

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Georgia Strait Crossing Pipeline LP

Docket Nos. CP01-176-000
CP01-176-001
CP01-176-003
CP01-177-000
CP01-177-001
CP01-178-000
CP01-178-001
and CP01-179-001

ORDER ISSUING CERTIFICATE AND PRESIDENTIAL PERMIT, GRANTING IN
PART AND DENYING IN PART REQUESTS FOR REHEARING AND
CLARIFICATION, AND DENYING MOTIONS TO DISMISS

(Issued September 20, 2002)

1. On March 13, 2002, the Commission issued a preliminary determination in this proceeding addressing the non-environmental issues raised by the Georgia Strait Crossing Pipeline LP (Georgia Strait) application to construct and operate approximately 47.5 miles of 16- and 20-inch diameter gas pipeline, a compressor station, and related facilities in Whatcom and San Juan Counties, Washington.¹ Authorization pursuant to Natural Gas Act (NGA) sections 3 and 7(c) was reserved pending completion of an environmental review of the proposed project.
2. Powerex Corporation (Powerex) filed a timely request for clarification, or alternatively for rehearing, of the March 2002 order. Whatcom and San Juan Counties, Washington, filed motions to dismiss Georgia Strait's application, or alternatively to hold an evidentiary hearing.

¹98 FERC ¶ 61,271 (2002).

3. As discussed below, we analyze the environmental issues raised by the application and grant Georgia Strait NGA section 7 certificate authority, NGA section 3 authority, and a Presidential Permit to construct and operate its proposed pipeline.² In addition, we grant in part and deny in part requests for clarification and rehearing of the March 2002 order, and deny motions to dismiss that prior order. We find Georgia Strait's proposed project to be consistent with the public interest because it will increase the potential flow of natural gas to underserved and/or unserved markets.

I. Preliminary Determination

4. In our March 2002 order, we made a preliminary determination, based on our analysis of the non-environmental issues raised by Georgia Strait's proposal, that the proposed project was required by the public convenience and necessity. Georgia Strait proposes to construct a pipeline to carry gas east to west, from the Canadian border near Sumas, Washington, overland across Whatcom and San Juan Counties, Washington, then underwater across the Strait of Georgia, to a subsea interconnection mid-channel in the Boundary Pass at the international border between the United States and Canada.³ The onshore facilities will consist of approximately 32.1 miles of 20-inch pipe, 1.4 miles of 16-inch pipe, a 10,302 horsepower (ISO-rated) compressor station at Cherry Point, Washington, and a receipt point meter station at the border near Sumas. The offshore facilities will consist of approximately 14 miles of 16-inch pipe, with a subsea tap valve assembly near the San Juan Islands.

²Specifically, Georgia Strait is granted the following authorizations: in Docket No. CP01-176-000, certificate authorization to construct and operate approximately 47.5 miles of 16- and 20-inch diameter gas pipeline, a compressor station, and related facilities, in Whatcom and San Juan Counties, Washington, pursuant to NGA section 7(c) and Part 157 of the Commission's regulations; in Docket No. CP01-177-000, blanket transportation certificate authorization, pursuant to Subpart G of Part 284 of the Commission's regulations; in Docket No. CP01-178-000, blanket construction and abandonment certificate authorization, pursuant to Subpart F of Part 157 of the Commission's regulations; and in Docket No CP01-179-000, a Presidential Permit and authorization to site, construct, operate, and maintain proposed gas import and export facilities at the border of the United States and Canada, pursuant to NGA section 3, Part 153 of the Commission's regulations, Executive Order Nos. 10485 and 12038, and the Secretary of Energy's Delegation Order No. 0204-112.

³The proposed system will also permit west-to-east transportation by means of backhaul.

5. At its east terminus, onshore near Sumas, the proposed pipeline will interconnect with both Westcoast Energy Inc. (Westcoast) of Canada and the domestic Northwest Pipeline Corporation (Northwest). At its west terminus, offshore in the Strait of Georgia, the proposed pipeline will interconnect with a new pipeline to be built and operated by GSX Canada Limited Partnership (GSX Canada). GSX Canada will carry gas west for approximately 37.5 miles, to an onshore interconnection with an existing Centra Gas British Columbia Inc. (Centra) pipeline near Shawnigan Lake on Vancouver Island, British Columbia, Canada. Georgia Strait states that there is a growing demand for gas on Vancouver Island, and a particular need for gas to fuel two electric generation facilities, one recently placed in service and the other yet to be constructed.

6. Georgia Strait is expected to primarily import gas from Canada, move it across the state of Washington, then export the gas back into Canada. However, Georgia Strait's interconnection with Northwest will permit deliveries of domestic gas supplies to Canadian markets as well as deliveries of Canadian gas to domestic markets. Domestic gas destined for Canada will be delivered to Georgia Strait by Northwest at Sumas, either directly or by displacement.⁴ In addition, Canadian gas may be delivered via backhaul from Vancouver Island to domestic markets by means of Georgia Strait's diverting gas to U.S. customers, and then reducing, by an equivalent volume, gas flowing across the GSX Canada interconnection.

A. Response to March 2002 Order

1. Powerex's Request for Clarification and/or Rehearing

7. Powerex has executed a binding precedent agreement with Georgia Strait for firm transportation service for 30 years for 95,700 dekatherms of gas per day (Dth/d), the full design capacity of the proposed pipeline. In our March 2002 order, we objected to

⁴Gas would move by displacement when domestic gas is taken off of Northwest's system upstream of Sumas, and then replaced by equivalent volumes of Canadian gas delivered to Georgia Strait at Sumas via Westcoast. Because Northwest's system is bi-directional, Northwest can move gas east-to-west for delivery to Georgia Strait at the Sumas interconnect and can also receive gas at that same interconnect and carry it west-to-east. However, operational and economic circumstances make it unlikely that Northwest will take physical delivery of gas from Georgia Strait at Sumas and transport gas to points east. We note that Georgia Strait indicates it intends to add facilities to permit it to make deliveries directly to customers in Washington state.

certain of the terms of the parties' transportation service agreement (TSA). Specifically, we found fault with: (1) a unilateral, rather than bilateral, evergreen provision; (2) an early termination option allowing for a buyout of the contract after 15 years; (3) a Georgia Strait obligation to offer Powerex an amended TSA in the event it provides a more favorable deal to another shipper prior to the commencement of service; and (4) customized dispute resolution procedures and assignment provisions. In light of our recent clarification of our policy regarding TSAs' negotiated terms and conditions,⁵ we directed Georgia Strait to revise its agreement with Powerex to either remove these four negotiated provisions or else amend its proposed tariff to make such provisions generally available on a nondiscriminatory basis.⁶

8. Powerex maintains that the evergreen clause is a critical provision of its TSA because, as a negotiated rate shipper, it does not receive a regulatory right of first refusal (ROFR). Thus, Powerex argues the Commission should clarify that a TSA between a pipeline and a negotiated rate shipper may contain a contractual ROFR when modeled on the comparable regulatory ROFR in the General Terms and Conditions of the pipeline's tariff.⁷ Further, Powerex argues that a pipeline should be permitted to offer an early termination right in a negotiated TSA when the pipeline offers firm shippers the same right in its generally applicable tariff.⁸ Powerex states that its TSA will be revised so that

⁵See, e.g., ANR Pipeline Company, 97 FERC ¶ 61,224 (2001) and 97 FERC ¶ 61,223 (2001).

⁶98 FERC ¶ 61,271, at 62,055 (2002).

⁷Citing ANR Pipeline Company, 97 FERC ¶ 61,252, at 62,118-119 (2001).

⁸Citing Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,091, at 31,341 (Feb. 9, 2000); order on reh'g, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); reh'g denied, Order No. 637-B, 92 FERC ¶ 61,062 (2000), aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC, 285 F.3d 18 (D.C. Cir. Apr. 5, 2002), "a pipeline and its shippers may agree to include a right of first refusal roll-over or evergreen clause in their contracts. If a contractual right of first refusal, rollover or evergreen clause would allow the shipper to exercise a right of first refusal in situations where the regulatory right would not apply, the shipper may rely on its contractual rights (continued...)"

the TSA's contractual ROFR is comparable to the ROFR in Georgia Strait's tariff; in addition, Georgia Strait will add a provision to its generally applicable tariff governing early termination and buyout to ensure no shipper is subject to undue discrimination.

9. With respect to its "most favored nations" clause – whereby Georgia Strait offers Powerex the option to amend its TSA in the event Georgia Strait offers service to another shipper on more favorable terms prior to the proposed pipeline's in-service date – Powerex contends that this provision is consistent with the Commission's policy on selective discounting. Powerex argues that if Georgia Strait were to insert a similar provision into its generally applicable tariff, then Georgia Strait would have to give all firm shippers the lowest discounted rate. Powerex argues that this would produce uniform discounting, a result inconsistent with the Commission's policy permitting selective discounting.⁹ Powerex therefore requests that the Commission reverse its position. To address the Commission's concern, Powerex proposes to modify its TSA to clarify that the option to amend the agreement with Georgia Strait will apply only to the negotiated rate, and not to any other terms of the TSA.¹⁰

10. With respect to the proposed dispute resolution provisions, Powerex points out that it is a wholly-owned subsidiary of British Columbia Power and Hydro Authority (BC Hydro), a provincial Crown corporation owned by the government of British Columbia, Canada, and that it markets power within Canada, and to Mexico, and within and to the U.S. In view of its affiliation with a foreign government, Powerex argues that it should be permitted to include customized dispute resolution procedures in the TSA with Georgia Strait. Powerex maintains that the Commission has previously acknowledged the unique nature of foreign affiliates, and in response, has allowed the inclusion of provisions in a foreign affiliate's TSA that do not conform with the provisions available

⁸(...continued)

in lieu of the regulatory right of first refusal. The choice is for the shipper to make."

⁹Powerex observes that the Commission has rejected proposals to compel pipelines to add a most favored nations clause to their pro forma Form of Service Agreements for fear of rigid uniformity, while finding such a clause acceptable in individual service contracts. See South Georgia Natural Gas Company, 63 FERC ¶ 61,190 (1993), order on reh'g, 64 FERC ¶ 61,251 (1993) and Southern Natural Gas Company, 64 FERC ¶ 61,274 (1993).

¹⁰Citing Gulfstream Natural Gas System, L.L.C. (Gulfstream), 100 FERC ¶ 61,036 (2002).

to other customers via a pipeline's tariff.¹¹ Powerex claims its situation is similar, and requests similar treatment for the non-conforming provisions in its TSA.

Commission Response

11. In our March 2002 order, while we endorsed Georgia Strait's and Powerex's decision to negotiate a transportation rate,¹² we questioned the legitimacy of other negotiated terms in the parties' TSA. Our goal is to ensure that shippers contracting for service under the terms set forth in Georgia Strait's pro forma service agreement receive service consistent with that provided to Powerex under the negotiated terms of its TSA.¹³ Where service is not provided to all shippers under the same standard set of terms and conditions, the potential for unduly preferential or discriminatory treatment is present. We have required a pipeline that submits a TSA containing negotiated terms which we find constitute material deviations from its tariff, to either modify its tariff in order to offer the same negotiated terms to all its customers or justify why the TSA-specific terms of service are needed to meet an individual customer's requirements.¹⁴

¹¹Tennessee Gas Pipeline Company, 88 FERC ¶ 61,300 (1999), reh'g granted, 90 FERC ¶ 61,037 (2000).

¹²We found Georgia Strait's pro forma tariff's section 7 on negotiated rates to be consistent with Commission policy as articulated in Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996), reh'g and clarification denied, 75 FERC ¶ 61,024 (1996), reh'g denied, 75 FERC ¶ 61,066 (1996).

¹³We have described negotiated terms and conditions of service as being any provisions that result in a customer's receiving a different quality of service than that provided to other customers under the pipeline's tariff or that affect the quantity of service received by others. See, e.g., Columbia Gas Transmission Corporation, 97 FERC ¶ 61,221, at 62,003 (2001) and Dominion Transmission, Inc., 93 FERC ¶ 61,177 (2000).

¹⁴See, e.g., ANR Pipeline Company, 98 FERC ¶ 61,175 (2002); Tennessee Gas Pipeline Company, 97 FERC ¶ 61,225, at 62,029 (2001); and Columbia Gas Transmission Corporation, 97 FERC ¶ 61,221 at 62,003 (2001). This approach follows from the Commission's decision, as discussed in Order No. 637, not to provide pipelines
(continued...)

12. We have observed that guarding against the potential for undue discrimination does not require that every material deviation from a pipeline's pro forma service agreement be prohibited. For example, we have permitted pipelines to negotiate rates, provided the shipper continues to have the option of electing to receive service under a recourse rate specified in the pipeline's tariff.¹⁵ Additionally, we have accepted TSAs with terms that differ materially from a pipeline's tariff when we have been persuaded of the need to do so to, and have been assured that doing so would not adversely affect the quality of service received by any shipper.¹⁶

13. With respect to the negotiated ROFR, we clarify that if, as Powerex proposes, a ROFR provision is included in Georgia Strait's tariff, our stated concerns will have been adequately addressed. Accordingly, we expect Georgia Strait to amend section 8.5 of the General Terms and Conditions of its tariff to permit all shippers the opportunity offered to Powerex of including an ROFR clause in their service agreements.¹⁷

14. A shipper's right to terminate a TSA before its specified expiration date is a valuable right, as it can enable the shipper to avoid costs that would otherwise be incurred through the designated duration of the TSA. Thus, we affirm our finding that a negotiated buyout clause could lead to undue discrimination, and so require that the

¹⁴(...continued)

with the authority to file for pre-approval of the right to negotiate terms and conditions of service with individual customers, due to the risk of undue discrimination among customers.

¹⁵Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4,633 (February 7, 1996), 74 FERC ¶ 61,076 (1996). In addition, we have found no cause to bar negotiated terms that "include the price, the term of service, the receipt and delivery points, and the quantity." Order No. 637, FERC Stats. & Regs. ¶ 31,300, at 31,344.

¹⁶See, e.g., note 10.

¹⁷See, e.g., the ROFR provision in Northern Natural Gas Company's tariff. 92 FERC ¶ 61,103 (2000).

clause be removed from Powerex's TSA or that a similar provision be included as an option in Georgia Strait's tariff.¹⁸

15. Article VI, section 6.1 of the TSA, states that prior to the proposed project's commissioning date, Georgia Strait will not enter into any other transportation agreement "with respect to rates, tariffs, terms and conditions of service or rights that are more favorable" than those provided to Powerex, unless Georgia Strait "offers the same rates, tariffs, terms and conditions of service or rights" to Powerex. We will accept this most favored nations provision in light of its limited applicability during the pipeline's planning and construction phases.

16. Ideally, a project applicant will present evidence of a customer or customers willing to contract for the proposed capacity in full, preferably for firm, long-term service at a maximum rate. Here, Georgia Strait has done so, as Powerex has signed up for the full capacity of the proposed pipeline for a 30-year term, albeit at a negotiated rate of \$0.42230 per Dth of contract demand, rather than the \$0.52635 per Dth recourse rate. If prior to placing the project in service, Powerex seeks the protection of section 6.1 to permit it to revise its contract in accordance with a more favorable future offer to another shipper, we find no cause to object, given that the terms of the Powerex TSA are public. We presume prospective shippers will compare any offer Georgia Strait presents against the terms of the Powerex TSA. Consequently, we do not believe that section 6.1 of the TSA either prejudices prospective shippers in bargaining with the pipeline or provides Powerex with any unduly discriminatory advantage. Accordingly, we clarify that this clause, conditionally allowing for the revision of the TSA prior to the Georgia Strait in-service date, may remain unchanged.

17. In contrast, we find Article VI, section 6.2 of the TSA, which takes effect after the in-service date, may not remain unchanged. Section 6.2 states that after the new pipeline's commissioning date, Georgia Strait "will not enter into any firm transportation

¹⁸See Tennessee Gas Pipeline Company, 97 FERC ¶ 61,225, at 62,030 (2001), wherein we explain that "if the customer desires a special contract demand reduction or early termination right not provided in the generally applicable tariff, the availability of service at the recourse rate does not provide an adequate substitute, since recourse service would not include any such provision. A shipper obtaining such a buyout provision would be automatically insulated from the risk of not being able to terminate its service agreement early, and therefore, would have an advantage over recourse rate shippers. It is, therefore, our conclusion that pipelines should not be permitted to negotiate such provisions, unless they are offered, subject to reasonable conditions, as part of the pipeline's generally applicable tariff."

service agreement or other agreement with a third Person for firm service" for a term of one year or more that offers "rates, tariffs, terms or conditions of service or rights that are more favorable . . . than those provided to" Powerex unless Georgia Strait demonstrates that it "acted prudently in maximizing the incremental revenue . . . from the pipeline capacity made available" and "the projected incremental revenue is not less than the projected incremental costs . . . of making the pipeline capacity available." We concur with the general principle represented, namely, that Georgia Strait not make any financially disadvantageous deals. However, we do not believe that Powerex, or any other shipper, should be in a position to interfere with Georgia Strait's efficient management of its system. Provided a pipeline's transactions are permissible under our regulations, we see no need for the pipeline to be constrained by a clause compelling it to satisfy a shipper that it has "acted prudently in maximizing the incremental revenue." Nevertheless, as noted below, we can accept this most favored nations clause as long as it is revised and limited to allowing Powerex to amend its negotiated rate to match a discounted rate that Georgia Strait may later offer another shipper.

18. In Order No. 637, to guard against undue discrimination, we decided not to allow a pipeline to individually negotiate terms of service in a TSA with one shipper unless other shippers could also obtain comparable terms of service under the pipeline's tariff and Form of Service Agreement. As an exception to such uniformity, we have permitted pipelines to offer selective discounts in order to maximize throughput, discounting prices to retain and attract business by meeting competition. This benefits all customers, including captive customers that do not receive discounts, by spreading fixed cost recovery over more units of service.¹⁹ However, to guard against undue discrimination, such discounts, if offered, must be available to similarly situated shippers.²⁰ We do not believe that section 6.2 of Powerex's TSA explicitly articulates either a pipeline's constraint in varying shippers' terms of service or a pipeline's flexibility in discounting rates.

¹⁹See, e.g., Northern Natural Gas Company, 99 FERC ¶ 61,051, at 61,222-23 (2002).

²⁰We concur with Powerex's observation that it would undermine our policy on selective discounting if we were to compel Georgia Strait to offer service to all shippers under identical rates. This is not our intention. Accordingly, we clarify that including a most favored nations clause in the tariff that mirrors section 6.2 of the TSA, as suggested in our March 2002 order, would be unsatisfactory.

19. We will direct Georgia Strait to either eliminate section 6.2 or modify it to specify that any option afforded Powerex to amend its TSA is limited to revising its rates, and is only applicable in the event Georgia Strait provides comparable service to a similarly situated shipper at rates discounted below Powerex's negotiated rates. This modification is consistent with the Gulfstream decision cited by Powerex. In that case, we accepted an agreement between a pipeline and a shipper specifying that if the pipeline subsequently offered "more favorable rates" to a second similar shipper, the pipeline would then offer the first shipper the option to receive service under the more favorable rates. We found "this type of most favored nations clause to be acceptable, since it is applicable only to the negotiated rate to be paid . . . Therefore, it will not result in [one shipper] receiving a different quality of service from other shippers or adversely affect other shippers."²¹

20. We reject Powerex's assertion that a non-conforming dispute resolution clause is necessary due to the unique international nature of the proposed project and its prospective participants. Nevertheless, upon review, we will grant rehearing and accept the non-conforming clause because we believe it presents no potential for undue discrimination. Article X, section 10.1 of the TSA, states that "[e]xcept for those disputes over which the FERC has exclusive jurisdiction," the parties agree that disputes "shall be submitted to final and binding arbitration in Calgary, Alberta in accordance with the American Arbitration Association (International Rules) then in effect." The subsequent section 10.2 notes that "[n]othing in this Article X shall be construed to limit or exclude in any way the jurisdiction of the FERC."

21. The Article X provisions differ materially from the standard dispute resolution procedures contained in section 20 of the General Terms and Conditions of Georgia Strait's tariff. Nevertheless, we find no harm in permitting Powerex and Georgia Strait to bring their grievances to a forum in Calgary. Although not so stated in the tariff, the option to employ any means in any forum to reach accord on any matter in dispute is open to all shippers, regardless of national origin. Hence, Powerex's status as a foreign affiliate need not occasion any special accommodation. Of course, following discussions with Georgia Strait, whether in Calgary or elsewhere, any resolution reached among parties concerning matters within the Commission's jurisdiction must be submitted to the Commission for final approval.

2. Whatcom and San Juan Counties

²¹100 FERC ¶ 61,036, at 61,125.

22. Whatcom County, Washington, requests that the Commission dismiss Georgia Strait's application on the grounds that the Commission lacks NGA section 7 jurisdiction over the proposed project; alternatively, Whatcom County seeks an evidentiary hearing.²²

23. Whatcom County stresses that all gas supply sources and all gas end users identified by the applicant are Canadian; in addition, given current gas supply sources and the configuration of the existing gas infrastructure grid, there is no reasonable possibility that domestic gas will flow through the proposed pipeline.²³ Thus, Whatcom County concludes that the proposed Georgia Strait project is designed as a conduit to move Canadian gas to Canadian customers.

24. Whatcom County acknowledges that the Commission has jurisdiction under NGA section 3 over the border crossing endpoints of proposed pipeline; however, Whatcom County asserts that the Commission does not have jurisdiction under NGA section 7 over the remaining stretch between the borders, characterizing this mid-section as an intrastate pipeline to be used for foreign, and not intrastate, commerce.²⁴ Whatcom County argues that the fact that Georgia Strait is capable of carrying domestic gas should not preclude

²²Juan County, Washington, submitted a separate and identical request, stating that the basis for its request is set forth in Whatcom County's submission. Thus, San Juan County effectively joins in the argument as presented by Whatcom County.

²³See Whatcom County's Motion to Dismiss, Affidavit of James Lazar, at 4 (June 17, 2002). Mr. Lazar notes that domestic gas enters Washington along the state's eastern border with Idaho, and contends that this source of domestic gas is consumed before reaching Whatcom County, located in the northwest corner of the state. Because Georgia Strait's proposed line would lie close to Sumas, a major import point for Canadian gas, Mr. Lazar expects that in practice, the proposed line will carry Canadian gas exclusively. Mr. Lazar acknowledges that customers proximate to the proposed line can currently contract for gas with domestic producers; however, he expects all such domestic gas contracts will be fulfilled via displacement, whereby domestic supplies are taken off at points east, then replaced at western delivery points by equivalent volumes of Canadian gas.

²⁴Whatcom County points out that the Commission's NGA jurisdiction applies to natural gas companies that transport gas between states, but does not apply to gas companies that transport gas between a single state and a foreign country. See *Distrigas Corporation v. FPC* 495 F.2d 1057 (1974) and *Border Pipeline Company v. FPC*, 171 F.2d 149 (1948).

the Commission from finding that the proposed pipeline is exempt from its section 7 jurisdiction as an intrastate facility. Whatcom County contends that until domestic gas is flowing through the proposed line, Georgia Strait is not engaging in interstate commerce. Further, even if domestic gas is transported over the proposed pipeline, Whatcom County maintains Georgia Strait should then be exempt from the Commission's section 7 jurisdiction pursuant to NGA section 1(c) as a Hinshaw pipeline.²⁵

a. Georgia Strait Response

25. In response to Whatcom County, Georgia Strait contends that its proposed pipeline is properly classified as an interstate pipeline subject to the Commission's NGA section 7 regulatory jurisdiction.²⁶ Georgia Strait concurs with Whatcom County in recognizing a distinction between foreign commerce, which is not necessarily subject to the Commission's regulatory jurisdiction under NGA section 7, and interstate commerce, which is. Georgia Strait, however, insists that this distinction is immaterial, since its proposed pipeline will engage in both foreign and interstate commerce.²⁷

26. Georgia Strait maintains that the configuration of its proposed pipeline has not changed from its initial application; it continues to plan to interconnect the Sumas east terminus of its new line to the existing facilities of Westcoast and Northwest Pipeline

²⁵Section 1(c) of the NGA, the Hinshaw Amendment, provides that the NGA shall not apply to a natural gas company engaged in interstate transportation if the company receives all gas volumes at or within the boundary of a state, the gas is consumed entirely within that state, and the facilities, rates, and services are subject to regulation by that state. Under such circumstances, such facilities and services are deemed to be "matters primarily of local concern," and as a result, are exempt from the Commission's jurisdiction over interstate facilities and services.

²⁶Section 385.213(a)(2) of the Commission's Rules of Practice and Procedure generally does not permit answers to requests for rehearing. However, we may waive this rule for good cause shown. In this instance, we will do so and accept Georgia Strait's answer, as it helps to clarify the issues under consideration in this proceeding.

²⁷Both Georgia Strait and Whatcom County agree that the border crossing portion of the proposed pipeline used to import and export natural gas is properly subject to NGA section 3. Georgia Strait adds that Commission jurisdiction over the bulk of the line that traverses Whatcom County, Washington, is not derived from any extension of NGA section 3 oversight, but rests on the Commission's separate section 7 statutory authority over facilities used to transport natural gas in interstate commerce.

Corporation (Northwest). The interconnection with Westcoast at the border will allow the Georgia Strait line to receive Canadian gas supplies. The interconnection with Northwest is at the same location, immediately upstream of the Westcoast interconnect. The Northwest interconnect will allow Georgia Strait to both receive domestic gas supplies, and in the event of a disruption to its line, to deliver gas to Northwest's bi-directional system.

27. Georgia Strait asserts that in addition to this physical integration with Northwest's existing interstate system, Powerex, to date the sole prospective shipper for the new pipeline, intends to purchase some part of its gas volumes from U.S. firms' domestic supplies.²⁸ Georgia Strait concedes that deliveries of such domestic gas will "generally" be by displacement, rather than by physical flow across its interconnection with Northwest. However, Georgia Strait maintains that although the proposed pipeline is designed to move gas east-to-west, it will be able to accommodate west-to-east backhauls by displacement by delivering gas to Northwest. Georgia Strait stresses that these transactions constitute transportation of gas in interstate commerce, regardless of whether gas flows in one continuous physical stream or reaches delivery points via displacement.²⁹

28. Georgia Strait rejects Whatcom County's assertion that its proposed pipeline will be exempt from the Commission's jurisdiction pursuant to NGA section 1(c). Georgia Strait maintains that any claim to NGA-exempt status would fail because not all gas received will be consumed within Washington (initially, most of the gas it carries will be consumed in Canada, with all remaining volumes moved to other states by means of

²⁸See Georgia Strait's Data Response, at 4 (February 20, 2002), noting that Powerex, in addition to its stated intention to purchase gas from U.S. suppliers to meet its future needs, is already doing so to meet its current needs.

²⁹Georgia Strait references section 284.1(a) of the Commission's regulations, defining transportation as including "storage, exchange, backhaul, displacement, or other methods of transportation." Georgia Strait notes that National Fuel Gas Distribution Corporation, 93 FERC ¶ 61,276, at 61,897 (Dec. 14, 2000), states that "[t]he Commission has long held that delivery of interstate gas by displacement constitutes jurisdictional interstate transportation service," citing Williams Natural Gas Company, 61 FERC ¶ 61,205, at 61,760 (1992), aff'd sub nom., Oklahoma Natural Gas Company v. FERC, 28 F.3d. 1281 (1992) and Natural Gas Pipeline Company of America, 15 FERC ¶ 61,254, at 61,586 (1981).

displacement), and because the state of Washington will not regulate Georgia Strait's facilities and rates.

b. Commission Response

29. As an initial matter, we will deny the Whatcom and San Juan County requests for an evidentiary hearing. An evidentiary trial-type hearing is necessary only where material issues of fact are in dispute that cannot be resolved on the basis of the written record.³⁰ In this case, we find there are no material issues of fact that cannot be resolved on the basis of the existing record, thus we find no need for an evidentiary hearing.

30. We share Whatcom County's expectation that Georgia Strait's proposed pipeline will serve principally to move Canadian gas to Canadian customers, *i.e.*, to promote foreign commerce. We also share Georgia Strait's expectation – based on evidence in the record – that some lesser amount of the proposed pipeline's capacity will be given over to moving gas between states. Because NGA section 7 does not grant the Commission jurisdiction by degree, no matter how small this interstate aspect of Georgia Strait's business is when compared to the pipeline's foreign commerce transactions, this movement of gas between states subjects the entire project to our regulatory oversight under NGA section 7.³¹

³⁰See, *e.g.*, *Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); and *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

³¹It was on this basis that we reached the determination in our March 2002 order that Georgia Strait's proposal would be subject our NGA section 7 jurisdiction. Accordingly, that order did not address the prospect, as raised and rejected above by Whatcom County, that our NGA section 3 authority over the two border crossing segments might be expanded to encompass the interconnecting line between these two sections. We find no reason to discuss whether the scope of our section 3 authority might reach beyond the border crossing portions proper, as we are affirming our earlier finding that NGA section 7 applies to the project as a whole. See generally *Inter-City Minnesota Pipelines Ltd.*, 44 FPC 262 (1970) (the FPC authorized the export and import gas to and from Canada under NGA section 3, but reserved the right to require that the pipeline file an application at some point in the future under NGA section 7 for authorization for the facilities).

31. We concur with Whatcom County that we cannot rely on speculation regarding future changes in a project's configuration or operation to confer jurisdiction on an otherwise NGA-exempt project. In this case, Georgia Strait will install taps and meters along its line in anticipation of later constructing lateral lines to facilitate deliveries to additional end users. We believe it would be inappropriate to claim jurisdiction over Georgia Strait based exclusively on the expectation that lateral lines eventually will be built. Consequently, we did not do so. Our basis for asserting jurisdiction did not depend on future facilities, instead our finding was based on the proposed initial configuration of the new pipeline. This configuration includes an interconnection with the existing Northwest pipeline, at which interconnect gas in interstate commerce will be both received and delivered. As noted, it is immaterial how much gas crosses over at this interconnect. Further, it is immaterial whether gas moves across this connection physically, molecule by molecule, or moves between Georgia Strait's and Northwest's systems by displacement.³² The interconnect itself constitutes physical and operational integration with the existing interstate gas grid, and so renders Georgia Strait's proposed project jurisdictional under NGA section 7. Georgia Strait stakes no claim to Hinshaw status. If it did, the claim would fail, since under the NGA section 1(c) criteria, all gas received "within or at the boundary of a State" must "be ultimately consumed within such State," and Georgia Strait, upon commencing service, will be moving gas out of Washington state.³³

II. Environmental Analysis

³²See Associated Gas Distributors v. FERC, 899 F.2d 1250, at 1254, note 1 (D.C. Cir. 1990), in which the court clarified that "since natural gas is fungible, its 'transportation' does not always take the form of the physical carriage of a particular supply of gas from its starting point to its destination. Just as Western Union can 'transport' money from one place to another by accepting cash at the starting point and paying out different, but equivalent, cash at the destination, so too [can] pipelines transport gas." See also, National Fuel Gas Distribution Corporation, 94 FERC ¶ 61,136, at 61,520 (2001), explaining that "transportation by displacement does not produce different jurisdictional results than transportation by forward haul." Citation omitted.

³³Here, although the majority of the gas carried by Georgia Strait is expected to be consumed in Canada, a portion of the gas will be transported, presumably via displacement, to consumers located in states served by Northwest. It is this gas, bound for domestic consumption outside the state of Washington, that precludes Georgia Strait from meeting the NGA section 1(c) in-state consumption criterium.

32. The Commission prepared an Environmental Impact Statement (EIS) to consider the environmental impact of the proposed pipeline. The EIS addresses the purpose and need for the project, the no-action alternative, system and routing alternatives, air quality and noise, geologic hazards, ground water, wetlands and waterbodies, erosion and sediment control, soils, prime farmland, wildlife, fisheries, threatened and endangered species, land use, public interest areas, cultural resources, visual resources, socioeconomics, pipeline reliability and safety, and cumulative impacts.

33. The Commission issued a notice of intent (NOI) to prepare an EIS on June 1, 2001. Copies of the NOI were sent to interested parties including federal, state, county, and local agencies; elected officials (U.S. representatives, senators and state governors, and local and state representatives); local newspapers and libraries; landowners; and intervenors.

34. Public scoping meetings were held in Lynden and Friday Harbor, Washington, on June 26 and 28, 2001, respectively. Written comments were received in response to the NOI. Issues and concerns raised in response to the NOI were addressed in the draft EIS, which was issued on December 10, 2001.

35. The draft EIS was filed with the U.S. Environmental Protection Agency (EPA), and a formal notice was published in the Federal Register on December 13, 2001, indicating that the draft EIS was available for public review and comment.³⁴ Additionally, copies of the draft EIS were mailed to agencies, groups, and individuals on the mailing list. The public had until February 4, 2002, to comment on the draft EIS. In addition, a public meeting was held on February 26, 2002, to receive comments from the public. Comments were received from four federal agencies, five state agencies, four local agencies, the Whatcom County Council, two Native America groups, six companies and organizations, ten individuals, and the applicant. In addition, 25 people spoke at the public meeting in Lynden, Washington.

36. On July 17, 2002, the Commission issued the final EIS. The final EIS includes copies of most of the comment letters received on the draft EIS and responses to those comments. The final EIS also incorporates the analysis of information that was filed subsequent to the issuance of the draft EIS.

37. The final EIS concludes that construction and operation of the proposed project will result in limited adverse environmental impact. As part of the analysis in the final

³⁴66 FR 64,413-14.

EIS, specific mitigation measures are developed for the construction and operation of the proposed facilities, including a program of environmental inspection and monitoring that is designed to contain most of the impact within the project vicinity and to ensure compliance with certificate and permit requirements. The final EIS concludes that these measures will substantially reduce any environmental impact and further concludes that if this project is constructed and operated in accordance with these mitigation measures, it will be an environmentally acceptable action. The Commission adopts the findings and conclusion of the final EIS.

38. Following issuance of the final EIS, letters were received from Kenneth E. and Micaela H. Brostrom; EPA; and the U.S. Public Health Service, Department of Health and Human Services. The latter states that the final EIS adequately addresses the comments it submitted on the draft EIS.

39. The Brostroms are concerned that the proximity of the pipeline to the San Juan Islands, in particular to Waldron Island, could impact the vulnerability of these islands in the event the pipeline was damaged as the result of a seismic event.³⁵ EPA is concerned that the final EIS does not give sufficient consideration to alternatives. The EPA suggests that expanding the existing Atlantic Richfield Company Pipeline (ARCO) could serve the same ends as the proposed Georgia Strait project, with the advantage that there would be no need to establish a new right-of-way corridor. EPA also suggests that the expansion of the existing Centra or BC Gas, Inc. (BC Gas) pipeline systems in Canada could also satisfy the needs set forth in the Georgia Strait proposal. EPA questions whether the Commission has coordinated appropriately with Canadian authorities concerning the portion of the proposed project that will require new construction in Canada. Finally, EPA finds the risk of damage to the pipeline from seismic events to be "extraordinarily high" and proposes the EIS present a clear statement of this risk along with maps that identify areas of greatest risk.

40. In response to the Brostrom's concern regarding seismic impacts, we observe that the route of the Georgia Strait line will be approximately three miles away from Waldron Island and run under several hundred feet of water. Consequently, we do not believe that

³⁵In addition, the Brostroms note that the Waldron, Patos, Sucia, and Matia Islands do not appear in the final EIS's depiction of San Juan Islands on page 3-6, figure 3.1.2-1. Despite these islands' omission from the graphic representation on page 3-6 of the final EIS, we affirm that the impact of the proposed pipeline on these particular islands, and all other potentially impacted San Juan Islands, was taken into consideration in our environmental analysis.

seismic damage to the pipeline will adversely affect Waldron Island or any other San Juan Island.

41. EPA does not challenge the need for the proposed pipeline, but prefers that this need be met by expanding an existing system. In the US, the only existing system that might be expanded is an ARCO pipeline. The ARCO pipeline is currently operating at capacity; consequently, moving additional gas on this system would require looping the existing line or replacing that line with larger diameter pipe. The existing ARCO corridor runs through sensitive areas, including sections with residences adjacent to either side of the right-of-way. Thus, enlarging ARCO's corridor by laying another line or a larger line may require deviating from the existing right-of-way to route around these sensitive areas. In addition, while the ARCO alternative will lie along an existing right-of-way for the majority of its length, a portion of new right-of-way will need to be established to enable the new pipe to reach Georgia Strait's target market. In view of this, we affirm the finding in the final EIS that the ARCO alternative would not result in a significant environmental advantage over Georgia Strait's proposed route.

42. As alternatives, the final EIS contemplated expanding two existing pipeline systems located in Canada. The EIS considered enlarging the Centra system and found this approach would require a longer route and placing a compressor station in a residential area, and would affect more sensitive environmental resources, including residences, mountains, forests, major rivers, a provincial park, and a wildlife sanctuary. The Georgia Strait proposal avoids most residences, crosses no major rivers, and is mainly in flat, agricultural land. Accordingly, while the Centra system facilities would be located in Canada, we do not believe this alternative would be environmentally preferable to Georgia Strait's proposal.³⁶

43. The EIS considered adding to and extending the existing BC Gas system, and found that this alternative presents engineering difficulties or geotechnical hazards, and overall, does not constitute an environmentally preferable option. In addition, we noted that the BC Gas alternative, while it could supply Vancouver Island customers, could not offer the same option provided by the Georgia Strait facilities to provide for future

³⁶Our assessment of the Centra alternative on pages 4-4 to 4-7 of the EIS presents comparative impacts in narrative form, rather than in a tabular form, as is the case with Table 4.2.2-2-1 summarizing the BC Gas alternative. We believe the discussion of the options for expanding the Centra system provides detail sufficient to the 40 CFR §1502.14 criterion of "providing a clear basis for choice among options by the decisionmaker and the public."

deliveries of gas to US customers. Thus, although EPA suggests that expanding the BC Gas system may be a reasonable alternative, we are not persuaded that this is the case. We affirm our conclusion that the Georgia Strait proposal is the better environmental option and is better in terms of meeting domestic gas demand.

44. In response to the EPA's concern regarding the joint international nature of the proposed project, we note that the Commission has coordinated with the National Energy Board (NEB) of Canada and the Joint Review Panel in the analysis of the full proposal. As discussed below, our authorization of the domestic portion of the Georgia Strait project is contingent on NEB approval of the Canadian portion. Canadian authorities are currently considering that proposed GSX Canada pipeline.

45. The information presented on page 3-3 of the final EIS indicates that there is a ten percent chance over the next 50 years (the pipeline has been designed with a 40-year lifespan) of an earthquake capable of producing ground motions that would exceed the pipeline design parameters, not its design standards. Engineering design standards typically include a safety factor that accounts for the chance that natural phenomena could exceed the design parameters. We find the proposed pipeline will meet all applicable safety standards.³⁷

III. Jurisdiction and Authorization

A. NGA Section 7 Certificate Authorization

46. Since the Georgia Strait application pertains to facilities that will be used for the transportation of natural gas in interstate commerce, the facilities are subject to the Commission's jurisdiction and the requirements of subsections (c) and (e) of NGA section 7. In the March 2002 order, we considered Georgia Strait's proposed pipeline and reached a preliminary finding that the public benefits of the project outweighed the non-environmental adverse impacts. In this order, we consider the proposed pipeline's potential environmental impacts and find that if constructed and operated in accordance with Georgia Strait's application, as supplemented, and with the mitigation measures

³⁷The Georgia Strait facilities, as designed, conform with current engineering design as specified in the following publications: American Society of Civil Engineers, 1984, Guidelines for the Seismic Design of Oil and Gas Pipeline Systems; Canadian Standards Association, Section 11.2.4, 1999, CSA-Z662-99, Oil and Gas Pipeline Systems; and American Petroleum Institute, 1999, RP 1111 – Design, Construction, Operation, and Maintenance of Offshore Hydrocarbon Pipelines (Limit State Design).

specified in Appendix A, construction and operation of the proposed project will result in limited adverse environmental impact and will be an environmentally acceptable action. We conclude that the proposed pipeline is required by the public convenience and necessity and so issue the requested authorizations. We incorporate the findings reached in our March 2002 order, as modified in accordance with the discussion herein.

B. NGA Section 3 Certificate Authorization and Presidential Permit

47. Since Georgia Strait's proposed pipeline will be used to import and export natural gas, the proposed transportation and border crossing facilities are subject to our jurisdiction and the requirements of NGA section 3. A draft Presidential Permit was sent to the Secretary of State and to the Secretary of Defense for their recommendations. Replies on behalf of the Secretary of State, dated February 11, 2002, and on behalf of the Secretary of Defense, dated September 6, 2001, indicate no objection to the issuance of the Presidential Permit.³⁸ Based on our review of the record, and the absence of any objection to the Georgia Strait application from the Secretaries of State and Defense, we find that the proposed project promotes the objectives of the Energy Policy Act of 1992³⁹ and the North American Free Trade Agreement⁴⁰ and is consistent with the public interest. Accordingly, we will grant Georgia Strait's request for NGA section 3 authorization and a Presidential Permit.⁴¹

C. National Energy Board Authorization

48. In view of the fact that the GSX Canada facilities constitute an integral portion of the overall project proposal, we believe it would be premature to permit Georgia Strait to commence construction absent assurance that the new GSX Canada line will also be

³⁸Executive Order No. 10,485 requires that the Commission obtain the favorable recommendation of the Secretaries of State and Defense prior to issuing a Presidential Permit.

³⁹See 15 USCS § 717b (2001).

⁴⁰The North American Free Trade Agreement Implementation Act, Pub. L. 103-182 (December 8, 1993) 107 Stat. 2057; Implementation of the North American Free Trade Agreement Act, Executive Order No. 12889, 58 Fed. Reg. 69681 (December 30, 1993).

⁴¹See Appendix B.

built. Therefore, until the NEB approves the portion of pipeline that will extend from the subsea interconnection mid-channel in the Boundary Pass to Vancouver Island, Georgia Strait may not begin construction.⁴²

IV. Conclusion

49. Based on the discussion in the EIS, we conclude that if constructed and operated in accordance with Georgia Strait's application, as supplemented, and with the mitigation measures specified in Appendix A, construction and operation of the proposed project will result in limited adverse environmental impact and will be an environmentally acceptable action.

50. We note that any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of Georgia Strait's certificates. 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.⁴³ Georgia Strait shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Georgia Strait. Georgia Strait shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

51. Having previously made preliminary findings based on non-environmental issues relating to Georgia Strait's application, and having now completed the environmental review of the proposed construction, the Commission has completed its review of the proposal. We find, subject to compliance with the conditions set forth herein, that the benefits of Georgia Strait's proposal will outweigh any potential adverse effects, and therefore will be consistent with our Policy Statement on New Facilities and NGA

⁴²See, e.g., PG&E Gas Transmission, 99 FERC ¶ 61,366 (2002); Millennium Pipeline Company, L.P., 97 FERC ¶ 61,292 (2001); and Vector Pipeline, L.P., 85 FERC ¶ 61,083 (1998), imposing a similar NEB-approval condition on pipelines running to the U.S.-Canadian border.

⁴³See, e.g., Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988); National Fuel Gas Supply v. Public Service Commission, 894 F.2d 571 (2d Cir. 1989); and Iroquois Gas Transmission System, L.P., et al., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

Docket Nos. CP01-176-000, et al.

- 22 -

section 7. Accordingly, we find that the public convenience and necessity require granting the requested approvals and authorizations to Georgia Strait, as discussed above and in our March 2002 preliminary determination.

52. This order incorporates findings with respect to the non-environmental issues contained in the preliminary determination to the extent they are not modified in this order and constitutes the Commission's final decision on Georgia Strait's proposed pipeline. We find that the proposed pipeline, if constructed and operated in accordance with the mitigation measures contained in the application, as supplemented, and the EIS, is environmentally acceptable. All mitigation measures required in the final EIS are included as conditions in this order.

53. At a hearing held on September 18, 2002, 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, and upon consideration of the record,

The Commission orders:

(A) In Docket No. CP01-176-000, Georgia Strait is issued a certificate of public convenience and necessity, pursuant to NGA section 7(c), authorizing it to construct, operate, and maintain natural gas facilities, as described and conditioned herein and in our March 2002 order, and as more fully described in the application as amended.

(B) In Docket No. CP01-177-000, Georgia Strait is issued a blanket transportation certificate of public convenience and necessity, pursuant to Subpart G of Part 284 of the Commission's regulations, as described and conditioned herein and in our March 2002 order, and as more fully described in the application as amended.

(C) In Docket No. CP01-178-000, Georgia Strait is issued a blanket construction and abandonment certificate of public convenience and necessity, pursuant to Subpart F of Part 157 of the Commission's regulations, as described and conditioned herein and in our March 2002 order, and as more fully described in the application as amended.

(D) In Docket No CP01-179-000, Georgia Strait is issued a Presidential Permit and granted authorization, pursuant to NGA section 3, to site, construct, operate, and maintain natural gas facilities at the international border with Canada near Sumas, Washington, and mid-channel in the Boundary Pass waters of the Strait of Georgia, as

Docket Nos. CP01-176-000, et al.

- 23 -

described and conditioned herein and in our March 2002 order, and as more fully described in the application as amended.

(E) The authorizations in the order paragraphs above are conditioned, as discussed our March 2002 order and this order, on the following:

(1) Georgia Strait's completing the authorized construction within three years of the final order;

(2) Georgia Strait's complying with paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(3) Georgia Strait's complying with the accounting procedures as described in the body of our March 2002 order and this order;

(4) Georgia Strait's filing, at least 30 days prior to commencement of service, either negotiated rate contracts or tariff sheets reflecting the essential elements of its negotiated rate agreements, as well as modified tariff sheets consistent with the discussion in our March 2002 order and this order and with the North American Energy Standards Board and Order No. 637 standards;

(5) Georgia Strait's executing contracts for the level of service and for the terms of the service represented in the precedent agreements prior to commencing construction;

(6) Georgia Strait's not commencing construction until the Canadian National Energy Board has approved the proposed GSX Canada facilities in Canada;

(7) Georgia Strait's signing and returning the Testimony of Acceptance of all the provisions, conditions, and requirements of the Presidential Permit to the Secretary of the Commission within thirty days of the issuance of this order; and

(8) Georgia Strait's compliance with the specific environmental conditions listed in Appendix A of this order.

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

Docket Nos. CP01-176-000, et al.

- 24 -

(G) Powerex's request for clarification and/or rehearing is granted in part and denied in part, as discussed herein.

(H) The motions of Whatcom and San Juan Counties, Washington, to dismiss Georgia Strait's application, or alternatively to hold an evidentiary hearing, are denied, as discussed herein.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Appendix A

Environmental Conditions

1. Georgia Strait Pipeline Crossing LP (Georgia Strait) shall follow the construction procedures and mitigation measures described in its application, its supplemental filings, and as identified in the environmental impact statement (EIS), unless modified by this Order. Georgia Strait 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 and operation of the project. This authority shall allow:
 - a. the modification of conditions of this 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**, Georgia Strait 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 EIS, as supplemented by filed alignment sheets, and shall include the staff's recommended facility locations. **As soon as they are available, and before the start of construction,** Georgia Strait 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 this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Georgia Strait's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Georgia Strait'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. Georgia Strait 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 will 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 route variations recommended herein 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 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, Georgia Strait shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Georgia Strait will implement the mitigation measures required by this Order. Georgia Strait must file revisions to the plan as schedules change. The plan shall identify:**
- a. how Georgia Strait 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 would 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. what training and instructions Georgia Strait will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
 - e. the company personnel (if known) and specific portion of Georgia Strait's organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Georgia Strait will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

Docket Nos. CP01-176-000, et al.

- 28 -

- (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. Georgia Strait shall employ a team of environmental inspectors per construction spread. The environmental inspectors shall be:
 - a. responsible for monitoring and ensuring compliance with all environmental mitigative measures required by this Order, Georgia Strait's Upland Erosion Control, Revegetation and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures), 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 recommendation 6 above) and any other authorizing documents;
 - c. empowered to order correction of acts that violate the environmental conditions of this 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 this 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. Georgia Strait shall file updated status reports with the Secretary on a **weekly** basis **until** all construction-related activities, including restoration and initial permanent seeding, 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 each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspectors 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 this Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Georgia Strait from other federal, state or local permitting agencies concerning instances of noncompliance, and Georgia Strait's response.
9. Georgia Strait 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 rehabilitation and restoration of the right-of-way is proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Georgia Strait 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 Georgia Strait has complied with or will comply with. This statement shall also identify any areas along the right-of-way where compliance measures were not properly

implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Georgia Strait shall offer to conduct pre-construction well analyses to acquire baseline information about water quality and well function to those landowners with wells located within 150 feet of the construction right-of-way. This information will form the basis for post-construction monitoring efforts if problems are identified following construction. Georgia Strait shall document any complaints that were received concerning well function or water quality and describe how each was resolved in its weekly status reports to the Commission.
12. Georgia Strait shall not implement the open-cut method as an alternative to the proposed horizontal directional drill (HDD) or conventional bore methods **until**:
 - a. Georgia Strait files with the Secretary the specific reasons that the HDD or conventional bore method is not feasible or was not successful;
 - b. FERC staff concludes formal consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) regarding adverse impacts on federally listed species, if necessary;
 - c. Georgia Strait consults with the U.S. Army Corps of Engineers (COE) and the Washington Department of Ecology (WDOE), the NMFS, the FWS, and the Washington Department of Fish and Wildlife (WDFW) and files a detailed site-specific, open-cut crossing plan including scaled drawings identifying all areas that would be disturbed by constructing the open-cut crossing and mitigation measures that would minimize the extent and duration of disturbance on the waterbody and associated riparian habitat;
 - d. for Fishtrap Creek and Bertrand Creek, Georgia Strait shall develop a protocol in consultation with the WDOE and the WDFW to determine if contaminated sediments are present in the construction right-of-way and to develop measures to minimize the resuspension of contaminated sediments (if present) for the crossings; and
 - e. Georgia Strait has received written notification from the Director of OEP that an open-cut crossing may begin.

13. Georgia Strait shall prepare an explanation of the site-specific conditions at each crossing that preclude the use of the dry-ditch method where the wet-ditch method is proposed. This explanation and the results of consultations with the WDFW, the FWS, the NMFS, and other appropriate agencies regarding the crossing method shall be filed with the Secretary for review and approval by the Director of OEP **prior to construction.**
14. Georgia Strait clearing crews shall avoid crossing equipment through perennial waterbodies in the project area, unless otherwise approved by the Director of OEP in Georgia Strait's initial implementation plan.
15. Georgia Strait, in consultation with the WDFW, the FWS, and the NMFS, shall design and locate the hydrostatic test water intake structure in the Strait of Georgia in a manner that avoids impingement of fish and damage to nearshore marine vegetation. The design and location of the intake structure, shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction.** Georgia Strait shall also file the results of as well as the results of the related consultations with the WDFW, the FWS, and the NMFS.
16. Georgia Strait shall file revised Procedures incorporating the FERC-approved variance requests in tables 3.3.2-2 and 3.4.2-1 of the EIS with the Secretary **prior to construction.**
17. Georgia Strait shall file with the Secretary a site-specific plan for use of the HDD method at the Cherry Point landfall for review and approval by the Director of OEP **prior to construction.** The plan should identify additional containment systems (e.g., booms and seafloor control devices) that would be used to minimize the potential for mud releases beyond the limits of the glory hole. Additionally, the plan should specify that density adjustments to the drilling mud would only be made through the use of additional dry mud compound, cement, cottonseed hulls, or other inert materials (i.e., no chemical weighting or thickening agents would be used).
18. Georgia Strait shall limit the Gulf Road pipestring fabrication area to the existing cleared opening (Georgia Strait proposed HDD Make-up Site #1), which is west of Gulf Road. Additionally, Georgia Strait shall limit the fabrication and stringing activities to the existing cleared road right-of-way and avoid clearing trees adjacent to Gulf Road unless necessary to create a safe work area.

19. Georgia Strait shall file with the Secretary for review and written approval of the Director of OEP **prior to construction**, a wetland restoration plan, prepared in coordination with the COE, the WDOE, and the WDFW, that includes detailed construction and restoration measures to minimize forested wetland impacts and addresses the need to actively revegetate wetlands. Georgia Strait shall file with the Secretary annual summary reports that compare pre- and post-construction wetland vegetation. Post-construction reports shall be filed for the first three years or **until** each wetland is successfully revegetated. The reports shall include an inventory of exotic nuisance plant species present on the construction right-of-way. For any wetlands that have not been restored by the third growing season, Georgia Strait shall file with the Secretary a site-specific plan to rectify these problem areas for review and written approval by the Director of OEP.
20. **Prior to implementing** an open cut crossing at the Cherry Point landfall, Georgia Strait shall consult with, and obtain necessary approvals from, the appropriate agencies, including the Washington Department of Natural Resources (WDNR), the WDFW, the WDOE, the NMFS, and the COE. Georgia Strait shall develop a plan to avoid or minimize impacts on sensitive resources and mitigate any loss of marine vegetation. The plan shall, at a minimum, quantify the amount of marine vegetation that would be impacted; provide scaled drawings that identify construction methods; and describe any compensatory mitigation that would be implemented during or after construction. Georgia Strait shall submit the plan to the Secretary for review and written approval by the Director of OEP **prior to implementation**.
21. Georgia Strait shall conduct post-construction surveys to quantify the impact of drilling mud on marine vegetation and prepare a plan in consultation with the WDNR, the WDFW, the NMFS, and other applicable agencies to mitigate observed impacts. Georgia Strait shall file the mitigation plan along with survey results with the Secretary for review and written approval by the Director of OEP **prior to implementation**.
22. Georgia Strait shall develop a plan in consultation with the FWS and the NMFS to gather data on sound emitted from the offshore pipeline at normal operating pressures. This data shall establish the level of sound emitted from the pipeline in relation to ambient noise levels in the southern Strait of Georgia and the distance this sound is propagated in the water column. This plan shall be filed with the Secretary for review and written approval by the Director of OEP **prior to**

- construction.** A report presenting the data collected, as part of this survey, shall be filed with the Secretary within 90 days of the completion of the survey.
23. Prior to construction, Georgia Strait shall consult with the WDFW and the NMFS to develop a detailed fish salvage and relocation plan that describes the techniques and equipment that would be used to remove fish that become stranded within the right-of-way at waterbody crossing areas. This plan shall be filed with the Secretary for review and written approval by the Director of OEP **prior to construction.**
 24. Georgia Strait shall prepare a site-specific plan for launching the HDD pipestrung in consultation with the FWS, NMFS, WDFW and other applicable agencies. This plan shall include specific measures that Georgia Strait would implement to mitigate impacts on marine vegetation and beach/intertidal habitats. These measures could include, but are not limited to: restricting heavy equipment activity on the beach, use of matting or pads to prevent rutting and compaction, restoration of disturbed cobble substrates, and restricting heavy work vessels to areas beyond the marine vegetation zone. Georgia Strait shall file the plan with the Secretary for review and written approval by the Director of OEP **prior to construction.**
 25. Georgia Strait shall consult with the Natural Resources Conservation Service and the Whatcom County Conservation Districts regarding future stream restoration projects involving channel relocation. Georgia Strait shall file the results of these consultations and any revised construction plans to avoid interfering with planned restoration projects with the FERC **prior to construction.**
 26. Georgia Strait shall not begin construction activities **until:**
 - a. Georgia Strait conducts a survey of suitable bald eagle habitat to identify nests or roosts that are within 0.5 of a mile of areas that would be disturbed by construction activities (these surveys shall follow a protocol approved by the FWS and the WDFW);
 - b. Georgia Strait, in consultation with the FWS and the WDFW, develops a management plan for each active bald eagle nest or communal roost within 0.5 of a mile of the project area; and

- c. Georgia Strait files with the Secretary a report of the results of the bald eagle survey(s), any necessary site management plans, and documentation that the FWS and the WDFW have reviewed and approved the survey results and any necessary mitigation plans. The survey report shall include the name(s) and qualifications of the person(s) conducting the survey, method(s) used to conduct the survey, date(s) of the survey, and areas surveyed (including the mileposts or a map of the area surveyed).
27. Georgia Strait shall follow the WDFW's recommended guidelines of avoiding construction disturbances within 3,280 feet of heron rookeries between February 15 and July 31 unless Georgia Strait files with the FERC documentation that the WDFW has waived the timing restriction.
 28. Georgia Strait shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the right-of-way. Prior to construction, Georgia Strait shall mail the complaint procedures to each landowner whose property would be crossed by the project. In its letter to affected landowners, Georgia Strait shall:
 - a. provide a local contact that the landowners should call first with their concerns; the letter shall indicate how soon a landowner shall expect a response;
 - b. instruct the landowners that, if they are not satisfied with the response, they shall call Georgia Strait's Hotline; the letter shall indicate how soon to expect a response; and
 - c. instruct the landowners that, if they are still not satisfied with the response from Georgia Strait's Hotline, they shall contact the Commission's Enforcement Hotline at (877) 303-4340.

In addition, Georgia Strait shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:

- a. the date of the call;
- b. the identification number from the certificated alignment sheets of the affected property;

Docket Nos. CP01-176-000, et al.

- 35 -

- c. the description of the problem/concern; and
 - d. an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
29. Georgia Strait shall file documentation from the WDOE for its Certification of Consistency with the Washington Coastal Zone Management Plan with the Secretary **prior to construction.**
30. Georgia Strait shall defer construction of facilities and use of all staging, storage, or temporary work areas and new or to-be-improved access roads **until** Georgia Strait files with the Secretary reports, plans, and related State Historic Preservation Officer comments; and the Director of OEP reviews and approves all cultural resources reports and plans, and notifies Georgia Strait in writing that construction may proceed.

All material filed with the FERC 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.**"

31. Georgia Strait shall conduct a noise survey to verify that the noise from the Cherry Point Compressor Station operated at full load does not exceed a day-night equivalent sound level (L_{dn}) of 55 decibels of the A-weighted scale (dBA) at any noise-sensitive areas (NSA), and file the results of the noise survey with the Secretary **no later than 60 days** after placing the compressor station in service. If the noise attributable to the operation of the compressor station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, Georgia Strait shall file a report on what changes are needed and shall install additional noise controls to meet that level **within 1 year of the in-service date.** Georgia Strait shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after the additional noise controls are installed.
32. Georgia Strait shall conduct a noise survey to verify that the noise from the meter facilities does not exceed an L_{dn} of 55 dBA at any NSAs, and file the results of the noise survey with the Secretary **no later than 60 days** after placing the meter facilities in service. If the noise attributable to the operation of the meter facilities exceeds an L_{dn} of 55 dBA at any nearby NSAs, Georgia Strait shall file a report on what changes are needed and shall install additional noise controls to meet that

Docket Nos. CP01-176-000, et al.

- 36 -

level **within 1 year of the in-service date**. Georgia Strait shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary **no later than 60 days** after the additional noise controls are installed.

33. Georgia Strait shall adopt the following route variations:
 - a. the I-5 Variation;
 - b. the Percie Road Variation; and
 - c. the Trillium Variation.

34. Georgia Strait shall adopt alternative site B for the Cherry Point Compressor Station as described in its October 11, 2001 application amendment

Appendix B

Presidential Permit

PERMIT AUTHORIZING GEORGIA STRAIGHT CROSSING PIPELINE LP TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN NATURAL GAS FACILITIES AT THE INTERNATIONAL BOUNDARY BETWEEN THE UNITED STATES AND CANADA

FEDERAL ENERGY REGULATORY COMMISSION
DOCKET NO. CP01-179-000

(Issued September 20, 2002)

Georgia Strait Crossing Pipeline LP (Permittee), a limited partnership formed under the laws of Utah and qualified to do business in Washington State, filed in Docket No. CP01-179-000 on April 24, 2001, an application pursuant to Executive Order Nos. 10485 and 12038 and the Secretary of Energy's Delegation Order No. 0204-112, seeking a Presidential Permit to authorize Permittee to construct, connect, operate, and maintain natural gas transmission facilities described in Article 2 below at the international border between the United States and Canada.

By letter dated September 6, 2001, the Secretary of Defense, and by letter dated February 11, 2001, the Secretary of State favorably recommended that the Permit be granted. The Federal Energy Regulatory Commission finds that the issuance of a Permit is appropriate and consistent with the public interest.

Pursuant to the provisions of Executive Order Nos. 10485 and 12038, dated September 3, 1953, and February 3, 1978, respectively, the Secretary of Energy's Delegation Order No. 0204-112, effective February 22, 1984, and the Commission's regulations, permission is granted to Permittee to construct, connect, 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.

Docket Nos. CP01-176-000, et al.

- 38 -

Article 2. The following facilities are subject to this Permit: at the border with Canada near Sumas, Washington, at an interconnection with facilities of Westcoast Energy Inc., a valve and approximately 500 feet of 20-inch diameter pipeline, and at the border with Canada midway between the west end of Patos Island, Washington, and the east end of Saturna Island, British Columbia, in the Boundary Pass waters, that portion of Permittee's 16-inch diameter pipe which interconnects underwater with a 16-inch GSX Canada Limited Partnership pipe.

Article 3. The natural gas facilities authorized herein, or which may subsequently be included herein by modification or amendment, may be utilized for the transportation of natural gas between the United States and Canada only in the amount, at the rate, and in the manner authorized under section 3 of the Natural Gas Act.

Article 4. The construction, connection, 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 and water 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

Docket Nos. CP01-176-000, et al.

- 39 -

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 transportation facilities herein authorized shall be removed within such time as the Commission may specify, and at the expense of the Permittee. Upon failure of the Permittee to remove such transportation facilities or any portion thereof, the Commission may direct that possession of the same be taken and the facilities be removed, at the expense of the Permittee, 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.

Docket Nos. CP01-176-000, et al.

- 40 -

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.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Docket Nos. CP01-176-000, et al.

- 41 -

IN TESTIMONY OF ACCEPTANCE of all the provisions, conditions and requirements of this Permit, the Permittee this day of _____, 2001 has caused its name to be signed by _____, pursuant to a resolution of its Board of Directors or its equivalent, on the _____ day of _____, 2001, a certified copy of the record of which is attached hereto.

Georgia Straight Crossing Pipeline LP

By _____

(Attest)

Executed in triplicate.