

153 FERC ¶ 61,109
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.

Wolverine Pipe Line Company

Docket No. OR15-33-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 29 , 2015)

1. On July 31, 2015, Wolverine Pipe Line Company (Wolverine) filed a Petition for Declaratory Order (Petition) regarding its proposed Detroit Metro System Project, which is intended to provide additional transportation capacity for refined petroleum products from refineries in Illinois and Indiana to Woodhaven, Michigan (Expansion Project).
2. Specifically, Wolverine seeks approval of its committed rate structure, priority service, and terms of service for the Expansion Project by October 30, 2015, to ensure the committed shipper rates and terms of service will be in place, so that the Expansion Project can be completed by the targeted in-service date. The Commission grants the rulings requested by Wolverine, as discussed below.

Background

3. The Expansion Project involves several components that include construction, reactivation, reconfiguration, and use of underutilized capacity. Wolverine plans to reactivate three idled segments on the Detroit Metro System and construct thirty-five miles of new pipeline between Freedom Junction, Michigan and the Detroit-Metro station in Romulus, Michigan. Wolverine also plans to reconfigure its mainline system to provide adequate pressure and flow for the additional volumes, and employ underutilized capacity.
4. The Expansion Project is expected to provide shippers with additional capacity to transport refined petroleum products from origins in Illinois and Indiana to Buckeye Pipe Line L.P.'s Woodhaven Terminal, in Woodhaven, Michigan, which serves multiple outlets to the east. The Expansion Project is expected to transport approximately 90,000 barrels per day (bpd) of capacity for refined products to Woodhaven and is anticipated to enter service in the fourth quarter of 2016.

5. Wolverine conducted a widely publicized open season from January 30, 2015 to April 8, 2015, seeking term and volume commitments in return for priority service at a premium rate. All interested parties had an opportunity to participate and notice of the open season was published and reported in a wide variety of industry outlets and general media. Shippers participating in the open season were required to sign a confidentiality agreement and were provided a Transportation Service Agreement (TSA) which included a *pro forma* tariff to be filed with the Commission before the Expansion Project enters service.¹ At the conclusion of the open season, Wolverine received sufficient volume commitments to support the Expansion Project.

Description of TSA

6. Wolverine explains that the TSA requires shippers to make binding volume commitments on a ship-or-pay basis for a ten-year term. Committed shippers were offered priority service for volumes up to 90 percent of the Expansion Project capacity.

7. Under the TSA, committed shippers are permitted to divide their volume commitments among selected origin points, provided each origin point commitment meets the 10,000 barrel minimum batch size. Wolverine explains the TSA also allows committed shippers to meet their obligations by shipping volumes from non-selected origin point(s), capacity permitting. The TSA also grants Wolverine the right to add new origin and delivery points to the system and make such alternate origin points available for shippers to use to satisfy their commitment obligations.

8. The TSA rate design divides committed volume rates into tiers based on the level of a shipper's total volume commitment. Wolverine explains the uncommitted rate tier applicable to a committed shipper's uncommitted volumes is based on the total of its committed and uncommitted volume, but committed shippers will not receive priority service for excess volumes.² Transportation rates for committed volumes will be at least one cent above the rates for uncommitted volumes for the same volume tier.

9. The TSA also provides that Wolverine may increase the committed rates, subject to the positive adjustment (if any) of the annual FERC oil pipeline rate index, beginning July 1, 2015. Wolverine explains if the FERC oil pipeline rate index decreases, its rates will remain the same as the preceding year and will not be reduced. Wolverine explains that in such instances, the reduction of the FERC oil pipeline rate index will be carried forward to offset any positive FERC oil pipeline rate index adjustment for the following

¹ Wolverine Petition at 5.

² Wolverine Petition at 11.

year to the extent the index reduction rate carried-over will not reduce the committed rates below the rates for the immediately preceding year. Wolverine explains the TSA may also increase committed rates to recover increased development and construction costs, subject to a cap, or increased capital or operating costs due to a change in applicable law.

10. Wolverine states that committed volumes will receive priority service under ordinary operating conditions, and at least ten percent of available capacity will be reserved for uncommitted volumes.

Requested Rulings

11. Wolverine requests Commission confirmation and approval of the following aspects of the Expansion Project:

- A. A tariff rate structure that provides different tiered rates for committed and uncommitted (walk-up) volumes with the uncommitted rate tier applicable to a committed shipper's uncommitted volumes to be based on the total of its committed and uncommitted volumes, and that the provisions of the TSAs for which Wolverine is requesting approval here will govern the transportation services Wolverine provides to the committed shipper, such that the committed shipper will pay the rates for which it contracted for its committed volumes on the basis set forth in the TSA for the duration of the TSA term;
- B. The rates for committed volumes provided for in the TSAs will be treated as settlement rates during the term of the TSA, including upon their initial filing in the pipeline's tariff, pursuant to section 342.4(c) of the Commission's regulations;
- C. Wolverine may provide what amounts to less than 90 percent of the available capacity of the Expansion Project as priority service at a premium rate for the committed volumes; and
- D. The committed shipper may satisfy its volume commitment by shipping volumes from origin point(s) other than the selected origin point(s), subject to available operational capacity as provided in the TSA, and that Wolverine has the right to add additional origin and delivery points under the TSA.

Public Notice, Interventions, Protests, and Comments

12. Notice of the Petition was issued on August 4, 2015, providing for motions to intervene, comments and protests to be filed on or before August 31, 2015. Pursuant to Rule 214 of the Commission's regulations,³ 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.

Wolverine's Attestations

13. Wolverine explains that its Petition is consistent with established Commission precedent and is a non-discriminatory means of meeting the needs of Wolverine and its shippers on the Expansion Project.

14. For example, Wolverine shows how the proposed priority service terms and rate structures are in accord with Commission precedent. Specifically, Wolverine states it offered priority service to all interested parties through a widely publicized and non-discriminatory open season, and committed volumes will be subject to premium rates of at least one cent per barrel above the uncommitted rate for the same volume tier, consistent with precedent.⁴

15. Wolverine also shows how its proposal to implement a rate structure that includes volume tiers is consistent with Commission precedent.⁵ Specifically, Wolverine cites Commission-approved proposals where committed shippers were permitted to pay volume incentive rates for volumes shipped in excess of their committed volumes.⁶

³ 18 C.F.R. § 385.214 (2015).

⁴ Wolverine Petition at 10 - 11, citing *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 26 (2013) (*CenterPoint*).

⁵ Wolverine Petition at 11, citing *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at PP 7, 23; *Oxy Midstream Strategic Dev., LLC*, 141 FERC ¶ 61,005, at PP 7, 19 (2012); *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at PP 4, 23 (2013) (*Enbridge*).

⁶ Wolverine Petition at 11, citing *Sunoco Pipeline, L.P.*, 151 FERC ¶ 61,192, at P 12 (2015); *CenterPoint*, 144 FERC ¶ 61,130 at P 28.

16. Wolverine states its proposal to increase the committed rates as set forth in the TSA is consistent with Commission precedent, inasmuch as the Commission has approved proposed adjustments to committed rates under TSA terms that deviate from the Commission's indexing methodology,⁷ and has also approved proposals under which the committed rates are subject to adjustment based on additional costs incurred in connection with the Project.⁸

17. Moreover, Wolverine states that the Commission has previously permitted the filing of initial rates as settlement rates under section 342.4 (c),⁹ where such committed rates were offered in a well-publicized open season where all potential shippers had notice and an opportunity to sign up.¹⁰

18. Wolverine also states its proposed priority service terms are consistent with Commission precedent, and seeks assurance that the committed volumes will not be subject to apportionment under normal operating conditions. Specifically, Wolverine states that the long-term commitments offered by committed shippers and their willingness to pay a premium rate differentiate them from uncommitted shippers and justify the priority apportionment of space.¹¹ Wolverine contends that the priority service offered to committed shippers is not unduly discriminatory because uncommitted shippers will have reasonable access to the pipeline's capacity, and the committed shippers have made the capacity on the pipeline possible. Wolverine explains that at least ten percent of the Expansion Project capacity will be available for uncommitted shippers, consistent with prior proposals the Commission has found acceptable.¹²

19. Regarding the underutilized segments planned to be used for the Expansion Project, Wolverine explains those segments have historically been underutilized and

⁷ Wolverine Petition at 12, citing *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at PP 11, 20 (2013); *CenterPoint*, 144 FERC ¶ 61,130 at PP 20-22.

⁸ *Enbridge*, 144 FERC ¶ 61,085, at PP 9, 23.

⁹ Wolverine Petition, citing *JBBR Pipeline LLC*, 150 FERC ¶ 61,012, at P 20 (2015).

¹⁰ *CenterPoint*, 144 FERC ¶ 61,130, at P 19.

¹¹ Wolverine Petition at 15.

¹² *Id.* at 15-16.

consequently no existing shippers will have their historical service curtailed.¹³ Moreover, Wolverine contends its proposal should be approved because the Commission has previously approved contract rate proposals that incorporate underutilized existing capacity.¹⁴

20. Wolverine also states its flexible origin and destination point rights should be approved as consistent with Commission precedent. Specifically, Wolverine states that committed shippers may satisfy volume commitment obligations by shipping on alternative origin points, and may receive priority service for those volumes, subject to operational capacity. Wolverine explains that committed shippers will pay the higher of the committed rate or the committed rate applicable to the alternative origin point,¹⁵ and that a minimum of ten percent of capacity will be reserved for uncommitted volumes at all times. Moreover, Wolverine explains the TSA permits Wolverine to add new origin points that can be used to satisfy the committed shipper's volume commitment, and should new origin or destination points be added, Wolverine will file interstate tariffs, as applicable, to notify shippers of the availability of these new points. Wolverine states that the Commission has previously upheld specific rights regarding origin and destination points that were given to entice committed shippers to sign TSAs,¹⁶ and the Commission has also approved a provision that would permit new origin and destination points.¹⁷ Wolverine states this additional origin and destination point availability was included in its well-publicized and non-discriminatory open season, and that the provisions benefit the shipper community by providing additional flexibility.

¹³ *Id.*

¹⁴ *Id.*, citing *Palmetto Products Pipe Line LLC*, 151 FERC ¶ 61,090, at P 33 (2015); *Enterprise TE Products Pipeline Company LLC*, 144 FERC ¶ 61,092, at PP 6, 16, (2013); *Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at PP 8, 20-21 (2012).

¹⁵ If the alternative origin point is downstream of the selected origin point, the selected origin point committed rate applies. If the alternative origin point is upstream of the selected origin point, the alternative origin point committed rate applies. Wolverine Petition at 6, n.2.

¹⁶ Wolverine Petition at 18, citing *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191, at P 31 (2014) (*Sunoco*).

¹⁷ *Id.*

Commission Determination

21. Based on the representations made in the Petition, the Commission will grant all the rulings requested by Wolverine, briefly summarized as follows.

22. The Commission approves Wolverine's tiered rate structure, offering priority service at a premium rate for the committed volumes of the committed shippers for up to 90 percent of the available capacity of the Expansion Project, since the proposed priority service was offered to all interested parties through a widely publicized and non-discriminatory open season, and committed shippers will pay a premium rate for transportation of their committed volumes of at least one cent per barrel above the uncommitted rate, all as consistent with Commission precedent.

23. The Commission also approves Wolverine's request to file the committed rates as settlement rates. The Commission has ruled that such provisions are consistent with the framework and intent of section 342.4(c) of the Commission's regulations.¹⁸

24. The Commission further affirms Wolverine's capacity allocation, which reserves up to 90 percent of the available Expansion Project capacity for priority service at a premium rate for the committed volumes of committed shippers. The ten percent available for uncommitted shippers provides reasonable walk-up access to the Expansion Project's capacity.¹⁹

25. The Commission also approves the TSA's origin and destination point flexibility provisions offered to a committed contract shipper, as described in the Petition, so the committed shipper may satisfy its contracted volume commitments under the TSA by shipping volumes from alternate origin points, subject to available operational capacity. Finally, the Commission confirms that Wolverine has the discretion to add additional origin and destination points to the Expansion Project, as consistent with Commission precedent.²⁰

¹⁸ *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

¹⁹ *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007).

²⁰ *Sunoco*, 149 FERC ¶ 61,191 at PP 24, 27.

The Commission orders:

The Commission grants the Petition, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.