

111 FERC ¶61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

AES Ocean Express LLC

Docket Nos. CP02-90-003
and CP02-93-002

ORDER AMENDING PRESIDENTIAL PERMIT
AND NGA SECTIONS 3 AND 7 AUTHORIZATIONS

(Issued May 11, 2005)

1. On January 29, 2004, the Commission issued AES Ocean Express LLC (Ocean Express) authorization under sections 3 and 7(c) of the Natural Gas Act (NGA) to construct and operate natural gas pipeline facilities onshore and in waters offshore of Broward County, Florida, and issued a Presidential Permit to construct and operate offshore pipeline facilities.¹ On September 9, 2004, Ocean Express submitted an application to amend its existing authorizations (1) to modify its method of installing new pipe by boring an underwater tunnel beneath coral reefs near shore; (2) to construct a pressure reducing station in the proposed tunnel; (3) to increase the diameter of 54.3 miles of pipe from 24 to 26 inches to provide greater hourly flow rates, while retaining the project's certificated capacity; (4) to modify previously imposed environmental conditions; and (5) to alter initial cost-of-service rates to reflect the additional expense of these proposed changes.

¹ 106 FERC ¶ 61,090 (2004) (order issuing authorizations); 103 FERC ¶ 61,326 (2003) (order extending construction schedule); and 103 FERC ¶ 61,030 (2003) (preliminary determination). Specifically, Ocean Express was granted the following authorizations: in Docket No. CP02-91-000, blanket construction and abandonment certificate authorization under NGA section 7(c) and subpart F of Part 157 of the Commission's regulations; in Docket No. CP02-92-000, blanket transportation certificate authorization under NGA section 7(c) and subpart G of Part 284 of the Commission's regulations; and in Docket No. CP02-93-000, authorization under NGA section 3 and a Presidential Permit to site, construct, connect, operate, and maintain its offshore pipeline facilities at the Exclusive Economic Zone (EEZ) boundary between the United States and the Commonwealth of the Bahamas, pursuant to Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 0204-112.

2. We conclude that the proposal to bore a tunnel is environmentally preferable to the previously approved horizontal directional drill (HDD) method of pipeline installation. In addition, we expect that enlarging the pipe's diameter will enable Ocean Express to better meet the operational needs of its gas recipients. Accordingly, we find the proposed amendments to the Ocean Express project to be consistent with the public interest.

Background and Proposal

3. The Ocean Express project is intended to bring up to 842,000 dekatherms per day (Dth/d) of natural gas from an offshore receipt point at the boundary between the EEZ of the United States and the Bahamas to an onshore delivery point in Broward County, Florida.² From the EEZ receipt point, the proposed Ocean Express line will transport the imported gas for approximately 48 miles, coming ashore near the Dania Beach Boulevard traffic circle in Broward County, Florida. Onshore, the Ocean Express pipeline will continue for approximately 6.6 miles to a point just west of the Ft. Lauderdale/Hollywood International Airport, where it will interconnect with and deliver gas to Florida Power & Light Company (Florida Power & Light).

4. Ocean Express seeks to modify its project as follows. Instead of employing two HDD segments to install pipe underneath three reef systems near shore, Ocean Express now proposes to use an earth pressure balance boring machine and construct a concrete segmented lined tunnel, approximately 14,000 feet long and 13 feet, 7 inches in diameter. When completed, pipe will be placed inside the tunnel. Ocean Express maintains that this alternative tunnel construction technology, while infrequently used to install natural gas pipelines, is commonly used to install water and sewage treatment pipelines. Ocean Express contends that constructing a concrete tunnel to encase a pipeline, when compared to installing pipe via an HDD, reduces the risk of adverse environmental impacts. Further, Ocean Express anticipates that by constructing a tunnel to house its pipeline, it can use readily available carbon steel pipe. Otherwise, if installed using an HDD, the terms of the agreement with the Naval Surface Warfare Center, Carderock Division, would require that Ocean Express use stainless steel pipe, which is significantly more expensive and may take more than a year to procure.

²An affiliate of Ocean Express plans to construct a liquefied natural gas (LNG) terminal in the Bahamas to receive, store, and regassify LNG. Regassified volumes will be transported from the new LNG terminal through a new pipeline to an underwater interconnect at the EEZ boundary with the proposed Ocean Express pipeline.

5. In conjunction with its proposal to build a tunnel, Ocean Express seeks to make minor modifications to the offshore portion of its pipeline's proposed route. Ocean Express states the altered routing "does not deviate substantially from the certificated route and does not impact new landowners or extend beyond the areas already surveyed by Ocean Express."³ The proposed revised path will traverse less of the Navy's South Florida Test Facility Navy Restricted Area offshore of Dania Beach, Florida and will marginally reduce the length of the offshore pipeline.

6. In addition to the proposed construction and routing modifications, Ocean Express requests authorization to enlarge the pipe's diameter from 24 to 26 inches and to coat its interior. Ocean Express explains these changes will permit it to provide a six percent hourly flow rate, as requested by gas recipients to accommodate their operational and market needs. Ocean Express stresses that using a wider-diameter pipe will not effect construction, will not expand the right-of-way, and will not alter the project's certificated capacity. Finally, Ocean Express proposes to install a pressure reducing station at the onshore end of the tunnel to bring the pipeline pressure down from a certificated maximum allowable operating pressure (MAOP) of 2,200 psig to 1,480 psig for transportation onshore.

7. Ocean Express estimates that the project's cost, with its proposed changes, will be approximately \$264.2 million; this is an increase from the previous cost estimate of \$111.6 million.⁴ Ocean Express states that it has prospective customer commitments for firm transportation service for 842,000 Dth/d, the full certificated capacity of the pipeline. Ocean Express seeks to change its approved initial rates primarily to reflect the increased costs associated with the proposed concrete tunnel to contain its pipeline.

Notice

8. Notice of Ocean Express' amended application was published in the *Federal Register* on September 30, 2004.⁵ No interventions or protests were submitted in response.

³ Ocean Express' Application to Amend, at 9 (September 9, 2004).

⁴ Ocean Express states that it will not be responsible for the cost of the Bahamian LNG terminal and the pipe from that terminal to the EEZ boundary.

⁵ 69 FR 58,416 (September 30, 2004).

Consultation with Secretaries of State and Defense

9. A draft Presidential Permit, amended to reflect the above-noted proposed modifications to the project, was sent to the Secretary of State and to the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State, dated March 11, 2005, and on behalf of the Secretary of Defense, dated April 21, 2005, indicate no objection to amending the Presidential Permit.⁶ The Secretary of Defense, however, observes that Ocean Express and the Naval Surface Warfare Center, Carderock Division, have executed a Memorandum of Agreement concerning the proposed pipeline's routing, construction, operation, and maintenance within the Navy's South Florida Test Facility at Dania Beach, Florida. The Secretary of Defense requests the Commission condition issuance of the amended Presidential Permit on compliance with the Memorandum of Agreement. We will do so.

Discussion

Presidential Permit and NGA Sections 3 and 7 Authorizations

10. Because the proposed Ocean Express pipeline will be used to import natural gas, the transportation and border crossing facilities are subject to our jurisdiction and to the requirements of NGA section 3. Further, because the proposed facilities will be used to transport gas in interstate commerce, they are subject to our jurisdiction and the requirements of NGA sections 7(c) and 7(e).

11. We find the tunnel proposal preferable to the previously approved HDD. The tunnel technology will permit Ocean Express to burrow down and out from shore, with all work taking place beneath the coral reefs, whereas laying pipe by means of an HDD requires working from ships stationed above the reef. Although we found the latter would be unlikely to result in any adverse environmental impact, the former carries a still smaller risk.

12. The offshore routing variations are minor. Nevertheless, given that a portion of the changed route traverses the Navy's South Florida Test Facility, we reiterate, as stated in our January 2004 Order, that Ocean Express' Presidential Permit is conditioned

⁶Executive Order No. 10,485 requires that the Commission obtain the favorable recommendation of the Secretaries of State and Defense prior to issuing a Presidential Permit.

on compliance with its Memorandum of Agreement with the Naval Surface Warfare Center, Carderock Division.

13. Issues have been raised regarding the manner in which Ocean Express will make prospective deliveries.⁷ After considering these issues, Ocean Express has determined, and we concur, that the use of larger diameter pipe better accommodates its customers' operational and market needs by permitting greater hourly flow. The maximum certificated capacity of the project, 842,000 Dth/d, will remain the same. We find that the use of 26-inch, instead of 24-inch, pipe will not result in any change to Ocean Express' construction methods or the size of its approved right-of-way.

14. Based on our review of the record, and the absence of any objection from the Secretaries of State and Defense, we conclude that the Ocean Express pipeline project, as modified by the proposed changes in its installation, route, and size, promotes the objectives of the Energy Policy Act of 1992,⁸ is consistent with the public interest and is required by the public convenience and necessity. Accordingly, we will grant Ocean Express' request, and amend its existing NGA sections 3 and 7 authorizations and Presidential Permit.⁹

Rates

15. Ocean Express seeks Commission approval to revise its cost-of-service rates, primarily to reflect proposed increases in construction and material costs. Ocean Express states that its *pro forma* tariff filed on March 29, 2004 has not changed as a result of its proposed project modifications. Ocean Express states that it is not proposing any changes to its previously approved underlying rate assumptions, other than that it is no longer assuming it will receive any revenue from interruptible transportation service because it is now fully subscribed on a firm basis for 842,000 Dth/d capacity. In contrast, the Rate Schedule FTS rates discussed in the April 2003 preliminary determination were based on 800,000 Dth/d of firm capacity.

⁷ See the proceeding in Docket No. RP04-249, *AES Ocean Express LLC v. Florida Gas Transmission Company*.

⁸ See 15 USC § 717b (2001).

⁹ See the Appendix to this order.

16. Ocean Express continues to propose to offer cost-based firm transportation under Rate Schedule FTS, and interruptible transportation under Rate Schedules ITS and Gas Parking Service (GPS) on an open-access, nondiscriminatory basis pursuant to Part 284 of the Commission's regulations. The proposed rates reflect a straight fixed variable (SFV) rate design and 6 percent hourly flow rates,¹⁰ and are calculated using a 25-year levelized cost of service. The annual levelized cost of service is \$31,215,000.¹¹ The firm reservation billing determinants total 10,104,000 Dth (842,000 Dth times 12), and Ocean Express estimates no billing determinants for interruptible services.

17. The Commission previously approved Ocean Express' capital structure of 70 percent debt and 30 percent equity and a rate of return on equity of 14 percent. Ocean Express does not anticipate any change in capital structure or rate of return on equity; however, in lieu of its previously employed 8.5 percent cost of debt to be repaid over 18 years, Ocean Express now estimates the cost of long term debt will be 7.57 percent to be repaid over a 25 years. Our review indicates that Ocean Express' rate calculation, using the lower 7.57 percent cost of debt, reflects a capital structure of 72 percent debt and 28 percent equity. We will accept Ocean Express' changes to its debt costs. However, we will require Ocean Express to correct its rate calculation to use the 70 percent debt and 30 percent equity capital structure that Ocean Express originally requested and that we previously approved.

¹⁰ Ocean Express has not proposed cost-based rates that vary depending on the hourly flow rates of the shipper's contracted service, *e.g.*, based on hourly flow rates other than 6 percent.

¹¹ The \$31,215,000 total cost of service for year 1 is comprised of \$3,840,000 of operation and maintenance expenses (including administrative and general expenses), \$10,568,000 of depreciation expenses, \$640,000 of taxes other than income taxes, \$6,094,000 of federal and state income taxes, \$24,714,000 of return and a levelization adjustment of (\$14,641,000). The total rate base of \$263,051,000 consists of \$264,189,000 of gross plant, less \$10,568,000 of accumulated depreciation and amortization expenses, \$14,641,000 of regulatory assets associated with the levelization adjustment, and (\$5,212,000) of accumulated deferred taxes.

18. As amended, the proposed maximum cost-based FTS reservation rate is \$3.0894 per Dth and the proposed FTS usage rate is \$0 per Dth. The proposed maximum ITS rate is \$0.1016 per Dth, and the same rate is proposed for the GPS rate and FTS authorized overrun service. These rates are equivalent to a 100 percent load factor derivative of the FTS rates and are to be charged on a usage basis. We will approve Ocean Express' proposed maximum cost-based rates, with the revisions discussed herein and subject to the conditions described in our previous orders. We direct Ocean Express to file actual tariff sheets that set forth all of its rates along with revised exhibits supporting the derivation of rates.

19. Ocean Express states that its filed *pro forma* tariff has not changed as a result of the project modifications proposed herein. However, Ocean Express has not shown how its filed *pro forma* tariff sheets incorporate the proposed change to 6 percent hourly flow rates. Ocean Express must explain what provisions of its tariff are affected by this change. Further, Ocean Express' tariff must be consistent with our policy regarding new interruptible service requiring either a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers, or an allocation of costs and volumes to these services.¹² While Ocean Express explains that it is no longer assuming it will receive any revenue from interruptible transportation service, and thus does not propose to allocate costs to interruptible services, Ocean Express must nevertheless file actual tariff sheets to provide for a revenue crediting mechanism in its General Terms and Conditions that credits any interruptible revenues from its cost-based ITS and GPS rates, net of variable costs, to both firm and interruptible customers.

20. Ocean Express expects third-party cable owners may desire to use the tunnel and states that it has no objection to such use by non-competitors. Ocean Express declares that the tunnel's access will be controlled by the State of Florida. Ocean Express avers that it does not anticipate receiving revenues from other parties sharing its tunnel, but if it does, it will account for any such revenues in its next NGA section 4 rate filing.

¹² See *Vector Pipeline L.P.*, 85 FERC ¶ 61,083 (1998).

21. Our previous orders in this proceeding require Ocean Express to make a filing within three years after its in-service date to justify its existing rates or propose alternative rates or make an NGA section 4 filing to propose alternative rates. We condition the authorizations granted herein upon the requirement that, when Ocean Express files its cost and revenue study, it fully explain and justify its cost-based rates in light of any revenues that it may receive from the use of its tunnel by other parties. These additional information requirements will provide customers with the opportunity to raise concerns about the impact of any third party revenues from use of the tunnel on Ocean Express' rates in the cost and revenue study.

22. We direct Ocean Express to file actual tariff sheets at least 30 days, but not more than 60 days, prior to the commencement of service.

Environmental Review

23. In response to Ocean Express' amended application, on November 15, 2004, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Modifications to the Ocean Express Pipeline Project and Request for Comments on Environmental Issues (NOI). The notice was sent to landowners, individuals, organizations, and government entities that expressed an interest in the original project and all persons that had received a copy of our final Environmental Impact Statement (EIS) for the original project. No new landowners are affected by the proposed modifications to the facilities and the route. The NOI was also sent to all identified potential right-of-way grantors.

24. In response, we received one public comment letter and four agency comment letters. The public and agency comments generally favored the proposed modifications since they would reduce impacts to the nearshore environment relative to the project as originally proposed and authorized. The Florida Department of Environmental Protection (FDEP) Office of Intergovernmental Programs requested permission to review an advance draft of the National Environmental Policy Act (NEPA) document prepared by FERC staff. In response, Commission staff provided an advance interagency draft document that was forwarded to FDEP, the United States Army Corps of Engineers, the National Marine Fisheries Service, and the United States Environmental Protection Agency (EPA). In addition, the comments requested that potential tunnel construction impacts be assessed, and the results of that assessment be provided publicly.

25. The comments received in response to the NOI and the advanced interagency draft documents have been incorporated, as appropriate, into an Environmental Assessment (EA). The EA addresses geology, soils, water resources, vegetation, wildlife, fisheries, sensitive species, land use, cultural resources, air quality and noise, socioeconomics, reliability and safety, and alternatives. On February 16, 2005, a Notice of Availability (NOA) of the EA for Ocean Express' amended project proposal was issued. No comments were submitted in response. Subsequent to issuance of the EA, EPA submitted comments, to which Ocean Express replied. EPA's comments raise no new material issues; the concerns expressed have been previously addressed in the EIS and EA.

26. Based on the discussion in the EA, we conclude that if constructed in accordance with Ocean Express' application, as supplemented and amended, and with the implementation of our January 29, 2004 Order's environmental conditions, as revised below, and with the additional environmental conditions specified below, approval of the project, as amended, will not constitute a major federal action significantly affecting the quality of the human environment.

27. We retain the environmental conditions specified in our January 2004 Order, with the following revisions. Environmental Condition No. 19 requires that Ocean Express begin with the HDD portion of its project and "successfully complete installation of the nearshore pipeline segment between RMP 44.70 to RMP 48.03 before commencing construction on any other facilities." Given the environmental sensitivity of the coral reef crossing, we continue to believe that Ocean Express should demonstrate the viability of its nearshore routing prior to initiating construction on any other portion of its project. However, we find that the completion of the proposed tunnel will be a sufficient demonstration of the viability of Ocean Express' proposed means to traverse the reef, and see no need to also require that Ocean Express feed pipe through its completed tunnel prior to commencing any other construction. Accordingly, Environmental Condition No. 19 is revised to read as follows:

Ocean Express shall successfully complete the construction of its concrete segmented lined tunnel between RMP 44.75 to RMP 47.50 **before commencing construction on any other facilities.** Within 90 days of successful construction of the tunnel, Ocean Express shall file with the Secretary a summary of the construction, problems encountered, and a comparison of the actual impacts to coral reef and hardbottom habitat versus those predicted by Ocean Express prior to construction.

28. Ocean Express asks that we revise Environmental Condition Nos. 15, 18, 20, and 21 of the January 2004 Order, which direct Ocean Express to submit specific information to the Commission prior to commencing any construction. Ocean Express contends that with respect to the construction of its proposed tunnel, the concerns that these information filing requirements are intended to address will either not arise or will be covered under other compliance conditions. We concur, and we will therefore revise Environmental Condition Nos. 15, 18, 20, and 21 to state that the action required by each condition is to be performed by Ocean Express “prior to construction on any facilities other than its tunnel.” The revised environmental conditions now read as follows:

15. **Prior to construction on any facilities other than its tunnel**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP, a site-specific construction plan for all major waterbody crossings. The plan should include scaled drawings identifying all areas to be disturbed by construction including extra workspace areas, spoil storage areas, sediment control structures, and mitigation for navigational issues.
18. **Prior to construction on any facilities other than its tunnel**, Ocean Express shall file with the Secretary an offshore-specific Spill Prevention, Containment, and Countermeasures Plan and the estimated volumes associated with a worst-case spill scenario, as well as an appropriate evaluation of the associated potential impacts to marine life and shore areas.
20. **Prior to construction on any facilities other than its tunnel**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP detailed maps (at a scale of 1 inch = 100 feet or greater) showing all offshore work areas, coral resources, habitat type, and proposed offset buffers. Where applicable, Ocean Express shall provide a site-specific explanation of the conditions that would not permit at least a 100-foot setback from reef resources.
21. Ocean Express shall conduct a survey of its construction areas for invasive/exotic plant species. If any are identified, Ocean Express shall file, **prior to construction on any facilities other than its tunnel**, with the Secretary a plan to control the spread of invasive/exotic plant species. The plan shall document the locations of invasive/exotic species by milepost and shall identify the mitigation measures that would be used to prevent the spread of these plants.

29. Ocean Express asks that we similarly revise Environmental Condition Nos. 22, 23, and 24 of the January 2004 Order, so that it can commence construction of its tunnel before satisfying the designated pre-construction actions Ocean Express is required to take to ensure its construction does not disrupt bird nesting. Ocean Express asserts that construction activities associated with its proposed tunnel will not take place proximate to any nesting areas. We believe it is prudent to retain these conditions as is, pending additional documentation that tunnel-related construction presents no potential to adversely impact nesting areas. Ocean Express is invited to present in its initial implementation plan a more detailed explanation of, and justification for, its request to alter these environmental conditions.

30. Finally, Ocean Express asks that we revise Environmental Condition No. 28 of the January 2004 Order, which requires Ocean Express to submit cultural resource reports and treatment plans. Ocean Express requests that this condition be modified to state that it is required to file a cultural resource report for the temporary concrete fabrication plant site prior to installing that plant, but not prior to starting construction on any other facilities. We do not find sufficient cause to alter this condition, but again invite Ocean Express to present a more detailed explanation of, and justification for, this request in its initial implementation plan.

31. With respect to the concrete fabrication plant, we require that prior to construction, Ocean Express shall identify the specific location, size, and configuration of the concrete plant, and file with the Director of the Office of Energy Projects (OEP), for review and approval, all pertinent information on the proposed site, including sensitive resources present, agency consultation, survey results, potential impacts, and appropriate mitigation, as necessary. The filing shall also include documentation demonstrating that Ocean Express has received all federal, state, and local approvals for operation of the facility.

32. In addition, prior to construction, Ocean Express shall file the results of a revised acoustical analysis and noise mitigation plan for the modified project with the Director of OEP for review and approval. The analysis should quantify the magnitude, duration, and frequency spectrum of principal noise sources associated with concrete fabrication including the potential cumulative noise associated with project-related noise of the concrete fabrication plant and tunnel construction at sensitive receptors, and specify noise mitigation measures necessary to reduce the noise levels to comply with local noise ordinances.

33. Any state or state or local permits issued with respect to the jurisdictional facilities described herein and in the application, as supplemented and amended, must be consistent with the conditions of Ocean Express' authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities authorized by this Commission.¹³ Ocean Express shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Ocean Express. Ocean Express shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

34. At a hearing held on May 11, 2005, the Commission, on its own motion, received and made a part of the record, all evidence, including the application, as supplemented and amended, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP02-90-003, Ocean Express' existing NGA section 7 certificate of public convenience and necessity to construct, own, and operate facilities, is amended, as described and conditioned herein and in the application.

(B) Ocean Express' initial rates are amended, as discussed herein. Ocean Express must file, at least 30 days, but no more than 60 days, prior to the commencement of service, actual tariff sheets and revised Exhibits consistent with the discussion in the body of this order and the Commission's regulations.

(C) When Ocean Express files its cost and revenue study at the end of the first three years of actual operation to justify its cost-based rates, Ocean Express must include an explanation of and justification for its cost-based rates in light of any revenues that it may receive from third-party use of its tunnel.

¹³See, e.g., *Schneidewind v. ANR Pipeline Company*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

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(D) Ocean Express must comply with the specific environmental conditions listed in Appendix A of the January 29, Order, as revised herein, and with the additional environmental conditions described in the body of this order.

(E) In Docket Nos. CP02-93-002, Ocean Express' existing Presidential Permit and NGA section 3 authorizations are amended, as described and conditioned herein and in the application.

(F) Ocean Express' amended Presidential Permit and NGA section 3 authorizations are conditioned on its complying with the terms of its Memorandum of Agreement with the Naval Surface Warfare Center, Carderock Division.

(G) Ocean Express must sign and return the Testimony of Acceptance of all the provisions of the amended Presidential Permit to the Secretary of the Commission prior to construction.

(H) Prior to commencing construction, Ocean Express shall provide the Commission with evidence that AES Ocean LNG, Ltd., or other applicable entity, has received all authorizations and approvals from the Commonwealth of the Bahamas necessary to complete the Bahamian portions of this project.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix

Amended Presidential Permit

**AMENDED PRESIDENTIAL PERMIT
AUTHORIZING AES OCEAN EXPRESS LLC
TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN
NATURAL GAS FACILITIES AT THE BOUNDARY
BETWEEN THE EXCLUSIVE ECONOMIC ZONES OF
THE UNITED STATES THE COMMONWEALTH OF THE BAHAMAS**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NOS. CP02-90-003 and CP02-93-002**

(May 11, 2005)

AES Ocean Express LLC (Permittee), a limited liability company organized and existing under the laws of the State of Delaware, filed an application in Docket No. CP02-93-002 on September 9, 2004, as supplemented on September 15, 2004 and September 20, 2004, to increase the diameter of its proposed natural gas pipeline from 24 to 26 inches. The Ocean Express pipeline was authorized under the Presidential Permit issued on January 29, 2004, 106 FERC ¶ 61,090 (2002).

By letter dated March 11, 2005, the Secretary of State, and by letter dated April 21, 2005, the Secretary of Defense, favorably recommended that the amended Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of an amended Permit 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 Permittee to construct, operate, maintain and connect the natural gas transmission 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: that portion of the 26-inch pipeline which is located in the United States immediately adjacent to the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from the Bahamas to the United States only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The construction, operation, maintenance, and connection 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 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 replacements.

Article 9. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, 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.

(S E A L)

Linda Mitry,
Deputy Secretary.

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

AES Ocean Express LLC

By _____

(Attest)

Executed in triplicate