121 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

CCPS Transportation, LLC Docket No. OR07-17-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 11, 2007)

1. On August 13, 2007, CCPS Transportation, LLC (CCPS)[1] filed a petition for a declaratory order asking the Commission to confirm the proposed capacity allocation and rate structure for its planned expansion of the Spearhead Pipeline (Expansion). CCPS explains that the Expansion will increase Spearhead's average annual capacity between Flanagan, Illinois, and Cushing, Oklahoma, by 65,000 barrels per day (bpd) of crude oil.[2] The Commission grants the petition for a declaratory order to the extent discussed below.

Background and Summary of Petition

2. CCPS states that the predecessor of the Spearhead Pipeline began as a joint interest pipeline held by three major integrated oil companies, and it was used primarily

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[1] CCPS states that it is a wholly-owned subsidiary, through various wholly-owned intermediates, of Enbridge Pipelines Inc. (Enbridge). CCPS further states that Enbridge and its affiliates operate the longest crude oil pipeline system in North America, extending from Edmonton, Alberta, through the U.S. Midwest to Ontario and upstate New York. CCPS explains that the U.S. portion of the system is known as the Lakehead System.

[2] CCPS states that Spearhead is a common carrier interstate oil pipeline that currently transports up to 125,000 bpd of crude oil from Griffith, Indiana (near Chicago), to the major oil transportation and storage hub at Cushing. CCPS points out that, by the time the planned Expansion goes into service (targeted for the first quarter of 2009), the origin point for Spearhead will change from Griffith to Flanagan, so that the segment northeast of Flanagan can be reversed to flow to Griffith.

to transport U.S. Mid-Continent crude oil production to refineries in Chicago. However, explains CCPS, as that production declined, demand for crude oil transportation to Chicago decreased, and it became clear that the pipeline eventually would be left idle.[3]

3. As the U.S. production declined, continues CCPS, Canadian producers served by the Enbridge system projected substantially increased production in western Canada. Thus, states CCPS, in anticipation of an increased need for transportation of Canadian oil sands production to U.S. markets, Enbridge purchased a 90-percent interest in CCPS in September 2003, with an option to purchase the remaining 10 percent at a later time.[4] CCPS explains that Enbridge planned to reverse the pipeline to flow from Chicago to Cushing and to incorporate it into the Enbridge network.

4. According to CCPS, prior to the reversal, Enbridge held an open season offering shippers discounted rates if they committed volumes for a 10-year term, with an option to extend for an additional 10-year term if the pipeline did not cease operations at the end of the first term. CCPS states that the original committed shippers accepted a "ship-or-pay" commitment under which they are required to make deficiency payments if they fail to ship their committed volumes. Further, CCPS explains that committed shippers had the option to choose a fixed volume or one that escalated over time, and they also had the right to step up their commitment levels within the first seven years of service. CCPS asserts that committed shippers agreed to initial rates of $0.75 per barrel on committed volumes of 10,000 bpd or more and $0.85 per barrel for committed volumes of less than 10,000 bpd. CCPS also explains that uncommitted shippers paid an initial rate of $1.50 per barrel. CCPS asserts that both the committed and uncommitted rates were subject to indexing, and neither class of shippers was exempt from prorationing.[5]

5. CCPS reports that Enbridge received initial commitments of 60,000 bpd, rising to 70,000 bpd in 2008, and 75,000 bpd for 2009 and subsequent years;[6] therefore, Enbridge

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[3] CCPS cites Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶ 6.

[4] CCPS states that Enbridge obtained the remaining 10-percent interest on June 1, 2005, becoming the sole owner of the Spearhead Pipeline. *Id.* ¶ 2 n.1.

[5] *Id.* ¶¶ 8-9. CCPS states that, as provided in the open season, Spearhead always has utilized a historically-based prorationing policy. *See* Rule 17(b) of Spearhead's FERC No. 10.

[6] CCPS states that the committed shippers' original commitments, added to their potential step-up commitments, total 144,000 bpd, reflecting Enbridge's expectation at the time that capacity on Spearhead could be expanded to approximately 160,000 bpd through additional pumping power. According to CCPS, the last 16,000 bpd (10 percent of 160,000 bpd) was intentionally preserved as uncommitted space. *Id.* ¶¶ 8-9.

determined that the proposed reversal was feasible, so it sought a declaratory order approving the terms under which the dormant pipeline would be returned to service.[7] CCPS further states that the Commission, in granting the requested declaratory order, noted that Enbridge's plan for the Spearhead Pipeline at that time was limited to 160,000 bpd, and the Commission determined:

A. That Enbridge's rate base for uncommitted rates could be based on the cost of acquiring the pipeline system;

B. That Enbridge could employ a discounted committed rate structure; and

C. That Enbridge could charge an initial uncommitted rate of $1.50 per barrel, subject to indexing.[8]

6. CCPS states that Enbridge (through CCPS) then undertook the reversal and placed the southbound pipeline in service in March 2006. However, CCPS contends that the line has experienced strong and growing demand for service, frequently requiring prorationing of capacity since October 2006.[9] CCPS states that it responded to the increasing demand by developing a plan to expand the Spearhead Pipeline to 190,000 bpd.[10] CCPS maintains that the key to this Expansion is the support from the Expansion shippers to commit a minimum of 30,000 bpd to the system once the Expansion goes into service and to pay an agreed-upon rate of $1.80 per barrel to facilitate the Expansion. CCPS seeks this declaratory order to provide assurances to the Expansion shippers, including the assurance that their volumes will not be prorated except in force majeure situations.

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[7] CCPS cites *Enbridge Energy Company, Inc*., 110 FERC ¶ 61,211 (2005).

[8] CCPS states that the Commission accepted the $1.50 per barrel rate as an initial rate agreed to by at least one unaffiliated shipper.

[9] CCPS cites Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶¶ 10-11.

[10] CCPS states that this Expansion will be coordinated with completion of the Southern Access Mainline expansion of the Lakehead System. *See Enbridge Energy, Limited Partnership*, 114 FERC ¶ 61,264 (2006). CCPS states that, when the Southern Access is completed, it will connect to Spearhead at Flanagan, after which the segment from Griffith, Indiana (Chicago) to Flanagan will be re-reversed to permit Southern Access volumes to be transported to Chicago from Flanagan. Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶ 15.

7. CCPS reports that it conducted a widely-publicized open season for the Expansion capacity from March 2, 2007, until April 23, 2007. CCPS states that it offered potential shippers a pro forma Transportation Services Agreement (TSA), an initial firm Expansion rate of $1.80 per barrel, and proposed amendments to Enbridge's tariff that would exempt the Expansion volumes from prorationing. CCPS emphasizes that it received commitments from a number of shippers (all of which are new to the system and none of which is affiliated with Enbridge) for amounts totaling more than the proposed 30,000 bpd for firm Expansion shippers;[11] therefore, it reduced the Expansion volumes to 30,000 bpd on a pro rata basis.[12]

8. CCPS summarizes the essential terms of its proposal as follows:

A. There will be 30,000 bpd available for firm Expansion shipments;

B. There will be an additional 35,000 bpd available for non-firm Expansion shipments, subject to the existing historically-based prorationing policy;

C. The firm Expansion shippers will pay an initial Expansion rate of $1.80 per barrel from Flanagan to Cushing; and

D. The firm Expansion rate will be adjusted for inflation pursuant to the TSA, but will not be decreased if the Commission's general oil pipeline index declines.

9. CCPS asserts that it seeks regulatory certainty to facilitate its financing and construction of the Expansion, which will provide relief from the frequent prorationing of volumes of Canadian crude oil destined to the market hub at Cushing.[13] CCPS states that, in the original 2005 Spearhead declaratory order, the Commission cited the public interest benefit of increased access to the Canadian oil sands production,[14] and CCPS submits that the same public interest benefit strongly supports the current proposed Expansion.[15]

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[11] *Id.* ¶¶ 17, 19.

[12] *Id.* ¶ 19.

[13] *Id.* ¶ 20.

[14] CCPS cites *Enbridge Energy Company, Inc.*, 110 FERC ¶ 61,211, at P 31-32 (2005).

[15] CCPS cites Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶ 14.

Notice and Interventions

10. Notice of the CCPS filing was issued on August 15, 2007. Interventions and protests were due as provided in the Commission's regulations.[16] Pursuant to Rule 214,[17] all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Only one person filed a motion to intervene,[18] while four persons filed letters in support of the petition.[19] No persons filed protests.

Discussion

11. CCPS submits that the Commission has recognized the value of providing advance rate guidance for projects of this nature and magnitude through the declaratory order mechanism.[20] CCPS observes that the Commission has stated as follows:

> [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 procedures. The public interest is better served by a review of the issues presented before a filing to put the rates into effect.[21]

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[16] 18 C.F.R. §§ 385.211, 385.214 (2007).

[17] 18 C.F.R. § 385.214 (2007).

[18] TransCanada Keystone Pipeline, LP.

[19] Holly Refining and Marketing Company, Plains Marketing Canada, L.P., Sinclair Oil Corporation, and Trafigura AG.

[20] CPSS cites *Enbridge Energy Company, Inc*., 110 FERC ¶ 61,211, at P 7 n.2 (2005). *See also* Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶ 12.

[21] CCPS cites *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at p. 62,253 (1996). Further, CCPS states that the Commission added on rehearing that "issuing a declaratory order [is] procedurally appropriate for a new oil pipeline entrant, such as Express, because it needs to acquire and guarantee financing in order to begin construction." *Express Pipeline Partnership*, 77 FERC ¶ 61,188, at p. 61,766 (1996) (*Express*).

12. CCPS contends that its petition here is similar to those addressed in earlier Commission proceedings in which petitioners sought advance Commission guidance to justify major capital expenditures.[22] CCPS requests approval of the following provisions of the TSA: (1) 30,000 bpd of the 65,000 bpd of total Expansion capacity will be available for firm capacity; (2) the firm Expansion capacity will not be subject to prorationing; (3) the firm Expansion shippers will pay a rate of $1.80 per barrel, which is a negotiated rate that is higher than the indexed rate paid by non-firm shippers;[23] and (4) the $1.80 per barrel Expansion rate will be subject to upward indexing under the Commission's general oil pipeline index, but will not be decreased if the index declines. As discussed below, the Commission grants the petition for a declaratory order with one condition.

A. Dedication of Firm Expansion Capacity at a Premium Rate

13. CCPS asserts that Commission precedent supports dedicating a portion of the Expansion capacity to firm shippers. According to CCPS, the Commission has emphasized that "[t]here is no single method of allocating capacity in times of excess demand in oil pipelines and pipelines should have some latitude in crafting allocation methods to meet circumstances specific to their operations."[24] To that end, continues CCPS, the Commission has approved prorationing policies that reserve a percentage of available capacity for shippers whose volume commitments support a pipeline's expansion.[25] CCPS cites *Mid-America Pipeline Co., LLC* (*Mid-America II*),[26] in which

[22] CCPS cites *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 23 (2007) (declaratory order prior to expansion); *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).

[23] When the Spearhead system was reversed, the original uncommitted shippers paid an initial rate of $1.50 per barrel.

[24] CCPS cites *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at p. 61,336 (2004) (*Mid-America I*) (citing *SFPP, L.P*., 86 FERC ¶ 61,022, at p. 61,115 (1999); *Total Petroleum Inc. v. Citgo Products Pipeline, Inc*., 76 FERC ¶ 61,164, at p. 61,947 (1996).

[25] CCPS cites, *e.g., Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040, at P 24 (2006) (*Mid-America II*). *See also Enbridge Pipelines (North Dakota) LLC*, 120 FERC ¶ 61,025, at P 23-24 (2007) (discussing and reaffirming *Mid-America II* ruling). CCPS maintains that, under similar open access provisions of the Outer Continental Shelf Lands Act, carriers also have been permitted to allocate firm capacity through an open season available to all prospective shippers. *Enbridge Offshore Facilities, LLC*, 116 FERC ¶ 61,001 (2006); *Caesar Oil Pipeline Co., LLC*, 102 FERC ¶ 61,339 (2003); *Proteus Oil Pipeline Co*., LLC, 102 FERC ¶ 61,333 (2003).

the pipeline's proposal afforded a favorable prorationing policy to shippers that made the necessary volume commitments. CCPS emphasizes that the Commission rejected a claim in that proceeding that the program was discriminatory, noting that it was available to all shippers willing to sign up for the program.[27]

14. CCPS submits that the Expansion rate is an initial agreed-upon rate for new service. CCPS further represents that the firm service for the Expansion shippers is a new service never before offered by Spearhead, so the $1.80 per-barrel negotiated rate can properly be regarded as an initial rate, notwithstanding that it may exceed the anticipated effective spot rate when the Expansion goes into service in 2009. CCPS argues that the Commission's regulations expressly provide for such an initial negotiated rate.[28] CCPS contends that the Commission has indicated in other contexts that sophisticated oil pipeline shippers should be held to their agreements and need not be protected by regulatory fiat.[29]

15. CCPS further contends that its proposed firm service terms are directly analogous to those previously approved by the Commission. First, CCPS claims that it conducted a fair open season, during which it offered all potential shippers the ability to obtain firm space. Second, CCPS states that the Expansion shippers agreed to commit substantial volumes on a ship-or-pay basis and to pay negotiated rates, thus differentiating them from

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[26] *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006).

[27] *Id*. P 8, 23-24 ("Non-volume incentive shippers will be eligible to ship on approximately 75 percent of the line. Thus, neither historical shippers nor new shippers will be denied access even if they do not sign long-term volume dedications.").

[28] CCPS cites 18 C.F.R. § 342.2 (2007).

[29] For example, states CCPS, in another case, the Commission rejected an attempt by shippers to seek refunds of a rate they agreed to pay, noting that "the charge was established by negotiation, and the contracts were entered into voluntarily by the parties." *SFPP, L.P*., 86 FERC ¶ 61,022, at p. 61,075 (1999). Where sophisticated shippers, aware of their rights under the ICA, had negotiated a detailed contract, a subsequent challenge was described as "arguably little more than an attempt to avoid a previously negotiated contract, agreements the Commission had held are lawful under the ICA." *Id. See also Kern River Gas Transmission Co*., 117 FERC ¶ 61,077, at P 64 and n.113 (2006) (choices made by two classes of shippers were accorded the "sanctity of contract"); Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, Order No. 561, FERC Stats. and Regs., Regulations Preambles January 1991-June 1996 ¶ 30,985, at p. 30,960 (1993) ("in furtherance of the Commission's policy to encourage settlements," initial rates could be established "through agreement of the pipeline and potential shippers, at least one of which must not be affiliated with the pipeline").

the non-Expansion shippers, who will pay lower rates for non-firm service. CCPS also explains that the firm service will not take away any capacity from non-firm shippers; in fact, it will increase the capacity available for non-firm service from 125,000 bpd to 160,000 bpd.[30] Finally, CCPS points out that non-firm shippers will be able to use more than 84 percent of the total post-Expansion capacity (compared to approximately 75 percent in the *Mid-America II* case).

16. *Commission Analysis.* Currently, Spearhead's pipeline has a capacity of 125,000 bpd. The initial petition for declaratory order anticipated that the Spearhead line would be expanded to a capacity of 160,000 bpd. Further, in its initial petition, CCPS noted that shippers committing to term rates would have the right, within seven years from the date service commenced on Spearhead, to increase their commitments up to 144,000 bpd of the 160,000 bpd anticipated capacity of the pipeline. CCPS stated that it would maintain the remaining 16,000 bpd (10 percent of pipeline capacity) for new shippers wishing to transport on its pipeline. In the instant petition, CCPS proposes a larger expansion than originally anticipated, proposing an Expansion of 65,000 bpd, rather than 35,000 bpd. CCPS proposes to reserve this additional Expansion volume of 30,000 bpd for those shippers agreeing to pay a premium rate for firm service. In the open season, all shippers had the opportunity to reserve guaranteed Expansion capacity by making 10-year volume commitments, thereby providing financial support that is essential to the Expansion project. The petition for a declaratory order anticipates that, after the Expansion, committed shippers will have up to 144,000 bpd of capacity, premium rate firm shippers will be guaranteed 30,000 bpd, and new shippers, therefore, will continue to have access to only 16,000 bpd.

17. As noted in Enbridge Energy, Inc's initial petition, "Spearhead's proposed proration policy is a form of historical-based prorationing that apportions 90 percent of the capacity to historical shippers based on their average movements during a rolling 12-month base period, with the remaining 10 percent set aside for new shippers, as defined in the tariff."[31] CCPS also states in the instant petition that "[i]t offered the reduced rates to Committed Shippers at levels up to 144,000 bpd (90 percent of a 160,000 bpd pipeline), reserving a minimum of 10 percent for spot shippers."[32] Of the additional Expansion volume of 30,000 bpd proposed herein for premium firm shippers, CCPS does

[30] CCPS cites Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 ¶¶ 13, 16, 17.

[31] Petition for Declaratory Order of Enbridge Energy, Inc., Docket No. OR05-1-000, December 10, 2004 at 9 n.8.

[32] Petition for Declaratory Order of CCPS Transportation, LLC (August 13, 2007) Ex. 1 (Schuldhaus Affidavit) P 8.

not propose to set aside any volumes for uncommitted shippers. The Commission's approval of the original Enbridge Energy, Inc. petition was based in part on the premise that neither historical shippers nor new shippers would be denied access to the expansion capacity, thus sufficiently balancing the shippers' competing interests. Therefore, to be consistent with that rationale, the Commission directs CCPS to set aside part of the additional proposed 30,000 bpd Expansion capacity for uncommitted spot shippers.[33]

18. In *Express*,[34] the Commission addressed the issue of rewarding shippers that make long-term commitments. Express relied on *Sea-Land Service, Inc. v. ICC* (*Sea-Land*),[35] asserting that the differences it proposed to afford its term rate shippers would not be improper discrimination because they were justified by relevant dissimilarities in the shippers' transportation conditions. Express also contended that the Interstate Commerce Act (ICA) does not prohibit differences in rates to shippers receiving similar services, but rather only prohibits unreasonable, undue, or unjust differences.[36] Additionally, a particular service can be offered exclusively to term shippers simply because they were the first to request service. The Commission quoted the court in *Sea-Land* as follows:

> Current law no longer considers contract rates to be *per se* violations of the common carrier duty of nondiscrimination…. Since 1978 … the Interstate Commerce Commission has held that contract rates are not inherently discriminatory provided that the carrier offering them makes them available to all similarly situated shippers of like commodities.[37]

The Commission further quoted the *Sea-Land* court's analysis of the acceptability of contract rates under the ICA:

> Although one normally regards contract relationships as highly individualized, contract rates can still be accommodated to the principle of nondiscrimination by requiring a carrier offering such rates to make them available to any shipper willing and able to meet the contract's terms. If those terms result in lower costs or respond to unique competitive

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[33] In the past, the Commission has not mandated a percentage for uncommitted shippers, but has never approved anything less than a 10-percent set-aside for uncommitted shippers to preserve the common carrier obligation.

[34] 76 FERC ¶ 61,245 (1996).

[35] 738 F.2d 1311 (D.C. Cir. 1984).

[36] *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at p. 62,253 n.12 (1996).

[37] *Id.* at p. 62,253.

> conditions, then shippers who agree to enter into the contract are not similarly situated with other shippers who are unwilling or unable to do so.[38]

19. In *Express* and other previous cases, the pipelines held open seasons available to any interested shippers, thus satisfying the principles of *Sea-Land*.[39] The CCPS proposal at issue in this proceeding also provides that shippers signing Expansion volume commitments will be guaranteed that their volumes will not be prorated in return for paying a higher or premium rate. This differs from term rates in earlier cases in which shippers paid lower rates than uncommitted shippers.[40] Applying the principles of *Sea-Land* and Commission precedent to the instant case, the Commission finds that the March 2 – April 23, 2007 open season afforded all prospective shippers an equal non-discriminatory opportunity to sign a TSA exempting their Expansion volumes from prorationing. No shipper claims that it did not have the opportunity to enter into a firm contract with CCPS if it so desired. The Commission concludes that a contract rate need not be less than a rate for uncommitted shippers. It can be appropriate to charge a premium rate to those shippers willing to meet the contract's terms and pay more for the guarantee of capacity without proration. In this case, premium rate firm shippers are not similarly situated with the pipeline's non-firm shippers. Premium rate firm shippers have made long-term agreements and must pay for their contracted amounts even if not used, but they are not subject to prorationing. Uncommitted shippers may choose to ship on CCPS in any month. Thus, uncommitted shippers have maximum flexibility to react to changes in their own circumstances or in market conditions, although they do not provide the assurances and financial support for the Expansion that the firm shippers provide. The Commission finds that the rate structure proposed by CCPS does not violate the provisions of the ICA.

B. <u>Inflation Adjustment</u>

20. CCPS argues that the Commission should approve the agreed-upon provision that the Expansion rate will be adjusted for inflation, but will not decrease if the general oil pipeline index declines. CCPS next asserts that shippers not affiliated with it agreed to the terms of the inflation adjustment. CCPS points out that the Commission has stated as follows: "As a general rule, a pipeline must utilize the indexing system to change its

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[38] *Id.* at p. 62,254 and n.14 .

[39] *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002); *Enbridge Energy, Inc.*, 110 FERC ¶ 61,211 (2005).

[40] *Enbridge Energy, Inc.*, 110 FERC ¶ 61,211, at P 38 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219, at p. 61,866 (2002); *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at p. 62,258, *reh'g denied*, 77 FERC ¶ 61,188 (1996).

rates."[41] However, continues CCPS, the Commission also has recognized the ability of a pipeline and its shippers to agree to a different rate change mechanism: "[W]henever a pipeline can secure the agreement of all existing customers, it may file a rate change based on such a settlement."[42] In the Commission's words, "[A]llowing rate changes to reflect the agreement of shippers and the pipeline would further [FERC's] policy of favoring settlements as a means for parties to avoid litigation and thereby lessen the regulatory burdens of all concerned."[43]

21. *Commission Analysis*. The Commission previously has accepted negotiated rates, with unanimous agreement of the current customers, which can be adjusted only upward.[44] In *Express*, the Commission stated that Order No. 561 anticipated that some proposals might not follow the Commission's indexing methodology:

> As to ARCO's suggestion that the escalator clauses in such [initial rate] agreements should be allowed, even if the rates would exceed the indexed ceiling, the Commission believes that it is consistent with the theory behind allowing a negotiated rate to uphold escalator clauses that reflect the unanimous agreement of the current customers.[45]

22. In this case, CCPS is using the Commission's index for increases, but if the index declines, CCPS will not reduce the rate. In Order No. 561, the Commission furthered its policy favoring settlements as a means for parties to avoid litigation and thereby lessen

[41] CCPS cites *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,985, at p. 30,946-47 (1993).

[42] *Id*. p. 30,946-47, 30,951 (indexing system that allowed for contractual agreements superior to one of indexing alone). CCPS states that the Commission also approved an alternative rate adjustment that solely adjusted rates upward in *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at p. 62,258-59 (1996).

[43] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,985, at p. 30,961 (1993) (contractual escalator clauses that exceed the prescribed general index are "consistent with the theory behind allowing a negotiated rate" to the extent they "reflect the unanimous agreement of the current customers").

[44] *Express Pipeline Partnership*, 76 FERC ¶ 61,245 at 62,258-59 (1996).

[45] *Id.* at 62,259.

the regulatory burdens of all concerned.[46] The Commission finds that the proposed rate structure of CCPS does not violate the antidiscrimination and undue preference provisions of the ICA because such rates were made available to all interested shippers and reflect the differences in service between firm and non-firm shippers.

The Commission orders:

The declarations requested in CCPS' petition are granted to the extent set forth in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[46] *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, FERC Stats. & Regs., Regulations Preambles January 1991-June 1999 ¶ 30,985, at p. 58,764 (1993).