154 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Buckeye Pipe Line Transportation, LLC — Docket No. OR16-5-000

ORDER ON PETITION FOR DECLARATORY ORDER

February 24, 2016

1. On November 24, 2015, Buckeye Pipe Line Transportation, LLC (Buckeye) filed a petition for declaratory order requesting approval of the overall tariff and rate structure for a proposed new interstate common carrier pipeline that will transport refined petroleum products from origin points in Michigan and Ohio to destination points in Ohio and Pennsylvania. Buckeye requests Commission action no later than February 24, 2016, so that Buckeye and its shippers may receive certainty regarding the commitments the shippers made to Buckeye and Buckeye may rely upon those commitments as it moves forward with installation of the pipeline. This order grants the unopposed petition and the specific declaratory rulings requested by Buckeye.

Background

2. The pipeline will transport refined petroleum products from several Midwest origins to delivery locations in eastern Ohio and western Pennsylvania. The pipeline is expected to transport up to 65,000 barrels per day (bpd). Buckeye will construct new pipelines and tanks, make upgrades to existing pipeline manifolds, replace certain existing mainline pumps, and reconfigure existing pipeage to allow for greater connectivity.

3. Buckeye will also lease certain existing, but underutilized capacity from Buckeye Pipe Line Company, L.P. (Buckeye Pipe Line), which is an affiliate of Buckeye (Leased Capacity). The Leased Capacity will be located between the following points: 1) Mantua, Ohio to Coraopolis, Pennsylvania, 2) Lima, Ohio to Columbus, Ohio, and 3) Toledo, Ohio to Bradley Road, Ohio. Buckeye will lease a portion of the capacity it is constructing on one line segment to Buckeye Pipe Line in exchange for Buckeye Pipe Line's leasing certain of its other existing capacity to Buckeye (Exchange Capacity).

This Exchange Capacity will benefit both pipelines because it will allow both pipelines to better align their flow capabilities, which in turn will serve to increase each pipeline's respective capacity. Buckeye expects to begin offering transportation services on its pipeline in the second half of 2016.

4. The open season for the pipeline commenced on January 30, 2015 and concluded on March 31, 2015. Buckeye issued a press release on January 30, 2015 announcing the commencement of the open season, and the contents of this press release were extensively reported by the trade press. Buckeye also undertook extensive marketing efforts to inform potential shippers of the open season.

5. Thereafter, Buckeye provided each party that expressed an interest in the open season a notice that outlined the open season process and provided a high-level summary of the proposed terms and conditions of service set forth in the transportation services agreement (TSA). At the end of the open season, Buckeye concluded that the level of volume commitments received from committed shippers was sufficient to proceed with the development of the pipeline.

TSA

6. The TSA provides that, in exchange for a potential shipper's binding ship-or-pay commitment for a specified volume of products on the pipeline each year during the term of the TSA, the shipper would receive firm capacity on the pipeline each month equal to the shipper's volume commitment multiplied times the number of days in the applicable month. The TSA also provides that firm capacity shall not be subject to prorationing except in instances of force majeure or other operational disruptions. The minimum volume commitment that a potential shipper could make was 3,000 bpd.

7. During the open season, Buckeye offered up to ninety percent of the total capacity available on the pipeline for volume commitments of committed shippers, and it reserved the remaining ten percent of the capacity for uncommitted shippers. Each committed shipper was required to commit in the TSA to an initial term of ten years. After the expiration of the initial term, the TSA will automatically renew for successive five-year periods until either Buckeye or the committed shipper terminates the agreement by providing written notice to the other party no less than one year prior to the expiration of the initial term or the then-current renewal term.

8. Buckeye proposes to charge committed shippers higher rates for firm transportation service on the pipeline as compared to the rates it will charge similarly-situated uncommitted shippers. The committed rates that a committed shipper would pay will depend upon the level of the committed shipper's volume commitments.

9. The rates charged to uncommitted shippers will be offered as volume-incentive rates, meaning that, similar to committed shippers, the rates applicable to each

uncommitted shipper will depend upon the volume of products that the uncommitted shipper ships during a particular month. The volume tiers applicable to the uncommitted rates will correspond to the volume tiers that were made available to committed shippers during the open season.

10. Buckeye states that in all instances, the committed rates will be premium rates relative to the uncommitted rates. Specifically, the committed rates will always be at least $0.01 per barrel more than the uncommitted rates offered to similarly-situated uncommitted shippers for the same service.

11. In addition, Buckeye states that the TSA allows it to increase the committed rates each year to reflect the greater of the Commission's indexing adjustment for that year or three percent. Buckeye further states that under the TSA Buckeye shall not be required to lower the committed rates during the term of the agreement.

12. In the event that Buckeye elects to expand the capacity of the pipeline, the TSA provides that Buckeye will provide all committed shippers a first right to submit binding nominations to ship, or otherwise pay for, a committed volume of products on the expansion capacity without first holding an open season for such capacity. The amount of the expansion capacity that will be available for volume commitments will not exceed ninety percent of the total available expansion capacity.

13. 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 24, 2015. Pursuant to Rule 214 of the Commission's regulations,[1] all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance of this order are granted. The petition is unopposed.

Discussion

14. Based upon the provisions of the Interstate Commerce Act (ICA) and Commission precedent involving the rates and terms of service for similar pipeline projects, the Commission finds the provisions of the TSA as explained in the petition lawful and consistent with Commission precedent. The Commission therefore grants the unopposed petition and approves as just and reasonable and not unduly discriminatory or preferential the requested rulings as briefly summarized below.

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[1] 18 C.F.R. § 385.214 (2015).

15. The Commission confirms that the TSA will be honored and its provisions will be upheld and will govern the transportation services Buckeye provides to a committed shipper during the term of the TSA.[2]

16. The Commission finds that a committed shipper may receive firm transportation service on the pipeline in exchange for paying a premium rate for such transportation, as compared to the rate applicable to a similarly-situated uncommitted shipper.[3]

17. The Commission finds that Buckeye may transport Flexible-Service Barrels and Priority Incremental Barrels on a priority basis,[4] at the committed rates, provided that its transportation of such barrels does not reduce the amount of capacity reserved for uncommitted shippers.[5]

18. The Commission finds that Buckeye may use the leased capacity and the exchange capacity to provide firm transportation services, pursuant to the terms of the TSA.[6]

19. The Commission finds that Buckeye may allocate up to ninety percent of the total capacity available on the pipeline to committed shippers, while reserving the remaining ten percent of capacity for uncommitted shippers.[7]

20. The Commission finds that the proration policy, as set forth in the TSA, is reasonable and will govern the allocation of capacity on the pipeline during months when

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[2] *E.g., Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087, at PP 9, 18-19 (2011); *Seaway Crude Pipeline Co., LLC*, 146 FERC ¶ 61,151, at P 20 (2014).

[3] *E.g., CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007); *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 24 (2013).

[4] These features of the TSA permit a shipper to vary from or exceed its monthly volume commitment.

[5] *E.g., CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 29 (2013); *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014).

[6] *E.g., Palmetto Products Pipe Line LLC*, 151 FERC ¶ 61,090, at P 33 (2015) *(Palmetto)*; *Norco Pipe Line Company, LLC*, 152 FERC ¶ 61,170 (2015).

[7] *E.g., Enbridge Pipelines (FSP) LLC*, 146 FERC ¶ 61,148, at P 27 (2014); *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 27 (2013); *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; *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008).

the pipeline is in prorationing.[8] The proration policy is consistent with prorationing policies that the Commission has approved in prior declaratory orders, and ensures that uncommitted shippers will continue to have access to at least ten percent of the Non-Priority Capacity at all times.[9]

21. Buckeye may file, at its election, the committed rates as settlement rates during the term of the TSA, including upon the initial filing of the committed rates in Buckeye's tariff, pursuant to section 342.4(c) of the Commission's regulations.[10]

22. The Commission finds that Buckeye may provide transportation service on the pipeline during the interim service period, subject to the terms outlined in the TSA. Transportation services offered on the pipeline during the interim service period will be on an uncommitted basis, and consistent with Commission precedent no shipments during this period will receive firm service.[11]

23. The Commission confirms that Buckeye may provide a committed shipper with the expansion commitment rights specified in the TSA in the event Buckeye decides to expand the capacity of the pipeline.[12]

24. The Commission finds that Buckeye may implement automatic extensions of the initial term of the TSA in accordance with the provisions of the TSA.[13]

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[8] *E.g.*, *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at P 14 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999); *Total Petroleum Inc. v. Citgo Products Pipeline, Co.*, 76 FERC ¶ 61,164, at 61,947 (1996).

[9] *E.g.*, *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 15 (2012); *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040, at PP 7, 24 (2006).

[10] *E.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130 at PP 17-18, 21.

[11] *E.g.*, *Sunoco Pipeline, L.P.*, 149 FERC ¶ 61,191 (2014); *Palmetto*, 151 FERC ¶ 61,090 at P 29.

[12] *E.g.*, *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012).

[13] *E.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130 at P 34.

<u>The Commission orders</u>:

Buckeye's November 24, 2015 petition for declaratory order is granted as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.