

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Maritimes & Northeast Pipeline, L.L.C.

Docket Nos. CP06-335-000
CP06-335-001
CP96-810-006

ORDER ISSUING CERTIFICATE AND AMENDING PRESIDENTIAL PERMIT

(Issued February 21, 2007)

1. On May 16, 2006, in Docket No. CP06-335-000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed an application, as amended in Docket No. CP06-335-001,¹ under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a certificate of public convenience and necessity requesting authority to construct, own, and operate certain pipeline facilities to increase its mainline design capacity by approximately 418,000 dekatherms per day (Dth/d) to accommodate the importation of regasified liquefied natural gas (LNG) from Canada (Phase IV Project). In addition, pursuant to section 3 of the NGA, Maritimes filed an application in Docket No. CP96-810-006 to amend its Presidential Permit authorization² to permit increased volumes of natural gas to be imported from Canada and to construct and operate an additional interconnection at the Canadian border.

2. We will authorize the Phase IV Project, with appropriate conditions, as discussed below. We also grant Maritimes' request to amend its Presidential Permit as described herein.

¹ Maritimes filed an amendment to its application on September 11, 2006.

² Maritimes' original Presidential Permit was granted on July 31, 1998. *Maritimes & Northeast Pipeline, L.L.C.*, 84 FERC ¶ 61,130 (1998).

I. Background

3. Maritimes is a limited liability company organized and existing under the laws of the State of Delaware. Maritimes is a natural gas company as defined by section 2(6) of the NGA and is in the business of transporting natural gas in interstate commerce, within the jurisdiction of the Commission. Maritimes transports gas from the Canadian-United States (U.S.) border near Goldboro, Nova Scotia, through Maine, New Hampshire, and Massachusetts to interconnections at Dracut, Massachusetts and Beverly, Massachusetts with Tennessee Gas Pipeline Company (Tennessee) and Algonquin Gas Transmission Company (Algonquin), respectively. Approximately 101 miles of Maritimes' mainline facilities, from Westbrook, Maine, to Dracut (joint facilities), are jointly owned with Portland Natural Gas Transmission System (PNGTS).

II. Maritimes' Proposal

4. Maritimes states that its Phase IV Project is designed to provide the additional capacity necessary to accommodate supplies of regasified LNG from the proposed Canaport LNG import terminal (Canaport Terminal) to be located in Saint John, New Brunswick, Canada. Maritimes explains that the regasified LNG from the Canaport Terminal will be transported approximately 90 miles on a pipeline from the tailgate of the terminal to a proposed interconnection with the Maritimes system at the U.S.-Canadian border by a Canadian pipeline (Brunswick Pipeline) that will be owned and operated by Emera Brunswick Pipeline Company Ltd, a subsidiary of Emera, Inc. Maritimes states that Canaport LNG and Emera-Brunswick are proceeding with the regulatory authorizations necessary for constructing the Canaport Terminal and the Brunswick Pipeline, respectively.

5. The new LNG supply will be delivered to the northeastern U.S. The New England market has virtually no native sources of natural gas and is at the end of natural gas pipeline transmissions systems which bring gas from the Gulf of Mexico, the western U.S. and Canada to New England. Maritimes is the only interstate pipeline that transports gas from Eastern Canada to New England. Maritimes asserts that these new LNG supplies are needed to help meet the increasing demands for natural gas in the Northeastern U.S. and to replace declines in the offshore natural gas reserves that currently supply its system.

6. The Phase IV Project would increase the mainline capacity of the Maritimes system from 415,480 Dth/d to 833,317 Dth/d, an increase of approximately 418,000

Dth/d.³ In its original application, Maritimes also proposed to increase the capacity of the joint facilities an additional 150,000 Dth/d for the account of PNGTS. However, in its amended application, Maritimes no longer proposes to construct and operate facilities to accommodate the additional 150,000 Dth/d of capacity for PNGTS on the joint facilities. Maritimes explains that it is proposing this change because PNGTS is not able to make a definitive commitment to the new capacity on the joint facilities in the time frame necessary for the Phase IV Project to be in service in order to commence deliveries from the Canaport Terminal. To implement the reduction of capacity for PNGTS, Maritimes proposes to reduce the amount of compression at the proposed Elliot Compressor Station. Maritimes claims that this proposed modification does not materially change the Phase IV Project, nor does it materially affect the requested NGA section 7 authorization for the project.

A. Proposed Facilities

7. Maritimes states that the Phase IV Project facilities will consist of additional compression, metering and pipeline looping facilities.⁴ More specifically, Maritimes proposes to construct, own, and operate the following facilities:

- approximately 1.7 miles of 30-inch diameter pipeline loop adjacent to the existing 30-inch diameter mainline from the St. Croix River crossing (Mile Post [MP] 306.7) at the U.S.-Canadian border to the Baileyville, Maine compressor station (MP 305.4);

³ This increase of capacity is for the pipeline wholly-owned by Maritimes. On the joint facilities, the proposed additional capacity is 393,000 Dth/d.

⁴ Maritimes notes that on December 12, 2005, it filed a waiver request with the Office of Pipeline and Hazardous Materials Safety Administration (PHMSA) of the Department of Transportation (DOT) in Docket No. PHMSA-2005-23448 to increase the maximum allowable operating pressure (MAOP) from 1,440 psig to 1,600 psig on its wholly-owned facilities extending from the U.S.-Canadian border to Westbrook, Maine. Maritimes states that if PHMSA grants the waiver, Maritimes proposes to implement the waiver as a part of its design for a future expansion and does not seek authorization for the increase in MAOP here. The PHMSA's decision to grant Maritimes's waiver request was published in the *Federal Register* on July 11, 2006 (71 Fed. Reg. 39148-51). While Maritimes has received authority from PHMSA to increase the MAOP of its system to 1,600 psig, the Commission notes that Maritimes may not operate its system above its currently Commission-certificated MAOP of 1,440 psig until such time as Maritimes requests and is granted authority from the Commission to operate at the higher pressure.

- five new compressor stations with a total of approximately 89,864 horse power (hp). These include new 18,085 hp compressor units at Woodchopping Ridge, Maine; Brewer, Maine; and at Searsmont, Maine; two new 13,333 hp compressor units at Westbrook, Maine,⁵ and a 8,960 hp compressor unit at Eliot, Maine located on the joint facilities;
- modifications to two meter stations in Dracut, Massachusetts and Baileyville, Maine to accommodate increased throughput;
- one new meter station at the proposed Westbrook Compressor Station which would replace Maritimes' portion of the existing Westbrook inlet meter station where the joint facilities' mainline and Maritimes' wholly-owned facilities currently connect;
- one new meter station at Baileyville, Maine to accommodate receipts of approximately 730,000 Dth/d of natural gas from the Brunswick Pipeline; and
- modifications to the Baileyville Compressor Station and the Richmond Compressor Station consisting of re-piping the stations so that their units operate in a parallel configuration rather than the current operation of the compressor units in series, as well as adding cooling at the Richmond Compressor Station for the additional heat load and odorization at the Baileyville Compressor Station.

8. Maritimes estimates that the facility cost of the Phase IV Project is approximately \$321,300,000. Maritimes projects an in-service date for the project of November 1, 2008.

B. Open Seasons and Precedent Agreement

9. Maritimes states it held an open season for its Phase IV Project from February 15 until March 31, 2005. As a result of the open season, Maritimes states that it entered into a precedent agreement for firm transportation service under Maritimes' Rate Schedule MN365 with Repsol Energy North America Corporation (Repsol) with a Maximum Daily

⁵ One unit will be located on the joint facilities and one will be located on Maritimes' wholly-owned facilities.

Transportation Quantity (MDTQ) of 730,000 Dth/d.⁶ Of the 730,000 Dth/d of transportation service, 330,000 Dth/d of natural gas will be delivered to an interconnect with Tennessee at Dracut, Massachusetts and 400,000 Dth/d to an interconnect with Algonquin at Beverly, Massachusetts. Additionally, Maritimes states that Repsol has executed an associated firm Service Agreement and Rate Agreement for which Maritimes will seek approval in a future proceeding under section 4 of the NGA.⁷

10. Additionally, Maritimes states it held a reverse open season from June 16 until July 18, 2005, to ensure that the Phase IV Project would be properly sized. As a result of the reverse open season, Maritimes executed turnback precedent agreements with its existing mainline firm shippers to relinquish a total of 257,258 Dth/d of capacity. Thus, Maritimes states that it will use a combination of the turnback capacity, existing capacity on its mainline system and capacity created by the Phase IV Project to provide the 730,000 Dth/d of firm service required by Repsol.

C. Recourse Rates

11. Maritimes proposes to provide firm and interruptible services on the Phase IV Project facilities pursuant to its existing rate schedules on file with the Commission and the General Terms and Conditions of its FERC Gas Tariff. Maritimes proposes to charge its existing recourse rates as established in its settlement in Docket No. RP04-360-000 (Settlement)⁸ as its initial rates for firm and interruptible transportation services on the Phase IV facilities. Maritimes also seeks a presumption that it can roll in the overall costs of the Phase IV Project in its next section 4 rate case. In this regard, Maritimes

⁶ As a result of the open season, Maritimes states that it also executed a precedent agreement with Anadarko LNG Marketing, LLC (Anadarko) to provide transportation for regasified LNG from a LNG terminal that Anadarko's affiliate is developing in Bear Head, Nova Scotia, Canada (Bear Head). However, because Anadarko has altered, and delayed its development schedule for its Bear Head project, Maritimes states that any further expansion of its system to accommodate throughput from Bear Head will be filed under a separate certificate application.

⁷ Maritimes filed its service agreement and negotiated rate agreement with Repsol in Docket No. RP06-361-000. The Commission will act on that filing in a separate order.

⁸ *Maritimes & Northeast Pipeline, L.L.C.*, 115 FERC ¶ 61,176 (2006) (approving contested Settlement).

notes that its Settlement requires Maritimes to file a rate case within six months of the in-service date of a system expansion, such as the Phase IV Project, if the expansion results in lower rates for existing customers.⁹

D. Amended Presidential Permit and NGA Section 3 Authorization

12. Maritimes currently holds a Presidential Permit under section 3 of the NGA to construct, operate, and maintain certain border crossing facilities at the international border at the St. Croix River near Woodland, Maine. Maritimes requests an amendment to its Presidential Permit and its authorizations under section 3 in order to allow Maritimes to construct the interconnection with the Brunswick Pipeline and import an additional 418,00 Dth/d of natural gas into the U.S. from Canada.

III. Notice, Interventions, Comments and Protests

13. Public notice of Maritimes' application in Docket No. CP06-335-000 was published in the *Federal Register* on June 2, 2006 (71 Fed. Reg. 32064-65). The parties listed in Appendix A filed timely, unopposed motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.¹⁰

14. Gaz Metro Limited Partnership, Black Bear Companies, the Maine Public Utilities Commission, and Salmon Resources Ltd. filed motions to intervene out-of-time. The Commission finds that granting these late-filed motions to intervene will not delay, disrupt, or otherwise prejudice this proceeding, or place an additional burden on the parties to this proceeding. Therefore, for good cause shown, we will grant these untimely motions to intervene.¹¹

15. Repsol filed comments in support of Maritimes' proposal. PNGTS filed a protest with its motion to intervene. Maritimes, Repsol, and KeySpan Delivery Companies filed answers in response to PNGTS' protest.

16. Public notice of Maritimes' amended application in Docket No. CP06-335-001 was published in the *Federal Register* on September 26, 2006 (71 Fed. Reg. 56141). Repsol filed comments in support of the Phase IV Project and requests timely

⁹ See section 1.6 of the Settlement.

¹⁰ 18 C.F.R. § 385.214(c) (2006).

¹¹ See 18 C.F.R. § 385.214(d) (2006).

Commission action. PNGTS filed a protest largely reiterating its prior protest in Docket No. CP06-335-000. Maritimes filed an answer to PNGTS' protest and PNGTS filed an answer to Maritimes.

17. On November 30, 2006, PNGTS filed to withdraw its protest filed in Docket No. CP06-335-000. PNGTS states that it has entered into a settlement agreement with Maritimes¹² under which PNGTS is obligated, among other things, to file to withdraw its protest in this proceeding. On December 1, 2006, PNGTS filed to withdraw, or treat as stricken, its protest filed in Docket No. CP06-335-001 and additional pleadings filed on June 19, 2006, September 29, 2006, October 30, 2006, and November 1, 2006, to the extent that such portions oppose or are otherwise adverse to Maritimes' pending proposal to expand the joint facilities. Under Rule 216(b) of the Commission's Rules of Practice and Procedure, PNGTS' requests to withdraw these pleadings have been granted by operation of law and require no further action on the part of the Commission.¹³

18. Answers to protests and answers to answers are not allowed under our rules.¹⁴ Because PNGTS has withdrawn its protests to Maritimes' proposal, we find the answers to PNGTS' pleadings are moot and we will not accept them.

19. In addition, on December 26, 2006, Mr. Mark Mendelson filed requesting intervenor status stating that he is "representing the interests and concerns of all of the pipeline abutters in Maine." He also requests that the Commission extend the comment period on the environmental assessment (EA) issued in this proceeding from 30 days to 60 days asserting that the 30 day comment period is too short a time period for anyone to review the EA.¹⁵ On January 5, 2007, Maritimes filed an answer to Mr. Mendelson's request for intervenor status and an extension of time. Maritimes states that it does not oppose Mr. Mendelson's request for intervenor status but requests that the Commission reject Mr. Mendelson's request for an extension of time to comment on the EA. Maritimes claims that the Commission's practice is to provide a comment period of 30

¹² Maritimes and PNGTS filed the settlement agreement seeking Commission approval in Docket No. CP97-238-012. The Commission will act on that filing in a separate order.

¹³ 18 C.F.R. § 385.216(b) (2006).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁵ The EA on the Phase IV Project was issued on December 11, 2006, with comments due on or before January 10, 2007.

days for an EA and granting the requested extension of time would unnecessarily delay a decision in this proceeding and place additional burdens on existing parties. On January 9, 2007, Mr. Mendelson filed an answer to Maritimes' answer. On January 10, 2007, Mr. Mendelson filed comments and a number of questions that he requests Maritimes answer.¹⁶ On January 22, 2007, Maritimes filed an answer to Mr. Mendelson's January 10 pleading.

20. On January 26, 2007, Mr. Mendelson filed additional comments in response to Maritimes' January 22 answer. In that pleading, he continues to express dissatisfaction with Maritimes' responses to his earlier questions, maintaining that there was insufficient notice provided to the public with respect to this proceeding and complaining that Maritimes had incorrectly interpreted language in his January 9, 2007 answer as a withdrawal of his request for intervenor status. He also specifically asks the Commission to "[c]onsider my request for intervenor status withdrawn as of this date." It is unclear from his correspondence whether Mr. Mendelson understands the rights an intervenor does and does not have in a certificate proceeding. However, pursuant to Rule 216, the withdrawal of any pleading is effective at the end of fifteen days from the date of filing of a notice of withdrawal if the withdrawal is not opposed and the decisional authority does not issue an order disallowing the withdrawal for good cause within that period. As we find no good cause for denying his request, Mr. Mendelson's withdrawal of his request to intervene has been granted by operation of law.

¹⁶ In general, Mr. Mendelson's informational requests are not specific to this proceeding. Rather, the requests are broader in nature and include questions related to Maritimes' business practices as well as past and future proceedings before this Commission and DOT (*e.g.*, Mr. Mendelson questions the rules for designating documents in FERC's e-library as "Public" as opposed to "non-Internet public"; alleged actions of individual construction workers during the construction of Maritimes' original project, the extent of Maritimes' personal injury liability and insurance coverage; whether an EIS, as opposed to an EA, will be prepared in conjunction with future expansions of the Maritimes pipeline; and details related to Maritimes' request to PHMSA to increase the MAOP of its existing pipeline facilities.) We find that the EA prepared for this proposal and discussed below adequately addresses the general safety and environmental impact concerns which appear to underlie Mr. Mendelson's comments. We also note that DOT is responsible for establishing criteria and requirements for the safety of natural gas pipeline facilities. The DOT sets standards for the design, construction, inspection, and operation of natural gas pipelines in accordance with the Natural Gas Pipeline Safety Act of 1968. Any applicant for a certificate from the Commission is required to verify that the proposed facilities would meet DOT safety standards.

21. Although the Commission's Rules of Practice and Procedure do not permit answers to protest or answers,¹⁷ the Commission finds good cause to waive Rule 213(a) to admit the above-described answers of Mr. Mendelson and Maritimes in order to insure a complete and accurate record.

22. However, we find that Mr. Mendelson has not provided a sufficient basis to extend the comment period on the EA an additional 30 days. The public has been provided notice of the potential issues raised by Maritimes' proposal since the initiation of the pre-filing process on October 14, 2005, in Docket No. PF05-17-000. Maritimes was required to mail or hand deliver notice of its subsequent application to all affected landowners and towns, communities, and local, state, and federal governments and agencies involved in the project. Notice of the filing of the application was also required to be published twice in a daily or weekly newspaper of general circulation in each county in which the project is located. In addition, on December 16, 2005, the Commission issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Maritimes Phase IV Project and Request for Comments on Environmental Issues and held several scoping meetings which provided affected landowners and the general public, among others, opportunities to offer comments on the proposed project. In these circumstances, we find that granting the requested extension is not warranted and would cause undue delay and place additional burdens on the applicant and other parties. Therefore, we will deny Mr. Mendelson's request for an extension of the comment period.

IV. Discussion

23. Since Maritimes proposes facilities for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Maritimes' proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Application of the Certificate Policy Statement

24. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating major new construction.¹⁸ The Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The

¹⁷ 18 C.F.R. § 385.213(a)(2) (2006).

¹⁸ *Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement)*, 88 FERC ¶ 61,277 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

25. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

26. Maritimes' proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, review of Maritimes' proposal demonstrates that projected revenues will exceed projected costs; thus there will be no subsidization by existing customers.

27. The project will not adversely affect Maritimes' existing customers, or other pipelines and their customers.¹⁹ The proposed facilities are designed to increase the capacity of the Maritimes system without degradation of service to Maritimes' existing firm customers. In fact, the Phase IV Project benefits several of Maritimes' firm shippers by enabling them to turn back unwanted capacity on the pipeline. Further, the Phase IV Project is designed as a supply access project that will provide transportation capacity to

¹⁹ Regarding gas quality and interchangeability issues, Maritimes states that it is engaging in a collaborative process with interested stakeholders on its system to determine whether it needs to revise or supplement its tariff to set forth additional specifications applicable to deliveries of regasified LNG into its system. Maritimes states that it intends to bring closure to these collaborative discussions in a timely manner and to file any necessary revisions to its tariff with the Commission.

enable LNG supplies to reach northeastern markets.²⁰ Thus, there is no evidence that service on other pipelines will be displaced or bypassed and no pipeline companies have objected to the project. Moreover, the new pipeline will benefit interconnecting pipelines by providing new sources of gas for them to transport. We conclude that Maritimes' proposal will not have adverse impacts on existing pipelines or their captive customers.

28. Maritimes states that the Phase IV Project will require acquisitions of rights of way or fee property from a limited number of landowners. It also states that the permanent wetland impacts associated with each compressor station are small. Additionally, Maritimes states that the 1.7 miles of looping facilities are located within or adjacent to existing Maritimes rights-of-way. Maritimes states that it has entered into landowner negotiations with the expectation that mutual agreement can be reached with the landowners such that eminent domain will not have to be exercised. For these reasons, we find that any adverse impacts on landowners and communities will be minimal.

29. Maritimes has entered into a long-term precedent agreement for the additional design capacity of the Phase IV Project. In addition, Maritimes' proposal provides the opportunity for existing firm shippers to turn back a total of 257,258 Dth/d of capacity. Finally, the proposal will benefit consumers by providing access to new supplies of LNG. There is a need for increased pipeline capacity to access these new gas supplies and the Phase IV Project is designed to meet that need.

30. Based on the benefits that the Phase IV Project will provide to the market and the minimal adverse effects on existing customers, other pipelines, landowners, or communities, we find that approval of the Phase IV Project is required by the public convenience and necessity.

²⁰ Maritimes asserts that Repsol, through its parent company, Repsol YPF, S.A. is a leading participant in the international LNG market and has been active in the upstream LNG liquefaction market since the start-up of Train 1 of the Atlantic LNG liquefaction terminal in Trinidad in 1999.

B. Recourse Rates and Presumption of Rolled-in Rate Treatment**1. Transportation Rates**

31. Maritimes proposes to charge as its initial rates, rates that were approved in its Settlement of its latest general rate proceeding in Docket No. RP06-360-000.²¹ Maritimes' amended application reflects an estimated facility cost for the Phase IV Project of \$321,300,000.²² Maritimes' Exhibit P sets forth the estimated annual cost of service and revenues for the new facilities for each year over a ten year period. For the first year of service, revenues are expected to total approximately \$119 million and the total cost of service is estimated at \$62.3 million. Maritimes' 10-year cost and revenue study shows that the cumulative total cost of service for 10 years is \$536,315,371, revenues are \$1,190,046,000, and revenues exceed costs by \$653,730,629. We find Maritimes' proposed project can proceed without subsidies from its existing customers and expect it to provide public benefits without adverse impacts. Maritimes' request for a presumption of rolled-in rate treatment for the Phase IV facilities is granted unless there is a significant change in the relevant facts and circumstances.

2. Fuel Costs

32. Maritimes' project involves the installation of additional compressor stations which would increase total horsepower on the system by approximately 89,900 hp. Such an increase in compression may generate increased fuel use over and above what Maritimes has historically charged shippers to transport on its system. Maritimes' application does not provide any information as to the possible impact on fuel costs or fuel retention levels to its existing shippers. To the extent there is an increase to fuel use, the increase could offset any potential transportation rate decrease generated by rolling in the Phase IV Project. Maritimes is directed to file an analysis within 30 days of this order to demonstrate what impact the new compression will have on system fuel, and whether the changes in fuel use combined with the decrease in base transportation rates will adversely impact Maritimes' existing shippers. To the extent that Maritimes' analysis shows an overall adverse impact on existing customers, Maritimes is directed to propose an incremental fuel retention percentage for the Phase IV Project.

²¹ *Maritimes & Northeast Pipeline, L.L.C.*, 115 FERC ¶ 61,176 (2006) (approving contested Settlement). Section 1.6 of the Settlement requires Maritimes to file a rate case within six months of the in-service date of a system expansion, if the expansion results in lower rates for existing customers.

²² See Exhibit K, pages 2 and 3, of the amended application.

C. Amended Presidential Permit and NGA Section 3 Authorizations

33. Maritimes seeks to amend its existing authorization under section 3 of the NGA, and its existing Presidential Permit authorizing the construction and operation of border facilities for the importation of natural gas, to reflect an additional interconnection at the border and the increased volumes of natural gas to be imported with the Phase IV Project. The proposed Phase IV Project facilities subject to NGA section 3 and the Presidential Permit are approximately 250 feet of 30-inch diameter pipeline loop adjacent to Maritimes' existing mainline, beneath the river bed of the St. Croix River near Woodland, Maine, which will interconnect Maritimes with the proposed Brunswick Pipeline.

34. Section 3 of the NGA provides for the Commission's approval of an application under that section "unless it finds that the proposal will not be consistent with the public interest." Executive Order No. 10484 requires that the Commission obtain the favorable recommendations of the Secretaries of State and Defense prior to issuing a Presidential Permit. Therefore, a draft Presidential Permit, amended to reflect Maritimes' proposal, was sent to the Secretary of State and to the Secretary of Defense for their recommendations.

35. Based on our review of Maritimes' application, we find that Maritimes' proposal to modify its natural gas export facilities to accommodate the importation of regasified LNG from Canada will facilitate growing international trade between the U.S. and Canada and provide additional supplies of natural gas to Northeastern U.S. markets. Further, by letter dated August 18, 2006, the Secretary of State indicated no objection to issuance of the Amended Presidential Permit. In addition, by letter dated August 15, 2006, the Secretary of Defense indicated no objection to issuance of the Amended Presidential Permit, pending approval and validation of any associated Army Corps of Engineers permit process. In this regard, we note that Maritimes is not allowed to start construction of the Phase IV Project prior to the issuance of the Army Corps of Engineers' permit.

36. Accordingly, in light of our approval of Maritimes' expansion proposal in Docket No. CP06-335, and the lack of adverse comment by the Secretaries of Defense and State, we find that the issuance of an amended Presidential Permit and NGA section 3 authorization to modify Maritimes' border facilities and import additional volumes of natural gas as proposed will not be inconsistent with the public interest, subject to the conditions set forth in the amended Presidential Permit in Appendix C to this order.

D. Environmental Analysis

37. Maritimes used the Commission's National Environmental Policy Act of 1969 (NEPA) pre-filing process for its project. The purpose of using the pre-filing process is to involve interested stakeholders early in the project planning and to identify and resolve issues prior to filing the certificate application. Use of this process allowed stakeholder input prior to Maritimes filing its application on May 16, 2006. During the pre-filing process, Maritimes downsized its proposal by dropping about 145 miles of looping and a planned compressor station in Massachusetts due to delays at the proposed Bear Head LNG terminal in Canada.

38. On December 16, 2005, we issued a Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Maritimes Phase IV Project and Request for Comments on Environmental Issues, and Notice of Scoping Meetings (NOI). We received hundreds of comments in response to the NOI and at the scoping meetings. Of these all but about five concerned facilities which Maritimes subsequently dropped from the project. The remaining comments expressed concern about visual and noise impacts from the compressor stations and potential land use conflicts at the Westbrook Compressor Station. These issues were addressed by our staff in the EA. In addition we are requiring Maritimes to take measures to protect the public from noise and visual impact.

39. Our staff prepared an EA for Maritimes' proposal. The EA addresses: nonjurisdictional facilities; geology; soils; wetlands and vernal pools; vegetation; wildlife and fisheries; endangered and threatened species; essential fish habitat; land use; cultural resources; socioeconomics; air quality and noise; cumulative impacts; reliability and safety; and alternatives.

40. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Maritimes' application and supplement(s), approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

41. 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/replacement or operation) of facilities approved by this Commission.²³

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

43. The Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding. Upon consideration of this record,

The Commission orders:

(A) In Docket Nos. CP06-335-000 and CP06-335-001, a certificate of public convenience and necessity is issued authorizing Maritimes to construct and operate facilities, as described more fully in this order and in the application.

(B) In Docket No. CP96-810-006, Maritimes' existing NGA authority is revised and its existing Presidential Permit issued on July 31, 1998, is amended as discussed herein and in the application.

(C) The certificate issued in Ordering Paragraph (A) is conditioned on the following:

(1) Maritimes constructing and making available for service the facilities described herein within two years of the issuance date of the order in this proceeding, pursuant to paragraph (b) of section 157.20 of the Commission's regulations; and

(2) Maritimes' compliance with all regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations.

²³ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm.*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) Maritimes request for pre-approval of rolled-in rate treatment is approved, subject to the conditions described in the body of this order.

(E) Maritimes shall comply with the environmental conditions contained in Appendix B to this order.

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

(G) Maritimes must sign and return the Testimony of Acceptance of all the provisions, conditions and requirements of the Amended Presidential Permit to the Secretary of the Commission within fifteen days of the issuance of this order.

(H) The late motions to intervene filed in this proceeding are granted.

(I) Mr. Mendelson's request to extend the comment period on the EA is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

**Maritimes & Northeast Pipeline, L.L.C.
Docket Nos. CP06-335-000 and CP96-810-006**

Parties filing timely motions to intervene:

BP Energy Company and BP Canada Energy Marketing Corp.
Corridor Resources, Inc.
EnCana Corporation
H.Q. Energy Services (U.S.), Inc.
KeySpan Energy Delivery NE
Maine State Planning Office
Mobil Natural Gas Inc.
NiSource Distribution Companies
Northeast Energy Associate and Rhode Island State Energy Statutory Trust 2000
Nova Scotia Power Inc.
Portland Natural Gas Transmission Systems
Province of Nova Scotia
Quoddy Bay, L.L.C.
Repsol Energy North America Corporation
Shell NA LNG LLC
Wausau Papers of New Hampshire, Inc.

Appendix B
Environmental Conditions for Maritimes' Phase IV Project

1. Maritimes shall follow the construction procedures 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. Maritimes must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the 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 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 and operation.
3. **Prior to any construction**, Maritimes shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector'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 supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Maritimes shall file with the Secretary any revised detailed survey alignment maps/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 alignment maps/sheets.

Maritimes' exercise of eminent domain authority granted under the NGA section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Maritimes' 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. Maritimes shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or 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, and 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 the *Upland Erosion Control, Revegetation, and Maintenance Plan*, 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 route realignments and 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 this certificate and before construction begins**, Maritimes shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Maritimes will implement the mitigation measures required by the Order. Maritimes must file revisions to the plan as schedules change. The plan shall identify:

- a. how Maritimes will 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;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Maritimes will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
 - e. the company personnel (if known) and specific portion of Maritimes' organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Maritimes will follow if noncompliance occurs; and
 - g. 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 mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Maritimes shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.

8. Maritimes shall file updated status reports prepared by the environmental inspector with the Secretary on a biweekly basis **until all construction 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. the current construction status of the Phase IV Project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) 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);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. 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
 - f. copies of any correspondence received by Maritimes from other federal, state or local permitting agencies concerning instances of noncompliance, and Maritimes' response.

9. Maritimes must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that the rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

10. **Within 30 days of placing the certificated facilities in service**, Maritimes shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Maritimes 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. Maritimes shall defer obtaining service from the Eastern Maine Electric Cooperative's planned transmission line **until** comments of the Maine State Historic Preservation Officer (SHPO) and the U.S. Fish and Wildlife Service (FWS) on the transmission line have been filed with the Secretary and the Director of OEP issues written approval to obtain service.
12. Maritimes shall file with the Secretary **before the start of construction** the location(s) and description(s) of potential wetlands where spoil may be temporarily stored as a result of construction right-of-way limitations created by steep side slopes.
13. **Prior to the start of construction**, Maritimes shall file with the Secretary a Vernal Pool Protection and Mitigation Plan. This plan shall specifically identify protection measures for the vernal pools identified within the compressor station sites, outline a post-construction vernal pool monitoring plan and describe any planned mitigation.
14. Maritimes shall file with the Secretary in its Implementation Plan photo alignment sheets clearly designating the dedicated New England Cottontail habitat and a description of the measures that would be implemented to ensure that operation of the facility would not affect this area.
15. Maritimes shall **not begin construction** activities until the staff receives concurrence from the FWS regarding its Endangered Species Act determinations and comments from National Marine Fisheries Service regarding our assessment of Atlantic salmon Essential Fish Habitat.
16. Maritimes shall file with the Secretary **prior to construction** of the proposed project a photo alignment sheet of the proposed Eliot Compressor Station site that clearly indicates state listed plant species and those individuals that would be flagged and avoided during construction.
17. **Prior to the start of construction at each new compressor station**, Maritimes shall file with the Secretary a plan for outdoor lighting at that proposed compressor station. The plan shall identify the type and placement of lighting and identify measure taken to minimize light pollution.
18. Maritimes shall **not begin construction** of the project until it files with the Secretary a copy of the determination of consistency with the Coastal Zone Management Plan issued by the Maine Coastal Program.
19. Maritimes shall defer construction at the Dracut Meter Station and the Searsmont and Westbrook Compressor Stations **until**:

- a. it files with the Secretary cultural resource reports, and treatment or avoidance plans as appropriate, and the SHPO's comments; and
- b. the Director of OEP reviews and approves all reports and plans and notifies Maritimes in writing that it may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE.**

20. Maritimes shall file noise surveys with the Secretary no later than **60 days after** placing the Eliot, Westbrook, Searsmont, Brewer, and Woodchopping Ridge Compressor Stations in service. If the noise attributable to the operation of all of the equipment at any of the Eliot, Westbrook, Searsmont, Brewer, or Woodchopping Ridge Compressor Station at full load exceeds an L_{dn} of 55 dBA at any nearby noise sensitive areas, Maritimes shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year of the in-service date.** Maritimes shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after** it installs the additional noise controls.

Appendix C

AMENDED PERMIT AUTHORIZING MARITIMES AND NORTHEAST PIPELINE, L.L.C. (MARITIMES) TO OPERATE AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA

FEDERAL ENERGY REGULATORY COMMISSION Docket Nos. CP96-810-006 & CP06-335-000

Maritimes and Northeast Pipeline, L.L.C. (Maritimes), a limited liability company organized under the laws of the State of Delaware, filed on May 16, 2006, in Docket No. CP96-810-006, 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 Maritimes to construct and operate additional import facilities at the international boundary between the United States and Canada to accommodate the importation into the United States of increased volumes of natural gas which will be regasified liquefied natural gas (LNG) from Canada.

By letter dated August 18, 2006, the Secretary of State, and by letter dated August 15, 2006, 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 modifications requested by Maritimes, 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 Maritimes (Permittee) to construct, operate, maintain, and connect 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 250 feet of 30-inch diameter high-pressure pipeline, with a maximum capacity of 452,679 Dth per day, extending from the international boundary between the United States and Canada beneath the St. Croix River near Woodland, Maine, at a depth not less than five (5) feet beneath the river bed, to an interconnection with Maritimes' Canadian pipeline affiliate, Maritimes & Northeast Pipeline Limited Partnership, and associated valving on the United States side of the river.

Approximately 250 feet of 30-inch diameter pipeline looping adjacent to the above-described pipeline, with a maximum capacity of 418,000 Dth per day, extending from the international boundary between the United States and Canada beneath the St. Croix River near Woodland, Maine, at a depth not less than five (5) feet beneath the river bed, to an interconnection with the Brunswick Pipeline in Canada, owned by Emera Brunswick Pipeline Company Ltd., and associated valving on the United States side of the river.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the importation 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 Army 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 Army, 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.

Magalie R. Salas,
Secretary.

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of __, 2007 has caused its name to be signed by __, [pursuant to a resolution of its Board of Directors duly adopted] on the __ day of __, 2007, a certified copy of the record of which is attached hereto.

Maritimes & Northeast Pipeline, L.L.C.

By _____

(Attest)

Executed in triplicate