

140 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Kinder Morgan Texas Pipeline LLC

Docket No. CP12-440-000

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

(Issued July 25, 2012)

1. On April 30, 2012, Kinder Morgan Texas Pipeline LLC (Kinder Morgan Texas) filed an application with the Commission in the above referenced docket to amend its existing Natural Gas Act (NGA) section 3 authorization and Presidential Permit to increase the authorized design capacity of its border-crossing facilities at the United States-Mexico International Border near Salineño, in Starr County, Texas. As discussed below, the Commission will grant the requested authorizations.

I. Background and Proposal

2. Kinder Morgan Texas is a limited liability company organized and existing under the laws of Delaware. Kinder Morgan Texas' sole member is Tejas Natural Gas, LLC (Tejas). Tejas is an indirect subsidiary of Kinder Morgan Energy Partners, L.P., a publicly traded pipeline master limited partnership, and Tejas' ultimate parent is Kinder Morgan, Inc.

3. Pursuant to Presidential Permits and section 3 authorizations issued on November 26, 1996 and December 17, 1997, the Commission authorized Kinder Morgan Texas to site, construct, and operate facilities at the International Border with Mexico.¹ The Commission amended Kinder Morgan Texas' Presidential Permit and section 3

¹ *MidCon Texas Pipeline Corp.*, 77 FERC ¶ 61,205 (1996) and *MidCon Texas Pipeline Operator, Inc.*, 81 FERC ¶ 61,326 (1997). Kinder Morgan Texas was formerly known as MidCon Texas Pipeline Operator, Inc., and Kinder Morgan Texas Pipeline, L.P.

authorization on September 24, 2002, authorizing it to increase the diameter of its border crossing pipeline from 24 to 30 inches, thereby increasing the pipeline's authorized design capacity from 270 to 375 MMcf per day.²

4. Kinder Morgan Texas' cross-border facilities extend 878 feet from an interconnection with its intrastate pipeline to the International Border at the midpoint of the Rio Grande River. At that point, the cross-border pipeline connects with Kinder Morgan Gas Natural de Mexico, S. de R.L. de C.V. (Kinder Morgan Mexico), an affiliate of Kinder Morgan Texas, that transports gas from the International Border to the Monterey, Mexico area. PEMEX-Gas Y Petroquimica Basica (PEMEX), the shipper-customer of Kinder Morgan Mexico, purchases gas at the United States-Mexico border from MGI Supply Ltd. (MGI Supply), an affiliate of PEMEX, and uses the gas to serve customers in the Monterey area and to support its system throughout Northeastern Mexico.

5. To accommodate changing gas flows on its system, Kinder Morgan Texas states that in recent years it has implemented a series of operational changes on the portion of its intrastate pipeline that is upstream of the cross-border facilities. As a result of these operational changes, Kinder Morgan Texas states that its cross-border facilities are now capable of transporting 425 MMcf per day.³

6. In its application, Kinder Morgan Texas proposes to increase the authorized design capacity of its cross-border facilities from approximately 375 to 425 MMcf per day. Kinder Morgan Texas states that its proposal will align its existing authorization with the actual design capabilities of its cross-border facilities. Kinder Morgan Texas proposes no construction or modification to its previously approved facilities in this application.

² *Kinder Morgan Texas Pipeline, L.P.*, 100 FERC ¶ 61,313 (2002).

³ Kinder Morgan Texas states that since April 25, 2012, it has been transporting up to 425 MMcf per day through the cross-border facilities under Part 284, Subpart I of the Commission's regulations, which allows a pipeline to transport volumes in excess of its authorized capacity in emergency situations. Kinder Morgan Texas asserts that it has been providing this emergency service to help PEMEX offset the effects of a rupture that occurred on November 11, 2011, on a 36-inch diameter pipeline located in the Reynosa – Monterey path in Mexico. Kinder Morgan Texas contends that this rupture has severely affected the transportation capacity of the National Pipeline System in Mexico in recent months. Kinder Morgan Texas states that by increasing the flow of gas through its cross-border facilities, it has been able to help PEMEX supply its Gulf, Center, and West zones, stabilizing the natural gas supply conditions previously affected by the damaged pipeline.

II. Notice, Interventions, and Comments

7. Notice of Kinder Morgan Texas' application was published in the *Federal Register* on May 11, 2012 (77 Fed. Reg. 27,758). MGI Supply filed a timely, unopposed motion to intervene in support of the application.⁴

8. Calpine Energy Services, L.P. (Calpine) filed a late motion to intervene. Calpine has demonstrated an interest in this proceeding. Calpine's motion to intervene will not delay, disrupt, or unfairly prejudice any parties in this proceeding. Thus, we will grant Calpine's late motion to intervene under Rule 214(d) of the Commission's Rules of Practice and Procedure.⁵ The application is unopposed.

III. Consultation with Secretaries of State and Defense

9. On May 11, 2012, pursuant to Executive Orders Nos. 10485 and 12038, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on Kinder Morgan Texas' requested issuance of an amended Presidential Permit and amended section 3 authorization. By letters dated July 5, 2012, and June 26, 2012, the Secretaries of State and Defense, respectively, indicated that they have no objections to the Presidential Permit for Kinder Morgan Texas.

IV. Discussion

10. Since the subject facilities are used to export gas across the United States-Mexico International Border, the proposal is subject to the Commission's jurisdiction under section 3 of the NGA.⁶

⁴ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. § 385.214(c) (2012).

⁵ 18 C.F.R. § 385.214(d) (2012).

⁶ The regulatory functions of section 3 were transferred to the Secretary of the Department of Energy (DOE) in 1977 pursuant to section 301(b) of the Department of Energy Organization Act. 42 U.S.C. § 7151(b) (2006). In reference to regulating imports or exports of natural gas, the DOE Secretary subsequently delegated to the Commission the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE Secretary's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00-004.00A, effective May 16, 2006.

11. Section 3 provides for the Commission's approval of an application under that section "unless it finds that the proposal will not be consistent with the public interest."⁷ The proposed amendment to increase the authorized design capacity of the border-crossing facilities from approximately 375 to 425 MMcf per day will align Kinder Morgan Texas' existing authorizations with the capabilities of its intrastate system. Accordingly, the Commission finds that approval of Kinder Morgan Texas' proposal is consistent with the public interest. Thus, the Commission will issue an amended Presidential Permit, set forth in the appendix to this order, and NGA section 3 authorization to increase the authorized capacity of the border-crossing facilities.

V. Environmental Analysis

12. Kinder Morgan Texas does not propose to construct or modify the existing cross-border facilities. Thus, no environmental review of this proposal is necessary.

13. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) Kinder Morgan Texas' existing NGA section 3 authorization and Presidential Permit are amended to increase the authorized design capacity of its border-crossing facilities at the United States-Mexico International Border near Salineño, in Starr County, Texas from approximately 375 MMcf per day to 425 MMcf per day.

(B) Kinder Morgan Texas shall sign and return the testimony of acceptance of all provisions, conditions, and requirements of the amended Presidential Permit to the Secretary of the Commission within 30 days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ 15 U.S.C. § 717b(a) (2006).

**AMENDED PERMIT AUTHORIZING
KINDER MORGAN TEXAS PIPELINE, LLC
TO OPERATE AND MAINTAIN
NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO**

**FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP12-440-000**

(Issued July 25, 2012)

Kinder Morgan Texas Pipeline, LLC (Kinder Morgan), a corporation organized under the laws of the State of Delaware, filed on April 30, 2012, in Docket No. CP12-440-000, 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 an amended Presidential Permit authorizing Kinder Morgan to increase the design capacity of its facilities at the international boundary between the United States and Mexico from 375 to 425 MMcf per day.

By letter dated July 5, 2012, the Secretary of State, and by letter dated June 26, 2012, the Secretary of Defense, favorably recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the modification requested by Kinder Morgan, 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 Kinder Morgan (Permittee) to operate and maintain the natural gas facilities described in Article 2 below, upon the terms and conditions of the Permit.

Article 1. It is expressly agreed by the Permittee that the facilities herein described shall be subject to all provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or the Federal Energy Regulatory Commission and may be amended by the Federal Energy Regulatory Commission, upon proper application therefore.

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

A natural gas transmission facility located near Salineño, Starr County, Texas consisting of approximately 878 feet of 30-inch diameter pipe extending from a

connection with intrastate pipeline facilities operated by Kinder Morgan to the International Boundary. The authorized design capacity of the border facilities will be approximately 425 MMcf per day.

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 between the United States and 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 Permittee shall allow officers and employees of the United States, showing proper credentials, free and unrestricted access to the land occupied by the facilities in the performance of their official duties.

Article 5. If in the future it should appear to the Secretary of the Defense 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 Defense, to remove or alter the same so as to render navigation through such waters free and unobstructed.

Article 6. The Permittee shall be liable for all damages occasioned to the property of others by the operation or maintenance of the facilities, and in no event shall the United States be liable therefore. The Permittee shall do everything reasonable within its power to prevent or suppress fires on or near land occupied under this Permit.

Article 7. The Permittee agrees to file with the Commission, under oath and in such detail as the Commission may require, such statements or reports with respect to the natural gas exported, imported, or the facilities described herein, as the Commission may, from time to time, request. Such information may be made available to any federal, state, or local agency requesting such information.

Article 8. Neither this Permit nor the facilities, nor any part thereof, covered by this Permit shall be voluntarily transferred in any manner, but the Permit shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of the facilities by operation of law (including transfer to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for a permanent Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the involuntary transfer. The Permittee shall maintain the facilities in a condition of repair for the efficient transportation of natural gas and shall make all necessary renewals and replacement.

Article 9. 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 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of __, 2012 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2012, a certified copy of the record of which is attached hereto.

Kinder Morgan Texas Pipeline LLC

By _____

(Attest)

Executed in triplicate