145 FERC ¶ 61,133
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.

Dominion NGL Pipelines, LLC Docket No. OR13-32-000

DECLARATORY ORDER

(Issued November 15, 2013)

1. On August 21, 2013, Dominion NGL Pipelines, LLC (Dominion NGL) filed a Petition for Declaratory Order (Petition). Dominion NGL asks the Commission to approve (a) the general rate structure for its new ethane pipeline (Ethane Pipeline) extending from a natural gas processing and fractionation plant in Marshall County, West Virginia, to an interconnection with Enterprise Products Partners, L.P.'s Appalachia to Texas Express pipeline (ATEX);[1] (b) the rates and terms of a long-term transportation service agreement (TSA) between Dominion NGL and a shipper that has agreed to use or pay for significant capacity on the Ethane Pipeline (Committed Shipper); and (c) the rate design that uses revenue crediting to establish rates for shippers that do not enter into agreements for committed service, but instead take service on an uncommitted basis.

2. Because it anticipates that the initial in-service date of the Ethane Pipeline will occur as early as January 1, 2014, Dominion NGL asks that the Commission act on the Petition by November 15, 2013, so that it can file rates for the Ethane Pipeline to become effective as of January 1, 2014. As discussed below, the Commission grants the requested approvals.

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[1] Dominion NGL explains that ATEX is an approximately 1,230-mile pipeline project designed to facilitate natural gas production from the Marcellus and Utica shale regions by transporting ethane to the Gulf Coast petrochemical market. Dominion NGL adds that on February 1, 2013, the Commission issued a declaratory order approving certain aspects of the ATEX rate structure and terms of service. *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087 (2013).

Background

3. Dominion NGL states that the Ethane Pipeline will be an eight-inch diameter line that will transport a maximum volume of 27,000 barrels per day (bpd) of ethane approximately 58 miles from a new processing and fractionation plant located in Natrium, West Virginia (Natrium Plant) to an interconnection to be established with ATEX near Follensbee, West Virginia.[2]

4. According to Dominion NGL, between October 2011 and October 2012, average production of natural gas from the Marcellus shale increased by 72 percent to 6.8 billion cubic feet per day (Bcf/d), which accounted for 26 percent of all U.S. natural shale gas production, based on Energy Information Administration (EIA) calculations.[3] Moreover, continues Dominion NGL, Marcellus shale production has increased nearly 50 percent during the first six months of 2013 compared to the first six months of 2012.[4]

5. Dominion NGL explains that the first Utica shale wells were drilled in late 2010. Dominion NGL further explains that, in 2012, the 87 Utica wells in Ohio that produced for at least a portion of the year produced 12.8 Bcf of natural gas, representing 16 percent of Ohio's total production, as reported by Ohio Department of Natural Resources (ODNR).[5] Dominion NGL adds that ODNR projects that Ohio's Utica gas production

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[2] In the Petition, Dominion NGL explains in detail the business entities involved in the Ethane Pipeline and related facilities. Petition for Declaratory Order of Dominion NGL Pipelines, LLC, at 2-3, 9-10.

[3] Dominion NGL cites EIA, Natural Gas Weekly Update for Week Ending November 14, 2012, *available at:* http://www.eia.gov/naturalgas/weekly/archive/2012/11_15/index.cfm.

[4] Dominion NGL cites EIA, Today in Energy, July 22, 2013, "U.S. natural gas spot prices increased during first-half of 2013," *available at:* http://www.eia.gov/todayinenergy/detail.cfm?id=12191.

[5] Dominion NGL cites "Additional Oil & Gas Facts," released by the Director of ODNR, accompanying its release of 2012 Ohio production data, *available at:* http://www.slideshare.net/MarcellusDN/odnr-utica-conventional-well-production-history-predictions-20112015.

will grow to approximately 49 Bcf in 2013, 88 Bcf in 2014, and 146 Bcf in 2015,[6] which Dominion NGL believes to be a conservative estimate.[7]

6. Dominion NGL contends that much of the production from the Utica and Marcellus shale production areas is "wet gas" (i.e., natural gas containing a large percentage of associated natural gas liquids (NGL), including ethane, propane, butane, and natural gasoline). Dominion NGL maintains that wet gas is particularly desirable for producers when gas prices are low relative to oil because the sale of NGLs at prices generally tracking oil prices can increase profitability substantially.[8] However, Dominion NGL emphasizes that a major challenge for gas processing in the Appalachian region is the lack of a local market for ethane, which is the largest component of the NGLs.[9]

7. Additionally, Dominion NGL states that the prevalence of wet gas in the region has led to a boom in the construction of processing and fractionation plants to remove the NGLs. Dominion NGL asserts that, prior to this year, the Appalachian region had 1,575 million cubic feet per day (MMcf/d) of processing capacity and 72,000 bpd of fractionation capacity. Dominion NGL anticipates that 2,365 MMcf/d of processing and 95,742 bpd of fractionation capacity will be added to the region during 2013, with another 1,000 MMcf/d of processing capacity and nearly another 96,000 bpd of fractionation capacity slated for 2014. Dominion NGL points out that the Natrium Plant is part of this new processing and fractionation infrastructure and that it currently

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[6] *Id.*

[7] Dominion NGL states that ODNR projects that over 1,000 Utica wells in Ohio will be producing in 2015, and that given the productivity of the existing wells, it expects even greater production than the estimates cited. Dominion NGL also points out that the largest Utica producer has stated that Utica production to date has been sharply constrained by a lack of gas processing infrastructure. Dominion NGL cites an April 2, 2013 analysts' conference call with the acting Chief Executive Officer of Chesapeake Energy Corporation. Transcript *available at:* http://seekingalpha.com/article/1312171-chesapeake-energy-corporation-ceos-hosts-update-conference-call-transcript.

[8] Dominion NGL cites EIA, Today in Energy, April 20, 2012, "What are natural gas liquids and how are they used?" *available at:* http://www.eia.gov/todayinenergy/detail.cfm?id=5930.

[9] Dominion NGL cites *Ethane Disposition Poses Risk for Marcellus Production*, Oil & Gas Financial Journal, Sept. 10, 2010, *available at*: http://www.ogfi.com/index/article-disposition.hmtl (discussing the proprietary study by BENTEK Energy, *A Home for Marcellus Ethane*).

provides 200 MMcf/d of processing capacity and 36,708 bpd of fractionation capacity, with capacity expansions planned for both functions.

8. Dominion NGL emphasizes that the Commission has acknowledged the need for additional pipeline capacity to transport the excess ethane away from the Marcellus and Utica production areas. In particular, Dominion NGL cites (a) the ATEX project,[10] (b) the Mariner West project to transport ethane to Ontario, Canada,[11] and (c) the Mariner East project to transport ethane to the Philadelphia area for further transportation to other markets.[12]

9. Because it expects the Natrium Pipeline to cost approximately $136 million, including capitalized interest, Dominion NGL states that it was unwilling to construct the pipeline without some binding, long-term financial commitments from shippers to support the project's economics. Therefore, continues Dominion NGL, it conducted a widely-publicized open season from July 17 to August 17, 2012.[13]

10. Dominion NGL explains that the open season announcement offered all prospective shippers an opportunity to become committed shippers by entering into long-term TSAs with minimum daily volumes of at least 10,000 bpd for a contract term of at least 10 years. Dominion NGL further explains that its announcement advised prospective shippers that up to 90 percent of the pipeline's total available capacity will be devoted to committed shippers, which will be charged a transportation rate up to 75 percent less than the rate to be charged to uncommitted shippers. Dominion NGL states

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[10] Dominion NGL cites *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087 (2013) ATEX is expected to commence service during the first quarter of 2014. http://www.atexexpresspipeline.com.

[11] Dominion NGL cites *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011). The Mariner West project began service in July of this year. http://sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208.

[12] Dominion NGL cites *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115 (2013). The Mariner East project is expected to have the ability to transport propane by the second half of 2014 and to be fully operational to deliver propane and ethane in the first half of 2015. http://www.sunocologistics.com/Customers/Business-Lines/Natural-Gas-Liquids-NGLs/NGL-Projects/208.

[13] A copy of the open season notice is attached to Dominion NGL's Petition as Attachment A.

that it also advised that the committed shippers would be subject to generally applicable prorationing rules. However, continues Dominion NGL, only Dominion Natrium, LLC (Dominion Natrium), the owner of the Natrium Plant, entered into a TSA for service on the Ethane Pipeline.[14]

11. Dominion NGL contends that its proposed approach is fully consistent with well-established Commission policy and it lists the following key terms of the TSA:

- A minimum volume commitment of 12,500 bpd, which the Committed Shipper [Dominion Natrium] must either tender for transportation or make a shortfall payment for committed volumes not transported. The shortfall payments are treated as a pre-payment for transportation of volumes in excess of the minimum commitment in the future.[15]

- An initial term of 10 years, with a right for the Committed Shipper to extend the term for one to five years for a minimum volume commitment of between 50 and 100 percent of the commitment applicable at the end of the term.

- A rate for the committed volumes of $1.26 per barrel, or three cents per gallon, for transportation from the Natrium Plant to the ATEX interconnection.

- The Committed Shipper rate will be increased annually by any positive adjustment under the Commission's indexing methodology as set forth in section 342.3 of the Commission's regulations (and any future amendments or modifications of it), but *not* decreased by any negative adjustments to that index.

- Dominion NGL contracted to file an initial uncommitted rate that is at least 50 percent higher than the committed rate. If the committed rate ever exceeds the uncommitted rate for the same transportation, the pipeline will reduce the committed rate to equal the uncommitted rate.

- The Committed Shipper has the right, but not the obligation, to tender volumes in excess of its minimum commitment for transportation pursuant to the general terms of the tariff of the Ethane Pipeline. The Committed Shipper rate will apply

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[14] Dominion NGL states that Dominion Natrium entered into a TSA with a minimum volume commitment of 12,500 bpd.

[15] Dominion NGL states that the shortfall payments will be credited as payment for incremental volumes for a period of up to 12 months, plus one month, for each month of that period during which the pipeline is in prorationing, up to a maximum of 18 months.

to the incremental volumes in any month in which the pipeline is not in prorationing; the uncommitted rate will apply to the incremental volumes in any month when prorationing applies.

- The Committed Shipper rate may be increased in the future in the event of any new fee resulting from an environmental law or regulation of general applicability; provided that the uncommitted rate also will be increased commensurately.

- The rate applicable to the Committed Shipper is subject to a most-favored-nation provision, providing that if Dominion NGL enters into a TSA with any other similarly-situated shipper for a lower rate, the Committed Shipper's rate will be reduced to equal the rate provided to the other party.

12. According to Dominion NGL, the Commission has employed the declaratory order mechanism to address proposed rate and service issues and provide enhanced regulatory certainty for NGL pipelines.[16] Dominion NGL contends that, since the *Express* decision, the dual committed/uncommitted rate structure proposed for the Ethane Pipeline has become well-established in the industry and commonly approved in subsequent Commission orders.

13. In particular, asserts Dominion NGL, the Commission has held that uncommitted shippers must have access to transportation on a common carrier pipeline, which has led to a general rule that at least 10 percent of the total capacity must remain uncommitted and generally available.[17] Dominion NGL emphasizes that the current Committed Shipper on the Ethane Pipeline has contracted for less than half of the total available capacity (12,500 of 27,000 bpd); therefore, ample capacity remains available for uncommitted shippers. Dominion NGL also argues that the rates established in the TSA with the Committed Shipper should be treated as "settlement rates" and should remain

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[16] Dominion NGL cites *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253, *order on reh'g*, 77 FERC ¶ 61,188 (1996) (*Express*) (explaining that "the public interest is better served" by up-front regulatory assurance through a declaratory order rather than waiting "until a rate filing is made, when the decision-making process would be constrained by the deadlines inherent in the statutory filing procedures.")

[17] Dominion NGL cites, *e.g.*, *Enterprise Liquids Pipeline LLC*, 144 FERC ¶ 61,083, at P 8 (2013); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 27 (2013); *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115, at P 19 (2013); *Sunoco Pipeline L.P.*, 141 FERC ¶ 61,212, at P 21 (2012); *Kinder Morgan Cochin LLC*, 141 FERC ¶ 61,056, at P 18 (2012); *Shell Pipeline Co.*, 141 FERC ¶ 61,017, at P 14 (2012); *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at P 14 (2012); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011).

effective without the need for future filings confirming that the Committed Shipper agrees to changes in the rate.[18]

14. Dominion NGL further states that the Commission has accepted rates for committed shippers that are lower than the rates for uncommitted shippers. Additionally, Dominion NGL contends that the Commission also has approved other elements that Dominion NGL had included in its TSA with its Committed Shipper, such as shipper contract extension rights[19] and a one-way indexing adjustment provision.[20]

15. Dominion NGL next maintains that the proposed rate structure and the terms of its TSA with the Committed Shipper do not violate the undue preference provisions of the Interstate Commerce Act (ICA). Dominion NGL states that the Commission recently addressed this issue in analogous circumstances:

> Because all shippers had the opportunity in well publicized open seasons to take advantage of competitive rates based on volume commitment and contract term, there is no issue of undue discrimination or undue preference among the resulting classes of shippers differentiated by contract term and volume commitment. Committed shippers are not similarly situated to shippers that did not enter into a commitment by their own choices.[21]

16. Dominion NGL emphasizes that the Committed Shipper in this case has made a significant and long-term financial commitment that has made possible the construction of the Ethane Pipeline, while potential uncommitted shippers have made no such

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[18] Dominion NGL observes that "[a]lthough the Commission's regulations do not provide specifically for negotiated initial rates with agreed-to future rate changes, the Commission has ruled that such contracts 'are consistent with the spirit of section 342.4(c)' of the Commission's regulations." Dominion NGL cites *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013) (citing *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,258-59 (1996); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 21 (2012); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 (2010)).

[19] Dominion NGL cites *e.g.*, *OxY Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 19 (2012).

[20] Dominion NGL cites *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 20 (2007).

[21] Dominion NGL cites *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 26 (2013).

commitment and may use the pipeline at the times they desire. Therefore, argues Dominion NGL, a higher rate for such service is entirely reasonable.

17. Dominion NGL states that it will submit a tariff filing to establish its initial uncommitted rates and that it anticipates submitting cost-of-service data in accordance with section 342.2(a) and Part 346 of the Commission's regulations. Dominion NGL explains that it plans to calculate its uncommitted rates by beginning with its total cost of service and crediting to it the revenues committed by committed shippers (using the committed shipper rate and minimum volume commitment). Next, continues Dominion NGL, the cost of service net of this revenue crediting will be divided by the total pipeline design capacity less the committed volumes (i.e., 27,000 barrel capacity minus the current 12,500 barrel committed volume, or 14,500 barrels). Dominion NGL emphasizes that, by using the total design capacity in its rate design, it will guard against any potential over-recovery of costs.[22]

18. Dominion NGL contends that the Commission also has approved the revenue crediting rate design in other cases,[23] explaining in *TransCanada Keystone* that "[t]he revenue crediting mechanism recognizes that committed shippers who have assumed the risk associated with term and throughput commitments in order to enable the construction of a project are not similarly situated to uncommitted shippers."[24] Indeed, adds Dominion NGL, the Commission recently reaffirmed its approval of another pipeline's rate design providing that the uncommitted rate will be twice as high as the committed rate.[25] While it proposes no specific uncommitted rate in this proceeding, Dominion NGL anticipates (based on current cost information) that this revenue crediting approach will result in an initial uncommitted rate of approximately 5.2 to 5.6 cents per gallon (compared to the committed rate of three cents per gallon).

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[22] Dominion NGL cites *White Cliffs Pipeline L.L.C.*, 126 FERC ¶ 61,070, at PP 30-32 (2009); *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at PP 26-33 (2008).

[23] Dominion NGL cites, *e.g.*, *TransCanada Keystone Pipeline, LP*, 144 FERC ¶ 61,089, at P 19 (2013); *Marketlink, LLC*, 144 FERC ¶ 61,086, at P 14 (2013); *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 25 (2008); *Laclede Pipeline Co.*, 114 FERC ¶ 61,335 (2006), *reh'g denied*, 119 FERC ¶ 61,236 (2007); *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,254 (1996).

[24] Dominion NGL cites *TransCanada Keystone Pipeline, LP*, 144 FERC ¶ 61,089, at P 19 (2013); *Marketlink, LLC*, 144 FERC ¶ 61,086, at P 14 (2013).

[25] Dominion NGL cites *Enbridge Pipelines (Southern Lights) LLC*, 144 FERC ¶ 61,044 (2013).

Public Notice, Interventions, and Protests

19. Notice of the filing was issued August 22, 2013, with interventions and protests due on September 23, 2013. Pursuant to Rule 214 of the Commission's regulations,[26] 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 delay or disrupt the proceeding or place additional burdens on existing parties. No interventions or protests were filed.

Commission Analysis

20. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide regulatory certainty for an important infrastructure project that will transport NGLs from major natural gas production areas, thereby facilitating transportation of the natural gas in accordance with the specifications of the natural gas pipelines.

21. Specifically, the Commission approves the TSA with Dominion Natrium, which currently is the sole Committed Shipper on the Ethane Pipeline. Dominion Natrium has agreed to ship or pay for certain volumes for a 10-year initial term, with the right to extend the TSA's term for up to an additional five years. As stated above, the Committed Shipper's volumes will require less than 50 percent of the Ethane Pipeline's capacity, so a great deal of capacity remains available for additional committed and uncommitted shippers. However, Dominion NGL specifically reserves 10 percent of the Ethane Pipeline's capacity for the uncommitted shippers that do not provide the financial assurances that committed shippers provide. Dominion NGL held an open season offering all potential shippers the opportunity to become committed shippers.

22. The Commission also finds that Dominion NGL's proposed rate structure and rate design using revenue crediting to establish rates for uncommitted shippers are consistent with Commission policy and precedent. The Commission has long held that shippers that do not enter into agreements for committed service, but instead take service on an uncommitted basis, are not similarly situated with committed shippers that provide financial support for a proposed pipeline project.

23. Additionally, the Commission finds that the proposed methodology for calculating rates for the Ethane Pipeline will ensure that the cost of Dominion NGL's facilities are appropriately allocated to shippers in a non-discriminatory manner. The calculation uses the pipeline design capacity, subtracts the amount reserved for the committed shipper (12,500 bbl) and then derives the uncommitted incremental unit cost utilizing revenue

[26] 18 C.F.R. § 385.214 (2013).

crediting. The Commission finds that this methodology ensures that no shipper or group of shippers will cross-subsidize any other shippers.

24. Dominion NGL anticipates that the Ethane Pipeline will commence service on January 1, 2014. Dominion NGL must file tariffs pursuant to the applicable provisions of Part 342 and other relevant sections of the Commission's Rules and Regulations when it proposes actual rates to implement the general methodological framework described in the Petition and approved by this order.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.