

139 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Bluewater Gas Storage, LLC

Docket No. CP12-51-000

ORDER VACATING SECTION 3 AUTHORIZATION,
TERMINATING PRESIDENTIAL PERMIT, AND ISSUING
SECTION 3 AUTHORIZATION AND PRESIDENTIAL PERMIT

(Issued June 21, 2012)

1. On January 27, 2012, Bluewater Gas Storage, LLC (Bluewater) filed an application requesting the Commission to: (1) vacate Bluewater's existing Natural Gas Act (NGA) section 3 authorization and terminate the Presidential Permit granted to Bluewater for the import and export of natural gas between the United States and Canada through facilities that Bluewater currently leases from Nova Chemicals Inc. (Nova) in St. Clair County, Michigan and (2) issue a new NGA section 3 authorization and Presidential Permit to Bluewater to construct, operate, and maintain its own new border crossing facilities at the United States/Canada international boundary in St. Clair County, Michigan (the St. Clair River Crossing Replacement Project). For the reasons discussed below, the Commission will grant the requested authorizations.

I. Background and Proposal

2. Bluewater is a limited liability company organized under the laws of the State of Delaware and is a natural gas company as defined in the NGA. Bluewater provides storage and hub services in interstate commerce subject to the Commission's jurisdiction.¹ PAA Natural Gas Storage, LLC (PNG LLC) holds 100 percent of the

¹ See *BGS Kimball Gas Storage, LLC and Bluewater Gas Storage, LLC*, 117 FERC ¶ 61,122 (2006) (authorizing Bluewater to operate existing pipeline and storage facilities, approving market-based rates for storage and hub services, and issuing Parts 157 and 284 blanket certificates).

membership interest in Bluewater Natural Gas Holding, LLC, which holds a 100 percent membership interest in both Bluewater and BGS Kimball Gas Storage, LLC.²

3. In 2004, the Commission issued a section 3 authorization and a Presidential Permit to Bluewater to operate and maintain existing natural gas border facilities at the United States/Canada international boundary in St. Clair County, Michigan.³ Specifically, these authorizations allowed CMS Gas Transmission Company (CMS) to transfer its leasehold interest in the border crossing facilities to Bluewater. The border crossing facilities connect to facilities in Canada leased by St. Clair Pipelines L.P. (SCPL) from an affiliate of Nova. Bluewater and SCPL have been notified that their leases will terminate on January 27, 2013.

4. Consequently, Bluewater proposes to construct its own border crossing facilities using the horizontal directional drilling (HDD) method underneath the St. Clair River. The facilities would consist of approximately 1,500 feet (0.29 mile) of new 20-inch diameter pipeline from St. Clair County to the international border under the St. Clair River. SCPL would concurrently construct approximately 1,500 feet (0.29 mile) of the Canadian portion of the pipeline from the County of Lambton, Ontario to the international border under the St. Clair River.

5. Bluewater will own and operate the entire United States portion of the border crossing facilities, and SCPL will own and operate the Canadian portion of the border crossing facilities. The proposed facilities will have a capacity of up to 300 million cubic feet per day (MMcf/d). Bluewater states that, although it is proposing to increase the capacity of this interconnection from its currently authorized 250 MMcf/d, the overall capacity of Bluewater's storage and header system will remain unchanged. Bluewater is

² PNG LLC also holds 100 percent of the membership interest in Pine Prairie Energy Center, LLC and SG Resources Mississippi, L.L.C. PAA Natural Gas Storage, L.P. (PNG) holds 100 percent of the membership interest in PNG LLC and is engaged in the acquisition, development, operation and commercial management of natural gas storage facilities. Plains All American Pipeline, L.P. owns 64 percent of the outstanding partnership interests of PNG and is engaged in the transportation, storage, terminalling and marketing of crude oil, refined products and liquefied petroleum gas and other natural gas related petroleum products. The remaining 36 percent of the PNG partnership interests are owned by the public. PNGS GP LLC is PNG's general partner and its sole member is Plains All American Pipeline, L.P.

³ *CMS Gas Transmission Co. and Bluewater Gas Storage, L.L.C.*, 109 FERC ¶ 61,219 (2004).

not proposing any increase in its overall certificated daily injection or withdrawal capabilities.

6. In addition to the proposed border crossing facilities, Bluewater would construct, under its Part 157 blanket certificate, meter station modifications and approximately 350 feet of new 20-inch diameter pipeline to connect its existing system to the United States portion of the proposed border crossing facilities. Bluewater would also abandon by removal, under its Part 157 blanket certificate, approximately 245 feet of 20-inch diameter pipeline and 30 feet of 12-inch diameter pipeline that connects Bluewater's header system to the existing leased border crossing facilities.

II. Public Notice and Intervention

7. Notice of Bluewater's application was published in the *Federal Register* on February 14, 2012 (77 Fed. Reg. 8248). Michigan Consolidated Gas Company and NJR Energy Services Company filed timely, unopposed motions to intervene.⁴ SEMCO Energy Gas Company filed a late, unopposed motion to intervene. We will grant this late motion to intervene, as we find that to do so at this stage of the proceeding will not cause undue delay or otherwise prejudice the proceeding or other parties.

III. Consultation with Secretaries of State and Defense

8. On March 2, 2012, pursuant to Executive Order 12038, the Commission sent letters to the Secretaries of State and Defense seeking their recommendations on the applicant's requested surrender of Bluewater's existing Presidential Permit and section 3 authorization and issuance of a new Presidential Permit and section 3 authorization to Bluewater. By letters dated April 16, 2012 and April 19, 2012, the Secretaries of State and Defense, respectively, indicated that they have no objections to the Presidential Permit for Bluewater.

IV. Discussion

A. Public Interest

9. Pursuant to Department of Energy Delegation Order No. 00-004.00A, effective May 16, 2006, the Commission has delegated authority to issue Presidential Permits⁵ and grant NGA section 3 authorizations for import and export facilities.

⁴ 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 (2011).

⁵ The Presidential Permit is attached as an appendix to this order.

10. Section 3 of the NGA provides that such applications shall be approved unless it is determined that “the exportation or importation will not be consistent with the public interest.”⁶ The lease pursuant to which Bluewater operates the existing border crossing facilities will expire in January 2013. Granting Bluewater section 3 authorization and a Presidential Permit to construct, operate, and maintain the proposed new border crossing facilities will provide Bluewater a greater degree of control over the facilities and will allow Bluewater to avoid an interruption in the service that it provides its customers. Therefore, we find that approval of Bluewater’s proposal is consistent with the public interest. We will terminate Bluewater’s existing Presidential Permit, vacate its existing NGA section 3 authorization, and grant Bluewater a new Presidential Permit, set forth in Appendix B to this order, and NGA section 3 authorization to construct, operate, maintain, and connect border crossing facilities at the United States-Canada international boundary as described above in the application.

B. Environment

11. On February 16, 2012, the Commission issued a Notice of Intent to Prepare an Environmental Assessment (EA) for the Proposed St. Clair River Crossing Replacement Project (Project) and Request for Comments on Environmental Issues (NOI). The NOI was mailed to interested parties including federal, state, and local officials; agency representatives; environmental and public interest groups; Native American tribes; local libraries and newspapers; and affected property owners.

12. The Commission received four public comments regarding the Project related to fugitive dust and noise mitigation during construction and regarding safety of the Project. We addressed these comments in the EA.

13. To satisfy the requirements of the National Environmental Policy Act, our staff prepared an EA for Bluewater’s proposed Project. The analysis in the EA addresses geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, safety, cumulative impacts, and alternatives. The EA was placed into the public record on May 15, 2012.

14. We received comment letters on the EA from Robert Brassel Jr. and Terry L. Whiting, both expressing concerns with the potential safety of the proposed project. In the EA, Commission Staff stated that the project’s construction and operation would represent a minimum increase in risk to the public.⁷ As stated in the EA, we are

⁶ 15 U.S.C. § 717b (2006).

⁷ See May 15, 2012 Environmental Assessment at 36.

confident that with the options available in the detailed design of Bluewater's facilities, the facilities will be constructed and operated safely.

15. Based on the analysis in the EA, we conclude that if constructed, abandoned, and operated in accordance with Bluewater's application and supplements, and in compliance with the environmental conditions in the Appendix to this Order, our approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

16. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.

17. At a hearing held on June 21, 2012, 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 authorizations sought herein, and upon consideration of the record,

The Commission orders:

(A) The NGA section 3 authority granted to Bluewater to operate and maintain facilities that Bluewater currently leases from Nova Chemicals Inc. (Nova) in St. Clair County, Michigan is vacated and the related Presidential Permit is terminated, effective upon the in-service date of the new facilities.

(B) A Presidential Permit and NGA section 3 authorization are issued authorizing Bluewater to construct, operate, maintain, and connect the St. Clair River Crossing Replacement Project, to transport natural gas being imported and exported between the United States and Canada.

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

(D) Bluewater shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Bluewater. Bluewater shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission. Commissioner Clark voting present.

(S E A L)

Kimberly D. Bose,
Secretary.

APPENDIX A

Environmental Conditions

As recommended in the EA, this authorization includes the following conditions:

1. Bluewater shall follow the construction and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Bluewater must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction, abandonment, and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction, abandonment, and operation.
3. Prior to any construction or abandonment of facilities, Bluewater shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA. As soon as they are available, and before the start of construction, Bluewater shall file with the Secretary any revised detailed survey maps and alignment sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these maps/sheets.

Bluewaters's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Bluewater's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Bluewater shall file with the Secretary detailed maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP before construction in or near that area.

This requirement does not apply to extra workspace allowed by our Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. Within 60 days of the acceptance of the Authorization and before construction or abandonment begins, Bluewater shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Bluewater must file revisions to the plan as schedules change. The plan shall identify:

- a. how Bluewater would implement the Horizontal Directional Drilling (HDD), pipeline construction, and abandonment by removal procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Bluewater would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who would receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Bluewater would give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of Bluewater's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Bluewater will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of HDD activities, pipeline construction and activities associated with the abandonment by removal of facilities; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Bluewater shall file updated status reports with the Secretary on a biweekly basis until all HDD activities, pipeline construction, and abandonment by removal, and restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update on Bluewater's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the project, work planned for the following reporting period, and any schedule changes for work in other environmentally-sensitive areas;

- c. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by Bluewater from other federal, state, or local permitting agencies concerning instances of noncompliance, and Bluewater's response.
8. Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities, Bluewater shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Bluewater must receive written authorization from the Director of OEP before placing the project into service. Such authorization will only be granted following a determination that rehabilitation and restoration of the facility sites and other areas affected by the project are proceeding satisfactorily.
10. Within 30 days of placing the authorized facilities in service, Bluewater shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed and abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Authorization conditions Bluewater has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. Prior to Construction of the facilities, Bluewater shall file with the Secretary, for the review and written approval by the Director of OEP a commitment to:
 - a. advise a point of contact (POC) at the Marysville Water Filtration Plant, prior to the start of drilling operations, and immediately notify the POC in the event of an inadvertent release, or suspected release;
 - b. notify the Michigan Department of Environmental Quality (MDEQ), and

- any other appropriate agency regarding the inadvertent release of drilling fluid into the St. Clair River; and
 - c. revise its construction alignment sheets to indicate the installation of safety fencing between construction work areas and any residences located within 50 feet.
12. Prior to receiving written authorization from the Director of OEP to commence construction of Project facilities, Bluewater shall file with the Secretary documentation that it has received all necessary federal and state authorizations regarding the coastal zone management plan.

APPENDIX B**PERMIT AUTHORIZING BLUEWATER GAS STORAGE, LLC (BLUEWATER)
TO CONSTRUCT, OPERATE, AND MAINTAIN NATURAL GAS FACILITIES
AT THE INTERNATIONAL BOUNDARY
BETWEEN THE UNITED STATES AND CANADA****FEDERAL ENERGY REGULATORY COMMISSION
Docket No. CP12-51-000**

(Issued June 21, 2012)

Bluewater Gas Storage, LLC (Bluewater), a limited liability corporation organized under the laws of the State of Delaware, filed on January 27, 2012, in Docket No. CP12-51-000, 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 a Presidential Permit authorizing Bluewater to construct, operate, and maintain natural gas facilities at the international boundary between the United States and Canada to accommodate the importation and exportation of natural gas between the United States and Canada.

By letter dated April 16, 2012, the Secretary of State, and by letter dated April 19, 2012, the Secretary of Defense, recommended that this Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of this Permit, allowing the import and export permission requested by Bluewater, 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 Bluewater (Permittee) to construct, 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 therefor.

Article 2. The following facilities are subject to this Permit:

Approximately 1500 feet of 20-inch natural gas pipeline at the interconnection to Bluewater's facilities at the United States-Canada international boundary within the St. Clair River, all in St. Clair County, Michigan.

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 therefor. 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 __, 2012 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2012, a certified copy of the record of which is attached hereto.

Bluewater Gas Storage, LLC

By _____

(Attest)

Executed in triplicate