

126 FERC ¶ 61,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

ConocoPhillips Alaska Natural Gas Corporation      Docket No. CP09-34-000  
and Marathon Oil Company

ORDER CLARIFYING JURISDICTION  
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued January 15, 2009)

1. On April 19, 1967, the Commission issued an order granting Phillips Petroleum Company (Phillips) jointly with Marathon Oil Company (Marathon) authorization under section 3 of the Natural Gas Act (NGA) to export liquefied natural gas (LNG) from a proposed LNG export terminal and storage facility to be located at Kenai, Alaska.<sup>1</sup> The Commission dismissed Phillips' and Marathon's concurrent application for a Presidential Permit for the construction, operation, and maintenance of its LNG export terminal, finding the requested authority was not necessary. As a result, the Commission did not oversee construction of the Kenai LNG terminal and did not apply to Kenai the same reporting and inspection requirements that apply to every other operational LNG terminal. The scope of the Commission's section 3 jurisdiction over LNG terminal and storage facilities has been clarified since issuance of the 1967 order. The Commission currently exercises its jurisdiction over the siting, construction, operation, and maintenance of LNG terminals to impose reporting and inspection requirements that serve to ensure the safety and security of such facilities. The public interest requires that the Kenai facility adhere to the same standard section 3 reporting and inspection

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<sup>1</sup> 37 FPC 777 (1967). Prior to the Department of Energy (DOE) Organization Act in 1977, Pub. L. No. 95-91, 91 Stat. 565 (1977), the responsibility for NGA section 3 rested with the Commission's predecessor, the Federal Power Commission. Subsequent to the DOE Organization Act, NGA section 3 authorization over imports and exports was assigned to DOE's Office of Fossil Energy (FE). Export approval for the Kenai facility was recently renewed, with DOE/FE authorizing ConocoPhillips Alaska Natural Gas Corporation (ConocoPhillips) jointly with Marathon to export up to 99 TBtus of LNG to Japan and/or one or more countries on either side of the Pacific Rim between April 1, 2009 and March 31, 2011. See *DOE Opinion and Order No. 2500*, FE Docket No. 07-02-LNG (June 3, 2008).

requirements that apply to every other operational LNG terminal. Accordingly, this order clarifies that the Kenai facility is subject to, and must comply with, the Commission's reporting and inspection requirements.

2. The proposal for the Kenai LNG terminal was the first opportunity for the Commission to consider import or export facilities that were not at the border with Canada or Mexico. The Commission sought the views of the Secretaries of State and Defense, as well as the Office of Legal Counsel of the Department of Justice, on whether Executive Order 10485, which required that "executive permission be obtained" for "the construction, operation, maintenance, or connection" of import or export "facilities at the borders of the United States," should apply to the proposed terminal. The Commission concluded that such permission, issued as a Presidential Permit, is only applicable to import or export facilities at the border involving a physical connection between the United States and a foreign country, such as a pipeline that crosses the border. The Commission has consistently followed this approach in subsequent orders; consequently, a Presidential Permit has not been required for LNG terminals that rely on ships to transport LNG supplies.<sup>2</sup> For the Kenai proposal, the Commission did not consider the issue of separate authorization, apart from the Presidential Permit, for the siting, construction, operation, and maintenance of the export terminal.

3. Kenai was completed in 1969. In 1970 the Commission received its second application for authorization related to an LNG terminal, a request by Distrigas Corporation (Distrigas) to import LNG into Everett, Massachusetts. The Commission's jurisdiction under section 3 to regulate the siting, construction, operation, and maintenance of LNG terminal facilities was clarified upon judicial review of the Commission's decision regarding the Distrigas proposal.<sup>3</sup>

4. The Commission has subsequently exercised authority over the siting, construction, operation, and maintenance of LNG terminal facilities in order to ensure, as required by section 3, that imports and exports are not inconsistent with the public interest.<sup>4</sup> In acting on applications for LNG terminals and storage facilities, the

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<sup>2</sup> However, in *AES Ocean Express LLC*, 106 FERC ¶ 61,090 (2004), the Commission determined a Presidential Permit is required for facilities in Florida that will receive regasified volumes via an underwater pipeline connecting to an LNG delivery terminal in the Bahamas.

<sup>3</sup> See *Distrigas*, 47 FPC 752 (1972) and *Distrigas v. FPC*, 495 F.2d 1057, 1064 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974).

<sup>4</sup> For example, the Commission acted under section 3 to regulate the siting, construction, operation, and maintenance of a proposed Alaskan LNG terminal intended to export domestic supplies to foreign markets. See *Yukon Pacific Corp.*, 39 FERC ¶ 61,216 (1987) and *Yukon Pacific Company L.P.*, 71 FERC ¶ 61,197 (1995).

Commission has routinely imposed siting, construction, maintenance, and operation requirements, and in 2002, in *Dynegy LNG Production Terminal, L.P.*,<sup>5</sup> the Commission rejected a challenge to its authority to impose such requirements. The Energy Policy Act of 2005<sup>6</sup> added section 3(e)(1) to the NGA, clarifying that “[t]he Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal.”

5. To ensure that the Kenai LNG terminal conforms to the same requirements that the Commission applies to other LNG terminals, the Kenai facilities will be subject to a cryogenic design and technical review of the facility’s design, operation, and maintenance. To this end, the Commission directs ConocoPhillips and Marathon to submit the information identified in Resource Report 11, Reliability and Safety, and Resource Report 13, Engineering and Design Material, that is included in applications for LNG projects. ConocoPhillips and Marathon must include a public volume, and pursuant to 388.112(b) of the Commission’s regulations, designate and clearly label as a separate volume that portion of its submission which constitutes critical energy infrastructure information. The Commission will review the information submitted, after which it may convene a technical conference to address any issues identified during the review. The Commission staff may recommend modifications to be made to the facilities and operations of the LNG terminal and storage facilities.<sup>7</sup>

6. Thereafter, the Kenai LNG terminal shall be subject to regular Commission staff technical reviews and site inspections on at least an annual basis or more frequently as circumstances indicate. Prior to each Commission staff technical review and site inspection, ConocoPhillips and Marathon shall respond to a specific data request including information relating to possible design and operating conditions that may have been imposed by other agencies or organizations. Up-to-date detailed piping and instrumentation diagrams reflecting facility modifications and provision of other pertinent information not included in the semi-annual reports described below, including facility events that have taken place since the previously submitted annual report, shall be submitted.

7. ConocoPhillips and Marathon shall file semi-annual operational reports with the Secretary of the Commission to identify changes in facility design and operating

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<sup>5</sup> 97 FERC ¶ 61,231 (2001).

<sup>6</sup> Pub. L. 109–58, 42 U.S.C. § 15801 (2005).

<sup>7</sup> The Commission has followed a similar procedure with respect to existing nonjurisdictional LNG peak-shaving facilities that undergo a change in ownership or operation that renders the facilities subject to the Commission’s jurisdiction. *See e.g., UGI LNG, Inc.*, 119 FERC ¶ 61,056 (2007); *Hopkinton LNG Corp.*, 81 FERC ¶ 61,291 (1997), and *Total Peaking Services*, 81 FERC ¶ 61,246 (1997).

conditions, abnormal operating experiences, activities (including ship departures, quantity and composition of exported LNG, liquefaction quantities, boil-off/flash gas, etc.), and plant modifications, including future plans and the progress thereof. Abnormalities shall include, but not be limited to: loading/shipping problems, potential hazardous conditions from off-site vessels, storage tank stratification or rollover, geysering, storage tank pressure excursions, cold spots on the storage tanks, storage tank vibrations and/or vibrations in associated cryogenic piping, storage tank settlement, significant equipment or instrumentation malfunctions or failures, non-scheduled maintenance or repair (and the reasons therefore), relative movement of storage tank inner vessels, liquid or vapor releases, fires involving natural gas and/or from other sources, negative pressure (vacuum) within a storage tank and higher than predicted boil-off rates. Adverse weather conditions and their effect on the facility also shall be reported. Reports shall be submitted within 45 days after each period ending June 30 and December 31. In addition to the above items, a section entitled "Significant plant modifications proposed for the next 12 months (dates)" also shall be included in the semi-annual operational reports. Such information would provide the Commission staff with early notice of anticipated future construction/maintenance projects at the LNG facility.

8. The ConocoPhillips and Marathon semi-annual operational reports must include page 520 of FERC Form No. 2, which reports the gas volume information.<sup>8</sup>

9. Significant non-scheduled events, including safety-related incidents (i.e., LNG or natural gas releases, fires, explosions, mechanical failures, unusual over pressurization, and major injuries) and security related incidents (i.e., attempts to enter the site and suspicious activities) shall be reported to Commission staff. In the event an abnormality is of significant magnitude to threaten public or employee safety, cause significant property damage, or interrupt service, notification shall be made immediately, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency procedure. In all instances, notification shall be made to Commission staff within 24 hours of the event. This notification practice shall be incorporated into the LNG facility's emergency plan. Examples of reportable LNG-related incidents include:

- a. fire;
- b. explosion;
- c. estimated property damage of \$50,000 or more;
- d. death or personal injury necessitating in-patient hospitalization;
- e. free flow of LNG that results in pooling;
- f. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood that impairs the serviceability,

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<sup>8</sup> This information is necessary to enable the Commission to calculate and impose an Annual Charge Adjustment, pursuant to section 382.202 of the Commission's regulations.

- structural integrity, or reliability of an LNG facility that contains, controls, or processes gas or LNG;
- g. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG;
  - h. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices;
  - i. a leak in an LNG facility that contains or processes gas or LNG that constitutes an emergency;
  - j. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of an LNG storage tank;
  - k. any condition that could lead to a hazard and cause a 20 percent reduction in operating pressure or shutdown of operation of a pipeline or an LNG facility;
  - l. safety-related incidents to LNG vessels occurring at or en route to and from the LNG facility; or
  - m. an event that is significant in the judgment of the operator and/or management even though it did not meet the above criteria or the guidelines set forth in an LNG facility's incident management plan.

10. In the event of an incident, the Director of the Office of Energy Projects has delegated authority to take whatever steps are necessary to ensure operational reliability and to protect human life, health, property, or the environment, including authority to direct the LNG facility to cease operations. Following the initial company notification, Commission staff will determine the need for an on-site inspection by Commission staff, and the timing of an initial incident report (normally within 10 days) and follow-up reports.

The Commission orders:

(A) Within 90 days of the issuance of this order, ConocoPhillips and Marathon must file with the Commission the information identified in Resource Report 11, Reliability and Safety, and Resource Report 13, Engineering and Design Material for LNG facility applications.

(B) ConocoPhillips and Marathon must file with the Commission semi-annual operational reports and significant incident reports, as described in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.