146 FERC ¶ 61,089
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 12, 2014

In Reply Refer To:
Valero Terminaling and
Distribution Company
Docket No. OR13-34-000

Venable LLP
575 7th Street, NW
Washington, DC 20004

Attention: Steven A. Adducci, Esq.

Dear Mr. Adducci:

1. On September 27, 2013, Valero Terminaling and Distribution Company (Valero) filed a request for temporary waiver of the filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act (ICA) and Parts 341 and 357 of the Commission's regulations with respect to its ownership interest in the McKee Products System (McKee System).[1]

2. Valero states that it is involved in the transportation and terminaling of refined petroleum products and crude oil in the mid-continent region of the United States by means of its one-third undivided interest in the McKee System. According to Valero, the McKee System provides pipeline transportation from Valero's affiliated McKee Refinery in Sunray, Texas, to El Paso, Texas, for further delivery to marketing destinations via

[1] *See* 49 U.S.C. App. §§ 6, 20 (1988). Section 6 requires interstate oil pipelines to file all rates, fares, and charges for transportation on their systems, as well as to file copies of contracts with other common carriers for any such traffic. Section 20 authorizes the Commission to require annual or special reports from carriers subject to the ICA. *See also* 18 C.F.R. Parts 341, 357 (2013) implementing the filing and reporting requirements of ICA sections 6 and 20.

truck rack deliveries and a connection to a third-party pipeline, including to points outside of Texas. According to Valero, the McKee Refinery is a wholly-owned, indirect subsidiary of Valero Energy Company, as is Valero.[2]

3. Valero states that the McKee System consists of three distinct segments:

A. McKee-to-El Paso Pipeline – This pipeline originates at the McKee Refinery and consists of approximately 408 miles of 10-inch pipeline that delivers motor gasoline and diesel produced at that facility to Valero's El Paso terminal, and from there to Kinder Morgan SFPP's (SFPP) system, specifically the SFPP East Line from El Paso to points in New Mexico and Arizona. The pipeline has a total capacity of 63,000 barrels per day (bpd), of which approximately one-third represents Valero's interest.

B. El Paso Terminal – This facility is located on approximately 117 acres and consists of 10 above-ground storage tanks with approximately 499,000 shell barrels of storage capacity, one-third of which are attributed to Valero's interest.[3] The El Paso Terminal receives refined petroleum products delivered to it through the McKee-to-El Paso Pipeline. The El Paso Terminal has a four-bay truck rack, as well as a pipeline interconnection to SFPP's East Line. The El Paso Terminal truck rack has approximately 30,000 bpd of capacity, approximately one-third of which is attributable to Valero's interest.

C. SFPP Connector Line – The McKee System also includes an approximately 12-mile, 16-inch pipeline that delivers motor gasoline and diesel fuel from the El Paso Terminal facilities to SFPP's East Line. The SFPP Connector Line has approximately 98,400 bpd of capacity, of which approximately one-third is attributable to Valero's interest.

Valero adds that the McKee System is operated by NuStar Logistics, L.P. (NuStar Logistics), which owns the other two-thirds undivided interest in the McKee System.[4]

---

[2] Valero states that Valero Energy Company is a publicly-traded holding company and that it is primarily engaged in petroleum refining and marketing operations in the United States and abroad.

[3] Valero states that the term "shell barrels" reflects the maximum amount of barrels that can be stored in the subject tankage.

[4] Valero explains that NuStar Logistics currently provides service on its two-thirds undivided interest pursuant to its FERC Tariff No. 70.8.0. Valero provides service on its one-third undivided interest pursuant to its Texas Railroad Commission R.R.C. Tariff No. 3, a copy of which is attached to its request as Attachment A.

4. Valero states that the geographic and physical configuration of the McKee System, as well as the intent of Valero's affiliated shipper, Valero Marketing and Supply Company (VMSC), to ship the majority of the refined products transported on Valero's portion of the McKee System make such transportation subject to the Commission's ICA jurisdiction. Specifically, continues Valero, the McKee-to-El Paso Pipeline transports refined petroleum products produced at the McKee Refinery to the El Paso Terminal in El Paso, Texas, involving two New Mexico/Texas border crossings. Valero further states that from the El Paso Terminal, a relatively small amount of the refined petroleum products leave the McKee System via the El Paso Terminal truck rack, and the bulk of the refined products transported on the McKee-to-El Paso Pipeline continue on the SFPP East Line via the SFPP Connector Line for transportation to downstream market destinations such as Tucson and Phoenix, Arizona.

5. Valero maintains that VMSC is and has been the only shipper on Valero's share of the McKee System since Valero acquired its ownership interest in that system in 2008. Additionally, Valero explains that no unaffiliated shippers have requested transportation on Valero's portion of the McKee System, and Valero does not anticipate that it will receive requests of that nature. Valero points out that this is especially true because the only physical access point to the McKee System is through the McKee Refinery. Moreover, continues Valero, while NuStar Logistics owns the remaining two-thirds undivided interest in the McKee System, that capacity remains a viable alternative for any third party to ship on the McKee System. Valero further states that VMSC has been the only shipper on both Valero's and NuStar's shares of the McKee System since 2008.

6. Valero asserts that the Commission previously has granted interstate pipelines temporary waivers of the filing and reporting requirements of ICA sections 6 and 20 in situations where the pipelines were not exempt from the ICA under the "private carrier" doctrine, but for which the factual circumstances showed that the filing and reporting requirements of the ICA were not necessary to protect the interests of an unaffiliated shipper.[5] Valero submits that there are not traditional third-party interests to protect in this instance.

7. According to Valero, the Commission's primary consideration in these cases has been the protection of third parties. Valero submits that, where the subject pipeline (or leased or owned portion of the subject pipeline) does not provide transportation service to third-party shippers, and there is no expectation that it will do so in the future, the

[5] Valero cites *In Re Pipe Line Cases*, 234 U.S. 548 (1914); *Hunt Refining Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995) (*Ciniza*); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 110 FERC ¶ 61,159 (2005); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 117 FERC ¶ 61,046 (2006); *Giant Pipeline Co.*, 120 FERC ¶ 61,275 (2007); *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009); *Pelican Gathering Systems, LLC,* 141 FERC ¶ 61,245 (2012).

Commission has found that there is no third-party interest to protect. Thus, continues Valero, in *Hunt*, the Commission granted a waiver after finding that "there are no immediate or prospective shippers on Hunt other than itself and no other shippers on [the pipeline] other than its parent company to protect under the provisions of the ICA."[6] Likewise, adds Valero, in *Ciniza*, the Commission found that "there are no other shippers on the [pipeline] to protect under the provisions of the ICA."[7]

8. Valero points out that Commission routinely grants such waivers when "(1) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (2) there is no demonstrated third-party interest in gaining access to or shipping on the line; (3) no such interest is likely to materialize; and (4) there is no opposition to granting the waivers."[8] Valero argues that the facts presented here fully satisfy the Commission's concerns for the protection of traditional third-party shippers. In particular, continues Valero, since it acquired its interest in the McKee System, only VMSC's refined petroleum product volumes have been transported and terminaled on Valero's portion of that system. Valero also emphasizes that no unaffiliated party has sought transportation service on its portion of the McKee System and that the McKee-to-El Paso Pipeline terminates at the interconnection with SFPP's East Line, with no other pipeline interconnections and no other origins and destinations.

9. Accordingly, Valero asks the Commission to grant a temporary waiver of the tariff filing and reporting requirements under ICA sections 6 and 20 and Parts 341 and 357 of the Commission's regulations as they apply to Valero's one-third ownership portion of the McKee System, subject to Valero's obligation to (1) maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines,[9] and (2) make such books and records available to the Commission or its authorized agents upon request. Further, Valero acknowledges that it must report any changes that may alter the Commission's determination here, including but not limited to (1) increased accessibility of other pipelines or refiners to the subject facilities; (2) changes in the ownership of the facilities; (3) changes in the ownership of the refined products shipped; and (4) shipment tenders or requests for service by any person.

---

[6] Valero cites *Hunt Refining Co.*, 70 FERC ¶ 61,035, at 61,113 (1995).

[7] Valero cites *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377, at 62,173 (1995).

[8] Valero cites *Agave Energy Co.*, 136 FERC ¶ 61,094, at P 5 (2011). *See also ONEOK Rockies Midstream*, 138 FERC ¶ 61,133, at P 4 (2012); *Sinclair Pipeline Co. L.L.C.*, 134 FERC ¶ 61,077, at P 6 (2011); *Chevron Pipe Line Co.*, 134 FERC ¶ 61,073, at P 4 (2011).

[9] 18 C.F.R. Pt. 352 (2013).

10. Public notice of Valero's filing was issued January 29, 2014, with interventions and protests due on February 4, 2014. No interventions or protests were filed.

11. The Commission concludes that, given the characteristics of the McKee System and Valero's minority ownership interest in the system, Valero meets the criteria necessary to qualify for temporary waiver consistent with Commission precedent.[10]

12. Accordingly, the Commission grants Valero temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 and the Commission's related regulations with respect to its pipeline. Because this waiver is temporary and based solely on the facts presented in the request for waiver, the Commission directs Valero to report immediately to the Commission any change in the circumstances on which this waiver is based. Specifically, Valero must report any changes including, but not limited to (i) increased accessibility of other pipelines or refiners to the McKee System, (ii) changes in the ownership of the McKee System, (iii) changes in the ownership of the petroleum products shipped, and (iv) shipment tenders or requests for service by any person. In addition, Valero must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines[11] and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[10] *See, e.g., ONEOK Rockies Midstream, L.L.C.*, 138 FERC ¶ 61,133 (2012); *Sinclair Pipeline Company, L.L.C.*, 134 FERC ¶ 61,077 (2011); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 117 FERC ¶ 61,046 (2006).

[11] 18 C.F.R. Pt. 352 (2013).