148 FERC ¶ 61,048
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Bakken Crude Services, LLC Docket No. OR14-24-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 17, 2014)

1. On March 20, 2014, Enable Bakken Crude Services, LLC (Enable Bakken) filed a petition for declaratory order (PDO) seeking certain rulings regarding its new crude oil gathering pipeline system (Pipeline). Enable Bakken seeks approval of the overall transportation, tariff, and rate structure for the Pipeline, which will gather crude oil produced from various points in Mountrail and Williams Counties, North Dakota and transport it to a central delivery point near Tioga, which is located in Williams County, North Dakota. As discussed more fully below, the Commission grants Enable Bakken's petition.

Project Details

2. According to Enable, the Pipeline is intended to increase substantially the oil gathering pipeline infrastructure available for Bakken crude oil produced in western North Dakota's Mountrail and Williams Counties, and to help reduce the region's reliance on trucking. The Pipeline will consist of multiple 6-inch and 4-inch diameter feeder lines merging and feeding into two 8-inch diameter gathering pipelines. The total length of the pipeline in the gathering complex is expected to be approximately 85 miles, with the span of the Pipeline expected to be no greater than 20 miles. The expected capacity of the Pipeline is 30,000 barrels per day of crude oil.

3. Enable Bakken maintains that from the Tioga delivery point, shippers will have significant flexibility to deliver their crude oil to multiple interstate pipeline systems for further distribution to a variety of downstream refinery and terminal destinations. Consequently, the Pipeline will provide transportation service subject to the jurisdiction of the Commission.

4. Enable Bakken states that the Pipeline will provide new gathering capacity vital to the region, as crude oil production continues to increase and existing pipeline

infrastructure struggles to meet demands. Enable Bakken states that the increased pipeline capacity will not only alleviate bottlenecks in existing pipelines but also reduce reliance on alternative trucking and rail transportation methods, thereby lowering shipping costs and increasing industry safety.[1]

Enable Bakken's Petition

5. Enable Bakken requests a number of specific rulings and approvals with respect to the overall transportation, tariff, and rate structure. Enable Bakken projects that the Pipeline will become operational in phases, with the first phase placed in-service in the second half of 2014. Accordingly, Enable Bakken requests a Commission ruling, if possible, by July 15, 2014.

Open Season

6. Enable Bakken asserts that it held a binding Open Season from February 3 to March 5, 2014. According to Enable Bakken, the Open Season offered interested entities the opportunity to make long-term dedications of the crude oil produced from certain acreage for transportation on the Pipeline for a fifteen year period (Acreage Dedication). Enable Bakken describes the Acreage Dedication as a long-term agreement by shippers to use the Pipeline to transport all crude oil produced from certain acreage. Enable Bakken asserts that it requested that potential shippers make commitments to the Pipeline in the form of Acreage Dedications rather than volume commitments based on Enable Bakken's market analysis of the region and the input of potential shippers indicating a strong preference for this type of commitment. Enable Bakken further asserts that during the Open Season, it gave potential shippers the opportunity to request other types of commitments, including volume commitments, but no entity made such a request.

7. Enable Bakken requests approval of the provisions of the transportation Services agreement (TSA) which governs the transportation services for Committed Shippers for the term of the TSA. Enable Bakken asserts the proposed overall transportation, tariff, and rate structure is not unduly discriminatory, conforms to precedent. Enable Bakken further requests approval to allocate up to ninety percent of the total capacity available of the Pipeline to the Committed Shippers, while reserving the remaining ten percent of the Pipeline's capacity for shippers who did not enter into a TSA with Enable Bakken during the Open Season (each such shipper being an Uncommitted Shipper).

---

[1] Enable Bakken estimates that the Pipeline could help displace approximately 150 trucks or 50 railcars that would otherwise be transporting the same crude oil each day.

8. Enable Bakken requests confirmation that a Committed Shipper may receive priority transportation service on the Pipeline in exchange for paying a premium rate, as compared to the rate applicable to an Uncommitted Shipper, for such transportation. Enable Bakken proposes to use a "postage stamp" rate design in setting rates for both Committed Shippers and Uncommitted Shippers, meaning the same rate would apply to the shipper regardless of the origin or destination of the shipper's transportation movement. Enable Bakken proposes to that the postage stamp rate applicable to a Committed Shipper (Committed Rate) would always be at least $0.01 per barrel more than the Uncommitted Rate for walk-up, Uncommitted Shippers.

9. Enable Bakken requests confirmation that it may file the Committed Rate as a settlement rate pursuant to Section 342.4(c) of the Commission's regulations.[2] Enable Bakken states that the Committed Rate will not be subject to the Commission's indexing methodology, but rather will be subject to a rate increase of three percent each year during the primary term of the TSA.

10. Enable Bakken requests approval of its prorationing policy for the Pipeline in the event that it receives more nominations for transportation service in a month than it is able to provide (Prorationing Policy). Under the Prorationing Policy, Enable Bakken would first allocate up to ninety percent of the Pipeline's capacity to Committed Shippers on the basis of their Acreage Dedication. The proportion of capacity that each Committed Shipper would be entitled to receive would depend upon the volume of the Committed Shipper's proposed Acreage Dedication during each year of the term of the TSA (Final Estimated Crude Production) for the proration month compared to the volume of the aggregate Final Estimated Crude Production of all Committed Shippers for the proration month, rather than upon the area of acreage dedicated. If a Committed Shipper submits a nomination for transportation in excess of its allocation in a proration month (such additional volumes being referred to as Incremental Barrels), the Prorationing Policy provides that Enable Bakken would automatically allocate capacity to the Committed Shipper equal to the Incremental Barrels. Enable Bakken explains that the transportation of such Incremental Barrels will not reduce the amount of capacity that has been reserved for Uncommitted Shippers.

11. Enable Bakken also requests approval of certain expansion commitment rights for Committed Shippers, as specified in the TSA, in the event Enable Bakken decides to expand the capacity of the Pipeline. Specifically, the TSA provides that Enable Bakken will provide a Committed Shipper a first right to submit binding nominations to ship, or otherwise pay for, a committed volume of crude oil on the expansion capacity without

[2] 18 C.F.R. § 342.4(c) (2013).

first holding an open season for such capacity. Enable Bakken asserts that the amount of the expansion capacity that will be available for volume commitments from Committed Shippers will not exceed ninety percent of the total available expansion capacity.

12. Enable Bakken requests confirmation that it and a Committed Shipper shall have the right to extend the term of the TSA in accordance with the extension rights specified in the TSA. The TSA has a primary term of fifteen years, but it affords each Committed Shipper the opportunity to extend the primary term for two additional five-year periods. Following the expiration of those extension terms (if any), the TSA provides that the term can be further extended for successive, additional five-year periods with the agreement of both Enable Bakken and the Committed Shipper. The Committed Shipper has the option for each extended term either to maintain its Acreage Dedication and to continue to receive priority service at a priority rate or eliminate its Acreage Dedication, in which case it would receive non-priority service at an adjusted rate.

Public Notice, Interventions, Protests, and Comments

13. Public notice of Enable Bakken's petition was issued on March 25, 2014, providing for motions to intervene, comments and protests to be filed on or before April 18, 2014. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), 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 disrupt the proceeding or place additional burdens on existing parties. No comments or protests were filed.

Discussion

14. Since the Commission's decision in *Express Pipeline P'ship* (*Express*),[3] oil pipelines have used the declaratory order process to remove uncertainty with respect to proposals for non-traditional rate and tariff structures. As to Enable Bakken's request for approval of the Committed Rates in the TSA as settlement rates, the Commission has approved similar requests in previous declaratory orders. As the Commission recently stated in *Seaway*, "although the Commission's regulations do not provide specifically for negotiated initial rates with agreed-to future rate changes, the Commission has ruled that such contracts 'are consistent with the spirit of section 342.4(c) of the Commission's regulations.'"[4] Accordingly, the Commission approves Enable Bakken's treatment of

[3] 75 FERC ¶ 61,303 (1996), *reh'g and declaratory order,* 76 FERC ¶ 61,245 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

[4] *See Seaway Crude Oil Pipeline Co. LLC,* 142 FERC ¶ 61,201, at P 12 (2014) (*Seaway II*) (citing Express Pipeline P'ship, 76 FERC ¶ 61,245, at 62,258 (1996)).

Committed Rates as settlement rates for the term of the TSAs, consistent with Commission policy. The Commission confirms that the provisions of the TSA will govern transportation services provided to Committed Shippers for the duration of the contract. The Commission previously approved similar requests for this type of assurance,[5] and will also approve the like provisions for which assurance is sought in the instant PDO. The Commission also finds the Committed Rate structure and expansion rights proposed in the instant PDO is just and reasonable, and should govern during the terms of the TSAs.

15. Granting Enable Bakken's petition will allow it to move forward with the Pipeline to provide additional transportation infrastructure for the Bakken oil producing region. Upon consideration of all the factors discussed above, the Commission grants Enable Bakken's petition for declaratory order and the rulings requested therein.

<u>The Commission orders</u>:

The March 20, 2014, petition for declaratory order of Enable Bakken is granted, as discussed more fully above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[5] *See MAPL*, 136 FERC ¶ 61,087 at P 9; *KMPXP I*, 141 FERC ¶ 61,180 at P 22. *See also Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201 (2013) (*Seaway I*). In *Seaway I*, the Commission specifically affirmed that the rate design embodied in the TSA to establish the rates for committed and uncommitted shippers "would be upheld and applied during the established terms of the agreements between the pipeline and the shippers that made volume commitments during the open season . . . ." *Seaway I*, 142 FERC ¶ 61,201 at P 13. The Commission cautioned, however, that if an uncommitted rate is protested, the pipeline must comply with section 342.2(b) of the Commission's regulations to support such rate.