

154 FERC ¶ 61,257
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

El Paso Natural Gas Company, L.L.C.

Docket No. CP15-493-000

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

(Issued March 30, 2016)

1. On May 19, 2015, El Paso Natural Gas Company, L.L.C. (El Paso) filed an application to amend its existing Presidential Permit and Natural Gas Act (NGA) section 3 authorization¹ to establish the maximum export capacity of its border-crossing facilities at the international boundary between the United States and Mexico near Naco, in Cochise County, Arizona.

2. For the reasons discussed below, the Commission grants the requested authorization, subject to conditions.

I. Background and Proposal

3. El Paso, a limited liability company organized under the laws of Delaware, is a natural gas company under the NGA.² El Paso owns and operates an integrated interstate pipeline system in Oklahoma, Texas, New Mexico, Colorado, Arizona, and California.

4. The border-crossing facilities that are the subject of El Paso's application herein consist of a meter station and Line No. 2042, a 127-foot-long, 8-5/8-inch-diameter

¹ 15 U.S.C. § 717b(a) (2012).

² 15 U.S.C. § 717a(6) (2012).

pipeline located at the international boundary between the United States and Mexico, near Naco, in Cochise County, Arizona (Monument 90 Facilities).³

5. On September 10, 1940, the Federal Power Commission, the Commission's predecessor agency, issued a Presidential Permit and authorized El Paso, pursuant to NGA section 3, to operate and maintain the Monument 90 Facilities at the international boundary to export gas from the United States to Mexico.⁴ The authorizations granted by the 1940 Order were extended and amended in 1947, 1962, 1967, and 1982.⁵ As relevant to this proceeding, the 1962 Order authorized El Paso to export, using the Monument 90 Facilities, "amounts not in excess of [10,000 Mcf] per day."⁶ In 1967, the Commission granted El Paso an amendment to increase its authorized export capacity from "10,000 to 14,300 Mcf per day on a firm basis and on a best efforts basis, to export for sale such additional quantities of gas as its customer shall request in excess of 14,300 Mcf per day."⁷

6. Currently, El Paso has four firm transportation service agreements that serve two customers, Comisión Federal de Electricidad and Mex Gas Supply, S.L. (a subsidiary of PEMEX), delivering an average of approximately 34,000 Mcf per day of gas. El Paso states, however, that the amount of natural gas it exports may exceed 34,000 Mcf per day to accommodate primary firm, alternate firm, and interruptible deliveries that may be scheduled to the Monument 90 Facilities.

7. El Paso seeks an amendment to its existing Presidential Permit and NGA section 3 authorization to establish the maximum export capacity at the Monument 90 Facilities as 56,900 Mcf per day. The proposed increase to 56,900 Mcf per day is based on the

³ The maximum allowable operating pressure (MAOP) of Line No. 2042 is 550 pounds per square inch gauge (psig). El Paso May 19, 2015 Application at 10.

⁴ Order issued in Docket G-104 (September 10, 1940) (1940 Order); Presidential Permit Issued to El Paso Natural Gas Company of El Paso, Texas (September 5, 1940).

⁵ *El Paso Natural Gas Co.*, 6 FPC 1005 (1947); *El Paso Natural Gas Co.*, 27 FPC 1116 (1962); *El Paso Natural Gas Co.*, 38 FPC 160 (1967); and *El Paso Natural Gas Co.*, 21 FERC ¶ 61,292 (1982).

⁶ 27 FPC at 1118.

⁷ 38 FPC at 160

throughput capabilities of the Monument 90 Facilities at a delivery pressure of 400 psig.⁸ El Paso states that its proposal seeks to accommodate current and potential growth in firm deliveries at the Monument 90 Facilities. It proposes no new construction or modifications to the existing Monument 90 Facilities. However, El Paso notes that if in the future its customers request deliveries at the Monument 90 Facilities at the proposed maximum authorized capacity of 56,900 Mcf per day, it would need to make modifications to its upstream facilities.

II. Notice and Intervention

8. Notice of El Paso's application was published in the *Federal Register* on June 5, 2015 (80 Fed. Reg. 32,102). Southwest Gas Corporation filed a timely, unopposed motion to intervene. Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁹ No other interventions, comments, or protests were filed.

III. Consultation with Secretaries of State and Defense

9. On July 24, 2015, the Commission sent copies of the application and a draft Presidential Permit to the Secretaries of State and Defense for their recommendations.¹⁰ A reply on behalf of the Secretary of State, filed October 23, 2015, indicates no objection to the issuance of the requested Presidential Permit.

10. On September 23, 2015, the Department of Defense filed a letter, recommending that El Paso verify its existing facilities could accommodate the changes in pressure associated with the increased authorized export capacity and provide notification to the proper authorities of any upstream modifications to its facilities. The Department of

⁸ El Paso Application at n.19. El Paso states that upstream modifications on its system would be required to provide its requested maximum capacity, but it is not proposing the modifications at this time.

⁹ 18 C.F.R. § 385.214 (2015).

¹⁰ 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 operation of facilities at the borders of the United States for the exportation or importation of natural gas.

Defense notes that any construction occurring on its land would require a real estate use agreement.¹¹

11. On February 1, 2016, the Director of the Division of Pipeline Certificates, Office of Energy Projects sent a letter to the Department of Defense, specifying that El Paso's Monument 90 Facilities can safely transport 56,900 Mcf per day of natural gas while operating within its MAOP. The letter also confirmed that any future upstream modifications to El Paso's facilities would be required to comply with NGA section 7 and the Commission's regulations.¹²

12. On March 2, 2016, the Department of Defense filed a letter with the Commission, indicating that it had no objection to the issuance of the requested Presidential Permit.

IV. Discussion

13. Since the Monument 90 Facilities are used to export natural gas across the international boundary between the United States and Mexico, El Paso's operation of the facilities is subject to the Commission's jurisdiction under section 3 of the NGA.

14. Section 3 provides for the Commission's approval of an application under that section "unless . . . it finds that the proposed exportation or importation will not be consistent with the public interest."¹³ El Paso's proposed amendment to increase the authorized export capacity of the border-crossing facilities to 56,900 Mcf per day will align El Paso's authorization with the capabilities of the Monument 90 Facilities. El Paso proposes no new construction related to this amendment. Thus, no environmental review of this proposal is necessary.¹⁴

15. Accordingly, the Commission finds that the approval of El Paso's 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 an NGA section 3 authorization to increase the maximum export capacity of the Monument 90 Facilities.

¹¹ El Paso filed a letter on October 14, 2015, responding to each of the issues raised by the Department of Defense.

¹² 15 U.S.C. § 717f (2012); 18 C.F.R. pts. 152-158 (2015).

¹³ 15 U.S.C. § 717b(a) (2012).

¹⁴ Commission staff found this to be a purely administrative action with no impacts on the environment. Environmental Assessment Report July 30, 2015.

16. 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, and all comments and upon consideration of the record,

The Commission orders:

(A) El Paso's existing Presidential Permit and NGA section 3 authorization are amended to establish the maximum authorized export capacity of its Monument 90 Facilities as 56,900 Mcf per day, as described and conditioned in this order, subject to the conditions of the Presidential Permit.

(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 30 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,
L.L.C. TO OPERATE NATURAL GAS FACILITIES AT THE INTERNATIONAL
BOUNDARY BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP15-493-000**

(March 30, 2016)

El Paso Natural Gas Company, L.L.C. (El Paso), a limited liability company organized and existing under the laws of the State of Delaware, filed on May 19, 2015, in Docket No. CP15-493-000, 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 an amended Presidential Permit authorizing El Paso to import and export natural gas between the United States and Mexico based on the maximum throughput capabilities of its crossing facilities at the international boundary between the United States and Mexico near Naco, in Cochise County, Arizona.

By letter filed October 23, 2015, the Secretary of State, and by letter filed March 2, 2016, the Secretary of Defense, favorably recommend that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this amended 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 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 at Monument 90 on the international boundary between the United States and Mexico, near Naco,

in Cochise County, Arizona, consisting of a meter station and 127 feet of 8-5/8-inch-diameter pipeline.

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 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. 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.

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 _____, 2016, has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ___ day of _____, 2016 a certified copy of the record of which is attached hereto.

El Paso Natural Gas Company, L.L.C.
By _____

(Attest)

Executed in triplicate