

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,051

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

Georgia Strait Crossing Pipeline LP
Docket Nos. CP01-176-004
CP01-177-002
CP01-178-002
and CP01-179-002

ORDER DENYING REQUESTS FOR REHEARING
AND GRANTING REQUEST FOR CLARIFICATION

(Issued January 17, 2003)

1. On September 20, 2002, the Commission issued a final order granting Georgia Strait Crossing Pipeline LP (Georgia Strait) a certificate pursuant to Natural Gas Act (NGA) section 7(c), NGA section 3 authority, and a Presidential Permit 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
2. Fuel Safe Washington and Rebound filed timely requests for rehearing. Powerex Corporation (Powerex) filed a timely request for clarification. For the reasons discussed below, we deny the requests for rehearing and grant the request for clarification.

Background

3. Georgia Strait intends to construct a new 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 between the United States and Canada. At its east terminus, Georgia Strait's pipeline will interconnect with the Canadian Westcoast Energy Inc. pipeline and the domestic Northwest Pipeline Corporation pipeline. At its west terminus, Georgia Strait's new pipeline will interconnect with another new pipeline, to be built and operated by GSX Canada Limited

¹98 FERC ¶ 61,271 (2002) (preliminary determination) and 100 FERC ¶ 61,280 (2002) (final order).

partnership. 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, the full design capacity of the proposed pipeline.

Requests for Rehearing

Fuel Safe Washington

4. Fuel Safe Washington repeats the concern expressed in comments on the draft environmental impact statement (EIS)² that the Commission's EIS does not address the cumulative impacts on marine wildlife of noise from the project's operation, construction, maintenance, and seismic surveys. We considered the cumulative impact of noise on marine wildlife and found that noise impacts from routine operation and maintenance activities should be temporary, infrequent, and of an intensity significantly below levels capable of causing any permanent damage.³ Further, to ensure that noise levels and noise impacts will be acceptable, we required Georgia Strait, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS), to develop a plan to monitor sound emitted from the offshore pipeline at normal operating pressures and submit results to the Commission prior to construction.⁴

5. We did not assess the cumulative impact of noise attributable to seismic surveys undertaken during the planning stages prior to Georgia Strait's submission of its application, because we had no cause to do so. It is not unusual for a company to consider a new project, survey all or part of a proposed route, review evidence of the project's environmental and economic feasibility, and elect not to go forward. These preliminary activities, taken in anticipation of and in preparation for filing an application, are outside our jurisdiction. These activities are nevertheless subject to applicable

²Cumulative impacts, including noise, are discussed in general in EIS section 3.14. Noise, in general, is discussed in EIS section 3.12.2. The specific impact of noise on marine life is discussed in EIS sections 3.5.2, 3.6.2, and 3.7.2. Fuel Safe Washington states it has had difficulty obtaining certain documents referenced in the EIS. The material in question is part of the record in this proceeding, and is available in the Commission's Public Reference Room and through the Commission's website using the Federal Energy Regulatory Records Information System (FERRIS) link.

³Normal maintenance involves the use of internal and external inspections tools, such as smart pigs and remotely operated vehicles and their support ships.

⁴Environmental mitigation measure no. 22.

federal, state, and local laws. Therefore, although the Commission has no jurisdiction over pre-certificate seismic survey permits and approvals, such as those required by the Endangered Species Act or the Marine Mammal Protection Act, the prospective applicant is responsible for obtaining all necessary authorizations and for adhering to all applicable laws and regulations through the entire process, from planning to placing a new project in service. Thus, Fuel Safe Washington's expressed concern over whether Georgia Strait has obtained a take permit from NMFS is appropriately directed not to the Commission, but to NMFS.

6. Fuel Safe Washington asserts that the Commission should supplement the EIS to include an evaluation of recent earthquakes in the project area, particularly the earthquake in the San Juan Islands on September 20, 2002. Fuel Safe Washington contends 10 earthquakes have occurred between January 8, 2002, and September 26, 2002, some in the project area, some hundreds of miles away, ranging from 2.4 to 5.1 on the Richter magnitude scale.

7. Our discussion of the potential impact of earthquakes on the pipeline can be found in EIS section 3.1.2. The EIS identified the project area as tectonically active, and in view of this, explained that the pipeline is designed to withstand earthquakes of a magnitude greater than those cited by Fuel Safe Washington.⁵ Georgia Strait has in place a plan for the immediate inspection of the pipeline in the event of an earthquake of a magnitude of 6.0 or greater with an epicenter within 75 miles of the pipeline. In addition, reviews of the University of Washington Seismology and Earthquake Information website and the Natural Resources Canada website do not indicate that any existing natural gas pipelines in the project area were damaged by any recent earthquakes. We find no cause to supplement the EIS as requested, as we believe the consideration of geologic hazards in the EIS is adequate. Further, while the National Environmental Protection Act indicates that a supplemental EIS may be warranted when there are significant new circumstances or information, we do not believe that an EIS needs to be supplemented due to an event occurring after issuance of the EIS, provided that, as is the case here, impacts of the type of event are already discussed in the EIS.

8. Fuel Safe Washington requests the Commission reassess its "decision to allow an open cut at the Cherry Point landfall." This mischaracterizes our decision, in that while we did not preclude an open cut at the Cherry Point landfall, neither did we endorse it. We conditioned Georgia Strait's certificate on its obtaining the appropriate regulatory

⁵See EIS Table 3.1.2-1, at 3-4.

agencies' review, approval, and permitting for its Cherry Point crossing plan.⁶ Further, the environmental impacts of any change in Georgia Strait's planned Cherry Point crossing method will be analyzed prior to any construction activity.

9. Fuel Safe Washington maintains the Commission should reevaluate the alternative of a pipeline located exclusively within Canada. The discussion of alternatives in an EIS should include all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives which are eliminated from detailed study, along with a brief discussion of the reasons for eliminating them.⁷ In this case, we considered four alternatives based on expansions of the existing Canadian pipeline systems of BC Gas Inc. and Centra Gas British Columbia, Inc. We discussed the reasons that we eliminated each alternative from further evaluation. We believe our assessment of alternatives in the EIS is both appropriate and adequate.

10. Fuel Safe Washington asserts the Presidential Permit is in error because Article 3 thereof applies to transportation of gas leaving the United States for Canada, but does not apply to gas entering the United States from Canada or to gas transported between Canada and Canada via the United States. We disagree. Article 3 of the Presidential Permit refers to "transportation of natural gas between the United States and Canada," the plain meaning of which we take to be transportation between both countries, *i.e.*, exports from Canada to the United States as well as exports from the United States to Canada. There is no special provision for gas transported between Canada and Canada via the United States because this transportation path inevitably encompasses an authorized import from Canada into the United States along with a corresponding authorized export from the United States to Canada. Any question of the intended scope of Article 3 may be resolved by noting that the transportation addressed is "only in the amount, at the rate, and in the manner authorized under Section 3 of the Natural Gas Act." The transportation authorized pursuant to NGA section 3 is described in Georgia Strait's application and in the body and ordering paragraphs of the preliminary determination and final order in this proceeding. We find the wording of Article 3 of the Presidential Permit presents neither any ambiguity, nor any gap, with respect to the transactions and transportation associated with the Georgia Strait project.

⁶See 100 FERC ¶ 61,280, at 62,204-05, Environmental Conditions 17 and 20.

⁷See 40 CFR § 1502.14 (2002) and Forty Most Asked Questions Concerning the Council on Environmental Quality's National Environmental Policy Act Regulations, 46 FR 18,026-27 (March 23, 1981).

11. The preliminary agreement between Georgia Strait and Powerex – upon which we based our finding that there was a market need for the proposed project, that the project was properly designed for the projected volumes, and that it would be financially viable – does not specify any domestic deliveries. Fuel Safe Washington contends that as long as there are no signed contracts for deliveries to customers in the United States, there is no justification for issuing Georgia Strait a certificate for its new pipeline. Fuel Safe Washington has previously raised this same concern, and we have previously addressed it, and we affirm our prior finding that there is no reason for "withholding approval for the proposed project given that Georgia Strait has demonstrated that its facilities will be fully utilized."⁸

Rebound

12. Rebound is concerned that we failed to properly evaluate an open cut crossing of the Cherry Point landfall and asserts our EIS should have contained a discussion of using electric powered compressors at the Cherry Creek Compressor Station. The proposed open cut crossing, as noted above, is conditioned on the appropriate regulatory agencies' review and authorization, a process which we expect to ensure proper mitigation of any adverse environmental impacts of Georgia Strait's construction. The final EIS acknowledged, in response to comment CO3-13 on the draft EIS, that using an electric-driven compressor unit, rather than a gas-fueled compressor unit, would eliminate or greatly reduce air emissions from the compressor station. However, the use of an electricity-driven unit at the compressor station would necessitate the generation of electricity at some other location, which might increase air emissions at that other site. Therefore, the final EIS did not recommend an electric-driven compressor unit at the station, but instead recommended relying on a gas-fueled compressor unit with design specifications complying with federal and state emission and noise regulations. Accordingly, we will deny Rebound's rehearing request that we stay the final order, prohibit an open cut crossing at Cherry Point, prohibit a gas-fired compressor station at Cherry Point, and revise or supplement our EIS to address alternatives.

Request for Clarification

Powerex Corporation

13. The transportation service agreement between Georgia Strait and Powerex obligates Georgia Strait to offer to amend the terms of its agreement with Powerex in the

⁸98 FERC ¶ 61,271, at 62,052.

Docket No. CP01-176-004, et al.

-6-

event Georgia Strait provides more favorable terms to another shipper prior to the project's in-service date. Powerex seeks clarification that it will be permitted to amend the terms of its service agreement with Georgia Strait regardless of whether a new customer is offered more favorable terms under discounted or negotiated rates. We clarify that our intention was to permit Powerex to amend its prospective terms of service if Georgia Strait were to offer comparable service to a similarly situated shipper under more favorable terms, which terms may include either discounted or negotiated rates.

The Commission orders:

(A) Fuel Safe Washington's and Rebound's requests for rehearing are denied, for the reasons discussed in the body of this order.

(B) Powerex's request for clarification is granted, for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.