149 FERC ¶ 61,275
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dakota Access, LLC Energy Transfer Crude Oil Company, LLC	Docket No. OR14-42-000

DECLARATORY ORDER

(Issued December 24, 2014)

1. On September 26, 2014, Dakota Access, LLC (Dakota Access), and Energy Transfer Crude Oil Company, LLC (ETCO) (jointly, Petitioners) filed a Petition for a Declaratory Order (Petition) seeking approval of the proposed rate structure, terms of service, and prorationing methodology for the proposed Dakota Access pipeline project (DAPL Project) and the proposed Energy Transfer pipeline project (ETCO Project) (together, Bakken Oil Projects). Petitioners state that the Bakken Oil Projects will establish critically needed, cost-effective crude oil pipeline transportation from the Bakken/Three Forks shale play in North Dakota to multiple refining markets throughout the United States.

2. Petitioners state that the Bakken Oil Projects are expected to enter service by the end of 2016, subject to numerous factors, including permitting and right-of-way negotiations. Accordingly, Petitioners request Commission action by December 24, 2014, to permit development of the Bakken Oil Projects to proceed on schedule.

3. As discussed below, the Commission grants the rulings requested in the Petition.

I. <u>Summary of the Bakken Oil Projects</u>

4. Petitioners explain that the DAPL Project will extend from points of origin in the production area of the North Dakota/Three Forks shale play to points of interconnection with existing crude oil pipeline and terminalling facilities near Patoka, Illinois (Patoka Hub), as well as to a possible additional point of interconnection with unit-train loading facilities in Illinois. Further, state Petitioners, a joint service to be provided by Dakota Access and ETCO will allow shippers on the DAPL Project to continue pipeline transportation on the ETCO Project, which will receive that crude oil from Dakota

Access at the Patoka Hub for delivery to the U.S. Gulf Coast at an ETCO interconnection with the Sunoco Logistics Partners L.P. crude petroleum terminal at Nederland, Texas (SXL Terminal).

5. Petitioners state that because of the substantial capital investment required to develop the Bakken Oil Projects, they conducted a widely-publicized open season seeking long-term volume commitments from shippers (Open Season). Petitioners emphasize that all interested parties had an opportunity to participate in the Open Season, which commenced on March 12, 2014, and ended at 12:00 p.m. (CT) on May 23, 2014. Petitioners further state that during the Open Season, interested shippers executed Transportation Service Agreements (TSA) with sufficient volume commitments for Petitioners to move forward with the Bakken Oil Projects. Additionally, Petitioners state that they initiated an expansion open season on September 22, 2014, to gauge market interest in additional transportation service on the Bakken Oil Projects (Expansion Open Season). Petitioners emphasize that the terms of the Expansion Open Season were identical to the terms offered in the Open Season.

6. Petitioners explain that the Bakken Oil Projects will provide transportation for up to approximately 320,000 barrels per day (bpd). Petitioners further explain that up to 90 percent of the new capacity will be available to committed shippers that have signed TSAs, as well as any other Regular Shippers that have records of historical movements on the pipeline.[1] Additionally, Petitioners state that at least 10 percent of the capacity will be reserved for New Shippers' uncommitted volumes.[2]

7. Petitioners point out that the proposed tariff structure for the Bakken Oil Projects contains rates for committed volumes that depend on (a) the origin and destination points chosen by the committed shippers, (b) the amount of the daily volume commitment established in each shipper's TSA, and (c) the length of the commitment term selected by each shipper. Petitioners add that the tariff structure provides flexibility for committed shippers to access various origin and destination points and also provides rate incentives for movements to certain points.

8. Petitioners explain that the proposed tariff structure also provides initially discounted tariff rates for committed shippers that will be lower than the initial

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[1] Petitioners state that a Regular Shipper is a shipper that has actual shipments during each month of the base period, which is the 12 consecutive month period ending with the second month prior to the month of prorationing, or a shipper that has made a volume commitment pursuant to a TSA.

[2] Petitioners state that a New Shipper is any shipper that is not a Regular Shipper.

uncommitted rates for the same point-to-point movements. According to Petitioners, committed shippers will not receive fixed capacity rights in the event of prorationing; however, in periods of prorationing, a committed shipper's history will be equal to the greater of its average shipments over the base period or its minimum committed monthly volume, and a committed shipper will remain a Regular Shipper throughout the term of its commitment. Petitioners further state that committed shippers choosing terms of seven or ten years are entitled to contract extension rights, as well as a cap on the amount of inventory they must provide.

II. Requested Rulings

9. Petitioners seek an order from the Commission approving the following aspects of the proposed tariff, rate structure, and terms of service for the Bakken Oil Projects:

a. Petitioners can implement a tariff rate structure that provides different rates for committed and uncommitted shippers' volumes.

b. The committed rates and index rate adjustment mechanism established in the TSA will not be subject to revision other than by agreement of the parties to a particular TSA.

c. The committed rates provided in the TSAs may be treated as the equivalent of settlement rates, both initially and during the terms of the TSAs, pursuant to section 342.4(c) of the Commission's regulations.

d. Petitioners can allow up to 90 percent of the available capacity created by the Bakken Oil Projects to be reserved for committed shippers and other Regular Shippers.

e. Petitioners can implement a prorationing policy providing that the volume history of committed shippers will be deemed to be the greater of their average actual shipments over the base period or their minimum volume commitments.

f. 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. Qualified committed shippers can have the right to extend the initial terms of their TSAs.

h. Qualified committed shippers can be subject to a limit on the amount of crude oil inventory they must provide.

i. Petitioners may offer early service; provided, however, that early shipments will not be counted toward any committed shipper's shipping history.

III. Petitioners' Arguments

10. Petitioners state that the Commission has issued declaratory orders to developers of similar pipeline projects, reasoning that the public interest is better served by a review of the relevant issues before a filing to put those rates and terms into effect, given the timing constraints associated with tariff filings.

11. As explained above, Petitioners state that the DAPL Project will extend from multiple points of origin in the Bakken/Three Forks production area to points of destination in Illinois, including the Patoka Hub. Petitioners further explain that the ETCO Project will transport crude oil from the Patoka Hub to the U.S. Gulf Coast. According to Petitioners, the ETCO Project will include nearly 700 miles of existing 24-inch and 30-inch diameter pipeline, which will be converted from natural gas transportation service to crude oil transportation service.[3] Petitioners also state that shippers will be able to nominate volumes from the North Dakota origin points to the SXL Terminal pursuant to a joint tariff that Petitioners will file with the Commission. In the alternative, continue Petitioners, shippers may nominate volumes from the North Dakota origin points to the Illinois destination points in accordance with a Dakota Access tariff to be filed with the Commission.

12. Petitioners state that the Open Season commenced on March 12, 2014. Petitioners explain that the notice was publicly available on Energy Transfer Partners, L.P.'s website, with additional notice provided by press release to hundreds of trade and general circulation print and online publications. Although they originally intended the Open Season to conclude on April 29, 2014, Petitioners state that they extended it to May 23, 2014. As also stated above, Petitioners established the Expansion Open Season on the same terms as the Open Season.

13. According to Petitioners, the Notice of Open Season explained that additional details, including a *pro forma* TSA, would be made available to interested shippers that signed confidentiality agreements. Petitioners state that they provided the *pro forma* TSA and additional information about the Bakken Oil Projects to the 51 shippers that

[3] Petitioners explain that ETCO's affiliate Trunkline Gas Company, LLC received authority from the Commission to abandon certain interstate natural gas transportation facilities for conversion to crude oil transportation service. *Trunkline Gas Co., LLC,* 145 FERC ¶ 61,108 (2013), *reh'g denied*, 147 FERC ¶ 61,041 (2014).

participated in the Open Season and signed confidentiality agreements (Open Season Participants). Petitioners point out that the *pro forma* TSA included the proposed committed and uncommitted tariff rates and the proposed rules tariffs. Additionally, Petitioners state that throughout the Open Season process, they modified the form of TSA to accommodate comments and feedback of interested persons, and they distributed the modified form of the TSA to all Open Season Participants.[4]

14. Petitioners state that the TSA contains three categories of key terms, including (a) the tariff rate structure for committed and uncommitted volumes, (b) the proposed history-based prorationing policy, and (c) certain other rights for committed shippers, in exchange for their volume and term commitments, including contract extension rights and caps on the amount of inventory those shippers must provide. Finally, Petitioners add that they also seek approval for the proposed early service on the Bakken Oil Projects.

A. Tariff Rate Structure

15. Petitioners contend that their proposal to lower rates for committed volumes than the rates for uncommitted volumes for the same movements is consistent with Commission precedent.[5] Moreover, continue Petitioners, the initial committed tariff rates will vary according to origin and destination point, length of contract term, and volume commitment level, with the initial rate being lower for longer term and higher volume commitments. Additionally, Petitioners explain that committed shippers that execute TSAs also will be eligible for the discounted tariff rates for movements of barrels up to 100 percent of their volume commitments from a given point of origin, provided that such movements do not impact the 10 percent of segment capacity reserved for uncommitted volumes. In contrast, state Petitioners, the initial uncommitted tariff rates vary only by origin and destination points.

16. Petitioners next state that the rates for uncommitted volumes will be subject to annual adjustment in accordance with the Commission's oil pipeline pricing index factor as provided in 18 C.F.R. § 342.3 (2014). However, continue Petitioners, the rates for

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[4] Additionally, Petitioners state that they proposed an Open Season subscription allocation process to be employed if they received capacity subscriptions in excess of the capacity made available in the Open Season; however, subscriptions did not exceed available capacity.

[5] Petitioners cite, *e.g., Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC,* 141 FERC ¶ 61,249, at P 22 (2012).

committed volumes will be subject to an annual increase of two percent of the then-applicable rate for the committed shipper's applicable committed volume.

17. Petitioners acknowledge that certain service outages due to *force majeure* and other specified causes may affect a committed shipper's obligation, but absent such circumstances, Petitioners state that a committed shipper that fails to transport its committed volumes in a given month for a particular path must pay a deficiency payment equal to the amount of the shortfall multiplied by the then-effective applicable committed rate applicable to the shortfall volumes. However, continue Petitioners, committed shippers can mitigate the total amount of their deficiency payments by meeting certain aggregate revenue requirements during the term of their TSAs. Petitioners explain that the deficiency payments take the form of credits that may be applied against future payments due for certain movements on the Bakken Oil Projects in excess of each shipper's minimum volume commitment (Prepaid Transportation Credits). Petitioners further explain that in most circumstances, the Prepaid Transportation Credits expire if not used by the earlier of (a) the end of the 24-month period following the month during which the deficiency occurred or (b) the expiration of the term for the applicable path. Petitioners add that Prepaid Transportation Credits arising as a result of a deficiency that occurred during the final 12 months of a TSA term may be applied to movements of volumes not subject to any remaining TSA commitment for a period of 180 calendar days following the expiration of the relevant TSA term.

18. Petitioners maintain that they responded to market requests by providing additional committed shipper incentives and flexibility. Specifically, state Petitioners, in addition to Prepaid Transportation Credits generated by deficiency payments, each committed shipper's TSA provides for additional Prepaid Transportation Credits to be earned based on deliveries to certain destination points. According to Petitioners, the Prepaid Transportation Credits generated in this manner will provide additional discounts to the committed shippers' transportation rates in exchange for the committed shippers' agreements to specified volume, term, and delivery commitments.

19. Petitioners next state that a committed shipper may apply its applicable committed transportation rate from an origin point to a destination point within the same continuous path of the points for which the shipper has contracted or from an alternative origin point other than its specified origin point and also may apply such volumes toward its minimum volume commitment. However, continue Petitioners, such nominations to or from alternative points are subject to a lower priority under the prorationing policy than the nominations of committed shippers that are transporting barrels from and to the points for which they contracted. According to Petitioners, with respect to committed shippers' paths to the SXL Terminal, if those committed shippers nominate and tender barrels for delivery to an Illinois destination point offered in the Open Season, then those committed shippers will be eligible for a discounted rate for their movements to that Illinois destination point, but only to the extent that committed shippers with paths that have the

relevant Illinois destination point as the selected destination point are not using their committed capacity to that point.

20. Additionally, Petitioners observe that the TSAs also include a most-favored-nations clause providing that if Petitioners contract for a lower committed transportation rate that satisfies the criteria established in the TSAs, the committed shipper's then-effective tariff rate will be reduced for an equal volume of crude oil to the lower committed tariff rate for so long as such lower committed transportation rate is in effect and lower than the committed shipper's then-effective committed tariff rate. Further, state Petitioners, should they choose to file a rate for uncommitted service for an origin point/destination point path that is less than the then-effective committed rate applicable to service on the same path for any volume commitment level, a shipper to whom the higher committed rate applies will have its committed rate reduced to $0.05 less than the uncommitted rate, which will preserve the discount for such shipper's committed volumes.

21. Petitioners again point out that the Commission has approved rate structures that allow committed shippers to pay varying initial rates on their committed volumes (based on their volume and term commitments) that are lower than the uncommitted rates applicable to uncommitted volumes if all potentially interested parties had the opportunity to execute TSAs agreeing to such volume and term commitments.[6] Additionally, Petitioners contend that in *Enterprise Liquids Pipeline LLC*, the Commission approved a committed rate structure comparable to the rate structure proposed in the instant case, allowing the initial committed rates to vary inversely based on the size of the volume commitment.[7]

22. Petitioners assert because they conducted a widely-publicized open season in which all interested potential shippers had the opportunity to enter into TSAs for committed tariff rates in exchange for term and volume commitments, there is no discrimination among similarly-situated shippers in offering such rates to those who

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[6] Petitioners cite, *e.g.*, *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 22 (2008); *Express Pipeline P'ship*, 77 FERC ¶ 61,188, at 61,756 (1996); *Sunoco Pipeline, L.P.*, 141 FERC ¶ 61,212, at P 20 (2012); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

[7] *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 25 (2013); *see also Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at P 22 (2012); *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 27 (2014); *North Dakota Pipeline Company LLC*, 147 FERC ¶ 61,121, at P 30 (2014).

chose to sign TSAs. Petitioners emphasize that the Commission has recognized that a committed shipper is not similarly situated with respect to other shippers that "were unwilling or unable" to sign TSAs.[8]

23. Petitioners state that they will establish the uncommitted rates for the Bakken Oil Projects at the required time in accordance with section 342.2 of the Commission's regulations.[9] Petitioners explain that the committed joint tariff rates offered by Dakota Access and ETCO will be no higher than the sum of the uncommitted rates for equivalent service for the same joint transportation paths. Petitioners further state that the joint committed rate for service from the Bakken/Three Forks origin points to the SXL Terminal the DAPL Project and the ETCO Project will be no higher than the sum of the local uncommitted rates on each of those projects for like service. Petitioners assert that this is consistent with previous Commission orders approving rate structures for new projects that feature joint and local committed and uncommitted tariff rates.[10]

24. Petitioners request that the Commission affirm that the rates for committed volumes and the related adjustment mechanism agreed to pursuant to 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.[11] Petitioners assert that the Commission consistently has approved similar requests.[12] Additionally, Petitioners state that the Commission has affirmed that the agreed-upon terms of a TSA will govern the determination of committed shippers' rates over the terms of their TSAs.[13]

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[8] Petitioners cite, *e.g.*, *Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at P 17 (2012).

[9] 18 C.F.R. § 342.2 (2014).

[10] Petitioners cite, *e.g.*, *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 20 (2012).

[11] 18 C.F.R. § 342.4(c) (2014).

[12] Petitioners cite, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-19 (2013); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 31 (2014); *Seaway Crude Pipeline Company, LLC*, 146 FERC ¶ 61,151, at PP 36-38 (2014).

[13] Petitioners cite, *e.g.*, *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at PP 31, 45 (2007).

25. Petitioners maintain that the Commission also has allowed other mechanisms to be used to establish and adjust rates in addition to the indexing mechanisms. For example, continue Petitioners, the Commission has approved mechanisms that do not provide for any downward adjustment of rates.[14] Further, state Petitioners, similar to the committed rate adjustment mechanism they now propose, the Commission has approved adjustment mechanisms that increase committed rates annually by a specified percentage, rather than using the Commission's indexing methodology.[15]

B. Proration Policy and Lottery Mechanism

26. Petitioners reiterate that they do not propose to provide firm service to committed shippers on the Bakken Oil Projects. Rather, they state that the volume history of committed shippers will be deemed to be the greater of their average actual shipments over the base period or their minimum volume commitments, and in the event that prorationing is necessary, available capacity will be apportioned on a historical basis with up to 90 percent allocated to "Regular Shippers," and at least 10 percent reserved for "New Shippers" on a *pro-rata* basis. Petitioners maintain that their proposal is consistent with Commission precedent.[16]

27. Additionally, Petitioners propose to implement a lottery mechanism to allocate capacity for New Shippers, consistent with similar mechanisms approved by the Commission for other new crude oil projects.[17] Petitioners explain that if the *pro rata* allocation in a given month, based on the number of New Shippers making nominations, results in no New Shipper being allocated the applicable minimum tender volume, then Petitioners will conduct a lottery using a software-generated random process for the total number of participating New Shippers. Petitioners contend that the software will

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[14] Petitioners cite, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 22 (2007); *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at PP 11, 20 (2013).

[15] Petitioners cite, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 21-22 (2013).

[16] Petitioners cite, *e.g.*, *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 24-25 (2013); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at PP 27-28 (2013); *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139, at P 12 (2010).

[17] Petitioners cite, *e.g.*, *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 12, 23-24 (2013); *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 31 (2014); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

establish an equitable and nondiscriminatory method of randomly assigning the numbers, each representing one minimum volume allocation. Petitioners further explain that the New Shipper assigned number one will receive the first minimum volume allocation, and thereafter allocations will be assigned to New Shippers sequentially, from lowest assigned number to highest assigned number, until the New Shipper capacity is fully allocated. Petitioners also emphasize that 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. Petitioners add that the proposed lottery process is designed to ensure that pro-rata allocations to New Shippers do not become so fractional that each shipper fails to meet the minimum tender volume and thus receives no capacity in a given month of allocation.

C. Other Committed Shipper Rights

28. Petitioners state that shippers making volume commitments for terms of seven or ten years may extend the original terms of their TSAs at the minimum volume commitment level of the final contract year of the original term. However, Petitioners emphasize that this right is subject to their ability to reject a TSA term extension if a shipper does not meet certain aggregate thresholds of capacity commitments at the time of the proposed extension. Petitioners further state that to exercise a term extension, shippers must provide written notice no later than six months prior to the then-current end of the original terms of their TSAs.

29. Petitioners next explain that all shippers will be required to provide proportionate shares of the crude oil inventory necessary for line fill. According to Petitioners, for committed shippers, this will be based on their committed volumes during the terms of their TSAs, regardless of whether those committed shippers continue to ship on the pipeline. However, Petitioners point out that certain committed shippers making sufficient term commitments to the Bakken Oil Projects will be entitled to a cap on the amount of inventory they must provide, consistent with Commission approvals of similar provisions.[18] Petitioners also emphasize that each TSA provides that the shortfall in required inventory resulting from this cap on required inventory for certain shippers will be made up by Petitioners and not by other shippers.

D. Early Service

30. Petitioners state that each TSA provides that prior to the date on which a particular segment of the Bakken Oil Projects is available for full service, Petitioners may offer

[18] Petitioners cite, *e.g.*, *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 31 (2014).

early service on any such segment, subject to their sole discretion and all applicable legal requirements. Petitioners emphasize that there will be no minimum volume commitments associated with the early service, and the service will also be subject to the availability of capacity and the tariff as in effect at the time. Petitioners explain that for purposes of the Proration Policy on and after the full service date for the relevant segment, no shipments of crude petroleum in the early service period will be counted toward any shipper's shipping history. Petitioners assert that the proposed early service terms are consistent with applicable policy and precedent.[19]

IV. Notice and Interventions

31. Notice of the Petition was issued October 2, 2014, with interventions and protests due October 24, 2014. Pursuant to Rule 214 of the Commission's regulations,[20] 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.

Commission Analysis

32. The Commission will grant the rulings requested by Petitioners. Granting these rulings will provide regulatory certainty for a significant infrastructure project that will transport approximately 320,000 bpd of crude petroleum from the Bakken/Three Forks shale play in North Dakota to points of interconnection with existing crude oil pipeline and terminalling facilities near Patoka, Illinois, and further to the SXL Terminal.

33. Specifically, the Petitioners' proposed rate structure and other tariff provisions are consistent with those approved by the Commission for other pipelines. The proposed volume incentive program to encourage shippers to make long-term commitments is akin to volume incentive programs approved by the Commission in other cases.[21] The Commission affirms that a volume incentive (or discounted) rate does not violate the anti-discrimination or undue preference provision of the ICA, so long as (a) all potential shippers had the opportunity to take advantage of the discounted rate and (b) the discount

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[19] Petitioners cite *Sunoco Pipeline, L.P.*, 141 FERC ¶ 61,212, at P 22 (2012).

[20] 18 C.F.R. § 385.214 (2014).

[21] *See, e.g.*, *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 22 (2008); *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC,* 141 FERC ¶ 61,249 at P 22 (2012).

rate reflects the relevant differences among shippers.[22] Petitioners' proposed committed rates vary inversely based on the size of the volume commitment (the higher the volume the greater the discount relative to the rate for the lowest volume commitment), and the Petitioners have made it clear that the committed rates will be no greater than the uncommitted rates for equivalent service.

34. Because all shippers had the opportunity in a well-publicized Open Season and Expansion Open Season to contract for competitive rates based on their volume commitments and contract terms, there is no issue of undue discrimination or undue preference among the resulting classes of shippers. Committed shippers are not similarly situated with respect to shippers that chose not to enter into a TSA incorporating these provisions.

35. Additionally, the Commission will approve the Petitioners' proposed index rate adjustment mechanism applicable to the committed rates. The adjustment mechanism permits Petitioners to increase the committed rates by two percent annually pursuant to terms in the TSA, rather than via the Commission's indexing methodology. The rates for uncommitted volumes will be subject to the Commission's indexing methodology as set forth in section 342.3 of the Commission's regulations.[23]

36. The Commission also grants the Petitioners' request that the Commission treat the committed rates as settlement rates at the time the Bakken Oil Projects commence service, in accordance with section 342.4(c) of the Commission's regulations. However, Petitioners must establish and support the initial rates for uncommitted volumes at the time the pipeline goes into service, consistent with section 342.2 of the Commission's regulations.[24]

37. The Petitioners' proposed history-based proration policy also is consistent with Commission precedent by ensuring that New Shippers will have access to at least 10 percent of total capacity.[25] Under the proposed proration policy, a committed shipper's historical volume will be determined by the greater of its average actual shipments over the base period or it minimum volume commitment.

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[22] *See Express Pipeline P'ship*, 77 FERC ¶ 61¶ 61,188 at 61,755.

[23] 18 C.F.R. § 342.3 (2014).

[24] 18 C.F.R. § 342.4(c) (2014).

[25] *See, e.g. Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 31 (2014).

38. Consistent with its decisions in *Seaway Crude Pipeline Co. LLC*[26] and *Enbridge Pipelines (FSP) LLC,*[27] the Commission will also accept the Petitioners' proposal to implement a lottery mechanism for allocating the total number of monthly minimum volume allocations available to New Shippers. The proposed lottery ensures that *pro rata* allocations to New Shippers do not become so fractional that each shipper fails to meet the minimum tender volume.

39. Additionally, the Commission approves the Petitioners' proposal to grant committed shippers that agreed to TSA terms of seven or ten years, the right to extend the term of their TSAs for an additional three years following the end of the original term. Further, the Commission will approve the Petitioners' proposal that committed shippers that made specific term commitments will be entitled to a cap on the amount of line fill they will be required to provide, with any shortfall resulting from the cap being the sole responsibility of the Petitioners.

40. Finally, the Commission will approve Petitioners' proposal to offer early service to shippers on certain segments of the Bakken Oil Projects, subject to a tariff being on file with the Commission prior to commencement of any such service. This will allow early phases of the Bakken Oil Projects to be used and not go idle, although volumes shipped under the early service will not count toward a shipper's history for prorationing purposes.

<u>The Commission orders</u>:

The rulings sought in the Petition are 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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[26] 143 FERC ¶ 61,036, at P 16 (2013).

[27] 146 FERC ¶ 61,148, at P 28 (2014).