Skelly-Belvieu Pipeline Company, L.L.C.

ORDER ON PETITIONFOR DECLARATORY ORDER

138 FERC ¶ 61,153 (2012)

In this case, Skelly-Belvieu Pipeline Company, L.L.C. (Skelly) filed a petition for a declaratory order seeking a decision from the Commission approving, among other things, a rate and priority of service structure for an expansion of its existing natural gas liquid pipeline system in Texas. After a second open season for all potential shippers, those shippers who executed transportation service agreements in which they committed to transport on a ship-or-pay basis a total of 15,300 barrels per day of new contract volumes for ten years and who paid a premium relative to the rate charged uncommitted shippers, will not have their volumes subject to prorationing under normal operating conditions. After the expansion project, committed shippers would have 90 percent of the expanded capacity available for them. On a system basis, after the expansion, they would have 35 percent of total system capacity set aside for them, and uncommitted shippers would have the balance 65 percent. The Commission granted the petition.

138 FRC ¶ 61,153
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Skelly-Belvieu Pipeline Company, L.L.C. Docket No. OR12-6-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 1, 2012)

1. On December 19, 2011, Skelly-Belvieu Pipeline Company, L.L.C. (Skelly-Belvieu) filed a petition for a declaratory order approving (1) priority service for Skelly-Belvieu's proposed expansion of Skelly-Belvieu's existing natural gas liquid (NGL) pipeline system; (2) Skelly-Belvieu provision of up to 90 percent of new capacity to shippers committing to priority service; and (3) the overall tariff and rate structure for the proposed expansion. Skelly-Belvieu seeks prompt Commission action so that additional capacity will be available for the transportation of NGLs from Skellytown Station, Texas to Mont Belvieu, Texas. One shipper, Valero Marketing and Supply Company, intervened in support. As discussed below, the Commission grants the requested declaratory order.

Background

2. Skelly-Belvieu is a 568-mile, 8-inch common carrier pipeline regulated by the Commission under the Interstate Commerce Act. Skelly-Belvieu states that it is a 50/50 joint venture between Enterprise Operating Products, LLC (Enterprise), the operator of the pipeline, and WesTTex 66 Pipeline Company. Skelly-Belvieu transports batched NGLs from Skellytown, Texas to the fractional hub at Mont Belvieu. Skelly-Belvieu explains that in recent years the supply of NGLs at Skellytown has increased significantly, creating a need for additional capacity to reach downstream markets.

The Expansion

3. Skelly-Belvieu states that the primary component of the expansion is the installation of additional pumps and related equipment, which upon completion will increase capacity of the Skelly-Belvieu system by approximately 17,000 barrels per day (bpd), from approximately 27,000 bpd to approximately 44,000 bpd. Skelly-Belvieu

states that the expansion is projected to go into service no later than the fourth quarter of 2012.[1]

4. Skelly-Belvieu states that to meet the in-service date of fourth quarter 2012, it is necessary to move forward with various items, such as engineering and procurement activities and power infrastructure commitments, as well as to obtain necessary regulatory approvals.[2] It therefore requests issuance of a declaratory order by March 1, 2012, to minimize costs and risks of the project.

Description of the TSA

5. Skelly-Belvieu states that to make the expansion possible, it is necessary to obtain sufficient volume commitments from shippers and be able to assure the committed shippers that they will be able to ship their barrels on the system.[3]

6. Accordingly, Skelly-Belvieu held two open seasons, seeking volume commitments from shippers in return for priority service equal to 90 percent of the expansion capacity, available at a premium rate. If the pipeline's capacity is oversubscribed, shippers with priority service will not be subject to prorationing with respect to their contract volumes. Skelly-Belvieu explains that this priority service protects committed shippers against the risk that committed volumes could be displaced from the pipeline by the nominations of uncommitted shippers paying a lower rate.[4]

7. Skelly-Belvieu's initial open season, running from October 19, 2011 through November 16, 2011, did not receive acceptable qualifying bids. A second open season, from December 1, 2011 through December 7, 2011, resulted in multiple shippers signing Transportation Service Agreements (TSAs). Through the TSAs, shippers committed to transport a total of 15,300 bpd of new contract volumes for a period of ten years, at a premium rate in excess of the general commodity rates in Skelly-Belvieu's tariff.[5]

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[1] Affidavit of James M. Collingsworth ¶ 6.

[2] Collingsworth Aff. ¶ 13.

[3] *Id.* ¶ 8.

[4] *Id.*

[5] *Id.* ¶¶ 9-10.

8. Skelly-Belvieu explains that the committed shippers' contract rate is initially set at $2.25 per barrel, which exceeds the comparable general commodity rate of $1.7034 for uncommitted shipments.

9. Skelly-Belvieu explains that uncommitted shippers will also benefit from the proposed expansion. The amount reserved for committed shippers (15,300 bpd) is exceeded by the additional capacity resulting from the expansion (approximately 17,000 bpd), and will total 35 percent of the total post-expansion capacity of the Skelly-Belvieu system. Uncommitted shippers, states Skelly-Belvieu, will have open access to the remaining 65 percent, or 28,700 bpd.

<u>Skelly-Belvieu's Argument for a Declaratory Order</u>

10. Skelly-Belvieu asserts that a declaratory order is appropriate in this case, as the rulings sought are consistent with the Commission's prior orders regarding priority service terms and rate structures that can be offered to shippers that commit volumes through an open season to support a new infrastructure project.[6] Skelly-Belvieu states that the Commission has repeatedly recognized the need for pipelines to obtain up-front regulatory approvals before undertaking major capital expenditures.[7]

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[6] Skelly-Belvieu cites, for example, *Express Pipeline System*, which states:

> [I]t is better to address these issues [term rate structure and validity of proposed rates] in advance of an actual tariff filing than to defer until the rate filing is made, when the decision-making process would be constrained by the deadlines inherent in the statutory filing process. The public interest is better served by a review of the issues presented before a filing to put rates into effect.

76 FERC ¶ 61,245, at 62,253, *order on reh'g*, 77 FERC ¶ 61,188, at 61,755 (1996).

[7] *See, e.g., Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 18 (2011) *(Mid-America I)*; *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 23 (2007); *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 9 (2006); *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002).

11. Skelly-Belvieu argues that the Commission has discretion under the Interstate Commerce Act to approve priority contract services under appropriate circumstances.[8] Skelly-Belvieu argues that these statutory phrases have been historically interpreted to invest the Commission with considerable discretion to determine what is and is not reasonable.[9]

12. The Commission, argues Skelly-Belvieu, has used discretion under the ICA to approve various methods for allocating capacity among different categories of shippers, including evaluating requests for priority service contracts. In *Mid-America*, the Commission explained "[t]here is no single method of allocating capacity in times of excess demand … and pipelines should have some latitude in crafting allocation methods to meet circumstances specific to their operations."[10] In exercising its discretion with respect to priority service for committed shippers, explains Skelly-Belvieu, the Commission has generally found such proposals to be reasonable and non-discriminatory provided that uncommitted shippers have sufficient capacity available to them and are not denied access to the line.

[8] Skelly-Belvieu cites sections 1(4) and 3(1) of the ICA, containing the obligation of oil pipelines to "furnish transportation upon reasonable request" and not to "cause any undue or unreasonable preference or advantage to any particular person." Skelly-Belvieu also cites to *Sea-Land Services Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984) (explaining that "Congress has delegated broad legislative discretion to the commission to determine when differential treatment amounts to improper discrimination among shippers and when such treatment is justified by relevant dissimilarities in transportation conditions").

[9] Skelly-Belvieu cites to numerous cases decided by the Interstate Commerce Commission where such discretion was exercised. *See, e.g., Rail & River Coal Co. v. Baltimore & Ohio R.R.*, 14 I.C.C. 86, 94-95 (1908); *Farmers' Elevator Co. of Vermillion, S.D. v. Chicago, M. & St. P. Ry.*, 47 I.C.C. 475, 482 (1917).

[10] *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at 61,336 (2004), *citing SFPP, L.P.*, Opinion No. 435, 86 FERC ¶ 61,022, at 61,115 (1999), *order on reh'g and compliance filings*, Opinion No. 435-A, 91 FERC ¶ 61,135 (2000), *order on reh'g and directing revised compliance filing*, Opinion No. 435-B, 96 FERC ¶ 61,281 (2001), *order granting clarification and reh'g in part*, 97 FERC ¶ 61,138 (2001), *order on reh'g*, 100 FERC ¶ 61,353 (2002), *aff'd in part, vacated in part, and remanded to sub nom. BP West Coast Products, LLC v. FERC*, 374 F.3d 1263 (D.C. Cir. 2004), and *Total Petroleum Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996), *see also Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008), *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 (2005).

13. For example, cites Skelly-Belvieu, the Commission in *Sunoco* approved a 10 percent capacity reservation as an "appropriate amount of capacity for uncommitted shippers.[11] In *Enbridge (North Dakota)*, explains Skelly-Belvieu, the Commission approved a proposal that reserved for uncommitted shippers 60 percent of capacity, finding the proposal "just and reasonable and not unduly discriminatory."[12] Further, states Skelly-Belvieu, in *Mid-America*, the Commission approved a proposal reserving 44 percent of overall capacity to committed shippers, with the remaining capacity available to uncommitted shippers.[13] Skelly-Belvieu argues that the current proposal meets the Commission's policy articulated in these previous cases.

Notice and Interventions

14. Public notice of the petition was issued on December 27, 2011, with interventions and protests due on or before January 18, 2012. Filing a timely intervention was Valero Marketing and Supply Company (VMSC). Pursuant to Rule 214,[14] all timely filed motions to intervene are granted. No protests or adverse comments were filed.

15. VMSC states that in December 2011 it entered into a TSA with Skelly-Belvieu. VMSC further states that it fully supports the proposed expansion of the Skelly-Belvieu pipeline system, and urges the Commission to approve Skelly-Belvieu's petition.

Commission Analysis

16. The Commission finds that Skelly-Belvieu's proposal is consistent with applicable policy and precedent. Skelly-Belvieu has demonstrated that the supply of NGLs at Skellytown has increased significantly, straining the current capacity to reach downstream markets. To meet the growing need for capacity to transport NGLs out of Skellytown, Skelly-Belvieu must undertake a significant capital investment to expand capacity of the Skelly-Belvieu system. Without the substantial financial investment of shippers that commit to move barrels on the new capacity pursuant to the TSAs, there exists the possibility that the expansion will not occur in a timely manner. To minimize the risk that the project will not move forward, and to provide financial assurances to Skelly-Belvieu, the proposed TSAs require shippers to commit to ship-or-pay contracts at

[11] *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011).

[12] *Enbridge (North Dakota)*, 133 FERC ¶ 61,167, at PP 7, 12, 40.

[13] *Mid-America I*, 136 FERC ¶ 61,087 at PP 18-19.

[14] 18 C.F.R. § 385.214 (2011).

premium rates for an initial term of ten years from the in-service date. In exchange for this commitment, the TSA provides that the committed shipments will not be subject to prorationing.

17. Skelly-Belvieu provides an appropriate amount of capacity for uncommitted shippers, while affording protection to the committed shippers who enter into long-term TSA. Committed shippers will pay a premium rate above the existing general commodity rates, in exchange for the assurance that their volumes will not be prorated under normal operating conditions. In addition, uncommitted shippers will have access to a post-expansion capacity exceeding the current capacity of the Skelly-Belvieu system.

18. Skelly-Belvieu's open seasons appropriately gave all potential shippers the opportunity to become committed shippers by entering into TSAs. Accordingly, the Commission grants Skelly-Belvieu's petition for a declaratory order.

<u>The Commission orders</u>:

Skelly-Belvieu's petition for declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)