

140 FERC ¶ 61,072
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.

El Paso Natural Gas Company

Docket No. CP12-74-000

ORDER AMENDING PRESIDENTIAL PERMIT

(Issued July 25, 2012)

1. On February 20, 2012, El Paso Natural Gas Company (El Paso) filed an application with the Commission in the above-referenced docket to amend its existing authorizations to increase the maximum daily export capacity of its border crossing facilities at the United States-Mexico International Boundary six miles south of Clint, Texas in El Paso County, Texas.

I. Background and Proposal

2. On November 29, 1993, the Commission issued a Presidential Permit and section 3 authorization authorizing El Paso, among other things, to construct, operate, maintain, and connect approximately 1,000 feet of 24-inch diameter pipeline extending from the Samalayuca Lateral across the Rio Grande River at the International Border between the United States and Mexico in El Paso, County, Texas (Samalayuca Crossing facilities).¹ The Samalayuca Crossing facilities were designed to transport natural gas to Gasoductos de Chihuahua, St. de R. L. de C.v. (Gasoductos).

3. In an order issued on June 11, 1997,² the Commission amended the previously-issued Presidential Permit and section 3 authorization to lengthen the border crossing facilities at the Rio Grande River from 1,000 to 1,500 feet. El Paso stated that although the surface distance of the river crossing would remain unchanged at 1,000 feet, the additional 500 feet was needed to directionally drill the Rio Grande River crossing.

¹ *El Paso Natural Gas Company*, 65 FERC ¶ 61,276 (1993).

² *El Paso Natural Gas Company*, 79 FERC ¶ 61,315 (1997), *reh'g denied*, 81 FERC ¶ 61,231 (1997).

El Paso stated that after construction, it would transfer 750 feet of pipeline on the Mexican side to Gasoductos.

4. In an order issued on January 31, 2002,³ the Commission amended the previously-issued Presidential Permit to increase the maximum daily export capacity from 208,000 to 308,500 Mcf per day.

5. Here, El Paso proposes to again amend its Presidential Permit in order to increase the maximum daily export capacity of the Samalayuca Crossing facilities from 308,000 to 544,500 Mcf per day. El Paso states that MGI Supply, Ltd. (MGI) requested El Paso to increase its natural gas export capacity at the Samalayuca Crossing facilities to meet increased natural gas demand in the State of Chihuahua, Mexico. El Paso asserts that the existing Samalayuca Crossing facilities can accommodate a flow of up to 544,500 Mcf per day with no construction of additional facilities.⁴

II. Notice, Interventions, and Comments

6. Notice of El Paso's application was published in the *Federal Register* on March 6, 2012 (77 *Fed. Reg.* 14,776). New Mexico Gas Company, Inc., Southwest Gas Corporation, MGI, and Arizona Public Service Company filed timely, unopposed motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁵ There were no protests to El Paso's application.

III. Consultation with Secretaries of State and Defense

7. On April 5, 2012, the Commission sent copies of El Paso's application and a draft amended Presidential Permit to the Secretary of State and the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State dated June 7, 2012, and the Secretary of Defense dated May 11, 2012, indicate no objection to the issuance of the Amended Presidential Permit as described.⁶ Accordingly, we will grant the requested authorization, finding that it is not inconsistent with the public interest.

³ *El Paso Natural Gas Company*, 98 FERC ¶ 61,096 (2002).

⁴ El Paso receives gas volumes into the Samalayuca Lateral, and subsequently into the Samalayuca Crossing facilities, from the discharge side of the Hueco Compressor Station. The increase in flow will be accomplished by El Paso operating the Hueco Compressor Station at a discharge pressure of 799 psig.

⁵ *See* 18 C.F.R. § 385.214 (2012).

⁶ The Amended Presidential Permit is attached as an Appendix to this order.

IV. Discussion

8. 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.⁷

9. 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."⁸ The proposed increase in the maximum daily export capacity of the Samalayuca crossing facilities will help MGI meet increased demand for natural gas in the State of Chihuahua, Mexico. El Paso states that it can meet the proposed increase without constructing any facilities by operating its Hueco Compressor Station at a discharge pressure of 799 psig. An analysis by the Commission's staff shows that there will be no degradation of service to El Paso's existing customers as a result of the proposed increase in flow. Thus, the Commission will issue an amended Presidential Permit, set forth in the Appendix to this order, to increase the authorized export capacity of the Samalayuca crossing facilities.

10. 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 authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) El Paso's Presidential Permit issued on November 29, 1993, as amended on June 11, 1997 and January 31, 2002, is further amended as discussed in this order and set forth in the Appendix to this order.

⁷ The regulatory functions of section 3 were transferred to the Secretary 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.

⁸ 15 U.S.C. § 717b(a) (2006).

(B) El Paso 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 fifteen days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX**AMENDED PERMIT
AUTHORIZING EL PASO NATURAL GAS COMPANY
TO CONSTRUCT, OPERATE, AND MAINTAIN
NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP12-74-000**

(Issued July 25, 2012)

El Paso Natural Gas Company (El Paso), a corporation organized under the laws of the State of Delaware, filed on February 20, 2012, in Docket No. CP12-74-000, 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 amended Presidential Permit authorizing El Paso to increase the authorized export capacity of the Samalayuca Crossing facility at the international boundary between the United States and Mexico from 308,000 to 544,500 Mcf per day.

By letter dated June 7, 2012, the Secretary of State, and by letter dated May 11, 2012, 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 El Paso (Permittee) to operate and maintain 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 therefor.

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

Approximately 750 feet of 24-inch pipeline and appurtenant facilities, known as the Samalayuca Crossing, with a maximum capacity of 544,500 Mcf per day, located approximately six miles south of Clint, Texas, that extends to the international boundary between the United States and Mexico in El Paso County Texas.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from the United States 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 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 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 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 therefor. 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 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 replacements.

Article 9. Upon the termination, revocation, or surrender of this Permit, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The facilities authorized shall be removed within such time as the Commission may specify and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, or any portion thereof, 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.

(S E A L)

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 named 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.

El Paso Natural Gas Company

By _____

(Attest)

Executed in triplicate