

132 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Empire Pipeline, Inc.

Docket No. CP10-136-000

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

(Issued September 16, 2010)

1. On February 2, 2010, Empire Pipeline, Inc. (Empire) 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 and Canada. For the reasons discussed below, the Commission will grant the requested authorization.

**I. Background and Proposal**

2. Empire is a corporation organized and existing under the laws of the State of New York. Empire is a wholly owned subsidiary of National Fuel Gas Company. Empire's facilities extend from the United States/Canada border near Chippewa, Ontario to an inter-connection with Millennium Pipeline Company, L.L.C. near Corning, New York.

3. In *Empire State Pipeline*, Empire received its original Presidential Permit and section 3 authorization.<sup>1</sup> These authorizations limit Empire's use of the cross-border facilities to the importation of gas from Canada into the United States. However, Empire states that it has recently begun receiving requests for firm transportation service from

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<sup>1</sup> 56 FERC ¶ 61,050 (1991). The original Presidential Permit and section 3 authorization were issued to Empire State Pipeline. Empire State Pipeline converted by merger into Empire and Empire requested redesignation of the Presidential Permit and section 3 authorization in its name pursuant to 18 C.F.R. § 375.302(r) by letter dated December 22, 2008.

primary receipt points in the United States to a primary delivery point at its interconnection with TransCanada Pipelines Limited (TransCanada) at the United States/Canada border. Accordingly, Empire now requests authority to use its existing cross-border facilities to transport natural gas from the United States to Canada. Empire proposes no construction or modification to its previously-approved facilities in this application.

4. On August 26, 2010, Empire filed its application pursuant to sections 7(c) and 7(b) of the Natural Gas Act, for authorization to construct and operate the non-border facilities it will need in order to export gas (Tioga County Extension Project), and for related abandonment authorization.<sup>2</sup>

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

5. Notice of the application in Docket No. CP10-136-000 was published in the *Federal Register* on April 23, 2010 (75 Fed. Reg. 21,287-21,288). Motions to intervene were due by May 7, 2010. New York State Electric and Gas Corporation and Rochester Gas and Electric Corporation filed a timely, unopposed joint motion to intervene. National Fuel Gas Distribution Corporation also filed an unopposed motion to intervene.<sup>3</sup> The application is unopposed.

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

6. On June 1, 2010, pursuant to Executive Order Nos. 10485 and 12038, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on the applicant's request for issuance of an amended Presidential Permit and section 3 authorization authorizing Empire to export gas into Canada through its subject existing border crossing facilities that are currently used to import gas. By letters dated June 3, 2010 and August 18, 2010, the Secretaries of State and Defense,

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<sup>2</sup> Empire's Tioga County Extension Project facilities include a new, approximately 16-mile-long, 24-inch diameter pipeline, from new producer interconnections near State Line Road in Jackson Township, Tioga County, Pennsylvania to Empire's existing Corning M&R Station on College Avenue in Corning Township, Steuben County, New York. In addition, Empire would replace approximately 1.3 miles of its existing system in Victor, New York in order to increase its maximum allowable operating pressure, construct a new interconnection with Tennessee Gas Pipeline Company in Ontario County, New York, and perform miscellaneous modifications at existing measurement and/or compressor stations.

<sup>3</sup> 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 (2010).

respectively, indicated that they have no objections to the amended Presidential Permit for Empire.

#### **IV. Discussion**

##### **A. Public Interest**

7. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits<sup>4</sup> and grant NGA section 3 authorizations for import and export facilities.

8. 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.”<sup>5</sup> As noted above, Empire 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, Empire can also transport natural gas being exported into Canada through the existing border facilities. No change is requested to the border crossing facilities themselves. 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,<sup>6</sup> providing for fewer restrictions on natural gas imports and exports. 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.”

9. In view of the above considerations, we find 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, we will issue an amended Presidential Permit, set forth in the appendix to this order, and NGA section 3 authorization for the use of the facilities to export and import natural gas.

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<sup>4</sup> The Presidential Permit is attached as the appendix to this order.

<sup>5</sup> 15 U.S.C. § 717b (2006).

<sup>6</sup> Pub. L. No. 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).

**B. Environment**

10. The Commission's staff reviewed the applicant's proposal and found that it raises no environmental issues.<sup>7</sup> Empire does not propose to construct or modify any facilities in this application. As stated above, Empire merely proposes to amend its NGA section 3 authorization and Presidential Permit so that, in addition to importing natural gas at the United States/Canada border, it would be authorized to export natural gas into Canada using existing border crossing facilities. Future additions or modifications to non-border facilities on Empire's system to effectuate the exportation of gas into Canada would be the subject of one or more separate applications. Under these circumstances, we find that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

11. At a hearing held on September 16, 2010, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

**The Commission orders:**

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

(B) Empire 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 )

Kimberly D. Bose,  
Secretary.

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<sup>7</sup> *Environmental Assessment Report* issued April 29, 2010.

**AMENDED PERMIT AUTHORIZING EMPIRE PIPELINE, INC. (EMPIRE)  
TO OPERATE, MAINTAIN, AND CONNECT NATURAL GAS FACILITIES  
AT THE INTERNATIONAL BOUNDARY  
BETWEEN THE UNITED STATES AND CANADA**

**FEDERAL ENERGY REGULATORY COMMISSION  
Docket No. CP10-136-000**

(Issued September 16, 2010)

Empire Pipeline, Inc. (Empire), a corporation organized under the laws of the State of New York, filed on February 2, 2010, in Docket No. CP10-136-000, 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 NGA and an amended Presidential Permit authorizing Empire to operate and maintain export facilities at the international boundary between the United States and Canada to accommodate the exportation of natural gas from the United States to Canada.

By letter dated June 3, 2010, the Secretary of State, and by letter dated August 18, 2010, the Secretary of Defense, recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the export permission requested by Empire, 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 Empire (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:

0.2 miles of 24-inch diameter pipeline under the Chippewa Channel of the Niagara River, proximate to Grand Island, New York, and a custody transfer meter station

in the town of Grand Island, New York.

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 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 Defense that any facilities or operations permitted hereunder cause unreasonable obstruction to the free navigation of any of the navigable waters of the United States, the Permittee may be required, upon notice from the Secretary of the Defense, 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.

Kimberly D. Bose,  
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of \_\_, 2010 has caused its name to be signed by \_\_, [pursuant to a resolution of its Board of Directors duly adopted] on the \_\_ day of \_\_, 2010, a certified copy of the record of which is attached hereto.

Empire Pipeline, Inc.

By \_\_\_\_\_

(Attest)

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Executed in triplicate