

144 FERC ¶ 61,092  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Enterprise TE Products Pipeline Company LLC

Docket No. OR13-20-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 1, 2013)

1. On May 14, 2013, Enterprise TE Products Pipeline Company LLC (Enterprise TE) filed a Petition for a Declaratory Order (Petition) requesting approval of priority service, the tariff rate structure, and service request allocation methodology for its proposed Seymour Lateral Extension Project (Seymour Project). Enterprise TE contends that the Seymour Project is expected to create up to 90,000 barrels per day (bpd) of new diluent transportation capacity, and will enhance the alternatives available for transporting diluent from the Gulf Coast. Enterprise TE requests that the Petition be granted no later than August 1, 2013, so that required additions to the available infrastructure be completed as soon as possible. As discussed below, the Commission conditionally grants the Petition.

**Background and Details of the Project**

2. The Seymour Project involves the construction of a new 16-inch lateral pipeline from a point in Illinois on the existing Seymour Lateral to a location in Manhattan, Illinois adjacent to tankage of Enbridge Pipelines (Southern Lights) LLC's Southern Lights Pipeline.<sup>1</sup> Enterprise TE also will construct a new interconnection with the Southern Lights Pipeline, and a new interconnection with Kinder Morgan Cochin LLC's Cochin Pipeline facilities.<sup>2</sup> The entire Seymour Project, expected to begin partial service by the fourth quarter of 2013, will consist of up to 44 miles of 16-inch pipeline and related facilities, costing in excess of \$115 million.<sup>3</sup>

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<sup>1</sup> Petition at 1.

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> *Id.* at 2.

3. Due to the substantial capital investment necessary to complete the Seymour Project, Enterprise TE states that it held a widely-publicized open season in which all “bona fide interested parties” had an equal opportunity to participate.<sup>4</sup> All interested parties who, according to Enterprise TE, established that they were legitimate potential shippers were provided information on the proposed project, including information on term and volume commitments.<sup>5</sup> Enterprise TE requested that shippers execute Transportation Service Agreements (TSAs) setting forth the term and volume commitments. Enterprise TE states that these term and volume commitments are integral to the economic viability of the Seymour Project.

4. Enterprise TE’s proposed rate structure states that in periods when the Seymour Project is not in prorationing, committed shippers (those who executed TSAs) will pay discounted rates for their committed volumes relative to the rates for uncommitted volumes in recognition of the volume and term commitments made.<sup>6</sup> During periods of prorationing, committed shippers may choose to pay rates of at least \$0.01 per barrel more than uncommitted shippers in return for which committed shippers will receive priority service for their committed volumes.<sup>7</sup>

5. Enterprise TE states that it follows Commission precedent by reserving up to 90 percent of available capacity for committed shippers, while maintaining at least 10 percent of available capacity to uncommitted shippers.<sup>8</sup> Enterprise TE states that if the pipeline’s normal operating capacity is reduced by *force majeure* or other causes, the capacity available for committed volumes will be maintained until the pipeline’s operating capacity falls below the level required to serve volumes nominated for priority service.<sup>9</sup>

6. Enterprise TE states that it does not anticipate allocation of other products on the existing facilities upstream from the Seymour Project, due to adequate capacity to

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<sup>4</sup> Petition at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.* at 7.

accommodate other products on the pipeline.<sup>10</sup> Further, Enterprise TE may follow its historical practice of offloading other products onto the Centennial Pipeline if necessary.

### **Requested Rulings**

7. Enterprise TE seeks an order approving the pipeline's proposal to allow up to 90 percent of the available capacity created through the Seymour Project for diluent service, or up to 81,000 bpd, to be treated as discounted committed space which, at the option of the committed shipper, may be converted to a priority service rate during periods of prorationing.<sup>11</sup>

8. Enterprise TE states that the terms of its tariff and priority service structure is consistent with Commission precedent. Enterprise TE states that the Commission has approved discount rate structures in which committed shippers that enter into term and volume commitments with the pipeline pay lower rates on their committed volumes than the rate payable on uncommitted volumes.<sup>12</sup> Discount rate structures, argues Enterprise TE, do not violate the anti-discrimination or undue preference provisions of the Interstate Commerce Act (ICA) because the rate discount was made available to all interested shippers and reflects the difference between firm and non-firm shippers.<sup>13</sup>

9. Enterprise TE further argues that the Commission has previously approved various proposals to charge a priority service rate in connection with priority service that will not be subject to prorationing.<sup>14</sup> The Commission has also, states Enterprise TE, approved prior proposals that blend a discount rate with a priority rate, as the Seymour Project entails.<sup>15</sup>

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<sup>10</sup> *Id.* at 4. Enterprise TE anticipates at least 26 percent capacity remaining available for refined products and Liquefied Petroleum Gas (LPG) movements to Creal Springs, Illinois, and approximately 44 percent remaining available capacity for movements further north.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.* at 12 (citing *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 (2012)).

<sup>13</sup> Petition at 12 (citing *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 at P 17).

<sup>14</sup> Petition at 12 (citing *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 at P 21).

<sup>15</sup> Petition at 13 (citing *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 at PP 19-20).

10. Finally, Enterprise TE argues that its proposal to reserve up to 90 percent of diluent capacity for committed volumes while ensuring that uncommitted volumes have access to at least 10 percent of the capacity is consistent with Commission precedent.<sup>16</sup>

### **Notice and Interventions**

11. Notice of the Petition was issued on May 15, 2013. Interventions and protests were due June 7, 2013. A Joint Motion to Intervene, Comment, and Protest (Joint Protest) was filed on June 7, 2013.<sup>17</sup> Pursuant to Rule 214 of the Commission's regulations,<sup>18</sup> all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties.

12. The Joint Protestors argue that the Commission should not approve the Petition because Enterprise TE failed to set forth any range for the discounted committed rates, failed to set forth uncommitted rates, and failed to set forth the terms of the proposed prorationing policy or priority service. Joint Protestors claim that offering priority service to committed diluent shippers could curtail or eliminate movements of other products on the Enterprise TE system. Joint Protestors further argue that without reviewing the specific rates, they cannot determine whether movements of other products will cross-subsidize diluent shipments.

13. The Joint Protestors also state that Enterprise TE refused to provide information regarding the open season, and that certain shippers were not provided any opportunity to obtain priority service. In e-mails provided by Joint Protestors, the following timeline is established: On April 17, 2013, counsel for Joint Protestors requested "additional information on this program, including information on the binding commitments, the term and price of different commitment levels." On May 3, Enterprise TE sought information on who the potential shipper was interested in the open season. The same day counsel for Joint Protestors responded "I represent many current and potential shippers on your system and again request the information that you have already provided to some regarding the open season or commitment period on diluent natural

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<sup>16</sup> Petition at 13 (citing *Sunoco Pipeline, L.P.*, 139 FERC ¶ 61,259, at PP 9-15 (2012)).

<sup>17</sup> The Joint Protestors are CHS, Inc., Delta Air Lines, Inc., Federal Express Corp., Growmark, Inc., HWRT Oil Co., LLC, MFA Oil Co., Southwest Airlines Co., United Airlines, Inc., and UPS Fuel Services, Inc.

<sup>18</sup> 18 C.F.R. § 385.214 (2013).

gasoline. On May 7, 2013, Enterprise TE stated that it would not provide open season information until it could verify a party's legitimate interest in the project.

14. In reply, Enterprise TE first notes that it discontinued nominations for all interstate distillate and jet fuel service on its mainline on June 1, 2013, and the Joint Protestors' concerns were adequately addressed in prior proceedings concerning the discontinuation.<sup>19</sup> Enterprise TE next argues that the Commission's usual approach in declaratory orders is to rule on the general rate structure without approving specific rates. Enterprise TE further argues that the transportation of different products is a distinct service, and there is no relation between various rates of distinct services.

15. Enterprise TE argues, in reference to the open season, that "all shippers interested in entering into long-term commitments to move diluent volumes were given the opportunity to do so."<sup>20</sup> Enterprise TE further argues that it was appropriate to deny open season information to the Joint Protestors, since they were "unwilling or unable to show that (counsel) represented any commercial entity with a legitimate interest in the diluent project."<sup>21</sup>

### **Discussion**

16. Enterprise TE seeks Commission approval of both a discounted rate structure for committed shippers and a premium rate structure for priority capacity during periods of prorationing. As Enterprise TE correctly states, this type of blended proposal is consistent with those previously approved by the Commission.<sup>22</sup> The Commission finds that the Seymour Project's terms for priority service, the tariff rate structure, and service request allocation methodology are indeed consistent with prior projects approved by the Commission.

17. Joint Protestors are incorrect in their argument that the Commission should review and approve specific rates as part of the declaratory order process. The declaratory order process approves general rate structures, often prior to the point where specific rates can be calculated.<sup>23</sup>

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<sup>19</sup> See *Enterprise TE Products Pipeline Co. LLC*, 143 FERC ¶ 61,191 (2013).

<sup>20</sup> Reply Comments of Enterprise TE at 18-19, filed June 24, 2013.

<sup>21</sup> Reply Comments at 18.

<sup>22</sup> *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 (2012).

<sup>23</sup> See *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249 (2012).

18. Joint Protestors' arguments concerning Enterprise TE's diluent rates as compared to rates for other products are misplaced. The Commission's requirement that priority service be at a higher rate than non-priority service involves the distinct transportation service at issue. Concerns of cross-subsidization may be addressed in either protests or complaints involving specific rates.

19. The Commission will only conditionally approve Enterprise TE's petition, however, due to concerns regarding the open season held for the Seymour Project. Joint Protestors raised legitimate arguments concerning the availability for all shippers to take part in Enterprise TE's open season, and the Commission will not grant the petition while these concerns remain.

20. Under the ICA, it is unlawful for any common carrier to charge discriminatory rates, or provide undue preference to any particular shipper.<sup>24</sup> Starting with the Commission's ruling in *Express Pipeline*,<sup>25</sup> carriers have been able to seek declaratory orders approving discount rate structures in which shippers that enter into term and volume commitments with the pipeline (committed shippers) pay lower rates on their committed volumes than the rate available on uncommitted volumes.<sup>26</sup> Such differential rate structures have been found to not violate the anti-discrimination or undue preference provisions of the ICA because the rate discount was made available to all interested shippers and reflects the difference between firm and non-firm shippers.<sup>27</sup>

21. Unlike in *Express*, in the present proceeding a protest has been filed, raising the argument that certain potential shippers did not have an opportunity to enter into, or even review, the TSAs relating to the Seymour Project. Joint Protestors challenge the appropriateness of Enterprise TE's refusal to provide this pertinent information. Enterprise TE argues that all shippers interested in entering into long-term commitments to move diluent volumes were given the opportunity to do so, but that it was appropriate to deny open season documents to Joint Protestors' counsel because he was "unable or unwilling to show that he represented any commercial entity with a legitimate interest in the diluent project."<sup>28</sup>

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<sup>24</sup> 49 U.S.C. § 3(1) (1988).

<sup>25</sup> *Express Pipeline P'Ship*, 76 FERC ¶ 61,245 (1996).

<sup>26</sup> See, e.g., *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 (2012); *Sunoco Pipeline, L.P.*, 141 FERC ¶ 61,212 (2012); *Shell Pipeline Co., LP*, 139 FERC ¶ 61,228 (2012).

<sup>27</sup> *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 at P 17.

<sup>28</sup> Reply Comments at 18.

22. The availability of discount rates to *all* interested shippers is the fundamental requirement upon which rulings approving such rate structures have been based. Contract rates can only satisfy the principle of nondiscrimination when the carrier offering such rates is required to make them available to “any shipper willing and able to meet the contract’s terms.”<sup>29</sup> All prospective shippers must have an equal, non-discriminatory opportunity to review and enter into contracts for committed service.<sup>30</sup> Enterprise TE’s open season for the Seymour Project failed to meet this fundamental requirement.

23. Enterprise TE’s arguments that it was appropriate to essentially “screen” potential shippers and only send information to those deemed by the pipeline to be “bona fide interested parties” who “established they were legitimate shippers” is contrary to Commission precedent as well as the statutory mandates of the ICA.<sup>31</sup> In order for the common carriage and anti-discrimination provisions of the ICA to be met, any shipper willing and able to ship product under substantially similar circumstances and conditions as another shipper must be afforded the opportunity to join a similar contract.<sup>32</sup> The pipeline cannot limit the open season to those entities currently in the market and deny access to any potential shipper seeking to enter that market on equal terms. While Enterprise TE may investigate whether a potential shipper indeed is able to meet the terms of the contract, which is primarily a financial matter, and may protect from disclosure of confidential information, a pipeline cannot refuse to provide information during an open season to a potential shipper. Such information determines whether a potential shipper is indeed interested in becoming a committed shipper, as well as provides information to the potential shipper as to whether there are concerns that should be addressed in the declaratory order process, i.e. whether to protest.<sup>33</sup>

24. Based on the concerns involving the open season for the Seymour Project discussed above, the Commission requires Enterprise TE, within 15 days of the issuance of this order, to supplement its open season by providing the terms of the Seymour Project open season to all parties expressing interest in the project. All potential shippers must be offered an opportunity to participate in the Seymour Project consistent with the

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<sup>29</sup> *Sea-Land Svc., Inc. v. Interstate Commerce Comm.*, 738 F.2d 1311, 1317 (D.C. Cir. 1984).

<sup>30</sup> *Express Pipeline P’Ship*, 76 FERC ¶ 61,245 at 62,254.

<sup>31</sup> Petition at 3.

<sup>32</sup> *Sea-Land Svc., Inc.*, 738 F.2d at 1317.

<sup>33</sup> *See id.* at 1320.

original terms of the open season, and on similar grounds as existing committed shippers. Once it is made available to all interested shippers, the Seymour Project open season will be consistent with Commission precedent. The Commission's approval is conditioned upon Enterprise TE properly supplementing their open season as directed here. All other aspects of Enterprise TE's proposal are approved.

The Commission orders:

The Petition is conditionally granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.