151 FERC ¶ 61,139
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.

Belle Fourche Pipeline Company
Bridger Pipeline LLC

Docket No. OR15-15-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 15, 2015)

1. On February 12, 2015, Belle Fourche Pipeline Company (Belle Fourche) and Bridger Pipeline LLC (Bridger) (jointly, Petitioners) filed a Petition for Declaratory Order (Petition) requesting approval of the overall rate and tariff structure for coordinated expansions of their systems in Wyoming (Expansion).

2. Petitioners request Commission action on the Petition no later than May 15, 2015, to ensure timely completion of the Expansion and associated transportation service obligations are met. The Commission grants the rulings requested by Petitioners, as discussed below.

Background

3. The Powder River Basin (PRB) is located in southeast Montana and northeast Wyoming, which has recently experienced a surge of oil and gas production. Petitioners explain there is insufficient crude oil transportation capacity in the PRB,[1] and the Expansion will provide much-needed takeaway capacity.

4. The Expansion involves the coordinated extension of the Belle Fourche and Bridger systems including construction of new pipeline and truck stations and the expansion of existing piping on Petitioners' systems. Specifically, the Expansion will increase capacity on the existing pipeline segment stretching from the Highway 450 station and the Highway 59 station (Historical Origin Points) to Guernsey, Wyoming (Expansion Pipeline). The Expansion will also include construction of new truck stations

[1] Petition at 4-5.

at or upstream of the Historical Origin Points (New Origination Stations) that will receive crude oil to be transported by pipeline to Guernsey, Wyoming. New gathering systems located upstream of the Expansion Pipeline will also be added (Gathering System Origin). The Petitioners explain that once crude oil is delivered to Guernsey, shippers will have significant flexibility to deliver crude oil to a variety of interstate pipeline systems reaching multiple downstream refinery and terminal destinations.[2]

5. The Expansion involves a significant capital investment. To finance the Expansion, Petitioners held a widely publicized open season between July 21, 2014 and September 26, 2014, seeking long-term volume commitments by shippers (Committed Shippers) willing to execute a throughput and deficiency agreement (T&D). During the open season, Petitioners made open season materials and other information available to all interested parties and invited questions and comments. The materials also invited shipper revisions to the terms, conditions, and service commitment options, provided those comments were received ten days prior to the conclusion of the open season.[3] In addition, Petitioners made available the proposed committed and uncommitted rates for the Expansion in addition to a *pro forma* T&D, if the interested shippers executed a confidentiality agreement. The confidentiality agreement allowed potential Committed Shippers to raise concerns about the Expansion with the Commission as long as the party would disclose such information under seal. Petitioners explain the tariffs that will govern transportation on the Expansion are already on file with the Commission and both became effective without protest or complaint.[4]

Terms of the Project

6. Petitioners state under the terms of the T&D, Committed Shippers were required to make an aggregate monthly volume commitment (Project Volume Commitment) on the Expansion for a term of 5 years, which can be met by shipment from any of the five available origin points of the system. Petitioners state that few producers in the PRB region ship their own production; instead, crude oil marketers often make the shipping arrangements. As marketers typically enter into short-term agreements with producers, Petitioners maintain that changes in producers and production locations where crude is

---

[2] *Id*. at 2-3.

[3] *Id*. at 6.

[4] Petitioners state F.E.R.C. No. 26.7.0 will govern transportation service on the portion of the Expansion owned and operated by Bridger, and F.E.R.C. No. 112.12.0 will govern the transportation service for the portion of the Expansion owned and operated by Belle Fourche. *Id*.

sourced often occurs, as frequently as month-to-month. Therefore, Petitioners suggest they are offering flexible origin points to allow shippers to effectively meet market and contract demands.

7. The T&D also requires each Committed Shipper planning to ship volumes from a New Origination Station to commit to transport a certain number of barrels from specific origin station(s) (Station Volume Commitment). The minimum Project Volume Commitment or Station Volume Commitment is 2,500 barrels per day. Petitioners explain the Station Volume Commitment will ensure sufficient financial backing to support the construction and operation of each New Origination Station.[5]

8. If a Committed Shipper fails to meet either its Project Volume Commitment or Station Volume Commitment, it is required to make a deficiency payment to the Petitioners in the amount of $1.45 per barrel for each barrel under the Project Volume Commitment and $0.25 per barrel for each barrel under the Station Volume Commitment.[6] Petitioners state the proposed rates are near the median rate for service from all origins to the Expansion destination point and provide a reasonable approximation of the rate the Committed Shipper would have paid if the Project or Station Volume Commitment were fulfilled. Petitioners note they do not seek Commission assurance for the Station Volume Commitment rate structure and applicable deficiency rate because the rate structure is tied solely to the truck station facilities and services and therefore, is not within Commission jurisdiction.[7]

9. Petitioners state 90 percent of the Expansion capacity was available for Committed Shipper volume commitments, with the remaining 10 percent reserved for Uncommitted Shippers, or shippers that did not elect to enter into a T&D with Petitioners during the open season.[8]

10. The open season resulted in three tiers of shippers with different rate structures: Committed Shippers with Firm Service, Committed Shippers with Non-Firm Service, and Uncommitted Shippers. Petitioners maintain Committed Shippers with Firm Service will receive firm service in exchange for premium rates compared to the rates applicable to Uncommitted Shippers shipping from the same Gathering System Origins. Committed Shippers with Non-Firm Service will receive rates that are equal to or at a discount

[5] *Id*. at 7-8.

[6] *Id*. at 8-9.

[7] *Id*.

[8] *Id*. at 9.

compared to those applicable to Uncommitted Shippers shipping from the same Existing or New Origination Stations.[9]

11. Petitioners explain the T&D allows for the Committed Rates to be adjusted in accordance with the Commission's indexing methodology[10] or any successor indexing methodology, and propose to file the Committed Rates as settlement rates pursuant to section 342.4(c)[11] for the term of the T&D.[12]

12. Petitioners state only Committed Shippers that elect to ship all or a portion of their Project Volume Commitment from a Gathering System Origin will receive Firm Service and will not be subject to prorationing during normal operations. Furthermore, any portion of a Committed Shipper's Project Volume Commitment that is shipped from a Truck Origination Station will be subject to prorationing. In the event of prorationing, those shippers would be considered Regular Shippers and prorationing would be based on a historical prorationing model, using the greater of: (1) the actual shipments on the Expansion Pipeline during a base period; or (2) the monthly shipper Project Volume Commitment.[13]

13. According to Petitioners, most marketers and producers in the PRB have leases tied to gathering systems with no trucking alternative. Petitioners explain production that is tied to gathering systems is subject to disruption or shut-ins if shippers are subject to prorationing because shippers typically lack flexibility to transport volumes by other methods.[14] Petitioners state production disruptions would constitute a significant financial hardship for the producers and marketers in addition to consumers of crude oil, and consequently it was critical to such shippers that the Petitioners offer Firm Service from Gathering System Origins.

---

[9] *Id*. at 10.

[10] 18 C.F.R. § 342.3(d) (2014).

[11] 18 C.F.R. § 342.4(c) (2014).

[12] Petition at 10.

[13] *Id*. at 11.

[14] Petitioners also state if trucking services were to be utilized, producers would have to engage in the costly and time-consuming build-out of facilities and the redesign of tank batteries, which are specifically developed to rely on either gathering systems or trucking services.

14. Petitioners explain the T&D has an initial term of 5 years, which will automatically be renewed for successive one-year periods, unless terminated by either party upon written notice at least 90 days prior to the expiration of the initial or renewed term.[15]

Requested Rulings

15. The Petitioners request Commission confirmation and approval of the following elements of the Expansion as just and reasonable and not unduly discriminatory or preferential:

A. The T&D will be honored and its provisions will be upheld and will govern the transportation services the Petitioners provide to Committed Shippers during the T&D term.

B. The Petitioners may file the Committed Rates as settlement rates during the term of the T&D, including upon the initial filing of the Committed Rates in the Petitioners' tariffs, pursuant to section 342.4(c) of the Commission's regulations.

C. The Petitioners may allocate up to ninety percent of the total capacity available on the Expansion Pipeline to Committed Shippers, while reserving the remaining ten percent of capacity for Uncommitted Shippers.

D. Committed Shippers may obtain Firm Service by paying premium rates compared to the rates applicable to Uncommitted Shippers shipping from the same Gathering System Origins; Committed Shippers receiving Non-Firm Service may be charged rates that are equal to or at a discount compared to those applicable to Uncommitted Shippers shipping from the same Existing or New Origination Stations.

E. Committed Shippers may ship their Project Volume Commitment from any available origin points that utilize the Expansion Pipeline.

F. The Petitioners may implement during the terms of the T&Ds the proposed prorationing policy for allocating capacity on the Expansion Pipeline, including the provision of Firm Service on the Expansion Pipeline for only those Committed Shippers that ship crude oil from Gathering System Origins.

[15] *Id*. at 12.

G. The Petitioners may implement their proposed Deficiency Payment Rate for calculating deficiency payments owed to them from Committed Shippers that fail to ship their Project Volume Commitments in any given month.

H. The Petitioners may implement automatic extensions of the Initial Term of the T&D in accordance with the T&D.

Public Notice, Interventions, Protests, and Comments

16. Notice of the Petition was issued on February 19, 2015, providing for motions to intervene, comments and protests to be filed on or before March 13, 2015. Pursuant to Rule 214 of the Commission's regulations,[16] 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 disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

Commission Analysis

17. The Commission will grant the rulings requested by the Petitioners. Granting these rulings will provide regulatory certainty required for the Expansion to proceed, providing a much-needed outlet for crude oil in the Powder River Basin production area.

18. The Commission will grant the requested ruling to honor and uphold the T&D governing the transportation services. The Commission has elsewhere approved the terms of the agreements executed between Committed Shippers and pipelines for volume commitments entered into during an open season and confirmed those terms would be applied during the established agreement.[17]

19. The Commission also grants the request permitting Petitioners to file Committed Shipper rates as settlement rates during the term of the T&D. Although the Commission's regulations do not provide specifically for negotiated initial rates with

[16] 18 C.F.R. § 385.214 (2014).

[17] *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 23 (2012); *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008) ("[T]he Commission clarifies that the agreed-upon terms of the TSA will govern the determination of the committed shippers' rates over the term of the TSA[.]").

agreed-to future rate changes, the Commission has ruled that such contracts are consistent with the spirit of section 342.4(c) of the Commission's regulations.[18]

20. Petitioners' reservation of ten percent of the Expansion capacity for Uncommitted Shippers is appropriate. The Commission finds the amount of capacity set aside ensures sufficient access to the Expansion capacity for shippers who did not enter into term agreements.

21. The Commission approves the Petitioners' proposal to offer firm service at a premium rate. The Commission has held firm service is permissible under the Interstate Commerce Act provided Committed Shippers pay a premium rate compared to Uncommitted Shippers, and the committed rates and priority service options were offered during an open season.[19] The Commission has also recognized it is appropriate for Committed Shippers to pay discounted rates because they commit to shipping larger volumes compared to shippers that do not make such a commitment.[20]

22. The Commission approves the T&D provision which allows Committed Shippers to ship their Project Volume Commitment from any available origin point on the Expansion Pipeline. Such provisions provide flexibility to Committed Shippers to respond to market demands and commercial needs while offering pipelines sufficient investment to finance expansions.

23. The Commission approves the Petitioners' proposed prorationing policy, including the provision which offers Firm Service only to those Committed Shippers transporting crude oil from Gathering System Origins. The Commission finds the provision non-discriminatory, as it was provided to all potential shippers during a widely-publicized open season. Further, the reservation of 10 percent of the Expansion capacity allows reasonable access for shippers who do not have origin points at the Gathering System Origins to gain access to the pipeline.

---

[18] *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

[19] *Shell Pipeline Company LP*, 139 FERC ¶ 61,228, at P 21 (2012).

[20] *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219, at 61,866 (2002) ("[T]he Commission has permitted nondiscriminatory, discounted rates to attract a particular type or group of shipper(s) who are amenable to committing substantial volumes and/or to committing to substantial periods of time.").

24. The Commission approves the Project Volume Commitment deficiency rate. The Commission has previously approved deficiency rate provisions[21] which require shippers to compensate pipelines for unshipped committed volumes. Such provisions ensure pipelines receive finances as agreed upon, which encourages future investment.

25. The Commission will approve the contract extension rights. The Commission has approved similar contract extension/rollover rights in prior declaratory orders addressing new pipeline capacity.[22]

26. Accordingly, based upon the circumstances described in the Petition and relying on the representations made therein, the Commission finds that Petitioners' proposed rate structure and terms and conditions contained in the T&D are just and reasonable and not unduly discriminatory or preferential.

<u>The Commission orders:</u>

The Commission grants the Petition, consistent with the discussion above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

---

[21] *CenterPoint Energy Bakken Crude Services, LLC,* 144 FERC ¶ 61,130, at PP 16-17 (2013).

[22] *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at P 39 (2012).