

147 FERC ¶ 61,222  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

EcoEléctrica, L.P.

Docket No. CP13-516-000

ORDER AMENDING AUTHORIZATION UNDER SECTION 3  
OF THE NATURAL GAS ACT

(Issued June 19, 2014)

1. On July 3, 2013, EcoEléctrica, L.P. (EcoEléctrica) filed an application to amend its previous authorization under section 3 of the Natural Gas Act (NGA),<sup>1</sup> issued by the Commission on May 15, 1996, as amended on April 16, 2009,<sup>2</sup> to construct and operate the LNG Supply Pipeline Project (LNG Supply Project) at its existing liquefied natural gas (LNG) terminal and cogeneration facility site in Peñuelas, Puerto Rico. The project will enable EcoEléctrica to supply LNG to a proposed non-jurisdictional LNG truck loading facility (LNG Truck Loading Facility), which is being developed and permitted by Gas Natural Puerto Rico, Inc. (GNPR). For the reasons discussed herein, we will approve the requested modifications to EcoEléctrica's previous authorization under section 3 of the NGA, subject to the conditions discussed herein.

**I. Background and Proposal**

2. EcoEléctrica is a limited and exempted partnership registered in Bermuda and headquartered in Peñuelas, Puerto Rico, which owns and operates an LNG terminal.

3. In the May 1996 Order, the Commission authorized EcoEléctrica to site, construct, and operate LNG import, storage, and vaporization facilities, including: (1) a marine

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<sup>1</sup> 15 U.S.C. § 717b(a) (2012).

<sup>2</sup> *EcoEléctrica, L.P.*, 75 FERC ¶ 61,157 (1996) (May 1996 Order); *EcoEléctrica, L.P.*, 127 FERC ¶ 61,044 (2009) (April 2009 Order).

terminal with a 1,800-foot-long pier for unloading LNG tankers; (2) two 1-million-barrel LNG storage tanks;<sup>3</sup> (3) an LNG vaporization system; and (4) various control systems, piping, and other ancillary equipment. With the exception of one LNG storage tank and the open-rack LNG vaporizers, all the facilities authorized by FERC in the May 1996 Order have been constructed and placed in service. EcoEléctrica commenced commercial operations on July 10, 2000.<sup>4</sup>

4. On April 16, 2009, FERC modified EcoEléctrica's NGA section 3 authorization to include the Terminal Modification Project, comprised of two additional vertical shell and tube heat exchange vaporizers. The Terminal Modification Project increased the terminal's send-out capacity to approximately 186 million cubic feet per day (MMcf/d). At the time of the April 2009 Order, it was contemplated that additional volumes resulting from the Terminal Modification Project would be delivered to Puerto Rico Electric Power Authority's (Power Authority) Aguirre Combined Power Plant in Salinas upon completion of that plant's conversion from fuel oil to natural gas. However, due to new policies in the Government of Puerto Rico's Public Energy Policy Plan, the destination of the incremental volumes was changed to the South Coast Power Plant (Costa Sur). The Terminal Modification Project was placed into service in the second quarter of 2012.

5. EcoEléctrica proposes to construct and operate the LNG Supply Project, which comprises the following components: (i) an approximately 3,600-foot-long, 4-inch-diameter LNG transfer pipeline (LNG Supply Pipeline); (ii) an approximately 3,600-foot-long, 6-inch-diameter boil off gas return pipeline (BOG Pipeline); (iii) an approximately 3,600-foot-long, 1.5-inch-diameter LNG recirculation pipeline (LNG Recirculation Pipeline); and (iv) associated equipment. The project will be located at the existing EcoEléctrica facility. The LNG Supply Project is being developed to supply LNG to GNPR's proposed non-jurisdictional LNG Truck Loading Facility, which in turn will be utilized to distribute LNG by truck to various industrial end-users in Puerto Rico.

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<sup>3</sup> Commission authorization for the second LNG storage tank, which was never constructed, has since lapsed.

<sup>4</sup> In conjunction with the LNG import terminal, EcoEléctrica also constructed: (1) a 461-megawatt electric cogeneration facility that uses vaporized LNG as a fuel source for power generation; (2) a desalination facility capable of producing up to 4 million gallons of fresh water per day; (3) other facilities necessary for the operation of the cogeneration facility, including a 2.3-mile-long, 230-kilovolt transmission line connecting the plant substation to an existing Power Authority substation and a gas line to serve the cogeneration facility; and (4) a gas line to serve the Power Authority's Costa Sur power plant.

6. EcoEléctrica states that the proposed pipeline facilities will each extend approximately 300 feet outside the EcoEléctrica property fence line. The portions of the pipelines outside EcoEléctrica's property fence are non-jurisdictional facilities and will be developed, permitted, and constructed by GNPR as part of the LNG Truck Loading Facility, as described in more detail below.

7. The proposed non-jurisdictional LNG Truck Loading Facility will be located entirely outside of the EcoEléctrica property, adjacent to the entrance to the EcoEléctrica site on the north side of its property. The LNG Truck Loading Facility includes: (i) parallel truck loading stations capable of simultaneously loading single standard 12,000 gallon LNG trailers; (ii) an approximately 300-foot-long, 4-inch-diameter LNG supply pipeline; (iii) an approximately 300-foot-long, 6-inch-diameter BOG vapor return pipeline; (iv) an approximately 300-foot-long, 1.5-inch-diameter LNG recirculation pipeline; (v) a nitrogen purge system; and (vi) instrumentation and control systems. The LNG Truck Loading Facility is being designed to accommodate a maximum LNG flow rate of 250 gallons per minute for simultaneous filling operations. Each loading station will be able to complete the loading process in approximately 1.5 to 2 hours.

## **II. Notice and Interventions**

8. Public notice of EcoEléctrica's application was published in the *Federal Register* on July 25, 2013 (78 Fed. Reg. 44,943). Motions to intervene were due on or before August 8, 2013. No comments or protests were filed regarding the application.

## **III. Discussion**

9. Because the proposed LNG terminal facilities will be used to import gas from foreign countries, the siting, construction and operation of the facilities require approval by the Commission under section 3 of the NGA.<sup>5</sup>

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<sup>5</sup> The regulatory functions of section 3 of the NGA were transferred to the Secretary of the U.S. Department of Energy (DOE) in 1977 pursuant to section 301(b) of the Department of Energy Organization Act (Pub. L. No. 95-91, 42 U.S.C. §§ 7101 *et seq.*). In reference to regulating the imports or exports of natural gas, the DOE Secretary has delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which facilities shall be located and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry or exit for exports. *See* DOE Delegation Order No. 00-004A.00 (2006), FERC Stats. & Regs. ¶ 9920 (reissuing, effective May 16, 2006, authorities contained in previous delegation orders). In addition, section 3(e)(1) of the NGA, as amended by section 311(c) of the Energy Policy Act of 2005 (EPAc 2005),

(continued...)

10. The Commission's authority over facilities constructed and operated under section 3 of the NGA includes the authority to apply terms and conditions as necessary and appropriate to ensure that the proposed construction and siting is in the public interest.<sup>6</sup> Section 3 provides that the Commission "shall issue such order on application" if it finds that the proposal "will not be inconsistent with the public interest."<sup>7</sup>

11. The proposed project will not change the authorized level of storage capacity or the deliverability of the terminal. The project will be constructed in accordance with governing federal and state regulations, including U.S. Department of Transportation (DOT) safety standards under 49 C.F.R. Part 193. The LNG Truck Loading Facility will be subject to the jurisdiction of the Public Service Commission of Puerto Rico, which regulates all enterprises that operate as natural gas service providers in Puerto Rico.

12. The purpose of the project is to supply LNG to the proposed GNPR non-jurisdictional LNG Truck Loading Facility, which in turn will be utilized to supply LNG to large end-users in Puerto Rico, such as pharmaceutical, petrochemical, and other industrial facilities. Further, the project will facilitate the transportation of LNG in Puerto Rico, thereby expanding the reach of imported LNG to those end-users in Puerto Rico who need it. The ability to receive LNG by truck will enable large end-users in Puerto Rico to benefit from lower cost fuel supplies.

13. The proposal will not have an impact on landowners, since construction of all the jurisdictional facilities is taking place within EcoEléctrica's existing LNG terminal site. Section 3(e)(3)(B) of the NGA prohibits the Commission, prior to January 15, 2015, from conditioning an order authorizing construction/operation of an LNG terminal on any regulation of the rates, charges, terms, or conditions of service. However, in any event, no comments or protests regarding rates or services were filed. Therefore, we find that, subject to the conditions imposed in this order, EcoEléctrica's proposal is not inconsistent with the public interest.

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Pub. L. No. 109-58, 119 Stat. 594, provides that the Commission has exclusive authority to approve or deny applications for the construction or operation of LNG terminals. DOE has retained authority to act on applications for authority to import or export natural gas. Such applications must be submitted to DOE's Office of Fossil Energy. The Commission does not authorize the importation of the commodity itself.

<sup>6</sup> See section 3(e)(3)(A) of the NGA, as enacted by section 311(c) of EPAct 2005. See also *Distrigas Corp. v. FPC*, 495 F.2d 1057, 1063-64, *cert. denied*, 419 U.S. 834 (1974); *Dynegy LNG Production Terminal, L.P.*, 97 FERC ¶ 61,231 (2001).

<sup>7</sup> 15 U.S.C. § 717b(a) (2012).

#### **IV. Environmental Assessment**

14. On August 22, 2013, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Planned LNG Supply Line project and Request for Comments on Environmental Issues (NOI). This notice was published in the Federal Register on August 30, 2013,<sup>8</sup> and mailed to federal, state, and local government agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received general comments from the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, and the U.S. Army Corps of Engineers.

15. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an environmental assessment (EA) for EcoEléctrica's proposal. The EA was prepared with the cooperation of DOT. The EA was placed into the public record on May 19, 2014. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative impacts, non-jurisdictional facilities, and alternatives. All substantive comments received in response to the NOI were addressed in the EA. No comments were filed after issuance of the EA.

16. Based on the analysis in the EA, we conclude that, if constructed in accordance with EcoEléctrica's application and supplements and in compliance with the environmental conditions in the appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

#### **V. Conclusion**

17. For the reasons set forth herein, and subject to the conditions set forth below in the Appendix, we find that EcoEléctrica's proposed project is not inconsistent with the public interest under section 3 of the NGA. Thus, we grant the requested authorization to EcoEléctrica.

18. At a hearing held on June , 2014, the Commission on its own motion received and made part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

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<sup>8</sup> 78 Fed. Reg. 53750 (2013).

The Commission orders:

(A) EcoEléctrica's authorization under section 3 of the NGA, issued May 15, 1996, for its approved LNG terminal is amended as more fully described in EcoEléctrica's application and as conditioned herein.

(B) Except as provided herein, the authorization issued May 15, 1996, remains unchanged and EcoEléctrica must comply with all of the conditions applicable to the LNG terminal set forth in the Appendix to the May 15, 1996 Order.

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

(D) Any state, territory, or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this authorization. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that territory or local agencies, through application of territory or local laws, may prohibit or unreasonably delay the construction or abandonment of facilities approved by this Commission.<sup>9</sup>

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>9</sup>See, 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).

## Appendix

### Environmental Conditions for EcoEléctrica's LNG Supply Pipeline Project Docket No. CP13-516-000

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

1. EcoEléctrica shall follow the construction procedures 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. EcoEléctrica 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 all steps necessary to ensure the protection of life, health, property and the environment during construction and operation of the project. This authority shall include:
  - a. stop-work authority and authority to cease operation; and
  - b. the design and implementation of any additional measures deemed necessary to assure continued compliance with the intent of the conditions of the Order.
3. **Prior to any construction**, EcoEléctrica shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), 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**, EcoEléctrica shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on

these alignment maps/sheets.

5. EcoEléctrica shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or 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.**

Examples of alterations requiring approval include all route realignments and 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,** EcoEléctrica shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. EcoEléctrica must file revisions to the plan as schedules change. The plan shall identify:
    - a. how EcoEléctrica will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
    - b. how EcoEléctrica 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 EcoEléctrica will give to all personnel involved with construction and restoration, and refresher training as the project progresses and personnel change, with the opportunity for OEP staff to participate in the training sessions;
  - f. the company personnel (if known) and specific portion of EcoEléctrica's organization having responsibility for compliance;
  - g. the procedures (including use of contract penalties) EcoEléctrica 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 construction; and
    - (4) the start and completion of restoration
7. EcoEléctrica shall employ at least one EI during construction of the project. The EI shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
  - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
  - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
  - d. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
  - e. responsible for maintaining status reports.
8. Beginning with the filing of its Implementation Plan, EcoEléctrica shall file updated status reports with the Secretary on a **monthly** basis until all 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 EcoEléctrica's efforts to obtain the necessary federal authorizations;
  - b. the construction status of the project, work planned for the following reporting period;

- 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 the Order, and the measures taken to satisfy their concerns; and
  - g. copies of any correspondence received by EcoEléctrica from other federal, state, or local permitting agencies concerning instances of noncompliance, and EcoEléctrica's response.
9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, EcoEléctrica shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
10. EcoEléctrica must receive written authorization from the Director of OEP **before placing the project into service**.
11. **Within 30 days of placing the authorized facilities in service**, EcoEléctrica shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
  - b. identifying which of the Order conditions EcoEléctrica 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.

**Conditions 12 through 18 shall apply to the Project prior to construction of final design and prior to commissioning. Information pertaining to the specific engineering conditions below shall be filed with the Secretary for review and written approval by the Director of OEP prior to construction of final design and prior to commissioning. Specific engineering, vulnerability, or detailed design information meeting the criteria specified in Order No. 683 (Docket No. RM06-24-000), including security information, shall be submitted as critical energy infrastructure information (CEII) pursuant to 18 CFR 388.112. See Critical Energy Infrastructure**

**Information, Order No. 683 (71 Fed. Reg. 58,273, (October 3, 2006)), FERC Statutes and Regulations ¶ 31,228 (2006). Information pertaining to items such as off-site emergency response, procedures for public notification and evacuation, and construction and operating reporting requirements shall be subject to public disclosure. EcoEléctrica shall file with the Secretary all information a minimum of 30 days before approval to proceed with commissioning is requested.**

12. EcoEléctrica shall certify that the **final design** is consistent with the information provided to the U.S. Department of Transportation (DOT) as described in the design spill determination letter dated March 25, 2014 (Accession Number 20140410-4005). In the event that any modifications to the design alters the candidate design spills on which the Title 49 CFR 193 siting analysis was based, EcoEléctrica shall consult with DOT on any actions necessary to comply with Part 193.
13. The **final design** shall include change logs that list and explain any changes made from the front-end engineering design provided in EcoEléctrica's application and filings. A list of all changes with an explanation for the design alteration should be provided and all changes should be clearly indicated on all diagrams and drawings.
14. The **final design** shall provide up-to-date plan view and cross section drawings of the proposed piping.
15. EcoEléctrica shall certify that the **final design** of the buried vacuum-jacketed pipe has satisfied DOT with respect to National Fire Protection Association 59A Sections 2.1.2, 2.2.1.2, and 2.2.1.3.
16. **Prior to commissioning**, EcoEléctrica shall tag all instrumentation and valves in the field, including drain valves, vent valves, main valves, and car-sealed or locked valves.
17. **Prior to commissioning**, EcoEléctrica shall file with the Secretary an updated Emergency Response Plan for the Terminal to address the additional facilities of the LNG Supply Pipeline Project.
18. **Prior to commissioning**, EcoEléctrica shall file with the Secretary updates to the Terminal's operation and maintenance procedures and manuals to include the facilities of the LNG Supply Pipeline Project. EcoEléctrica shall indicate when the Terminal operations staff has completed its training for the updated procedures.

**Conditions 19 through 21 shall apply throughout the life of the Project:**

19. The facilities installed as part of the LNG Supply Pipeline Project shall be subject to the same incident reporting requirements stated in FERC staff's June 23, 2006 letter to EcoEléctrica under Docket No. CP95-35-000.
20. The facilities installed as part of the LNG Supply Pipeline Project shall be subject to the regular FERC staff technical reviews and site inspections on at least an **annual** basis.
21. EcoEléctrica shall report any design modifications and operating problems for the facilities at the LNG Supply Pipeline Project in the **semi-annual** operational reports filed with the Secretary for the Terminal.