

127 FERC ¶ 61,160  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

New Mexico Gas Company, Inc.  
and  
Public Service Company of New Mexico

Docket Nos. CP09-25-000

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

(Issued May 21, 2009)

1. On November 21, 2008, New Mexico Gas Company, Inc. (New Mexico Gas) and Public Service Company of New Mexico (PNM) (collectively, applicants) filed an application for authorization under section 3 of the Natural Gas Act (NGA) and a Presidential Permit for New Mexico Gas to construct, operate, and maintain natural gas import/export facilities previously authorized by the Commission to be built by PNM in Docket No. CP93-98-000.<sup>1</sup> The natural gas import/export facilities would be located at

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<sup>1</sup> *Gas Company of New Mexico, a Division of Public Service Company of New Mexico (GCNM)*, 64 FERC ¶ 61,226 (1993). PNM's Presidential Permit and NGA section 3 authorization were originally issued to PNM's predecessor, Gas Company of New Mexico (GCNM). On January 17, 1997, the Commission issued notice granting GCNM's request to amend its permit to reflect a name change on the permit from GCNM to PNM Gas Services, a Division of Public Service Company of New Mexico. Although PNM does not use the "division" reference in its title, it affirms that the corporate entity that received the Presidential Permit and section 3 authorization and PNM are one in the same.

the United States/Mexico border near Santa Teresa, New Mexico. For the reasons discussed below, we will grant the requested authorizations.<sup>2</sup>

### **Background and Proposal**

2. PNM generates, transmits, distributes, and sells electricity and provides natural gas local distribution services in New Mexico. PNM is subject to the jurisdiction of the New Mexico Public Service Commission. PNM is in the process of selling its gas utility assets to its parent company, New Mexico Gas, through an asset purchase agreement (the agreement) executed on January 12, 2008.<sup>3</sup>

3. New Mexico Gas is a wholly-owned subsidiary of Continental Energy Systems, LLC. New Mexico Gas was formed to acquire and operate the natural gas distribution company facilities and operations that it is purchasing from PNM. Thus, New Mexico Gas is subject to the jurisdiction of the New Mexico Public Service Commission.

4. Neither New Mexico Gas nor PNM are owned, wholly or in part, by any foreign government or are directly or indirectly subsidized by any foreign government. Additionally, New Mexico Gas and PNM do not have any contracts with a foreign government for ownership or subsidization of the company or its operations.

5. PNM originally sought authorization for the export facilities for which it received authorization in 1993 in order to serve anticipated natural gas demand in the vicinity of the city of Juarez, Mexico. Due to slower than anticipated industrial and commercial

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<sup>2</sup> Authorization under section 3 of the Natural Gas Act (NGA) is necessary for the siting, construction and operation of facilities to import or export natural gas. Pursuant to Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, a Presidential Permit also must be obtained for the portion of an import or export facility crossing one of the United States' international borders. In Delegation Order No. 00-004.00A, effective May 16, 2006, the Secretary of Energy renewed the delegation of authority to the Commission to grant or deny authorization under section 3 of the NGA and, if applicable, a Presidential Permit for the siting, construction and operation of import and export facilities. The Commission has no authority to approve or disapprove applications to import or export natural gas. The Secretary of Energy has delegated such authority to the Department of Energy's Assistant Secretary for Fossil Energy.

<sup>3</sup> The agreement provides that, upon the receipt of all necessary regulatory approvals, New Mexico Gas will acquire, own, and operate all of the natural gas utility plant, property, and assets currently owned by PNM. New Mexico Gas agreed to operate the facilities as a stand-alone local distribution company.

development in that area, it has never constructed the facilities. However, in view of current development activities, the applicants believe the facilities will soon be needed.<sup>4</sup>

6. Pursuant to applicants' agreement, they propose that PNM relinquish its NGA section 3 authorization and Presidential Permit for the facilities and that New Mexico Gas be granted such authorizations to construct and operate the facilities. The proposed facilities include: (1) a meter station near the town of Santa Teresa, New Mexico; (2) 150 feet of 8-inch diameter underground gas transmission pipe in a 50-foot right-of-way; and (3) a delivery point at the crossing of the International Boundary between Dona Ana County, New Mexico, and the State of Chihuahua in the Republic of Mexico.

7. Applicants propose to include the same terms and conditions in the section 3 authorization and Presidential Permit as previously authorized to PNM, with three proposed changes: (1) New Mexico Gas's authorization not be limited to a period coterminous with its own Department of Energy/Office of Fossil Energy (DOE/FE) import/export authorization, since New Mexico Gas plans to use the facilities to also transport gas for third-parties holding DOE/FE export and import authorizations; (2) New Mexico Gas be authorized to use the facilities to both import and export natural gas, and (3) New Mexico Gas be authorized to interconnect the facilities at the border with the facilities of Compañía de Autoabastecedores de Gas Natural de San Jerónimo S.A. de C.V (CAGNSJ).<sup>5</sup>

### **Notice and Intervention**

8. Notice of the application was published in the *Federal Register* on December 11, 2008 (73 Fed. Reg. 75,418). No comments, motions to intervene, or protests were filed.

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

9. On December 29, 2008, the Commission sent copies of the application and a draft Presidential Permit to the Secretaries of State and Defense for their recommendations. Replies on behalf of the Secretary of State dated January 21, 2009, and Secretary of

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<sup>4</sup> November 21, 2008 Application at p. 6.

<sup>5</sup> CAGNSJ is a private entity. At the time that PNM was granted NGA section 3 authorization and a Presidential Permit for the facilities, it planned to interconnect at the border with Petroleas Mexicanos, S.A. (PEMEX), a Mexican Government entity, or its designee. Thus, PNM's authorizations identify the interconnecting entity as "Pemex or its designee."

Defense dated March 6, 2009, indicate no objection to the issuance of the Presidential Permit as described.<sup>6</sup>

### **Discussion**

10. Pursuant to Department of Energy Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits for border crossing facilities<sup>7</sup> and to grant authorizations for under section 3 of the NGA for import and export facilities. As discussed above, PNM has not constructed the facilities for which it received authorization under section 3 of the NGA and a Presidential Permit in 1993. However, the applicants state that there is now need for the facilities to be constructed by New Mexico Gas to meet developing gas demand in the vicinity of Juarez, Mexico. Section 3 of the NGA provides that the Commission shall authorize proposed import or export facilities “unless . . . it finds that the [proposal] will not be consistent with the public interest.”<sup>8</sup> We find that applicants’ proposal will promote national economic policy by reducing barriers to foreign trade and stimulating the flow of goods and services between the United States and Mexico, both of which are signatories to the North American Free Trade Agreement Implementation Act (NAFTA)<sup>9</sup> providing for fewer restrictions on natural gas imports and exports.

11. In view of the above considerations, we will approve the applicants’ proposal. However, section 153.9 of the Commission’s regulations<sup>10</sup> provides that prior Commission approval is necessary for the transfer of authorizations under NGA section 3 and related facilities. Further, Article 8 of PNM’s Presidential Permit states that neither the Permit nor any of the facilities covered by the Permit may be voluntarily transferred.<sup>11</sup> Therefore, to permit New Mexico Gas to construct, own, and operate the

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<sup>6</sup> 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.

<sup>7</sup> The Presidential Permit is attached as the appendix to this order.

<sup>8</sup> 15 U.S.C. § 717b.

<sup>9</sup> Pub. L. 103-182 (December 8, 1993), 107 Stat. 2057; Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (December 30, 1993).

<sup>10</sup> 18 C.F.R. § 153.9 (2008).

<sup>11</sup> See *GCNM*, 64 FERC ¶ 61,226 at Article 8.

facilities, the Commission will issue a new Presidential Permit, set forth in the appendix of this order, and new authorization under section 3 of the NGA for New Mexico Gas to construct, operate, and maintain the subject natural gas facilities for the importation and exportation of natural gas to and from Mexico.

12. PNM's NGA section 3 authorization and Presidential Permit limited use of the facilities to the exportation of natural gas supplies to Mexico.<sup>12</sup> While New Mexico Gas states that for the foreseeable future it probably will need to use the facilities only for the purpose of exporting gas to Mexico, it may eventually need to also use them to import gas from Mexico. We find that New Mexico Gas's request for authorization to construct and operate the border facilities to provide import service, as well as export service, is not inconsistent with the public interest. Authority for New Mexico Gas to use the facilities for import volumes as well as export volumes authorized by DOE will facilitate international energy trade between the United States and Mexico, further the policy goals of NAFTA, and promote the goal of both the Energy Policy Act of 1992<sup>13</sup> and the Energy Policy Act of 2005<sup>14</sup> of reducing restrictions on natural gas imports and exports.

13. As discussed above, in addition to its own export volumes, New Mexico Gas plans to use the facilities to transport gas being exported or imported by third parties as authorized by DOE/FE. Therefore, we find that it is appropriate to grant its request that its authorizations for operation of the facilities not be made coterminous with New Mexico Gas's own DOE/FE import/export authorizations.

### **Environmental Analysis**

14. As described above, the proposal involves New Mexico Gas's construction of: (1) a meter station near the town of Santa Teresa, New Mexico; (2) 150 feet of 8-inch diameter underground gas transmission pipe in a 50-foot right-of-way; and (3) a delivery point at the crossing of the International Boundary between Dona Ana County, New

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<sup>12</sup> The Commission's authority over construction and operation of facilities under section 3 of the NGA includes the authority to apply terms and conditions as necessary or appropriate to ensure that the proposed construction and siting are in the public interest. In *Distrigas Corp. v. FPC*, 495 F.2d 1057, 1064 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 834 (1974), the court held that the Commission's authority under section 3 of the NGA is "at once plenary and elastic" and that the Commission has the authority under section 3 to impose "the equivalent of section 7 certification requirements."

<sup>13</sup> Energy Policy Act of 1992, Pub. L. No.102-486, 106 Stat. 2776 (October 24, 1992).

<sup>14</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (August 8, 2005).

Mexico, and the State of Chihuahua in the Republic of Mexico. The size, location, and other characteristics of the border crossing facilities are identical to those that PNM was authorized to construct. The change of ownership will not alter the proposed operation of the facilities. On February 19, 2009, and as supplemented on March 31, 2009, Commission staff prepared an Environmental Assessment for the applicants' proposal and found that approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment.

15. On January 20, 2009, New Mexico Gas sent letters to the U.S. Fish and Wildlife Service (FWS) and the State Historic Preservation Office (SHPO) requesting threatened and/or endangered species and cultural resources clearances, respectively. On February 3, 2009, the SHPO issued a finding that no further consultation was necessary. We concur.

16. On March 2, 2009, FWS recommended that site-specific surveys should be conducted to evaluate any potential project-related impacts on any threatened and/or endangered species currently listed for Dona Ana County. Specifically, the six species found to exist in Dona Ana County include one plant species – Sneed pincushion cactus – and five bird species: Least tern, Northern Aplomado Falcon, Southwestern willow flycatcher, Rio Grande silvery minor, and Mexican spotted owl. By letter dated March 25, 2009, New Mexico Gas stated that it surveyed the project area and determined there was no suitable habitat for any of the federally listed species. We agree. Three of the species (Least tern, Southwestern willow flycatcher, and Rio Grande silvery minnow) require aquatic habitat which is not present in the project area. Two of the species (Sneed pincushion cactus and Mexican spotted owl) require mountainous habitat not present in the project area. Finally, since the proposed border crossing facilities will be constructed in an area that has been previously disturbed and where there is regular human activity, the area does not contain suitable habitat for the Northern Aplomado Falcon which is sensitive to human disturbance.

### **Conclusion**

17. The Commission on its own motion, received and made part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

#### **The Commission orders:**

(A) A Presidential Permit and section 3 of the NGA authority are issued to New Mexico Gas to construct, operate, and maintain natural gas import and export facilities, as described in this order and subject to the conditions of the Presidential Permit.

(B) New Mexico Gas shall sign and return the testimony of acceptance of all provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within 30 days of issuance of this order.

(C) New Mexico Gas shall complete construction of the facilities authorized in Ordering Paragraph (A) within two years of the issuance date of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX**

**PRESIDENTIAL PERMIT  
AUTHORIZING NEW MEXICO GAS COMPANY, INC.  
TO CONSTRUCT, OPERATE, AND MAINTAIN FACILITIES  
FOR THE IMPORT AND EXPORT OF NATURAL GAS  
AT THE INTERNATIONAL BOUNDARY BETWEEN  
THE UNITED STATES AND MEXICO  
NEAR SANTA TERESA, DONA ANA COUNTY, NEW MEXICO**

**FEDERAL ENERGY REGULATORY COMMISSION  
DOCKET NO. CP09-25-000**

(Issued May 21, 2009)

New Mexico Gas Company, Inc. (New Mexico Gas--Permittee) and Public Service Company of New Mexico (PNM) filed on November 21, 2008, in Docket No. CP09-25-000, 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 Natural Gas Act (NGA) and a Presidential Permit which authorizes Permittee to construct and operate certain pipeline and related facilities and to operate and maintain such facilities, as described in Article 2 below, for the exportation and importation of natural gas to and from the United States and Mexico.

By letter dated January 31, 2009, the Secretary of State, and by letter dated March 6, 2009, 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. 00-004.00A, effective May 16, 2006, and the Commission's Regulations, permission is granted to 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:

A meter station near Santa Teresa, Dona Ana County, New Mexico, approximately 150 feet of 8-inch diameter pipeline that will extend from Santa Teresa, New Mexico, to the international boundary between the United States and Mexico, and a delivery point at the crossing of the international boundary between the United States and Mexico.

Article 3. The natural gas facilities subject to this Permit, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas imported and exported to and from the United States and Mexico 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 therefor. The Permittee shall do everything reasonable within their 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 imported or 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. At such time that this Permit is surrendered, revoked, or otherwise terminated, the Commission shall determine which of the authorized facilities shall be removed and which shall remain in place. The Commission will specify the time within which any authorized facilities shall be removed, and the Permittee shall remove those facilities within such time and at the Permittee's expense. Upon failure of the Permittee to comply with the Commission's direction to remove any authorized facilities, 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.

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.

New Mexico Gas Company, Inc.

By \_\_\_\_\_

(Attest)

\_\_\_\_\_

Executed in triplicate