

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

EnCana Border Pipelines Limited and
Omimex Canada, Ltd.

Docket No. CP04-10-000

Chinook Pipeline Company and
Omimex Canada, Ltd.

Docket No. CP04-11-000

(Not Consolidated)

ORDER AMENDING PRESIDENTIAL PERMITS AND NGA SECTION 3
AUTHORIZATIONS

(Issued April 20, 2004)

1. On October 24, 2003, EnCana Border Pipelines Limited (EnCana) and Omimex Canada, Ltd. (Omimex) in Docket No. CP04-10-000, and Chinook Pipeline Company (Chinook) and Omimex in Docket No. CP04-11-000 filed applications requesting authority to transfer Presidential Permits and authorization under section 3 of the Natural Gas Act (NGA) held by EnCana and Chinook to Omimex.¹ The requested transfer of authorizations are in connection with purchase and sale agreements between EnCana and Omimex, and Chinook and Omimex, wherein Omimex will purchase certain facilities owned and operated by EnCana and Chinook, respectively. The respective facilities

¹The Commission notes that the Presidential Permit and section 3 authorization which EnCana seeks to transfer to Omimex were issued to 3698157 Canada Ltd. (Canada Ltd.), EnCana's predecessor, on January 11, 2001. See *Montana Power Company and 3698157 Canada Ltd.*, 94 FERC ¶ 61,024 (2001). Later, Canada Ltd. changed its name to PanCanadian Border Pipelines Limited and then to EnCana as a result of a merger between PanCanadian Energy Corporation and Alberta Energy Company. However, Canada Ltd. did not file to amend its Presidential Permit and section 3 authorization to reflect the new name of the Permittee. Therefore, EnCana and Omimex, in Docket No. CP04-10-000, request the Commission to waive, to the extent necessary, any regulations in order to allow the transfer at this time of the Presidential Permit and section 3 authorization to Omimex. The Commission will grant such waiver and this order will refer to the current Permittee as "EnCana."

currently are utilized by EnCana to import gas from Canada into the United States and by Chinook to export gas from the United States into Canada.

2. This order grants authority to EnCana and Chinook to transfer to Omimex their respective Presidential Permits and NGA section 3 authorizations and amends those Permits and authorizations to insert Omimex as the owner and operator of the facilities. Granting the requested authorizations is in the public interest because it will allow the parties to effectuate their purchase/sale agreements, while permitting Omimex to continue importing and exporting gas under existing contracts, which Omimex states it will honor.

I. Background and Proposal

3. EnCana is a wholly owned subsidiary of EnCana Resources Inc. EnCana Resources Inc. is a wholly owned subsidiary of EnCana Corporation, a Canadian Federal corporation incorporated under the Canada Business Corporation Act. EnCana currently owns and operates natural gas facilities located at the United States/Canada international border near Regan, Alberta and Del Bonita, Montana. Specifically, the facilities consist of a section of four and a half-inch diameter pipe extending for approximately one mile in a southerly direction from an interconnection with EnCana on the northern side of the international border to an interconnection with the four-inch gathering line owned and operated by NorthWestern Corporation.

4. Omimex is a corporation organized and existing under the laws of the State of Delaware and is a wholly-owned subsidiary of Omimex Resources, Inc., which is also a Delaware corporation. Omimex Resources, Inc. is an independent energy company engaged in the exploration, development, acquisition and operation of oil and gas properties. Omimex operates Omimex Resources, Inc.'s oil and gas properties in Canada.

5. EnCana states that it currently imports gas through the facilities pursuant to a blanket authorization issued by the Department of Energy,² and sells it in Montana and other states. Most of the gas is consumed by customers of NorthWestern Energy (formerly Montana Power Gas Company). EnCana maintains that the service over the facilities is not subject to the Commission's jurisdiction under the gathering exemption in NGA section 1(b). According to the applicants, Omimex also will import gas through the facilities and the service Omimex will provide will continue to be exempt as gathering.

²DOE/FE Order No. 1891 (Aug. 26, 2003).

6. Chinook, like EnCana, is a wholly-owned subsidiary of EnCana Resources Inc. Chinook currently owns and operates facilities at the international boundary in Blaine County, Montana, near Loomis, Saskatchewan, Canada. Specifically, the facilities consist of a 15.7-mile, six-inch diameter pipeline extending from the tail gate of the Battle Creek natural gas plant in Blaine County, Montana, across the international boundary where the facilities interconnect at a receipt point on Many Islands Pipeline Company at Loomis, Saskatchewan, Canada. The applicants state that the pipeline is designed to transport up to 15,000 Mcf of natural gas per day. They explain that Chinook currently uses the facilities to transport natural gas that is not needed for local requirements from the South Battle Creek gas field in Blaine County, Montana, to the international border where the gas is sold to third parties on TransCanada's pipeline system.³

7. Chinook and Omimex further assert that only the part of the Chinook facilities that are located in the United States and immediately next to the international boundary are subject to the Chinook's Presidential Permit and NGA section 3 authorization, which were issued in a Commission order on January 10, 2001.⁴ The applicants point out that the Commission found in that order that because Chinook utilized the facilities only to export gas to Canada and not to transport gas through any other state but Montana, the pipeline was not subject to the Commission's jurisdiction under NGA section 7.⁵ Rather, only those facilities at the border were subject to NGA section 3.⁶ Chinook and Omimex aver that Omimex will utilize the facilities for the same purpose and will honor all existing transportation arrangements.

8. The applicants in their applications maintain that the transfer of EnCana's and Chinook's authorizations to Omimex will not be inconsistent with the public interest since neither transfer involves any existing contracts between EnCana, Chinook or Omimex and a foreign government or person concerning the control of operations and rates for the delivery of gas which may restrict or prevent other United States' companies

³Chinook exports gas pursuant to a blanket authorization issued by the Department of Energy on December 4, 2000. DOE/FE Order No. 1615-A (December 4, 2000).

⁴See Chinook Pipeline Company, 94 FERC ¶ 61,017 (2001).

⁵Id.

⁶The Commission notes that where necessary to prevent a regulatory gap, the Commission has exercised NGA section 3 jurisdiction over facilities that extend beyond those located immediately at the border. There is no need to exercise such jurisdiction here. See Inter-City Minnesota Pipelines, Ltd., 29 FERC ¶ 61,105 (1984).

from extending their activities in the same general area. EnCana and Omimex state that the transfer of the authorizations to Omimex will enhance the reliability and flexibility of Omimex's pipeline system and will not impair Omimex's ability to render service in the United States to existing customers at reasonable rates. Further, both applicants aver that the transfers of their authorizations to Omimex will improve access to gas supplies and promote national economic policies by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Canada.

II. Consultation with Secretaries of State and Defense

9. On December 24, 2003, the Commission sent copies of the applications in Docket Nos. CP04-10-000 and CP04-11-000 and draft Presidential Permits to the Secretary of State and the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State were filed on March 9, 2004 in both Docket No. CP04-10-000 and Docket No. CP04-11-000. Replies on behalf of the Secretary of Defense were filed on March 10, 2004 in both dockets. The replies indicate no objection to the issuance of the Presidential Permits, as described herein.

III. Interventions

10. Notice of EnCana's and Omimex's application in Docket No. CP04-10-000 was published in the Federal Register on November 5, 2003 (68 Fed. Reg. 62570-71). Notice of Chinook's and Omimex's application in Docket No. CP04-11-000 was published in the Federal Register on November 5, 2003 (68 Fed. Reg. 62570). No motions to intervene, notices of intervention or protests were filed in either proceeding.

IV. Discussion

11. After the transfer of the facilities discussed herein from EnCana and Chinook to Omimex, Omimex will utilize them to import or export gas between the United States and Canada. Therefore, the Commission will continue to have jurisdiction over the siting, construction, operation and place of entry of the facilities at the international boundary with Canada under NGA section 3. Further, pursuant to the provisions of Executive Order Nos. 10485 and 12038 of September 1, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, the Commission, subject to approval from the Secretary of State and the Secretary of Defense, is authorized to issue a Presidential Permit approving the construction and operation, in this case the transfer, of the subject facilities located at the international border with Canada. The Commission will issue these authorizations if it finds that doing so is not inconsistent with the public interest.

12. In these proceedings, EnCana and Chinook, along with Omimex, have complied with the filing provisions of Part 153, subparts B and C. They have made the assertions required in section 153.7(c)(1) and (2), thus, demonstrating that the transfer of the facilities to Omimex and the transfer of EnCana's and Chinook's NGA section 3 authorizations and their Presidential Permits to Omimex will not be inconsistent with the public interest. For example, in their filings the parties state that the subject facilities, in each proceeding, will generally be utilized for the same purpose that they are currently utilized, that the transferee, Omimex, will honor all existing contracts for service, thereby assuring continuity of service for EnCana's and Chinook's current customers, and that under Omimex's ownership the facilities will continue to improve access to gas supplies for Omimex and that their use will continue to facilitate the international trading of energy or enhance competition in the United States for the transportation or supply of natural gas.

13. Additionally, as described above, the Secretary of State and the Secretary of Defense have indicated no objection to the transfer of EnCana's and Chinook's Presidential Permits to Omimex. Therefore, the Commission concludes that EnCana's and Chinook's proposal to transfer their NGA section 3 authorizations and Presidential Permits should be granted.

V. Environmental Matters

14. Under the transfer proposals in these proceedings, no new facilities will be constructed or modified, nor will any facilities be abandoned. Therefore, granting the applications will not constitute a Federal action significantly affecting the quality of the human environment.

The Commission orders:

(A) The Commission approves the requests by EnCana and Chinook to transfer their authorizations under NGA section 3 and their Presidential Permits (attached in Appendices A and B, hereto) to Omimex authorizing it to site, construct, operate and maintain pipeline facilities at the border of the United States and Canada, as described in the applications and in the body of this order.

(B) Omimex shall sign and return the Testimony of Acceptance of all the provisions, conditions and requirements of the Presidential Permits to the Secretary of the Commission within 30 days of the issuance of this order.

(C) The waivers requested by EnCana and Omimex relating to the failure of EnCana to amend its NGA section 3 authorization and Presidential Permit to reflect a previous name change is granted.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX A

AMENDED PERMIT AUTHORIZING ENCANA BORDER PIPELINES (ENCANA BORDER) TO TRANSFER TO OMIMEX CANADA, LTD. AUTHORIZATION HELD IN THE NAME OF 3698157 CANADA LTD. (NOW ENCANA BORDER) TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA

Docket No. CP04-10-000

(April 20, 2004)

EnCana Border, a wholly owned subsidiary of EnCana Energy Resources Inc., which is a wholly owned subsidiary of EnCana Corporation, incorporated under the laws of Canada, and Omimex Canada, Ltd. (Omimex), a Delaware corporation, and wholly owned subsidiary of Omimex Resources, Inc., also a Delaware corporation, filed on October 24, 2003 in Docket No. CP04-10-000 an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, requesting that the Commission issue an order: (1) authorizing EnCana Border to transfer to Omimex existing Natural Gas Act section 3 authorization (held in the name of EnCana Border's predecessor, 3698157 Canada Ltd.) to site, construct, operate and maintain facilities at Reagan, Alberta, and Del Bonita, Montana, for the importation of natural gas into the United States; and (2) authorizing EnCana Border to assign to Omimex the January 11, 2001 Presidential Permit, which was issued to 3698157 Canada Ltd., authorizing it to construct, operate, and maintain facilities at the Reagan/Del Bonita import point.

By letter filed with the Commission on March 9, 2004, the Secretary of State, and by letter filed with the Commission on March 10, 2004 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, reflecting the name change of the Permittee to Omimex 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. 0204-112, effective February 22, 1984, and the Commission's regulations, permission is granted to Omimex (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 therefore.

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

At a point of interconnection with the facilities of EnCana Border on the international boundary between the United States and Canada in Glacier County, Montana, a section of 4 1/2-inch pipe extending from such interconnection in a southerly direction for approximately 1 mile to a point of interconnection with NorthWestern Corporation's (formerly Montana Power Gas Company) gathering facilities.

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.

Linda Mitry,
Acting Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this ____ day of _____, 2004 has caused its name to be signed by _____, [pursuant to a resolution of its Board of Directors duly adopted] on the ____ day of _____, 2004, a certified copy of the record of which is attached hereto.

Omimex Canada, Ltd.

By _____

(Attest)

Executed in triplicate

APPENDIX B

AMENDED PERMIT AUTHORIZING CHINOOK PIPELINE COMPANY TO
TRANSFER TO OMIMEX CANADA LTD SECTION 3 AUTHORIZATION AND
PRESIDENTIAL PERMIT TO OPERATE AND MAINTAIN FACILITIES FOR THE
EXPORTATION OF NATURAL GAS AT THE INTERNATIONAL BORDER
BETWEEN THE UNITED STATES AND CANADA

Docket No. CP04-11-000

(April 20, 2004)

Chinook Pipeline Company (Chinook) and Omimex Canada, Ltd (Omimex), filed on October 24, 2003, in Docket No. CP04-11-000, an application, pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, and section 3 of the Natural Gas Act, requesting the Commission to issue an order: (1) authorizing Chinook to transfer to Omimex its existing Natural Gas Act section 3 authorization to site, construct and operate facilities at the international boundary between the United States and Canada in Blaine County, Montana and near Loomis, Saskatchewan, Canada for the exploration of natural gas to Canada; and (2) authorizing Chinook to transfer to Omimex the January 10, 2001 Presidential Permit authorizing Chinook to construct, operate and maintain facilities at the boundary point referenced above.

By letters filed with the Commission on March 9, 2004 and March 10, 2004, respectively, the Secretary of State and the Secretary of Defense favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of the 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. 0204-112, effective February 22, 1984, and the Commission's regulations, permission is granted to the 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. Permittee owns and operates a 15.7-mile long, six-inch diameter gas pipeline extending from the existing Battle Creek natural gas plant in Blaine County, Montana, to the United States-Canadian border. The facilities subject to this Permit are those immediately next to where the proposed line will cross the international boundary and connect to a receipt point at Loomis, Saskatchewan, Canada. The capacity of these facilities is limited to 15,000 Mcf of natural gas per day.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the exportation or importation 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 siting, 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, 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 shall be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such transportation facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, 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.

Linda Mitry,
Acting Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this ___ day of _____, 2004 has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ___ day of _____, 2004, a certified copy of the record of which is attached hereto.

Omimex Canada, Ltd.

By _____

(Attest)

Executed in triplicate