

150 FERC ¶ 61,073
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 5, 2015

In Reply Refer To:
Noble Energy, Inc.
Docket No. OR15-2-000

Bracewell & Giuliani
2000 K Street, NW
Suite 500
Washington, DC 20006

Attention: D. Kirk Morgan II, Esq.

Dear Mr. Morgan:

1. On October 30, 2014, Noble Energy, Inc. (Noble) filed a request for temporary waiver of sections 6 and 20 of the Interstate Commerce Act (ICA)¹ and Parts 341 and 357 of the Commission's Regulations.² Noble explains that it leases capacity on four separate oil pipeline systems (Leased Capacity) and that it is constructing an interim oil gathering system (Interim System), as well as a small gathering system for production from the DP401 production facility (DP401 System). According to Noble, following construction of the Interim System and the DP401 System,³ those systems, as well as the Leased Capacity, will be operated as a single, integrated system (Crow Creek Gathering System) located in Weld County Colorado. Noble states that the Crow Creek Gathering System is designed to transport "Noble-owned and operated" production in the Denver-Julesburg

¹ Noble cites 49 U.S.C. App. §§ 6 and 20 (1988). Section 6 requires all 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.

² 18 C.F.R. pts. 341 and 357 (2014) implement the filing and reporting requirements of ICA sections 6 and 20.

³ These systems are depicted on Ex. A to Noble's filing.

Basin and that the system will be operated exclusively for this purpose, with Noble as the sole shipper.

2. The four lines that constitute the Leased Capacity are as follows:
 - A. *The WOT Line.* Noble states that, pursuant to a lease agreement with Wattenberg Holding, LLC (Wattenberg), Noble leases 100 percent of the capacity on the WOT Line. Further, states Noble, the WOT Line currently is capable of moving up to 50,000 barrels of oil per day (bpd), and Noble anticipates that the capacity soon will be increased to 85,000 bpd with the addition of a larger pump at the Wells Ranch Oil Processing Facility. Noble explains that all of the oil transported on the WOT Line originates at the Briggsdale Oil Polishing/Unload Facility and the Wells Ranch Oil Processing Facility. Noble adds that the crude oil shipped on the WOT Line is delivered only to storage tanks, which subsequently deliver the crude oil to interconnections with the White Cliffs Pipeline or the Tampa Line.
 - B. *The WOT Extension Line.* Noble also states that, pursuant to a separate agreement with Wattenberg, it will lease 100 percent of the capacity on approximately 38 miles of 12-inch pipeline, which was under construction and expected to be in service by December 1, 2014. According to Noble, it anticipates that the WOT Extension Line will be capable of moving up to 50,000 bpd of oil. Noble emphasizes that all of the oil transported on this line will originate at Noble's East Pony Oil Processing Facility and will be transported only to storage tanks at the Briggsdale Oil Polishing/Unload Facility for subsequent delivery into the WOT Line.
 - C. *The Tampa Line.* Noble next explains that pursuant to an agreement with Rose Rock Midstream Crude, LP, (Rose Rock), it leases 100 percent of the capacity on 12 miles of 12-inch pipeline extending from storage facilities at the terminus of the WOT Line to the Plains Tampa Rail Facility. Noble states that the Tampa Line currently is capable of moving up to 34,000 bpd. Noble maintains that all of the oil transported on the Tampa Line will originate from storage at the end of the WOT Line or from the Oscar Gathering System and that the only destination on the Tampa Line is the Plains Tampa Rail Facility.
 - D. *Oscar Gathering System.* Next, states Noble, it also leases from Rose Rock 100 percent of the capacity on 3.5 miles of eight-inch pipeline extending from a Noble-operated production facility to a mid-point connection on the Tampa Line. Noble explains that it will be extending this gathering system to additional Noble oil production facilities. According to Noble, the Oscar Gathering System currently transports up to approximately

2,800 bpd, and with modification, will have a maximum capacity of up to 25,000 bpd.

3. *The Interim System.* Noble states that it is constructing this system to include various lengths of eight-inch line and 10-inch line, with a capacity up to approximately 40,000 bpd. According to Noble, the Interim System will gather pipeline quality oil from recent and new Noble production facilities and deliver it to the WOT Extension and/or Tallgrass Energy's Pony Express Northeast Colorado Lateral until Noble completes a new processing facility (Central Oil Processing Facility). Noble explains that after completion of the Central Oil Processing Facility, it will use the Interim System to gather raw, non-pipeline quality oil from Noble-operated production facilities, and the Central Oil Processing Facility will further process the oil to remove water and light volatile components to produce pipeline quality oil.

4. *The DP401 System.* Noble states that it is in the construction design phase for the DP401 System, which will consist of six miles of 12-inch pipe with a capacity to transport up to approximately 12,000 bpd. Noble further states that it will use the DP401 System to gather pipeline quality oil from future Noble production facilities and deliver the oil to storage tanks that will further deliver oil to interconnections with White Cliffs Pipeline or the Tampa Line.

5. Noble explains that it will use the Crow Creek Gathering System only to transport oil from: (a) the Briggsdale Oil Polishing/Unload Facility; (b) the Wells Ranch Oil Processing Facility; (c) the Central Oil Processing Facility; and (d) production facilities in the Oscar, DP401, and East Pony areas (together, Origin Facilities), all of which produce Noble-owned and operated production. Noble further states that as the sole shipper, it will transport oil on the Crow Creek Gathering System to downstream points where it will sell all of the oil. According to Noble, no third-party shipper has requested transportation on the Crow Creek Gathering System, and because the only origin points on the Crow Creek Gathering System are owned and operated for Noble-owned and operated production, it does not anticipate that any other party will seek to transport oil on the Crow Creek Gathering System in the future. Additionally, Noble agrees that the temporary waiver it seeks will be subject to its continuing obligation to maintain its books and records consistent with the Commission's Parts 352 and 356 recordkeeping requirements and to report any material change in the facts presented in this waiver request.

6. Noble maintains that in similar circumstances, the Commission has granted temporary waivers of the ICA tariff filing and reporting requirements applicable to interstate common carrier pipelines.⁴ Noble contends that for good cause shown, the

⁴ Noble cites *ONEOK Rockies Midstream L.L.C.*, 138 FERC ¶ 61,133 (2012); *Sinclair Pipeline Co., L.L.C.*, 134 FERC ¶ 61,077 (2011); *Chevron Pipe Line Co.*, (continued...)

Commission has granted such waivers to pipelines that do not technically qualify for an outright exemption from the ICA under the private carrier doctrine,⁵ but nevertheless do qualify for light-handed regulation by the Commission.⁶ Noble argues that the waivers have been granted when pipelines have demonstrated that: (a) the pipeline (or its affiliates) owns 100 percent of the throughput on the system; (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 granting the waivers.⁷

7. Noble contends that it has met all of these requirements in seeking a waiver for its Crow Creek Gathering System.⁸ First, states Noble, it will own and operate every barrel of oil transported on the Crow Creek Gathering System, i.e., it will be the sole shipper on the Crow Creek Gathering System. Second, continues Noble, there has been no demonstrated third-party interest in gaining access to or shipping on the Crow Creek Gathering System. Third, Noble states that because the only origin points on the Crow Creek Gathering System are owned and operated for Noble-owned and operated production, it does not expect any third-party interest in obtaining transportation on the Crow Creek Gathering System to materialize. Finally, Noble does not anticipate any opposition to its request for temporary waiver.

8. Noble affirms that it will comply with the conditions imposed on previously-issued temporary waivers. Specifically, Noble agrees that it will report any material

134 FERC ¶ 61,073 (2011); *Agave Energy Co.*, 136 FERC ¶ 61,094 (2011); *Saddle Butte Pipeline, LLC*, 136 FERC ¶ 61,071 (2011); *Whiting Oil & Gas Corp.*, 131 FERC ¶ 61,263 (2010); *Bear Paw Energy, LLC*, 132 FERC ¶ 61,259 (2010); *MV Purchasing, LLC*, 133 FERC ¶ 61,251 (2010); *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009); *Cimarron Gathering, L.P.*, 126 FERC ¶ 61,017 (2009); *Parnon Gathering, Inc.*, 129 FERC ¶ 61,273 (2009); *CKB Petroleum, Inc.*, 125 FERC ¶ 61,259 (2008); *Giant Pipeline Co.*, 120 FERC ¶ 61,275 (2007); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995); *Sinclair Oil Corp.*, 4 FERC ¶ 61,263 (2010).

⁵ Noble cites *Valvoline Oil Co. v. United States*, 308 U.S. 141, 143, 146 (1939); *The Pipe Line Cases*, 234 U.S. 548, 560 (1914).

⁶ Noble cites *Sinclair Oil Corp.*, 4 FERC ¶ 62,026, at 63,032 (1978).

⁷ Noble cites, e.g., *Saddle Butte Pipeline, LLC*, 136 FERC ¶ 61,071 (2011).

⁸ Noble cites, e.g., *Saddle Butte Pipeline, LLC*, 136 FERC ¶ 61,071 (2011); *Whiting Oil & Gas Corp.*, 131 FERC ¶ 61,263 (2010).

change to the facts it has stated, herein, including: (a) increased accessibility of other pipelines or refiners to its facilities; (b) changes in ownership of the facilities; (c) changes in the ownership of the crude oil shipped; and (d) shipment tenders or requests for service by any person.⁹

9. Public notice of Noble's filing was issued November 6, 2014, with interventions and protests due as provided in accordance with Rules 211 and 214 of the Commission's regulations.¹⁰ Noble's filing is unopposed.

10. On December 12, 2014, the Commission sent a data request to Noble asking whether Noble or an affiliate will own 100 percent of the volumes transported on the Crow Creek Gathering System, or if that is not the case, what percentage does Noble own. In its response dated December 17, 2014, Noble stated in part as follows:

Noble will produce and will own every barrel of oil transported on the Crow Creek Gathering System Within each barrel, Noble will have an undivided interest in 80 percent or more of the oil. The remainder of the undivided interest in each barrel of oil will be held by working interest owners in the properties from which the oil was produced through wells operated by Noble in the Denver-Julesburg Basin. This arrangement is the typical practice in U.S. oil fields where one operator produces and markets the oil on behalf of the working interest owners and the proportionate share of each barrel is determined by the working interest owner's undivided interest in the applicable well.

...The oil transported on the [Crow Creek Gathering] System will originate from wells that Noble owns and operates on behalf of itself and its working interest owners. In other words, the oil transported on the Crow Creek Gathering System will come from properties for which Noble is responsible for exploring, drilling, developing, and operating. In every sense, the Crow Creek Gathering System has been designed and will be operated for the sole purpose of meeting the production needs of Noble.¹¹

11. The Commission finds that Noble has not demonstrated that it will own all of the crude oil to be transported on the facilities described above. In a recent order issued in

⁹ Noble cites *Whiting Gas and Oil Corp.*, 131 FERC ¶ 61,263, at P 7 (2010).

¹⁰ 18 C.F.R. §§ 385.211 and 385.214 (2014).

¹¹ Noble Energy, Inc. – Docket No. OR15-2-000, Response to December 12, 2014 Data Request, Response No. 1.

Tapstone Midstream, LLC,¹² the Commission addressed a similar situation and denied Tapstone's request for waivers of ICA sections 6 and 20, as well as of Parts 341 and 357 of the Commission's regulations. Tapstone argued that while it would not hold title to all throughput on the facilities at issue in that case, an affiliate, which it did not identify, would bear all other indicia of ownership, such as custody, control, and good right to sell the crude oil to be transported. Tapstone also contended that the mere fact that its affiliate would not have title to all of the volumes should not be determinative.

12. In denying Tapstone's request, the Commission stated as follows:

The Commission has heretofore never equated substantial control of, or dominion over, the crude oil to be transported with the 100-percent ownership requirement to warrant temporary waiver of the ICA and oil pipeline regulation. Tapstone's assertion that other indicia of ownership, "such as custody, control, and good right to sell" should equate to ownership for purposes of waiver of the regulations is not sufficient to warrant acceptance of its tariff filing.¹³

13. The same rationale applies in this case. Noble has failed to demonstrate unambiguously that it will own 100 percent of the production to be transported on the Crow Creek Gathering System. Instead, it asserts that it produces and owns every barrel of oil transported on the Crow Creek Gathering System, but within each barrel, it may have an undivided interest in 80 percent or more of the oil. This does not meet the Commission's 100-percent ownership requirement necessary to warrant a temporary waiver of the ICA and the Commission's oil pipeline regulations. Accordingly, the Commission denies Noble's request for waiver of ICA sections 6 and 20, as well as Parts 341 and 357 of the Commission's regulations.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² *Tapstone Midstream, LLC*, 150 FERC ¶ 61,016 (2015).

¹³ *Tapstone Midstream, LLC*, 150 FERC ¶ 61,016, at P 16 (2015).