

145 FERC ¶ 61,274
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. OR14-7-000

DECLARATORY ORDER

(Issued December 24, 2013)

1. On October 28, 2013, Sunoco Pipeline L.P. (SPLP) filed a Petition for Declaratory Order (Petition). SPLP seeks approval of the proposed tariff and rate structure for its Granite Wash Extension Pipeline (Project), which will transport crude petroleum from the Granite Wash Shale to Ringgold, Texas. SPLP requests Commission action on its Petition by December 31, 2013, so that the Project can be completed as quickly as possible. As discussed below, the Commission grants the rulings requested in the Petition.

Project Details

2. SPLP states that it plans to build approximately 200 miles of new 12-inch pipeline that will connect petroleum production in Wheeler County, Texas, to an existing SPLP pipeline, the Central Texas Pipeline, which extends from Ringgold, Texas, to Corsicana, Texas. As part of the Project, continues SPLP, it also will build new pump stations, tankage, and truck unloading facilities. SPLP explains that from Corsicana, shippers will be able to connect to multiple third-party pipelines, which will allow producers to reach a number of markets and refineries in the Gulf Coast and Midcontinent regions. SPLP states that the Project is expected to enter service in the fourth quarter of 2014, and it will create 70,000 barrels per day (bpd) of crude petroleum transportation capacity.

Open Season

3. Due to the substantial capital investment necessary to complete the Project, SPLP states that it conducted a widely-publicized open season seeking term and volume commitments in return for priority service at a premium rate. According to SPLP, the open season for the Project commenced on July 17, 2013, and concluded on September 30, 2013. SPLP explains that it asked shippers willing to commit to the

Project to execute Transportation Service Agreements (TSA) that contained proposed rules, regulations, rates, and a prorationing policy.

Rates and Terms for the Project

4. SPLP asserts that shippers that enter into TSAs (Committed Shippers) will have access to up to 90 percent of the Project's capacity (63,000 bpd) on a ship-or-pay basis, while 10 percent of the Project's capacity will be reserved for volumes shipped by Uncommitted Shippers. SPLP explains that, during periods when the Project is not in prorationing, Committed Shippers will pay discounted rates for transportation of their committed volumes (relative to the rates payable for transportation of uncommitted volumes) in recognition of their long-term volume commitments that made the Project possible. However, adds SPLP, during periods of prorationing, Committed Shippers may choose to pay rates at least \$0.01 per barrel more than Uncommitted Shippers in return for which the Committed Shippers will receive priority service for their committed volumes.

5. SPLP states that the proposed tariff structure consists of three classes of rates: incentive rates, priority service rates, and uncommitted rates. SPLP points out that it will have the right to adjust all three classes of rates annually based on the Commission's oil pipeline index, commencing on the first July 1 following the in-service date of the Project. Additionally, SPLP contends that it will have the right to increase the rates applicable to Committed Shippers in the event of certain increases in capital or operating costs.

Requested Rulings

6. SPLP asks the Commission to approve its proposal to reserve up to 90 percent of the available capacity created by the Project (up to 63,000 bpd) to be treated as discounted committed capacity which, at the option of a Committed Shipper, may be converted to a priority service rate payable by any such Committed Shipper during periods of prorationing. SPLP contends that the terms of its proposed tariff and priority service structure for the Project have been designed to conform to Commission precedent.¹ For example, continues SPLP, as in *Enterprise* and *Explorer*, this option for

¹ SPLP cites, e.g., *Enterprise TE Products Pipeline Co., LLC*, 144 FERC ¶ 61,092 (2013) (*Enterprise*); *Explorer Pipeline Co.*, 140 FERC ¶ 61,098 (2012) (*Explorer*); *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259 (2012); *Skelly-Belview Pipeline Co., LLC*, 138 FERC ¶ 61,153 (2012); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040 (2006); *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253 (1995), *reh'g denied*, 77 FERC ¶ 61,188, at 61,755 (1996).

priority service protects a Committed Shipper against the risk that the barrels it has committed to move under the TSA would be prorated out of the pipeline by Uncommitted Shippers that made no financial commitment to support the Project, while reserving at least 10 percent of the available capacity of the Project for uncommitted volumes.

7. SPLP also requests that the Commission affirm that the committed rates and index rate adjustment mechanism established in the TSAs will not be subject to revision other than by agreement of the parties. SPLP asserts that the Commission has provided such assurances in the past as consistent with its policy and precedents.²

8. SPLP states that the Interstate Commerce Act (ICA) affords the Commission discretion to approve SPLP's proposed priority service terms and rate structures. SPLP argues that the relevant provisions of the ICA contain broad delegations of authority to the Commission to determine whether certain practices of oil pipelines are reasonable and not unduly discriminatory.³ According to SPLP, as these provisions show, the statute contains no specific requirements or prohibitions with respect to the common carrier obligation, but instead imposes a general reasonableness standard to be applied by the Commission. SPLP further contends that the courts historically have interpreted these statutory provisions to provide the Commission with considerable discretion to assess the reasonableness of pipeline practices, taking into consideration all current industry conditions, and not just conditions as they existed when the statute was adopted.⁴ SPLP emphasizes that the Commission has consistently stated that there is no

² SPLP cites, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 12 (2013); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 21 (2012).

³ SPLP cites ICA section 1(1) (49 U.S.C. app. § 1(1)(b) (2012)), which applies to common carriers engaged in the transportation of oil by pipeline from state to state. Section 1(3) (49 U.S.C. app. § 1(3)(a) (2012)) defines "common carrier" to include all pipeline companies and all persons, natural or artificial, engaged in common carriage for hire. ICA section 1(4) (49 U.S.C. app. § 1(4) (2012)) provides that a common carrier must furnish transportation upon reasonable request. ICA section 3(1) (49 U.S.C. app. § 3(1) (2012)) prohibits any undue preference or prejudice against particular shippers, classes of shippers, or traffic.

⁴ SPLP cites, *e.g.*, *Sea-Land Services Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984); *Indiana Harbor Belt R.R. v. US*, 510 F.2d 644, 49 (7th Cir.), *cert. denied*, 422 U.S. 1042 (1975).

single method of allocating capacity when necessary, and that pipelines should be afforded some latitude in crafting allocation methods to meet their specific operations.⁵

Public Notice and Interventions

9. Notice of the filing was issued October 30, 2013, with interventions and protests due on November 19, 2013. Pursuant to Rule 214 of the Commission's regulations,⁶ all timely-filed motions to intervene and any unopposed 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 delay or disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

Commission Analysis

10. 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 discounted rates for committed volumes during periods when the Project is not in prorating under ordinary operating conditions. Nevertheless, Committed Shippers may choose to pay higher rates than Uncommitted Shippers in return for priority service when the Project is in prorating.

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

12. Finally, the Commission will approve SPLP's proposal to offer up to 90 percent of the Project's capacity for shippers that commit to move predetermined volumes on a ship-or-pay basis. Accordingly, the Commission grants SPLP's Petition, based on the representations made in the Petition.

⁵ Sunoco cites *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at 61,336 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999); *Total Petroleum Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996)).

⁶ 18 C.F.R. § 385.214 (2013).

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.