

124 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Puget Sound Energy, Inc., SOCCO, Inc., and Sumas Pipeline Company Docket No. CP08-48-000

Sumas Cogeneration Company, L.P. Docket No. CP91-50-004

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

(Issued July 23, 2008)

1. On December 21, 2007, Puget Sound Energy, Inc. (Puget), SOCCO, Inc. (SOCCO), Sumas Pipeline Company (SPC), and Sumas Cogeneration Company, L.P. (SCCLP) (collectively, applicants) filed an application with the Federal Energy Regulatory Commission in the above referenced dockets for authorization under section 3 of the Natural Gas Act (NGA) and a Presidential Permit for Puget, SOCCO and SPC to acquire, operate and maintain natural gas import facilities currently owned and operated by SCCLP pursuant to authorizations granted by the Commission.¹ The natural gas import facilities are located at the United States/Canada border near the City of Sumas in Whatcom County, Washington.

2. For the reasons discussed below, we will grant the requested authorizations.

Background and Proposal

3. Puget, SOCCO and SPC request NGA section 3 authorization and a Presidential Permit to acquire the subject natural gas import facilities from SCCLP and to continue

¹ *Sumas Energy, Inc.*, 55 FERC ¶ 61,163 (1991) *order granting reh'g*, 56 FERC ¶ 61,119 (1991), *order granting in part, and denying in part, request for amendment to Presidential Permit*, 57 FERC ¶ 61,341 (1991), *notice of effectiveness of amendment to Presidential Permit*, 58 FERC ¶ 61,045 (1992), *erratum notice*, 58 FERC ¶ 61,212 (1992). SCCLP's Presidential Permit and NGA section 3 authorization were originally issued to Sumas Energy, Inc., and subsequently amended to reflect the name change pursuant to corporate restructuring. 57 FERC ¶ 61,341 (1991).

operating the facilities for the importation of natural gas from the Province of British Columbia, Canada, into Whatcom County, Washington. Puget will acquire a 57.3 percent ownership interest in the import facilities;² SPC will acquire a 41.0 percent ownership interest; and SOCCO's ownership interest will be 1.7 percent ownership interest.

4. The import facilities consist of (1) the border crossing facility, i.e., an interconnection with Westcoast Energy, Inc., at the international border between Canada and the United States, and (2) an 8-inch diameter pipeline located directly south of the Sumas gas meter station that crosses the Canada-United States border near or within the City of Sumas in Whatcom County, extending a distance of approximately 3.79 miles. The 8-inch diameter pipeline interconnects with the Sumas tie-in station at the 125-megawatt gas-fired Sumas cogeneration power plant owned and operated by SCCLP.

5. In an order issued on May 5, 2008 in Docket No. EC08-42-000, the Commission has authorized Puget to acquire SCCLP's cogeneration facility. Puget's proposed ownership interest in the gas import facilities will enable it to continue using the import facilities to obtain fuel for the cogeneration facility. SOCCO's ownership interest in the import facilities will enable it to continue receiving fuel for its lumber drying, heat treating and a remanufacturing facility in Sumas, Washington. SPC does not presently own any industrial facilities that would receive gas through the import facility. In the event SPC decides to construct such facilities, the applicants state they would first file with the Commission for any requisite authorizations. Applicants do not propose to construct any new facilities at this time. Applicants further state that there are no current third-party service agreements associated with the facilities, service has not been offered to the public, and that the import facilities will be used solely to transport Canadian natural gas for use by the applicants' respective facilities.

Public Notice and Intervention

6. Notice of the application in Docket Nos. CP08-48-000 and CP91-50-004 was published in the *Federal Register* on January 14, 2008 (73 Fed. Reg. 2233). Comments

² The ownership interest in the border crossing facility and natural gas pipeline to be transferred to Puget will be effected through Puget's purchase of all of SCCLP's interests in a special purpose entity, Sumas Power, LLC. SCCLP will form Sumas Power, LLC at closing and will transfer 57.3 percent of its interest in these gas import facilities to Sumas Power, LLC. Puget will then acquire 100 percent of the membership interests in Sumas Power, LLC. The structuring of the Puget purchase as an equity purchase of interests in the special purpose entity is only for Washington state tax purposes, and Puget will dissolve Sumas Power, LLC immediately upon closing of the transfer of SCCLP's interest in Sumas Power, LLC to Puget.

were due on or before January 25, 2008. No notices of intervention, motions to intervene, or protests to the application were filed.³

Consultation with Secretaries of State and Defense

7. On February 13, 2008, 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 May 27, 2008, and the Secretary of Defense dated June 12, 2008, indicate no objection to the issuance of the Presidential Permit as described.

Discussion

8. Pursuant to Department of Energy Delegation Order No. 00-004.00 effective December 1, 2001, the Commission has delegated authority to issue Presidential Permits⁴ and to grant NGA section 3 authorizations.

9. Section 153.9 of the Commission's regulations provides that prior Commission approval is necessary for the transfer of facilities authorized under section 3 of the NGA. Further, Article 8 of the 1991 Presidential Permit states that neither the Permit nor any of the facilities covered by the Permit may be voluntarily transferred.

10. The Commission's staff reviewed the applicants' proposal and found that it raises no environmental issues.⁵ No new facility construction, abandonment, or modification of existing facilities will occur. Nor will the change of ownership alter in any way the operation of the import facilities. Since granting this application will not be a federal action significantly affecting the quality of the human environment, the preparation of an environmental assessment or an environmental impact statement is not required.⁶

11. Approval of applicants' proposal is consistent with the public interest because it will continue to provide access to supplies of natural gas and promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Canada. Although the applicants will jointly own

³ 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).

⁴ The Presidential Permit is attached as the appendix to this order.

⁵ *Environmental Assessment Report* issued January 28, 2008, Docket No. CP08-48-000.

⁶ *BP West Coast Projects, LLC, Atlantic Richfield Co. and Intalco Aluminum Corp.*, 103 FERC ¶ 61,323 (2003).

the import facilities, they will use the facilities solely to transport gas for use at their own facilities in Washington; they do not propose to use the facilities to provide sales, transportation or any other services for other parties.⁷

12. Presidential Permits and authorizations pursuant to section 3 of the NGA are non-transferable.⁸ Therefore, to permit effectuation of the change in ownership of the facilities, the Commission will issue a new Presidential Permit, set forth in the appendix to this order, and new NGA section 3 authorization for Puget, SOCCO and SPC NGA to acquire the subject natural gas import facilities from SCCLP and to continue operating the facilities for the importation of natural gas supplies from Canada.

13. The Commission on its own motion, received and made a part of the record all evidence, including the application (s), 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 to Puget, SOCCO, and Sumas Pipeline Company to acquire and operate natural gas import facilities, as described in this order and subject to the conditions of the Presidential Permit.

(B) Puget, SOCCO, and Sumas Pipeline Company shall sign and return the testimony of acceptance of all provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ Cf. *Atlantic Richfield Co. and Intalco Aluminum Corp.*, 50 FERC ¶ 61,210, at P 61,669 (1990).

⁸ 18 C.F.R. § 153.9(a) (2008). See, e.g. *Regent Resources Ltd. and Sword Energy Limited*, 117 FERC ¶ 61, 036, at P 12 (2006); *Calpine Corp.*, 106 FERC ¶ 61,075, at P 11-12 (2004); Appendix at standard Article 8 of Applicants Presidential Permit.

**PRESIDENTIAL PERMIT
AUTHORIZING PUGET SOUND ENERGY, INC., SOCCO, INC.,
AND SUMAS PIPELINE COMPANY TO ACQUIRE, OPERATE, AND
MAINTAIN FACILITIES FOR THE IMPORTATION OF NATURAL GAS AT
THE INTERNATIONAL BOUNDARY BETWEEN
THE UNITED STATES AND CANADA
IN WHATCOM COUNTY, WASHINGTON**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NOS. CP08-48-000 AND CP91-50-004**

(Issued July 23, 2008)

Puget Sound Energy, Inc. (PUGET), SOCCO, Inc. (SOCCO) and Sumas Pipeline Company (SPC) (Permittees) filed on December 21, 2007, in Docket No. CP08-48-000 and CP91-50-004 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 Permittees to acquire from Sumas Cogeneration Company, L.P. certain pipeline and related facilities and to operate and maintain such facilities, as described in Article 2 below, for the importation of natural gas from Canada.

By letter dated May 27, 2008, the Secretary of State, and by letter dated June 12, 2008, 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 Permittees 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 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:

A natural gas transmission pipeline interconnecting with Westcoast Energy, Inc., at the International Boundary between the United States and Canada, near or within the City of Sumas in Whatcom County, Washington, and extending for approximately 20,000 feet to the 125-megawatt gas-fired cogeneration plant owned by Sumas Cogeneration Company, L.P. at the time of issuance of this Permit.

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 imported from 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 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. The Permittees 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 the Permittees shall remove those facilities within such time and at the Permittees' expense. Upon failure of the Permittees 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 Permittees' expense, and the Permittees 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.

Puget Sound Energy, Inc.

By _____

SOCCO, Inc.

By _____

Sumas Pipeline Company

By _____

(Attest)

Executed in triplicate