

162 FERC ¶ 61,066  
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.

Kinder Morgan Border Pipeline LLC

Docket No. CP17-474-000

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

(Issued January 29, 2018)

1. On February 14, 2017, Kinder Morgan Border Pipeline LLC (KM Border) filed an application under section 3 of the Natural Gas Act (NGA)<sup>1</sup> and Part 153 of the Commission's regulations<sup>2</sup> to amend its Presidential Permit to increase the authorized export capacity of its border facilities in Texas at the international boundary between the United States and Mexico from 300 to 450 million cubic feet per day (MMcf/d). For the reasons discussed below, the Commission finds KM Border's request to be consistent with the public interest, and therefore the request is granted.

**I. Background and Proposal**

2. KM Border is a limited liability company organized and existing under the laws of Delaware. KM Border's sole member is Tejas Natural Gas, LLC (TNG). TNG's ultimate parent is Kinder Morgan, Inc., a Delaware corporation.

3. On November 12, 1999, in Docket No. CP99-564-000, the Commission authorized KM Border to site, construct, operate, and maintain a border crossing facility for the export of natural gas at the international boundary between Mexico and the United States in Hidalgo County, Texas.<sup>3</sup> The border crossing facility consists of approximately

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<sup>1</sup> 15 U.S.C. § 717b(a) (2012).

<sup>2</sup> 18 C.F.R. Part 153 (2017).

<sup>3</sup> *Coral Mexico Pipeline, LLC*, 89 FERC ¶ 61,171 (1999). In 2002, Coral Mexico Pipeline, LLC changed its name to Kinder Morgan Border Pipeline, L.P., and in 2007,

1,375 feet of 24-inch-diameter pipe with an authorized export capacity of 300 MMcf/d. The pipeline extends from KM Border's intrastate pipeline in Hidalgo County, Texas, to the international boundary at the center of the Rio Grande River and connects with facilities of Mexico's *Centro Nacional de Control del Gas Natural*.

4. KM Border requests authorization to amend its Presidential Permit and NGA section 3 authorization to increase the authorized export capacity of its border crossing facility from 300 MMcf/d to 450 MMcf/d. KM Border states that the project will help satisfy increased demand in Mexico by enabling KM Border to move additional quantities of natural gas through its facilities.<sup>4</sup>

## **II. Public Notice and Intervention**

5. On July 25, 2017, the Commission issued notice of KM Border's amendment application.<sup>5</sup> No protests, comments, or motions to intervene were filed.

## **III. Consultation with Secretaries of State and Defense**

6. On September 7, 2017, pursuant to Executive Order 10485,<sup>6</sup> the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on the applicant's request to amend its Presidential Permit to increase the export capacity of its border crossing facilities authorized by the Commission's November 12, 1999 order. By letters dated September 29, 2017, and November 8, 2017, the Secretaries of Defense and

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it changed its name to Kinder Morgan Border Pipeline LLC. *Kinder Morgan Border Pipeline LLC*, Notice of Company Name Change, Docket No. CP99-564-000 (filed August 23, 2007).

<sup>4</sup> According to KM Border, only system modifications to non-jurisdictional facilities upstream of its border crossing facilities would be required to enable the increase in capacity through the existing border crossing facilities.

<sup>5</sup> *Federal Register*, 82 Fed. Reg. 35,770 (August 1, 2017).

<sup>6</sup> Executive Order No. 10485, 18 Fed. Reg. 5397 (Sept. 3, 1953) requires that the Commission obtain favorable recommendations of the Secretaries of State and Defense prior to issuing or amending a Presidential Permit authorizing the construction of facilities at the borders of the United States for the exportation or importation of natural gas.

State, respectively, indicated that they have no objections to KM Border's requested amendment of its Presidential Permit.<sup>7</sup>

#### IV. Discussion

##### Public Interest

7. KM Border's proposal to increase its authorized export capacity of its border crossing facilities from 300 MMcf/d to 450 MMcf/d is subject to the jurisdiction of the Commission under NGA section 3. 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."<sup>8</sup> Section 3 further 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."<sup>9</sup> The United States and Mexico are signatories to the North American Free Trade Agreement.<sup>10</sup> When the Commission first evaluated and authorized the construction and operation of the border crossing facilities, we noted that the facilities would promote international energy trade between the United States and Mexico and further the goals of the North American Free Trade Agreement.<sup>11</sup>

8. We find that KM Border's requested amendment of its NGA section 3 authorization and Presidential Permit remains consistent with the public interest. Granting the requested authorization will enable KM Border to increase gas flow from the United States to Mexico. Increasing KM Border's export capacity promotes national economic policy and stimulate the flow of goods and services between the United States and Mexico. Accordingly, we will issue KM Border an amended Presidential Permit, set

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<sup>7</sup> Prior to issuing KM Border's Presidential Permit in Docket No. CP99-564-000, the Commission sought the recommendations of the Secretaries of State and Defense and received their responses indicating no objection to issuance of the requested Presidential Permit. *Coral Mexico Pipeline, LLC*, 89 FERC ¶ 61,171, at P 5 (1999).

<sup>8</sup> 15 U.S.C. § 717b(a) (2012).

<sup>9</sup> 15 U.S.C. § 717b(b) (2012).

<sup>10</sup> 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).

<sup>11</sup> *Coral Mexico Pipeline*, 89 FERC at 61,517.

forth in the appendix of this order, and NGA section 3 authorization to increase the maximum capacity of its authorized export capacity from 300 MMcf/d to 450 MMcf/d.

9. No construction of new, or modification of the existing, physical border crossing facilities is contemplated by the subject application. Therefore, there will be no environmental impact as a result of our action.

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, and all comments and upon consideration of the record,

The Commission orders:

(A) KM Border is authorized under NGA section 3 to increase its authorized export capacity from 300 MMcf per day to 450 MMcf per day, as discussed herein.

(B) An amended Presidential Permit, set forth in the Appendix to this order, is issued to KM Border to operate and maintain natural gas facilities at the border between the United States and Mexico with an authorized export capacity of 450 MMcf per day.

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

(D) All other requirements and conditions of the Commission's prior orders authorizing its construction and operation of facilities remain in effect.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix****AMENDED PRESIDENTIAL PERMIT  
AUTHORIZING KINDER MORGAN BORDER PIPELINE LLC  
TO CONTINUE TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES  
AT THE INTERNATIONAL BOUNDARY  
BETWEEN THE UNITED STATES AND MEXICO****FEDERAL ENERGY REGULATORY COMMISSION  
Docket No. CP17-474-000**

(Issued January 29, 2018)

On November 12, 1999, in Docket No. CP99-564-000, Kinder Morgan Border Pipeline, LLC (KM Border or Permittee), a limited liability company organized under the laws of Delaware, was granted a permit to site, construct, operate, and maintain a border crossing facility, described in Article 2 below, for the export of natural gas at the international boundary between Mexico and the United States in Hidalgo County, Texas. (*Coral Mexico Pipeline, LLC*, 89 FERC ¶ 61,171 (1999), *amended Kinder Morgan Border Pipeline LLC*, Notice of Company Name Change, Docket No. CP99-564-000 (filed August 23, 2007)). On July 14, 2017, KM Border filed in Docket No. CP17-474-000, an application to amend its existing Presidential Permit and authorization under section 3 of the Natural Gas Act (NGA) to increase its authorized export capacity from 300 MMcf/d to 450 MMcf/d. KM Border proposes no construction or modifications to its existing border crossing facilities.

By letter filed September 29, 2017, the Secretary of Defense, and by letter filed November 8, 2017, the Secretary of State favorably recommend that an amended 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 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 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 therefor.

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

A natural gas transmission pipeline consisting of approximately 1,375 feet of 24-inch diameter pipeline, with an authorized export capacity of 450 MMcf/d, from a point in Hidalgo County, Texas, to the international boundary between the United States and Mexico at the midpoint of the Rio Grande River.

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 exportation 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 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 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, 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 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.

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 \_\_\_\_\_, \_\_\_\_\_, a certified copy of the record of which is attached hereto.

Kinder Morgan Border Pipeline LLC

By \_\_\_\_\_

(Attest)

\_\_\_\_\_

Executed in triplicate