

140 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

El Paso Natural Gas Company

Docket No. CP12-96-000

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

(Issued August 31, 2012)

1. On March 23, 2012, El Paso Natural Gas Company (El Paso) filed an application in the above referenced docket for authorization under section 3 of the Natural Gas Act (NGA) and a Presidential Permit for the siting, construction, connection, operation and maintenance of natural gas export facilities (Norte Crossing) at the international boundary between the United States and Mexico in El Paso County, Texas.¹ As discussed below, the Commission will grant the requested authorizations, subject to the conditions discussed herein.

¹ Authorization under section 3 of the NGA is necessary for the siting, construction, connection, operation and maintenance of facilities to import or export natural gas. In addition, pursuant to Executive Order No. 10485, dated September 3, 1953 (18 Fed. Reg. 5397 (1953)), as amended by Executive Order No. 12038, dated February 3, 1978 (43 Fed. Reg. 4957 (1978)), a Presidential Permit also must be obtained for the portion of an import or export facility crossing one of the United States international borders. In Delegation Order No. 00-004.00A, effective May 16, 2006, the Secretary of the U. S. Department of Energy (DOE) renewed the delegation of authority to the Commission to grant or deny authorization under section 3 of the NGA and, if applicable, a Presidential Permit for the siting, construction, connection, operation, and maintenance of import and export facilities. The Commission has no authority to approve or disapprove applications to import or export natural gas. The Secretary of Energy has delegated such authority to DOE's Assistant Secretary for Fossil Energy.

I. Background and Proposal

2. El Paso is a natural gas company organized and existing under the laws of Delaware. El Paso owns and operates an integrated interstate pipeline system which extends from various natural gas production areas in the southwestern United States through Texas, New Mexico, Colorado, Arizona, and California.
3. El Paso states that the Mexican Comision Federal de Electricidad (CFE) is proposing to build five new power plants over the next fifteen years to serve new power generation loads in the states of Chihuahua, Durango and Coahuila in northern Mexico. The CFE awarded a contract for the construction of the first of such plants, the Norte II Power Plant, as well as a contract to build the Tarahumara Pipeline which will transport gas from El Paso's Norte Crossing facility to the Norte II Power Plant. The Norte II Power Plant will require natural gas volumes of approximately 97,000 dekatherms (Dth) per day by its in-service date of July 2013.
4. El Paso seeks Commission authorization under NGA section 3 and a Presidential Permit to site, construct, connect, operate and maintain a new border crossing facility, Norte Crossing, for the purpose of exporting natural gas to Mexico. The Norte Crossing will consist of approximately 1,500 feet of 36-inch diameter pipeline with a maximum delivery export capacity of 366,000 cubic feet (Mcf) per day, designed to transport natural gas to a new delivery interconnect with Tarahumara Pipeline at the United States/Mexico border underneath the Rio Grande River. El Paso will construct the Norte Crossing underneath the Rio Grande River using the horizontal directional drill process.
5. In addition, El Paso plans to construct new upstream facilities, under its Part 157 blanket construction certificate, consisting of a new meter station with related appurtenances and a new tie-in that will connect Norte Crossing to El Paso's existing Samalayuca Lateral.²
6. MGI Supply, Ltd (MGI), a current firm shipper on El Paso's system, has entered into an agreement with El Paso for capacity at the proposed Norte Crossing facility, allowing MGI to export natural gas from the United States to Mexico to serve the Norte II Power Plant.

² On November 20, 1993, in Docket No. CP93-253-000, the Commission granted El Paso section 3 authorization and issued a Presidential Permit authorizing the Samalayuca Crossing, including the Samalayuca Lateral, located in El Paso County, Texas at the international boundary between the United States and Mexico. *See El Paso Natural Gas Co.*, 65 FERC ¶ 61,276 (1993).

II. Notice, Interventions, and Comments

7. Notice of El Paso's application was published in the *Federal Register* on April 5, 2012 (77 Fed. Reg. 20,617). Timely, unopposed motions to intervene were filed by Arizona Public Service Company; BP America Production Company and BP Energy Company (filing jointly); MGI; New Mexico Gas Company Inc.; and Southwest Gas Corporation.³ No protests or adverse comments were filed.

III. Consultation with Secretaries of State and Defense

8. On May 21, 2012, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations. By letters dated July 6, 2012, and July 2, 2012, the Secretaries of State and Defense, respectively, indicate no objection to the proposed Presidential Permit for El Paso.⁴

IV. Discussion

9. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits for border crossing facilities⁵ and to grant NGA section 3 authorizations for import and export facilities. Since the subject facilities will be used to export gas across the United States/Mexico international border, the proposal is subject to the Commission's jurisdiction under section 3 of the NGA.

10. Section 3 provides for the Commission's approval of an application under that section "unless it finds that the proposal will not be consistent with the public interest."⁶ The construction of the proposed facilities to export natural gas at Norte Crossing, from the United States to Mexico, will be necessary to meet the future needs of new power generation loads in the states of Chihuahua, Durango and Coahuila in northern Mexico. Further, the proposed export facilities will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the

³ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(c) (2012).

⁴ Executive Order No. 10485, 18 Fed. Reg. 5397 (September 3, 1953), requires that the Commission obtain favorable recommendations of the Secretaries of State and Defense prior to issuing a Presidential Permit authorizing the construction of facilities at the borders of the United States for the exportation or importation of natural gas.

⁵ The Presidential Permit is attached as the appendix to this order.

⁶ 15 U.S.C. § 717b(a) (2006).

United States and Mexico, both of which are signatories to the North American Free Trade Agreement (NAFTA),⁷ providing for fewer restrictions on natural gas imports and exports.

11. In view of the above considerations, the Commission finds the approval of the Norte Crossing facilities for the exportation of natural gas is consistent with the public interest. Therefore, the Commission will issue a new Presidential Permit, set forth in Appendix A to this order, and NGA section 3 authorization to site, construct, connect, operate, and maintain Norte Crossing.

V. Environmental Analysis

12. On May 14, 2012, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Norte Crossing Project and Request for Comments on Environmental Issues* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

13. In response to the NOI, the Commission received two comment letters. One comment letter was from the U.S. International Boundary and Water Commission (IBWC) notifying the Commission of its required licensing for the proposed project. The second was from the U.S. Department of Interior National Park Service (NPS) regarding the location of the proposed project in relation to the El Camino Real de Tierra Adentro National Historic Trail (NHT) and potential trail-related cultural resources.

14. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an Environmental Assessment (EA) for El Paso's proposed project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA addresses the IBWC and NPS comments in EA Sections II-b and II-f, respectively. El Paso filed its application with the IBWC on April 18, 2012, and also states that it would notify the IBWC of any inadvertent release of drilling mud which poses a threat to public health and safety, and would clean up the release to their satisfaction. Also, El Paso addressed the NPS comments related to the El Camino Real de Tierra Adentro NHT by providing documentation that demonstrated that no trail resources were present in the project area of potential effect. The EA was placed into the public record on July 20, 2012.

⁷ Pub. L. No. 103-182 (December 8, 1993), 107 Stat. 2057; Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (December 30, 1993).

15. Based on the analysis in the EA, we conclude that if the proposed facilities are constructed and operated in accordance with El Paso's application and supplements, and in compliance with the environmental conditions in Appendix B to this order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

16. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. 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 approved by this Commission.⁸

Conclusion

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

The Commission orders:

(A) A Presidential Permit and NGA section 3 authority are issued authorizing El Paso to site, construct, connect, operate and maintain natural gas export and border crossing facilities, as described in this order and subject to the conditions of the Presidential Permit.

(B) El Paso 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.

(C) The authorized export/border crossing facilities shall be completed and placed in service within three years of the date of issuance of this order.

⁸See, e.g., *Schneidewind v. ANR Pipeline Co.*, 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., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) El Paso shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies El Paso. El Paso shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A**PERMIT AUTHORIZING EL PASO NATURAL GAS COMPANY
TO SITE, CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN,
NATURAL GAS PIPELINE FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP12-96-000**

(Issued August 31, 2012)

El Paso Natural Gas Company (El Paso), a corporation organized under the laws of the State of Delaware, filed on March 23, 2012, in Docket No. CP12-96-000, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00A, requesting that the Commission issue an order under section 3 of the NGA and a Presidential Permit authorizing El Paso to site, construct, connect, operate and maintain export facilities at the international boundary between the United States and Mexico to accommodate the exportation of natural gas from the United States to Mexico.

By letter dated July 6, 2012, the Secretary of State, and by letter dated July 2, 2012, the Secretary of Defense, favorably recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the export permission requested by El Paso, 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. 00-004.00A effective May 16, 2006, and the Commission's regulations, permission is granted to El Paso (Permittee) to site, construct, connect, 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 therefore.

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

approximately 1,500 feet of 36-inch diameter pipe with a maximum daily export capacity of 366,000 Mcf/d designed to transport natural gas to a new delivery interconnect with Tarahumara Pipeline at the international boundary between the United States and Mexico in El Paso County, Texas, approximately six miles south of Clint, Texas

Article 3. The natural gas facilities subject to this Permit, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas between the United States and Mexico 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 Defense 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 Defense, 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 therefore. 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. 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 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.

Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of __, 2012 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2012, a certified copy of the record of which is attached hereto.

El Paso Natural Gas Company

By _____

(Attest)

Executed in triplicate

APPENDIX B

As recommended in the EA, this authorization includes the following conditions:

1. El Paso shall follow the construction and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. El Paso must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction, and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction, and operation.
3. **Prior to any construction of facilities**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA. **As soon as they are available, and before the start of construction**, El Paso shall file with the Secretary any revised detailed survey maps and alignment sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these maps/sheets.

5. El Paso shall file with the Secretary detailed maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the authorization and before construction begins**, El Paso shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. El Paso must file revisions to the plan as schedules change. The plan shall identify:
 - a. how El Paso will implement the Horizontal Directional Drilling (HDD), and pipeline construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by this Order;
 - b. how El Paso will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation

- required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions El Paso would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of El Paso's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) El Paso will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of HDD activities, and pipeline construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, El Paso shall file updated status reports with the Secretary on a biweekly basis until all HDD, pipeline construction, and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on El Paso's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for work in other environmentally-sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;

- f. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by El Paso from other federal, state, or local permitting agencies concerning instances of noncompliance, and El Paso's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, El Paso shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. El Paso must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the facility sites and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Authorization conditions El Paso has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, El Paso shall file a revised HDD Contingency Plan for the review and approval by the Director of OEP which includes a commitment to contain and collect any inadvertent releases of drilling fluid within the Rio Grande River and/or the two riverside canals.