152 FERC ¶ 61,005
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.

Marathon Pipe Line LLC | Docket No. OR15-17-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 1, 2015)

1. On February 18, 2015, Marathon Pipe Line LLC (MPL) filed a petition for declaratory order (Petition) requesting approval of priority service, and the overall tariff rate structure and terms of service, in connection with an expansion of its crude oil pipeline from Patoka, Illinois to Lima, Ohio (Expansion).

2. MPL requests Commission action on the Petition no later than July 1, 2015 to ensure timely completion of the Expansion and fulfillment of associated transportation service obligations. The Commission grants the rulings requested by MPL, as discussed below.

**Background**

3. MPL currently operates a pipeline with a capacity of 249,000 barrels per day from Patoka, Illinois to Lima, Ohio. MPL explains that there is an oversupply of crude oil in the Bakken, Canadian, U.S. Mid-Continent, and U.S. Gulf Coast regions.[1] Currently, insufficient pipeline capacity exists to move the excess supply. The Expansion will provide needed capacity and eliminate a bottleneck on its pipeline.[2]

4. The Expansion would involve increasing capacity along the line from Patoka to Lima by an additional 18,000 barrels per day. This would be accomplished by adding two new pump stations and decommissioning another pump station, as well as by introducing drag-reducing agents.[3]

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[1] Petition at 3, 6-8.

[2] *Id.*

[3] *Id.* at 7.

5. The Expansion necessitates material capital investment. To finance the Expansion, MPL held a well-publicized open season between December 1, 2014 and December 31, 2014, seeking long-term volume commitments by shippers (Committed Shippers) willing to execute a transportation services agreement (TSA). During the open season, MPL made open season materials and other information available to all interested shippers. One non-affiliated shipper provided enough interest to support the Expansion.[4]

**Terms of the Project**

6. MPL states that under the terms of the TSA, Committed Shippers were required to commit to ship specified volumes for a term of 10, 15 or 20 years.[5]

7. Each Committed Shipper would agree to ship an amount equal to their Quarterly Volume Commitment as defined in the TSA, and pay a rate with Minimum Fixed Rate component and a Variable Rate component. These rates would be at a premium over the current uncommitted rate of $0.5499 per barrel for existing capacity.[6] A Committed Shipper will not be subject to prorationing under normal operating circumstances, unless it exceeds its committed volumes. MPL's historic prorationing policy on the Existing Capacity will remain unchanged.[7]

8. The Minimum Fixed Rate reflects estimated costs to complete the expansion. Bidders could use a higher, but not lower rate when submitting their capacity request, with MPL using the lowest rate of accepted bids for all Committed Shippers. The estimated Minimum Fixed Rate will be tiered based on the duration of the commitment, as follows: $1.63 per barrel for a 10 year term; $1.36 per barrel for a 15 year term; and $1.24 per barrel for a 20 year term, with these rates to be adjusted upward or downward by up to 15 percent to more accurately reflect actual costs when known. The Minimum Fixed Rate will also be subject to an annual rate increase of 4 percent.[8]

9. Committed Shippers that miss their Quarterly Volume Commitment will be required to make Quarterly Deficiency Payments. Quarterly Deficiency Payments will

[4] *Id*. at 8.

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

[6] *Id.*

[7] *Id.* at 11.

[8] *Id.*

include only the Minimum Fixed Rate component.[9] However, certain flexibility provisions exist including (a) the ability to apply Quarterly Deficiency Payments as prepayments for shipments in excess of minimum requirements over the next four quarters, and (b) the ability to nominate, following deficient months, certain volumes from subsequent months to count towards the Quarterly Volume Commitment.[10]

10. The Variable Rate component reflects fuel and power costs, and will be $0.09 per barrel for the duration of the commitment regardless of the terms selected.[11]

11. MPL explains that after each TSA's initial term, a Committed Shipper may extend its term up to two times with the committed rate for the extended term being set at a rate that is $0.05 per barrel higher than the uncommitted rate, as adjusted annually pursuant to the FERC index.[12]

**Requested Rulings**

12. MPL requests Commission confirmation and approval of the following as just and reasonable and not unduly discriminatory or preferential:

A. The committed rates provided for in the TSA will be treated as settlement rates during the term of the TSA, including upon their initial filing in the pipeline's tariff and any subsequent adjustments pursuant to section 342.4(c) of the Commission's regulations.

B. The TSA will be honored and its provisions will be upheld and will govern the transportation services MPL provides to a committed shipper during the term of the TSA.

C. MPL may provide priority capacity at a premium rate on the Patoka to Lima Expansion which represents 100 percent of the Expansion Capacity and 8 percent of the total post-expansion capacity of MPL's Patoka to Lima pipeline.

D. The committed rates contain a Minimum Fixed Rate component, which is based on the estimated costs of the Patoka to Lima Expansion, and a Variable Rate component, which is based on fuel and power costs. Prior to the estimated in-service

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[9] *Id.*

[10] *Id.* at 18-19.

[11] *Id.* at 9.

[12] *Id.* at 10.

date of the project, MPL may increase or decrease the Minimum Fixed Rate by up to 15 percent to reflect the actual costs of the Patoka to Lima Expansion. The resulting rate will be the rate filed in the FERC tariff as the committed rate for the Expansion Capacity.

E. The Minimum Fixed Rate component of the committed rate may be increased annually by 4 percent.

F. A committed shipper may extend the term of its TSA for up to two renewal terms of five years each, in which case the committed rate shall be reduced to a rate that is $0.05 per barrel higher than the uncommitted rate at that time, as adjusted annually pursuant to the FERC index.

G. A committed shipper that is required to make a Quarterly Deficiency Payment as defined in the TSA is entitled to a Prepaid Transportation Credit to the shipper's account which can be applied during the next rolling four calendar quarters to any amounts due to MPL for deliveries on the pipeline that exceed its commitment under the TSA.

H. If, during a given month, all or a portion of the Expansion Capacity is not nominated in accordance with the nomination procedures in the tariff, a committed shipper has the opportunity on the first business day of the month and every seven days thereafter to nominate additional volumes for transportation that month, which shall be counted toward the shipper's Quarterly Volume Commitment under the TSA.

**Public Notice, Interventions, Protests, and Comments**

13. Notice of the Petition was issued on February 24, 2015, providing for motions to intervene, comments and protests to be filed on or before March 18, 2015. Pursuant to Rule 214 of the Commission's regulations,[13] 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**

14. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide regulatory certainty required for the Expansion to proceed, providing a much-needed outlet for crude oil in the Patoka production area.

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[13] 18 C.F.R. § 385.214 (2014).

15. The Commission grants the request permitting MPL to file Committed Shipper rates as settlement rates during the term of the TSA. Although the Commission's regulations do not provide specifically for negotiated initial rates with 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.[14]

16. The Commission grants the requested ruling to honor and uphold the TSA governing the transportation services. The Commission has previously 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.[15]

17. MPL's reservation of 92 percent of the overall post-Expansion Patoka to Lima capacity for Uncommitted Shippers is appropriate. The Commission finds the amount of capacity set aside ensures sufficient access to the Patoka to Lima capacity for shippers who did not enter into term agreements.

18. The Commission approves MPL's proposal to offer priority service at a premium rate of at least one cent per barrel over the uncommitted rate, as discussed in the Petition. The Commission has held priority service permissible under the Interstate Commerce Act provided Committed Shippers pay a premium rate of at least one cent per barrel more than Uncommitted Shippers, and the committed rates and priority service options were offered during an open season.[16]

19. The Commission approves the contract extension rights. The Commission has approved similar contract extension/rollover rights in prior declaratory orders addressing new pipeline capacity.[17]

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

[15] *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Company*, 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[.]").

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

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

20. The Commission approves the deficiency rate and related rights of the Committed Shippers. The Commission has previously approved deficiency rate provisions[18] which require shippers to compensate pipelines for unshipped committed volumes. Such provisions ensure pipelines receive finances as agreed upon, which encourages future investment.

21. Based upon the circumstances described in the Petition and the representations made therein, the Commission finds that MPL's proposed rate structure and terms and conditions of service contained in the TSA are just and reasonable and do not result in undue discrimination or undue preference. Accordingly, the Commission grants the rulings as sought in MPL's Petition.

The Commission orders:

The Petition is granted as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.

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