

106 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher,

AES Ocean Express LLC

Docket Nos. CP02-90-000,
CP02-90-001,
CP02-91-000,
CP02-92-000,
CP02-93-000,
and CP02-93-001

ORDER ISSUING PRESIDENTIAL PERMIT
AND NGA SECTIONS 3 AND 7 AUTHORIZATIONS

(Issued January 29, 2004)

1. On April 10, 2003, the Commission issued a preliminary determination in this proceeding addressing the non-environmental issues raised by the AES Ocean Express LLC (Ocean Express) application to construct natural gas pipeline facilities in Broward County, Florida.¹ Authorization pursuant to Natural Gas Act (NGA) Sections 3 and 7(c) was reserved pending completion of an environmental review of the proposed project. In this order we analyze the environmental issues raised by the application and issue Ocean Express a Presidential Permit and NGA Sections 3 and 7 authorizations to construct and operate its proposed pipeline facilities.² We find the proposed project to be consistent

¹103 FERC ¶61,030 (2003). The construction schedule for the proposed project was subsequently extended from two to three years. 103 FERC ¶ 61,326 (2003).

²Specifically, Ocean Express is granted the following authorizations: in Docket No. CP02-91-000 -- blanket construction and abandonment certificate authorization under NGA Section 7(c) and Subpart F of Part 157 of the Commission's regulations; in Docket No. CP02-92-000 -- blanket transportation certificate authorization under NGA Section 7 and Subpart G of Part 284 of the Commission's regulations; and in Docket No. CP02-93-000 -- authorization under NGA Section 3 and a Presidential Permit to site, construct, connect, operate, and maintain its offshore pipeline facilities at the Exclusive Economic Zone (EEZ) boundary between the United States and the Bahamas, pursuant to Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order

with the public interest because it will increase the potential flow of natural gas to underserved and/or unserved markets.

Background and Proposal

2. In our April 2003 Order, we made a preliminary determination, based on our analysis of the non-environmental issues, that the proposed project was required by the public convenience and necessity. Ocean Express proposes to construct 54.5 miles of 24-inch diameter pipe. This proposed pipeline will bring up to 842,000 dekatherms per day (Dth/d) of natural gas from an offshore receipt point at the boundary between the EEZ of the United States and the Commonwealth of the Bahamas to onshore delivery points in Broward County, Florida.³ From the EEZ receipt point, the proposed Ocean Express line will transport the gas approximately 48 miles to landfall near the Dania Beach Boulevard traffic circle in Broward County, Florida, then continue onshore for approximately 6.6 miles, terminating just west of the Ft. Lauderdale/Hollywood International Airport at an interconnect with Florida Power & Light Company.

3. Ocean Express estimates that the cost of its portion of the proposed project will be approximately \$111.6 million. Ocean Express will not be responsible for the cost of the LNG terminal and pipeline to be built in the Bahamas. Ocean Express states that as the result of an open season, it has entered into a precedent agreement with AES LNG Marketing, L.L.C. for firm transportation for 800,000 Dth/d of gas for a 25-year term.

4. No requests for rehearing of the April 2003 preliminary determination, as amended by our June 2003 Order, have been filed. We have now completed our environmental review of the proposed expansion and abandonment and conclude that the public convenience and necessity require granting the requested authorizations and approvals to Ocean Express, as discussed herein and in our prior orders in this proceeding.

Presidential Permit and NGA Sections 3 and 7 Authorizations

No. 0204-112.

³An affiliate of Ocean Express plans to construct a liquified natural gas (LNG) terminal in the Bahamas to receive, store, and regassify LNG. Regassified volumes will be transported from the new terminal through a new 40.4-mile long, 24-inch diameter pipeline to the EEZ boundary underwater interconnect with the proposed Ocean Express pipeline.

5. Because the proposed Ocean Express pipeline will be used to import natural gas, the transportation and border crossing facilities are subject to our jurisdiction and the requirements of NGA Section 3. Further, because the proposed facilities will be used to transport gas in interstate commerce, they are subject to our jurisdiction and the requirements of subsections (c) and (e) of Section 7 of the NGA.

6. A draft Presidential Permit was sent to the Secretary of State and to the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State, dated April 7, 2003, and on behalf of the Secretary of Defense, dated March 26, 2003, indicate no objection to the issuance of the Presidential Permit.⁴ The Secretary of Defense, however, observes that Ocean Express and the Naval Surface Warfare Center, Carderock Division, have executed a Memorandum of Agreement concerning the proposed pipeline's routing, construction, operation, and maintenance within the Navy's South Florida Test Facility at Dania Beach, Florida. The Secretary of Defense requests the Commission condition issuance of the Presidential Permit on compliance with the Memorandum of Agreement, and we do so. Based on our review of the record, and the absence of any objection to the Ocean Express application from the Secretaries of State and Defense, we find that the proposed project promotes the objectives of the Energy Policy Act of 1992⁵ and is consistent with the public interest. Accordingly, we will grant Ocean Express' request for NGA Section 3 authorization and a Presidential Permit.⁶

7. In our April 2003 Order we reached a preliminary determination that the proposed project would be consistent with the criteria set forth in our 1999 Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement on New Facilities).⁷ This preliminary finding was based on our consideration of the non-environmental issues raised by the application. No requests for rehearing of our April 2003 preliminary determination or our June 2003 amendment thereto have been filed. We have now completed our environmental review of the proposed project and find, subject to compliance with the conditions set forth below, that the benefits of the

⁴Executive Order No. 10,485 requires that the Commission obtain the favorable recommendation of the Secretaries of State and Defense prior to issuing a Presidential Permit.

⁵See 15 USC § 717b (2001).

⁶See Appendix B.

⁷88 FERC ¶61,227 (1999), Orders clarifying statement of policy, 90 FERC ¶61,128 and 92 FERC ¶61,094 (2000), Order further clarifying statement of policy, 92 FERC ¶61,094 (2000).

proposed project will outweigh any potential adverse effects, and therefore will be consistent with our Policy Statement on New Facilities and NGA Section 7.

Accordingly, we conclude that the public convenience and necessity require granting the requested authorizations and approvals to Ocean Express, as discussed herein and in our previous orders in this proceeding. This order incorporates findings with respect to the non-environmental issues contained in our prior orders in this proceeding and constitutes the Commission's final decision on the Ocean Express project proposal.

Environmental Review

8. On July 28, 2003, the Commission issued a draft Environmental Impact Statement (EIS) for the proposed Ocean Express project. On November 28, 2003, the Commission issued a final EIS. Copies of the draft and final EIS were sent to interested parties including federal, state, county, and local agencies; elected officials; local newspapers and libraries; landowners; and intervenors. The final EIS addresses the issues, concerns, and comments raised in response to the draft EIS. The final EIS also addresses: marine resources; geologic resources and hazards; soils and sediments; water resources; fishery resources, benthic communities, and wildlife; vegetation communities; endangered and threatened species; land use, recreation, and visual resources; cultural resources; socioeconomics; air quality and noise; reliability and safety; cumulative impacts; and alternatives to the proposed route.

9. The Commission also prepared an Essential Fish Habitat (EFH) Assessment that describes how the proposed Ocean Express project could affect EFH. The EFH Assessment was submitted for review to the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA Fisheries). NOAA Fisheries filed EFH conservation recommendations (CRs) for the Ocean Express project on November 21, 2003. NOAA Fisheries submitted a letter on January 8, 2004 in response to our final EIS and an interagency meeting held on December 12-13, 2003. This letter describes the status of each CR and the potential resolution of outstanding concerns that were determined in the interagency meeting. In response to NOAA Fisheries' recommendations, we adopt the following two environmental conditions, which were not in the final EIS. Environmental Condition No. 17 requires that Ocean Express provide a post-construction monitoring plan to evaluate potential impacts to deepwater resources that may occur following placement of the pipeline on the seafloor. Environmental Condition No. 20 requires Ocean Express to provide detailed mapping of buffers between work areas and coral resources and site-specific explanations for areas where a buffer of at least 100 feet cannot be maintained.

10. The Florida Department of Environmental Protection (DEP) coordinated a review of the Coastal Zone Management Act (CZMA) consistency certification and supporting

information, including the final EIS. The Florida DEP filed a letter on December 15, 2003 identifying information that it needed to complete its review. Ocean Express filed a response and supplemental information on December 30, 2003. The Florida DEP is reviewing the additional information.

11. In a letter dated January 5, 2004, the Florida DEP submitted comments from state agencies on the final EIS. The Florida Fish and Wildlife Conservation Commission (FWCC) raises concerns regarding manatees. We believe Ocean Express' adherence to the Manatee Protection Plan contained in the final EIS will satisfy the Florida FWCC's concerns.⁸ Concerns expressed by Florida's State Historic Preservation Officer (SHPO) are addressed by the provisions of Environmental Condition No. 28. The Florida Department of Transportation asks that roadway pavement disrupted by pipeline construction be restored and that an artificial reef created as part of the 17th Street Causeway Bridge project not be disturbed. We so direct Ocean Express. Comments of the Florida DEP focus on CMZA compliance, and include the observation that CZMA consistency certification will precede Commission authorization. We clarify that although we are issuing certificate authorization in advance of completion of the CZMA consistency determination, Environmental Condition No. 26 bars Ocean Express from commencing construction prior to a finding by the State of Florida that the proposed project is consistent with the Coastal Zone Management Program and Ocean Express filing a copy of the CZMA consistency determination with the Commission.⁹ This condition is intended to ensure that all concerns of the Florida DEP are adequately addressed.

12. The Environmental Protection Agency (EPA) provided comments on the final EIS. In general, the EPA comments parallel the concerns expressed by NOAA Fisheries. FERC staff replied by letter to the EPA, referencing recent correspondence with NOAA Fisheries.

13. Based on ongoing consultations with the United States Fish and Wildlife Service (USFWS) and NOAA Fisheries, Environmental Condition No. 22 of the final EIS has been removed. This condition required Ocean Express to file agency comments on its Manatee Protection Plan. The USFWS and NOAA Fisheries have since determined that

⁸See Final EIS, at 3-161-64 and Appendix C (November 28, 2003).

⁹This approach, issuing a certificate but conditioning construction on compliance with the CZMA, is consistent with our past practice. See, e.g., Islander East Pipeline Company, 102 FERC ¶ 61,054 (2003) and Millennium Pipeline Company, L.P., 100 FERC ¶ 61,277 (2002).

the plan is complete and they do not expect any further modifications.

14. Environmental Condition No. 19 requires that Ocean Express successfully complete installation of the nearshore pipeline segment between revised milepost (RMP) 44.70 to RMP 48.03 before commencing construction on any other facilities. Ocean Express states that this requirement will increase the overall construction period by at least 15 months and significantly complicate, if not undo, the financing and other commercial arrangements for the proposed jurisdictional facilities in the United States and nonjurisdictional facilities the Bahamas.

15. The final EIS concludes that given “the complexity of the proposed construction and the sensitivity of the habitat being traversed . . . the nearshore construction should precede construction of any other jurisdictional facilities.”¹⁰ The Florida DEP characterizes the South Florida coral reef system as a diverse and unique natural ecosystem that is critical to the economic future of Florida. The proposed RMP 44.70 to RMP 48.03 corridor across the coral reef system has been carefully chosen to avoid impacts to coral resources as well as to the Navy’s South Florida Test Facility located to the north of the corridor. Extensive interagency review and consultation produced the proposal evaluated in the final EIS. The critical reviewing agencies, including the United States Army Corps of Engineers (USCOE), NOAA Fisheries, EPA, and the Florida DEP have all indicated strong support for a condition requiring that this most sensitive segment of the project be completed first.

16. Further, we note that as part of the environmental review, the Commission analyzed numerous alternative reef crossings and onshore gas delivery alternatives. Based on that analysis, we conclude that because of the numerous constrains on any suitable alternative, if a horizontal directional drill (HDD) fails at the proposed location, any alternative location would likely require extensive environmental review. Any significant modification to the proposed corridor would also necessitate reopening consultations with NOAA Fisheries on EFH issues, with the Florida DEP under the Florida Coastal Management Program, and with the USCOE. Such a supplemental environmental review would delay the project for a considerable amount of time.

17. Finally, there are sound legal and policy reasons for requiring Ocean Express to successfully complete installation of the nearshore pipeline segment before commencing construction of other onshore or offshore pipeline segments. Construction of other portions of the proposed project will inevitably have environmental impacts in the areas in which construction takes place; those impacts will be avoided if Ocean Express cannot

¹⁰Final EIS, at 3-136 (November 28, 2003).

first successfully complete the nearshore portion of its proposed pipeline. Perhaps more importantly, if Ocean Express constructs other portions of the project before undertaking the nearshore segment, and is then unable to complete the nearshore segment as planned, it will have to seek Commission approval to amend its certificate to alter the approved route. Given the difficulty already experienced in finding an appropriate location to bring the pipeline onshore, this is likely to be problematic and may require a significant rerouting of the pipeline. If Ocean Express has already completed portions of its proposed pipeline, this could unacceptably limit the routing options available to the Commission. Accordingly, we find that a successful HDD is necessary before Ocean Express can commence construction of the remaining facilities.

18. The final EIS concludes that construction and operation of the proposed project will result in limited adverse environmental impacts. As part of the analysis in the final EIS, specific mitigation measures are developed for the construction and operation of the proposed facilities, including a program of environmental inspection and monitoring that is designed to contain most of the impact within the project vicinity and ensure compliance with certificate and permit requirements. The final EIS concludes that these measures will substantially reduce any environmental impact and finds that if the project is constructed and operated in accordance with the mitigation measures, it will be an environmentally acceptable action. The Commission adopts the findings and conclusion of the final EIS.

19. Any state or local permits issued with respect to the expansion facilities described herein and in the application, as supplemented, must be consistent with the conditions of Ocean Express' 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 authorized by this Commission.¹¹ Ocean Express shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Ocean Express. Ocean Express shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

20. At a hearing held on January 22, 2004, the Commission, on its own motion, received and made a part of the record, all evidence, including the application, as

¹¹See, e.g., *Schneidewind v. ANR Pipeline Company*, 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.*, 52 FERC P61,091 (1990) and 59 FERC P 61,094 (1992).

supplemented, and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

(A) In Docket Nos. CP02-90-000 and CP02-90-001, Ocean Express is issued a certificate of public convenience and necessity under NGA Section 7(c) to construct and operate natural gas facilities, as described and conditioned herein, and as more fully described in the application as amended.

(B) In Docket No. CP02-91-000, Ocean Express is issued a blanket construction and abandonment certificate under Subpart F of Part 157 of the Commission's regulations, as described and conditioned herein, and as more fully described in the application.

(C) In Docket No. CP02-92-000, Ocean Express is issued a blanket transportation certificate under Subpart G of Part 284 of the Commission's regulations, as described and conditioned herein, and as more fully described in the application

(D) In Docket Nos. CP02-93-000 and CP02-93-001, Ocean Express is issued a Presidential Permit and authorization under NGA Section 3 to construct, own, operate, and maintain natural gas facilities at the Exclusive Economic Zone boundary between the United States and the Bahamas, as described and conditioned herein, and as more fully described in the application as amended.

(E) The authorizations in the above paragraphs are conditioned on Ocean Express:

- (1) placing the proposed facilities in service within three years of the final order;
- (2) complying with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of Section 157.20 of the Commission's regulations;
- (3) making a tariff filing no sooner than 60 days but no later than 30 days prior to commencement of service to place the rates approved herein into effect;
- (4) signing and returning the Testimony of Acceptance of all the provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within thirty days

of the issuance of this order;

- (5) complying with the terms of its Memorandum of Agreement with the Naval Surface Warfare Center, Carderock Division; and,
- (6) complying with the specific environmental conditions listed in Appendix A of this order.

(F) Prior to commencing construction, Ocean Express shall provide the Commission with evidence that AES Ocean LNG, Ltd., or other applicable entity, has received all authorizations and approvals from Commonwealth of the Bahamas necessary to complete the Bahamian portions of this project.

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

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Environmental Conditions

1. Ocean Express shall follow the construction procedures and mitigation measures described in its application, as supplemented (including responses to staff data requests), and as identified in the final Environmental Impact Statement (EIS), unless modified by this order. Ocean Express must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (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 Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this 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**, Ocean Express shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 EIS, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations. **As soon as they are available, and before the start of construction**,

Ocean Express shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Ocean Express' exercise of eminent domain authority granted under NGA Section 7(h) in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. Ocean Express' right of eminent domain does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Ocean Express 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, and other areas that would 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, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would 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 route variations required herein or minor field realignments per landowner needs and requirements that 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 its acceptance of this certificate and before construction** begins Ocean Express shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Ocean Express will implement the mitigation measures required by this order. Ocean Express must file revisions to the plan as schedules change. The plan shall identify:
- a. how Ocean Express 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;
 - b. the number of environmental inspectors assigned per spread and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. what training and instructions Ocean Express will give to all personnel involved with construction and restoration (including initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training sessions;
 - e. the company personnel (if known) and specific portion of Ocean Express' organization having responsibility for compliance;
 - f. the procedures (including the use of contract penalties) that Ocean Express will follow if noncompliance occurs; and
 - g. 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 mitigation training of onsite personnel;
 - 3) the start of construction; and
 - 4) the start and completion of restoration.
7. Ocean Express shall employ one or more environmental inspectors per construction spread. The environmental inspectors shall be:
- a. responsible for monitoring and ensuring compliance with all environmental mitigation measures required by this order

- and all other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Ocean Express shall file updated status reports with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, 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. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors during the reporting period (both for the conditions imposed by the Commission and any environmental condition/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Ocean Express from other federal, state or local permitting agencies

concerning instances of noncompliance along with Ocean Express' response.

9. Ocean Express must receive written authorization from the Director of OEP **before commencing service** from each component of the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Ocean Express 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 certificate conditions Ocean Express has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Ocean Express shall file with the Secretary a detailed plot plan for the meter station facilities that identifies the entire construction footprint for the facilities, including extra workspaces and access roads. The plan shall include a detailed alignment sheet(s) that identifies the proposed facilities relative to any environmentally sensitive areas and copies of any relevant correspondence with the United States Fish and Wildlife Service (USFWS), State Historic Preservation Office (SHPO), and Florida Department of Environmental Protection (DEP) regarding the new location.
12. **Prior to construction of the pipeline segment through West Lake Park, between revised mileposts (RMPs) 48.2 and 48.8**, Ocean Express shall file with the Secretary a detailed construction plan, discussing the crossing procedures used to cross West Lake Park. The plan shall include discussion on avoidance of and potential impacts to mangroves.
13. **Prior to initiation of construction activities offshore**, Ocean Express shall file with the Secretary a Storm Handling Plan that establishes procedures for cessation of construction activities under rough sea conditions. The plan shall include measures to ensure that resources are not damaged by the movement of construction equipment and staged pipeline segments during storms, or other

weather related events and shall include contingencies for securing templates, marine risers, the lateral guidance system, and the pullstring on the seafloor. The plan shall be consistent with any United States Coast Guard guidance.

14. Ocean Express shall not use corrosion inhibitors, biocides, oxygen scavengers, or other additives that exhibit toxicity to aquatic organisms in hydrostatic test water without prior written approval by the Director of OEP.
15. **Prior to construction**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP, a site-specific construction plan for all major waterbody crossings. The plan should include scaled drawings identifying all areas to be disturbed by construction including extra workspace areas, spoil storage areas, sediment control structures, and mitigation for navigational issues.
16. **At least 90 days prior to initiating offshore construction between about milepost (MP) 29 and RMP 44.7**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP, a pre-installation video survey plan for deepwater corals that includes the identification and mapping of high probability exposed hardbottom regions along the pipeline centerline; specifications on the resolution and survey method; designation and draft contractual agreement with a recognized Florida deepwater coral expert to independently review the pre-installation video; and avoidance, impact minimization (including the establishment of adequate buffers), and mitigation strategies, if required. Results of the survey(s) and mitigation strategies must be submitted to NOAA Fisheries, USCOE, the Department of the Interior's Mineral Management Service (MMS), and Florida DEP for review at least 30 days prior to construction. The Florida deepwater coral expert shall be selected in consultation with NOAA Fisheries.
17. **At least 45 days prior to initiating offshore construction between MP 25 and RMP 44.7**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP, a post-construction monitoring plan that would provide for a qualitative assessment of impacts to significant deepwater resources that could not be avoided by construction of this segment of the pipeline. The plan shall include provisions for: (a) an as-built baseline survey for the pipeline between MP 25 and RMP 44.7, and (b) an assessment of impacts to significant deepwater resources at year two following construction. An interagency team comprised of representatives from FERC, MMS, NOAA Fisheries, USCOE, and the Florida DEP would review the results of the year two survey and determine the need for monitoring of these resources at year four. If monitoring at year four

is required, the team would review the results and determine if a final monitoring survey is needed at year 10. The plan shall propose survey methodologies including the types of equipment to be used, the expected resolution of survey data, and the dimensions of the survey corridor.

18. **Prior to construction**, Ocean Express shall file with the Secretary an offshore-specific Spill Prevention, Containment, and Countermeasures Plan and the estimated volumes associated with a worst-case spill scenario, as well as an appropriate evaluation of the associated potential impacts to marine life and shore areas.
19. Ocean Express shall successfully complete installation of the nearshore pipeline segment between RMP 44.70 to RMP 48.03 **before commencing construction on any other facilities**. Successful installation should include completion of the two horizontal directional drills and the direct pipelay segment between them. Within 90 days of successful installation of the nearshore segment, Ocean Express shall file with the Secretary a summary of the installation, problems encountered, and a comparison of the actual impacts to coral reef and hardbottom habitat versus those predicted by Ocean Express prior to construction.
20. **Prior to construction**, Ocean Express shall file with the Secretary for review and written approval by the Director of OEP detailed maps (at a scale of 1 inch = 100 feet or greater) showing all offshore work areas, coral resources, habitat type, and proposed offset buffers. Where applicable, Ocean Express shall provide a site-specific explanation of the conditions that would not permit at least a 100-foot setback from reef resources.
21. Ocean Express shall conduct a survey of its construction areas for invasive/exotic plant species. If any are identified, Ocean Express shall file, **prior to construction**, with the Secretary a plan to control the spread of invasive/exotic plant species. The plan shall document the locations of invasive/exotic species by milepost and shall identify the mitigation measures that would be used to prevent the spread of these plants.
22. If construction is scheduled to occur during the wood stork nesting season, Ocean Express shall conduct additional surveys in all areas immediately adjacent to mangroves (i.e., West Lake Park) to determine the presence of active wood stork rookeries. If active wood stork rookeries are observed prior to construction, Ocean Express shall coordinate with the USFWS to establish a protection buffer zone or construction setback from the nests and/or protective monitoring measures until the young have fledged.

23. If construction is scheduled to occur within the wading bird nesting season, Ocean Express shall conduct additional surveys in all areas immediately adjacent to mangroves (i.e., West Lake Park) to determine the presence of active wading bird rookeries prior to construction. If wading bird rookeries are observed nesting prior to construction, Ocean Express shall consult with the USFWS and the Florida Fish and Wildlife Conservation Commission to establish a protection buffer zone or construction setbacks from the rookery and/or protective monitoring measures until the young have fledged.
24. If construction is scheduled to occur within the brown pelican nesting season, Ocean Express shall conduct additional surveys in all areas immediately adjacent to mangroves (i.e., West Lake Park) to determine the presence of active brown pelican nests. If active brown pelican nests are observed prior to construction, Ocean Express shall consult with the USFWS to establish a protection buffer zone or construction setback from the nests and/or protective monitoring measures until the young have fledged.
25. **Prior to construction**, Ocean Express shall develop a Maintenance of Traffic (MOT) plan in consultation with the Florida Department of Transportation (DOT) and the Broward County Aviation Department to mitigate the short-term impacts at areas of affected rights-of-way during construction. Ocean Express shall submit the MOT plan to the Florida DOT and the Broward County Aviation Department for approval, and then file the MOT plan with the Secretary.
26. **Prior to construction**, Ocean Express shall coordinate with the USCOE and United States Coast Guard to establish a timeline for updating the appropriate navigation charts to show the as-built location of the Ocean Express pipeline.
27. Ocean Express shall not begin any construction until it has received a determination from Florida that the project is consistent with its Coastal Zone Management Program and Ocean Express has filed a copy of the coastal zone consistency determination with the Commission.
28. Ocean Express shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction, and use of all staging, storage and temporary work areas or new or to-be-improved access roads until: Ocean Express files with the Secretary cultural resources reports and treatment plans as appropriate, and the SHPO, MMS, and Navy comments, as appropriate, including:

- a. an evaluation of the historic significance of the 1907 New York to Havana cable,
- b. a cultural resources assessment documenting the investigation of all onshore resource probability areas and offshore anomalies,
- c. a revised Unanticipated Discoveries Plan and Emergency Scenario and Response Plan, and
- d. a revised anchor handling plan which indicates how Ocean Express will avoid the anomalies recommended for avoidance.

The Director of OEP reviews and approves all reports and plans, and notifies Ocean Express in writing that the treatment plans/measures may be implemented or construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "**CONTAINS PRIVILEGED INFORMATION-DO NOT RELEASE**".

Appendix B

Presidential Permit

**PRESIDENTIAL PERMIT
AUTHORIZING AES OCEAN EXPRESS, LLC
TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN
NATURAL GAS FACILITIES AT THE BOUNDARY
BETWEEN THE EXCLUSIVE ECONOMIC ZONES OF
THE UNITED STATES THE COMMONWEALTH OF THE BAHAMAS**

**FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NOS. CP02-90-000 and CP02-90-001**

AES Ocean Express, LLC (Permittee), a limited liability company organized and existing under the laws of the State of Delaware, filed an application on February 21, 2002, in Docket No. CP02-90-000, as amended on October 18, 2002, in Docket No. CP02-90-001, pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 00-004.00, for a Presidential Permit authorizing Permittee to construct, connect, operate, and maintain natural gas transmission facilities described in Article 2 below in waters off the southeast coast of Florida at the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

By letter dated April 7, 2003, the Secretary of State, and by letter dated March 26, 2003, the Secretary of Defense, favorably recommended 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, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 00-004.00, effective December 6, 2001, and the Commission's Regulations, permission is granted to Permittee to construct, connect, 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: that portion of the 24-inch pipeline which is located in the United States immediately adjacent to the boundary between the Exclusive Economic Zones of the United States and the Commonwealth of the Bahamas.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas from the Bahamas to the United States only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The construction, operation, maintenance, and connection 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 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 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 replacements.

Article 9. Upon the termination, revocation, or surrender of this Permit, the transportation facilities herein authorized shall be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such transportation facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, 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)

Magalie R. Salas,
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____ has caused its named 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.

AES Ocean Express, LLC

By _____

(Attest)

Executed in triplicate