145 FERC ¶ 61,273
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunoco Pipeline L.P. Docket No. OR14-2-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 24, 2013)

1. On October 9, 2013, Sunoco Pipeline L.P. (Sunoco) filed a petition for declaratory order approving priority service and the overall tariff and rate structure for the proposed Eaglebine Express Project. Sunoco requests that the Commission act on the petition no later than December 31, 2013, so that this new transportation alternative serving the East Texas area can be completed as quickly as possible. This order grants Sunoco's petition.

Background

2. The Eaglebine Express Project is designed to transport crude petroleum from East Texas petroleum wells to the Nederland Terminal in Nederland, Texas. Nederland, Texas is a shipping and refining hub. Sunoco owns the Magtex Pipeline that currently transports refined petroleum products from Hebert, Texas to Hearne, Texas. Sunoco plans to reverse and convert the Magtex Pipeline to crude petroleum transportation, and construct a new five-mile pipeline from Hebert, Texas to Nederland, Texas. These two components will comprise the Eaglebine Express Project. The Eaglebine Express Project will thus provide a continuous system for the shipment of crude petroleum, from the Eaglebine and Woodbine shale formation to Nederland, Texas. The Eaglebine Express Project is expected to enter service by the third quarter of 2014.

3. Sunoco anticipates that the crude petroleum to be moved on the Eaglebine Express Project will originate at Sunoco's facility in Hearne, Texas. Sunoco states that the Project's Transportation Services Agreement (TSA) permits Sunoco to add origin points under specified conditions and may make some or all such additional origin points available to meet the obligations of committed shippers.

4. Sunoco states that due to the substantial capital investment necessary to complete the Eaglebine Express Project, it conducted a widely publicized open season from May 14, 2013, through July 15, 2013, seeking term and volume commitments in return for

priority service at a premium rate. Sunoco states a shipper opting for priority service will not be subject to prorationing of its committed volumes under normal operating conditions. Sunoco states that all shippers had equal rights to participate in the open season. Sunoco states that shippers willing to commit to the Project executed the TSA that was provided during the open season. Sunoco states the open season resulted in the commitment by one shipper for all of the capacity that was made available on a priority basis.

5. The Eaglebine Express Project will create approximately 60,000 barrels per day of new capacity for transportation of crude petroleum. Approximately 54,000 barrels per day (or 90 percent of the capacity) will be available to committed shippers, with the remaining 10 percent available for uncommitted shippers.

6. The tariff structure for the Eaglebine Express Project is a one-part rate determined by the committed shipper's chosen volume level and length of commitment. A committed shipper will always pay a premium rate on its shipments of committed volumes of at least one cent per barrel more than the rate payable by uncommitted shippers moving comparable volumes. Sunoco may adjust the priority service rate effective July 1 of each year. The adjustment will be based on the annual Federal Energy Regulatory Commission (FERC) oil pipeline index, or, if FERC indexing has terminated, by the annual change in the Producer Price Index. The priority service rate will never be less than the initial priority service rate. Sunoco may also adjust the uncommitted rates annually using the FERC oil pipeline index or other permitted ratemaking methods.

Requested Rulings

7. Sunoco seeks approval that it may provide 90 percent of the capacity created by the Eaglebine Express Project as priority committed space at a premium rate for shippers that commit to move volumes on a ship-or-pay basis through a transparent and widely-publicized open season. Sunoco asserts that the priority service protects the committed shipper against the risks that the barrels it has committed to move would be prorated out of the pipeline by uncommitted shippers that made no financial commitment to support the pipeline project. Sunoco asserts the terms of the tariff and service structure for the project have been designed to conform to Commission precedent.[1]

8. Sunoco also requests that the Commission affirm that the committed rates and index adjustment mechanism agreed to as part of the Eaglebine Express TSA will not be subject to revision other than by agreement of the parties. Sunoco asserts that although

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[1] Citing, *e,g.*, *Sunoco Pipeline LP*, 141 FERC ¶ 61,212 (2012); *Skelly-Belvieu Pipeline Co.*, 138 FERC ¶ 61,153 (2012); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006).

Commission regulations do not specifically provide for a negotiated initial rate with agreed-to subsequent rate changes, the Commission has approved such arrangements in prior cases by treating rates set by contract as "settlement rates" provided for under 18 C.F.R. § 342.4(c).[2]

9. Sunoco submits that the assurances requested in the petition will allow the Eaglebine Express Project to proceed as soon as possible. Sunoco contends that the public interest will be benefitted by the addition of new transportation capacity for domestically-produced petroleum.

Public Notice and Interventions

10. Public notice of Sunoco's petition was issued on October 10, 2013. Interventions and protests were due on or before November 8, 2013. No interventions, protests or comments were filed.

Discussion

11. The Commission finds that the rulings requested by Sunoco in its petition are consistent with applicable Commission policy and precedent. To provide financial assurances to Sunoco, Committed Shippers are required to enter into long-term volume commitments with a ship-or-pay obligation. In exchange for the long-term commitments, the Committed Shippers will pay higher rates for a premium service that is not subject to prorationing under ordinary operating conditions.

12. Consistent with prior orders, Sunoco will reserve up to 90 percent of the capacity of the Eaglebine Express Project for Committed Shippers and will set aside up to 10 percent of the capacity for Uncommitted Shippers. Sunoco provided an opportunity during the open season for all potential shippers to become Committed Shippers by entering into TSAs.

13. Finally, consistent with precedent, the Commission will treat the Committed Rates as settlement rates that will not be subject to future revisions other than by agreement of the parties. Based on the representations made in the petition, Sunoco's petition for declaratory order is granted.

[2] Citing, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 17 (2013); *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P12 (2013); *Kinder Morgan Pony Express Pipeline LLC,* 141 FERC ¶ 61,180, at P 21 (2012).

The Commission orders:

Sunoco'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.