

148 FERC ¶ 61,129  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Tesoro High Plains Pipeline Company LLC and Tesoro Logistics Operations, L.L.C.      Docket No. OR14-31-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 18, 2014)

1. On May 19, 2014, Tesoro High Plains Pipeline Company LLC (Tesoro Pipeline)<sup>1</sup> filed a petition for a declaratory order (PDO or Petition) requesting that the Commission (1) confirm the committed shipper rate agreed to in signed Transportation Service Agreements (TSAs) and other provisions relating to terms of service will be honored; (2) confirm a committed shipper that pays a premium rate can be provided priority service not subject to apportionment; (3) approve its proposed rate design and rate structure; and (4) approve its proposed net present value (NPV) capacity-allocation methodology in the event open-season bids for service exceeded capacity. Tesoro Pipeline requests Commission action on the PDO by August 18, 2014, so that the new transportation alternative will be available to transport crude oil from the Bakken region as quickly as possible. The Commission approves the Petition, as discussed below.

**Project Details**

2. Tesoro Pipeline is a wholly owned subsidiary of Tesoro Logistics. The Tesoro Pipeline system includes approximately 221 miles of trunk line and a 200-mile gathering system located in Eastern Montana and Western North Dakota. In response to the recent growth of Bakken crude oil production and the demands to move the crude to available interstate market outlets, the Tesoro Pipeline system has been reconfigured to transport crude oil from a number of origin stations in North Dakota to delivery points at Richey Station in Eastern Montana, as well as Dry Fork Station, North Dakota Pipeline Company LLC's (North Dakota Pipeline) Beaver Lodge Station, and Stampede in North Dakota.

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<sup>1</sup> Tesoro Logistics Operations LLC is Tesoro Pipeline's parent company. While Tesoro Logistics is referenced throughout the petition, for ease in understanding, Tesoro Pipeline refers to either entity.

The Tesoro Pipeline system currently has an approximate capacity of 110,000 barrels per day (bpd).

3. In 2013, Tesoro Pipeline made substantial investments to upgrade the pipeline system between Dunn, North Dakota and Black Slough, North Dakota, so that a portion of the pipeline could run bi-directionally, enabling the transportation of crude oil in both a northerly and southerly direction. The segment that is subject of this Petition is an intermediate section of that portion of the pipeline that was made bi-directional.

4. Tesoro Pipeline proposes to expand a portion of its current pipeline that runs under and north of Lake Sakakawea, expanding the pipeline's existing capacity from five separate origin points in North Dakota south of the Missouri River to Ramberg Station, North Dakota. After completing the project, shippers could then connect into several different facilities, including a rail facility and a storage hub, to further transport crude oil to various markets.<sup>2</sup> The project adds an additional 70,000 bpd of capacity to the existing 30,000 bpd.

### **The Open Season**

5. Tesoro Pipeline, through Tesoro Logistics, held its open season from February 4, 2014, to March 18, 2014. The open season documents included a binding open season notice and memorandum, and a TSA. Tesoro Pipeline proposed to provide the same service and priority for shipments to Ramberg Station without regard to whether the character of the shipments was interstate or intrastate.

6. Tesoro Pipeline designed the open season so that potential shippers could bid from 10,000 bpd to 70,000 bpd of pipeline capacity on the expansion, with each bid evaluated on a 10,000 bpd tranche basis. After shipper feedback, Tesoro Pipeline amended its open season documents to permit bids in 5,000 bpd tranches and held another open season from March 10, 2014, to April 4, 2014.

7. Tesoro Pipeline states the open season was widely publicized. Tesoro Pipeline received bids for 13 tranches of the project for a total of 65,000 bpd of capacity from Johnson's Corner to Ramberg, equal to 93 percent of the committed capacity offered and 65 percent of the total expanded capacity of the Johnson's Corner to Ramberg pipeline segment. The 13 bids were accepted from five different shippers.

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<sup>2</sup> The original proposal was for two phases; both phases were publicized and bid on separately in the open season. Tesoro Pipeline elected not to proceed at this time with Phase II of the project.

8. While Tesoro Pipeline stated in the open season documents that, in the event the bids exceeded the capacity offered, it would allocate capacity based on an NPV methodology, bids did not exceed the available capacity. Tesoro Pipeline accepted all bids and modified the price terms so that the rate structure would be uniform for all committed shippers. Tesoro Pipeline took the lowest bid (\$0.95 minimum) and applied it across the board, so a single, uniform price of \$0.95 will apply to all committed shipper TSA contracts.

9. Tesoro Pipeline states the open season it held was designed to expand capacity on an existing segment of the Tesoro Pipeline system and provide significant take-away capacity for Bakken crude for ultimate delivery to markets throughout the United States.

### **Terms of Service**

10. Tesoro Pipeline states the commercial terms of the TSA include a tariff rate structure for committed contract shipper volumes and a capacity allocation methodology that restricts contract volumes from prorationing during normal operations. Each TSA contains a take-or-pay provision that requires the shipper to ship its aggregate minimum volume commitment, which is equal to 5,000 bpd times the number of tranches allocated to that shipper during a term. If the shipper does not ship its minimum obligation each month, it is required to pay a deficiency amount, which is calculated on a quarterly basis, allowing the shipper to make up some deficiency volumes throughout the quarter, assuming additional capacity is available. The TSA bid process required bids at a rate of at least \$0.95 per barrel for each 5,000 bpd tranche. This rate is on average \$0.15 higher than the present uncommitted rate from the five origin points identified in the Notice of Open Season to Ramberg Station.

11. Shippers could bid for postage stamp rates for transportation from Blue Buttes, Charlson, Johnson's Corner, Keene or Yttredahl to destinations at Ramberg Station.<sup>3</sup> Under this arrangement, each shipper who entered in to a TSA would be able to ship from any of the five Johnson's Corner origin points to Ramberg Station to meet its monthly commitment. The TSAs provide that the committed rates could be increased in accordance with the Commission's indexing regulations. However, irrespective of the index, the rates of committed shipper would not decrease, and Tesoro Pipeline may elect to forgo an index-rate increase.

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<sup>3</sup> Herein after referred to as the Johnson's Corner origin points.

## **Notice and Interventions**

12. Notice of the Petition issued May 21, 2014. Interventions and protests were due June 18, 2014. Pursuant to Rule 214 of the Commission's regulations,<sup>4</sup> 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 disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

## **Discussion**

### **Rate Structure**

13. Consistent with the precedent established by the Commission's order in *Express Pipeline Partnership*,<sup>5</sup> Tesoro Pipeline requests Commission confirmation of multiple aspects of the project, addressed in turn below.

14. Tesoro Pipeline requests approval of its rate structure in which different rates are charged to committed and uncommitted shippers, and requests confirmation it is appropriate for Tesoro Pipeline to establish committed rates at \$0.95 per barrel as described in the petition. Tesoro Pipeline proposes the committed shippers' rates as agreed to in the executed TSAs may be filed as the equivalent of settlement rates that have been agreed to by each such shipper pursuant to section 342.4(c) of the Commission's regulations, and requests the rates and terms for committed shippers as specified in each TSA be honored and not subject to challenge during the term specified in each TSA. Tesoro Pipeline also requests confirmation that it may increase its committed rates according to the indexing regulations. Tesoro Pipeline requests the Commission confirm that at least 30 percent of pipeline capacity from the Johnson's Corner origination points designated in the Notice of Open Season to Ramberg Station may be reserved for uncommitted shipments of crude oil. Finally, Tesoro Pipeline requests confirmation that it is appropriate for Tesoro Pipeline to continue to charge the individual rates in effect from the Johnson's Corner origin points to Ramberg Station.

### **Commission Discussion**

15. The Commission in *Pony Express* held the committed rates established as part of an open season and included in shipper contracts could be filed as settlement rates under

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<sup>4</sup> 18 C.F.R. § 385.214 (2014).

<sup>5</sup> See *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,253 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996) (*Express*).

section 342.4(c).<sup>6</sup> As the Commission recently stated in *Seaway*, “[a]lthough 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.””<sup>7</sup>

16. In *CCPS*,<sup>8</sup> the Commission recognized that carriers may use different approaches to rate structure to avoid litigation and thereby lessen regulatory burden. The Commission finds that Tesoro Pipeline’s proposed rate structure does not violate the antidiscrimination and undue preference provisions of the ICA, since all interested shippers were on notice via the open season. As noted above, a uniform committed shipper rate of \$0.95 per barrel applies to all TSA contracts.

17. Committed shippers were notified of the proposed rate structures, bid processes, and terms for service through the *pro forma* TSA. There is no issue of discrimination because all potential shippers had the ability to determine how their contracts would be structured based on volume and term, and they knew in advance what the impact of the contract terms would be for the purpose of evaluating their bids. As such, the Commission confirms those rates and terms of service must be honored and are not subject to challenge during the term specified in the contract.

18. Since the contract specified a uniform mechanism for rate changes, Tesoro Pipeline’s proposal to adapt the Commission’s index mechanism for rate changes to the committed rates does not fall outside of current Commission policy. The Commission previously approved the additional two features of the index rate change mechanism embodied in the TSAs, specifically that the committed rates will not be reduced and the pipeline may elect to forego an index-rate increase.<sup>9</sup> The Commission thus affirms the TSA Agreements will be upheld and applied during the agreed-upon term.<sup>10</sup>

19. The Commission previously found a reservation of at least 10 percent of the pipeline’s capacity for uncommitted shippers is sufficient to provide reasonable access to

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<sup>6</sup> See *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at PP 19-21 (2012).

<sup>7</sup> See *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

<sup>8</sup> See *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 22 (2007).

<sup>9</sup> See *CCPS*, 121 FERC ¶ 61,253; *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at P 11 (2013).

<sup>10</sup> *Kinder Morgan Pony Express*, 141 FERC ¶ 61,180 at PP 22-23.

the pipeline.<sup>11</sup> The Commission finds the 30 percent capacity allocation proposed here for uncommitted shippers conforms to its policy.

20. Tesoro Pipeline made a somewhat unusual request in asking for confirmation that it is appropriate it to continue to charge the individual rates in effect from the Johnson's Corner origin points to Ramberg Station. There was no further discussion in the instant petition regarding this requested ruling, and the Commission finds that it could be read in two different ways.

21. Therefore, the Commission finds that, to the extent already existing, previously approved, tariff rates are used after the commencement of the project in question, there is no reason why those rates should not continue. However, to the extent Tesoro Pipeline requests approval for uncommitted rates for future use, the Commission reminds Tesoro Pipeline that it must file such uncommitted rates with the Commission for approval prior to the pipeline going into service,<sup>12</sup> and such rates must be approved by the date service under the uncommitted rates commences.

### **TSA Provisions**

22. Tesoro Pipeline requests confirmation the shipment volume set forth in the TSA, which each individual shipper signed, will not be prorated under ordinary operating conditions. Further, Tesoro Pipeline requests confirmation that committed shippers will be permitted to assign their contract rights under certain conditions as described in the TSAs.

### **Commission Discussion**

23. As discussed above, potential shippers knew in advance the terms of service being offered by Tesoro Pipeline through the *pro forma* TSA, including the prorationing policy. The Commission honors the contract terms entered into by sophisticated parties that engage in an arms-length negotiation.

24. The Commission previously approved prorationing policies where a committed shipper may be provided with priority service not subject to apportionment if that shipper pays a premium rate for the service. The Commission has held that priority service is permissible under the ICA, so long as committed shippers paid a premium rate compared to uncommitted shippers, and the committed rates and priority service options were

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<sup>11</sup> See *Sunoco Pipeline, LP*, 137 FERC ¶ 61,107, at PP 6-15 (2011) (*Sunoco*); *Shell Pipeline Company LP*, 139 FERC ¶ 61,228, at P 21 (2012).

<sup>12</sup> See 18 C.F.R. § 341.2 (2014).

offered to all interested persons during an open season.<sup>13</sup> Based on the representations Tesoro Pipeline made in the instant Petition, the proposed prorating policy is consistent with prorating policies previously approved by the Commission.<sup>14</sup>

25. The Commission finds that Tesoro Pipeline's proposal to permit committed shippers to assign their contracts (or a portion of their contracted capacity) is consistent with Commission precedent.<sup>15</sup> The assignment proposal will allow committed shippers to mitigate the risks of making a long-term commitment to the project.

26. Finally, Tesoro Pipeline 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:

Tesoro Pipeline's PDO 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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<sup>13</sup> See *Sunoco*, 137 FERC ¶ 61,107.

<sup>14</sup> See *Shell Pipeline Company LP*, 141 FERC ¶ 61,017 (2012).

<sup>15</sup> *Id.* P 16