

134 FERC ¶ 61,175
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.

Tennessee Gas Pipeline Company

Docket No. CP11-22-000

ORDER AMENDING PRESIDENTIAL PERMITS
AND AUTHORIZATIONS
UNDER SECTION 3 OF THE NATURAL GAS ACT

(Issued March 7, 2011)

1. On November 5, 2010, Tennessee Gas Pipeline Company (Tennessee) filed an application with the Commission in the above referenced docket to amend its Presidential Permits and Natural Gas Act (NGA) section 3 authorizations in order 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 authorizations.

I. Background and Proposal

2. Tennessee is a corporation organized under the laws of the State of Delaware. Tennessee currently holds two section 3 authorizations and Presidential Permits at issue: one with respect to its Niagara Spur Line¹ and another for its Niagara Spur Loop

¹ On September 11, 1953, in Docket No. G-1922, Tennessee was issued a Presidential Permit authorizing the construction and operation of border-crossing facilities on the Niagara Spur Line for the export of natural gas as contemplated in *Tennessee Gas Transmission Co.*, 12 FPC 311 (1953). This Presidential Permit was amended on December 14, 1961, authorizing Tennessee to use those facilities to import natural gas from Canada. *Tennessee Gas Transmission Co.*, 26 FPC 860 (1961). On April 6, 1965, the Presidential Permit was again amended permitting Tennessee to utilize those facilities to export natural gas to Canada, but only for a limited term which ended on November 1, 1970. *Tennessee Gas Transmission Co.*, 33 FPC 702 (1965).

Line.² The two Niagara Spur lines connect with the facilities of TransCanada Pipelines Limited at the United States-Canada international boundary in the Niagara River near Niagara Falls, New York.

3. Tennessee's current authorizations limit Tennessee's use of the border facilities associated with the Niagara Spur Line and the Niagara Spur Loop Line to the importation of gas from Canada into the United States. Tennessee now requests authority to use its existing border facilities to both import and export natural gas between the United States and Canada. Tennessee believes its requested amendments will enhance the flexibility of Tennessee's interstate pipeline system. Tennessee proposes no construction or modification to its previously-approved facilities in this application.

II. Public Notice and Intervention

4. Notice of Tennessee's application was published in the *Federal Register* on November 29, 2010 (75 Fed. Reg. 73,065). ProLiance Energy, LLC, National Fuel Gas Distribution Corporation, Piedmont Natural Gas Company, Inc., National Grid Gas Delivery Companies, Statoil Natural Gas LLC, Consolidated Edison Company of New York, Inc. together with Orange and Rockland Utilities, Inc., and PSEG Energy Resources & Trade LLC all filed timely, unopposed motions to intervene.³ The application is unopposed.

III. Consultation with Secretaries of State and Defense

5. On December 22, 2010, pursuant to Executive Orders 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 amended Presidential Permits and section 3 authorizations allowing Tennessee to both import and export gas between the United States and Canada through its existing border-crossing facilities that are currently authorized only for the importation of gas. By letters dated February 2, and February 9, 2011, the Secretaries of State and Defense, respectively, indicated that they have no objections to the amended Presidential Permits for Tennessee.

² The Commission authorized the Niagara Spur Loop Line and issued an associated Presidential Permit for the importation of natural gas from Canada on September 13, 1990. *Tennessee Gas Pipeline Co.*, 52 FERC ¶ 61,257 (1990).

³ 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).

IV. Discussion

A. Public Interest

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

7. 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.”⁴ As noted above, Tennessee requests an amendment to its Presidential Permits and NGA section 3 authorizations so that in addition to transporting natural gas being imported at the United States/Canadian border, Tennessee 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,⁵ 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.”

8. 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 amended Presidential Permits, set forth in the appendices to this order, and NGA section 3 authorizations for the use of the facilities to export and import natural gas.⁶

⁴ 15 U.S.C. § 717b (2006).

⁵ 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 (Dec. 30, 1993).

⁶ The Presidential Permits are attached to this order with the Permit pertaining to the Niagara Spur Line designated as Appendix A and the one pertaining to the Niagara Spur Loop Line listed as Appendix B.

B. Environment

9. Commission staff reviewed the applicant's proposal and found that it raises no environmental issues.⁷ Tennessee does not propose to construct or modify any facilities in this application. As stated above, Tennessee merely proposes to amend its NGA section 3 authorizations and Presidential Permits 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. Any future additions or modifications to non-border facilities on Tennessee's system to effectuate the exportation of gas into Canada would be the subject of one or more separate authorization. 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.

10. 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) NGA section 3 authorization and two amended Presidential Permits are issued authorizing Tennessee to utilize its existing cross-border facilities to transport natural gas being imported and exported between the United States and Canada.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ *Environmental Assessment Report* issued on February 23, 2011.

APPENDIX A**AMENDED PERMIT AUTHORIZING TENNESSEE
GAS PIPELINE COMPANY (TENNESSEE)
TO OPERATE, MAINTAIN, AND CONNECT
NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND CANADA****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP11-22-000**

(Issued March 7, 2011)

Tennessee Gas Pipeline Company (Tennessee), a corporation organized under the laws of the State of Delaware, filed on November 5, 2010, in Docket No. CP11-22-000, 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 Tennessee to operate and maintain facilities at the international boundary between the United States and Canada to accommodate the exportation of natural gas between the United States to Canada.

By letter dated February 1, 2011, the Secretary of State, and by letter dated February 9, 2011, the Secretary of Defense, favorably recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the export permission requested by Tennessee, 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 Tennessee (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 natural gas pipeline consisting of a dual 20-inch diameter segment connecting at the United States-Canada international boundary in the Niagara River near Niagara Falls, New York, with the facilities of TransCanada Pipelines Limited.

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 Permittees 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 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 agree 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 agree 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 __, 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.

Tennessee Gas Pipeline Company
By _____

(Attest)

Executed in triplicate

APPENDIX B**AMENDED PERMIT AUTHORIZING TENNESSEE GAS PIPELINE COMPANY
(TENNESSEE)
TO OPERATE, MAINTAIN, AND CONNECT NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND CANADA****FEDERAL ENERGY REGULATORY COMMISSION
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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:

A natural gas pipeline consisting of a 30-inch diameter segment connecting at the United States-Canada international boundary in the Niagara River near Niagara Falls, New York, with the facilities of TransCanada Pipelines Limited.

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.

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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.

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 __, 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.

Tennessee Gas Pipeline Company
By _____

(Attest)

Executed in triplicate