145 FERC ¶ 61,099
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.

Sunoco Pipeline L.P. Docket No. OR13-30-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 1, 2013)

1. On August 15, 2013, Sunoco Pipeline L.P. (SPLP) filed a petition for a declaratory order approving the proposed tariff and rate structure for its Mariner South Pipeline Project (the Project), which will transport natural gas liquids and petroleum products (Permitted Products) from Mont Belvieu, Texas to Nederland, Texas. SPLP seeks the order by November 1, 2013. As discussed below, the Commission grants the requested declaratory order.

Project Details

2. In 2013, SPLP acquired an approximately 55-mile currently idle pipeline (MVB-70 Pipeline) that extends from a location several miles from Mont Belvieu, Texas to a location several miles from Nederland, Texas (Existing Pipeline). The Existing Pipeline was last in service in 2005 at which time it was in natural gas transmission service. SPLP plans to reactivate the Existing Pipeline and build a new pipeline segment that will connect the Existing Pipeline to the Sunoco Partners Marketing & Terminals L.P.'s marine terminal in Nederland, Texas. SPLP also plans to build a new pipeline segment that will connect the Existing Pipeline to the Mont Belvieu storage and fractionation facilities owned by Lone Star NGL Products Services LLC. Together, these components comprise the Project, resulting in a continuous system for the shipment of Permitted Products from Mont Belvieu to Nederland. When completed, the Project will enhance the alternatives for transporting Permitted Products to marine shipping facilities, thus allowing more efficient economic use of these products. The Project is expected to enter into full service in January 2015, -creating up to 200,000 barrels per day (bpd) of new capacity for transportation of Permitted Products.

Open Season

3. Due to the substantial capital investment necessary to complete the Project, SPLP conducted an open season seeking term and volume commitments in return for priority service at a premium rate.

4. The Open Season for the Project commenced on March 20, 2013, and concluded on May 21, 2013. Notice of the open season was provided to interested parties, with additional notice distributed in press releases to more than 200 trade and general circulation print and online publications. *Pro forma* Transportation Service Agreements (TSAs) were provided to shippers who chose to participate in the open season; the TSAs included the proposed priority service and uncommitted rates for 2015 and the proposed rules tariff that would exempt committed volumes from prorationing under ordinary operating conditions.

Rates and Terms for the Project

5. According to SPLP, shippers that enter into TSAs (Committed Shippers) will ship at least 18,000 bpd on a ship-or-pay basis for five- or ten-year terms. Committed Shippers will also agree to pay a premium rate (i.e., a rate in excess of the uncommitted rate) for transportation of committed volumes in exchange for an allocation of up to 90 percent of the capacity created by the Project. SPLP states that the remaining ten percent of the capacity created by the Project will be reserved for uncommitted volumes.

6. SPLP states that it will have the right to adjust the committed rate annually, effective January 1 of each year, commencing on January 1, 2016. The adjustment will be based on the annual FERC oil pipeline index, or, if FERC indexing has terminated, by the annual change in the Provider Price Index published in the immediately preceding calendar year plus two percent. SPLP will also have the right to increase the committed rate in the event of certain increases in capital or operating costs.

Requested Rulings

7. SPLP seeks an order approving the proposal to provide priority service of up to 90 percent of the capacity created through the Project at a premium rate for shippers that commit to move at least 18,000 bpd. SPLP argues that this structure is supported by Commission precedent and is a reasonable, non-discriminatory means of meeting the needs of both SPLP and its shippers.

8. SPLP argues that under the Interstate Commerce Act (ICA), the Commission has discretion to approve its proposed priority service terms and rate structures. The provisions of the ICA, argues SPLP, contain no specific requirements and prohibitions with respect to common carrier obligations, but instead impose a “general

reasonableness" standard to be applied by the Commission. Courts, states SPLP, historically have interpreted the statutory provisions of the ICA to invest the Commission with considerable discretion to assess the reasonableness of pipeline practices.[1]

9. The Commission, argues SPLP, has also exercised discretion under the ICA to approve various methods for allocating capacity among different categories of shippers. Pipelines have been granted latitude by the Commission, states SPLP, in crafting allocation methods to meet circumstances specific to their operations.[2] SPLP also argues that the Commission has approved requests for priority service on terms comparable to those offered in its Petition.[3]

Notice and Interventions

10. Public notice of the petition was issued on August 19, 2013, with interventions and protests due on or before September 19, 2013. No interventions, protests or other comments were filed.

Commission Determination

11. The Commission finds that SPLP's proposal is consistent with applicable policy and precedent. To provide financial assurances to SPLP, the proposed TSAs require shippers to enter into long-term volume commitments. In exchange for these commitments, the TSAs provide for higher rates for premium service not subject to prorationing under ordinary operating conditions.

12. SPLP provides an appropriate amount of capacity for uncommitted shippers, at least ten percent, while affording benefits to Committed Shippers who enter into long-term TSAs. Moreover, SPLP's open season gave all potential shippers the opportunity to become Committed Shippers by entering into TSAs.

13. Finally, the Commission will approve SPLP's proposal to offer up to 90 percent of the Project's capacity at a premium service for shippers that commit to move

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[1] (Citing *Sea-Land Services Inc. v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984)).

[2] (Citing *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094 (2004), *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008)).

[3] (Citing *Sunoco Pipeline LP*, 141 FERC ¶ 61,212, *Sunoco Pipeline LP*, 137 FERC ¶ 61,107 (2011)).

predetermined volumes on a ship-or-pay basis. Accordingly, the Commission grants SPLP's petition for declaratory order, based on the representations made in the petition.

The Commission orders:

SPLP's Petition for declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.