150 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

JBBR Pipeline LLC Docket No. OR15-3-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued January 14, 2015)

1. On November 3, 2014, JBBR Pipeline LLC (JBBR Pipeline) filed a Petition for Declaratory Order (Petition) requesting approval of the overall tariff and rate structure for a new crude oil pipeline system. JBBR Pipeline proposes a system that will transport crude oil from Joliet Bulk, Barge & Rail LLC terminal in Joliet, Will County, Illinois (Terminal) to Mobil Pipe Line Company's Mokena-to-Joliet crude pipeline (Project).

2. JBBR Pipeline requests the Commission act on this Petition no later than January 15, 2015, so that the Project can commence service as soon as possible. As discussed below, the Commission grants the requested rulings.

Purpose and Description of the Project

3. JBBR Pipeline states it developed the Project in response to demand for an additional outlet for crude oil produced in Western Canada and access to refinery services at ExxonMobil's Joliet Refinery. JBBR Pipeline asserts the Project will provide timely new capacity for the Project area, and will do so using rate and term structures that JBBR Pipeline has designed to be fully consistent with structures previously approved by the Commission.

4. JBBR Pipeline plans to construct a new 20-inch, 4.5-mile crude oil pipeline, together with all necessary meters, valves, and pumps, to transport oil from the Joliet Bulk, Barge & Rail LLC terminal in Joliet, Will County, Illinois to Mobil Pipe Line Company's Mokena-to-Joliet crude pipeline (MoJo Interconnection). The project is designed to have a 210,000 barrel per day capacity (bpd) (Pipeline Capacity). The Terminal will receive crude oil delivered by rail from Western Canada, and it in turn will deliver the oil into the Project, which will transport the oil to the MoJo Interconnection. JBBR Pipeline states the Terminal has very limited storage, and requires the oil to be

delivered into the Mokena-to-Joliet crude pipeline via the Project as quickly as possible. JBBR Pipeline notes shippers at the MoJo Interconnection can only deliver to ExxonMobil's Joliet Refinery on the Mokena-to-Joliet crude pipeline, with the Project serving as a link in the chain of transportation from Canada to the Joliet Refinery.

5. The transportation service to be provided on the Project will be interstate in nature; therefore, it is subject to the jurisdiction of the Commission. JBBR Pipeline states the Project is scheduled to be placed into service by January 31, 2015, with a projected cost of $19 million.

6. JBBR Pipeline states the Project will provide essential new transportation capacity for producers of crude oil from Western Canada to access refinery services at the Joliet Refinery in Joliet, Will County, Illinois. JBBR Pipeline notes that production of crude oil from Western Canada has been increasing, but the necessary infrastructure to transport crude oil out of Western Canada to refineries in the United States designed for Canadian crude oil has failed to keep pace, which has created bottlenecks in moving crude oil to those refineries.

7. JBBR Pipeline states the Project design will enable Terminal customers to obtain refinery services at ExxonMobil's Joliet Refinery, and once completed, will provide an additional outlet for crude oil produced in Western Canada, alleviating transportation constraints in the region by providing for transportation of up to 210,000 bpd from the new crude-by-rail off-loading Terminal to the MoJo Interconnection. From the MoJo Interconnection, shippers can access refinery services at the Joliet Refinery, which is a key supplier of refined petroleum products to the Midwest, and which was specifically designed to receive and process Canadian crude oil.

Requested Rulings

8. JBBR Pipeline seeks approval of the following aspects of the Project's rate structure and terms of service:

a. The Throughput and Deficiency Agreements (T&DA) will be honored and its provisions will be upheld and will govern the transportation services JBBR Pipeline provides to Committed Shippers during the term of the T&DA;

b. Committed rates established in the Transportation Service Agreements (TSAs) will be treated as settlement rates pursuant to section 342.4(c) of the Commission's regulations[1] at the time of their initial filing and throughout the terms of the TSAs;

c. JBBR Pipeline may allocate up to 90 percent of the total capacity available on the Project to volume commitments of Committed Shippers, while reserving the remaining 10 percent of the Project's total capacity for Uncommitted Shippers;

d. JBBR Pipeline appropriately proposed in its Open Season to use a net present value (NPV) subscription allocation process to allocate capacity to Committed Shippers in the event that the aggregate volume commitments received during the Open Season exceed the available capacity for such volume commitments;

e. A Committed Shipper may receive priority transportation service on up to 90 percent of the total capacity available on the Project in exchange for paying a premium rate for such transportation, relative to the rate applicable to Uncommitted Shippers for the same transportation service; and

f. JBBR Pipeline may implement its proposed prorationing policy for Committed Shippers and Uncommitted Shippers.

JBBR Pipeline's Petition

9. JBBR Pipeline states the open season for the Project commenced on October 23, 2014, and ended on November 21, 2014 (Open Season). Notice was provided to all interested parties, consistent with past Commission precedent. As a part of the Open Season, JBBR Pipeline gave all interested shippers an Open Season notice that provided a high level overview of the Project and provided a pro forma T&DA and proposed rules and regulations tariff for the Project to all potential shippers who asked to receive a copy and executed a confidentiality agreement. JBBR Pipeline states there is likely only one shipper interested in committing to the Project, but the shipper has made a sufficient long-term volume commitment for JBBR Pipeline to proceed with the Project.

10. JBBR Pipeline states that if the aggregate volumes committed to by potential shippers exceeded the 90 percent of Pipeline Capacity that was made available for minimum volume commitments by Committed Shippers during the Open Season, such

[1] 18 C.F.R. § 342.4(c) (2014).

capacity would be allocated to potential shippers using the NPV methodology described in the Open Season Notice.[2]

11. JBBR Pipeline explains that any Committed Shipper must make a volume commitment of at least 40,000 bpd (Volume Commitment), and any Committed Shipper that fails to ship its Volume Commitment in any given month will be required to pay the amount that would have been paid by the Committed Shipper if the Committed Shipper had shipped the Volume Commitment (Deficiency Payment).

12. JBBR Pipeline states it offered up to 90 percent of the Pipeline Capacity for volume commitments during the Open Season (i.e., 189,000 bpd). Consistent with Commission precedent, JBBR Pipeline states it reserved at least 10 percent of the Pipeline Capacity (i.e., 21,000 bpd) for shippers that chose not to enter into a T&DA with JBBR Pipeline during the Open Season (Uncommitted Shippers).

13. JBBR Pipeline states once the Project is operational, with the exception of prorationing, Committed Shippers and Uncommitted Shippers are both subject to the same rules and regulations for transportation service on the Project. With respect to prorationing, the Volume Commitment of a Committed Shipper during the term of the T&DA will be firm capacity that is not subject to prorationing on up to 90 percent of the Pipeline Capacity except in the event of force majeure or other operational disruptions. The remaining 10 percent of Pipeline Capacity will be available for nominations by Uncommitted Shippers and will be allocated among all Uncommitted Shippers on a pro rata basis according to each Uncommitted Shipper's shipment history during a twelve-month historical period.

14. JBBR Pipeline proposes to charge higher transportation rates to Committed Shippers as compared to Uncommitted Shippers. The rate applicable to Committed Shippers (Committed Rate) is set at a premium relative to the rate applicable to uncommitted volumes for the same transportation service (Uncommitted Rate), and this is consistent with Commission precedent where the service offered to Committed Shippers is priority, or firm service.

[2] JBBR Pipeline would have awarded capacity to Committed Shippers from the highest NPV to the lowest NPV, based on the submitted binding volume commitments from each Committed Shipper, and JBBR Pipeline would use an annual discount rate of 7 percent for purposes of calculating NPV (Gilbert Affidavit at P 12). If two or more Committed Shippers were to submit valid binding T&DAs with the same overall calculated NPV, and there was insufficient capacity available to meet their capacity requests, capacity would be allocated to such shippers on a pro rata basis.

15. Once the Project is operational, JBBR Pipeline proposes to file the Committed Rate as a settlement rate pursuant to section 342.4(c) of the Commission's regulations. Additionally, JBBR Pipeline states that pursuant to the terms of the T&DA, the Committed Rate will be subject to an escalation pursuant to the Commission's indexing methodology currently set forth in section 342.3 of the Commission's regulations.

16. JBBR Pipeline contends that the rulings it seeks are fully consistent with previous Commission orders addressing priority service terms, tariff and rate structures, and terms of service applicable to new pipeline projects and pipeline expansion projects. JBBR Pipeline notes it is required to make a major capital investment in order to construct the Project; therefore, the success of the Project depends on support from shippers willing to make long-term volume commitments by executing a T&DA.

17. JBBR Pipeline therefore requests the Commission confirm that the T&DA will be honored and its provisions upheld during the term of the T&DA, as consistent with Commission precedent.

<u>Public Notice and Interventions</u>

18. Notice of the filing was issued November 6, 2014, with interventions and protests due November 25, 2014. Pursuant to Rule 214 of the Commission's regulations,[3] 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 delay or disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

<u>Discussion</u>

19. The Commission will grant the unopposed Petition. Granting JBBR Pipeline's Petition will allow it to respond to demand for additional outlets for crude oil produced in Western Canada and access to refinery services at ExxonMobil's Joliet Refinery. The Project will provide timely new capacity for the Project area.

20. The Commission affirms the T&DA should be honored and its provisions upheld. This is consistent with Commission precedent.[4] Further, the Commission has previously

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[3] 18 C.F.R. § 385.214 (2013).

[4] *See generally Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087, at P 9 (2011); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048, at P 14 (2014) (*Enable Bakken*); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at PP 14, 26 (2014) (*Enbridge (FSP)*); *Seaway Crude Pipeline Co. LLC,* 142 FERC ¶ 61,201, at PP 12-13 (2013).

confirmed initial committed rates may be filed as settlement rates.[5] Additionally, JBBR Pipeline may adjust the Committed Shippers' rates in accordance with section 342.3 of the Commission's regulations or any successor indexing methodology, as requested.

21. The Project is consistent with the Commission precedent in reserving 90 percent of capacity for committed volumes, while ensuring that uncommitted volumes have access to at least 10 percent of capacity.[6] Additionally, as long as uncommitted shippers have reasonable access to the pipeline's capacity, there is nothing inequitable or unfair about preserving on a priority basis a portion of the pipeline's capacity for shippers that have made the pipeline capacity possible.[7] JBBR Pipeline's proposal to utilize the NPV methodology if nominations had exceeded pipeline capacity is also consistent with Commission policy, ensuring "full utilization of the capacity of the pipeline by those shippers that value it most and who provide the greatest financial value to the system."[8]

22. JBBR Pipeline's request of priority contract service is consistent with Commission precedent, as a shipper may obtain priority service at a premium rate to ensure firm service.[9] As stated in *MarkWest*, if potential shippers are given a fair opportunity to enter into term volume commitments for contract obligations and associated priority rights, or to remain uncommitted shippers without any obligation to use the system or to pay for it,

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[5] *See Enable Bakken*, 148 FERC ¶ 61,048 at PP 9, 14; 18 C.F.R. § 342.4(c) (2014).

[6] *See generally Enbridge (FSP)*, 146 FERC ¶ 61,148 at P 27; *Enterprise Liquids Pipeline, LLC*, 142 FERC ¶ 61,087, at P 27 (2013); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007) (*CCPS*); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008).

[7] *See Enbridge Pipeline (Illinois) LLC*, 144 FERC ¶ 61,085 (2013); *Enbridge Energy Pipelines (North Dakota) LLC, et al.*, 133 FERC ¶ 61,167, at PP 39-40 (2010) (finding it appropriate that "uncommitted shippers . . . will not enjoy [prorationing] protection because they are not providing the financial backing required for the [project]"); *CCPS*, 121 FERC ¶ 61,253 at P 19 (finding it not discriminatory to treat committed shippers differently, as "uncommitted shippers have maximum flexibility to react to changes in their own circumstances or in market conditions, although they do not provide the assurances and financial support for the Expansion that the firm shippers provide").

[8] *See Shell Pipeline Co., LP*, 139 FERC ¶ 61,228, at 22 (2012).

[9] *See generally CCPS*, 121 FERC ¶ 61,253 at P 14.

there is no undue discrimination when later the uncommitted volumes are not accorded the same prorationing rights.[10]

23. JBBR Pipeline requests the Commission approve its prorationing policy, which only applies to Uncommitted Shippers on a pro rata basis using a historical prorationing model with a 12-month base period. As previously stated, the Volume Commitment of a Committed Shipper during the term of the T&DA will be firm capacity that is not subject to prorationing on up to 90 percent of the Pipeline Capacity except in the event of force majeure or other operational disruptions.[11] This treatment is substantially similar to that the Commission granted in *MarkWest*, i.e., a prorationing policy that allowed committed shippers to not be subject to prorationing of their committed volumes up to a total of 90 percent of the Project's capacity, while allocating uncommitted shippers' capacity on a pro rata basis.[12] The Commission confirms Committed Shippers who are paying a premium rate for firm service may also be exempt from prorationing of their committed volumes.

24. Accordingly, the Commission grants the rulings sought by JBBR Pipeline, finding that the proposals addressed above are just and reasonable and will not result in undue discrimination or undue preference.

The Commission orders:

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

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[10] *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 24 (2013) (*MarkWest*).

[11] *See Enable Bakken*, 148 FERC ¶ 61,048 at PP 10, 15.

[12] *See MarkWest*, 145 FERC ¶ 61,287 at P 25.