147 FERC ¶ 61,072
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 29, 2014

In Reply Refer To:
Valero Terminaling and
Distribution Company
Docket No. OR14-22-000

Steven A. Adducci
Venable LLP
575 7th Street, NW
Washington, DC 20004

Dear Counsel:

1. On March 4, 2014, 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 the Turpin Pipeline system (Turpin System) comprised of pipeline and ancillary facilities owned and operated by Valero.[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. Valero's Turpin System includes a pipeline facility (the Turpin Pipeline) located between Turpin, Oklahoma and a Valero Energy Corporation-affiliated refinery near Sunray, Texas called the McKee Refinery, and related appurtenant facilities. Valero explains that the Turpin Pipeline has been used to transport various refined products from the McKee Refinery to Turpin, Oklahoma for over fifty years, and that after a period of deactivation, the Turpin Pipeline has recently been converted from a pipeline used to transport refined products into a pipeline used to transport crude oil.

3. Valero is the owner and operator of the Turpin Pipeline, which can now transport

[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. pt. 341, 357 (2013) implementing the filing and reporting requirements of ICA sections 6 and 20.

crude oil volumes directly to the McKee Refinery and to the Clawson Complex. According to Valero, at the Clawson Complex, crude oil volumes, in addition to continuing to be shipped on the Turpin Pipeline, can also be transferred to and shipped on a third-party crude oil pipeline that is owned and operated by NuStar Logistics, L.P. (NuStar) that extends from the Clawson Complex to the Valero-affiliated McKee Refinery.

4. Valero explains that the Turpin System, which is the subject of its waiver request, is owned by Valero and that the conversion of the Turpin Pipeline to transport crude oil between Turpin, Oklahoma and the McKee Refinery is designed to increase the crude oil supply alternatives for the McKee Refinery. Valero states that it is a wholly-owned, indirect subsidiary of Valero Energy Company.[2] It also states that the McKee Refinery is owned and operated by Diamond Shamrock Refining Company, L.P., which is also a wholly-owned, indirect subsidiary of Valero Energy Company.

5. Valero states that the Turpin System consists of three primary components:

A. Turpin Pipeline – Prior to the recent crude oil conversion, this pipeline originated at the McKee Refinery in Moore County, Texas and consisted of approximately 87.5 miles of 6-inch pipeline that delivered refined petroleum products to the Turpin Terminal in Beaver County, Oklahoma. After a period of deactivation, Valero recently reversed and reactivated the Turpin Pipeline and converted it to be used to transport crude oil to the McKee Refinery. The pipeline is comprised of two sections. The first section runs from the Turpin Terminal to the Clawson Complex and has a capacity of approximately 10,000 barrels per day (bpd). The second section runs from the Clawson Complex to the McKee Refinery and has a capacity of approximately 24,000 bpd. Crude oil received from trucks at the Turpin Terminal in Oklahoma is transported to the McKee Refinery or to the Clawson Complex for ultimate delivery to the McKee Refinery.[3]

B. Clawson Complex – This facility is comprised of the NuStar Clawson Station, the Valerio-affiliated Clawson Truck Haul Station, and the Valero-affiliated

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

[3] Crude oil can also be introduced into the Turpin Pipeline at the two other Valero-affiliated gathering and receipt stations (the Hitchland and McKee Refinery Truck Haul Stations) directly connected to the Turpin Pipeline which accept other crude oil deliveries via trucks for ultimate delivery to the McKee Refinery.

Gruver Station. The NuStar Clawson Station is a break-out storage facility owned and operated by NuStar, and from this facility, crude oil is transported to McKee Station pipeline for ultimate delivery to the McKee Refinery. The Clawson Truck Haul Station is owned by The Shamrock Pipe Line Corporation (Shamrock) and operated by Valero. The Gruver Station is owned by Shamrock and operated by Valero, and receives crude oil volumes from both the Turpin Pipeline and the Shamrock Pipeline. The Valero-affiliated Shamrock pipeline, referred to as the Shamrock Gathering System, is operated by Valero, and is used to gather and transport crude oil from points in Texas and Oklahoma to the Clawson Complex for ultimately delivery to the McKee Refinery. The Shamrock Gathering System no longer performs these interstate transportation services and the remaining crude oil volumes transported on the pipeline system now originate and are delivered by Shamrock solely within the State of Texas.

C. Turpin Terminal – Prior to the reversal of the Turpin Pipeline, Valero converted the Turpin Terminal in Beaver County, Oklahoma into a crude oil gathering and receiving station capable of receiving crude oil volumes by truck. The Turpin Terminal facility currently has one crude oil terminal tank with a shell barrel storage capacity of approximately 30,000.[4]

6. Valero also explains that the geographic and physical configuration of the Turpin System, the out-of-state origin of a portion of the Turpin Pipeline transported crude oil, and the intent of the only shipper on the Turpin Pipeline (Valero's affiliate, Valero Marketing and Supply Company (Valero Marketing)), to ship all of the crude oil transported on the Turpin Pipeline to its affiliated McKee Refinery in Moore County, Texas, make such transportation subject to Commission's ICA jurisdiction.

7. Valero states that its affiliate, Valero Marketing, is and has been the only shipper of crude oil on the Turpin Pipeline since its conversion to a crude oil pipeline. It states that Valero Marketing has been the only crude oil shipper on the Shamrock Gathering System for over a decade, and that no unaffiliated shippers or independent producers have requested transportation on the Turpin Pipeline or the Shamrock Gathering System; nor does Valero or Shamrock anticipate receiving any requests from unaffiliated shippers or independent producers to use the Turpin Pipeline or Shamrock Gathering System or any portion thereof, as crude oil producers deliver and sell their crude oil to Valero Marketing at the truck haul gathering and receiving stations connected to the Turpin Pipeline and the Shamrock Gathering System.

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

8. 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.

9. 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 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]

10. Valero argues that the facts presented here fully satisfy the Commission's concerns for the protection of traditional third-party shippers. In particular, Valerio states that since the recent conversion and reactivation of the Turpin Pipeline, only Valero Marketing's crude oil volumes have been transported and stored on these facilities. Valero states that no unaffiliated party has requested to ship on the Turpin Pipeline and that Valero Marketing has been the only shipper on the Shamrock Gathering System for over a decade, which now is in intrastate transportation service, and is the only pipeline that can deliver to the Turpin Pipeline. Valero also emphasizes that no unaffiliated party has requested to ship on the Turpin Pipeline, or for that matter, the Shamrock Gathering System. Valero further states that, given its experience with the Turpin Pipeline, it is highly unlikely that any unaffiliated party will seek or request service involving the Turpin Pipeline or any portion thereof. According to Valero, this conclusion is reinforced by the fact that Valero Marketing has been the only shipper on the Turpin Pipeline and local producers sell their crude oil production to Valero Marketing at all of the gathering and receiving stations connected to or that can supply the Turpin Pipeline, and no third-party shipper or independent producer has expressed any interest in becoming a shipper on the Turpin Pipeline.

---

[5] Valero cites *In Re Pipe Line Cases*, 234 U.S. 548 (1914).

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

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

11. 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 for the Turpin Pipeline, 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,[8] 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 crude oil shipped; and (4) shipment tenders or requests for service by any person. Valero anticipates that the Turpin Pipeline will be among various assets that are expected to be acquired and transferred to a new, to-be formed Valero-affiliated and controlled entity. Valero states that to the extent the Turpin Pipeline is acquired and transferred to the new entity, this entity will promptly notify the Commission of the official non-material change in ownership and accept its related responsibilities.

12. Notice of Valero's request for temporary waiver issued on March 11, 2014. Persons desiring to intervene or protest this filing were accorded an opportunity to do so pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure.[9] with interventions and protests due on March 25, 2014. No requests for intervention or protests were received.

13. The Commission previously granted requests for temporary waiver of the filing and reporting requirements of its regulations and sections 6 and 20 of the ICA when four criteria are met. First, the pipeline requesting temporary waiver (or its affiliates) owns 100 percent of the throughput on the line. Second, there is no demonstrated third-party interest in gaining access to or shipping upon the line. Third, there is no likelihood that such third-party interest will materialize. Fourth, there is no opposition to granting the waivers. Under these circumstances, the Commission determined there were no active third-party shipper interests to protect under the ICA, and therefore, temporary waivers of the section 6 and 20 filing and reporting requirements were warranted. However, such waivers are made subject to revocation should circumstances change, and the pipelines must keep their books and records in a manner consistent with the Commission's Uniform System of Accounts.

14. Valero's request is similar to previous requests granted by the Commission. Under the facts presented, all of the crude oil transported will be owned by Valero or an affiliate, and there is no demonstrated third-party interest in gaining access to or shipping

[8] 18 C.F.R. pt. 352 (2013).

[9] 18 C.F.R. §§ 385.211 and 385.214 (2013).

upon the line. Because of the planned operations and configuration of the Turpin Pipeline, it is unlikely that a third party will request service. There is no opposition to Valero's waiver request. The Commission therefore concludes that, given the change in the physical use of the facilities, Valero meets all of the criteria necessary to qualify for a temporary waiver consistent with the Commission's prior rulings.[10]

15. Accordingly, the Commission grants Valero a temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 and the Commission's related regulations with respect to the Turpin Pipeline. Because these waivers are temporary and based 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 these waivers are based. Specifically, Valero must report any changes including, but not limited to, increased accessibility of other pipelines or refiners to its facilities, changes in the ownership of the facilities, changes in the ownership of the crude oil being shipped, and 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, 18 C.F.R. Part 352, 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] *ONEOK Rockies Midstream, L.L.C.*, 138 FERC ¶ 61,133 (2012); *Agave Energy Co.*, 136 FERC ¶ 61,094 (2011); *Saddle Butte Pipeline, LLC*, 136 FERC ¶ 61,071 (2011); *Chevron Pipe Line Co.*, 134 FERC ¶ 61,073 (2011); *Sinclair Pipeline Co., L.L.C.*, 134 FERC ¶ 61,077 (2011); *MV Purchasing, LLC*, 133 FERC ¶ 61,251 (2010); *Bear Paw Energy, LLC*, 132 FERC ¶ 61,259 (2010); *Whiting Oil and Gas Corp.*, 131 FERC ¶ 61,263 (2010); *Parnon Gathering, Inc.*, 129 FERC ¶ 61,273 (2009); *Jayhawk Pipeline L.L.C.*, 128 FERC ¶ 61,079 (2009); *Cimarron Gathering, L.P.*, 126 FERC ¶ 61,017 (2009); *CKB Petroleum, Inc.*, 125 FERC ¶ 61,259 (2008); *Giant Pipeline Co.*, 120 FERC ¶ 61,275 (2007); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 117 FERC ¶ 61,046 (2006); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995); *Hunt Refining Co.*, 70 FERC ¶ 61,035 (1995); *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978).