

147 FERC ¶ 61,204  
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.  
SunVit Pipeline LLC

Docket No. OR14-23-000

DECLARATORY ORDER

(Issued June 13, 2014)

1. On March 6, 2014, Sunoco Pipeline L.P. (SPLP) and SunVit Pipeline LLC (SunVit) filed a Petition for Declaratory Order (Petition).<sup>1</sup> Petitioners seek approval of the rate structures, terms of service, and prorationing methodology for the proposed Permian Express 2 pipeline (Project). According to Petitioners, the Project will create an additional pipeline transportation route for crude oil shipped from the growing production centers in and near the Permian Basin in west Texas to storage and refining centers, as well as to pipeline interconnections, in the Nederland<sup>2</sup> and Sour Lake markets in southeast Texas.<sup>3</sup> Petitioners state that the Project is expected to be in service during the second quarter of 2015; therefore, they request Commission action no later than June 15, 2014, so that development of the Project can proceed as scheduled.
2. As discussed below, the Commission grants, with one exception, the requested rulings.

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<sup>1</sup> In this order SPLP and SunVit are referred to jointly as Petitioners.

<sup>2</sup> Petitioners explain that the crude oil terminal in Nederland, Texas, the actual destination point for the Project, is owned and operated by SPLP's affiliate, Sunoco Partners Marketing & Terminals L.P. Petitioners state that none of the facilities at the Nederland terminal is included in the Project.

<sup>3</sup> Petitioners state that during the open season for the Project, they also offered potential shippers service to an additional destination point at Longview, Texas; however, Petitioners have determined not to move forward with service to Longview as of now.

### **Description of the Project**

3. Petitioners explain that SunVit will develop a new crude oil terminal in Midland, Texas, and a new approximately 40-mile pipeline for the Midland-to-Garden City, Texas segment, which will be subject to a SunVit tariff to be filed with the Commission. Additionally, Petitioners state that SPLP will construct a new approximately 59-mile pipeline for the Garden City-to-Colorado City, Texas segment of the Project, as well as a new pipeline of approximately 278 miles from the Colorado City origin point to Corsicana, Texas. Further, Petitioners point out that SPLP will develop the remaining segments of the Project from Corsicana to the destination points of Sour Lake and Nederland by using repurposed existing pipeline and/or leased pipeline capacity. According to Petitioners, shippers may nominate volumes from Midland through to the Sour Lake or Nederland destinations pursuant to a joint tariff of the Petitioners to be administered by SPLP. Petitioners add that shippers also may nominate volumes to those destinations from either Garden City or Colorado City pursuant to an SPLP tariff to be filed with the Commission.

4. Petitioners assert that the completed Project is expected to provide transportation of up to approximately 230,000 barrels per day (bpd) of crude oil. Petitioners point out that up to 90 percent of the new capacity will be available to committed shippers that have signed Transportation Services Agreements (TSA), as well as other shippers meeting certain uncommitted volume throughput thresholds on the Project. However, Petitioners emphasize that at least 10 percent of the capacity will be reserved for New Shippers' uncommitted volumes.<sup>4</sup>

### **Open Season**

5. Petitioners explain that they conducted a widely-publicized open season from September 18, 2013, through November 20, 2013 (Open Season), seeking sufficient long-term shipper volume commitments to support the Project's economic viability. Petitioners add that the Open Season notice asked that interested shippers execute the

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<sup>4</sup> Petitioners state that the terms "Regular Shipper" and "New Shipper" are explained in section 2(C)(2), Prorationing Policy And Lottery Mechanism. *See* P 19 *infra*. Ten percent of the Project's capacity is reserved for New Shippers, while the remaining 90 percent is reserved for committed shippers and uncommitted shippers that are Regular Shippers. Uncommitted shippers can become Regular Shippers if they have built a history of shipments sufficient for them to move from the New Shipper category (limited to 10 percent of the capacity) into the Regular Shipper category. Committed shippers are not firm shippers, and thus their capacity entitlement can be eroded over time by uncommitted shippers that become Regular Shippers.

TSA made available to potential shippers. Petitioners maintain that all interested parties had an equal opportunity to participate in the Open Season.

### **Requested Rulings**

6. Petitioners seek an order from the Commission approving the following aspects of the proposed tariff and rate structure, as well as the terms of service for the Project:
  - a. That Petitioners can implement a tariff rate structure that provides different rates for committed and uncommitted volumes;
  - b. That the committed rates and index rate adjustment mechanism specified in a TSA will be subject to revision only by agreement of the parties to that particular TSA;
  - c. That the committed rates provided in the TSAs may be treated as the equivalent of settlement rates, both initially and during the term of the TSAs, pursuant to section 342.4(c) of the Commission's regulations;<sup>5</sup>
  - d. That Petitioners can allow up to 90 percent of the available capacity created by the Project to be treated as space reserved for committed shippers and other Regular Shippers;
  - e. That Petitioners can implement a prorationing policy that will deem the volume history of committed shippers to be the greater of their average actual shipments over the base period or their volume commitments;
  - f. That Petitioners can implement a lottery mechanism for allocation of space available to New Shippers to prevent any New Shipper's allocation from falling below the minimum tender volume during periods of prorationing;
  - g. That qualifying committed shippers can be afforded the right to extend the initial terms of their TSAs; and
  - h. That committed shippers making volume commitments of at least 75,000 bpd can be subject to a limit on the amount of crude oil inventory that they are required to provide.

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<sup>5</sup> 18 C.F.R. § 342.4(c) (2013).

## **Petitioners' Arguments**

### **A. Tariff Rate Structure**

7. Petitioners state that the proposed tariff structure for the Project establishes separate rates for committed and uncommitted volumes. However, continue Petitioners, the rates for committed volumes also depend on (a) the origin and destination points chosen by a committed shipper; (b) the amount of the daily volume commitment established in a shipper's TSA; and (c) whether a shipper selects a commitment term of five or seven years. Petitioners further state that the proposed tariff structure also provides initially discounted tariff rates for committed shippers that will be lower than the initial uncommitted rates for the same point-to-point movements.

8. According to Petitioners, committed shippers will not receive fixed capacity rights in the event of prorationing; however, during such periods, a committed shipper's history will be equal to the greater of its average shipments over the base period or its committed monthly volume, and a committed shipper will remain a Regular Shipper throughout the term of its commitment. In addition, Petitioners point out that committed shippers making volume commitments of 50,000 bpd or higher or committing to seven-year TSA initial terms also are entitled to contract extension rights under their TSAs, and committed shippers making volume commitments of 75,000 bpd or higher also are entitled to a cap on the amount of required inventory that they must provide in accordance with their TSAs.

9. Petitioners further explain that the rates for committed volumes will be subject to annual adjustments in accordance with a modified version of the Commission's index as follows: (a) if the relevant Commission index factor for a given year is 0.045 or greater, the committed rates will be subject to adjustment by that index factor less 0.015; (b) if in any year the relevant index factor is between 0.03 and 0.045, the committed rates will be subject to adjustment by a factor of 0.03; and (c) if in a particular year, the relevant index factor is less than 0.03, the committed volume rates will be subject to adjustment by the actual index factor. However, Petitioners also point out that if the Commission terminates its indexing methodology, both committed and uncommitted rates will be adjusted annually in accordance with the change in the producer price index for finished goods (PPI) published annually by the U.S. Department of Labor. Petitioners emphasize that in no event will the committed tariff rates be adjusted to a level below that of the initial committed tariff rates established in each committed shipper's TSA.

10. With respect to the initial uncommitted tariff rates, Petitioners state that such rates will vary by origin and destination point only and will be subject to annual adjustment in accordance with the Commission's indexing procedure. However, continue Petitioners, should the Commission terminate its indexing procedure, they will adjust the uncommitted rates annually in accordance with the PPI.

11. Petitioners next explain that, subject to certain allowances for service outages due to *force majeure* and other specified causes, a committed shipper that fails to transport its committed volumes during any calendar quarter must nevertheless pay the applicable committed rate for the volumes it failed to ship. Petitioners further state that such payments may be applied against future payments due for movements on the Project in excess of the shipper's committed volumes (referred to as prepaid transportation credits), which will expire if not utilized within six quarters following the incurrence of the deficiency during the first two years of a TSA term and within four quarters following the incurrence of the deficiency in subsequent years.

12. Petitioners maintain that a committed shipper is permitted by the terms of its TSA to apply its applicable committed rate from an origin point to a destination point within the same continuous path of the points for which the shipper has committed to obtain service. Further, continue Petitioners, the committed shipper also may apply such volumes toward its minimum volume commitment. For example, explain Petitioners, a committed shipper that elects Colorado City as an origin point in its TSA will be permitted to originate volumes further upstream on the Project at Midland or Garden City by paying the difference between the uncommitted tariff rate from Midland or Garden City, as applicable, and the uncommitted tariff rate from Colorado City to the same destination point, as well as its applicable committed tariff rate from Colorado City. However, Petitioners add that as of now, they do not plan to file an initial uncommitted tariff rate for service from Midland to Colorado City because they do not intend Colorado City to be a destination point on the Project, so the foregoing will allow a committed shipper tendering volumes upstream of Colorado City to both apply its committed rate to such volumes and to have those volumes count toward its volume commitment.

13. Additionally, Petitioners state that certain additional charges and/or deductions will apply to both committed and uncommitted volumes. Specifically, they state that a truck unloading charge of \$0.10 per barrel will be assessed when shipments are unloaded from tank truck facilities into the Project facilities at Garden City. Petitioners also point out that a pump-over charge of \$0.0675 per barrel will be assessed for transferring volumes from shipper tanks at Colorado City. Moreover, Petitioners explain that shippers will be assessed a deduction on net quantities tendered for transportation to cover losses inherent in the transportation of crude oil on the Project in the following amounts: 0.1 percent for volumes tendered at Colorado City bound for all initial destination points, or at Midland bound for Garden City, as well as 0.2 percent for volumes tendered at Garden City bound for all initial destination points, or at Midland bound for Nederland or Sour Lake.

14. Petitioners contend that the Commission has approved rate structures allowing committed shippers making term and volume commitments to pay lower initial rates for their committed volumes than the initial rates applicable to uncommitted volumes, as well as allowing committed shippers' rates to vary according to their commitments if the opportunity to execute TSAs containing such volume and term commitments was open and available to all interested parties.<sup>6</sup> Petitioners also emphasize that the Commission has recognized that committed shippers are not similarly situated with other shippers that were unwilling or unable to sign TSAs.<sup>7</sup>

15. Petitioners next seek Commission affirmation that the rates for committed volumes and the related index adjustment mechanism established in the TSAs will not be subject to revision other than by agreement of the parties during the terms of the TSAs, and that such rates (as subsequently adjusted) may be treated as settlement rates in accordance with section 342.4(c) of the Commission's regulations.<sup>8</sup> Petitioners assert that while the Commission's regulations do not specifically provide for negotiated initial rates with agreed-to future rate changes, the Commission has made it clear that such rates may be treated in accordance with section 342.4(c) of the Commission's regulations providing for settlement rates.<sup>9</sup>

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<sup>6</sup> Petitioners cite, e.g., *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014) (*Enbridge FSP*); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 25 (2013) (*Enterprise*); *Sunoco Pipeline L.P.*, 141 FERC ¶ 61,212, at P 20 (2012); *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 22 (2008); *Express Pipeline P'ship*, 77 FERC ¶ 61,188, at 61,756 (1996).

<sup>7</sup> Petitioners cite, e.g., *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at P 23 (2013) (*Enbridge Illinois*); *Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at P 17 (2012); *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,254 (1996).

<sup>8</sup> Petitioners cite, e.g., *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-19 (2013) (*CenterPoint*).

<sup>9</sup> Petitioners cite, e.g., *Seaway Crude Pipeline Co., LLC*, 142 FERC ¶ 61,201, at P 12 (2013); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-19 (2013); *Seaway Crude Pipeline Company LLC*, 146 FERC ¶ 61,151, at PP 36-38 (2014).

16. Additionally, Petitioners contend that the Commission has approved index-based adjustments to committed shippers' rates agreed to in their TSAs if such TSAs provide that the committed rates will not be adjusted downward, even if such an adjustment would result from application of the Commission's index.<sup>10</sup> However, add Petitioners, the Commission also has accepted a provision that would forgo any decreases in those rates that would result from application of the index in a given year.<sup>11</sup>

**B. Prorationing and Lottery**

17. Petitioners state that the proposed prorationing policy for the Project establishes the following process for any month in which prorationing is necessary (Allocation Month):

- a. In the aggregate, New Shippers will be allocated 10 percent of the Available Capacity of the prorated Pipeline segment in any Allocation Month, on a *pro rata* basis but not to exceed the lesser of a New Shipper's Nomination or 2.5 percent of Available Capacity in any Allocation Month. If the *pro rata* allocation in an Allocation Month, based on the number of New Shippers making Nominations, results in no New Shipper being allocated the Minimum Volume, then Carrier will administer a lottery process for the total number of Minimum Volume allocations available to New Shippers in the Allocation Month. A New Shipper will not be allocated capacity through the lottery process if it is (i) an Affiliate of a Regular Shipper, or (ii) an Affiliate of another Shipper that received an allocation through the lottery process. The lottery process will be conducted as follows:
  - Carrier will use a random number generating software to randomly assign each New Shipper a number from one to the number representing the total number of New Shippers participating in the lottery (i.e., if there are 50 New Shippers, numbers one through 50 will be assigned).

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<sup>10</sup> Petitioners cite, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 8 (2007) (*CCPS*).

<sup>11</sup> Petitioners cite, *e.g.*, *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115, at PP 8, 20 (2013).

- The New Shipper assigned number one will receive the first Minimum Volume allocation. Thereafter, Minimum Volume allocations will be assigned to New Shippers sequentially, from lowest assigned number to highest assigned number, until 10 percent of Available Capacity is fully allocated.
- b. For each prorated Pipeline segment, 90 percent of Available Capacity will be allocated to Regular Shippers proportionately based on the lesser of each Regular Shipper's Historic Shipment Volume or its Nomination in the Allocation Month.

18. Petitioners explain that the prorationing policy also provides that any capacity remaining after the implementation of steps outlined above will be allocated on a *pro rata* basis to both committed and uncommitted volumes on the basis of specified criteria and that the policy prevents shippers from using affiliate relationships or other devices to attempt to game the system and obtain more capacity in prorationing than they otherwise would be allocated. In particular, continue Petitioners, if there is any remaining capacity following the initial allocation of capacity pursuant to steps listed above (to both Regular Shippers and New Shippers) and there are additional nominations that have not yet been allocated, such remaining capacity will be allocated on a *pro rata* basis to committed shippers nominating volumes through the use of prepaid transportation credits obtained by paying for volumes not shipped in any previous quarters during the term of their TSAs. According to Petitioners, following that allocation, if there is any remaining capacity, such remaining capacity will be allocated *pro rata* among all shippers making nominations in the month of allocation, based on the remaining amounts of their unallocated nominated volumes.

19. According to Petitioners, for purposes of the proposed prorationing policy, a "Regular Shipper" is either a shipper that has transported crude oil on the Project in nine of the 12 consecutive months ending with the second month prior to the month during which prorationing is being applied or a shipper that has made a volume commitment pursuant to a TSA. Petitioners further state that a "New Shipper" is any shipper that is not a Regular Shipper. Additionally, Petitioners explain that an uncommitted shipper's "Historic Shipment Volume" is the monthly average of such shipper's volumes shipped during the 12-month period referred to above, and a committed shipper's "Historic Shipment Volume" is the greater of such shipper's monthly average volume shipped over that period or such shipper's monthly volume commitment in its TSA.<sup>12</sup>

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<sup>12</sup> Petitioners state that because a Committed Shipper may ship volumes in excess of its minimum volume commitment, it is entitled to a share of available capacity based on the greater of its average monthly volume actually shipped or its committed volumes.

20. Petitioners emphasize that they are not proposing to provide firm service to committed shippers on the Project. Instead, Petitioners state that they will maintain a traditional history-based prorationing policy under which 90 percent of available capacity will be made available to Regular Shippers (including committed shippers) and 10 percent will be reserved for New Shippers. Further, state Petitioners, a New Shipper will not be allocated capacity through the lottery process if it is either an affiliate of a Regular Shipper or an affiliate of another shipper that received an allocation through the lottery process.

21. Petitioners argue that the proposed prorationing policy is consistent with Commission precedent in reserving at least 10 percent of available capacity for New Shippers, with the remainder reserved for Regular Shippers.<sup>13</sup> Petitioners also contend that in *Enterprise*, the Commission approved a provision providing that a committed shipper would be automatically deemed a regular shipper for prorationing purposes and would be allocated volumes based on the higher of its actual average throughput during the base period or its monthly volume commitment.<sup>14</sup> Petitioners further assert that their proposed lottery mechanism is similar to the one accepted by the Commission in *Enbridge Illinois*.<sup>15</sup>

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<sup>13</sup> Petitioners cite *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 27 (2013) (*Enterprise*); *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 24-25 (2013); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at PP 30, 40 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 30-31 (2013).

<sup>14</sup> Petitioners cite *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 28 (2013). See also *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139, at P 12 (2010); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at PP 35-40 (2012); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 29 (2014).

<sup>15</sup> Petitioners cite *Enbridge Pipeline (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 12, 25 (2013). Petitioners further state that the minimum volume allocation under the Project's *pro forma* tariff is 50,000 barrels, which is the same minimum applied by the prorationing policy evaluated by the Commission in *Enbridge Illinois*. See also *Seaway Crude Pipeline Company LLC*, 142 FERC ¶ 61,201, at P 21 (2013); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

### C. Other Committed Shipper Rights

22. Petitioners next assert that shippers on the Project that make volume commitments of at least 50,000 bpd or commit to a term of seven years will have the ability to extend the terms of their TSAs for an additional three years following the end of the original terms, as well as for another three years following the end of any such extensions. Petitioners add that they may reject a qualifying committed shipper's extension of its TSA term if, at the end of the expiring term, the aggregate volume commitments on the relevant segment of the Project of all remaining shippers is less than 25 percent of the total available capacity or 50 percent of the total available capacity and if the Petitioners have determined to discontinue transportation service on the Project within 24 months of the end of the TSA term.

23. Petitioners also point out that all shippers will be required to provide a proportionate share of the crude oil inventory required by Petitioners for line fill. Petitioners explain that for committed shippers, this share will be based on the shipper's committed volume throughout the term of its TSA, regardless of whether that committed shipper continues to ship on the pipeline. According to Petitioners, a committed shipper that has made a volume commitment of 75,000 bpd or higher will be limited to supplying a maximum amount of this required inventory equal to the greater of such shipper's monthly volume commitment multiplied by 1.2, or its nomination for the relevant month (as the same may be adjusted as a result of prorationing), divided by the actual capacity for the line segment, multiplied by the total required inventory for that line segment. However, Petitioners emphasize that any shortfall in required inventory resulting from this cap for shippers committing at least 75,000 bpd will be made up by Petitioners and not by other shippers.

24. Petitioners contend that the Commission consistently has upheld the grant of certain similar rights to committed shippers as an inducement to entering into long term contracts committing volumes and revenue to a new project, provided that those rights are offered to all interested shippers.<sup>16</sup> According to Petitioners, in *CenterPoint*, the Commission held that contract extension rights for committed shippers making volume and term commitments were permissible where such rights were made available to interested parties in a valid open season.<sup>17</sup> Further, state Petitioners, the Commission

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<sup>16</sup> Petitioners cite, e.g., *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 35 (2013); *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at PP 19-20 (2012).

<sup>17</sup> Petitioners cite *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 35 (2013); *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at PP 19-20.

approved a similar right for committed shippers to extend the terms of their TSAs if such shippers made a volume commitment of 50-100 percent of the committed capacity.<sup>18</sup>

### **Public Notice and Interventions**

25. Notice of the filing was issued March 11, 2014, with interventions and protests due April 11, 2014. Pursuant to Rule 214 of the Commission's regulations,<sup>19</sup> 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**

26. The Commission will grant the rulings requested in the Petition, with one exception, discussed below. The peak annual average capacity of the Project will be approximately 230,000 bpd, and granting Petitioners' requested rulings will provide regulatory certainty for a significant infrastructure project that will increase the movement of crude oil to interstate markets and help to alleviate constraints facing Permian Basin producers and marketers in moving crude oil to downstream refineries and markets. Petitioners have demonstrated that Commission precedent supports granting the rulings they seek.

27. Specifically, the Petitioners' proposed rate structure and other tariff provisions are generally consistent with those approved by the Commission for other pipelines. The Petitioners will offer 90 percent of the capacity of the Project to committed shippers that will ship or pay for the volumes established in their TSAs. Committed shippers that commit to greater volumes and longer terms will receive further reduced rates. Additionally, the Petitioners have proposed to charge different rates for the volumes of committed shippers that have made ship-or-pay commitments and the uncommitted shippers that did not make such commitments. The Commission finds that the Petitioners' proposed reservation of 10 percent of the Project's capacity will allow uncommitted shippers sufficient access to the Project, although at rates likely to be higher than those paid by the committed shippers.

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<sup>18</sup> Petitioners cite *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at PP 11, 21 (2013).

<sup>19</sup> 18 C.F.R. § 385.214 (2013).

28. However, Petitioners propose that, should the Commission terminate its indexing procedure, they will adjust uncommitted rates annually in accordance with the PPI. The Commission does not grant the requested ruling on this proposal, and instead finds that, in the event the Commission terminates the current indexing methodology, the Commission will require that Petitioners follow, for the uncommitted rates, whatever rate change methodology is then in effect.

29. The Commission also grants the Petitioners' request that the Commission treat the Committed Rates as if they were settlement rates under section 342.4(c) of the Commission's regulations upon the start-up of the Project. The Petitioners will, however, set and be prepared to support the initial rates for the uncommitted shippers at the time the pipeline goes into service, consistent with section 342.2 of the Commission's regulations.

30. Further, the Petitioners' proposed allocation methodology is reasonable and not unduly discriminatory. The Petitioners propose a history-based proration policy under which 90 percent of available capacity will be available to Regular Shippers. If the average monthly volume of the Regular Shippers exceeds the 90 percent available to them, all Regular Shippers' volumes will be prorated based on the greater of each Regular Shipper's historic average volumes shipped or, if applicable, a committed shipper's volume commitment. The remaining 10 percent of available capacity will be reserved at all times for New Shippers that have not moved oil on a sufficient basis to become Regular Shippers. Further, while a committed shipper automatically qualifies as a Regular Shipper, a New Shipper can also qualify as a Regular Shipper by moving oil in nine of the 12 consecutive months ending with the second month prior to the month in which prorationing is being applied.

31. Consistent with its decisions in *Seaway Crude Pipeline Co. LLC*<sup>20</sup> and *Enbridge FSP*,<sup>21</sup> the Commission also will accept the Petitioner's proposal to implement a lottery mechanism for allocating the total number of monthly minimum volume allocations available to New Shippers. The proposed lottery is intended to ensure that *pro rata* allocations to New Shippers do not become so fractional that each shipper fails to meet the minimum tender volume.

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<sup>20</sup> *Seaway Crude Pipeline Co., LLC*, 143 FERC ¶ 61,036, at P 16 (2013).

<sup>21</sup> *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

32. Finally, the Commission approves the Petitioner's proposal to grant Committed Shippers that made volume commitments of at least 50,000 bpd, or agreed to TSA terms of seven years, the right to extend the term of their TSAs for an additional three years, and for another three years following the end of any such extension. Additionally, the Commission will approve the Petitioner's proposal that a Committed Shipper which has made a volume commitment equal to or greater than 75,000 bpd will be limited to supplying a maximum amount of required line fill which will be proportionally less than other Committed Shippers.

33. Accordingly, the Commission grants the rulings sought by Petitioners, finding that the proposed rate structure and terms and conditions for the Project are just and reasonable and will not result in undue discrimination or undue preference.

The Commission orders:

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.