

151 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Osage Pipe Line Company, LLC

Docket No. OR15-8-000

ORDER ON MARKET-BASED RATES APPLICATION AND
ESTABLISHING HEARING PROCEDURES

(Issued April 30, 2015)

1. On December 16, 2014, Osage Pipe Line Company, LLC (Osage), pursuant to Part 348¹ of the Commission's regulations, filed an application for authority to charge market-based rates for the transportation of crude oil on its pipeline at Osage's Cushing, Oklahoma origin market and its El Dorado, Kansas destination market. The application was protested by HollyFrontier Refining & Marketing LLC (HollyFrontier), arguing that Osage's analysis was incorrect and incomplete. As discussed below, the Commission sets all issues raised by the filing for hearing.

I. Background

2. Osage is a common carrier crude oil pipeline subject to the Commission's jurisdiction under the Interstate Commerce Act (ICA). Osage is a 20-inch, 135-mile crude oil pipeline with a rated capacity of 168,000 barrels per day (bpd). Osage is owned 50 percent by Magellan OLP, L.P. (Magellan)² and 50 percent by the National Cooperative Refinery Association (NCRA). Magellan operates Osage. At Osage's terminal in El Dorado, Kansas, Osage's deliveries are made to a third-party crude oil terminal and then either to tankage at the terminal or to third-party tankage outside of the

¹ See 18 C.F.R. pt. 348 (2014).

² Magellan acquired 50 percent of Osage from NCRA in 2004. See Magellan Midstream Partners Acquires 50 Percent Ownership in Osage Pipeline (Mar 3, 2004), available at: <http://www.magellanlp.com/magellannews.aspx?id=49>.

terminal. From its tankage, crude oil can be delivered to the HollyFrontier refinery in El Dorado³ by a third-party pipeline or to the NCRA refinery in McPherson, Kansas⁴ by the NCRA Jayhawk pipeline⁵.

3. Osage currently transports a variety of light, medium, and heavy crude oils that originate in Oklahoma, the Permian Basin/West Texas crude oil production areas, and the Rocky Mountain and Western Canada crude oil production areas. The pipeline's current capacity is 155,000 bpd. However, in most months, Osage's nominations exceed its capacity, and the capacity must be prorated. As a result, Osage is undergoing an expansion project which is expected to be completed in the first quarter of 2015.

II. Description of Filing

4. Osage claims its origin and destination markets have a low level of concentration, low market share and significant excess capacity. For its origin market, Osage claims an extremely low capacity-based HHI of only 798 and asserts its effective capacity-based market share is 3.5 percent. Additionally, Osage states there is significant excess capacity in the market. For its destination market, Osage also claims it lacks market power. The HHI in the market, both currently and in 2015, following Osage expansion, is 1,668 and 1,656 respectively. Moreover, Osage's market share is 30.9 percent currently and 32.5 percent in 2015.

5. Osage argues this supports finding it lacks market power, in that the Commission has elsewhere granted market-based rate authority where HHIs have exceeded 2,500 where the applicant pipeline's delivery-based market shares were between 50 and 60 percent.

³ "El Dorado Refinery has a 135,000 bpd capacity and processes sour and heavy (Canadian) crude oils." See HollyFrontier, Investor Presentation (Jan. 2015) at 5, available at: <http://files.shareholder.com/downloads/FTO/4000679736x0x801153/D3CFDD89-6CF0-4BB0-8F27-D6D91D0152C3/HFC%20Jan%202015%20IR%20presentation.pdf>.

⁴ The McPherson refinery is currently going through an expansion project expected to be completed by early 2016. Upon completion, the McPherson refinery will increase refining capacity to 100,000 bpd from the current 85,000 bpd. See NCRA Refinery, New Coker and Refinery Expansion, available at <http://www.ncrarefinery.com/Main/Graphics/expansion.pdf>.

⁵ Jayhawk Pipeline is 100% owned by NCRA. It currently transports more than 140,000 bpd. See Jayhawk Pipeline, LLC, available at <http://www.jayhawkpl.com/>.

A. Product Market

6. Osage states that the relevant product market for Osage is the transportation of all crude oil.⁶ Osage argues that this definition is appropriate because Osage is capable of transporting all crude oil and Osage's competitors can transport/supply all types of crude oil as well. Osage also argues that different types of crude oil are substitutes for each other within refineries, such that no single crude oil is required by a refinery. Moreover, Osage asserts that if granted market-based rates, Osage is committed to make only proportionate changes in its rates for the transportation of different crude oil types.

B. Origin Market

7. Osage states that its origin market is Cushing, Oklahoma, a major crude oil pipeline hub, located in a crude oil production area. Osage argues that its origin market is properly defined to include the crude oil production areas in Oklahoma and the Permian Basin/West Texas area that are linked by pipeline to Cushing. In addition, Osage states it transports crude oil produced in the Rocky Mountain area and Western Canada.

C. Destination Market

8. Osage argues that its geographic destination market is appropriately defined as the State of Kansas which includes the southeast Kansas refining area as well as the crude oil production area throughout Kansas that supply crude oil via pipeline to southeast Kansas. Osage's destination market includes the refining area to which the pipeline supplies crude oil and the local crude production area that supply this refining area. Osage also states that in its Kansas destination market, it faces extensive competition from local crude oil production in Kansas,⁷ from 4 competing pipelines that deliver crude oil to the market, and rail deliveries of crude oil to the Savage rail unloading terminal at El Dorado.

D. Competitive Alternatives

9. Osage claims it faces numerous competitors in its Cushing origin market, which includes both the Oklahoma and Permian Basin/West Texas crude oil production areas. Osage also states that shippers with crude oil at Cushing have numerous alternatives,

⁶ Osage's current effective tariff shows that Osage has transportation rates for Light, Medium, Heavy and Super Heavy Crude Petroleums. *See* Osage Pipe Line Company, LLC, F.E.R.C. No. 16.5.0 effective July 1, 2014.

⁷ According to the U.S. Energy Information Administration (EIA), Kansas produces about 140,000 bpd in private lands. *See* EIA, Crude Oil Production, *available at*: http://www.eia.gov/dnav/pet/pet_crd_crpdn_adc_mbbldpd_m.htm.

including processing crude oil at refineries within the Cushing origin market, and moving their crude oil out of the Cushing origin market via pipeline, rail, and barge. Osage asserts that 9 refineries owned by 7 different companies in the Cushing origin market process the crude oil in the area. In addition, there are 16 pipelines and 9 rail loading facilities that transport crude oil out of the Cushing origin market. Moreover, crude oil can move from the Cushing origin market by truck to a barge terminal facility 60 miles from Cushing, from which it can be transported by barge to the U.S. Gulf Coast. Osage concludes that there are numerous alternatives to Osage in the Cushing origin market, and so it clearly could not exercise market power in that market.

III. HollyFrontier Protest

10. HollyFrontier argues Osage's assertions that it lacks market power are false, and since its market analysis is deficient, the Commission should summarily reject it, or at least set Osage's application for hearing where Osage's origin and destination market analyses can be examined fully.

11. HollyFrontier states it is the only shipper on Osage that is unaffiliated with the pipeline and that Osage provides 99 percent of the crude oil needs of HollyFrontier's El Dorado refinery making it highly dependent on Osage's pipeline. The only other sources of crude oil currently physically available to HollyFrontier are MVP and Rose Rock, which together can only deliver up to 16,000 bpd to El Dorado. HollyFrontier states that MVP and Rose Rock are suppliers of last resort when Osage is unable to transport all of HollyFrontier's crude oil needs as was demonstrated by the fact that Osage delivered 99 percent of the total crude oil delivered to El Dorado during the period 2013-2014.

12. HollyFrontier essentially argues, among other things, that Osage has not properly defined the relevant product and geographic markets, and has alleged potential alternatives that are not in fact good alternatives that would be capable of mitigating Osage's market power.

IV. Discussion

13. The Commission's preliminary analysis indicates that the protest raises issues about Osage's request for market-based rates that cannot be resolved on the basis of the record at this point. Therefore, the Commission will set the application for hearing, in order to thoroughly test and examine through discovery before a trier of fact and law all aspects of the parties' differing market power analyses.

The Commission orders:

(A) Pursuant to the authority conferred on the Commission by the ICA, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the ICA, a public hearing shall be held concerning the HollyFrontier's protest against Osage's market-based rate application.

(B) A Presiding ALJ, to be designated by the Chief ALJ within 15 days of this order, shall within 15 days of the date of the Presiding ALJ's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding ALJ is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.