

127 FERC ¶ 61,263
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Oasis Pipeline, LP, and
Oasis Pipe Line Company Texas L.P.

Docket No. CP09-47-000

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

(Issued June 18, 2009)

1. On January 14, 2009, Oasis Pipeline, LP (Oasis) and Oasis Pipe Line Company Texas L.P. (Oasis Texas) filed an application with the Federal Energy Regulatory Commission in the above referenced docket for authorization under section 3 of the Natural Gas Act (NGA) and a Presidential Permit for the construction, operation, and maintenance of natural gas export facilities at the international boundary between the United States and Mexico in El Paso County, Texas.¹ For the reasons discussed below, we will grant the requested authorizations.

¹ Authorization under section 3 of the NGA is necessary for the siting, construction and operation 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 and operation 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. Oasis Texas is a limited partnership that owns an intrastate natural gas pipeline system extending from Pecos County, Texas to Waller County, Texas. Oasis Texas leases 100 percent of the capacity in the intrastate system to Oasis, which is responsible for the commercial operation of the system. Oasis utilizes the leased capacity to provide intrastate transportation services, as well as interstate transportation services pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).²

3. Oasis and Oasis Texas request NGA section 3 authorization and a Presidential Permit authorizing the construction, operation, and maintenance of natural gas export facilities at a point on the international boundary between the United States and Mexico in El Paso County, Texas. As proposed by Oasis, the facilities for which NGA section 3 authorization and a Presidential Permit are sought are 836 feet of 36-inch diameter pipeline with a maximum operating pressure of 1,275 psig and design capacity 600 MMcf per day (export/border crossing facilities). The export/border crossing facilities would commence at a point 836 feet north northeast of the Rio Grande River, approximately 2.8 miles southwest of the Town of Clint in El Paso County, Texas and extend to the international border in the Rio Grande River. The applicants states that the export/border crossing facilities will deliver gas to Tarahumara Pipeline, S. de R.L. de C.V. for further transportation and distribution in Mexico, principally for use as fuel for gas-fired electric generation plants and industrial customers in the vicinity of Chihuahua, Coahuila and Durango, Mexico.³

4. The applicants' proposed export/border crossing facilities are part of the Clint Export Project, which will include 188 miles of 36-inch diameter pipeline from the export/border crossing facilities to the existing intrastate Oasis pipeline system near the Waha Hub in Pecos County, Texas. Like the existing Oasis intrastate pipeline system, the Clint Export Project facilities, including the proposed export/border crossing facilities, will be constructed, owned and physically operated by Oasis Texas while the commercial operation of the facilities is managed by Oasis, which will lease the new facilities' capacity as long as it continues to lease the existing Oasis pipeline system facilities.

² 15 U.S.C. §§ 3301- 3432 (2006).

³ The applicants acknowledge in their application that separate federal authorization for the exportation of gas is required from DOE's Office of Fossil Energy (FE). They state that their affiliate ETC Marketing, Ltd. received blanket authorization from DOE/FE to export natural gas to Mexico in DOE Docket No. 08-46-NG. They further acknowledge that any other shippers on the Oasis pipeline system desiring to export gas to Mexico will need similar authorization from DOE/FE.

5. While the applicants state that export/border crossing facilities will be operated as part of the Oasis intrastate pipeline system, they acknowledge that NGA section 3 authorization and a Presidential Permit granted by the Commission are necessary for the proposed facilities at the border with Mexico. However, the applicants state that they need no authorization from the Commission for the 188-miles of upstream pipeline to be constructed as part of the Clint Export Project.

II. Public Notice and Interventions

6. Notice of the application in Docket No. CP09-47-000 was published in the *Federal Register* on January 27, 2009 (74 Fed. Reg. 5927). Timely, unopposed motions to intervene were filed by El Paso Natural Gas Company and MGI Supply Ltd. (MGI).⁴

7. In its motion to intervene, MGI states that Oasis currently offers interruptible NGPA section 311 interstate transportation service on the existing Oasis intrastate pipeline. MGI's initial pleading expressed concern that the applicants do not plan to provide interruptible NGPA section 311 service on the 188-mile long, Clint Export Project pipeline to be constructed and operated as an integrated part of Oasis' intrastate pipeline system in Texas. The applicants filed an answer to MGI's comments. On March 10, 2009, MGI filed an answer to the applicants' answer. On March 16, 2009, the applicants filed an answer to MGI's answer. Although the Commission's Rules of Practice and Procedure do not permit answers to comments, the Commission finds good cause to waive Rule 213(a) to admit these pleadings, as they have provided information that assists in the decision-making process.⁵ MGI's concerns and the applicants' responsive comments are addressed below.

III. Consultation with Secretaries of State and Defense

8. On February 17, 2009, the Commission sent copies of the application and a draft Presidential Permit to the Secretaries of State and Defense for their recommendations. Replies on behalf of the Secretary of State dated March 19, 2009, and the Secretary of Defense dated March 20, 2009, indicate no objection to the issuance of the requested Presidential Permit.⁶

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

⁵ 18 C.F.R. § 385.213(a)(2) (2008)

⁶ 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.

IV. Discussion

A. Public Interest

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 facilities⁷ and to grant NGA section 3 authorizations for import and export facilities.

10. Section 3 of the NGA provides that applications for the importation or exportation of natural gas shall be approved unless it is determined that “the exportation or importation will not be consistent with the public interest.”⁸ The proposed export facilities will be necessary to implement any gas exports that are authorized by DOE/FE and which need to utilize the 188-mile pipeline being constructed by Oasis Texas for the purpose of exporting gas to Mexico.⁹ Further, the applicants’ proposed export facilities will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Mexico, both of which are signatories to the North American Free Trade Agreement (NAFTA),¹⁰ providing for fewer restrictions on natural gas imports and exports. NGA section 3 provides that “the exportation of natural gas to a nation with which there is a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation and exportation shall be granted without modification or delay.”

11. In view of the above considerations, the Commission finds that approval of the applicants’ proposed export/border crossing facilities for the exportation of the natural gas is consistent with the public interest. Therefore, the Commission will issue a Presidential Permit, set forth in the appendix to this order, and NGA section 3 authorization for the construction, operation, and maintenance of the proposed export/border crossing facilities.¹¹ However, as discussed below, the Commission will

⁷ The Presidential Permit is attached as the appendix to this order.

⁸ 15 U.S.C. § 717b.

⁹ The applicants state that their affiliate ETC Marketing, Ltd. has already received blanket authorization from DOE/FE to export natural gas to Mexico.

¹⁰ 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).

¹¹ We recognize that routing and other plans relating to the upstream non-jurisdictional pipeline facilities are not complete. However, because relevant

exercise its discretion under section 3 of the NGA to make its grant of authorization under that section “upon such terms and conditions as the Commission may find necessary or appropriate.”

B. Use of the Facilities for Service under Section 311 of the NGPA

12. Section 311(a)(2) of the NGPA allows the Commission to authorize the transportation of natural gas by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by interstate pipelines. Section 601(a)(2) of the NGPA provides that the Commission’s NGA jurisdiction shall not attach to an intrastate pipeline “by reason of, or with respect to,” any transportation of natural gas authorized under section 311(a)(2).

13. MGI requests that the Commission clarify that it expects Oasis and Oasis Texas to treat the 188-mile pipeline to be constructed upstream of the proposed export/border crossing facilities no differently from the rest of the Oasis pipeline system for NGPA section 311(a)(2) transportation purposes. Although the applicants acknowledge that Oasis currently offers interruptible interstate transportation services under section 311 of the NGPA subject to the Commission’s jurisdiction and regulations,¹² they state that Oasis is not obligated to provide NGPA section 311 interruptible service on a system-wide basis and has the sole discretion in deciding whether to offer NGPA section 311 transportation service on different portions of the intrastate pipeline system. Lastly, they state that Oasis has the discretion to offer NGPA section 311 transportation service on less than a system-wide basis by restricting interruptible interstate service to certain points on the intrastate pipeline system.

14. The Commission finds that because Oasis offers interruptible NGPA section 311 service it must do so on its entire system, including the 188-mile pipeline that it plans to construct in conjunction with the proposed export/border crossing facilities. The Commission agrees with the applicants that the Commission cannot require an intrastate transportation company to offer NGPA section 311 services. However, a company that voluntarily offers interruptible interstate services under section 311 of the NGPA must

circumstances can change over time, particularly those relevant to environmental considerations, we will require that construction of the export/border crossing facilities be completed within three years unless an extension of time is requested and granted. We also note that section 3 authorizations and Presidential Permits are non-transferable without prior Commission authorization.

¹² The Commission’s regulations governing interstate transportation services by intrastate pipelines under section 311(a)(2) of the NGPA are set forth in Part 284, subpart C of the Commission’s regulations, 18 C.F.R. § 284.121 *et seq.* (2008).

offer such service on its entire system in order to satisfy the Commission's regulatory condition requiring non-discriminatory access.¹³

15. The purpose of the Commission's non-discriminatory access condition is to prevent arbitrary and exclusionary transportation practices. While Oasis is not required to accept a request for interruptible transportation service for which capacity is not available or that would require it to construct or acquire new facilities,¹⁴ permitting Oasis to limit where on its system it offers interruptible NGPA section 311 service would allow it to arbitrarily exclude potential customers from transporting their gas when capacity is available.

16. Oasis cites the Commission's order in *Northern Illinois Gas Co.*¹⁵ in support of its position that it should be allowed to offer interruptible services under section 311 of the NGPA on some portions of the Oasis pipeline system and refuse to offer such service on other portions of the system. However, when the Commission acknowledged in *Northern Illinois Gas Co.* that it may be reasonable for an intrastate pipeline company to limit the amount and location of interstate service it offers, the Commission was referring to *firm* services under NGPA section 311.¹⁶ As explained in that case, it is appropriate to allow an intrastate pipeline company offering firm NGPA section 311 service to include provisions in its Operating Statement on file with the Commission to limit the amount and location of the service to avoid a situation where the intrastate pipeline is required to offer so much *firm* service for out-of-state shippers that it is progressively turned into an interstate pipeline against its will.

17. The concern in *Northern Illinois Gas Co.* is not present in this case because Oasis is required to offer interruptible NGPA section 311 service only where there is unutilized capacity on the pipeline. Further, Oasis currently offers interruptible NGPA section 311 service on its entire existing pipeline system, and for the last three years over seventy percent of its capacity has been utilized for intrastate transportation. Therefore, we find no

¹³ Subpart C of Part 284 of the Commission's regulations sets forth the terms and conditions governing intrastate pipelines' interstate transportation services under section 311 of the NGPA. Section 284.121 states that such services are subject to "other applicable conditions of Subpart A." Section 284.9(b) of the regulations provides intrastate pipelines providing interruptible service under section 311 of the NGPA are subject to the provisions in section 284.7(b) and (c) regarding non-discriminatory access and reasonable operational conditions, respectively.

¹⁴ See section 284.7(f).

¹⁵ *Northern Illinois Gas Co.*, 95 FERC ¶ 61,452 (2001).

¹⁶ *Id.* at 62,644.

merit in Oasis's argument that requiring it to offer potential shippers non-discriminatory access to *interruptible* service under NGPA section 311 could force it to become a *de facto* interstate pipeline against its will. In conclusion, Oasis is required to offer interruptible NGPA section 311 service on its entire system, including the 188-mile expansion to be constructed in conjunction with the export/border crossing facilities authorized by this order.

V. ENVIRONMENTAL ANALYSIS

18. While the applicants' Clint Export Project will include 188 miles of pipeline, the only portion of the project subject to the Commission's jurisdiction is the 836 feet of proposed pipeline that would constitute the export and border crossing facilities for which authorization under section 3 of the NGA and a Presidential Permit are necessary. The remaining 188 miles of non-jurisdictional pipeline facilities sited in Texas are under the jurisdiction of the Texas Railroad Commission.

19. The export/border crossing facilities would commence at a point 836 feet north northeast of the Rio Grande River, approximately 2.8 miles southwest of the Town of Clint in El Paso County, Texas and extend to the international border with Mexico in the Rio Grande River. The 836 feet of export/border crossing pipeline will be 36-inch diameter, grade X-70 pipe with 0.750" wall thickness. Horizontal directional drilling (HDD) will be employed to cross the Rio Grande River. Drilling operations on the U.S. side of the border would require 0.90 acres of temporary workspace and a 50-foot-wide permanent right-of-way which would encumber 0.2 acres.¹⁷ The proposed temporary workspace abuts an adjacent unimproved road that would be used for access. The Commission's staff prepared an environmental assessment (EA) of the proposed export/border crossing facilities. Based on that review, staff concludes that the construction would not significantly affect groundwater resources; wetlands; vegetation, wildlife, fisheries; mineral resources; hazardous waste sites; federally owned lands; air emissions; or National or state wild or scenic rivers, national trails, nature preserves, wilderness areas, registered natural landmarks, or Native American religious sites and reservations, or coastal zone management areas.

20. The EA concludes that the proposed project also would not significantly affect any federally threatened and/or endangered species in the project area. In its September 4, 2008 letter, the U.S. Fish and Wildlife Service indicated its concurrence that the project would not likely adversely affect the least tern, Mexican spotted owl, northern aplomado falcon, southwestern will flycatcher, yellow-billed cuckoo, or Snead pincushion cactus.

¹⁷ The Commission notes that neither a Presidential Permit nor a grant of authorization under section 3 of the NGA conveys the right to invoke eminent domain.

21. Construction of the project would be performed in accordance with the Commission Staff's *Upland Erosion Control, Revegetation and Maintenance Plan*. The project would be designed, operated and maintained in accordance with the United States Department of Transportation's pipeline safety regulations, 49 C.F.R. Part 192, and all applicable permits.
22. By letter dated June 26, 2008, the Texas Historical Commission indicated that the proposed project would have no adverse effect on historic properties eligible for or listed on the National Register of Historic Places. Oasis has filed an Unanticipated Discovery Plan which the Commission's staff has reviewed and found acceptable.
23. Noise readings of an operating horizontal direction drill were provided and inserted into a mathematical formula for estimating noise at a known distance using data derived at a known source and distance. The closest noise sensitive receptors (residences) are 1,090 feet and 1,500 feet away from where drilling would occur. As a result, staff concludes that the predicted decibels (dB) levels while operating the HDD would not peak above 55.0 dB during the length of the construction.
24. Based on the above environmental analysis, the Commission finds, consistent with staff's conclusions, that approval of the applicants' proposed export/border crossing facilities would not constitute a major federal action significantly affecting the quality of the human environment.¹⁸
25. At a hearing held on June 18, 2009, the Commission on its own motion, received and made part of the record all evidence, including the application, as supplemented, 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 Oasis Pipe Line Company Texas L.P. to construct, operate, and maintain natural gas export and border crossing facilities and authorizing Oasis Pipeline, L.P. to provide service using such facilities as described in this order and subject to the conditions of the Presidential Permit.

(B) Oasis Pipe Line Company Texas L.P. and Oasis Pipeline, L.P. shall sign and return the testimony of acceptance of all provisions, conditions, and requirements of

¹⁸ *Staff Environmental Comments* issued January 27, 2009, Docket No. CP09-47-000.

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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

**PRESIDENTIAL PERMIT
AUTHORIZING THE CONSTRUCTION, OPERATION, AND MAINTENANCE
OF FACILITIES BY OASIS PIPE LINE COMPANY TEXAS L.P. AND OASIS
PIPELINE, L.P. FOR THE EXPORTATION OF NATURAL GAS AT THE
INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND
MEXICO IN EL PASO COUNTY, TEXAS**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP09-47-000**

(Issued XXX)

Oasis Pipe Line Company Texas L.P. and Oasis Pipeline, L.P. (Permittees) filed on January 14, 2009, in Docket No. CP09-47-000 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 Permittee Oasis Pipe Line Company Texas L.P. to construct, operate, and maintain certain facilities and authorizing Permittee Oasis Pipeline, L.P. to use such facilities to provide service as described in Permittees' application in Docket No. CP09-47-000 and in Article 2 below, for the export of natural gas to Mexico.

By letter dated March 19, 2009, the Secretary of State, and by letter dated March 20, 2009, the Secretary of Defense, favorably recommended 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. 00-004.00A, effective May 16, 2006, and the Commission's Regulations, permission is granted to Permittee Oasis Pipe Line Company Texas L.P. to construct, operate and maintain the natural gas facilities described in Article 2 below and for Permittee Oasis Pipeline, L.P. to use such facilities to provide service upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittees 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:

Natural gas transmission pipeline interconnecting with the Oasis pipeline transmission system at a point 836 feet north northeast of the Rio Grande River, approximately 2.8 miles southwest of the Town of Clint in El Paso County, Texas, and extending to the International Boundary between the United States and Mexico in the Rio Grande River, near or within the Town of Clint in El Paso County, Texas, and interconnecting with Tarahumara Pipeline, S. de R.L. de C.V.

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 exported to 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 Permittees 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 Permittees 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 Permittees 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 Permittees shall do everything reasonable within their power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittees agree 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 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. Permittee Oasis Pipe Line Company Texas L.P. 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 Permittee Oasis Pipe Line Texas L.P. shall remove those facilities within such time and at its expense. Upon failure of Permittee Oasis Pipeline Company Texas L.P. 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 Permittee Oasis Pipe Line Texas L.P.'s expense, and neither the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittees agree 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 Permittees; and in the event that the United States shall exercise such right it shall pay the Permittees 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 Permittees.

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 Permittees to any foreign government.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittees this day of _____ have caused their names 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.

Oasis Pipeline, L.P.

By _____

Oasis Pipe Line Company Texas L.P.

By _____

(Attest)

Executed in triplicate