151 FERC ¶ 61,150
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.

Monarch Oil Pipeline, LLC Docket No. OR15-21-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 18, 2015)

1. On March 4, 2015, Monarch Oil Pipeline, LLC (Monarch), a subsidiary of Monarch Natural Gas Holdings, LLC (Monarch Holdings) filed a Petition for Declaratory Order (Petition). Monarch requests approval of its proposed rates for shippers making acreage dedications and/or volume commitments, as well as the rate structures and terms and conditions of service relating to its proposed pipeline project (Project). Monarch seeks Commission action on its Petition by May 18, 2015, so the Project can be placed in service by June 1, 2015.

2. As discussed below, the Commission grants the Petition.

Background

3. Monarch explains there is limited crude oil pipeline takeaway capacity in the northeast region of the Texas Panhandle, so producers must rely on trucking to move production. According to Monarch, a producer with leases in Texas and Oklahoma (Anchor Shipper) solicited proposals to build crude oil pipeline facilities that would aid in transporting its production to downstream markets. Monarch explains it was selected to build the pipeline and negotiated a 10-year Transportation and Gathering Services Agreement (TGSA) with the Anchor Shipper in September 2014. Monarch states the Anchor Shipper will become a Committed Shipper when the pipeline commences service.[1]

[1] Throughout its Petition, Monarch refers to the Anchor Shipper as a Committed Shipper as appropriate.

4. Monarch explains the TGSA's terms and conditions were modified twice: first to extend the time during which Monarch was obligated to commence an open season, and second, during the open season to make changes to the *pro forma* tariff suggested by potential third-party shippers.

<u>Description of Project</u>

5. Monarch explains the Project consists of four parts: (a) a crude oil pipeline gathering system originating at various Central Receipt Points (CRPs) in Lipscomb and Hemphill Counties, Texas with 30,000 bpd of capacity (Gathering System); (b) a central tankage, truck unloading, and blending and batching station at the terminus of the Gathering System in Area 161 in Lipscomb County, Texas (Casey Station); (c) an approximately 38-mile, 8-inch diameter greenfield interstate crude oil pipeline with a capacity of 30,000 barrels per day (bpd) (Transmission System); and (d) an intrastate downstream crude oil transmission system from the Casey Station to a Texas refinery. The interstate portion of the system will move crude oil southeastward through the Gathering System and Transmission System to an interconnection with Plains Pipeline, LP's (Plains) Reydon Station located in Roger Mills County, Oklahoma.[2] Crude oil can enter the Monarch system at the CRPs or at Casey Station.

6. Monarch states Casey Station will serve as the terminus of the Gathering System and as a receipt point for the Transmission System. Monarch states shippers may use Casey Station prior to transporting their volumes on the Transmission System; however, Monarch asserts that the Casey Station facilities will not perform FERC-jurisdictional transportation functions and will not provide facilities essential to further transportation on the Monarch system.[3] Monarch explains crude oil volumes shipped from the CRPs on the Gathering System will not be required to stop at Casey Station for further transportation on the Transmission System, and may be shipped directly downstream to Reydon Station.

7. According to Monarch, Casey Station will connect with intrastate pipeline facilities to transport the crude oil to a refinery in Lipscomb County, Texas. Monarch contends the Gathering System (when used for intrastate service), Casey Station, and the intrastate pipeline facilities connecting Casey Station to the Texas refinery are not subject to the Commission's jurisdiction.

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[2] Monarch states that there is also a segment moving crude oil intrastate from the Casey Station to a refinery also located in Lipscomb County that is not the subject of its Petition.

[3] Monarch cites *Lakehead Pipe Line Co., L.P.*, Opinion No. 397, 71 FERC ¶ 61,338, at 62,325 (1995), *reh'g denied*, Opinion No. 397-A, 75 FERC ¶ 61,181 (1996).

Requested Rulings

8. Monarch requests Commission confirmation of the following:

A. The open season for the Project followed Commission guidelines.

B. Monarch properly committed Project capacity to the Anchor Shipper and may continue to commit capacity to open season participants willing to become Committed Shippers.

C. The Committed Rates and rate structure provided in the TGSA, Transportation Services Agreement (TSA), and *pro forma* tariffs are consistent with Commission precedent, are just and reasonable under the Interstate Commerce Act (ICA), and will not be subject to modification or revision except as provided in the TGSA and TSA.

D. Each of the following provisions in the TGSA and TSA is consistent with Commission precedent and is just and reasonable under the ICA:

i. The TGSA provision permitting a reservation of capacity at a Committed Rate with priority treatment in exchange for an acreage dedication.

ii. The treatment of the Committed Rate as a settlement rate in accordance with 18 C.F.R. § 342.4(c) (2014).

iii. The use of a variable Committed Rate structure based on volumes transported on the Monarch system.

iv. The ability to adjust, upward or downward, Committed Shippers' Committed Volumes based on pipeline flows, provided that Uncommitted Shippers at all times will have access to at least 10 percent of the pipeline's capacity.

v. The use of a Priority Capacity Election to reserve premium capacity on a pipeline that otherwise would be subject to prorationing.

vi. The use of the Commission's Oil Pipeline Index annual adjustments, capped at a three-percent increase or decrease for the Committed Shipper.

vii. The contractual provision granting contract extension rights to the Committed Shipper.

Notice and Interventions

9. Notice of the Petition was issued on March 10, 2015, providing for motions to intervene, comments and protests to be filed on or before March 24, 2015. Pursuant to Rule 214 of the Commission's regulations,[4] 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.

Provisions of the TSGA

10. Monarch explains the TGSA provides the Anchor Shipper with up to 7,000 bpd of takeaway capacity on the interstate facilities (Committed Volume) in exchange for the dedication of 30,000 acres in Lipscomb and Hemphill Counties for a 10-year primary term, after which the TGSA may be renewed for consecutive one-year periods.

11. Monarch states there are no minimum volume commitments or throughput and deficiency payment obligations under the TGSA. When the Anchor Shipper flows less than 7,000 bpd, Monarch may use any remaining capacity to flow other shippers' crude oil.

12. Monarch explains the Committed Rate applies only to volumes of crude oil that are produced from wells owned by the Anchor Shipper and/or its affiliates, while all other crude oil shipped by the Anchor Shipper will be subject to the Uncommitted Shipper rate.

A. Open Season

13. Monarch commenced an open season on December 1, 2014, making the terms and conditions of the TGSA available to all interested persons that signed a confidentiality agreement and could meet the same minimum term and acreage commitments made by the Anchor Shipper. The open season was also held to allocate the remaining Transmission System capacity to shippers willing to make volume and term commitments.[5]

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[4] 18 C.F.R. § 385.214 (2014).

[5] Monarch states that potential Committed Shippers that were unable to make acreage dedication commitments were not offered priority access to the Gathering System, which is designed to accommodate an acreage dedication. That system remains available to all shippers, including volumetric shippers, on an uncommitted basis.

14. Monarch contends the open season was transparent and widely-publicized through a press release that was distributed via Business Wire, posted on Monarch's website, and through in-person meetings with potential shippers. Monarch states it extended the original open season to February 20, 2015 to respond to shipper interest and requests to modify certain provisions of the proposed Tariff, publicizing the open season extension in a similar manner.

15. Monarch explains the open season materials included (a) a form of TGSA identical to the TGSA executed by the Anchor Shipper, and (b) a form of TSA with volume and term commitments to be negotiated for transportation-only services on the Transmission System.[6] In addition, both the TGSA and the TSA contained a *pro forma* Rules and Regulations Tariff, a *pro forma* Rates Tariff, and a pipeline map. Monarch explains that any potential shipper willing and able to make the same minimum 30,000 acreage dedication as the Anchor Shipper was considered an "Acreage Dedication Committed Shipper," and in the same class of Committed Shipper as the Anchor Shipper.

16. The open season also solicited long-term, volumetric-only commitments to the Transmission System, offering potential shippers the opportunity to transport crude oil from Casey Station to Reydon Station, with the ability to become Committed Shippers on the pipeline in exchange for volume and term commitments that would be subject to throughput and deficiency payments (Volume Commitment Shippers). The Volume Commitment Shippers and Acreage Dedication Committed Shippers had the same opportunity to access priority service by paying a premium rate (Priority Capacity Elections).

17. According to Monarch, it received no additional binding commitments through the open season process. Consequently, the only binding agreement Monarch received was the initial TGSA executed by the Anchor Shipper, which represents approximately 23 percent of Monarch's 30,000 bpd capacity.

B. <u>Project Capacity Commitments</u>

18. Monarch explains the open season process reserved at least 10 percent of capacity on the Project for Uncommitted Shippers, while the remaining 90 percent remained available to Committed Shippers. Monarch explains that if the Committed Shipper chooses to increase access to capacity (after its initial five year term), that access would still be capped at 90 percent. Monarch contends it reserved the right in its open season

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[6] Monarch states that no shipper had executed a TSA as of the time it filed the Petition. Monarch anticipates that it will enter into TSAs, with substantially similar terms and obligations, in the near future.

process to sign up additional Committed Shippers, while ensuring at least 10 percent of the Project's capacity is reserved for Uncommitted Shippers.

C. **Tiered Rate Structure Based on Volumes and Term**

19. Monarch explains the Acreage Dedication Committed Shipper rate varies with the volumes transported. Under the TGSA, the Committed Shipper (or any other Acreage Dedication Committed Shipper) will pay a variable rate between 200 and 245 cents per barrel for transporting volumes from the CRPs to Reydon Station. The rate will be 220 cents per barrel for the first three months the Monarch system is in service, but for the remainder of the first five years of the TGSA's primary term, the rate will be based on the total average of all crude oil volumes delivered to Reydon Station. Monarch states the Committed Rate for the Acreage Dedication Committed Shipper class will revert to 220 cents per barrel in the sixth year of the TGSA's term.

20. Monarch emphasizes the variable rate structure will reward the Committed Shipper with a lower rate for shipping more volumes and will lower the risk to Monarch if it is unable to fill the pipeline with third-party shipper volumes. Moreover, Monarch explains the Committed Shipper will benefit from a lower rate when volumes shipped by Uncommitted Shippers increase the pipeline's total average daily delivered volumes. Monarch states the Committed Shipper rates are projected to be lower than the Uncommitted Shipper rates for the transportation from the same receipt and delivery points.

21. Monarch contemplates executing variable rate schedules under TSAs with Volume Commitment Shippers for remaining available capacity on its system, (up to 90 percent) on a first-come, first-serve basis. Monarch states it will offer a priority rate in exchange for a term commitment that is backstopped by minimum throughput and deficiency requirements.

22. Monarch states the Commission has approved proposals for shippers paying differing rates depending on the length of term and size of commitment[7] in addition to similar tiered rate mechanisms[8] when incentive rate structures are necessary for oil

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[7] Monarch cites *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006) (*Mid-America*); *Williams Pipe Line Co.*, 80 FERC ¶ 61,402 (1997); *Explorer Pipeline Co.*, 71 FERC ¶ 61,416 (1995).

[8] Monarch cites, *e.g.*, *Dakota Access, LLC*, 149 FERC ¶ 61,275, at P 33 (2014) (*Dakota Access*) (approving variable, incentive rates); *Hiland Crude, LLC*, 148 FERC ¶ 61,228, at P 14 (2014) (*Hiland*) (approving tiered Committed Rate discounts); *Tesoro High Plains Pipeline Co. LLC*, 148 FERC ¶ 61,160, at P 5 (2014) (*Tesoro*) (approving tiered rate structure based on volumes committed).

pipeline projects to be competitive in the marketplace. However, Monarch acknowledges its proposal is somewhat different from prior approvals in that the Committed Rate will vary based not only on the volumes transported by the Acreage Dedication Committed Shipper but also based on volumes flowed by other shippers.

D. Contractual and Tariff Provisions

1. Acreage Dedication

23. Monarch states the Commission has approved petitions for declaratory orders requesting differentiated rates and tariff treatment for shippers that are willing to dedicate producing acreage to a pipeline project for a set term of years.[9]

24. Monarch explains the Anchor Shipper is released from its obligations to ship its dedicated acreage volumes on the Project's pipelines during an extended period of *force majeure* that would affect Monarch's ability to transport the dedication. Monarch further states the commercial transaction allows the Committed Shipper to fulfill its credit obligations through its acreage dedication, and that such provisions were offered to all shippers in a non-discriminatory fashion during the open season.

2. Committed Volumes Adjustment and 10 Percent of Capacity Reserved for Uncommitted Shippers

25. Monarch reiterates the TGSA and the *pro forma* tariff contain a clause providing after the first five years of the TGSA's primary term, the Anchor Shipper's Committed Volumes may be adjusted upwards or downwards[10] based upon 120 percent of its deliveries to the Monarch system, averaged for the immediate prior calendar year, provided that the aggregate Committed Volumes of all Committed Shippers do not exceed 90 percent of the normal operating capacity of the pipeline. Monarch states this option is available to Committed Shippers on a first-come, first-served basis.

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[9] Monarch cites, *e.g., Alpha Crude Connector, LLC,* 149 FERC ¶ 61,001 (2014) (*Alpha)* (approval of committed shipper status to acreage dedication and volume commitment shippers); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014) (*Enable)* (Commission grants request for declaratory order for project based on acreage dedication of one shipper).

[10] Monarch cites *CenterPoint Energy Bakken Crude Servs., LLC,* 144 FERC ¶ 61,130, at P 35 (2013) (*CenterPoint)* (approving contractual provision that permits shippers the ability to adjust to changing market conditions).

3. Proration Policy

26. Monarch states its proration policy permits a Committed Shipper to receive priority service, thereby avoiding prorationing, by paying a premium rate of one cent more than the Uncommitted Rate whenever the pipeline is full, for up to 90 percent of the Project's capacity. Monarch states it offered the same proration-avoidance premium rate benefit to any shipper willing to become a Committed Shipper, either through an acreage dedication or a volume commitment.

27. To the extent no other potential shippers select the Priority Capacity Election, Monarch states its proration policy encourages consistent shipper behavior. Monarch's proration policy allows for Uncommitted Shippers to become Regular Shippers, through a consistent shipping history during a consecutive 12-month base period. Committed Shippers paying a Priority Capacity Election will have first right to capacity for their Committed Volumes. However, Regular Shippers will be able to reduce the severity of proration through the establishment of shipper history.

4. Three Percent Index Adjustment

28. Monarch proposes to raise the Committed Rate in the TGSA by the lesser of (a) the maximum applicable index adjustment as published by the Commission for a given years, or (b) three percent. Further, the provision provides if the generally applicable index adjustment for a given year would result in a rate decrease, Monarch will not be required to decrease the Committed Rate by more than three percent. Additionally, the Committed Rate would never decrease below the rate set forth in the TGSA. Monarch suggests such provisions are consistent with Commission precedent.[11]

5. Contract Extension

29. Monarch states in recognition of the contribution of long-term Committed Shippers to the financial underpinnings of an oil pipeline project, the Commission has accepted "rollover" and "evergreen" provisions contained in Committed Shipper contracts that permit the Committed Shipper to extend or rollover contracts after their termination.[12] Monarch proposes to allow Committed Shippers to automatically renew

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[11] Monarch cites *Tesoro*, 148 FERC ¶ 61,160, at P 27 (permitting committed shipper rates to increase at 3.5% annually).

[12] Monarch cites *Alpha Crude Connector, LLC*, 149 FERC ¶ 61,001 (2014) (declaratory order granting application requesting rollover provision); *CenterPoint*, 144 FERC ¶ 61,130, at P 35 (authorizing contract extension rights); *Kinder Morgan Pony Express Pipeline, LLC*, 141 FERC ¶ 61,249, at P 20 (2012) (*Pony Express)* (authorizing contract extension right in PDO).

their contracts for consecutive one-year periods after the initial term has concluded. Under this contract provision, either party may terminate the agreement thereafter by written notice to the other party one year prior to expiration of the primary term or any Secondary Term.

Commission Analysis

30. Consistent with general Commission guidelines regarding open seasons, the Commission finds that Monarch's open season was widely-publicized and transparent, and offered all potential shippers the same opportunity to become Committed Shippers or Anchor Shippers, receiving the same terms as the original TGSA.

31. The Commission also finds Monarch properly committed Project capacity to the Anchor Shipper and may continue to commit capacity to open season participants willing to become Committed Shippers. All shippers during the open season had the opportunity to sign the same agreement as the Anchor Shipper with the same terms and conditions. Monarch may continue to commit capacity to participants, so long as all shippers are offered the same terms and conditions, and reasonable access to Monarch is reserved for Uncommitted Shippers.

32. The Commission approves the use of a variable Committed Rate structure based on the total average of volumes transported on the Monarch system. Monarch's proposal varies from prior rate structures approved by the Commission in that the rate within a certain class of shippers will vary. Under Monarch's proposal, the greater the average daily delivered volumes, (combined from both Committed and Uncommitted Volumes), the lower the rate will be for the entire class of Committed Shippers. Consequently, all Committed Shippers will pay the same, fluctuating, rate. While the combination of Committed and Uncommitted Volumes is a new variation of volume discount rates, the Commission finds no discrimination because the rate structure was properly described and offered in the open season, allowing shippers the opportunity to select the desired volume levels for transportation.

33. Further, the Commission finds the Committed Rates and rate structure provided in the TGSA, TSA, and *pro forma* tariffs are consistent with Commission precedent, appear just and reasonable under the Interstate Commerce Act, and accordingly will not be subject to modification or revision except as provided in the TGSA and TSA.

34. Based on the facts and circumstances as presented in the Petition and set forth above, the Commission grants the declarations, assurances, and confirmations requested by Monarch in its Petition.

<u>The Commission orders:</u>

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.