146 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Shell Pipeline Company LP | Docket No. OR14-9-000

DECLARATORY ORDER

(Issued January 29, 2014)

1. On November 14, 2013, Shell Pipeline Company LP (Shell) filed a Petition for Declaratory Order (Petition). Shell seeks approval of proposed contract rates, service priority rights, and prorationing provisions applicable to shippers that have executed Transportation Service Agreements (TSAs) following Shell's binding open season. Shell states that the TSAs govern its proposed transportation service from Nederland and Port Neches, Texas, to St. James and Clovelly, Louisiana, and any other receipt or delivery points that it might add.

2. Shell seeks Commission action by January 31, 2014. As discussed below, the Commission grants the rulings requested in the Petition.

Background and Description of the Project

3. Shell states that the project it proposes is an additional phase in the reversal of its Houma, Louisiana, to Houston, Texas system (Ho-Ho System). Shell explains that, in June 2012, the Commission issued a declaratory order in Docket No. OR12-11-000 approving, *inter alia*, Shell's contract rates and proposed service priority rights and prorationing provisions for transportation service from Houston to Houma and certain other destinations and origins.[1] According to Shell, the project addressed in the June 2012 Order involved a reversal of Shell's pipeline facilities that provide westbound crude petroleum service (Houma to Houston) to enable Shell to provide eastbound service (Houston to Houma) via eastern Texas to the Louisiana refinery markets (Ho-Ho Reversal). Shell states that, as part of the ongoing Ho-Ho Reversal, it plans to

[1] Shell cites *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228 (2012) (June 2012 Order).

expand capacity from Nederland/Port Neches downstream on the Ho-Ho System by adding additional pumping capacity and increased connectivity with potential sources of sweet light crude petroleum at Nederland and/or Port Neches. Shell also states that the approvals it seeks here relate to an expansion of the Ho-Ho System (Phase 4 Expansion).[2]

4. Shell explains that the Ho-Ho System is a batched system that provides both interstate and intrastate transportation. According to Shell, the system consists of over 350 miles of pipe and historically has had two main flow patterns originating at Clovelly and Houma, Louisiana. Shell states that the following capacities are post-reversal and expansion:

- West: 24-inch system from Clovelly to Houma, Louisiana (500k bpd), 22-inch system from Houma to Port Arthur area (375k bpd capacity) and 20-inch system from Port Arthur to Houston (250k bpd capacity).

- North: 18-inch system from Houma to St. James, Louisiana (300k bpd capacity).

Shell further explains that the Ho-Ho System has multiple delivery points, including points that serve major Gulf Coast refineries and provide access to storage facilities at Houma and Erath, Louisiana, as well as in the Port Arthur area of Texas.

5. Moreover, continues Shell, it anticipates increases in production from a number of developing crude petroleum plays, including the Texas Eagle Ford, Permian Basin, and multiple other shale oil plays (including the Bakken and Niobraran), as well as Canadian oil sands sources, which will enter Texas primarily from west and north of Houston. Shell maintains that the strong demand for transportation of these new supplies now extends beyond Houston to Nederland/Port Neches. Further, states Shell, the Ho-Ho Reversal and Phase 4 Expansion will provide a pipeline alternative to barging, easier access to markets, better reliability, and increased storage options for domestic producers.

6. Shell asserts that the Ho-Ho Reversal, including the Phase 4 Expansion, consists of four phases:

[2] Shell relies on the Appendices to the Petition for additional support of the facts discussed in the Petition, including the Affidavit of Geoffrey Gauthier (Gauthier Affidavit). Shell also states that Appendix B to the Petition is a schematic of the Reversed Ho-Ho System, including a detailed illustration of the facilities near Nederland. Further, states Shell, Appendix C to the Petition is a map illustrating the Ho-Ho System's location in relation to other major crude pipelines and refineries in the Gulf Coast region.

- Phase 1 – Reversal of the Houston to Port Arthur/Nederland segment of the Ho-Ho System for intrastate service (commissioned January 2013).

- Phase 2 – Reversal of the Port Arthur/Nederland segment of the Ho-Ho System to complete the line reversal and enable Houston and Port Neches origins to access Louisiana markets in interstate service.

- Phase 3 – Expansion of the 20-inch segment Ho-Ho System to allow more Committed Shippers firm access to Louisiana markets by early 2014. Shell states that it will install additional pumping capability in the Houston area to create this increased capacity. Phase 3 consists of an additional 50,000 bpd of capacity between Houston, Texas, and Clovelly/St. James, Louisiana.

- Phase 4 – Expansion of the Ho-Ho System to allow more Committed Shippers firm access to Louisiana markets by mid-2014. Shell will install and/or acquire additional connectivity and pumping capability in the Nederland and Port Neches area to create this additional capacity. Phase 4 consists of an increase of 125,000 bpd of capacity between Nederland/Port Neches Junction, Texas, and Clovelly/ St. James, Louisiana.

Shell adds that the projected cost of the Phase 4 Expansion is approximately $65 million. According to Shell, the contracts resulting from the open season will provide commercial and financial support for Shell to invest the substantial sums necessary to construct the Phase 4 Expansion.

7. Shell explains that during the open season, it disseminated explanatory material and contract documents for the Phase 4 Expansion via a website, press releases, and notices to its tariff subscribers and current Ho-Ho shippers.[3] Additionally, Shell states that it provided prospective shippers and interested parties with a "Phase 4 Information Memorandum & Binding Open Season Notice For Houma-to-Houston Pipeline System Reversal Phase 4 Limited Supplemental Open Season Proposal" (Information Memorandum).[4] Shell states that it accepted binding requests for service by

[3] http://www.shell.us/aboutshell/us-media-center/news-and-press-releases/2013/08292013-phase4-ho-ho.hmtl.

[4] The Information Memorandum is attached to the Petition as Appendix D.

October 16, 2013, and that it received sufficient interest to permit it to continue with the Phase 4 Expansion.[5]

8. Shell explains that it will offer two types of shipper service on the Phase 4 Expansion capacity. First, states Shell, Uncommitted Shippers can use the regular uncommitted tariff service that it will offer under the existing rules and regulations of its tariffs,[6] while Committed Shippers are those that enter into TSAs making binding commitments to ship or pay for stated contract quantities of crude petroleum for a period of years, subject to certain makeup rights.

9. Shell points out that Committed Shippers and Uncommitted Shippers will receive service under the same rules and regulations (except for prorationing), but at different rates. Shell explains that during periods of prorationing, Committed Shippers will have priority rights for their contract volumes in 90 percent of the capacity on the transportation route (other than the Houma to St. James, Louisiana segment). Shell also explains that all nominations for non-contract volumes will be allocated pursuant to its existing prorationing methodology (a historical rolling 12-month average of actual movements); however, volumes transported on the Houma to St. James segment will not be subject to any priority contract rights in prorationing and will not experience any change in prorationing rules. Shell adds that Committed Shippers will pay a premium relative to the rate applicable to the Uncommitted Shippers for that volume tier, and for each level of contract rate volume commitment, Uncommitted Shippers meeting an equivalent volume for a particular month will be offered a discounted non-contract rate.

10. Shell proposes to file the rates for Uncommitted Shippers and the rates for the Committed Shippers rates (for which approval is sought in this Petition) shortly before the Phase 4 Expansion project is commissioned.[7] Shell adds that all Committed Shipper

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[5] Shell states that the Information Memorandum explains that it will use the Net Present Value (NPV) methodology to allocate requests for contract capacity during the Open Season in excess of the available expansion capacity, but at this time, such an allocation is not required. To support the use of the NPV methodology to allocate excess requests for capacity in the Open Season, Shell cites *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 22 (2012); *Sunoco Pipeline L.P.*, 141 FERC ¶ 61,212 (2012). Shell also reserves the right to hold a supplemental open season using the same terms should demand appear, and the NPV methodology could also be used there if requests exceed capacity.

[6] Shell states that its relevant rules and regulations tariff is FERC No. S-120.5.0, and successor tariffs.

[7] Shell states that it will file the Uncommitted Shipper initial rates in accordance with 18 C.F.R. § 342.2 (2013).

rates will be subject to increase pursuant to any non-negative adjustments to the Commission's oil pipeline index during the term of the contracts, and all volumes will be subject to a viscosity surcharge of at least 15 cents per barrel if they have a viscosity greater than 130 centistokes at 60 degrees F.

11. Shell seeks the following approvals regarding the Phase 4 Expansion project:

- That the structure of the contract rates and service terms for Committed Shippers described in the Information Memorandum is lawful and that the agreed-upon terms of the TSA will govern the determination of the Committed Shippers' rates during the term of the TSA, irrespective of the uncommitted rates, including assessment of the agreed-upon non-negative adjustments pursuant to the Commission's generic index during the contract term and the viscosity surcharge, and further, that such rates will not be subject to revision other than by agreement of the parties.

- That Shell may provide up to 90 percent of capacity on the offered route (other than the Houma, Louisiana, to St. James, Louisiana segment) for priority transportation of the contract volumes of Committed Shippers.

Shell's Supporting Arguments

12. Shell cites *Express Pipeline Partnership*, in which the Commission determined that advance rulings may be necessary to create sufficient regulatory certainty and to consider the issues without being subject to the tariff filing time constraints, which require Commission action no later than 30 days after a tariff filing. Shell emphasizes that the Commission stated in *Express* that "[t]he public interest is better served by a review of the issues presented before a filing to put the rates into effect."[8]

[8] Shell cites *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253 (1996) (*Express*), *order on reh'g*, 77 FERC ¶ 61,188 (1996). Shell cites additional proceedings in which the Commission has recognized the need for such advance approvals, *e.g.*, *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228 (2012); *Shell Pipeline Company, LP*, 141 FERC ¶ 61,017 (2012); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180 (2013); *Skelly-Belvieu Pipeline Co., L.L.C.*, 138 FERC ¶ 61,153 (2012); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073 (2007); *Colonial Pipeline Co.*, 116 FERC ¶ 61,078 (2006); *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002).

Shell contends that the Commission concluded in the June 2012 Order that the same reasons supported advance Commission approval for certain of the rates and general rate structure, as well as the terms and conditions of the Ho-Ho Reversal.[9]

13. Shell states that section 342.2 of the Commission's regulations provides for either cost-of-service rates or rates to be established subject to the agreement of an unaffiliated shipper, which can be challenged by a protest triggering the pipeline's required submission of cost-of-service data.[10] However, continues Shell, the Commission's long-standing policy with respect to term or committed rates for shippers that sign TSAs and commit to pay for the contract volumes over a period of years has been to treat these rates as achieving the status of the "settlement rates" as contemplated by 342.4(c) of the Commission's regulations.[11] Shell adds that the structure of the rates for Committed Shippers is consistent with the Commission's finding in the June 2012 Order that a similar proposed rate structure and terms and conditions in the Ho-Ho Reversal would be just and reasonable and would not result in undue discrimination or undue preference.[12]

14. Shell next contends that the Commission has recognized that shippers committing to larger volumes may pay a discounted rate relative to those not committing to transport larger volumes.[13] Further, states Shell, since its decision in *Express*, the Commission has recognized that shippers making long-term commitments incur costs and liabilities and undertake risks that make them not similarly situated with shippers that do not make long-term commitments.[14]

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[9] Shell cites *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 20 (2012).

[10] Shell cites 18 C.F.R. § 342.2 (2013). Thus, a protest would trigger the requirement for cost-of-service support for the uncommitted rates, but would not require such support for the committed rates approved in a declaratory order.

[11] 18 C.F.R. § 342.4(c) (2013).

[12] Shell cites *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 23 (2012).

[13] Shell cites, *e.g.*, *Mid-America Pipeline Co., LLC*, 116 FERC ¶61,040 (2006); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002); *Williams Pipe Line Co.*, 80 FERC ¶ 61,402 (1997).

[14] Shell cites *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,254 (1996). Shell also cites, *e.g.*, *CenterPoint Energy Bakken Crude Services LLC*, 144 FERC ¶ 61,130 (2013); *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085 (2013).

15. While Shell acknowledges its common carrier obligation, it asserts that the Commission has recognized that common carrier pipelines may also provide priority rights in prorationing to shipments moving pursuant to contracts under certain circumstances.[15] Further, states Shell, the Commission has approved similar proposals involving projects that would create new capacity needed to serve growing or changing market needs, provide benefits, and require substantial capital investment.[16] Shell also observes that the Commission has required pipelines to ensure that there is a "significant amount of capacity for Uncommitted Shippers,"[17] and that reserving at least 10 percent of the pipeline's capacity for such shippers is sufficient.[18]

16. Shell next contends that the Commission also has approved priority rights for contract volumes when the applicant pipeline has held "open seasons [that] appropriately gave all potential shippers the opportunity to become Committed Shippers by entering into TSAs."[19] Shell maintains that it held a publicly-noticed, fair, open and transparent open season, and thus satisfied the Commission's policy.

17. Moreover, continues Shell, the Commission has approved proposed priority rights when the pipeline "appropriately distinguishes Committed and Uncommitted Shippers

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[15] Shell cites, *e.g.*, *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 21 (2012); *Mid-America Pipeline Co., LLC*, 116 FERC ¶61,040, at P 7 (2006); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 1(2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 1 (2011); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011); *Skelly-Belvieu Pipeline Co., L.L.C.*, 138 FERC ¶ 61,153 (2012).

[16] Shell cites *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 14 (2011) ("[T]he Project will enhance domestic energy production and allow the expansion of ethane markets. Sunoco also has demonstrated that the Project entails a significant capital investment, which requires the support of committed shippers to share the financial risk of the Project.").

[17] Shell cites *e.g.*, *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2011).

[18] Shell cites *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011). *See also Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 56 (2006).

[19] Shell cites *Skelly-Belvieu Pipeline Co., L.L.C.*, 138 FERC ¶ 61,153, at P 18 (2012). *See also Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 21 (2012); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011).

and provides for rates consistent with the obligations of each class of shipper."[20] However, Shell emphasizes that the exact requirement for presenting "rates consistent with the obligations of each class of shipper" will vary depending on the circumstances of the proposed project.

18. Finally, Shell emphasizes that the Commission has permitted initial agreed-upon rates for new pipeline infrastructure that include premium committed rates of at least $0.01 higher than the uncommitted rates.[21] Shell asserts that its proposal is consistent with that principle.

<u>Public Notice and Interventions</u>

19. Notice of the filing was issued November 20, 2013, with interventions and protests due on December 16, 2013. Pursuant to Rule 214 of the Commission's regulations,[22] 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. The Petition is unopposed.

<u>Commission Analysis</u>

20. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide regulatory certainty for an important expansion project that will transport the increasing amount of light sweet crude from the Houston area to refineries in Louisiana.

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[20] Shell cites *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2011).

[21] Shell cites, *e.g.*, *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 24-25 (2013) (accepting a rate structure where at each volume level, committed shippers will pay a premium rate that is at least 1 cent more than the rate applicable to comparable uncommitted volumes moving from the same receipt point to the same destination point as the committed volumes); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,249, at PP 25, 30 (2012) (accepting a proposal to "grant Committed Shippers the right to obtain priority capacity equal to their Committed Volumes in any month by paying a premium rate of $0.01 per barrel above the uncommitted rate"); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2012) (approving a proposal under which "committed shippers will pay premium rates for the assurance that their much greater volumes will not be prorated under normal operating conditions").

[22] 18 C.F.R. § 385.214 (2013).

21. Specifically, the Commission approves the TSAs with the Committed Shippers. These multi-year contract rates are tiered based on the volumes committed and the length of the term. The rates will increase according to the Commission's indexing methodology and will be subject to fees based on the quality/type of the crude tendered for shipment. Shell specifically reserves 10 percent of the expansion capacity for the Uncommitted Shippers that do not provide the financial assurances that Committed Shippers provide. Shell held an open season offering all potential shippers the opportunity to become Committed Shippers.

22. Additionally, the Commission finds that the proposed methodology for calculating rates for the Phase 4 Expansion will ensure that the costs of the expansion are appropriately allocated to shippers in a non-discriminatory manner. Uncommitted Shippers will pay rates based on the volumes they tender, and Committed Shippers will pay a premium as compared to Uncommitted Shippers that ship similar volumes.

23. Shell anticipates that the Phase 4 Expansion will commence service in July, 2014. Shell 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.

<u>The Commission orders</u>:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.