

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

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

1057533 Alberta Ltd. and 1978740 Alberta Ltd.

Docket No. CP17-461-000

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

(Issued January 29, 2018)

1. On June 5, 2017, 1057533 Alberta Ltd. (Alberta Ltd.) and 1978740 Alberta Ltd. (Spartan US) (collectively, applicants) filed an application pursuant to section 3 of the Natural Gas Act (NGA),¹ Part 153 of the Commission's regulations,² and Executive Order Nos. 10485 and 12038³ to transfer to Spartan US the NGA section 3 authorization and Presidential Permit that were issued to Alberta Ltd. on November 14, 2005, in

¹ 15 U.S.C. § 717(b) (2012).

² 18 C.F.R. pt. 153 (2017).

³ Authorization under section 3 of the NGA is necessary for the siting, construction, expansion, or operation of facilities to import or export natural gas. 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 United States Department of Energy 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 Department of Energy's Assistant Secretary for Fossil Energy.

Docket No. CP05-211-000,⁴ for the existing border crossing facility located at the international boundary near the Village of Monchy, Saskatchewan in Canada.

2. As discussed below, the Commission will grant the requested authorizations.

I. Background and Proposal

3. Alberta Ltd., a subsidiary of Harvest Operations Corporation, is a corporation organized under the laws of Alberta and has its principal place of business in Calgary, Canada. Alberta Ltd. was incorporated on July 17, 2003, to operate the existing border crossing facility.

4. Spartan US, a wholly owned subsidiary of Spartan Energy Corporation, is a corporation organized under the laws of Alberta and has its principal place of business in Calgary, Canada. Spartan US was incorporated on June 27, 2016, to operate the border crossing facility via a purchase and sale agreement.

5. In 1999, the Commission granted NGA section 3 authorization and issued a Presidential Permit to Canadian-Montana Pipe Line Corporation (Canadian-Montana) to site, construct, operate, maintain, and connect pipeline facilities for the importation of natural gas extending from the international boundary near the Village of Monchy, Saskatchewan, Canada to a non-jurisdictional interconnection with facilities in Phillips County, Montana.⁵

6. Since 1999, several other entities have operated the border crossing facilities. In 2001, the Commission issued an order granting 3698157 Canada Ltd. section 3 authorization and a Presidential Permit to operate and maintain the facilities it acquired from Canadian-Montana.⁶ In 2005, the Commission issued an order granting section 3 authorization and a Presidential Permit to Alberta Ltd. to operate and maintain the border crossing facilities it acquired from 3698157 Canada Ltd.'s predecessor, Encana Border Pipelines Limited.⁷ Each of these Commission orders noted that the Secretaries of Defense and State had no objections to the requested authorizations.

⁴ *EnCana Border Pipelines Ltd.*, 113 FERC ¶ 61,150 (2005).

⁵ *Canadian-Montana Pipe Line Corp.*, 87 FERC ¶ 61,323 (1999).

⁶ *Canadian-Montana Pipe Line Corp.*, 94 FERC ¶ 61,023 (2001).

⁷ *EnCana Border Pipelines Ltd.*, 113 FERC ¶ 61,150 (2005) (3698157 Canada Ltd. changed its name to Encana Border Pipelines Ltd. as a result of a merger in 2002).

7. The Commission-authorized border crossing facilities consist of approximately 30 feet of 8-inch diameter pipeline, with a capacity of 10 million cubic feet (MMcf) per day, extending from the international boundary near the Village of Monchy, Saskatchewan to a non-jurisdictional interconnection with the facilities of Alberta Ltd. in Phillips County, Montana.⁸

8. To effectuate a purchase and sale agreement, applicants request that the Commission grant NGA section 3 authorization and issue a Presidential Permit to Spartan US to operate and maintain the border crossing facilities to import natural gas from Canada.

II. Public Notice and Intervention

9. Notice of Alberta Ltd. and Spartan US's application was published in the *Federal Register* on June 21, 2017.⁹ No protests, comments, or motions to intervene were filed.

III. Consultation with Secretaries of Defense and State

10. On September 22, 2017, pursuant to Executive Order 10485, the Commission sent letters to the Secretaries of Defense and State seeking their recommendations on the applicants' request for issuance of a Presidential Permit authorizing Spartan US's operation of the subject border crossing facility. By letters dated October 31, 2017 and November 13, the Secretaries of Defense and State, respectively, indicated that they have no objections to the issuance of the proposed Presidential Permit to Spartan US.

IV. Discussion

11. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits and grant NGA section 3 authorizations for import and export facilities. Section 153.9 of the Commission's regulations provides that prior Commission authorization is necessary for the transfer of facilities authorized under section 3 of the NGA.¹⁰ Further, Article 8 of

⁸ Previous orders included "a gas meter station situated adjacent to Highway 4, approximately 0.5 mile north of the Village of Monchy, Saskatchewan." See *Canadian-Montana Pipe Line Corp.*, 87 FERC ¶ 61,323 and *Canadian-Montana Pipe Line Corp.*, 94 FERC ¶ 61,023. However, because the gas meter station is located in Canada, it is outside the Commission's jurisdiction.

⁹ 82 Fed. Reg. 28,309 (2017).

¹⁰ 18 C.F.R. § 153.9 (2017).

Alberta Ltd.'s 2005 Presidential Permit states that neither the Presidential Permit nor any of the facilities covered by the permit may be voluntarily transferred.

12. When the Commission first evaluated and authorized the construction and operation of the border crossing facilities, we found that approval of the facility for the importation of natural gas is not inconsistent with the public interest.¹¹ Alberta Ltd. and Spartan US propose no construction or modification of the Commission-approved border crossing facilities.

13. Section 3 specifies 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.”¹² The United States and Canada are signatories to the North American Free Trade Agreement.¹³ The applicants state that the only economically viable tie-in location, for low pressure natural gas from wells in the Monchy area, is the existing gas gathering infrastructure across the international border in Montana and that although the non-jurisdictional gathering line in the U.S. is not currently operational, Spartan US will resume operating upon acquisition of the border crossing facilities. No comments have been filed in opposition to Spartan US's request. For these reasons, we find that the applicants' proposal is not inconsistent with the public interest. Accordingly, we will grant NGA section 3 authorization and issue a Presidential Permit to Spartan US, as requested in the joint application.¹⁴

14. The transfer of the border facilities by Alberta Ltd. to Spartan US will not involve the construction or modification of any facilities and there will be no environmental impacts from the proposed actions.

15. 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 upon consideration of the record,

¹¹ *Canadian-Montana*, 87 FERC at 62,254.

¹² 15 U.S.C. § 717b(b) (2012).

¹³ Pub. L. No. 103-182, 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).

¹⁴ The Presidential Permit is attached as the Appendix to this order.

The Commission orders:

(A) The Presidential Permit and NGA section 3 authorization, formerly granted to 1057533 Alberta Ltd., are issued to 1978740 Alberta Ltd. to operate and maintain natural gas facilities at the border between the United States and Canada, subject to the conditions of the Presidential Permit set forth in the Appendix to this order.

(B) 1978740 Alberta Ltd. 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)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

PRESIDENTIAL PERMIT AUTHORIZING 1978740 ALBERTA LTD.
TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE
INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND
CANADA

FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP17-461-000

(January 29, 2018)

1057533 Alberta Ltd. (Alberta Ltd.) and 1978740 Alberta Ltd. (Spartan US or Permittee) filed on June 5, 2017, in Docket No. CP17-461-000, an application pursuant to Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, requesting that the Commission issue an order under section 3 of the NGA and a Presidential Permit authorizing Spartan US to operate and maintain certain pipeline and related facilities, as described in Article 2 below, for the importation of natural gas from Canada.

By letter dated October 31, 2017, the Secretary of Defense and by letter dated November 13, 2017, the Secretary of State, favorably recommend 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, the Secretary of Energy's Delegation Order No. 00-004.00A, and the Commission's regulations, permission is granted to the 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 30 feet of 8-inch-diameter pipeline, with a capacity of 10 million cubic feet (MMcf) per day, extending from the international boundary near the Village of Monchy, Saskatchewan, to a non-jurisdictional interconnection with the facilities of Alberta Ltd. in Phillips County, Montana.

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 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 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 or 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 purchases 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 Permittee's expense, and the Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. The Permittee 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 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 costs 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 _____ has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors duly adopted on the ____ day of _____, 2018, a certified copy of the record of which is attached hereto.

1978740 Alberta Ltd.

By _____

(Attest)

Executed in triplicate