

151 FERC ¶ 61,093
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.

Express Pipeline LLC

Docket No. OR15-20-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 1, 2015)

1. On February 27, 2015, Express Pipeline LLC (Express) filed a petition for declaratory order requesting that the Commission approve the rates, and terms and conditions of service for new facilities and an expansion of its existing pipeline to transport crude from Western Canada to points in Montana and Wyoming. Express requests that the Commission act on the petition no later than May 1, 2015, to allow Express the regulatory certainty in order to meet its transportation service obligations for the pipeline. For the reasons discussed below, the Commission grants Express' petition.

Background

2. Express currently transports Western Canadian crude oil from an origin in Hardisty, Alberta Canada to destinations in Buffalo and Edgar, Montana, and Casper, Wyoming. Express' daily capacity is approximately 250,000 barrels per day (bpd). Express states that there is high demand for crude transportation from Western Canada to U.S. refinery centers. Express has determined that it could add capacity to provide an additional 21,000 bpd of capacity, for a total system capacity of 271,000 bpd.

3. Express states that it can add this capacity through the construction of new equipment. Express will construct six new 150,000 barrel tanks at Buffalo Station, Montana. Additionally, Express will move two 4,000 horsepower mainline pumps from Straw Station approximately one mile to Buffalo Station. Express will also build associated piping. The total capital cost of the improvements will be approximately \$120,000,000. Express projects an in-service date of the fourth quarter of 2016.

4. Express asserts this expansion will increase the ability of U.S. refining markets to source Canadian petroleum products. Furthermore, Express states that the expansion will provide operational flexibility and increase reliability across the Express System.

5. In order to determine interest in the expansion, Express held an open season from December 10, 2014, to February 9, 2015. The open season was widely publicized in the press. Interested parties who executed confidentiality agreements were given a *pro forma* Transportation Service Agreement (TSA), the proposed rates, and the proposed terms of service. Express states that by the close of its open season it concluded that the level of volume commitments it had received from committed shippers was sufficient to proceed with the expansion.

Express' Proposed Terms of Service

6. Under Express' proposal committed shippers would receive approximately 90 percent of the expansion capacity and uncommitted shippers would receive approximately 10 percent of the pipeline capacity. Committed shippers are required to execute TSAs with volume commitments totaling in the aggregate approximately 19,000 barrels per day as well as to select either a 5-9 year term or a 10 or more year term. The TSA permits Express to adjust the committed rates upward by no more than 3 percent on an annual basis and to file the committed rates as settlement rates.

Requested Rulings in Express' Petition

7. Express asks the Commission to approve as lawful and not unduly discriminatory the requests discussed below.

8. Express asks that the provisions of the TSA and the accompanying *pro forma* tariff rate structure will govern the rates and service for the committed shippers during the term of their TSAs, irrespective of Express' uncommitted and other committed rates, including assessment of the agreed-upon escalation and such rates will not be subject to revision other than by agreement of the parties.

9. Express requests that the Commission find the proposed committed shipper rates in Appendix B to the TSA are lawful and not unduly discriminatory, relative to Express' other committed rates or to the uncommitted rates. Express also requests any necessary prior waiver or other authority under section 4 of the Interstate Commerce Act (ICA).¹

¹ Section 4 of the ICA prohibits greater compensation for a shorter haul than a longer haul on the same route. Section 341.15(a) of the Commission's regulations allows a pipeline to seek relief in order to charge a greater amount for a shorter distance over the same line or route in the same direction.

10. The committed rates provided for in the TSA will be treated as settlement rates during the term of the TSA for filing purposes, including upon their initial filing and in the agreed-upon escalation filings, pursuant to section 342.4(c) of the Commission's regulations.

Discussion

11. In its petition for declaratory order Express is seeking approval of the rates, and terms and conditions of service for its pipeline expansion project that will transport crude from Western Canada to points in Montana and Wyoming. In accordance with Commission precedent Express has sought advance guidance through the declaratory order process.² Express informed potential shippers of the project through a widely publicized open season. The Commission finds that the rates, and terms and conditions of service offered to the potential committed shippers during the open season are consistent with the ICA and Commission precedent and policy. The various aspects of Express' terms of service such as committed and uncommitted rates, 10 percent of capacity reserved for uncommitted shippers, volume and term commitments, and treatment of the committed rates as settlement rates are consistent with prior Commission rulings. Since many of the issues raised in Express' petition have been addressed by the Commission before, no further discussion is necessary.

12. The Commission will also grant Express ICA section 4 relief to permit it to charge committed shippers a higher rate for a shorter haul than uncommitted shippers are charged for a longer distance. Such relief is appropriate because the committed shippers agreed to the rate in an open season, committed shippers and uncommitted shippers are not similarly situated, there is no impact on uncommitted shippers, and there is no issue of discrimination or abuse.³

² *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

³ *See, e.g., Buckeye Pipe Line Co.*, 60 FERC ¶ 61,033 (1992).

The Commission orders:

Express' petition for declaratory order is granted, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.