153 FERC ¶ 61,067
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.

Saddlehorn Pipeline Company, LLC Docket No. OR15-37-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 15, 2015)

1. On August 25, 2015, Saddlehorn Pipeline Company, LLC (Saddlehorn) filed a petition for declaratory order regarding a proposed new interstate pipeline project (Project) which would transport crude oil from the D-J Basin in Colorado to Cushing, Oklahoma. Specifically, Saddlehorn seeks Commission approval of its proposed tariff rate structure and terms of service for the Project by October 15, 2015, to enable Saddlehorn to meet its targeted in-service date by mid-2016.

2. The Commission grants the rulings requested by Saddlehorn, as discussed below.

Background

3. The Project is an approximately 538-mile, 20-inch diameter, new crude oil pipeline designed to transport at least 190,000 barrels per day (bpd) of crude oil from the D-J Basin region near Platteville, Colorado to the Cushing, Oklahoma crude oil hub for delivery to connecting carriers. The pipeline is intended to increase pipeline capacity in the D-J Basin and provide additional avenues for producers to access third-party distribution and storage facilities in the Cushing crude oil hub area as well as marketing facilities beyond Cushing, Oklahoma. Construction of the Project is projected to cost approximately $850 million.

4. The Project's origin and destination facilities are expected to have significant operational tankage capacity with approximately 1 million barrels of capacity. Saddlehorn's storage service is included in the Project's rates.

5. Saddlehorn explains that recent crude oil production in the D-J Basin reached 260,000 bpd, with projections suggesting production will increase to 400,000 - 500,000

bpd over the next five to ten years. Accordingly, Saddlehorn has designed its system to expand its capacity to 400,000 bpd with minimal additional capital investment to capture the anticipated growth.

6. Magellan Midstream Partners L.P. (Magellan) was the initial sponsor of the Project, and was subsequently joined by Plains All American Pipeline, L.P., and Anadarko Petroleum Corporation.

7. Magellan commenced a binding open season on September 23, 2014, to solicit support for the Project. The open season was extended four times, ultimately concluding on February 27, 2015. Saddlehorn describes the open season as transparent and well-publicized. Notice of the open season was published on Magellan's website, reported in the trade press, and Magellan launched its own marketing efforts, which included direct contact to potential shippers. Interested parties were required to execute a confidentiality agreement and were provided a document outlining the open season process and describing the proposed rates and terms and service conditions as well as the form of transportation services agreement (TSA). Based on the comments and feedback offered by potential shippers, Magellan revised its open season documents and redistributed the documents to all potential shippers that had expressed interest in the Project.[1]

8. On June 23, 2015, Saddlehorn announced a 50-mile extension of its pipeline, from Platteville to an origin point at Carr, Colorado. Saddlehorn maintains that under the TSA it may establish other origin and destination points in the future.

9. Saddlehorn explains both shippers who signed a commitment (committed shippers) and shippers who did not sign a commitment (uncommitted shippers) are eligible to receive discount volume incentive rates on uncommitted volumes shipped. During the open season, committed shippers were offered two types of service: priority service, in which committed shippers pay a premium rate for firm service (anchor firm shipper), and non-priority service offered at a discounted rate (anchor non-firm shipper).

10. Saddlehorn explains that shippers were able to elect between two volume commitment tiers for firm service during the open season, and consequently, the committed rates for priority service vary based on the shipper's volume commitment. Tier 1 priority service rates were offered to shippers with commitments to transport 45,000 bpd, paying a one cent premium compared to the proposed uncommitted rate of the same volume level. Tier 2 priority service rates were offered to shippers with

[1] Saddlehorn Petition at 12.

commitments to transport 25,000 bpd at a one cent premium rate over the uncommitted rate for the same volume level. Tier 3 non-firm service rates were offered to committed shippers making a 10,000 bpd volume commitment level. Tier 3 service is offered at a discount rate compared to the uncommitted rate for the same volume level.

11. Tier 1 and Tier 2 committed shippers were offered the option to "ramp-up" commitments during the open season, which means they were able to commit to different volumes during contract year 1 compared to contract years 2-5, so long as the commitment will increase in contract years 2-5.

12. The TSA also provides that committed shippers are also eligible to ship, on a space-available basis, volumes in excess of their respective commitments at the volume incentive rate. Uncommitted shippers will also receive volume incentive rates based on the volume shipped during a particular month.

Requested Rulings

13. Saddle Pipeline Company, LLC requests Commission confirmation and approval of the following aspects of the Project:

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.

B. The TSA will be honored and its key provisions will be upheld and will govern the transportation services Saddlehorn provides to committed shippers during the term of the TSA.

C. Saddlehorn may provide firm capacity to anchor firm shippers that represents no more than sixty percent of the total approximate 190,000 bpd initial capacity of the Saddlehorn pipeline system, with at least forty percent of the initial capacity of the pipeline available for uncommitted volumes (which includes ten percent for new shippers).

D. Saddlehorn may implement a rate structure in which anchor firm shippers pay a premium rate compared to uncommitted shippers at the same volume level, and pay discounted volume incentive rates for volumes over their commitment levels. In addition, anchor non-firm shippers may pay discounted volume incentive rates for volumes over their commitment levels.

E. The committed rates may be increased annually by up to two percent, and may also be further increased or a surcharge imposed in the future due to qualifying change in law, as defined in the TSA.

F. An anchor firm shipper may commit to a lower volume level for the first year of its commitment, with an increased volume commitment in years two through five of its commitment.

G. A committed shipper may extend the term of its TSA for up to two renewal terms of two years each, and may elect to decrease its volume commitment during an extended term under certain specified conditions.

H. Saddlehorn may provide anchor shippers with right-of-first-offer expansion commitment rights specified in the TSA in the event Saddlehorn expands the capacity of the pipeline.

I. Saddlehorn may implement the prorationing policy that was provided with the TSA during pipeline operations in the event that nominations in any given month exceed available capacity.

J. Saddlehorn may transport incremental barrels on a firm basis, provided that its transportation of such incremental barrels does not reduce the amount of capacity that has been set aside for uncommitted volumes.

K. Saddlehorn may add additional origin points and destination points on the pipeline system, which will be governed by the TSA.

L. Saddlehorn and committed shippers may each assign the TSA with consent, and may assign the TSA to a wholly owned subsidiary without consent.

Saddlehorn's Arguments

14. Saddlehorn maintains that its request for Commission confirmation that it will uphold and apply the key provisions of the TSA during the term of the TSA is supported by Commission precedent.[2] Saddlehorn explains confirmation is needed to provide regulatory certainty for the project to move forward.

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[2] Saddlehorn Petition at 22, citing *Enbridge Pipeline (FSP) LLC*, 146 FERC ¶ 61,148, at P 31 (2014) (*Enbridge FSP*); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 17 (2013) (*CenterPoint*); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,249, at P 20 (2012) (*Pony Express*); *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008) (*Southern Lights*).

15. Saddlehorn explains that its request for authorization to file committed rates as settlement rates, including the initial committed rates and any adjustments pursuant to the TSA is similar to other requests the Commission has previously approved.[3] Saddlehorn contends the Commission has a policy of honoring contracts signed by committed shippers, including commitments for contract volumes and other agreed-to charges.[4]

16. Saddlehorn maintains its service offerings and capacity allocations for committed shippers are supported by Commission precedent. Saddlehorn notes that the Commission has consistently approved proposals that include priority service at premium rates. Moreover, Saddlehorn argues the Commission has approved proposals where committed shippers could select priority capacity at a premium rate or non-priority capacity at a discounted rate in an open season.[5] Saddlehorn maintains that the long-term commitment and willingness to pay a premium distinguish such shippers and justify the priority service during prorationing.

17. Additionally, Saddlehorn suggests the Commission has approved provisions offering volume discounts to committed shippers receiving non-priority service, in recognition of their substantial commitment to the project compared to uncommitted shippers.[6]

18. Saddlehorn represents that no more than 60 percent of the initial Project capacity will be subject to committed volumes. Saddlehorn contends the reservation of capacity, at least 40 percent, including 10 percent for new shippers, will be sufficient to provide reasonable access to the Project.

19. Saddlehorn further argues its proposed rate structure is consistent with Commission precedent. Saddlehorn explains its committed rate tier structure is designed to provide committed shippers with the choice of priority and non-priority commitment tiers and both uncommitted and committed shippers with volume discounts. Saddlehorn

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[3] Saddlehorn Petition at 23, citing *Pony Express*, 141 FERC ¶ 61,249 at PP 17-18; *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 (2010).

[4] Saddlehorn Petition at 23, citing *Pony Express*, 141 FERC ¶ 61,249 at PP 17-18.

[5] Saddlehorn Petition at 23, citing *Medallion Pipeline Co., LLC*, 150 FERC ¶ 61,156 (2015) (*Medallion II*); *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095, at P 6 (2014) (*Medallion I*); *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 7 (2012) (*Oxy Midstream*).

[6] Saddlehorn Petition at 23-24, citing *Shell Pipeline Co., LP*, 141 FERC ¶ 61,017, at P 5 (2012) (*Shell*).

explains the Commission has previously approved tiered committed rate structures, where the rates paid by priority and non-priority committed shippers vary according to the level of the volume commitments,[7] committed rates for priority service where priority service is offered at a one cent premium than uncommitted shippers at the same volume tier level,[8] discounts to non-priority committed shippers compared to the uncommitted rate,[9] and volume incentive rates for uncommitted shippers.[10]

20. Saddlehorn explains its rate structure makes volume incentive rates available for all committed shippers for non-priority volumes in excess of their commitments, and that the Commission has previously approved similar discounts.[11] Saddlehorn argues that despite the fact that Saddlehorn offered both priority and non-priority service, whereas in the precedential cases only non-priority service was offered, the discounts apply only to non-priority volumes above the shipper's commitment level and therefore do not diminish the capacity set aside for uncommitted volumes. Saddlehorn explains further that these terms were offered to all shippers on an equal basis during the open season, and that all potential shippers had an opportunity to sign up for them.

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[7] Saddlehorn Petition at 26, citing *Shell*, 141 FERC ¶ 61,017, at P 5; *Shell Pipeline Co., LP*, 139 FERC ¶ 61,228, at P 16 (2012) (*Shell Pipeline*); *Crosstex NGL Pipeline, L.P.*, 146 FERC ¶ 61,182, at P 22 (2014) (*Crosstex*).

[8] Saddlehorn Petition at 26, citing *Shell Pipeline*, 139 FERC ¶ 61,228 at P 21; *Crosstex*, 146 FERC ¶ 61,182 at P 22; *CenterPoint*, 144 FERC ¶ 61,130, at P 27; *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 7 (2013) (*MarkWest*).

[9] Saddlehorn Petition at 26, citing *Dakota Access, LLC*, 149 FERC ¶ 61,275 (2014) (*Dakota Access*); *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at P 10 (2013) (*Dominion*); *Shell*, 141 FERC ¶ 61,017 at P 5.

[10] *CenterPoint*, 144 FERC ¶ 61,130, at P 9; *Shell Pipeline*, 139 FERC ¶ 61,228 at P 8.

[11] Saddlehorn Petition at 26, citing *Shell*, 141 FERC ¶ 61,017; "Petition of Shell Pipeline Company LP for a Declaratory Order," Docket No. OR12-23, Appendix D at 25-26 (Aug. 10, 2012); *Kinder Morgan Cochin LLC*, 141 FERC ¶ 61,056, at P 6 (2012); *Dominion*, 145 FERC ¶ 61,133 at P 11.

21. Saddlehorn argues the committed rate adjustments provided for in the TSA, limited to a two percent increase per year, is consistent with Commission precedent.[12] The TSA also provides for additional rate adjustments or surcharges if Saddlehorn is required to incur additional expenses, exceeding a certain threshold, due to a "change in law."[13] Saddlehorn contends the surcharge provision is similar to others proposals that deviate from the Commission's indexing methodology, and were approved because the provisions were provided to all shippers during the open season and agreed to by the parties that signed a TSA.[14]

22. Under the TSA, committed priority shippers are able to increase, or "ramp-up" their commitments from contract year 1 to contract years 2 - 5 of the TSA, provided their commitment level increased from year 1, and provided at least 40 percent of the Project's initial capacity is available for uncommitted volumes. Saddlehorn contends that this provision has previously been approved by the Commission[15] and should be affirmed here.

23. Saddlehorn argues the Commission should approve its proposed TSA term extension rights. The provision allows for the TSA to be extended twice, for two-year periods. During the extended term, a committed shipper is permitted to decrease, but not increase, its daily volume commitment if the aggregate daily volume commitments by all

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[12] Saddlehorn Petition at 28, citing *Tesoro High Plains Pipeline Co., LLC*, 148 FERC ¶ 61,160, at P 7 (2014) (*Tesoro*); *CenterPoint*, 144 FERC ¶ 61,130 at P 9; *White Cliffs Pipeline, L.L.C.*, 148 FERC ¶ 61,037, at P 14 (2014).

[13] Saddlehorn explains in its Petition that such additional expenses include additions or modifications to Saddlehorn facilities, required changes in operations or maintenance on the pipeline, changes in training, testing, and verification programs, or changes related to compliance with permits, environmental emissions, or exposures. Saddlehorn states that the TSA provides for a 90-day notification period, in addition to a fee determination method, and that committed shippers have audit rights. Saddlehorn Petition at 28, citing Payne Affidavit.

[14] Saddlehorn Petition at 28.

[15] Saddlehorn Petition at 29, citing *Medallion II,*150 FERC ¶ 61,156, at P 12, *Medallion I,* 148 FERC ¶ 61,095 at P 7; *Tallgrass Pony Express Pipeline LLC,* 147 FERC ¶ 61,266, at PP 6, 19-20 (2014) (*Tallgrass*); *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211, at P 10 (2005).

committed shippers is at least 80,000 bpd. Saddlehorn states the Commission has previously approved such term extension options and explains that its extension provisions provide committed shippers with an option, but not requirement, to renew commitments. Saddlehorn suggests term extension options have been approved where the terms of the TSA diverge from the terms during the original term.[16]

24. The TSA also includes a provision for a right of first offer which would allow anchor firm shippers and anchor non-firm shippers the right to make a commitment for future Project expansion capacity at the rates paid under the TSA. The TSA permits Saddlehorn to offer the future Project expansion capacity to anchor shippers without conducting a supplemental open season. If, however, a second open season is conducted, the TSA provides that the rates for the expanded capacity must be equal to or greater than the committed rates offered during the open season initiated in September 2014. The TSA allows for Saddlehorn to market 50 percent of such future Project expansion capacity, reserving the remaining 50 percent for uncommitted volumes. Saddlehorn contends that the Commission has previously approved a proposal offering committed shippers the right of first offer in connection with future expansion capacity, without the need for a second open season, and that the terms and conditions offered during a second open season may vary from or be less advantageous than the terms offered during the initial open season.[17]

25. Saddlehorn further argues that its prorationing policy is appropriate and should be approved by the Commission. In months where the Project is in prorationing, Saddlehorn proposes to allocate capacity equal to the daily contract volume for anchor firm shippers and firm shippers. New shippers will be allocated the volume of monthly nominations, and collectively, new shippers will be allocated up to 10 percent of the Project's capacity. If total commitments for new shippers exceed 10 percent, each new shipper's allocation will be reduced on a *pro rata* basis based on nominated volumes. A lottery system will be implemented if no new shipper is able to meet the monthly minimum volume of 50,000 bpd.

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[16] Saddlehorn Petition at 30, citing *Hiland Crude, LLC*, 148 FERC ¶ 61,228, at PP 17, 24 (2014) (*Hiland)*; *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 46 (2012); *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at P 11 (2007).

[17] Saddlehorn Petition at 32, citing *Enbridge Pipelines* (*Southern Lights*, *LLC*), 141 FERC ¶ 61,244, at PP 25-26 (2012) (*Enbridge Southern Lights*); *Mark West*, 145 FERC ¶ 61,287 at PP 19-20, 27; *Enable Bakken Crude Services*, *LLC*, 148 FERC ¶ 61,048, at P 11 (2014) (*Enable*); *CenterPoint*, 144 FERC ¶ 61,130 at P 11; *Palmetto Products Pipe Line LLC*, 151 FERC ¶ 61,090, at P 13 (2015) (*Palmetto*).

26. After allocation to anchor firm shippers, firm shippers, and new shippers, Saddlehorn will allocate capacity to regular shippers, which are shippers that have made a shipment in each of the 12 months of the base period.[18] The historical shipment status for allocation purposes is determined differently for anchor firm shippers and firm shippers than for non-firm committed shippers during the initial base period.[19] If capacity remains after Saddlehorn has allocated capacity to its anchor firm shippers, firm shippers, new shippers, and regular shippers, the TSA states Saddlehorn will allocate the capacity among all shippers having remaining unmet nominations, in proportion to each shipper's initial capacity allocation.

27. Saddlehorn argues the Commission has previously approved prorationing policies that define regular shippers as committed shippers, or as those who ship each month in a 12-month base period[20] and has also approved lottery systems for capacity allocations to new shippers.[21] Saddlehorn further maintains the Commission has approved prorationing

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[18] The Saddlehorn Petition at 34 explains that a regular shipper will receive allocations equivalent to the lesser of its monthly nominations, or its proration factor. The proration factor is described as the regular shipper's historical shipment status divided by the aggregate total of all regular shipper's historical shipment status at the time of the allocation.

[19] The "historical shipment status" for an anchor firm shipper and a non-anchor firm shipper is, for any proration month, equal to the greater of (1) the average of all its shipments on a bpd basis, inclusive of all shipments under its firm capacity, non-firm capacity and uncommitted capacity during the applicable base period, and (2) the average of its daily volume commitment for each month during the applicable base period. (Saddlehorn Petition at Exhibit 1, P 44).

During the initial base period, the "historical shipment status" of non-firm committed shippers is determined with reference to both its daily volume commitment as set forth in its TSA and its actual shipments on an average bpd basis, and then is adjusted based on subsequent actual shipping history, until ultimately each non-firm committed shipper's historical shipment status will be calculated using only its actual shipment data. (*See* Saddlehorn Petition at Exhibit 1, P 45 for details of the adjustment process).

[20] Saddlehorn Petition at 36, citing *Oxy Midstream,* 141 FERC ¶ 61,005.

[21] Saddlehorn Petition at 36, citing *Sunoco Pipeline, L.P.*, 151 FERC ¶ 61,192, at P 13 (2015) (*Sunoco*); *Sunoco Pipeline L.P.,* 147 FERC ¶ 61,204, at P 21 (2014); *Enbridge FSP,* 146 FERC ¶ 61,148 at P 8; *Dakota Access,* 149 FERC ¶ 61,275 at P 30; *Seaway Crude Pipeline Co., LLC*, 143 FERC ¶ 61,036, at P 16 (2013).

policies that establish an initial historical allocation for committed shippers based on their level of commitment under their TSAs, which is subject to adjustment to reflect actual volumes shipped to the extent that a committed shipper fails to ship or pay for the level of entitlement in subsequent months.[22]

28. During prorationing, Saddlehorn explains that a portion of an anchor firm shipper's monthly nomination may be for priority barrels in excess of its daily volume commitment (incremental barrels). If the total allocation of incremental barrels in a proration month would exceed the allocation for anchor firm shipper aggregate daily volume commitments, Saddlehorn states it will allocate the incremental barrels among all anchor firm shippers requesting incremental barrels on a pro rata basis and will not reduce the amount of capacity that has been set aside for uncommitted volumes. Saddlehorn contends the Commission has previously allowed priority committed shippers to ship incremental priority barrels at a premium rate provided that doing so does not reduce the capacity available for uncommitted shippers.[23]

29. Saddlehorn explains that its prorationing policy states for the first shipping month following the conclusion of the TSA, an anchor firm shipper's historical shipment status will equal the greater of (1) the average of its daily volume commitment during the 12 months immediately preceding termination of the TSA, and (2) the barrels of crude oil that it actually shipped on the pipeline during the 12 months immediately preceding termination of its TSA, including firm and non-firm committed volumes and uncommitted volumes. Saddlehorn argues that in granting anchor firm shippers and firm shippers who ship volumes in excess of their firm commitment a prorationing history equivalent to the greater of their volume commitment or their actual barrels shipped is

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[22] Saddlehorn Petition at 36, citing *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at PP 1, 20, 28 (2013) (*Enterprise)*, *Hiland*, 148 FERC ¶ 61,228, at PP 10, 23; *Oxy Midstream*, 141 FERC ¶ 61,005; *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139 (2010); *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040, at P 24 (2006).

[23] Saddlehorn Petition at 37-38, citing *Enable*, 148 FERC ¶ 61,048 at P 10; *Tesoro*, 148 FERC ¶ 61,160 at PP 18-19 (Tier 1 firm shippers permitted to increase their firm capacity allotment by 25 percent over their commitment on a space-available basis); *Palmetto*, 151 FERC ¶ 61,090 at P 8 (priority committed shippers may nominate volumes on a firm basis that vary or exceed their monthly commitments); *CenterPoint*, 144 FERC ¶ 61,130 at PP 8, 29 (permitting priority committed shippers to nominate Incremental Barrels in excess of their monthly commitments provided nominations by committed shippers would not exceed 90 percent of available capacity).

consistent with Commission precedent.[24] Saddlehorn argues anchor firm shippers have made more significant commitments to the Project and thus are not similarly situated. Saddlehorn suggests that the Project would not be built without the anchor shipper contributions and the historical shipment status rights are an incentive for shippers to sign TSAs.

30. The TSA permits Saddlehorn to add new origins and destinations to the system at its discretion, notifying all shippers of its new origin or destinations by filing an interstate tariff with the Commission. Saddlehorn cites *Sunoco Pipeline L.P.*[25] where the Commission approved a similar TSA provision, finding the ability for the pipeline to add new origins and destinations would allow the pipeline to capture the demand for transportation in certain areas and minimize impairment to production in those regions. Saddlehorn states that the Commission has also approved TSA provisions which permit flexibility in the origin and destinations at which committed shippers can nominate and deliver volumes.

31. Saddlehorn explains the TSA provides that no party may assign the agreement without prior written consent from the opposite party, but either party may assign the agreement to a wholly owned subsidiary without prior written consent of the other party. Further, the TSA does not permit shipper history and committed shipper allocations to be assigned, except as an incident of the bona fide sale of all or substantially all of the shipper's business or by an assignment of the committed shipper's TSA. Saddlehorn contends the assignment rights provided in the TSA are supported by Commission precedent.[26]

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

Notice of the petition was issued on September 2, 2015, providing for motions to intervene, comments and protests to be filed on or before September 17, 2015. Pursuant

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[24] Saddlehorn Petition 39, citing *Sunoco*, 151 FERC ¶ 61,192, at PP 5, 7, 13; *Sunoco Pipeline, L.P.*, 150 FERC ¶ 61,172, at PP 9, 23 (2015); *Enbridge FSP*, 146 FERC ¶ 61,148 at PP 8, 20; *Dakota Access*, 149 FERC ¶ 61,275 at P 30; *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180 at P 28; *Shell*, 141 FERC ¶ 61,017, at P 14.

[25] 149 FERC ¶ 61,191, at PP 24, 27 (2014).

[26] Saddlehorn Petition at 42, citing *NuStar Crude Oil Pipeline L.P.*, 146 FERC ¶ 61,146 at P 14 (2014) (NuStar) (assignment rights are part of the incentive package deal); *Shell*, 141 FERC ¶ 61,017 (allowing committed shippers to assign their TSAs and shipping history).

to Rule 214 of the Commission's regulations,[27] 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.

<u>Commission Determination</u>

32. Based on the representations in the petition, the Commission will grant all the rulings requested by Saddlehorn as consistent with precedent. These confirmations and rulings are briefly summarized below.

33. The Commission confirms it will honor the TSA, as it has previously confirmed for similar agreements,[28] and that the TSA's provisions will govern Saddlehorn's transportation services and rates for contract shippers during its term. Saddlehorn's proposal to treat the committed rates, including the initial rates provided to the contract shippers in the TSAs, as settlement rates, pursuant to Section 342.4(c) of the Commission's regulations, is consistent with Commission precedent.[29]

34. The Commission finds that the terms of Saddlehorn's Project, including the capacity allocation,[30] annual rate adjustments,[31] contract extension rights,[32] "ramp-up"

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[27] 18 C.F.R. § 385.214 (2015).

[28] *Southern Lights*, 122 FERC ¶ 61,170, at P 13 ("[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[.]"); *Tesoro*, 148 FERC ¶ 61,160, at P 22; *Kinder Morgan Pony Express Pipeline LLC,* 141 FERC ¶ 61,180 at P 23.

[29] *See Seaway Crude Oil Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013), citing *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,258-59 (1996).

[30] *See JBBR Pipeline LLC*, 150 FERC ¶ 61,012, at P 21 (2015); *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at P 14 (2012); *CenterPoint*, 144 FERC ¶ 61,130 at P 24.

[31] *Tesoro,* 148 FERC ¶ 61,160 at P 27; *CenterPoint*, 144 FERC ¶ 61,130 at PP 21-22.

[32] *Belle Fourche Pipeline Company & Bridger Pipeline LLC,* 151 FERC ¶ 61,139, at P 25 (2015); *Pony Express*, 141 FERC ¶ 61,249, at P 39.

election,[33] right of first offer,[34] assignment provisions,[35] and prorationing rights[36] are consistent with Commission precedent.

35. Saddlehorn's priority service and rate structure, which provides that anchor firm committed shippers pay a premium rate compared to uncommitted shippers at the same volume level, and pay discounted volume incentive rates for volumes over their commitment levels is also approved. Saddlehorn may transport incremental barrels on a firm basis, provided that its transportation of such incremental barrels does not reduce the amount of capacity that has been set aside for uncommitted volumes. The Commission has previously granted declaratory orders approving such terms concerning the shipment of incremental barrels, in other agreements executed between committed shippers and pipelines.[37]

36. The Commission also confirms and approves the provisions in the TSA allowing Saddlehorn to increase the committed shipper rates annually subject to a two percent cap, in addition to surcharges that may be imposed due to a qualifying change in law, as defined in the TSA. The Commission previously has approved provisions that allow for adjustments and surcharges to committed rates[38] finding that committed shippers freely entered into the TSA contracts and consequently assumed all the rights and obligations thereunder.

37. The Commission will also approve, as consistent with precedent, the TSA provision that permits Saddlehorn to add origin and destination points to its system without initiating an open season.[39]

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[33] *Tallgrass*, 147 FERC ¶ 61,266, at PP 6, 19; *Medallion Pipeline Co.*, 148 FERC ¶ 61,095, at P 18 (2014).

[34] *Enbridge Southern Lights*, 141 FERC ¶ 61,244 at PP 5-6.

[35] *Shell*, 141 FERC ¶ 61,017; *NuStar*, 146 FERC ¶ 61,146 at P 14.

[36] *Sunoco*, 151 FERC ¶ 61,192 at P 13; *Enterprise*, 142 FERC ¶ 61,087 at PP 1, 20, 28; *Dakota Access*, 149 FERC ¶ 61,275 at P 30.

[37] *NORCO Pipe Line Company, LLC*, 152 FERC ¶ 61,170, at P 17 (2015); *CenterPoint*, 144 FERC ¶ 61,130 at PP 8, 17.

[38] *Tallgrass*, 147 FERC ¶ 61,266 at P 10.

[39] *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191, at P 27 (2014).

38. In conclusion, the Commission finds the petition consistent with precedent and unopposed. Accordingly, based upon the facts and representations made by Saddlehorn, the Commission confirms and approves the rulings concerning the Project, as requested in the petition.

The Commission orders:

Saddlehorn's petition for declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.