148 FERC ¶ 61,095
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Medallion Pipeline Company, LLC Docket No. OR14-29-000

DECLARATORY ORDER

(Issued August 1, 2014)

1. On April 21, 2014, Medallion Pipeline Company, LLC (Medallion) filed a petition for a declaratory order (Petition) seeking Commission approval of the open season procedure, capacity allocation, tariff rate structure, as well as provisions regarding annual rate adjustments, contract extension rights, a "ramp-up" election, and prorationing rights applicable to Medallion's proposed Wolfcamp Connector crude oil pipeline project (Project). Medallion anticipates that the Project will be placed in service by the fourth quarter of 2014.[1] To provide its committed shippers assurance that the Project will proceed on the basis of the applicable terms and conditions of their Transportation Service Agreements (TSA), Medallion requests Commission approval of the Petition by August 1, 2014.

2. As discussed below, the Commission grants the requested rulings.

**Background**

3. Medallion states that the Project will originate in the Midland Basin in West Texas, which has experienced a substantial surge in crude oil exploration, development, and production activity. In particular, states Medallion, recent activity in the Wolfcamp

[1] On July 10, 2014, Medallion filed a letter to provide updated information regarding the commercial development of the Project. Medallion states that after it submitted the Petition, it entered into discussions with other producers that have substantial acreage positions, ongoing drilling programs, and escalating production in the Wolfcamp Shale. Medallion anticipates conducting additional open seasons for new capacity that it expects to provide through additional extensions and/or expansions. Medallion further states that it now anticipates that the Project will be ready for service in the third quarter of 2014.

shale formation within that basin, which includes numerous stacked oil reservoirs and multiple pay zones, has resulted in a dramatic increase in essentially all aspects of crude oil exploration and development. According to Medallion, the overall level of crude oil exploration, development, and production from the Wolfcamp shale is likely to continue to increase in 2014 and thereafter.

4. Medallion explains that during the first nine months of 2013, it met with virtually every producer with significant acreage holdings in the Wolfcamp shale, drilling programs underway or publicly announced, and/or existing crude oil production. As a result, continues Medallion, it conducted a successful open season and proposes to construct the Project, which will extend approximately 112 miles northward through the Midland Basin, with an initial capacity of approximately 65,000 barrels per day (bpd), to points of interconnection with downstream take-away pipelines at the Colorado City hub, including planned destination points interconnecting with the pipeline facilities of BridgeTex Pipeline Company, LLC. Further, states Medallion, the Project will have an additional destination point on the southern end of the system that will interconnect with the facilities of Plains Pipeline, L.P. (Plains). Medallion also explains that the Project's capacity will be expandable to approximately 100,000 bpd with the addition of mid-point pumping stations. According to Medallion, the Project initially will consist of the following two integrated pipeline segments:

- <u>Wolfcamp Connector Mainline</u>. The 12-inch diameter mainline will originate near Garden City in Glasscock County, Texas, and will extend approximately 60 miles north through Howard and Mitchell Counties, Texas, to the Colorado City hub in Scurry County, Texas.

- <u>Reagan Gathering Extension</u>. The 51.5-mile extension will function as a gathering header system with multiple points of origin connecting various production sources in Reagan and Glasscock Counties and will be capable of bidirectional operations, delivering up to 65,000 bpd either northward to the Wolfcamp Connector Mainline's Garden City station (for delivery through to the Colorado City hub destination points) or southward to the destination point with Plains in Reagan County. The facilities will consist of a 27-mile, 10-inch diameter gathering header, along with approximately 24.5 miles of smaller diameter gathering laterals.

Depending on market dynamics, Medallion anticipates that the Project may interconnect with several other long-haul takeaway pipelines to provide even more options for shippers to access the Gulf Coast and Cushing, Oklahoma crude oil markets. Medallion states that the additional interconnection possibilities at the Colorado City hub include Centurion Pipeline L.P. and the proposed Sunoco/Permian Express II project.

5. Medallion explains that its open season commenced October 29, 2013, with an initial deadline of November 27, 2013; however, Medallion states that it extended the

deadline to February 3, 2014, to permit further discussions with prospective shippers. According to Medallion, the discussions led it to refine the route, configuration, and operations of the proposed gathering header, and by further notice to prospective shippers of January 24, 2014, it announced modifications to the redesigned Reagan Gathering Extension. Medallion emphasizes that the open season materials were available to any prospective shipper that executed a confidentiality agreement and that to constitute a valid bid, a prospective shipper was required to submit an executed TSA, select the form of service (Committed Firm Service or Committed Non-Firm Service) and identify the level of committed volumes, origin and destination points, and contract term. According to Medallion, as of the close of the open season, it had received binding commitments from open season participants, including its own affiliates, for Committed Firm Service and Committed Non-Firm Service in an aggregate amount equaling 90 percent of the Project's 65,000 bpd capacity.

6. Medallion explains its two classes of premium service as follows:

- A Committed Firm Shipper will receive firm transportation service (*i.e.*, service exempt from the prorationing provisions of the tariff) for its contractually committed volumes in exchange for a long-term commitment to transport (or pay for) those volumes, pursuant to the terms of a TSA executed during the open season process. The rates applicable to Committed Firm Service vary depending on the contract term, the level of the committed volumes, and the origin and destination points; however, in all instances, the rates will be at least $0.01 per barrel above the rates applicable to Uncommitted Service for the same the same origin and destination points.

- A Committed Non-Firm Shipper will receive non-firm transportation service (*i.e.*, service subject to the tariff prorationing provisions). In exchange for a long-term commitment to transport (or pay for) its contractually committed volumes (again, pursuant to the terms of a TSA), the rates applicable to Committed Non-Firm Service will be below the rates for uncommitted service applicable to the same origin and destination points. The rates for Committed Non-Firm Service will also vary depending on contract term, the level of the committed volumes, and origin and destination points.

7. Medallion emphasizes that the TSAs for Committed Shippers, along with the open season *pro forma* tariffs, contain other important provisions. First, states Medallion, while the rates for Committed Firm and Committed Non-Firm Service are subject to annual adjustment pursuant to the Commission's indexing rules, the TSAs limit the level of that annual adjustment by both a negotiated ceiling and floor. Second, Medallion states that the TSAs provide that Committed Firm Shippers may elect a "ramp up" option applicable to the initial two years of service, such that the ship-or-pay obligation for the

first year is 33 1/3 percent of the otherwise applicable committed volume, and 66 2/3 percent for the second year, in recognition of such shipper's long-term ship-or-pay commitment at premium rates. Third, continues Medallion, the *pro forma* rules and regulations tariff provides that during periods of prorationing, a Committed Non-Firm Shipper's deliveries during the base period shall be deemed to be the higher of its committed volumes or actual shipments, in recognition of that shipper's long-term ship-or-pay commitment under the TSA. Finally, Medallion states that the TSAs provide Committed Shippers with contract extension rights, pursuant to which the TSAs are automatically extended for up to two additional two-year terms, unless the shipper provides prior notice of termination pursuant to the TSA.

**<u>Requested Rulings</u>**

8. Medallion requests Commission approval of the following aspects of the Projects:

A. The open season for the Project followed Commission guidelines;

B. Medallion properly committed up to 90 percent of the Project's capacity to committed shippers, while reserving at least 10 percent of the capacity for uncommitted shippers;

C. The committed rates and rate structure contained in the TSAs and *pro forma* rates tariff are consistent with Commission precedent, are just and reasonable under the Interstate Commerce Act (ICA), and will not be subject to modification or revision except as provided by the TSAs; and

D. Each of the following provisions is consistent with Commission precedent and is just and reasonable under the ICA:

(i) the TSA provision limiting the annual Commission Oil Pipeline Index adjustments for committed shippers;

(ii) the TSA provision granting contract extension rights to committed shippers;

(iii) the TSA provision granting a "ramp up" election to committed firm shippers; and

(iv) the *pro forma* rules and regulations tariff provision granting certain prorationing rights to committed non-firm shippers, namely that during periods of prorationing, a committed non-firm shipper's deliveries during the base period shall be deemed to be the higher of its committed volumes or its actual shipments, in recognition of that shipper's long term ship-or-pay commitment under the TSA.

**Medallion's Arguments**

9. Medallion states that the Commission consistently has approved the use of its declaratory order procedures to remove uncertainty concerning the negotiated rate and service provisions established in transportation services agreements between project sponsors and anchor shippers. Medallion points out that such agreements are executed following appropriate open season procedures[2] and that they underpin the financing, construction, and operation of capital-intensive "greenfield" pipeline projects, such as the instant Project.[3] Medallion maintains that a declaratory order is appropriate in this case to provide certainty regarding the similar rate and service provisions that are critical features of the TSAs and *pro forma* tariff provisions.

10. Medallion states that its open season process reserved at least 10 percent of the capacity on the Project for uncommitted shippers, with the remaining 90 percent now subscribed by committed shippers. According to Medallion, while the Commission has not established a stated minimum percentage to be set aside for uncommitted shippers, it has held that the reservation of 10 percent of the capacity for uncommitted shippers is sufficient to provide reasonable access, particularly when an open season provides all potential shippers the opportunity to become committed shippers.[4] Medallion contends that its open season satisfies the Commission's requirements.

11. Additionally, Medallion submits that the Commission's determination should include a finding that the rate structure and rate provisions of the TSAs constitute settlement rates pursuant to section 342.4(c) of the Commission's regulations,[5] and as such, will govern the rates for transportation services rendered to committed shippers for

[2] Medallion cites *Skelly-Belvieu Pipeline Company, L.L.C.*, 138 FERC ¶ 61,153, at PP 6, 18 (2012); *Shell Pipeline Company, LP*, 146 FERC ¶ 61,051, at PP 16, 21; *Shell Pipeline Company, LP*, 139 FERC ¶ 61,228, at P 21 (2012); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011).

[3] Medallion cites, *e.g.*, *Express Pipeline P'ship*, 76 FERC ¶ 61,245, *order on reh'g*, 77 FERC ¶ 61,188 (1996).

[4] Medallion cites, *e.g.*, *Sunoco Pipeline L.P.*, 145 FERC ¶ 61,274, at P 11 (2013).

[5] 18 C.F.R. § 342.4(c) (2013).

the respective terms of the TSAs, without modification or revision, except for the annual adjustments as stated in the TSAs.[6]

12. Medallion next asserts that Commission precedent allows firm service to be provided to committed shippers, provided that those shippers pay premium rates. Medallion explains that the TSAs with the Committed Firm Shippers include substantial long-term volume commitments, subject to ship-or-pay obligations, in exchange for firm transportation service that will be exempt from prorationing. According to Medallion, a critical element of this service is a rate structure that obligates those shippers to pay rates that will exceed the rates paid by either Committed Non-Firm Shippers or uncommitted shippers for the same origin and destination points. Specifically, Medallion states that the premium will be at least $0.01 per barrel above the rates for uncommitted shippers, and that the Commission has approved similar rate structures, recognizing that premium rate firm shippers are not similarly situated with other shippers.[7] Medallion reiterates the importance of the Committed Firm Shippers in providing financial support critical to the Project's commercial viability.

13. Likewise, continues Medallion, Commission precedent permits Committed Non-Firm Shippers to pay rates lower than those of the Uncommitted Shippers. Medallion points out that this service also requires long-term volume commitments, with associated ship-or-pay obligations; however, as the name indicates, these shippers will not receive firm service, will be subject to the tariff's prorationing provisions, and will not pay premium rates. Instead, explains Medallion, under the TSAs' rate structure, Committed Non-Firm Shippers will pay a rate that will be substantially lower than the rates for uncommitted shippers for the same origin and destination points. Medallion further states that the rates for this service also will vary depending on contract terms and committed volumes, with longer term and greater volume commitments commanding the lowest rates. Medallion adds that the lower rates reflect the fact that unlike uncommitted shippers, the Committed Non-Firm Shippers also provide important support for the Project. Medallion maintains that the Commission has approved similar rate structures for other pipelines.[8]

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[6] Medallion cites, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 18-19 (2013); *Enbridge Pipelines (FSP), LLC*, 146 FERC ¶ 61,148 (2014).

[7] Medallion cites *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007).

[8] Medallion cites, *e.g.*, *Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P.*, 141 FERC ¶ 61,005 (2012); *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133 (2013); *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*, 124

(continued...)

14. Medallion next contends that the Commission has approved provisions comparable to the TSA and tariff provisions it has submitted in this proceeding. For example, Medallion observes that the TSAs provide for rates to be adjusted annually by a modified version of the Commission's Oil Pipeline Index that includes both a ceiling and floor applicable to annual rate adjustments.[9] Medallion also points out that the Commission has approved treatment of annually-adjusted rates as settlement rates pursuant to section 342.4(c) of the regulations. Additionally, Medallion asks the Commission to waive the regulation's requirement to submit a verified statement.[10]

15. Finally, Medallion asserts that Commission precedent supports (a) the TSA provisions permitting Committed Firm Shippers to elect a "ramp up" option for the initial two years of service; (b) the *pro forma* tariff prorationing provision granting Committed Non-Firm Shippers the higher of their committed volumes or their actual shipments as its base period shipper history; and (c) the TSAs' contract extension rights for Committed Firm and Committed Non-Firm Shippers.[11] Medallion emphasizes that these rights were designed to provide both categories of committed shippers greater flexibility to tailor the service to their particular transportation requirements.[12]

**Notice and Interventions**

16. Notice of the Petition was issued April 23, 2014, with interventions and protests due May 21, 2014. Pursuant to Rule 214 of the Commission's regulations,[13] all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed

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FERC ¶ 61,199, at P 21 (2008); *Sunoco Pipeline L.P.*, 141 FERC ¶ 61,212, at P 20 (2012).

[9] Medallion cites *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at PP 20-22 (2007). *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 20-22 (2013).

[10] Medallion cites *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 18-19 (2013).

[11] Medallion cites, *e.g.*, *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 8e-8f (2014); *Kinder Morgan Pony Express Pipeline LLC, Belle Fourche Pipeline Co.*, 141 FERC ¶ 141 FERC ¶ 61,180, at P 47 (2012).

[12] Medallion cites, e.g., *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 35 (2013).

[13] 18 C.F.R. § 385.214 (2013).

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. The Petition is unopposed.

**Commission Analysis**

17. The Commission will grant the approvals requested by Medallion. The Project will provide additional transportation capacity from an area with significant current production and additional anticipated activity. The Commission finds that Medallion conducted its open season in a manner consistent with the ICA's requirements and Commission precedent. The open season was widely advertised and afforded all potentially interested shippers a fair and equal opportunity to become committed shippers on the Project.

18. The terms of Medallion's proposal, including the capacity allocation, tariff rate structure, annual rate adjustments, contract extension rights, a "ramp-up" election, and prorationing rights are consistent with Commission precedent. Additionally, Medallion appropriately proposes to reserve 10 percent of the Project's capacity for uncommitted shippers. Its rates provide priority firm service for shippers willing to pay premium rates and guarantee to ship minimum volumes for a minimum term. Both committed and uncommitted shippers will have the ability to ship greater quantities in accordance with a tiered rate structure that decreases the applicable rates as the shipper increases the volumes shipped. Medallion's proposal to adjust its rates annually in accordance with the Commission's Oil Pipeline Index, subject to a specified floor and ceiling, is acceptable as well.

19. Finally, Medallion's proposal to treat the rates provided in the TSA as settlement rates pursuant to section 342.4(c) of the Commission's regulations is consistent with Commission precedent. However, while the Commission allows pipelines to seek waiver of the verified statement obligation of that section, Medallion must do so at the time it files the initial rates applicable to the Project.

The Commission orders:

Medallion's Petition is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.