

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company

Docket No. CP93-117-003

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

(Issued October 8, 2004)

1. On March 5, 2004, San Diego Gas & Electric Company (SDG&E), a Hinshaw pipeline, filed an application for an order amending its Presidential Permit and authorization under section 3 of the Natural Gas Act (NGA) for the siting, construction, and operation of pipeline and metering facilities in San Diego County, California, to export natural gas at the International Boundary between the United States and Mexico. SDG&E seeks amended authorizations to also permit use of its border crossing facilities to import natural gas from Mexico pursuant to a mutual assistance agreement with Transportadora de Gas Natural de Baja California (TGN), an affiliated Mexican utility. On March 12, 2004, SDG&E filed a supplement to the application providing additional environmental information.

2. This order grants SDG&E the requested amended authorizations based on the Commission's finding that the proposal is in the public interest since it will allow gas to be exchanged between SDG&E and its Mexican affiliate, TGN, for operational balancing purposes.

I. Background

3. SDG&E provides local distribution service in San Diego County, California. SDG&E operates as a Hinshaw pipeline exempt from the Commission's jurisdiction under section 1 (c) of the NGA and is regulated by the California Public Utilities Commission (California PUC).

4. On August 6, 1993, the Commission issued an order granting SGD&E a Presidential Permit and NGA section 3 authorizations to site, construct and operate border crossing facilities to export natural gas to Mexico.¹ Due to changing market conditions and significant development on both sides of the border at the original export point, the Commission granted SGD&E amended authorizations in 1998 to relocate its border crossing facilities to their current location in San Diego, California.²

5. SDG&E's existing border crossing facilities include a meter station within a 100-foot by 120-foot fenced area and approximately 400 feet of 30-inch pipeline from the meter station to the International Boundary. The pipeline operates at 800 psig with a maximum daily capacity of 350 MMcfd. Although the facilities are operational and authorized for use in exporting natural gas to Mexico, the facilities are not currently being used.

6. SDG&E requests amended authorizations because it has entered into a Mutual Assistance and Operational Balancing Agreement with its Mexican affiliate, TGN. Under the agreement, if one party is experiencing a temporary operational constraint, the other party would supply gas from its gas system to support the reliability of the party experiencing the operational constraint.

7. In order for SDG&E to use the existing border crossing facilities to receive gas supplies from Mexico, SDG&E seeks authorization (1) to modify two meter runs to allow bidirectional flow by adding flanges and flow conditioners and removing check valves; (2) to install a gas chromatograph to permit testing the quality of the imported gas; (3) to add an odorant injection system, with underground connection to the existing pipeline; (4) to add a filter/separator to remove liquids and debris from the imported gas and an underground pipe connecting the filter/separator to the existing pipeline; and (5) to construct a concrete containment enclosure around the bottom and sides of the odorant injection system.

¹ *San Diego Gas & Electric Company*, 64 FERC ¶ 61,221 (1993).

² *San Diego Gas & Electric Company*, 85 FERC ¶ 61,081 (1998).

II. Public Notice and Intervention

8. Notice of SGD&E's application in Docket No. CP93-117-003 was published on March 22, 2004 (69 Fed. Reg. 13,293) with interventions due on or before April 1, 2004. The California PUC filed a timely notice of intervention.³ BP Energy Company filed a late motion to intervene. Granting the late motion to intervene at this stage of the proceeding will not cause undue delay or prejudice to any other party. Therefore, for good cause shown, we will grant the motion.⁴

III. Consultation with Secretaries of State and Defense

9. On April 20, 2004, as required by Executive Order 10485, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on a proposed amendment to SDG&E's Presidential Permit. By letters dated July 27, 2004, and September 15, 2004, the Secretaries of Defense and State, respectively, indicated that they have no objections to SDG&E's requested amendments to its Presidential Permit and authorization under section 3 of the NGA.

IV. Discussion

10. SDG&E's states that the requested amendments to its Presidential Permit and authorization under section 3 of the NGA are needed to accommodate the importation of natural gas through its border facilities in accordance with the terms of its Mutual Assistance and Operational Balancing Agreement with its Mexican affiliate, TGN. Under the agreement, either party will be entitled, in the event of a specified temporary operational constraint, to call on the other party for delivery of gas supplies at the International Border. The agreement will be used to support the reliability of each utility's system on an interruptible basis without negatively affecting either party's operations.

11. Since the proposed modifications to SDG&E's facilities will enable the facilities to be used to import as well as export gas from a foreign country, the proposal requires approval of the Commission under section 3 of the NGA. The Commission's authority

³ By filing a timely notice of intervention, the California PUC is a party by operation of Rule 214(a)(2) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(a)(2) (2004).

⁴ The Commission has discretion to allow untimely motions to intervene pursuant to 18 C.F.R. § 385.214(b)(3) (2004).

over construction and operation of facilities under section 3 includes the authority to apply terms and conditions as necessary or appropriate to ensure that the proposed construction and siting is in the public interest. Section 3 provides that the Commission shall issue such order on application “unless it finds that the proposal will not be consistent with the public interest.”

12. The record in this case shows that approval of SDG&E’s proposal is consistent with the public interest because it will increase supply reliability for both SDG&E and TGN during periods of emergency. SDG&E states that all gas imported through its border crossing facilities will be consumed in California. Therefore, its requested amendments to its Presidential Permit and authorization under section 3 of the NGA will not affect its Hinshaw exemption under section 1(c) of the NGA for its facilities downstream of the 400-foot bidirectional pipeline and metering station authorized by this Commission for the importation and exportation of gas supplies. Thus, SDG&E’s proposal will not affect the California PUC’s jurisdiction over SDG&E’s facilities downstream of the facilities authorized by this Commission. Further, as stated above, the Secretaries of State and Defense have indicated that they have no objections to SDG&E’s proposal.

13. SDG&E states that it will, in accordance with section 153.6 of the Commission’s regulations, file a statement that it will obtain any required import and export authorizations from the Office of Fossil Energy of the Department of Energy.

14. Consistent with current Commission policy,⁵ SDG&E’s amended Presidential Permit provides, in Article 9 thereof, that any determinations regarding whether authorized facilities shall be abandoned in place or by removal shall be deferred until such time that the facilities are no longer in use.

15. The Commission staff prepared an Environmental Assessment (EA) for the original installation of the meter station on August 24, 1998, in Docket No. CP93-117-002.⁶ This EA found that no significant environmental resources would be affected in the project area. The land use in the vicinity of the pipeline is uninhabited on the United States side and mixed industrial/residential on the Mexico side. The land use has not changed since the existing border facilities were installed. The entire area in which the modifications will occur was previously disturbed by construction of the existing

⁵ See, e.g., *Calpine Corporation* 106 FERC ¶ 61,075 at P 13 (2004); *Reef International*, 99 FERC ¶ 61,221 at P 21 (2002).

⁶ 85 FERC at p. 61,286.

facilities. SGD&E does not plan to construct any significant non-jurisdictional facilities in association with this project, and all the modifications will occur within the fenced area surrounding the meter station with the exception of 40 feet of 30-inch diameter pipeline. Work outside the fenced area will disturb approximately a 60-foot by 100-foot area within an existing right-of-way.

16. Based on the environmental analysis, the Commission finds that approval of SDG&E's proposal does not constitute a major federal action significantly affecting the quality of the human environment when the facilities are installed as described in the application and supplements in this proceeding.

The Commission orders:

(A) SDG&E's existing Presidential Permit and NGA section 3 authorization are amended as discussed in the application and in body of this order.

(B) SDG&E 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.

(C) BP Energy Company's late motion to intervene is granted.

By the Commission

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX A

PERMIT AUTHORIZING SAN DIEGO GAS & ELECTRIC COMPANY TO
CONSTRUCT, OPERATE AND MAINTAIN MODIFIED NATURAL GAS
FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED
STATES AND MEXICO

FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP93-117-003

(Issued October 8, 2004)

San Diego Gas & Electric Company (SDG&E) a corporation organized and existing under the laws of the State of California filed in Docket No. CP93-117-003 on March 5, 2004, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00, for authorization to modify the facilities authorized under its Presidential Permit issued on August 6, 1993 in Docket No. CP93-117-000, 64 FERC ¶ 61,221 (1993), and amended on October 19, 1998 in Docket No. CP93-117-002, 85 FERC ¶ 61,081 (1998). Applicant states that the modifications are minor and are needed to enable SDG&E to modify the natural gas transmission facilities described in Article 2 below at the international border between the United States and Mexico to enable the facilities to import as well as export natural gas in order to comply with the Mutual Assistance and Operational Balancing Agreement between SDG&E and Transportation de Gas Natural de Baja California, a Mexican utility that is an affiliate of SDG&E.

By letter dated September 15, 2004, the Secretary of State, and by letter dated July 27, 2004, the Secretary of Defense favorably recommend that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a 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 General Rules and Regulations, permission is granted to the 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.

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

A meter station and 400 feet of bi-directional 30-inch pipeline, with a maximum capacity of 350 MMcf of gas per day, connecting to facilities constructed by the Permittee under the California Public Utilities Code and extending to the International Boundary at Otay Mesa, San Diego County, California.

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 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 for such purposes. The Permittee shall allow officers and employees of the United States, showing proper credentials, 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 aforesaid facilities and connections, and in no event shall the United States be liable therefor. The Permittee shall do everything reasonable within their 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 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 and connections, 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 and connections used hereunder 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 and connections authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities and connection, and every part thereof, in a condition of repair for the efficient operation of said facilities and connections in the 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 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.

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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.

San Diego Gas & Electric Company

By _____