

147 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Bakken Hunter, LLC

Docket No. CP14-24-000

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

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

(Issued April 24, 2014)

1. On December 2, 2013, Bakken Hunter, LLC (Bakken Hunter) filed an application seeking authorization under section 3 of the Natural Gas Act (NGA)¹ and a Presidential Permit to site, construct, operate, and maintain a border-crossing facility for the importation of natural gas at the international boundary between Canada and the United States in Divide County, North Dakota.²
2. For the reasons discussed below, the Commission will grant the requested authorizations, subject to certain conditions.

¹ 15 U.S.C. § 717b (2012); 18 C.F.R. pt. 153 (2013) (implementing regulations).

² Authorization under section 3 of the NGA is necessary for the siting, construction, or 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), as amended by Executive Order No. 12038, dated February 3, 1978 (43 Fed. Reg. 4957), 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 construction, operation, maintenance, or connection 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

3. Bakken Hunter is a limited liability company engaged in the exploration for and the exploitation, acquisition, development, and production of crude oil, natural gas, and natural gas liquids in North Dakota. Bakken Hunter is a wholly owned subsidiary of Magnum Hunter Resources Corporation (Magnum Hunter), an independent oil and gas company organized under the laws of Delaware. Magnum Hunter's indirectly wholly owned subsidiary, Williston Hunter Canada, Inc. (Williston Hunter), will be responsible for the Canadian portion of the pipeline and associated facilities.

4. Bakken Hunter states that it intends to construct and operate approximately 14,562 feet (2.76 miles) of 10-inch-diameter pipeline in the United States and Canada. Bakken Hunter proposes to construct and operate approximately 5,372 feet (1.02 miles) of that pipeline in North Dakota (the Import Facility). The pipeline is designed to transport unprocessed natural gas that is currently being flared at Williston Hunter's operations in Saskatchewan, Canada to a FERC non-jurisdictional gathering system owned and operated by ONEOK Rockies Midstream, LLC (ONEOK) in Divide County for eventual sale in the United States.³

5. The proposed pipeline will have a maximum operating pressure of 80 pounds per square inch gauge and an approximate design capacity of five million cubic feet per day. Bakken Hunter will install pigging facilities at both ends of the pipeline, and the jurisdictional border crossing facilities will terminate at the pigging facility in Divide County at the interconnection with ONEOK. In addition, as part of the proposed project, Bakken Hunter will install a non-jurisdictional metering station at the ONEOK Custody Transfer location between Bakken Hunter's proposed pipeline and the ONEOK gathering system in Divide County.

II. Public Notice, Interventions, and Comments

6. Notice of Bakken Hunter's application was published in the *Federal Register* on December 20, 2013 (78 Fed. Reg. 77,113). No motions to intervene or protests to the application were filed.

III. Consultation with Secretaries of State and Defense

7. On January 31, 2014, 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, filed February 12, 2014, and the Secretary of

³ ONEOK specializes in the gathering, processing, storage, and transportation of natural gas in the United States. The gas to be transported to ONEOK from Canada will be treated and processed on ONEOK's facilities.

Defense, filed March 20, 2014, indicate no objection to the issuance of the requested Presidential Permit.⁴

IV. Discussion

A. Public Interest

8. Because the subject facilities will be used to import natural gas across the Canada/United States international border, the construction and operation of the proposed facilities is subject to the Commission's jurisdiction under section 3 of the NGA.

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."⁵ Under its section 3 authority, the Commission may also apply terms and conditions as necessary and appropriate to ensure that the proposed siting, construction, and operation are not inconsistent with the public interest.⁶

10. NGA section 3 further provides that the exportation and importation of natural gas between the United States and "a nation with which there is in effect 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."⁷ The United States and Canada are signatories to the North American Free Trade Agreement.⁸ The border-crossing facilities are needed to import gas that is being flared in Canada for sale in the United States, and authorization for construction of the facilities therefore will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and

⁴ Executive Order No. 10485, 18 Fed. Reg. 5397 (September 9, 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.

⁵ 15 U.S.C. § 717b(a) (2012).

⁶ *Id.*

⁷ 15 U.S.C. § 717b(c) (2012).

⁸ Pub. L. No. 103-82, 107 Stat. 2057 (1993); Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (Dec. 27, 1993).

services between the United States and Canada by facilitating the transportation of natural gas imports and exports authorized by DOE's Office of Fossil Energy.⁹

11. The Import Facility will have a minimal impact on landowners. Bakken Hunter has entered into easement agreements with four landowners that have land crossed by the pipeline. Construction of the pipeline and pig receiver in the United States would temporarily disturb approximately 9.25 acres of agricultural land. Following the completion of construction, Bakken Hunter would permanently maintain approximately 0.02 acre for operation of the pig receiver with the remaining land restored to its former agricultural use.

12. In view of the above considerations, the Commission finds that the approval of the Import Facility for the importation of natural gas is not inconsistent with the public interest. Therefore, the Commission will issue a Presidential Permit, set forth in Appendix B to this order, and an NGA section 3 authorization to site, construct, operate, and maintain the Import Facility, subject to the environmental conditions in Appendix A to this order.

B. Environmental Analysis

13. On January 10, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment* (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners. The Commission received a comment in response to the NOI from the North Dakota Department of Health, raising general issues about impacts on air quality, noise, and wetlands; spill prevention; and storm water runoff control.

14. To satisfy the requirements of the National Environmental Policy Act of 1969, Commission staff prepared an environmental assessment (EA) for Bakken Hunter's proposal. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, wildlife, threatened and endangered species, land use, recreation, visual resources, cultural resources, air quality, noise, safety, cumulative effects, and alternatives. The North Dakota Department of Health's comments were thoroughly addressed in the EA. The EA was placed into the public record on April 2, 2014.

15. Based on the analysis in the EA, the Commission concludes that if constructed and operated in accordance with Bakken Hunter's application and supplements, and in compliance with the environmental conditions in Appendix A to this order, approval of

⁹ See, e.g., *Puget Sound Energy, Inc.*, 124 FERC ¶ 61,078, at P 11 (2008); *Sword Energy Limited*, 124 FERC ¶ 61,143, at P 10 (2008).

this proposal will not constitute a major federal action significantly affecting the quality of the human environment.

16. Any state 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 state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.¹⁰

17. The Commission on its own motion, received and made part of the record all evidence, including the application, supplements, and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A Presidential Permit and NGA section 3 authorization are issued authorizing Bakken Hunter to site, construct, operate, and maintain border-crossing facilities to import natural gas, as described and conditioned in this order, subject to the conditions of the Presidential Permit and compliance with the environmental conditions in Appendix A to this order.

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

(C) The authorized import facilities shall be completed and placed in service within one year of the date of issuance of this order.

¹⁰See, 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).

(D) Bakken Hunter shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day such agency notifies Bakken Hunter. Bakken Hunter shall file written confirmation of such notification with the Secretary within 24 hours.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX A

Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Bakken Hunter 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. Bakken Hunter must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with the construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction of facilities,** Bakken Hunter shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), 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,** Bakken Hunter shall file with the Secretary any revised construction workspace configuration drawings at a scale not smaller than 1:6,000 with station positions for all activities 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. Bakken Hunter 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 will 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 will 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.**

This requirement does not apply to extra workspace allowed by FERC's *Upland Erosion Control, Revegetation, and Maintenance Plan* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

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**, Bakken Hunter shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Bakken Hunter must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Bakken Hunter will implement 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 Bakken Hunter 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 Bakken Hunter will give to all personnel involved with construction activities and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Bakken Hunter's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Bakken Hunter 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. Beginning with the filing of its Implementation Plan, Bakken Hunter shall file updated status reports with the Secretary on a **biweekly 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 Bakken Hunter's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) 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 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 Bakken Hunter from other

federal, state or local permitting agencies concerning instances of noncompliance, and Bakken Hunter's response.

8. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Bakken Hunter shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Bakken Hunter must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the facility sites and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, Bakken Hunter shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the conditions Bakken Hunter 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.

APPENDIX B**PERMIT AUTHORIZING BAKKEN HUNTER, LLC
TO SITE, CONSTRUCT, AND OPERATE NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND CANADA****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP14-24-000**

(Issued April 24, 2014)

Bakken Hunter, LLC, (Bakken Hunter), a limited liability corporation organized under the laws of the State of Delaware, filed on December 2, 2013, in Docket No. CP14-24-000, 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 Natural Gas Act (NGA) and a Presidential Permit authorizing Bakken Hunter to site, construct, and operate a new border crossing pipeline facility at the international boundary of the United States and Canada to accommodate the importation of natural gas between Canada and the United States.

By letter filed February 12, 2014, the Secretary of State, and by letter filed March 20, 2014, the Secretary of Defense, favorably recommend that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the export permission requested by Bakken Hunter, is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 1, 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 Bakken Hunter (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: Approximately 5,372 feet of 10-inch-diameter pipeline with a maximum daily design capacity of 5 million standard cubic feet per day, designed to transport natural gas from Bakken Hunter's operations in Saskatchewan, Canada, to a non-jurisdictional gathering system owned and operated by ONEOK Rockies Midstream, LLC (ONEOK) in Divide County, North Dakota; and a pigging facility of standard design, to be installed at the end of the pipeline facility, in Divide County.

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 Canada only in the amount, at the rate, and in the manner authorized under section 3 of the NGA.

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 Defense, to remove or alter the same so as to render navigation through such water 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 Permittee 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. 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 its 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.