

Overview of Presidential Permitting Processes

Executive permission, in the form of a Presidential Permit, is required for the construction, connection, operation, and maintenance of certain facilities that cross the United States' borders with Canada and Mexico. The Presidential Permit review processes for cross-border energy infrastructure is implemented by these agencies:

- The Department of State for pipelines and similar facilities that transport liquids such as petroleum, petroleum products, and other hazardous liquids;
- **The Federal Energy Regulatory Commission (FERC) for natural gas pipelines and associated facilities;** and
- The Department of Energy (DOE) for electricity transmission lines and associated facilities.

The State Department, FERC, and DOE each make their decisions regarding Presidential Permit applications largely within the context of their own interpretation of directives from a series of executive orders. For natural gas pipelines, FERC looks to:

- Gather necessary project-specific information from the applicant;
- Seek input from specific outside federal agencies; and
- Decide whether to seek input from additional local, state, tribal, or federal agencies or from members of the public.

FERC issues Presidential Permits if it determines that the project would “serve the national interest” or be “consistent with the public interest”. It is unusual that an agency denies a permit application; the permitting process is generally used to determine how a project must be implemented to comply with federal law (and meet the national or public interest standard) rather than whether it can be implemented.

Summary of requirements:

- Cross-border natural gas pipelines between USA and Mexico require two (2) permits, as established in Subparts B and C (Presidential Permit).
- Effectiveness of the Presidential Permit requires prior acceptance via a Testimony of Acceptance from the highest authority of the recipient.
- Submission of information for both permits follow the same requirements, which are established under §§153.7 and 153.8 of subpart B.
- Applicant is defined as that who proposes, constructs or operates facilities used for the export of natural gas from the United States to a foreign country
- Application must state whether DOE/FE authorization for the export of natural gas is required and whether all required authorizations have been granted. If they have not been obtained prior to filing with FERC, authorization is conditioned to applicant obtaining all permits prior to construction of border facilities.
- Prior permission is requested for transfer of permit.

Part 153. APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE, OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

Subpart A—General Provisions

§153.1 Purpose and scope.

The purpose of this part is to implement the Commission's delegated authorities under section 3 of the Natural Gas Act and Executive Order 10485, as amended by Executive Order 12038.

Subpart B of this part establishes filing requirements an applicant must follow to obtain authorization under section 3 of the Natural Gas Act for the siting, construction, operation, place of entry for imports or place of exit for exports. Subpart C of this part establishes filing requirements an applicant must follow to apply for a Presidential Permit, or an amendment to an existing Presidential Permit, for border facilities at the international boundary between the United States and Canada or Mexico.

§153.2 Definitions.

(a) DOE/FE means the Department of Energy/Office of Fossil Energy or its successor office.

(b) NBSIR means the National Bureau of Standards Information Report.

(c) Person means an individual or entity as defined in 10 CFR 590.102(m).

(d) LNG Terminal means all natural gas facilities located onshore or in state waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by a waterborne vessel, but does not include:

(1) Waterborne vessels used to deliver natural gas to or from any such facility; or

(2) Any pipeline or storage facility subject to the jurisdiction of the Commission under section 7 of the Natural Gas Act.

(e) For purposes of this part and §157.21, related jurisdictional natural gas facilities means any pipeline or other natural gas facilities which are subject to section 7 of the NGA; will directly interconnect with the facilities of an LNG terminal, as defined in paragraph (d) of this section; and which are necessary to transport gas to or regasified LNG from:

(1) A planned but not yet authorized LNG terminal; or

(2) An existing or authorized LNG terminal for which prospective modifications are subject pursuant to section 157.21(e)(2) to a mandatory pre-filing process.

(f) Waterway Suitability Assessment (WSA) means a document used by the U.S. Coast Guard in assessing the suitability of a waterway for LNG marine traffic pursuant to 33 CFR 127.007. The Preliminary WSA initiates the process of analyzing the safety and security risks posed by

proposed LNG tanker operations to a port and waterways, and the Follow-On WSA provides a detailed analysis of the same issues.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 665, 70 FR 60440, Oct. 18, 2005]

§153.3 Notice requirements.

All applications filed under this part are subject to the landowner notification requirements in §157.6(d) of this chapter.

[Order 609, 64 FR 57390, Oct. 25, 1999]

Subpart B—Application Under Section 3

§153.4 General requirements.

The procedures in §§157.5, 157.6, 157.8, 157.9, 157.10, 157.11, 157.12, and 157.23 of this chapter are applicable to the applications described in this subpart.

[Order 871, 85 FR 40115, July 6, 2020]

§153.5 Who shall apply.

(a) Applicant. Any person proposing to site, construct, or operate facilities which are to be used for the export of natural gas from the United States to a foreign country or for the import of natural gas from a foreign country or to amend an existing Commission authorization, including the modification of existing authorized facilities, shall file with the Commission an application for authorization therefor under subpart B of this part and section 3 of the Natural Gas Act.

(b) Cross-reference. Any person applying under paragraph (a) of this section to construct facilities at the borders of the United States and Canada or Mexico must also simultaneously apply for a Presidential Permit under subpart C of this part.

§153.6 Time of filing.

(a) An application filed pursuant to §153.5(a) shall state whether DOE/FE authorization for the import/export of natural gas is required and whether DOE/FE has granted all required authorizations for the import/export of natural gas.

(b) If all required DOE/FE authorizations have not been obtained prior to filing an application with the Commission, the applicant agrees, as a condition of its authorization, to file a statement that all required DOE/FE authorizations have been obtained prior to applicant's construction of border facilities.

(c) When a prospective applicant for authorization for LNG terminal facilities, related jurisdictional natural gas facilities or modifications to existing LNG terminal facilities is required by §157.21(a) to comply with that section's pre-filing procedures, no application for such authorization may be made before 180 days after the date of issuance of the notice by the

Director of the Office of Energy Projects, as provided in §157.21(e), of the commencement of the prospective applicant's pre-filing process under §157.21.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 665, 70 FR 60440, Oct. 18, 2005]

§153.7 Contents of application.

Every application under subpart B of this part shall include, in the order indicated, the following:

(a) Information regarding applicant. (1) The exact legal name of applicant;

(2) The name, title, and post office address, telephone and facsimile numbers of the person to whom correspondence in regard to the application shall be addressed;

(3) If a corporation, the state or territory under the laws of which the applicant was organized, and the town or city where applicant's principal office is located. If applicant is incorporated under the laws of, or authorized to operate in, more than one state, all pertinent facts should be stated. If applicant company is owned wholly or in part by any foreign government entity, or directly or indirectly subsidized by any foreign government entity; or, if applicant company has any agreement for such ownership or subsidization from any foreign government, provide full details of ownership and/or subsidies.

(b) Summary. A detailed summary of the proposal, including descriptions of the facilities utilized in the proposed export or import of natural gas; state, foreign, or other Federal governmental licenses or permits for the construction, operation, or modification of facilities in the United States, Canada, or Mexico; and the status of any state, foreign, or other Federal regulatory proceedings which are related to the proposal.

(c) Statements. (1) A statement demonstrating that the proposal or proposed construction is not inconsistent with the public interest, including, where applicable to the applicant's operations and proposal, a demonstration that the proposal:

(i) Will improve access to supplies of natural gas, serve new market demand, enhance the reliability, security, and/or flexibility of the applicant's pipeline system, improve the dependability of international energy trade, or enhance competition within the United States for natural gas transportation or supply;

(ii) Will not impair the ability of the applicant to render transportation service in the United States at reasonable rates to its existing customers; and,

(iii) Will not involve any existing contract(s) between the applicant and a foreign government or person concerning the control of operations or rates for the delivery or receipt of natural gas which may restrict or prevent other United States companies from extending their activities in the same general area, with copies of such contracts; and,

(2) A statement representing that the proposal will be used to render transportation services under parts 157 or 284 of this chapter, private transportation, or service that is exempt from the provisions of the Natural Gas Act pursuant to sections 1(b) or 1(c) thereof. The applicant providing transportation service under part 157 of this chapter must represent that the pipeline's proposed increase in capacity at an existing import/export point is not exclusively reserved for part 157 users and that all new service made available as a result of a new or modified import/export facility will be under part 284 of this chapter.

§153.8 Required exhibits.

(a) An application must include the following exhibits:

(1) Exhibit A. A certified copy of articles of incorporation, partnership or joint venture agreements, and by-laws of applicant; the amount and classes of capital stock; nationality of officers, directors, and stockholders, and the amount and class of stock held by each;

(2) Exhibit B. A detailed statement of the financial and corporate relationship existing between applicant and any other person or corporation;

(3) Exhibit C. A statement, including signed opinion of counsel, showing that the construction, operation, or modification of facilities for the export or the import of natural gas is within the authorized powers of applicant, that applicant has complied with laws and regulations of the state or states in which applicant operates;

(4) Exhibit D. If the proposal is for a pipeline interconnection to import or export natural gas, a copy of any construction and operation agreement between the applicant and the operator(s) of border facilities in the United States and Canada or Mexico;

(5) Exhibit E. If the proposal is to import or export LNG, evidence that an appropriate and qualified concern will properly and safely receive or deliver such LNG, including a report containing detailed engineering and design information. The Commission staff's "Guidance Manual for Environmental Report Preparation" may be obtained from the Commission's Office of Energy Projects, 888 First Street, NE., Washington, DC 20426;

(6) Exhibit E-1. If the LNG import/export facility is to be located at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is a risk of surface faulting or ground liquefaction, a report on earthquake hazards and engineering. Guidelines are contained in "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84-2833. This document may be obtained from the National Technical Information Service or the Commission's Office of Energy Projects, 888 First Street, NE., Washington, DC 20426;

(7) Exhibit F. (i) An environmental report as specified in §380.3 and §380.12 of this chapter. Applicant must submit all appropriate revisions to Exhibit F whenever route or site changes are filed. These revisions should identify the specific differences resulting from the route or site changes, and not just provide revised totals for the resources affected;

(8) Exhibit G. A geographical map of a suitable scale and detail showing the physical location of the facilities to be utilized for the applicant's proposed export or import operations. The map should indicate with particularity the ownership of such facilities at or on each side of the border between the United States and Canada or Mexico, if applicable; and

(9) Exhibit H. A statement identifying each Federal authorization that the proposal will require; the Federal agency or officer, or State agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

(b) The applicant may incorporate by reference any Exhibit required by paragraph (a) of this section already on file with the Commission.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 603, 64 FR 26604, May 14, 1999; Order 687, 71 FR 62920, Oct. 27, 2006; Order 699, 72 FR 45325, Aug. 14, 2007]

§153.9 Transferability.

(a) Non-transferable. Authorizations under subpart B of this part and section 3 of the Natural Gas Act and related facilities shall not be transferable or assignable without prior Commission authorization.

(b) Involuntary transfer. A Commission order granting such authorization shall continue in effect temporarily for a reasonable time in the event of the involuntary transfer of facilities used thereunder by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) pending the making of an application for permanent authorization and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the physical facts relating to operations of the facilities remain substantially the same as before the transfer and as stated in the initial application for such authorization.

§153.10 Authorization not exclusive.

No authorization granted pursuant to subpart B of this part and section 3 of the Natural Gas Act shall be deemed to prevent the Commission from granting authorization under subpart B to any other person at the same general location, or to prevent any other person from making application for such authorization.

§153.11 Supplemental orders.

The Commission also may make, at any time subsequent to the original order of authorization, after opportunity for hearing, such supplemental orders implementing its authority under section 3 of the Natural Gas Act as it may find necessary or appropriate.

§153.12 Pre-filing procedures for applications for authorization to site, construct, maintain, connect or modify facilities to be used for the export or import of natural gas.

The definitions in §157.1 and the pre-filing procedures in §157.21 of this chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

[Order 665, 70 FR 60440, Oct. 18, 2005]

§153.13 Emergency reconstruction.

The provisions of subpart F of part 157 of this chapter that permit reconstruction for the purpose of immediately restoring interrupted service for the protection of life or health or for maintenance of physical property in an emergency due to a sudden unanticipated loss of gas supply or capacity are applicable to facilities subject to section 3 of the Natural Gas Act.

[Order 633, 68 FR 31604, May 28, 2003]

Subpart C—Application for a Presidential Permit

§153.15 Who shall apply.

(a) Applicant. Any person proposing to construct, operate, maintain, or connect facilities at the borders of the United States and Canada or Mexico, for the export or import of natural gas to or from those countries, or to amend an existing Presidential Permit, shall file with the Commission an application for a Presidential Permit under subpart C of this part and Executive Order 10485, as amended by Executive Order 12038.

(b) Cross-reference. Any person applying under paragraph (a) of this section for a Presidential Permit for the construction and operation of border facilities must also simultaneously apply for authorization under subpart B of this part.

§153.16 Contents of application.

(a) Cross-reference. The submission of information under §§153.7 and 153.8 of subpart B of this part shall be deemed sufficient for purposes of applying for a Presidential Permit or an amendment to an existing Presidential Permit under subpart C of this part for the construction and operation of border facilities.

(b) Amendment not proposing construction. An applicant proposing to amend the article(s) of an existing Presidential Permit (other than facilities aspects) must file information pursuant to §153.7(a) and a summary and justification of its proposal.

§153.17 Effectiveness of Presidential Permit.

A Presidential Permit, once issued by the Commission, shall not be effective until it has been accepted by the highest authority of the Permittee, as indicated by Permittee's execution of a

Testimony of Acceptance, and a certified copy of the accepted Presidential Permit and the executed Testimony of Acceptance has been filed with the Commission.

Subpart D—Paper Media and Other Requirements

§153.20 General rule.

(a) Filing procedures. Applications under Subparts B and C must be submitted to the Secretary of the Commission in accordance with filing procedures posted on the Commission's Web site at <http://www.ferc.gov>.

(b) Certification. All applications must be signed in compliance with §385.2005 of this chapter.

(1) The signature on an application constitutes a certification that: The signer has read the filing signed and knows the contents of the paper copies; and, the signer possesses the full power and authority to sign the filing.

(2) An application must be signed by one of the following:

(i) The person on behalf of whom the application is made;

(ii) An officer, agent, or employee of the governmental authority, agency, or instrumentality on behalf of which the filing is made; or,

(iii) A representative qualified to practice before the Commission under §385.2101 of this chapter who possesses authority to sign.

(c) Where to file. The paper copies and an accompanying transmittal letter must be submitted in one package to: Office of the Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 737, 75 FR 43404, July 26, 2010]

§153.21 Conformity with requirements.

(a) General Rule. Applications under subparts B and C of this part must conform with the requirements of this part.

(b) Rejection of applications. If an application patently fails to comply with applicable statutory requirements or with applicable Commission rules, regulations, and orders for which a waiver has not been granted, the Director of the Office of Energy Projects may reject the application within 10 days of filing as provided by §385.2001(b) of this chapter. This rejection is without prejudice to an applicant's refiling a complete application. However, an application will not be rejected solely on the basis of: Environmental reports that are incomplete because the company has not been granted access by the affected landowner(s) to perform required surveys, or environmental reports that are incomplete, but where the minimum checklist requirements of part 380, appendix A of this chapter have been met. An application that relates to an operation, service, or construction concerning which a prior application has been filed and rejected, shall

be docketed as a new application. Such new application shall state the docket number of the prior rejected application.

[Order 595, 62 FR 30446, June 4, 1997, as amended by Order 603, 64 FR 26604, May 14, 1999; Order 699, 72 FR 45325, Aug. 14, 2007]

§153.22 Amendments and withdrawals.

Amendments to or withdrawals of applications must conform to the requirements of §§385.215 and 385.216 of this chapter.

§153.23 Reporting requirements.

Each person authorized under this part 153 that is not otherwise required to file information concerning the start of construction or modification of import/export facilities, the completion of construction or modification, and the commencement of service must file such information with the Commission within 10 days after such event. Each person, other than entities without pipeline capacity, must also report by March 1 of each year the estimated peak day capacity and actual peak day usage of its import/export facilities.