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

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

NuStar Crude Oil Pipeline L.P. Docket No. OR14-12-000

DECLARATORY ORDER

(Issued February 28, 2014)

1. On December 13, 2013, NuStar Crude Oil Pipeline L.P. (NuStar) filed a Petition for Declaratory Order (Petition) related to the proposed expansion of its South Texas Crude Oil Pipeline System (Project). NuStar seeks approval of rates, priority rights, and assignment provisions applicable to Committed Shippers that have executed Throughput and Deficiency Agreements (T&D Agreements) following NuStar's binding open season. NuStar has requested Commission action by March 1, 2014. As discussed below, the Commission grants the rulings requested in the Petition.

Background and Description of the Project

2. NuStar states that the Project is designed to provide takeaway capacity from the the NuStar Logistics, L.P. Gardendale Terminal in La Salle County, Texas, to the Logistics Corpus Christi North Beach Terminal in Nueces County, Texas. NuStar states that the Project includes the installation of mainline pumps and the construction of approximately 60 miles of new pipeline to loop a segment along the route. NuStar states that the Project will add an estimated 100,000 barrels per day of capacity out of the Eagle Ford production area at a cost of approximately $174 million. NuStar states that Eagle Ford crude oil production is expected to increase over the next few years and will require additional takeaway capacity to reach markets. NuStar states that the Project is intended to relieve pipeline capacity constraints resulting from the increased production. NuStar explains that that Project will be completed in two phases. Phase I adds incremental throughput capacity of approximately 35,000 barrels per day by October 2014, and Phase II adds incremental throughput capacity of 65,000 barrels per day by March 2015.

3. NuStar explains that it required volume commitments from its shippers to make the Project economically feasible. NuStar states that it held an open season from July 17, 2013, until September 30, 2013, for binding monthly volume commitments for a five-year term, subject to shortfall payments and the option to renew for one additional five-year term. NuStar states that interested shippers were permitted to elect service from three origin points,[1] and either early service following the completion of phase I or later service under phase II. NuStar emphasizes that the open season was widely publicized and reported in the press, and NuStar states that all interested parties had an equal opportunity to participate. NuStar states that during the open season, NuStar provided prospective shippers an information memorandum, a T&D Agreement, and a *pro forma* tariff.

Key Terms of the T&D Agreement and the *pro forma tariff*

4. NuStar explains that the T&D Agreement included a Committed Shipper Rate of $1.55 per barrel, which NuStar compares to an Uncommitted Shipper rate of $1.50 per barrel. NuStar states that the Uncommitted Shipper rate is merely for illustrative purposes and is subject to change. NuStar states that the T&D Agreement requires each Committed Shipper to ship an annual minimum volume commitment or to make a deficiency payment if the Committed Shipper fails to meet its volume commitment. Commencing on July 1, 2015, and each year thereafter, NuStar may adjust the rates pursuant to the Commission's indexing regulations.

5. NuStar's proposal reserves 90 percent of capacity for Committed Shipper volumes while ensuring that Uncommitted Shippers have access to 10 percent of capacity. The prorationing provisions provide that a Committed Shipper shall not be subject to prorationing unless NuStar's overall monthly capacity available for transportation is reduced.

6. NuStar explains that its proposal also allows Committed Shippers to assign all or part of their rights under the T&D Agreement, but without relieving the Committed Shipper of its obligations should the assignee fail to perform their assigned obligations. NuStar states that any assignees have the right to the same contract rate and priority as the original Committed Shipper. However, NuStar explains that the Committed Shipper, as the primary obligor, would be credited with all shipper history, whether product is shipped by the Committed Shipper or the assignee.

[1] The three origin locations are: Frio City, Hwy 85, TX; McMullen Cty, Hwy 97, TX; LaSalle Cty, Gardendale, TX.

NuStar's Requested Rulings

7. NuStar requests a declaration that confirms the following:

(1) The provisions of the T&D Agreement and the accompanying *pro forma* tariff rate structure will govern the rates and service for the Committed Shippers during the term of their T&D Agreements, irrespective of the uncommitted rates, including assessment of the agreed-upon escalation, and such rates will not be subject to revision other than by agreement of the parties.

(2) The Committed Rates provided in the T&D Agreement will be treated as settlement rates during the term of the T&D Agreement, including upon their initial filing and in the agreed-upon escalation filings, pursuant to section 342.4(c) of the Commission's regulations.

(3) The proposed priority transportation rights in the T&D Agreement and the terms of the prorationing provision in the *pro forma* tariff are lawful, not unduly discriminatory, and consistent with Commission policy.

(4) The Committed Shippers' rights under the T&D Agreement and *pro forma* tariff to assign all or part of rights under the T&D Agreement, without the prior written consent of NuStar, to (i) a designated third party shipper as provided in the T&D Agreement, or (ii) Committed Shipper's co-working interest owner(s) but without relieving the Committed Shipper of its obligations under the T&D Agreement, are lawful, not unduly discriminatory, and consistent with Commission precedent.

NuStar's Supporting Statements

8. NuStar states that the Commission has long provided advance guidance when pipelines require regulatory certainty prior to making substantial financial investments.[2] NuStar states that the Project will require substantial capital outlays by NuStar and NuStar states that the Committed Shippers provide revenue necessary to support the

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[2] NuStar Petition at 6 (citing *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253, *order on reh'g*, 77 FERC ¶ 61,188 (1996); *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 and Enbridge Pipeline (Bakken) L.P.*, 133 FERC ¶ 61,167 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073 (2007)).

Project. NuStar states that neither it nor the Committed Shippers can incur these significant investment costs without the requested regulatory certainty regarding rate structure and terms of service. NuStar states that its request is consistent with prior Commission orders upholding Committed Shipper agreements.[3] NuStar states that the Commission's practice has been to grant such Committed Shipper rates effectively the same status as settlement rates.[4]

9. NuStar states that the priority provisions for the Committed Shippers are reasonable and consistent with Commission policy. NuStar emphasizes that the Committed Shippers provided essential financial commitments needed to make the construction of the new capacity possible. NuStar asserts that as long as Uncommitted Shippers have reasonable access to the pipeline's capacity, and all shippers had the opportunity to become Committed Shippers, there is nothing inequitable in granting priority to Committed Shippers. NuStar states that the Commission has previously held that reserving 10 percent of capacity for Uncommitted Shippers is sufficient to provide reasonable access.[5] NuStar also states that, consistent with Commission policy, the Committed Shippers receiving priority will pay a higher rate than the Uncommitted Shippers.[6]

10. NuStar states that its proposed assignment provisions are similar to the assignment provision accepted by the Commission in Westward Ho.[7] NuStar states that the only difference between its proposal and the proposal approved by the Commission in Westward Ho is that NuStar's proposal allows for partial, as well as full, assignment.

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[3] NuStar Petition at 8-9 (citing *Mid-American Pipeline Co., LLC*, 136 FERC ¶ 61,087 (2011); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, P 22 (2012); *Centerpoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, P 17 (2013); *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, P 13 (2013)).

[4] *Id.* at 9 (citing *Express*, 76 FERC at 62,258-59).

[5] *Id.* at 11 (citing *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at PP 9-15 (2012); *CCPS*, 121 FERC ¶ 61,253 at P 17 n.33; *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*, 124 FERC ¶ 61,199, P 35 (2008)).

[6] *Id.* at 10.

[7] NuStar Petition at 13 (citing *Shell Pipeline Co. LP*, 141 FERC ¶ 61,017 (2013) (Westward Ho)).

Public Notice and Interventions

11. 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,[8] 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.

Commission Analysis

12. The Commission grants the rulings requested in the Petition. Granting these rulings will provide regulatory certainty for an important expansion project that will transport crude oil from the Eagle Ford production area.

13. NuStar's proposed rate structure and priority provisions are consistent with those that the Commission has approved for other petroleum pipelines. NuStar held a public open season which gave all prospective shippers the opportunity to become Committed Shippers. NuStar has offered 90 percent of the capacity of the Project to Committed Shippers. NuStar's proposed reservation of 10 percent of the Project's capacity for Uncommitted Shippers will allow Uncommitted Shippers sufficient access to the Project. Because the Committed Shippers will pay a premium rate, NuStar's proposal to give Committed Shippers a higher priority than Uncommitted Shippers is consistent with Commission policy.[9]

14. The Commission finds that NuStar's proposal to permit Committed Shippers to assign their contracts (or a portion of their contracted capacity) is just and reasonable and consistent with Commission precedent. The Commission recently approved a similar provision in Westward Ho.[10] The assignment proposal will allow Committed Shippers to mitigate the risks of making a long-term commitment to the Project.

15. The Commission also grants NuStar's request that during the term of the T&D Agreements it may file the Committed Shippers' rates as settlement rates, consistent with sections 342.4(c) of the Commission's regulations. The Commission has granted a

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[8] 18 C.F.R § 385.214 (2013).

[9] *E.g.*, *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 4, 24-25 (2013); *Kinder Morgan Pony Express LLC and Highland Crude, LLC*, 141 FERC ¶ 61,249 at PP 25, 30; *Sunoco*, 137 FERC ¶ 61,107 at P 15 (2011).

[10] Westward Ho, 141 FERC ¶ 61,017 at P 16.

similar request in the past.[11] The Commission also affirms that the T&D Agreements will be upheld and applied during the agreed-upon term.[12]

16. In sum, based upon the circumstances described in the Petition and the representations made therein, the Commission finds that NuStar's proposed rate structure and terms and conditions contained in the T&D Agreements are just and reasonable and do not result in undue discrimination or undue preference. Accordingly, the Commission grants all the requested rulings and approvals sought in NuStar's Petition.

17. NuStar 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.

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[11] *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287 (2014).

[12] *Kinder Morgan Pony Express,* 141 FERC ¶ 61,180 at PP 22-23.