

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Clark Fork & Blackfoot, L.L.C. and  
EnCana Border Pipelines Limited

Docket No. CP05-414-000

ORDER ISSUING PRESIDENTIAL PERMIT AND GRANTING AUTHORIZATION  
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued May 1, 2006)

1. On September 13, 2005, Clark Fork & Blackfoot, L.L.C. (Clark Fork ) and EnCana Border Pipelines Limited (EnCana), jointly referred to as Applicants, filed an application in Docket No. CP05-414-000 to transfer to EnCana the Presidential Permit and authorization under section 3 of the Natural Gas Act (NGA) issued to Montana Power, L.L.C. (Montana Power) (predecessor-in-interest to Clark Fork) on May 18, 2001.<sup>1</sup>

2. For the reasons discussed below we will issue a Presidential Permit to EnCana and approve authorization under NGA section 3 allowing EnCana to operate and maintain the Whitlash Facilities at the international border between the United States and Canada.<sup>2</sup>

**Background**

3. Clark Fork is a Delaware corporation that is a subsidiary of NorthWestern, also a Delaware corporation doing business as NorthWestern Energy. Clark Fork's Montana operations are located at 40 East Broadway, Butte, Montana 59701.

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<sup>1</sup> *Montana Power Corp.*, 95 FERC ¶ 61,261 (2001).

<sup>2</sup> The Whitlash Facilities consist of a .02-mile, 16-inch pipeline extending from the United States/Canada international border in Toole County, Montana to an interconnect with Clark Fork's approximately 52.3-mile, 16-inch pipeline which extends to an area near Cut Bank, Montana. At the international border, the Whitlash Facilities interconnect with the Aden Line, a 16-inch pipeline which extends north to the Pakowki Lake area in the Province of Alberta, Canada.

4. EnCana is a wholly owned subsidiary of EnCana Corporation, both of which are Canadian Federal Corporations incorporated under the Canada Business Corporations Act. EnCana's principal place of business is located at 1800, 855-2nd Street S.W., Calgary, Alberta, T2P 3V4 Canada.

5. The May 18, 2001 Order issued a new Presidential Permit and section 3 authorization for operation of the Whitlash Facilities, previously operated by the Montana Power Company (MPC), to Montana Power. Subsequently Montana Power was acquired by NorthWestern Corporation, which changed its name to NorthWestern Energy, L.L.C. (NorthWestern). In 2002 NorthWestern was renamed Clark Fork & Blackfoot, L.L.C.

6. Applicants assert that they recently discovered that when Montana Power sold certain border crossing facilities at the United States/Canada border in September 2000 to 3698157 Canada Ltd., EnCana's predecessor-in-interest; the description of the facilities to be sold encompassed the Whitlash Facilities.<sup>3</sup> The Applicants assert that their previous misunderstanding of the 2000 agreement was demonstrated when Montana Power filed an application in Docket No. CP01-50-000 on December 18, 2000, requesting authorizations to permit Montana Power to succeed MPC as holder of the NGA section 3 authorization and Presidential Permit related to the Whitlash Facilities to recognize a change in corporate form. Having now determined that EnCana is the owner of the Whitlash Facilities, Clark Fork and EnCana request that the Commission transfer Montana Power's section 3 authorization and Presidential Permit to EnCana and grant any waivers or remedial authority necessary to cover the time from EnCana's predecessor's acquisition of the Whitlash Facilities until the effective date of the new authorization and Permit.

### **Consultation with Secretaries of State and Defense**

7. On October 13, 2005, the Commission sent copies of the applications and a draft Presidential Permit to the Secretary of State and the Secretary of Defense for their

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<sup>3</sup> See *Montana Power Company*, 94 FERC ¶ 61,024 (2001). The facilities to be sold under the agreement included the Aden line and the Monchy and Reagan border crossing facilities. The parties filed their application in this proceeding after their recent discovery that the description of the Aden line in the amended sales agreement encompassed the Whitlash Facilities. With respect to the Monchy and Regan facilities, the Commission recently approved Presidential Permits and section 3 authorizations to reflect those facilities' latest owners. See *EnCana Border Pipelines Limited and 1057533 Alberta Ltd.*, 113 FERC ¶ 61,150 (2005) (Monchy facilities) and *EnCana Border Pipelines Limited*, 107 FERC ¶ 61,064 (2004) (Reagan facilities).

recommendations. Replies on behalf of the Secretary of State dated December 1, 2005, and the Secretary of Defense dated April 13, 2006, indicate no objection to the issuance of the Presidential Permit as described.

### **Notice and Interventions**

8. Notice of Clark Fork and EnCana's joint application in Docket No. CP05-414-000 was noticed in the *Federal Register* on September 28, 2005 (70 *Fed. Reg.* 56652). Comments were due on or before October 11, 2005. No motions to intervene, comments or protests were filed.

### **Discussion**

9. Pursuant to Department of Energy Delegation Order No. 00-004.00, effective December 6, 2001, the Commission has delegated authority to issue Presidential Permits<sup>4</sup> and to grant NGA section 3 authorizations.

10. Section 153.9 of the Commission's regulations provides that prior Commission approval is necessary for the transfer of facilities authorized under section 3 of the NGA.<sup>5</sup> Further, Article 8 of the 2001 Presidential Permit states that neither the Permit nor any of the facilities covered by the Permit may be voluntarily transferred.

11. The Applicants state that when these changes occurred, the company did not apply to change the name of the Permittee on its Presidential Permit and section 3 authorization because they did not realize that ownership of the facilities had been transferred. They maintain that the name changes have had no adverse effects on the operation of these facilities and there has been no harm either to customers of these facilities or downstream consumers in Montana or other markets served with gas imported through these facilities. They also state that the facilities have been maintained in good repair and there has been no new construction.

12. The parties state that they regret that they failed to change the Presidential Permit and section 3 authorization contemporaneously with the transfer of the property and they respectfully request that the Commission grant any waiver that may be necessary to allow the authorization and Permit that were issued to Montana Power by the May 18, 2001 Order to be transferred to EnCana.

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<sup>4</sup> The Presidential Permit is attached as the appendix to this order.

<sup>5</sup> See 18 C.F.R. § 153.9 (2005).

13. The Commission emphasizes that it takes seriously any company's failure to comply with its regulatory conditions requiring Commission approval prior to the transfer of NGA section 3 border crossing facilities or Presidential Permits. The Commission will take appropriate enforcement action in any situation where it determines such action is warranted. Based on the staff's review and recommendation, the Commission finds, in its discretion, that there is no need in this instance for further investigation or enforcement action. As demonstrated by MPC's and Montana Power's request in December 2000 that the Commission transfer the NGA section 3 authorization and Presidential Permit associated with the Whitlash facilities from MPC to Montana Power, the parties believed at the time that Montana Power was the owner of the facilities. After their recent discovery that EnCana is the owner of the facilities, the parties filed their request to transfer the appropriate authorizations.

14. In view of the above considerations, the Commission finds that the Applicants' proposals are not inconsistent with the public interest. However, Presidential Permits and authorizations pursuant to section 3 of the NGA are non-transferable,<sup>6</sup> as proposed in the joint application. Therefore, to permit effectuation of the change in ownership of the facilities, the Commission will issue a new Presidential Permit and NGA section 3 authorization to EnCana.

15. Consistent with current Commission policy,<sup>7</sup> Article 9 of EnCana's Presidential Permit will provide that any determinations regarding whether authorized facilities shall be abandoned in place or by removal shall be deferred until such time when the facilities are no longer in use.

16. Under this proposal, no new facility construction, abandonment, or modification of existing facilities will occur. Therefore, since granting this application will not be a federal action significantly affecting the quality of the human environment, the preparation of an environmental assessment or an environmental impact statement is not required.

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<sup>6</sup> 18 C.F.R. § 153.9(a) (2005). *See, e.g., Calpine Corporation, et al.*, 106 FERC ¶ 61,075 at P 11-12 (2004) and Appendix, at standard Article 8 of Calpine's Presidential Permit.

<sup>7</sup> *See, e.g., Reef International*, 99 FERC ¶ 61,221 at P 21 (2002) and *Calpine Corporation, et al.*, 106 FERC ¶ 61,075 at P 13 (2004).

17. The Commission on its own motion received and made part of the record in this proceeding all evidence, including the application and exhibits thereto submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A Presidential Permit and NGA section 3 authority are issued to EnCana to operate and maintain the Whitlash Facilities, as described in this order.

(B) EnCana shall sign and return the testimony of acceptance of all provisions, conditions and requirements of the Presidential Permit to the Secretary of the Commission within 30 days of the issuance of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**PERMIT GRANTING ENCAN A BORDER PIPELINES LIMITED (ENCANA)  
AUTHORIZATION TO OPERATE AND MAINTAIN NATURAL GAS  
FACILITIES AT THE INTERNATIONAL BORDER BETWEEN THE UNITED  
STATES AND CANADA**

**FEDERAL ENERGY REGULATORY COMMISSION  
Docket No. CP05-414-000**

(Issued May 1, 2006)

Clark Fork, a Delaware corporation, a wholly owned subsidiary of NorthWestern Corp., dba as NorthWestern Energy, also a Delaware corporation and EnCana Border Pipelines Limited, a wholly owned subsidiary of EnCana Corporation, incorporated under the laws of Canada, filed on September 13, 2005, in Docket No. CP05-414-000 a joint application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00, requesting that the Commission issue an order: (1) granting EnCana a Natural Gas Act section 3 authorization (previously held in the name of Clark Fork's predecessor, the Montana Power, L.L.C.(Montana Power)) to site, construct and operate facilities at Aden, Alberta, Canada, and Port Whitlash, Montana, for the importation of natural gas into the United States; and (2) granting a Presidential Permit authorizing EnCana to construct, operate, and maintain facilities at the Aden/Port Whitlash import point.

By letter dated December 5, 2005, the Secretary of State, and by letter dated April 13, 2006, the Secretary of Defense favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit, reflecting the name changes of various companies, to EnCana is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00 effective December 6, 2001, and the Commission's regulations, permission is granted to EnCana (Permittee) to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission, upon proper application therefor.

Article 2. The following facilities are subject to this Permit:

.02 miles of 16-inch diameter pipeline extending from the international border between the United States and Canada in Toole County, Montana where it interconnects with the 16-inch diameter pipeline, the Aden Line, which extends north to the Pakowki Lake area in the Province of Alberta, Canada.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation or exportation of natural gas between the United States and Canada only in the amount, at the rate, and in the manner authorized under Section 3 of the Natural Gas Act.

Article 4. The operation and maintenance of the aforesaid facilities shall be subject to the inspection and approval of representatives of the United States. The Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Army that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Army, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit

and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify, and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed at the Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee agrees that when, in the opinion of the President of the United States, evidenced by a written order addressed to it as holder of this Permit, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of any of the facilities, or parts thereof, maintained or operated under this Permit, and all contracts covering the transportation or sale of natural gas by means of said facilities, to retain possession, management, and control thereof for such length of time as may appear to the President to be necessary to accomplish said purposes, and then to restore possession and control to the Permittee; and in the event that the United States shall exercise such right it shall pay the Permittee just and fair compensation for the use of said facilities upon the basis of a reasonable profit in time of peace, and the cost of restoring said facilities to as good condition as existed at the time of taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to the Permittee.

Article 11. This Permit is subject to any action which the Government of the United States may in the future deem expedient or necessary to take in case any part of the aforesaid facilities comes into the control of any foreign government.

Article 12. The Government of the United States shall be entitled to the same or similar privileges as may by law, regulation, agreement, or otherwise, be granted by the Permittee to any foreign government.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of \_\_, 2006 has caused its name to be signed by \_\_, [pursuant to a resolution of its Board of Directors duly adopted] on the \_\_ day of \_\_, 2006, a certified copy of the record of which is attached hereto.

EnCana Border Pipelines Limited.

By \_\_\_\_\_

(Attest)

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Executed in triplicate