

169 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Steel Reef Burke LLC  
ONEOK Rockies Midstream, L.L.C.

Docket No. CP19-465-000

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

(Issued November 27, 2019)

1. On May 6, 2019, Steel Reef Burke LLC (Steel Reef) and ONEOK Rockies Midstream, L.L.C. (ORM) (applicants) filed an application pursuant to section 3 of the Natural Gas Act (NGA),<sup>1</sup> Part 153 of the Commission's regulations,<sup>2</sup> and Executive Order Nos. 10485 and 12038<sup>3</sup> to transfer to Steel Reef the NGA section 3 authorization and Presidential Permit held by ORM for the existing border crossing facilities located between the United States and Canada near Portal, Burke County, North Dakota.
2. As discussed below, the Commission will grant the requested authorizations.

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<sup>1</sup> 15 U.S.C. § 717(b) (2018).

<sup>2</sup> 18 C.F.R. pt. 153 (2019).

<sup>3</sup> Authorization under section 3 of the NGA is necessary for the siting, construction, expansion, or operation of facilities to import or export natural gas. Pursuant to Executive Order No. 10485, dated September 3, 1953 (18 Fed. Reg. 5397), as amended by Executive Order No. 12038, dated February 3, 1978 (43 Fed. Reg. 4957), 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 the United States Department 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 construction, operation, maintenance, or connection of import and export facilities. The Commission has no authority to approve or disapprove applications to import or export natural gas.

## I. Background and Proposal

3. ORM, an indirect, wholly owned subsidiary of ONEOK, Inc., is a limited liability company organized under the laws of the State of Delaware and based in Tulsa, Oklahoma. ONEOK, Inc. is an Oklahoma corporation.

4. Steel Reef, an indirect, wholly owned subsidiary of Steel Reef Infrastructure Corp., is a limited liability company organized under the laws of the State of Delaware and based in Burke County, North Dakota. Steel Reef Infrastructure Corp. is a corporation organized under the laws of the Province of Alberta, Canada, and is based in Calgary, Alberta, Canada. The applicants state that Steel Reef was formed to purchase, own, and operate ORM's border crossing facilities and associated lignite processing facilities and gathering lines.<sup>4</sup>

5. In 1997, the Commission authorized Interenergy Sheffield Processing Company (Interenergy Sheffield) to construct a natural gas pipeline, consisting of approximately 1.2 miles of 8.265-inch-diameter pipe, for the importation of natural gas at the international boundary between the United States and Canada, approximately 1 mile east of Portal, North Dakota.<sup>5</sup> In 2000, the Commission issued an order authorizing Bear Paw Energy, L.L.C. (Bear Paw) to acquire the border crossing facilities from Interenergy Sheffield,<sup>6</sup> and, in 2012, the Commission issued a notice redesignating ORM as the permit holder due to a name change.<sup>7</sup> Both Commission orders noted that the Secretaries of State and Defense had no objections to the requested authorizations.

6. The applicants state that on March 1, 2019, Steel Reef acquired ORM's border crossing facilities and its associated gathering and processing system located near the international boundary between the United States and Canada near Portal, Burke County, North Dakota. As the result of this transaction, applicants request that the Commission

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<sup>4</sup> Application at 2.

<sup>5</sup> *Interenergy Sheffield Processing Co.*, 78 FERC ¶ 61,085 (1997).

<sup>6</sup> *Interenergy Sheffield Processing Co.*, 91 FERC ¶ 61,286 (2000).

<sup>7</sup> ONEOK Rockies Midstream, L.L.C., Notice of Redesignation of Proceeding, Docket No. CP12-449-000 (May 9, 2012).

grant NGA section 3 authorization and issue a Presidential Permit to Steel Reef to operate and maintain the border crossing facilities to import and export natural gas to and from Canada.<sup>8</sup> Steel Reef noted that the facilities have been shut-in since 2012 and that it currently does not have a plan for resuming service.<sup>9</sup>

## II. Public Notice and Intervention

7. Notice of ORM and Steel Reef's application was published in the *Federal Register* on May 22, 2019.<sup>10</sup> No protests, comments, or motions to intervene were filed.

## III. Consultation with Secretaries of Defense and State

8. On August 29, 2019, pursuant to Executive Order 10485, the Commission sent letters to the Secretaries of Defense and State seeking their recommendations on the applicants' request for issuance of a Presidential Permit authorizing Steel Reef's operation of the subject border crossing facilities. By letters dated September 27 and October 3, 2019, the Secretaries of Defense and State, respectively, indicated that they have no objections to the issuance of the proposed Presidential Permit to Steel Reef.

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<sup>8</sup> Standard Article 8 of ORM's 2000 Presidential Permit states that neither the Presidential Permit nor any of the facilities covered by the permit may be voluntarily transferred, and Article 9 provides that upon surrender of the permit the facilities shall be removed as the Commission may specify. Further, under the Commission's Part 153 regulations, NGA Section 3 authorizations to operate border-crossing facilities are not transferable without prior Commission authorization. 18 C.F.R. § 153.9(a) (2019). Our policy is to issue a new Presidential Permit and grant new Section 3 authorization to a new owner-operator upon a transfer of facilities. Accordingly, to permit effectuation of the change in ownership of the border crossing facilities, the Commission is treating the joint application as an application for ORM to surrender and application by Steel Reef for a new Presidential Permit and authorization under NGA Section 3 to operate and maintain facilities formerly operated by ORM. See, e.g., *Clark Fork & Blackfoot, L.L.C.*, 115 FERC ¶ 61,131, at P 14 (2006); *Norteño Pipeline Co.*, 105 FERC ¶ 61,047, at P 14 (2003).

<sup>9</sup> Application at 3-4.

<sup>10</sup> 84 Fed. Reg. 23,555 (2019).

#### IV. Discussion

9. 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. When the Commission first evaluated and authorized the construction and operation of the subject border crossing facilities, we found that approval of the facilities for the importation of natural gas is not inconsistent with the public interest.<sup>11</sup> Steel Reef and ORM propose no construction or modification of the Commission-approved border crossing facilities.

10. Section 3 specifies that the exportation and importation of natural gas between the United States and “a nation with which there is in effect 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.”<sup>12</sup> The United States and Canada are signatories to the North American Free Trade Agreement.<sup>13</sup> Moreover, the applicants state that Steel Reef does not currently provide transportation service to any customers in the United States and the facilities will not involve any contracts that may restrict or prevent U.S. companies from extending activities in the area. No comments have been filed in opposition to applicants’ request.

11. The applicants state that they did not obtain Commission authorization prior to transfer of the facilities because the transaction occurred “in an unanticipated manner” and the facilities have been shut-in since 2012 with no plans to resume service.<sup>14</sup> They request that the Commission grant any waiver that may be necessary to allow the authorization and permit for the border crossing facilities to be issued to Steel Reef.

12. The Commission takes seriously any company’s failure to comply with its regulatory conditions requiring Commission approval prior to the transfer of NGA section 3 border crossing facilities or Presidential Permits. The Commission will take appropriate enforcement action in any situation where it determines such action is warranted. However, there is no need in this instance for further investigation or

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<sup>11</sup> *Interenergy Sheffield*, 78 FERC at 61,312.

<sup>12</sup> 15 U.S.C. § 717b(b) (2018).

<sup>13</sup> Pub. L. No. 103-182, 107 Stat. 2057 (1993); Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69,681 (Dec. 27, 1993).

<sup>14</sup> Application at 5 & n.6.

enforcement action.<sup>15</sup> As the applicants stated, the facilities have been shut-in since 2012, and the applicants filed their joint application upon discovery of the failure to obtain prior approval.

13. The transfer of the border facilities by ORM to Steel Reef does not involve the construction or modification of any facilities; accordingly, there will be no environmental impacts from the proposed actions.<sup>16</sup>

14. In view of the above considerations, we find that the applicants' proposal is not inconsistent with the public interest. Accordingly, we will grant NGA section 3 authorization and issue a Presidential Permit to Steel Reef, as requested in the joint application.<sup>17</sup>

15. 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, and upon consideration of the record,

The Commission orders:

(A) ONEOK Rockies Midstream, L.L.C.'s Presidential Permit and NGA section 3 authorization for the natural gas facilities at the border between the United States and Canada in Burke County, North Dakota, are hereby surrendered, without modification or removal of the facilities.

(B) A Presidential Permit and NGA section 3 authorization are issued to Steel Reef Burke LLC to operate and maintain natural gas facilities at the border between the United States and Canada in Burke County, North Dakota, subject to the conditions of the Presidential Permit set forth in the Appendix to this order.

(C) Steel Reef Burke LLC 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 the issuance of this order.

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<sup>15</sup> See, e.g., *Clark Fork & Blackfoot*, 115 FERC ¶ 61,131 at P 13.

<sup>16</sup> We note that should any construction or modification of border crossing facilities be necessary to renew operation of the facilities, Steel Reef must seek Commission authorization prior to undertaking such activities.

<sup>17</sup> The Presidential Permit is attached as the Appendix to this order.

(D) Steel Reef Burke LLC must notify the Commission at least ten (10) days prior to resuming operation of the facilities that are covered by this Presidential Permit.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

**APPENDIX****PRESIDENTIAL PERMIT AUTHORIZING STEEL REEF BURKE LLC  
TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE  
INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND  
CANADA IN BURKE COUNTY, NORTH DAKOTA****FEDERAL ENERGY REGULATORY COMMISSION  
DOCKET NO. CP19-465-000**

(Issued November 27, 2019)

ONEOK Rockies Midstream, L.L.C. (ORM) and Steel Reef Burke LLC (Steel Reef or Permittee) filed on May 6, 2019, in Docket No. CP19-465-000, an application pursuant to Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, and the Secretary of Energy's Delegation Order No. 00-004.00A, effective May 16, 2006, requesting that the Commission issue an order under section 3 of the NGA and a Presidential Permit authorizing Steel Reef to operate and maintain certain pipeline and related facilities, as described in Article 2 below, for the import or export of natural gas from or to Canada.

By letter dated October 3, 2019, the Secretary of State and by letter dated September 27, 2019, the Secretary of Defense favorably recommend 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, the Secretary of Energy's Delegation Order No. 00-004.00A, and the Commission's regulations, permission is granted to the 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 approximately 1.2 miles of 8.265-inch outside-diameter pipe, extending on an uninterrupted basis under the United States-Canada International Boundary line to a non-jurisdictional interconnection approximately 1 mile east of Portal, Burke County, North Dakota.

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 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 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 for the Secretary of Defense, to remove or alter the same so as to render navigation through such water 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 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 exported or 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 purchases 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 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 costs 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 \_\_\_\_\_ has caused its name to be signed by \_\_\_\_\_, pursuant to a resolution of its Board of Directors duly adopted on the \_\_\_\_ day of \_\_\_\_\_, 2019, a certified copy of the record of which is attached hereto.

Steel Reef Burke LLC

By \_\_\_\_\_

(Attest)

\_\_\_\_\_  
Executed in triplicate