

150 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunoco Pipeline L.P.
SunVit Pipeline LLC
ExxonMobil Pipeline Company

Docket No. OR15-5-000

DECLARATORY ORDER

(Issued March 4, 2015)

1. On December 5, 2014, Sunoco Pipeline L.P. (SPLP), SunVit Pipeline LLC (SunVit), and ExxonMobil Pipeline Company (EMPCo) (jointly, Petitioners) filed a Petition for Declaratory Order (Petition) seeking approval of the specified rate structures, terms of service, and prorationing methodology applicable to their proposed Permian Longview and Louisiana Extension pipeline project (Project). Petitioners contend that the Project will significantly increase pipeline transportation capacity for crude oil produced from the Permian Basin in west Texas and other areas in the Southwest to downstream pipeline interconnections and markets in east Texas and Louisiana. Petitioners seek Commission approval of the Petition by March 5, 2015.
2. As discussed below, the Commission grants the requested rulings.

Overview of the Project

3. Petitioners anticipate that the Project will commence service in the second half of 2016. Petitioners explain that the Project is designed to provide a new crude oil transportation route from Midland, Texas, to multiple destination points in east Texas and Louisiana by using pipeline segments owned and/or operated by SunVit, SPLP, and/or EMPCo. Petitioners also state that movements on the Project will be subject to Joint and Local Tariffs of the Petitioners, which will be filed with the Commission.
4. Additionally, Petitioners state that SunVit will develop a new pipeline extending from Midland, Texas, to Garden City, Texas, and that those movements will be governed by a SunVit tariff to be filed with the Commission. Further, continue Petitioners, SPLP will develop a combination of new pipeline and repurposed and expanded existing pipeline facilities from Garden City, Texas, to Colorado City, Texas, and to the

downstream destination points of Tyler and Longview, Texas,¹ with movements between Garden City and Tyler/Longview to be subject to a joint SunVit/SPLP tariff.

5. Petitioners also state that EMPCo will reverse the flow of an existing pipeline to return that system to its originally-designed flow direction so that the Project will extend from Longview, Texas, to Brown Station/Finney Station, Louisiana, and Anchorage, Louisiana. Petitioners explain that the movements on the Project between Longview and these Louisiana destinations will be governed by an EMPCo tariff to be filed with the Commission, while movements from Midland to the Brown Station/Finney Station, and/or Anchorage destinations will be subject to joint tariffs to be filed with the Commission.

6. According to Petitioners, because of the substantial capital investment required to develop the Project, they conducted a widely-publicized open season from August 7, 2014, to October 22, 2014 (Open Season) seeking long-term volume commitments from shippers. Petitioners emphasize that they provided notice of the Open Season to all interested parties, with additional notice provided by press release to more than 100 trade and general circulation print and online publications. According to Petitioners, they provided each of the 17 shippers that signed the required confidentiality agreement a *pro forma* Transportation Services Agreement (TSA), which included the proposed rates applicable to Committed and Uncommitted Shippers and proposed rules and rates tariffs applicable to service on the Project.

7. Petitioners assert that the completed Project will provide transportation for up to 100,000 barrels per day (bpd) of crude oil. Petitioners explain that as much as 90 percent of the new capacity will be available to Committed Shippers that have signed TSAs, as well as to Uncommitted Shippers that have met certain throughput thresholds and become Regular Shippers. Petitioners also point out that at least 10 percent of the capacity will be reserved for New Shippers' Uncommitted Volumes.

8. Petitioners explain that the proposed tariff structure for the Project contains separate rates for Committed and Uncommitted volumes, as well as different rates for Committed Volumes depending on (a) the origin and destination points chosen by a

¹ Petitioners state that SunVit and SPLP also are jointly developing a pipeline project that will provide a new route for crude oil from the Midland, Texas area to Nederland and Sour Lake, Texas, employing the SunVit and SPLP facilities between Midland and Colorado City (Permian Express 2 Project). Petitioners further state that the rates, terms and conditions of service for the Permian Express 2 Project were approved by the Commission (subject to certain conditions) on June 13, 2014. *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204 (2014). Petitioners observe that the two Projects are separate and distinct, although most of the terms and conditions and the rate structures of the two Projects are similar or identical.

Committed Shipper; (b) the daily volume commitment established in a shipper's TSA; and (c) whether a shipper selects a commitment term of five, seven, or 10 years. Petitioners also explain that the proposed tariff structure includes initially discounted rates for Committed Shippers that are lower than the initial Uncommitted Rates for the same point-to-point movements. Further, continue Petitioners, Committed Shippers will not receive fixed capacity rights during prorationing. Rather, state Petitioners, 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 monthly Committed Volume, and a Committed Shipper will remain a Regular Shipper throughout the term of its commitment.

Requested Rulings

9. Petitioners seek Commission approval of the following aspects of the Project:
 - a. Petitioners may implement a tariff rate structure that provides different rates for Committed and Uncommitted Volumes;
 - b. The committed rates and index rate adjustment mechanism agreed to as part of the Project will not be subject to revision other than by agreement of the parties to a given TSA;
 - c. The Committed Rates established in the TSAs may be treated as the equivalent of settlement rates, both initially and during the term of the TSAs, pursuant to section 342.4(c) of the Commission's regulations;²
 - d. Petitioners may allow up to 90 percent of the available capacity created by the Project to be treated as space reserved for Committed Shippers and other Regular Shippers;
 - e. Petitioners may 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 volume commitments;
 - f. Petitioners may 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; and
 - g. Petitioners may offer Committed Shippers the option of electing one calendar quarter during the term of their TSAs during which prepaid

² 18 C.F.R. § 342.4(c) (2014).

transportation credits earned by the payment of deficiency payments are not subject to normal expiration and will last through a certain “tail period” following the termination of the applicable TSA.

Petitioners’ Supporting Detail

10. Petitioners assert that the Commission encourages developers of new pipeline projects that entail significant capital investments to seek approval of the rate structures and terms of service for such projects by petitioning for a declaratory order, 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.³ Petitioners maintain that the rulings it seeks in this proceeding are consistent with the Interstate Commerce Act and the Commission’s regulations and that issuance of the requested declaratory order will provide the Petitioners with much needed regulatory certainty regarding the terms and conditions of service underpinning the Project prior to proceeding with the capital-intensive task of development.

A. Tariff Rate Structure

11. Petitioners reiterate that they propose to charge lower rates for the volumes subject to TSAs establishing ship-or-pay commitments than they will charge for Uncommitted Volumes for the same movements. Moreover, continue Petitioners, the initial Committed Rates will vary according to origin and destination points, length of contract term, and volume commitment level, with lower initial tariff rates for longer term and higher volume commitments. In contrast, state Petitioners, the initial Uncommitted Rates will vary only by origin and destination point.

12. Petitioners further state that the rates for Uncommitted Volumes will be subject to annual adjustment in accordance with the oil price indexing methodology established in section 343.3 of the Commission’s regulations. However, continue Petitioners, should the Commission terminate the indexing methodology, the Uncommitted Rates may be adjusted annually each year for the remainder of the TSA’s term in accordance with any replacement methodology established by the Commission. Similarly, state Petitioners, the rates for Committed Volumes are subject to annual adjustment in accordance the Commission’s indexing methodology, although the Committed Rates may not be adjusted to a level below the initial Committed Rates established in the Committed Shipper’s TSA.

³ Petitioners cite, *e.g.*, *Express Pipeline P’ship*, 76 FERC ¶ 61,245, at 62,253, *order on reh’g*, 77 FERC ¶ 61,188 (1996). *See also North Dakota Pipeline Company LLC*, 147 FERC ¶ 61,121, at P 22 (2014).

13. Petitioners explain that subject to exceptions for service outages due to *force majeure* and other specified causes, Committed Shippers that fail to transport their Committed Volumes during any calendar quarter must pay the applicable Committed Rates for the volumes not shipped. However, Petitioners add that those payments may be applied against future payments due for movements on the Project in excess of the Committed Shipper's Committed Volume (prepaid transportation credits), which will expire if not used within four quarters following the expiration of the quarter during which the deficiency occurred. Petitioners further point out that a Committed Shipper may elect once during the term of its TSA, with at least six months' advance notice, to have any prepaid transportation credits earned during one calendar quarter of the term treated as "Super Credits," for the purpose of accommodating a facility turnaround or other temporary condition or event. Petitioners add that Super Credits will not expire within four quarters, but instead may be used any time during the remainder of the TSA's term and up to six months following expiration or termination of the TSA.

14. Additionally, Petitioners explain that a Committed Shipper may apply its applicable Committed Rate from an origin point downstream of its selected committed destination point within the continuous path of the points for which the Committed Shipper has committed, and the Committed Shipper also may apply such volumes toward its minimum volume commitment. Petitioners explain that a Committed Shipper electing Midland as an origin point in its TSA will be permitted to originate volumes further downstream on the Project at Garden City or Colorado City, and the Committed Shipper will be permitted to apply its Committed Rate from Midland to those movements. Petitioners add that they currently do not intend to file an initial Committed Rate for service from Garden City or Colorado City, but that they do intend to file rates from those points to the various destination points on the Project for service to Uncommitted Shippers.

15. Petitioners contend that the Commission has approved rate structures that allow Committed Shippers making term and volume commitments to pay initial rates that are lower than the rates applicable to Uncommitted Volumes if all potentially interested parties had the opportunity to execute TSAs establishing those volume and term commitments.⁴ Petitioners emphasize that because they conducted the Open Season in

⁴ 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); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 25 (2013); *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at P 22 (2012).

accordance with the Commission's requirements, there is no discrimination among similarly-situated shippers that had the same opportunity to enter into TSAs.⁵

B. Proration Policies and Lottery Mechanism

16. Petitioners state that they propose separate prorationing policies for the separate segments of the Project. Specifically, Petitioners state that the SPLP and SunVit proration policies will be applicable to transportation originating at Midland, Texas, and serving destination points up to and including Longview, Texas, while the EMPCo proration policy will apply to transportation on the pipeline from Longview, Texas, to the Finney/Brown Station, Louisiana, and Anchorage, Louisiana destinations. However, Petitioners explain that a shipper shipping pursuant to the joint tariff will be subject to the prorationing policies of each carrier having a pipeline segment involved in the shipment, based on then-existing capacity constraints.

17. *SPLP and SunVit Proration Policy.* Petitioners state that the proposed proration policy for the SPLP and SunVit portion of the Project provides for a lottery process in any month in which prorationing is necessary (Allocation Month):

In the aggregate, New Shippers will be allocated 10 percent of the available capacity of the prorated Project segment, on a *pro rata* basis, but not to exceed the lesser of a New Shipper's nomination or 2.5 percent of available capacity in any Allocation Month. If the *pro rata* allocation in an Allocation Month results in no New Shipper being allocated the minimum volume as provided in the applicable tariff, then Petitioners will administer a lottery process for the total number of minimum volume allocations available to New Shippers in the Allocation Month. A New Shipper will not be allocated capacity through the lottery process if it is (a) an affiliate of a Regular Shipper, or (b) an affiliate of another shipper that received an allocation through the lottery process.⁶ The lottery process will be conducted as follows:

- Petitioners will use a number-generating software that randomly assigns each New Shipper a number from one to the number representing the total number of New Shippers participating in the lottery (i.e., if there are 50 New Shippers, numbers one through 50 will be assigned).

⁵ Petitioners cite *Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at P 17 (2012); *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at P 23 (2013).

⁶ Petitioners state that the proposed Sunoco and SunVit proration policy is similar to the one approved by the Commission in *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at P 25 (2013).

- The New Shipper assigned number one will receive the first minimum volume allocation. Thereafter, minimum volume allocations will be assigned to New Shippers sequentially, from lowest assigned number to highest assigned number until 10 percent of available capacity is fully allocated.

For each prorated Project segment, 90 percent of available capacity will be allocated to Regular Shippers proportionately based on the lesser of each Regular Shipper's Historic Shipment Volume or its nomination in the Allocation Month.

18. Petitioners state that the prorationing policy also includes a procedure for allocating any capacity remaining after implementation of the steps cited above. Petitioners explain that any such remaining capacity will be allocated on a *pro rata* basis to both Committed and Uncommitted Volumes, but that the procedure also will prevent shippers from using affiliate relationships or other devices to game the system. Petitioners further state that if any capacity remains after the initial allocation process described above, and if there are additional nominations that have not yet been allocated, such remaining capacity will be allocated on a *pro rata* basis to Committed Shippers nominating volumes through the use of prepaid transportation credits they obtained by paying for volumes not shipped in previous quarters during the term of their TSAs. Petitioners state that if there remains any other capacity following application of the second allocation process, it will be allocated *pro rata* among all shippers making nominations in the month of allocation, based on the remaining amounts of their unallocated nominated volumes.

19. Petitioners explain that a "Regular Shipper" is a shipper that has transported crude oil on the Project in nine of the 12 consecutive months ending with the second month prior to the month in which prorationing is being applied, or a shipper that has made a volume commitment pursuant to a TSA. Petitioners further explain that a "New Shipper" is any shipper that is not a Regular Shipper. According to Petitioners, an Uncommitted Shipper's "Historic Shipment Volume" is the monthly average of the shipper's volumes shipped during the 12-month period referred to above, and a Committed Shipper's "Historic Shipment Volume" is the greater of the Committed Shipper's monthly average volume shipped over that period, or its monthly volume commitment in its TSA.⁷ Petitioners reiterate that they do not propose to provide firm service to Committed Shippers on the Project. Instead, continue Petitioners, they will maintain a traditional history-based prorationing policy under which 90 percent of available capacity will be made available to Regular Shippers (including Committed Shippers) and 10 percent will be reserved for New Shippers.

⁷ Petitioners state that because a Committed Shipper may ship volumes in excess of its minimum Committed Volume, it is entitled to a share of available capacity based on the greater of its average monthly volume actually shipped or its Committed Volume.

20. *EMPCO Proration Policy.* Petitioners state that the EMPCo proration policy is very similar to the SPLP and SunVit policy. According to Petitioners, in relevant part, the proposed proration policy for the EMPCo portion of the Project provides for the following in any month in which prorationing is necessary (Allocation Month):

In the aggregate, New Shippers will be allocated 10 percent of the available capacity of the prorated pipeline segment in any Allocation Month in proportion to their nominations for the month. If the allocation calculation results in no New Shippers being allocated a monthly minimum volume amount of 60,000 barrels, the Petitioners will administer a lottery process for the total number of minimum volume allocations available to New Shippers in the Allocation Month.

Petitioners state that a New Shipper will not be allocated capacity through the lottery process if it is (a) an affiliate of a Regular Shipper, or (b) an affiliate of another shipper that received an allocation through the lottery process. The lottery process will be conducted as follows:

- Petitioners will use a number-generating software to randomly assign each New Shipper a number from one to the number representing the total number of New Shippers participating in the lottery (i.e., if there are 30 New Shippers, numbers one through 30 will be assigned).
- The New Shipper assigned number one will receive the first minimum volume allocation. Thereafter, minimum volume allocations will be assigned to New Shippers sequentially, from the lowest assigned number to the highest assigned number, until 10 percent of available capacity is fully allocated.

Regular Shippers will be allocated 90 percent of available capacity in proportion to their historical volumes shipped during the base period. At the commencement of service, Committed Shippers will be deemed to have Base Period historical volumes equal to their TSA volume commitments. After the commencement of service, the allocation to Committed Shippers will be calculated based on the greater of the volumes shipped or paid for by Committed Shippers as a result of the TSA volume commitments.

21. Petitioners state that any capacity remaining capacity after implementation of the steps listed above will be allocated on a *pro rata* basis to both Committed and Uncommitted Volumes on a non-discriminatory basis, and that shippers will not be able to rely on affiliate relationships or other devices to game the system and obtain more capacity in prorationing than they would otherwise be allocated. Petitioners further state that for purposes of this policy, a “Regular Shipper” means any shipper that shipped on the pipeline during each month of the Base Period, or a Committed Shipper. Petitioners explain that “Base Period” is the 12 consecutive-month period ending with the second

month prior to the month of prorating. Additionally, Petitioners state that a “Committed Shipper” is a shipper that executed a TSA based on the 2014 Notice of Open Season for the Project, and a “New Shipper” is any shipper other than a Regular Shipper or a Committed Shipper.

22. Petitioners state that as in the SPLP and SunVit policy, the EMPCo policy will be a traditional history-based proration policy under which 90 percent of available capacity will be made available to Regular Shippers (including Committed Shippers) and 10 percent will be reserved for New Shippers. In addition, Petitioners point out that the EMPCo policy proposes to use a lottery system similar to that used in the SPLP and SunVit policy.

23. Petitioners contend that both proposed proration policies are consistent with Commission precedent in reserving at least 10 percent of available capacity for New Shippers, with the remainder reserved for Regular Shippers.⁸ Petitioners also maintain that the concept of allocating capacity during prorating to Regular Shippers based on the shipper’s average volumes shipped over a base period or (if greater for a Committed Shipper, that shipper’s monthly minimum volume commitment), also is consistent with Commission precedent. Petitioners argue that in *Enterprise Liquids Pipeline LLC*, the Commission approved a provision providing that a Committed Shipper would automatically be deemed a Regular Shipper for prorating purposes and would be allocated volumes based on the higher of its actual average throughput during the base period or its monthly Volume Commitment.⁹ Similarly, continue Petitioners, in *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, the Commission approved a provision that granted Committed Shippers immediate Regular Shipper status with respect to a historical prorating methodology similar to that proposed in this case.¹⁰ Petitioners emphasize that New Shippers on the Project can become Regular Shippers under both of the proposed proration policies by having actual shipments during the rolling 12-month base period. Additionally, Petitioners assert that the Commission

⁸ Petitioners cite, e.g., *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 24-25 (2013).

⁹ *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 27-28 (2013). See also *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139, at P 12 (2010).

¹⁰ *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at PP 35, 40 (2012). See also *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 29; *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at PP 27, 31 (2014).

recently has approved similar lottery mechanisms for allocating capacity during times of prorationing to New Shippers.¹¹

C. Other Committed Shipper Rights

24. Petitioners ask the Commission to affirm that the rates for Committed Volumes and the related index 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.¹² Petitioners contend that the Commission consistently has affirmed that it will honor the rates for Committed Volumes agreed to by shippers pursuant to a valid open season.¹³ Additionally, Petitioners state that the Commission found in such cases that while the Commission's regulations do not specifically provide for negotiated initial rates with agreed-to future rate changes, the Commission has made clear that such rates are consistent with the spirit of, and may be treated in accordance with, section 342.4(c) of the Commission's regulations providing for settlement rates.¹⁴ Moreover, continue Petitioners, the Commission also has made it clear that the agreed-upon terms of a TSA will govern the determination of Committed Shippers' rates over the terms of their TSAs.¹⁵

25. Petitioners also maintain that the Commission has approved index-based adjustments in Committed Shippers' rates agreed upon in TSAs when such TSAs provided that the Committed Rates would not be adjusted downward, even when such an adjustment would result from application of the FERC index.¹⁶ However, in this case,

¹¹ Petitioners cite, e.g., *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 23-24 (2013); *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61204, at PP 27, 31 (2014); *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

¹² 18 C.F.R. § 342.4(c) (2014).

¹³ Petitioners cite, e.g., *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-19 (2013); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 21 (2012); *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).

¹⁴ Petitioners cite, e.g., *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 29 (2014).

¹⁵ Petitioners cite e.g., *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at PP 31, 45 (2007).

¹⁶ 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).

continue Petitioners, the TSA does not provide that the Committed Rates may never be adjusted downward; rather, the Committed Rates will not be adjusted below the initial Committed Rates agreed upon by Committed Shippers in their TSAs. Petitioners contend that this limitation is consistent with a comparable provision that the Commission approved in response to a petition for declaratory order in *Sunoco Pipeline L.P.*¹⁷

26. Finally, Petitioners state that a Committed Shipper may elect once during the term of its TSA, with six months irrevocable advance notice, to have any prepaid transportation credits earned during one quarter of the term treated as “Super Credits.” Petitioners explain that the Super Credits will be used to accommodate a facility turnaround or any other temporary condition that the shipper designates. Additionally, Petitioners state that the Super Credits will not expire until the end of the “Tail Period,” which will be the period of six months after the termination of the Committed Shipper’s TSA. Petitioners maintain that the Commission has consistently upheld the grant of similar specific rights to Committed Shippers as an inducement to entering into long term contracts committing volumes and revenue to a new project, provided that those rights are offered to all interested shippers.

Commission Analysis

27. The Commission will grant the rulings requested in the Petition. Granting Petitioners’ request will provide regulatory certainty for a significant infrastructure project that will increase the movement of crude oil to interstate markets and help to alleviate constraints facing Permian Basin producers and marketers in moving crude oil to downstream refineries and markets. Petitioners have demonstrated that Commission precedent supports granting the rulings they seek.

28. Specifically, the Petitioners’ proposed rate structure and other tariff provisions are generally consistent with those approved by the Commission for other pipelines. The Petitioners will offer 90 percent of the capacity of the Project to Committed Shippers that will ship or pay for the volumes established in their TSAs. Committed Shippers that commit to greater volumes and longer terms will receive further reduced rates. Additionally, the Petitioners have proposed to charge different rates for the volumes of Committed Shippers that have made ship-or-pay commitments and the Uncommitted Shippers that did not make such commitments. The Commission finds that the Petitioners’ proposed reservation of 10 percent of the Project’s capacity will allow Uncommitted Shippers sufficient access to the Project, although at rates likely to be higher than those paid by the Committed Shippers.

29. Petitioners also have proposed that Committed Shippers’ agreed-upon rates will be adjusted in accordance with the Commission’s indexing methodology, except that any

¹⁷ *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115, at PP 8, 20 (2013).

such adjustments may not result in rates lower than the initial Committed Rates. Additionally, Petitioners propose to afford Committed Shippers the opportunity to apply prepaid transportation credits to subsequent shipments that occur within four quarters following expiration of the quarter during which the deficiency occurred. Petitioners also propose to allow Committed Shippers a one-time opportunity during the term of their TSAs to treat prepaid transportation credits as Super Credits for the purpose of accommodating a facility turnaround or other temporary event. The Super Credits will not expire during the remaining term of the Committed Shippers' TSAs or within six months following termination or expiration of the TSAs. It is reasonable for Petitioners to allow these accommodations for Committed Shippers that have provided financial support for the Project.

30. The Commission also grants the Petitioners' request that the Commission treat the Committed Rates as if they were settlement rates under section 342.4(c) of the Commission's regulations upon the start-up of the Project. The Petitioners should, however, be prepared to support the initial rates for the Uncommitted Shippers at the time the pipeline goes into service, consistent with section 342.2 of the Commission's regulations.

31. Further, the Petitioners' proposed allocation methodology is reasonable and not unduly discriminatory. The Petitioners propose a history-based proration policy under which 90 percent of available capacity will be available to Regular Shippers. If the average monthly volume of the Regular Shippers exceeds the 90 percent available to them, all Regular Shippers' volumes will be prorated based on the greater of each Regular Shipper's historic average volumes shipped or, if applicable, a Committed Shipper's volume commitment. The remaining 10 percent of available capacity will be reserved at all times for New Shippers that have not moved oil on a sufficient basis to become Regular Shippers. Further, while a Committed Shipper automatically qualifies as a Regular Shipper, a New Shipper can also qualify as a Regular Shipper by moving oil in nine of the 12 consecutive months ending with the second month prior to the month in which prorationing is being applied.

32. Consistent with its decisions in *Seaway Crude Pipeline Co. LLC*¹⁸ and *Enbridge Pipelines (FSP) LLC*,¹⁹ the Commission also will accept the Petitioner's proposal to implement a lottery mechanism for allocating the total number of monthly minimum volume allocations available to New Shippers. The proposed lottery is intended to ensure that *pro rata* allocations to New Shippers do not become so fractional that each shipper fails to meet the minimum tender volume.

¹⁸ *Seaway Crude Pipeline Co. LLC*, 143 FERC ¶ 61,036, at P 16 (2013).

¹⁹ *Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 28 (2014).

33. Accordingly, the Commission grants the rulings sought by Petitioners, finding that the proposed rate structure and terms and conditions for the Project are just and reasonable and will not result in undue discrimination or undue preference.

The Commission orders:

The Petition is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.