149 FERC ¶ 61,080
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 29, 2014

In Reply Refer To:
Whiting Oil and Gas Corporation
Docket No. OR14-39-000

Pierce Atwood LLP
900 17th Street, NW
Suite 350
Washington, DC 20006

Attention: Randall S. Rich, Esq.

Dear Mr. Rich:

1. On August 12, 2014, Whiting Oil and Gas Corporation (Whiting) filed a Request for Temporary Waiver of the Tariff Filing and Reporting Requirements of sections 6 and 20 of the Interstate Commerce Act (ICA) and the Commission's implementing regulations with respect to Whiting's proposed natural gas liquids (NGL) pipeline.[1]

2. Whiting states that it owns and/or controls natural gas production in northeast Colorado and owns a natural gas processing plant in Weld County, Colorado (Plant). Whiting further states that it plans to arrange for the construction of a new eight-inch pipeline and associated equipment (Pipeline) from the Plant to an interconnection with Overland Pass Pipeline Company LLC (Overland Pass) so that Whiting can deliver its NGLs from its Plant into the Overland Pass pipeline system, which is subject to the Commission's jurisdiction.[2] According to Whiting, Tallgrass Midstream, LLC (Tallgrass) will arrange for construction of the Pipeline, which it will lease to Whiting for

[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. pts. 341, 357 (2014) implementing the filing and reporting requirements of ICA sections 6 and 20.

[2] Whiting states that the Pipeline will be entirely within Weld County, Colorado.

20 years. Whiting states that, during the term of the lease, it will have sole control over the Pipeline and that the only role of Tallgrass will be to maintain and operate the Pipeline under Whiting's direction.

3. Whiting emphasizes that the Pipeline will be used exclusively to move the NGLs removed from the gas stream at the Plant. Because the natural gas produced upstream of the Plant is produced from wells owned by Whiting or purchased by Whiting at the wellhead, Whiting states that no other party will use or is likely to use the Pipeline. Moreover, continues Whiting, no pipelines other than the Overland Pass pipeline are expected to be connected to the Pipeline, which will ship Whiting's NGLs in a single direction.

4. Whiting contends that the Commission has acted under its "Special Permissions" policy to grant pipelines similar temporary waivers of the tariff filing and reporting requirements of the ICA when certain requirements are not necessary to protect the public interest because the pipeline is not being used, or is not likely to be used, for transportation of petroleum products for an unaffiliated third party.[3] Additionally, Whiting asserts that, even if pipelines do not qualify for an exemption from the ICA under the "private carrier" doctrine,[4] the Commission has granted waivers when (a) the pipelines (or their affiliates) own 100 percent of the throughput on the line, (b) there is no demonstrated third-party interest in gaining access to or shipping on the line, (c) no such interest is likely to materialize, and (d) there is no opposition to the waiver request.[5]

5. Despite the fact that it has contracted with Tallgrass to construct the pipeline and act as its operator, Whiting reiterates that it will lease and control 100 percent of the throughput on the line under the terms of the lease agreement and, therefore, a waiver is warranted. Whiting also submits that the effect of this arrangement is similar to the

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[3] Whiting cites, *e.g.*, *Whiting Oil and Gas Corp*., 131 FERC ¶ 61,263 (2010) (citing *Sinclair Oil Corp*., 4 FERC ¶ 62,206 (1978); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); *Ciniza Pipe Line Inc*., 73 FERC ¶ 61,377 (1995) (*Ciniza*)).

[4] Whiting cites *The Pipeline Cases*, 235 U.S. 548 (1914) (finding a pipeline exempt from the ICA if it simply transports its own production from its own wells to its own refinery).

[5] Whiting cites *Valero Terminaling and Distribution Co*., 147 FERC ¶ 61,072, at P 8 (2014) (*Valero*).

situations in other cases in which the Commission has granted waivers, including a case involving another Whiting pipeline.[6]

6. Whiting also cites the Commission's order in *Sinclair Pipeline Company, L.L.C.* (*Sinclair*),[7] in which the pipeline requested a waiver for movements made pursuant to capacity lease agreements with Magellan Pipeline Company, L.P. (Magellan). Whiting points out that all of Sinclair's movements on the Magellan pipelines were "made pursuant to capacity lease agreements,"[8] and in granting the waiver, the Commission found it relevant that Sinclair was never "asked by any other shipper to transport products for a third party under its leased capacity."[9]

7. According to Whiting, in such waiver cases, the Commission's primary concern is the protection of third parties. Whiting points out that in the *Hunt* case, the Commission granted a waiver after finding "there [we]re 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 ICA."[10] Whiting also emphasizes that the western leg of the Ciniza pipeline was used exclusively "to transport crude oil owned by Giant to Giant's refinery at Ciniza, New Mexico."[11] Whiting claims that its proposed Pipeline will not provide transportation service to third-party shippers, and there is no expectation that it will do so in the future, so there is no third-party interest to protect.[12]

8. Additionally, Whiting points out that the physical characteristics of the facilities and the limited nature of the movement of a pipeline's operations factor into the

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[6] *Whiting Oil and Gas Corp*., 131 FERC ¶ 61,263, at PP 4-5 (2010); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995); *Ciniza Pipe Line, Inc*., 73 FERC ¶ 61,377 (1995).

[7] 134 FERC ¶ 61,077 (2011).

[8] *Id*. P 4.

[9] *Id*.

[10] *Ciniza Pipe Line, Inc*., 73 FERC ¶ 61,377, at 62,173 (1995).

[11] *Id*.

[12] *See also Enbridge Pipelines (NE Texas Liquid) L.P.*, 110 FERC ¶ 61,159 (2005); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 117 FERC ¶ 61,046 (2006); *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009).

Commission's determination to grant waivers. According to Whiting, the Commission previously granted it a waiver after finding that "Whiting's pipeline segment upstream of its connection with Nexen's tank facilities at Stanley is located entirely within the state and has no immediate interconnections with other pipelines or refineries."[13] Moreover, continues Whiting, in *Sinclair*, the Commission recognized that because the pipeline routes were "incapable of receiving or delivering products to any company other than a Sinclair Oil affiliate," and "the only destination [for the Reed Junction to Carrollton segment was] the Sinclair Transportation terminal" the requested waiver was warranted.[14] Whiting further states that the Commission recently explained in *Valero* that the waiver request should be granted because "the only physical access point to the McKee System" was through the McKee Refinery.[15]

9. Contending that its waiver request presents facts that are consistent with the facts of other cases in which the Commission granted waivers, Whiting asks the Commission to grant it temporary waiver of the tariff filing and reporting requirements under ICA sections 6 and 20 and the Commission's regulations promulgated thereunder. Whiting acknowledges that the waiver, if granted, will be subject to the continuing obligation to (a) maintain its books and records in accordance with the Uniform System of Accounts, and (b) notify the Commission in a timely manner of any material change in the facts relied upon to grant the requested waivers. Whiting states that granting the requested waivers will relieve it from regulatory burdens that, under the circumstances, would neither protect any shipper nor serve any other practical purpose.

10. Public notice of Whiting's filing was issued August 26, 2014, with interventions and protests due as provided in accordance with Rules 211 and 214 of the Commission's regulations.[16] Pursuant to Rule 214, 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.

[13] *Whiting Oil and Gas Corp*., 131 FERC ¶ 61,263, at P 5 (2010).

[14] *Sinclair*, 134 FERC ¶ 61,077, at P 5 (2011).

[15] *Valero Terminaling and Distribution Co*., 136 FERC ¶ 61,089, at P 5 (2014).

[16] 18 C.F.R. §§ 385.211 and 385.214 (2014).

11. The Commission concludes that, given the physical characteristics of Whiting's Pipeline and the limited nature of the Pipeline's operations, Whiting meets the criteria necessary to qualify for a temporary waiver consistent with Commission precedent.[17]

12. Accordingly, the Commission grants Whiting temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 and the Commission's related regulations with respect to the Pipeline. Because this waiver is temporary and based solely on the facts presented in the request for waiver, the Commission directs Whiting to report immediately to the Commission any change in the circumstances on which this waiver is based. In particular, Whiting must report changes including, but not limited to (a) increased accessibility of other pipelines or refiners to the subject Pipeline, (b) changes in the ownership of the Pipeline, (c) changes in the ownership of the petroleum products shipped, and (d) shipment tenders or requests for service by any person. In addition, Whiting must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines[18] and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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[17] *See, e.g., ONEOK Rockies Midstream, L.L.C.,* 138 FERC ¶ 61,133 (2012), in addition to the cases cited by Whiting.

[18] 18 C.F.R. pt. 352 (2014).