

139 FERC ¶ 61,125
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 16, 2012

In Reply Refer To:
CCPS Transportation, LLC
Docket No. IS12-233-000

Enbridge Pipelines Inc.
3000 Fifth Avenue Place
425 – 1st Street S.W.
Calgary, AB Canada T2P 3L8

Attention: Shauna Bates, Director, Regulatory, Planning and Analysis

Reference: Order Accepting Tariff

Ladies and Gentlemen:

1. On April 16, 2012, CCPS Transportation, LLC (Spearhead) filed FERC Tariff No. 37.1.0,¹ which cancels FERC Tariff No. 37.0.0, modifies language regarding its verification procedures under Item 6, “Nominations and Quantities,” modifies its prorationing policy under Item 17, “Prorationing” and implements a lottery process under Item 24, “Lottery Process” to allocate available capacity to New Shippers² during periods of apportionment. Spearhead states it filed FERC Tariff No. 37.1.0 to address the proliferation of New Shippers. This proliferation causes batches allocated to New Shippers to be below that which can be accurately measured under its currently effective apportionment policy. Spearhead requests waiver under 18 C.F.R. § 341.14 and Section 6(3) of the Interstate Commerce Act to be granted special permission to file the proposed tariff on less than 30 days’ notice in order to revise its rules effective May 11, 2012, in time for the May nomination deadline for June movements. As discussed below, the

¹ FERC Oil Tariff, [Rules and Regs, FERC No. 37.1.0, 37.1.0](#).

² A New Shipper is any shipper that has not made actual shipments on Spearhead in at least 9 of the 12 previous months to reach Regular Shipper status.

Commission accepts Spearhead's revised tariff record effective May 11, 2012, as proposed, and grants Spearhead's waiver request.

2. Spearhead states its system currently operates at a full capacity of 170,000 barrels per day (bpd) and, due to the rapidly increasing number of New Shippers, experiences significant levels of apportionment. From April 2011 to April 2012, Spearhead states the number of shippers on its system has increased from 13 to 33 and is expected to continue to grow. Of the current 33 shippers, 25 are New Shippers (increased from 5 in April 2011). To demonstrate the prorationing issue on its system, Spearhead states that shippers nominated a total of 4,192,000 bpd (approximately 25 times system capacity) for transportation in April 2012, resulting in 96 percent apportionment.

3. Spearhead believes the rapidly increasing number of shippers is the result of increased crude production and the ongoing competition for limited pipeline capacity to Cushing, Oklahoma. Spearhead states there is a perpetuating cycle in which the increasing number of first time New Shippers erodes the space allocated to existing New Shippers, thereby giving those existing shippers an incentive to create additional affiliated New Shippers in a never-ending chase by each shipper to maintain or expand its existing allocation of capacity. Spearhead states that in order to control this shipper proliferation before it becomes unmanageable, it proposes solutions similar to changes made in its affiliated pipeline rules and regulations tariffs of Enbridge Pipelines (North Dakota) LLC (EPND) and Enbridge Pipelines (Ozark) LLC (Ozark).

4. Therefore, to ensure continued system access by New Shippers and to define how capacity will be allocated among affiliated New Shippers, Spearhead proposes the following tariff modifications: (1) adding language in Item 6(b) and (c) that spells out the existing upstream and downstream nomination verification procedures used on the system; (2) implementing a software-generated random lottery process in Items 17 and 24 to allocate New Shipper capacity when the number of New Shippers nominating on the system precludes any individual New Shipper from being allocated a minimum batch; (3) including new language in Item 17(b) to limit individual shipper nominations to their existing maximum allowable allocation of capacity during periods of apportionment to reduce vast over-nominations; (4) including new language in Item 6(h) concerning the use of agents on behalf of shippers of record outlining business protocol regarding communications, nominations and payment of charges; and (5) specifying in Item 6(e) and (f) that the minimum accepted batch size is 50,000 barrels, which represents the smallest batch possible on upstream carriers that deliver to Spearhead, to ensure accurate measurement.

5. On May 1, 2012, Yaltex Oil LLC (Yaltex) filed a motion to intervene and offered comments regarding Spearhead's proposed lottery process. Yaltex states it supports fair and non-discriminatory methods of allocating capacity among New Shippers, but is concerned Spearhead's proposed lottery process could have a detrimental effect and

potentially restrict Yaltex's ability to become a Regular Shipper. Yaltex acknowledges that similar lottery processes have been effective in slowing the proliferation of New Shippers for EPND and Ozark, but states that unlike the aforementioned pipelines, Spearhead has not been in apportionment due to over-subscription for years. According to Yaltex, Spearhead came out of apportionment in early 2011, moved at less than 50 percent its capacity in the second half of 2011, and has only again been subject to apportionment since early 2012. Yaltex questions whether the recent increase in shipper count is temporary or reflects a perpetual cycle of shipper proliferation as Spearhead suggests.

6. Yaltex claims the lottery process proposed by Spearhead, just as a matter of mathematical odds, renders it nearly impossible for New Shippers to become Regular Shippers. Yaltex states that given the 10 percent set-aside of Spearhead's full capacity of 170,000 bpd for New Shippers and a 50,000 barrel minimum batch, there is only space available 10.3 New Shippers per month (170,000 bpd x 10% x 30.4 days / 50,000 barrels). Yaltex continues that in the event that 20 or more New Shippers nominate volumes in a given month, at least half of those nominating will be denied access to Spearhead. Therefore, if a New Shipper has only a 50 percent chance of "winning the lottery" to get a batch scheduled, Yaltex states the mathematical odds that such a shipper will ship in 9 out of 12 months as required to become a Regular Shipper are approximately 7.30 percent. Further, as shipper numbers are increasing, Yaltex states this percentage decreases to 0.04 percent if 40 shippers nominate, and to approximately 0.00 percent if 60 shippers nominate.

7. Yaltex states the Commission has required pipelines that implement historically-based apportionment methodologies to allow all shippers the opportunity to develop a record of transportation on the pipeline so as to attain historical or regular shipper status.³ Yaltex states that, unlike Spearhead's situation herein, where the Commission has approved a moratorium on New Shippers becoming Regular Shippers, the Commission has made it clear that it is on a temporary basis and under extraordinary circumstances.⁴

8. Yaltex states that Spearhead's proposed lottery process makes it extremely unlikely a New Shipper will attain Regular Shipper status in the event of continuing over-nominations. Therefore, Yaltex suggests Spearhead increase the percentage of available

³ See, e.g., *SuncorEnergy Marketing Inc., et. al. v. Platte Pipe Line Co.*, 132 FERC ¶ 61,242, at P 25 (2010).

⁴ See, e.g., *Enbridge Pipelines (North Dakota) LLC*, 132 FERC ¶ 61,274, at PP 26-29 (2010).

capacity allocated to New Shippers under Item 17 from 10 to 20 percent; consider reducing the number of months of actual shipments a New Shipper needs to attain Regular Shipper status from 9 of 12 months to 6 of 12 months, and also consider reducing its minimum batch size from 50,000 to 25,000 barrels. Yaltex states that EPND and Ozark have higher pipeline capacities of 210,000 and 240,000 bpd, respectively, but use minimum batch sizes of 5,000 and 30,000 bpd, respectively.

9. On May 7, 2012, Spearhead filed a response to the comments of Yaltex. Spearhead states that current operating capacity has increased from 170,000 to 190,000 bpd, but the proliferation of New Shippers continues to erode the space allocated to New Shippers. At a shipper meeting on March 30, 2012, Spearhead states it explained the proposed tariff changes in the instant filing designed to address this problem, shipper response was positive, and therefore the changes were incorporated in its proposed tariff. Spearhead states that none of its 33 shippers, including Yaltex, filed a protest.

10. Spearhead disagrees with Yaltex's assessment that the proliferation of New Shippers issue is not as serious as that on other pipelines that have adopted lottery systems, and cannot wait to address this issue or no New Shipper would be able to meet the existing minimum batch requirement. Spearhead states it remains committed to addressing suggested improvements and intends to hold another all-shipper meeting within calendar year 2012, but does not believe it is either feasible or necessary to implement the suggestions of Yaltex at this time. Rather, Spearhead states the proposed tariff should be allowed to take effect and further changes, if warranted, should await practical experience with the new process over the next several months.

11. Spearhead states the three suggested modifications by Yaltex to its proposed lottery process (increasing New Shipper space allocation from 10 to 20 percent, decreasing the minimum batch size from 50,000 to 25,000 bpd, and decreasing the actual shipping requirement for a New Shipper to become a Regular Shipper from 9 out of 12 months to 6 out of 12 months) have not been generally endorsed by other shippers, are not in line with standard industry practice, have not been shown to be operationally feasible, involve changes to its tariff that are unchanged from prior practice, and would unfairly affect other classes of shippers.

12. First, with regard to Yaltex's suggested increase in allocated capacity from 10 to 20 percent for New Shippers, Spearhead states it has not proposed to alter the existing 10 percent level and even if Yaltex had filed a protest (which it did not), the 10 percent allocation would not be subject to a protest.⁵ Spearhead states Yaltex cites no precedent

⁵ A protest cannot lawfully challenge an item that is not changed by the proposed new tariff. The Commission's regulations make clear that a protest is "a filing, *under*

for such a change, and an increase to the 20 percent level would decrease the amount of capacity available to Regular Shippers, negatively affecting their historical capacity rights and undoubtedly result in protests being filed with the Commission.

13. Second, with regard to its 50,000 barrel minimum batch size, Spearhead states a reduction to 25,000 barrels is not operationally feasible as a 50,000 minimum volume requirement is necessary to ensure accurate metering and sampling of shippers' batches. In addition, Spearhead states there is only one directly connected upstream carrier (Enbridge Mainline) and that carrier has a minimum volume requirement of 50,000 barrels for deliveries to Spearhead. Spearhead also states that the analogies to EPND and Ozark are inaccurate as EPND is a common stream pipeline, not a batched system like Spearhead, with different measurement and sampling requirements. Also, Ozark receives all shipments from tankage, not another pipeline, and therefore Ozark's tariff requirements are inapplicable to Spearhead.

14. Third, with regard to decreasing the actual shipping requirement for a New Shipper to become a Regular Shipper from 9 out of 12 months to 6 out of 12 months, Spearhead states the nine-month requirement to become a Regular Shipper is typical of industry practice⁶ and is not a change from Spearhead's currently effective tariff. Therefore, like Yaltex' first suggested change, Spearhead notes that no protest was filed, and could not be challenged even if a protest was filed (See footnote 5 - A protest cannot lawfully challenge an item that is not changed by the proposed new tariff). Nonetheless, Spearhead states it is open to considering this modification, and others, after gaining experience under the proposed lottery system and consultation with all shippers on the best means of addressing the issues.

15. We find that Spearhead's proposal is just and reasonable. Spearhead's proposed lottery process is the agreed-upon result of discussions with all of its shippers and no other comments or protests were filed. Further, as correctly noted above by Spearhead,

section 15(7) of the [ICA], challenging a tariff publication, 18 C.F.R. § 343.1(b) (emphasis added), and the section 15(7) power to suspend and investigate is "limited to newly tariffed rates or practices." BP West Coast Prods. v. FERC, 374 F.3d 1263, 1278 (D.C. Cir. 2004); see also Enbridge Pipelines (North Dakota) LLC, 132 FERC ¶ 61,274 at P 33; TE Products Pipeline Company, LLC, 130 FERC ¶ 61,257, at P 16 (2010); Equilon Pipeline Co., 91 FERC ¶ 61,210, at 61,762 (2000).

⁶ See also Butte Pipe Line Company, FERC Tariff No. 566.5.0 at Item 27, Docket No. IS11-598-000 (filed Sep. 28, 2011) (twelve-of-twelve month shipment criteria); Bridger Pipeline LLC, FERC Tariff No. 26.3.0 at Item 76, Docket No. IS11-575-000 (filed Aug. 31, 2011) (same).

two of the three suggested modifications by Yaltex to Spearhead's proposed lottery process (increasing New Shipper space allocation from 10 to 20 percent and decreasing the actual shipping requirement for a New Shipper to become a Regular Shipper from 9 out of 12 months to 6 out of 12 months) involve tariff changes not before us here and which would unfairly impact other classes of shippers. Spearhead also operationally demonstrates the need for the proposed 50,000 barrel minimum batch size and differentiates it from its other affiliated pipelines. The proposed lottery process is not discriminatory to any individual shipper and results from the ongoing issues of shipper proliferation and significant over-nominations on Spearhead's pipeline. Accordingly, the Commission accepts Spearhead's FERC Tariff No. 37.1.0, to become effective May 11, 2012, as proposed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.