

154 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Powder River Crude Services, LLC
Powder River Express, LLC

Docket No. OR16-8-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued February 1, 2016)

1. On December 9, 2015, Powder River Crude Services, LLC (Powder River Crude Services, LLC) and Powder River Express, LLC (Powder River Express) (jointly, Powder River) filed a petition for declaratory order (Petition) regarding a new pipeline project intended to connect crude oil production sources in Wyoming's Powder River Basin area to multiple downstream markets (Project). Specifically, Powder River seeks Commission approval of its proposed tariff rate structure and terms of service for the Project by February 1, 2016, to enable the Project to proceed on schedule.
2. The Commission grants the rulings requested by Powder River, as discussed below.

Background

3. The Project is an approximately 135-mile pipeline designed to transport 45,000 barrels per day (bpd) of crude oil from the Powder River Basin to multiple downstream markets through delivery points with direct access to rail, local refining markets, and interconnection with other pipelines.
4. Powder River explains that after discussions with potential shippers, the Project was divided into two phases to make immediate access to transportation by rail available in Phase 1, while additional pipeline is subsequently constructed in Phase 2 that will directly connect with other oil pipelines and terminals. In June 2015, Powder River launched an open season for Phase 1, which entailed construction of a 60-mile pipeline extending from Campbell and Converse Counties in Wyoming to a delivery point north of Douglas, Wyoming (Pronghorn Station) (North Line). The North Line commenced service in July 2015 providing 20,000 bpd of capacity. From the Pronghorn Station,

shippers are able to access the Union Pacific Railroad and the BNSF Railway Systems for further movement to downstream markets.

5. Powder River explains that the second phase of the Project (Phase 2) will entail an additional 75 miles of new pipeline, with a capacity of approximately 45,000 bpd (South Line). The South Line will operate from the Pronghorn Station to a delivery point, which will interconnect with the Pony Express Pipeline and terminal assets owned by Sinclair Transportation Company. Phase 2 will also include a North Line capacity expansion of 25,000 bpd.

6. Powder River states the Phase 2 open season was widely publicized and occurred between November 2, 2015 and December 1, 2015.¹ Powder River maintains that all prospective shippers had the opportunity to obtain the same contractual rights. The open season set aside a minimum of 10 percent of the Project's capacity for uncommitted shippers, allowing the remaining 90 percent of capacity to be available for subscription by committed shippers.

Terms of the Transportation Service Agreement (TSA)

7. Powder River explains that the Phase 2 open season provided two options for committed shippers: (i) an Acreage Dedicated Shipper (Acreage shipper) option, whereby a shipper agrees to transport all crude oil produced within a specified dedicated acreage for 10 years in exchange for mutually agreed upon committed capacity levels (shipper's capacity), and (ii) a Throughput and Deficiency Shipper (T&D shipper) option, where the shipper makes a monthly minimum volume commitment (MMV), averaging at least 5,000 bpd for a minimum of 5 years in exchange for committed capacity equal to the MMV.

8. Powder River further states that committed shippers are subject to prorationing, where capacity is allocated based upon a shipper's shipment history over a rolling twelve-month base period. The base period is determined by the greater of the shipper's capacity or MMV, as applicable, or actual shipments.

9. Powder River explains that the committed shipper rates are less than the uncommitted shipper rates for the same origin and destination points, and are the same for Acreage shippers and T&D shippers. Powder River further states that the committed rates on Powder River Express include a volume incentive mechanism, which would

¹ Powder River states the Phase 1 open season for interim operations was also widely publicized and was conducted in June 2015, with North Line operations commencing in July 2015.

reduce the committed rates if the aggregate throughput for all shippers exceeds specified levels. Powder River maintains that committed shippers provide the contractual and financial support for the Project, and the lower committed rates reflect the commitment of either acreage dedications or long-term minimum volume commitments.

10. Moreover, Powder River states that an Acreage shipper's capacity establishes the maximum volume that the Acreage shipper may transport at the committed rate. The Acreage shipper's capacity will ramp up each year to specified levels for the initial years of the agreements. Thereafter, commencing January 1, 2019, the Acreage shipper's capacity will be adjusted either downward or upward based upon an average monthly shipments over certain timeframes.

11. Powder River explains that T&D shippers pay for volumes actually shipped, and are subject to a deficiency payment if actual deliveries are less than the MMV for a given month. Powder River states that the deficiency payment is applied as a prepayment credit against excess transportation charges incurred in a month when the shipper tenders barrels in excess of its monthly volume commitment over the subsequent 12 months. The TSAs for the T&D shippers will commence the later of the in-service date or June 1, 2016. T&D shippers who elect to transport during the interim service period will do so at the applicable committed rates, but without a MMV obligation until the determined date.

12. The committed shipper TSA provides for a modified application of the FERC Oil Pipeline Index methodology, limited to upward adjustments of not more than 3 percent above the rate prior to the adjustment. Moreover, Powder River requests the Commission to approve the rates and adjustment mechanism as settlement rates, pursuant to section 342.4(c) of the Commission's regulations.

13. Powder River explains that the committed shipper TSA provides for an automatic contract extension for successive one-year terms, unless terminated by either party upon prior written notice. To the extent Powder River Crude or Powder River Express elects to expand their systems beyond a certain threshold, the committed shippers have the right of first offer to submit a binding commitment to ship or pay for a commitment volume of crude oil.

14. Powder River also explains that the TSA permits either party to assign agreements by either prior written consent, or without the consent of the other party in certain enumerated circumstances subject to contractual protections in the agreement.²

² The TSA was not submitted with the instant Petition; accordingly, the Commission is relying solely on the representations made in the Petition.

15. The TSA also provides that to the extent unreserved capacity exists following the conclusion of the open season, Powder River retains the right to enter into additional TSAs prior to the commencement date. Powder River indicates that it is likely that shippers will enter into such TSAs for the remaining unsubscribed capacity.

Requested Rulings

16. Powder River requests Commission confirmation and approval of the following aspects of the Project, specifically that:

- A. The Phase 2 open season followed Commission guidelines;
- B. Up to 90 percent of the pipeline's capacity was properly committed to committed shippers, while reserving at least 10 percent of the capacity for uncommitted shippers;
- C. The committed rates and rate structure provided in the open season TSAs follow Commission precedent, are just and reasonable under the Interstate Commerce Act (ICA), and will not be subject to modification or revision except as provided by the TSAs;
- D. The open season properly reserved the Powder River Group's right to enter into additional TSAs with committed shippers for unsubscribed capacity, after the close of the Phase 2 open season but prior to the T&D commencement date, provided those agreements adhere to the same terms and conditions as in the open season; and
- E. Each of the following provisions in the TSAs is consistent with Commission precedent and is just and reasonable under the ICA:
 - i. The provisions limiting the annual FERC Oil Pipeline Index adjustments for committed shippers;
 - ii. The provisions granting contract extension rights to committed shippers;
 - iii. The provision in the T&D shipper option that provides that the transportation rate shall begin in the month immediately following the T&D Commencement Date;
 - iv. The provisions of the TSAs permitting assignments with the other party's consent, as a general matter, and without consent under certain specifically enumerated circumstances; and
 - v. The provisions affording committed shippers a right of first refusal on additional capacity made available through a facilities expansion beyond a certain threshold, as defined by and subject to the terms and conditions set forth in the TSAs.

Public Notice, Interventions, Protests, and Comments

17. Notice of the Petition was issued on December 9, 2015, providing for motions to intervene, comments and protests to be filed on or before December 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.

Commission Determination

18. Based on the representations in the Petition, the Commission will grant all the rulings requested by Powder River as consistent with precedent. These confirmations and rulings are briefly summarized below.

19. The Commission confirms that Powder River's Phase 2 open season followed Commission guidelines, and is consistent with prior precedent.⁴ The open season was widely advertised and afforded all potentially interested shippers an opportunity to become committed firm shippers on the Project. Furthermore, Powder River's reservation of up to 90 percent of the Project's capacity allows at least 10 percent of capacity to remain available for walk-up shippers, which provides reasonable access for uncommitted shippers.⁵

20. The Commission finds the committed rates and rate structure, including acreage dedication and volume commitments⁶ for which Powder River seeks approval in the Petition are consistent with Commission precedent, and accordingly will not be subject to modification or revision except as provided in the TSA.

³ 18 C.F.R. § 385.214 (2015).

⁴ See, e.g., *Shell Pipeline Co., LP*, 146 FERC ¶ 61,051, at P 21 (2014).

⁵ *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at P 14 (2012); *CCPS Transp., LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007).

⁶ *Monarch Oil Pipeline, LLC*, 151 FERC ¶ 61,150 (2015) (*Monarch*); *Alpha Crude Connector, LLC*, 149 FERC ¶ 61,001 (2014); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014).

21. Moreover, the Commission finds the open season properly reserved Powder River's right to commit capacity for unsubscribed volumes after the close of the Phase 2 open season but prior to the T&D commencement date, provided those agreements adhere to the same terms and conditions as in the open season.⁷

22. The Commission also finds that the TSA provisions for which the Petition seeks approval, including the modified FERC Oil Pipeline Index adjustments for committed shippers,⁸ contract extension rights,⁹ right of first offer,¹⁰ and assignments,¹¹ as described in the Petition are consistent with prior policy.

23. Moreover, the Commission finds the committed rates and rate structure provided in the open season TSAs and the request to treat the committed rates as settlement rates are consistent with Commission precedent. Powder River also seeks waiver of the verified statement obligation of section 342.4(c) of its regulations, which is herein granted. Powder River should reference this declaratory order and its waiver of the verified statement obligation at the time it files the initial committed rates applicable to the Project.

24. In conclusion, the Commission finds the Petition consistent with precedent and unopposed, and accordingly confirms and approves Powder River's requested rulings concerning the Project, as discussed above.

⁷ *Monarch*, 151 FERC ¶ 61,150.

⁸ *Navigator BSG Transportation & Storage, LLC*, 152 FERC ¶ 61,026 (2015); *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).

⁹ *Belle Fourche Pipeline Company and Bridger Pipeline LLC*, 151 FERC ¶ 61,139, at P 25 (2015); *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at P 39 (2012); *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005).

¹⁰ *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067 (2015) (*Saddlehorn*); *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at PP 5-6 (2012).

¹¹ *Saddlehorn*, 153 FERC ¶ 61,067 at P 34; *NuStar Crude Oil Pipeline LP*, 146 FERC ¶ 61,146, at P 14 (2014).

The Commission orders:

Powder River's Petition is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.