151 FERC ¶ 61,192
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.

Sunoco Pipeline, L.P. — Docket No. OR15-18-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued June 1, 2015)

1. On February 23, 2015, Sunoco Pipeline, L.P. (Sunoco) filed a petition for declaratory order (Petition) requesting approval of the proposed rate structure, proration policy, and other matters related to the Delaware Basin Extension Project (Project). Anticipating that the project will commence service in the first half of 2016, Sunoco requests Commission action on this Petition no later than June 1, 2015. As discussed below, the Commission grants the Petition.

I. **Background**

2. Sunoco plans to construct an approximately 130-mile pipeline to transport crude petroleum from origin points in the Delaware Basin in Lea County, New Mexico, Loving County, Texas, and Andrews County, Texas, to destination points in Midland, Texas. The Project is expected to have an initial capacity of 100,000 barrels per day (bpd) and an expected in-service date in the first half of 2016.

3. Sunoco states the Project will enable producers in the rapidly expanding Delaware Basin to move crude oil more easily from various origin points to Midland, Texas. Sunoco states shippers have expressed strong interest due to production growth in the region.

4. Sunoco states that it held an open season for the Project from October 15, 2014, to December 16, 2014. Sunoco represents that notice of the open season was provided to interested parties with additional notice provided by press release. Sunoco notes twenty shippers signed confidentiality agreements to view the terms of the Transportation Service Agreement (TSA) and two shippers committed to the project. Sunoco states it is currently evaluating whether to conduct a supplemental open season.

II. Requested Rulings

5. Sunoco requests Commission approval of the following terms related to the Project:

A. a tariff rate structure that provides different rates for committed volumes pursuant to the TSA and for uncommitted volumes;

B. a tariff structure that allows a committed shipper to pay the committed rate on its throughput volumes up to 125 percent of its initial committed volume if such initial committed volume is less than 20,000 bpd, or on all of its throughput volumes if its initial committed volume is 20,000 bpd or more;

C. the principle that committed shipper rates will be treated as the equivalent of settlement rates for the term of the TSAs, pursuant to Section 342.4(c) of the Commission's regulations and committed shippers will pay the rate for which they contracted in the TSA for the entire duration of the contract term;

D. a one-time right for committed shippers to increase their volume commitments on the Delaware Basin Extension if there is sufficient available capacity;

E. the provision of the proration policy under which 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. a lottery mechanism to allocate capacity available to new shippers if no new shipper would otherwise receive a minimum batch.

III. Details of Filing

6. Sunoco asserts that the proposed rate difference between committed and uncommitted rates is not discriminatory because all interested parties had the opportunity to take part in the open season and agree to the committed rate.[1] Sunoco states the Commission has repeatedly held that it will treat committed rates as the equivalent of settlement rates and committed shippers will be obligated to pay these rates over the term

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[1] Sunoco Petition at 8 (citing *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 22 (2008)).

of the TSA.[2] Sunoco states the Commission has also previously approved provisions allowing committed shippers to pay incentive rates for volumes nominated above the contractually committed volume level.[3]

7. Sunoco states that under its proration policy 90 percent of pipeline capacity will be reserved for regular shippers and 10 percent will be reserved for new shippers.[4] When allocating capacity among regular shippers, Sunoco explains uncommitted shipper history will be based upon the shipper's actual use over a 24-month base period. For committed shippers, Sunoco will use the greater of the shipper's actual barrels shipped over a 24-month base period or the shipper's monthly minimum volume commitments. Sunoco states the Commission has previously approved similar provisions because the committed shippers' volume commitments are financially supporting construction of the pipeline.[5]

8. Also pursuant to the proration policy, a new shipper's individual allocation is not to exceed 2.5 percent of the pipeline segment's then-available capacity. Sunoco states if no new shipper is allocated the minimum batch size of 50,000 barrels, Sunoco will administer a lottery for the total number of minimum batch allocations available. Sunoco states the Commission has previously approved similar lottery provisions for allocating new shipper capacity.[6]

9. Sunoco states that committed shippers will have a one-time option to increase their volume commitment by providing notice at least 90 days before the second anniversary of the pipeline's in-service date. Sunoco states that so long as there is sufficient unused initial committed capacity on the pipeline, a committed shipper will be eligible to receive the volume increase. Consistent with similar provisions the Commission has approved,

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[2] *Id.* at 10 (citing *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at PP 12-13 (2013)).

[3] Sunoco Petition at 9 (citing *CenterPoint Energy Bakken Crude Serv., LLC*, 144 FERC ¶ 61, 130, at P 28 (2013)).

[4] Sunoco defines a "regular shipper" as a committed shipper on the pipeline or a shipper that has had actual shipments during at least eighteen months of the base period (defined as the twenty four month period ending at the second month prior to the allocation month). A "new shipper" is any other shipper on the pipeline.

[5] Sunoco Petition at 12 (citing *Shell Pipeline Co.*, 141 FERC ¶ 61,017, at P 14 (2012)).

[6] *Id.* (citing *Seaway Crude Pipeline Co., LLC*, 143 FERC ¶ 61,036, at P 16 (2013)).

Sunoco emphasizes that 10 percent of pipeline capacity will always be reserved for new shippers.[7]

IV. <u>Public Notice, Interventions, Protests, and Comments</u>

10. Notice of the Petition was issued on February 25, 2015, providing for motions to intervene, comments and protests to be filed on or before March 23, 2015. Pursuant to Rule 214 of the Commission's regulations,[8] 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.

11. On March 23, 2015, the Liquid Shippers Group filed a protest.[9] On April 14, 2015, Sunoco filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise ordered by the decisional authority.[10] In this case, the Commission will accept Sunoco's answer because it assisted the Commission in its decision-making process. On April 22, 2015, the Liquid Shipper Group withdrew its protest stating that Sunoco's answer had addressed their concerns.[11]

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[7] Sunoco Petition at 12 (citing *Tesoro High Plains Pipeline Co. LLC*, 148 FERC ¶ 61,160, at P 18 (2012)).

[8] 18 C.F.R. § 385.214 (2014).

[9] The Liquid Shippers consist of: Apache Corporation; Encana Marketing (USA) Inc.; Marathon Oil Company; Noble Energy, Inc.; and Anadarko Petroleum Corporation.

[10] 18 C.F.R. § 385.213(a)(2) (2014).

[11] In its original filing, Sunoco proposed a right-of-first offer (ROFO) for committed shippers should Sunoco decide to build an expansion from the terminus of this Project at Midland to a new destination in Nederland, Texas. The Liquid Shippers objected to this ROFO as preferentially tying access to future downstream segments on committed participation in the current Project. In Sunoco's answer, it withdrew this ROFO proposal, and also clarified and further supported its proposal in response to the Liquid Shippers' protest. The Liquid Shippers then filed to state that Sunoco had addressed their concerns, and that they therefore withdrew their protest.

V. Discussion

12. The Commission grants Sunoco's Petition. The Commission approves Sunoco's requests for: (a) rate structures which provide different rates for committed shippers and uncommitted shippers; and (b) treatment of the committed shippers' TSA rates as settlement rates pursuant to section 342.4(c)[12] of the Commission's regulations, which the committed shippers will be obligated throughout the TSA term. These requests are consistent with Commission policy, which allows for such rate structures provided the pipeline held an appropriate open season and adopts appropriate polices for making capacity available to uncommitted shippers. The Commission also approves Sunoco's proposal to permit committed shippers to pay the committed incentive rate for volumes shipped in excess of the committed volumes. The Commission has previously approved similar provisions.[13]

13. The Commission also grant's Sunoco's request for approval of a prorationing policy defining the volume history for committed shippers as the greater of the shipper's actual shipments or the shipper's TSA volume commitments. Sunoco's proposal is consistent with similar prorationing methodologies previously approved by the Commission.[14] The Commission finds Sunoco's proposed lottery mechanism for allocating capacity to new shippers during prorationing to be consistent with Commission policy. The Commission has held that similar lottery mechanisms allocate capacity to new shippers in a fair and efficient manner.[15]

14. Finally, as proposed in the Petition, Sunoco may permit committed shippers to request a one-time increase in volume commitments. Sunoco has assured the Commission that 10 percent of the pipeline capacity will remain available for new shippers, and thus, Sunoco's proposal is consistent with Commission policy.[16]

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[12] 18 C.F.R. § 342.4(c) (2014).

[13] *CenterPoint*, 144 FERC ¶ 61,130 at P 28.

[14] *Shell*, 141 FERC ¶ 61,017 at P 14.

[15] *Sunoco Pipeline L.P. and SunVit Pipeline LLC*, 147 FERC ¶ 61,204, at P 31 (2014); *Seaway*, 143 FERC ¶ 61,036 at P 16.

[16] *Tesoro*, 148 FERC ¶ 61,160 at P 18.

<u>The Commission orders:</u>

Based on the facts presented by the Petition, 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.