahassee, Leon County, Florida.

BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of November, 2015.

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