

152 FERC ¶ 61,026
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.

Navigator BSG Transportation &
Storage, LLC

Docket No. OR15-24-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 10, 2015)

1. On April 29, 2015, Navigator BSG Transportation & Storage, LLC (Navigator) filed a petition for declaratory order requesting that the Commission approve the overall tariff, rate and priority service structure for its proposed new crude oil pipeline system that begins in various West Texas counties in the Permian Basin and terminates near Colorado City, in Scurry County, Texas (the Big Spring Gateway Crude Oil Pipeline System (hereinafter the Project)). Transportation service on the Project is scheduled to commence in the second half of 2015. Navigator asserts that the requested rulings in the petition are consistent with Commission precedent and policy and should be granted. Navigator requests that the Commission issue an order granting the petition by July 10, 2015, to enable Navigator to meet its transportation service obligations and for the shippers to utilize the new transportation capacity as soon as possible. As discussed below, the Commission grants Navigator's petition.

Background

2. Navigator developed its pipeline to serve oil producers and other shippers in the Permian Basin. Navigator states the Permian Basin is a producing region that has seen a substantial increase in crude oil production. Navigator's Project will have a capacity of 140,000 barrels per day (bpd), 250 miles of gathering pipeline and 200 miles of mainline pipeline. Navigator will provide both interstate and intrastate transportation services.

3. The Project consists of the Big Spring Segment and the CC Segment. The Big Spring Segment is proposed to have various subsets of pipelines (referred to as Segments A through G) with origin points in several counties in West Texas. Segments A through G will converge at Navigator's Big Spring Terminal in Howard County, Texas. The Project will also have several truck injection stations along the Big

Spring Segment. From the Big Spring Terminal the Project will proceed in a northeasterly direction terminating at Navigator's facilities near Colorado City in Scurry County, Texas (CC Segment). Near Colorado City, the Project will interconnect with BridgeTex Pipeline, Permian Express II Pipeline and the West Texas Gulf Pipeline. Navigator states that the Project will provide West Texas producers a direct path to approximately 950,000 bpd of pipeline takeaway capacity from Colorado City to Texas Gulf Coast and Midcontinent market centers.

4. Due to the substantial capital investment necessary to undertake the Project, Navigator held a widely-publicized open season for the Project to obtain commitments from prospective shippers. Navigator's open season for 75,000 bpd commenced on September 18, 2013, and concluded on December 13, 2013. Navigator received sufficient shipper commitments to proceed with the Project as proposed. Navigator was subsequently acquired by First Reserve, a global private equity and infrastructure investment firm. Navigator re-evaluated the Project and decided to design it with a capacity of 140,000 bpd. Navigator held a supplemental open season beginning on February 2, 2015, and closing on April 7, 2015. Navigator received sufficient shipper commitments to proceed with the Project designed with a capacity of 140,000 bpd.

5. In the open season notices, Navigator announced that it was seeking long-term volume commitment for the Project. Navigator made available to potential interested shippers detailed open season notices that described the open season process. Navigator also provided potential interested shippers the form of transportation services agreement, a *pro forma* FERC tariff and a *pro forma* proration policy.

6. Navigator sought from interested potential Committed Shippers long term minimum volume commitments in the Project for either five, seven or ten years. A Committed Shipper was required to sign up for a minimum overall committed volume of 2000 bpd in 1000 bpd increments. For transportation from a truck injection point, a Committed Shipper was required to sign up for a minimum overall committed volume of 1000 bpd. A Committed Shipper may aggregate its volume commitments from Segments A through G or the truck injection stations to qualify for the applicable tier rate. The committed rates are discounted below the uncommitted rates based on the volume commitment and length of the transportation services agreement.

7. Navigator also offered priority service at a premium rate when the pipeline system is in allocation to all shippers that either (1) signed up for a seven or ten year term or (2) signed up for a five-year term and a committed volume of at least 30,000 bpd across both the Big Spring Segment and the CC Segment. The priority rates will always be at least \$0.01 higher than the corresponding uncommitted rate. The priority rates and committed rates are subject to increase (but not decrease) by the positive adjustment, if any, in the Commission's oil pipeline index from the immediately preceding year. Any such rate increase is limited to a maximum of three percent per year.

8. Navigator reserved up to 90 percent of the capacity for priority committed service and reserved at least 10 percent of the capacity for use by uncommitted shippers. The open season materials also set out that Committed Shippers that signed up for certain minimum term commitments would not be assessed the per barrel tariff pumping charge or the truck unloading charge, as applicable.

Navigator's Requested Rulings

9. Navigator seeks a declaratory order approving the overall tariff, rate and priority service structure for the Project. Navigator asserts that the petition and requested rulings are consistent with the Commission's policy and precedent, and are lawful under the statutory requirements of the Interstate Commerce Act (ICA). Navigator requests that the Commission grant the rulings discussed below.

10. Navigator requests that the Commission find that its widely advertised open season afforded all potentially interested shippers a fair and equal opportunity to become Committed Shippers.

11. Navigator requests that the transportation services agreements, including the agreed-upon rates and terms of service, entered into between Navigator and the Committed Shippers will be honored.¹

12. Navigator requests that the committed rates and the priority rates, including any adjustments thereto pursuant to the transportation services agreement, will be treated as settlement rates under 18 C.F.R. § 342.4(c) during the term of the transportation services agreements.²

13. Navigator requests that the Commission find that it is permissible for the committed rates and the priority rates to be increased annually, effective July 1 of each year, by the positive adjustment, if any, in the Commission's oil pipeline index from the immediately preceding year; provided, however, that the rate increase will be limited to a maximum of three percent per year.³

¹ See, e.g., *Seaway Crude Pipeline Co., LLC*, 142 FERC ¶ 61,201, at PP 12-13 (2013).

² See, e.g., *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,249, at P 18 (2012).

³ See, e.g., *Tesoro High Plains Pipeline Co. LLC*, 148 FERC ¶ 61,160, at P 27 (2014); *CenterPoint Energy Bakken Crude Services LLC*, 144 FERC ¶ 61,130, at PP 21-22 (2013).

14. Navigator requests that the Commission permit Navigator to reserve up to 90 percent of the capacity for priority service, while reserving at least 10 percent of the capacity for use by uncommitted shippers.⁴
15. Navigator requests that the Commission permit a qualifying Committed Shipper to elect to receive priority service,⁵ in exchange for paying a premium rate for such service,⁶ when the pipeline system (or the relevant portion thereof) is in allocation.
16. Navigator requests permission to structure its committed rates based on volume and term commitments.⁷
17. Navigator requests permission to waive the per barrel tariff pumping and truck unloading charges for certain Committed Shippers.

Discussion

18. In its petition for declaratory order Navigator is seeking approval of the overall tariff, rate and priority service structure for its proposed pipeline project that will transport crude oil from the Permian Basin in West Texas to Colorado City, Texas, where it will connect with several other oil pipelines. In accordance with Commission precedent, Navigator has sought advance guidance through the declaratory order process.⁸ Navigator's open season was widely publicized and gave all potential shippers a fair and equal opportunity to become Committed Shippers.⁹ 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

⁴ See, e.g., *Tesoro High Plains Pipeline Co. LLC*, 148 FERC ¶ 61,160, at P 25 (2014).

⁵ See, e.g., *Sunoco Pipeline L.P.*, 145 FERC ¶ 61,274, at P 10 (2013); *Enterprise TE Products Pipeline Co., LLC*, 144 FERC ¶ 61,092, at P 16 (2013); *Hiland Crude, LLC*, 148 FERC ¶ 61,228, at P 15 (2014).

⁶ See, e.g., *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011); *Skelly-Belvieu Pipeline Co., L.L.C.*, 138 FERC ¶ 61,153, at P 18 (2012).

⁷ See, e.g., *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 25 (2013).

⁸ *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996), *order on reh'g*, 77 FERC ¶ 61,188 (1996).

⁹ See, e.g., *Shell Pipeline Co., LP*, 146 FERC ¶ 61,051 (2014).

policy. The various aspects of Navigator's terms of service such as committed and uncommitted rates, priority service for committed shippers at a premium rate, 10 percent of capacity reserved for uncommitted shippers, treatment of the committed rates as settlement rates with agreed-to adjustments, are consistent with prior Commission rulings. Since the rulings requested by Navigator in its petition have been fully addressed by the Commission in prior orders no extensive discussion is necessary. However, the Commission will briefly address and clarify the reservation of 10 percent of the capacity for uncommitted shippers and the waiver of the pumping and truck unloading charges.

19. Navigator's proposed allocation of 90 percent of the capacity to committed priority shippers and 10 percent of capacity for uncommitted shippers is generally consistent with the capacity allocation structures approved for other pipelines. However, since Navigator will be providing both interstate and intrastate transportation services, and it only indicates that 10 percent of capacity will be reserved for the general category of uncommitted shippers, it is possible that it would not meet its interstate common carrier obligations consistent with Commission policy and precedent. Therefore, consistent with the Commission's recent determination in *Panola Pipeline Company, LLC*,¹⁰ the Commission's existing policy requires that 10 percent of capacity be reserved for uncommitted jurisdictional shippers. To the extent there are service nominations from both intrastate and interstate uncommitted shippers that exceed the 10 percent of uncommitted capacity available, the Commission's approval of this declaratory order is conditioned upon the understanding that interstate uncommitted shippers shall have the first right to service from that 10 percent of uncommitted capacity.

20. While the Commission has made prior determinations on the various rate aspects contained in Navigator's petition, it does not appear that the Commission has specifically addressed before Navigator's proposal not to assess truck unloading and pumping charges to certain Committed Shippers. The Commission finds that it is appropriate to address the general issue of whether an oil pipeline can contractually agree in a transportation services agreement with a committed shipper to waive or not assess certain generally applicable tariff charges in order to provide guidance to pipelines who may be contemplating similar proposals. The Commission finds that Navigator's proposal does not constitute an undue preference or undue discrimination under the ICA because it was made clear during the widely publicized open season that truck unloading or pumping charges would not be assessed as a benefit of being a Committed Shipper who agreed to certain contractual terms. Moreover, Navigator has stated that any costs associated with the waiver of the truck unloading or pumping charge will be borne solely by Navigator and not any other shippers subject to the charges. Thus, there will be no issue of other

¹⁰ 151 FERC ¶ 61,140, at P 23 (2015).

shippers subsidizing those Committed Shippers not subject to the truck unloading or pumping charge.

The Commission orders:

Navigator's petition for declaratory order is granted consistent with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.