

128 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Maritimes & Northeast Pipeline, L.L.C.

CP96-810-009

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

(Issued July 21, 2009)

1. On April 8, 2009, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed an application with the Federal Energy Regulatory Commission in the above referenced docket to amend its Presidential Permit and Natural Gas Act (NGA) section 3 authorization to utilize its existing cross-border facilities to export, as well as import, natural gas between the United States to Canada. For the reasons discussed below, the Commission will grant the requested authorizations.

I. Background and Proposal

2. Maritimes is a limited liability company organized and existing under the laws of the State of Delaware. Maritimes, along with its Canadian pipeline affiliates, Maritimes & Northeast Pipeline Limited Partnership (Maritimes-Canada), operates a high-pressure natural gas delivery system that transports natural gas in international and interstate commerce from a point near Goldboro, Nova Scotia to the Canadian-United States border and through the northeastern states of Maine and New Hampshire, with one terminus in Dracut, Massachusetts and another in Beverly, Massachusetts.

3. In *Maritimes & Northeast Pipeline, L.L.C.*, 84 FERC ¶ 61130 (1998), the Commission issued Maritimes a Presidential Permit and NGA section 3 authorization to construct and operate facilities at the international border between Canada and the United States in connection with the construction of the Maritimes pipeline system. These border facilities, as more completely described in the 1998 order, are located near the St. Croix River, near Woodland, Maine. Maritimes placed those facilities into service on December 1, 1999. In 2007, the Commission authorized Maritimes to add an interconnection with the Brunswick Pipeline near Maritimes' interconnection with

Maritimes-Canada at the border, making Maritimes capable of receiving imports of natural gas from either Maritimes-Canada or the Brunswick Pipeline, or both (the Phase IV facilities).¹ The total design capacity of the cross-border facilities is 833,317 dekatherms (Dth) per day. The Brunswick Pipeline will transport regasified liquefied natural gas (LNG) from the Canaport LNG Terminal in New Brunswick, Canada. Both the Brunswick Pipeline and the Canaport LNG Terminal are expected to be placed into service during the second quarter of 2009.

4. Maritimes now requests authority to use these existing facilities to transport natural gas from the United States to Canada, in response to recent inquiries regarding export capability. Maritimes proposes no construction or modification in its previously approved facilities.

II. Public Notice and Intervention

5. Notice of the application in Docket No. CP96-810-009 was published in the *Federal Register* on April 20, 2009 (74 Fed. Reg. 17,956). Timely unopposed motions to intervene were filed by Calais LNG Project Company, LLC, Calpine Energy Services, L.P., Excelerate Energy LLC, Mobil Natural Gas Inc., and Portland Natural Gas Transmission System (Portland).²

6. On May 8, 2009, Portland submitted comments with its motion to intervene, contending that Maritimes' ability to backhaul gas that uses Maritimes' and Portland's "Joint Facilities" is limited to displacement of Maritimes' scheduled forward haul capacity for a given day.³

7. On May 19, 2009, Maritimes submitted an answer to Portland's comments, stating that Portland's comments have no relevance to this proceeding, that the cross-border facilities are more than 200 miles from the Joint Facilities, and that the authorization requested herein is not tied to supplies located behind the Joint Facilities or to any other particular source of supply.

¹ 118 FERC ¶ 61.137 (2007). Phase IV Project facilities, were placed into service on January 15, 2009.

² Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214 (2008).

³ The "Joint Facilities" comprise approximately 101 miles of mainline facilities owned in joint undivided interests by Maritimes and Portland, which extend from the interconnection of Maritimes and Portland in Westbrook, Maine, to an interconnection with Tennessee Gas Pipeline Company in Dracut, Massachusetts.

III. Consultation with Secretaries of State and Defense

8. On May 12, 2009, the Commission sent copies of the application and a draft amended Presidential Permit to the Secretaries of State and Defense for their recommendations. Replies on behalf of the Secretary of State dated May 26, 2009, and the Secretary of Defense dated June 23, 2009 indicate no objection to the issuance of the requested amended Presidential Permit.⁴

IV. Discussion

A. Public Interest

9. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits for border crossing facilities⁵ and to grant NGA section 3 authorizations for import and export facilities.

10. Section 3 of the NGA provides that applications for the importation or exportation of natural gas shall be approved unless it is determined that “the exportation or importation will not be consistent with the public interest.”⁶ As noted above, Maritimes requests an amendment to its Presidential Permit and NGA section 3 authorization so that in addition to transporting natural gas being imported at the United States/Canadian border, Maritimes can also transport gas being exported into Canada through the existing border facilities. No change is requested to the border crossing facilities themselves. Further, Maritimes is correct in its assertion that Portland’s comments are not relevant to the Commission’s decision here. We find that granting the applicant’s request for authority to use its existing border facilities for the export, as well as the import, of natural gas will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Canada, both of which are signatories to the North American Free Trade Agreement,⁷ providing for fewer restrictions on natural gas imports and exports.

⁴ Executive Order No. 10485, 18 Fed. Reg. 5397 (September 3, 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 The Presidential Permit is attached as the appendix to this order.

⁶ 15 U.S.C. §717b.

⁷ Pub. L. 103-182 (December 8, 1993), 107 Stat. 2057; Implementation of the

11. In view of the above considerations, the Commission finds that approval of the applicant's proposed use of its existing border crossing facilities for the importation and exportation of natural gas is consistent with the public interest. Therefore, the Commission will issue an amended Presidential Permit, set forth in the appendix to this order, and NGA section 3 authorization for use of the facilities to import and export natural gas.

B. Environment

12. The Commission's staff prepared an environmental assessment (EA) of this project which was placed in the public record in Docket No. CP96-810-009 on April 21, 2009. The EA confirms that no environmental impact would result from the approval of this proposal. Under these circumstances, the Commission finds that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

13. The Commission on its own motion received and made part of this record to this proceeding all evidence, including the application and exhibits thereto submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) An Amended Presidential Permit and NGA section 3 authority are issued authorizing Maritimes to utilize its existing cross-border facilities to transport natural gas being imported and exported natural gas between the United States to Canada.

(B) Maritimes 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.

North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (December 30, 1993). Further, NGA section 3 provides that the importation or exportation of natural gas from/to a nation with which there is 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."

APPENDIX**AMENDED PERMIT AUTHORIZING MARITIMES AND NORTHEAST PIPELINE, L.L.C. (MARITIMES) TO OPERATE, MAINTAIN, AND CONNECT NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP96-810-009**

(Issued July 21, 2009)

Maritimes and Northeast Pipeline, L.L.C. (Maritimes), a limited liability company organized under the laws of the State of Delaware, filed on April 8, 2009, in Docket No. CP96-810-009, 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 NGA and an amended Presidential Permit authorizing Maritimes to operate and maintain import and export facilities at the international boundary between the United States and Canada to accommodate the importation and exportation of natural gas between the United States to Canada.

By letter dated May 26, 2009, the Secretary of State, and by letter dated June 23, 2009, the Secretary of Defense, favorably recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the permission requested by Maritimes, 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 Maritimes (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 250 feet of 30-inch diameter high-pressure pipeline, with a

maximum capacity of 440,000 Dth per day plus fuel, extending from the international boundary between the United States and Canada beneath the St. Croix River near Woodland, Maine, at a depth not less than five (5) feet beneath the river bed, to an interconnection with Maritimes' Canadian pipeline affiliate, Maritimes & Northeast Pipeline Limited Partnership, and associated valving on the United States side of the river.

Approximately 250 feet of 30-inch diameter pipeline looping adjacent to the above-described pipeline, with a maximum capacity of 730,000 Dth per day plus fuel, extending from the international boundary between the United States and Canada beneath the St. Croix River near Woodland, Maine, at a depth not less than five (5) feet beneath the river bed, to an interconnection with the Brunswick Pipeline in Canada, owned by Emera Brunswick Pipeline Company Ltd., and associated valving on the United States side of the river.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation and exportation 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 the Army 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 the Army, 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.

(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 __, 2009 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2009, a certified copy of the record of which is attached hereto.

Maritimes & Northeast Pipeline, L.L.C.

By _____

(Attest)

Executed in triplicate