

128 FERC ¶ 61,079
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 23, 2009

In Reply Refer To:
Jayhawk Pipeline, L.L.C.
Docket No. OR09-10-000

Jayhawk Pipeline, L.L.C.
2000 S. Main Street
P.O. Box 1404
McPherson, KS 67460

Attention: Rick Petersen, General Manager

Reference: Temporary Waivers of Sections 6 and 20 of the Interstate
Commerce Act

Ladies and Gentlemen:

1. Jayhawk Pipeline L.L.C. (Jayhawk), which is owned by National Cooperative Refinery Association (NCRA), recently constructed a new pipeline segment in Kansas. On June 5, 2009, Jayhawk filed a request for temporary waiver of the filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act (ICA)¹ with respect to its newly constructed pipeline segment, and for an existing pipeline segment, which will be used to transport crude oil to NCRA's refinery in McPherson, Kansas. Jayhawk contends that, under the Commission's "Special Permissions" policy, the Commission has, in certain circumstances, granted interstate pipelines temporary waivers of the aforementioned sections of the ICA. Jayhawk asks that the Commission consider its request and grant the waivers to permit Jayhawk to meet a July 1, 2009 target in-service date. The Commission grants Jayhawk's request for a temporary waiver of the filing and reporting requirements of sections 6 and 20 of the ICA, as more fully discussed below.

¹ Specifically, 49 U.S.C. app. § 6 requires interstate oil pipelines to file all their rates, fares, and charges for transportation on their systems, and also file copies of contracts with other common carriers for any such traffic; and 49 U.S.C. app. § 20 authorizes the Commission to require annual or special reports from carriers subject to the ICA.

2. Jayhawk owns and operates pipeline systems in the States of Kansas, Nebraska, Oklahoma, and Texas. These pipelines transport crude oil in interstate commerce. Jayhawk has constructed a new direct link between El Dorado, Butler County, Kansas, and Halstead Junction, Sedgwick County, Kansas, in addition to Jayhawk's existing circuitous pipeline from El Dorado through Valley Center Station, Kansas, and on to Halstead Junction. Because NCRA has been the only shipper on the El Dorado line through the Valley Center Station pipeline segment, Jayhawk states there will be greatly reduced or no shipments in the foreseeable future on the existing segment, which is subject to Jayhawk's Supplement No. 4 to FERC Tariff No. 30. Jayhawk has also leased to NCRA the remainder of the existing pipeline from Halstead Junction to McPherson Station, Kansas, which is subject to Jayhawk's Supplement No. 4 to FERC Tariff No. 31.

3. Jayhawk states that both the 35.7-mile newly constructed pipeline and the existing pipeline between Halstead Junction and McPherson Station will be leased in their entirety to its affiliate, NCRA, which intends to operate the leased capacity in order to provide seamless transportation of its own crude oil to its refinery in McPherson, Kansas. Jayhawk states that no other shipper has utilized the Halstead Junction to McPherson pipeline and that there are no other outlets for crude for other refineries on this line or interconnections with other pipelines downstream of El Dorado. Further, Jayhawk does not expect to receive any requests for service from unaffiliated shippers seeking to use any portions of the leased capacity.

4. The Commission previously has granted temporary requests for waiver of the filing and reporting requirements of sections 6 and 20 of the ICA.² The Commission granted these waivers based on the fact that: (i) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (ii) there is no demonstrated third-party interest in gaining access to or shipping upon the line; (iii) no such interest is likely to materialize; and, (iv) there is no opposition to granting the waivers. In these cases, the Commission determined that there were no active third-party shipper interests to protect under the ICA, and therefore, temporary waivers of the section 6 and 20 filing and reporting requirements were warranted. However, the Commission granted the waivers, subject to revocation should circumstances change, and required the pipelines to keep their books and records in a manner consistent with the Commission's Uniform System of Accounts.

5. Jayhawk's request for waiver is similar to previous requests from pipelines that received waivers of the filing and reporting requirements of ICA sections 6 and 20. Jayhawk's pipeline segments downstream of El Dorado are located entirely within one

² *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978) (*Sinclair*); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995) (*Ciniza*) and *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005) (*Enbridge*).

state and have no intermediate interconnections with other pipelines or refineries, all of the crude oil to be transported is owned by Jayhawk or its affiliate NCRA, no unaffiliated third party has requested or is likely to request transportation service downstream of El Dorado, and there is no opposition to the waiver request.

6. The Commission concludes that, given the physical characteristics of the facilities and the limited nature of the movements downstream of El Dorado, Jayhawk meets all of the criteria necessary to qualify for a temporary waiver consistent with the Commission's rulings in *Sinclair*, *Hunt*, *Ciniza*, and *Enbridge*. Therefore, the Commission finds it unnecessary to subject Jayhawk to all of the filing and reporting requirements of the ICA.

7. Accordingly, the Commission grants Jayhawk a temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 relating to its Supplement No. 4 to FERC Tariff No. 30 and Supplement No. 4 to FERC Tariff No. 31, applicable to transportation movements downstream of El Dorado. Because these waivers are temporary, the Commission also directs Jayhawk to immediately report to the Commission any change in the circumstances on which these waivers are based. Specifically, Jayhawk must report any changes including, but not limited to: (1) increased accessibility of other pipelines or refiners to its facilities; (2) changes in the ownership of the facilities; (3) changes in the ownership of the oil or by-products being shipped; and, (4) shipment tenders or requests for service by any person. In addition, Jayhawk must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines, 18 C.F.R. Part 352, and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: James P. Zakoura
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