

154 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Chicap Pipe Line Company

Docket No. OR16-7-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 7, 2016)

1. On December 8, 2015, Chicap Pipe Line Company (Chicap) filed a petition for declaratory order (Petition) requesting approval of priority service, and the overall tariff rate structure and terms of service, in connection with an expansion of capacity on its crude oil pipeline from Blue Island, Illinois to Mokena, Illinois (Expansion).
2. Chicap requests Commission action on the Petition no later than March 7, 2016, to ensure timely completion of the Expansion and fulfillment of associated transportation service obligations. The Commission grants the rulings requested by Chicap, as discussed below.

Background

3. Chicap currently operates a 15-mile, 14-inch diameter lateral pipeline that runs from Mokena, Illinois to Blue Island, Illinois. Chicap states that there is shipper interest in bi-directional flow on this pipeline, including for the purpose of moving volumes to Blue Island for storage.¹ Chicap states that the Expansion will provide needed optionality for storage, meet market demand for bi-directional flow, and provide connections to two third-party pipelines and a third-party terminal.²

¹ Petition at 4.

² *Id* at 2, 5.

4. According to Chicap, the Expansion would involve increasing flow capability and creating capacity along the line from Mokena to Blue Island of approximately 22,222 barrels per day.³ This would be accomplished by adding additional pump, pipe and valve work including electrical infrastructure at Blue Island and replacing the existing pump at Mokena, and installing a new pump connection.⁴ Chicap distinguishes its Expansion from a Colonial Pipeline Company proposal rejected by the Commission.⁵ Chicap points out that in *Colonial* no new capacity or infrastructure was proposed, whereas Chicap's Expansion both preserves existing capacity for current shippers and adds additional bi-directional flow capability and will allow shippers to access new markets in response to changing market conditions.⁶

5. To determine the viability of the Expansion, Chicap states it held a well-publicized open season between October 26, 2015 and November 24, 2015, seeking long-term volume commitments by shippers (Committed Shippers) willing to execute a Throughput and Deficiency Agreement (TDA). During the open season, Chicap made open season materials and other information available to all interested shippers. Chicap states it elicited sufficient interest to support the Expansion.⁷

Terms of the Project

6. Chicap states that under the terms of the TDA, Committed Shippers were required to commit to ship specified volumes for a term of approximately 3, 5 or 7 years.⁸

7. Each Committed Shipper would agree to ship an amount committed to under their TDA, which would be at least the minimum volume of 5,000 barrels per day. Rates would vary by term selected but would be set at least a \$0.01 premium over the

³ *Id.* at 7.

⁴ *Id.* at 5.

⁵ *Colonial Pipeline Co.*, 146 FERC ¶ 61,206 (2014) (*Colonial*).

⁶ Petition at 19-20.

⁷ *Id.* at 7.

⁸ *Id.* at 7. Dates are approximate because each term option would begin on the startup date of the Expansion and end on December 31, 2018, December 31, 2020, or December 31, 2022, respectively. *Id.*

uncommitted rate per barrel.⁹ A Committed Shipper will not be subject to prorationing under normal operating circumstances. During the open season, Chicap awarded less than 90 percent of the Expansion's capacity to Committed Shippers.¹⁰

Requested Rulings

8. Chicap requests Commission confirmation and approval of the following as just and reasonable and not unduly discriminatory or preferential:

A. The terms of the TDA entered into by any shipper for priority service on the Expansion (including the agreed-upon tariff, rate, and priority service structure) will be upheld and applied during the agreed term of the TDA;

B. The rates provided in the TDA will be treated as settlement rates during the term of the TDA, including upon their initial filing and in the agreed-upon escalation filings, pursuant to section 342.4(c) of the Commission's regulations; and

C. Chicap may provide up to 90 percent of the Expansion as priority service at a premium rate for any shipper that has committed to ship or pay volumes, pursuant to the terms of the TDA.

Public Notice, Interventions, Protests, and Comments

9. Notice of the Petition was issued on December 9, 2015, providing for motions to intervene, comments and protests to be filed on or before January 8, 2016. Pursuant to Rule 214 of the Commission's regulations,¹¹ 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 Analysis

10. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide regulatory certainty required for the Expansion to proceed, providing shippers with new optionality in the form of bi-directional capability without adversely affecting existing shippers.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 18 C.F.R. § 385.214 (2015).

11. The Commission grants the requested ruling to honor and uphold the TDA terms governing the transportation services. The Commission has previously issued declaratory orders approving agreements executed between Committed Shippers and pipelines that include volume commitments and priority service arrangements,¹² if entered into during a well-publicized open season, and has confirmed that those provisions would be upheld and would apply during the agreed-upon term of the agreement.¹³

12. The Commission grants the request permitting Chicap to file Committed Shipper rates as settlement rates during the term of the TDA. Although the Commission's regulations do not provide specifically for negotiated initial rates with agreed-to future rate changes, the Commission has ruled that such contracts are consistent with the spirit of section 342.4(c) of the Commission's regulations.¹⁴

13. Chicap's reservation of at least 10 percent of the overall Expansion capacity for uncommitted shippers is appropriate. The Commission finds the amount of capacity set aside ensures sufficient access to capacity for shippers who did not enter into a TDA.

14. The Commission approves Chicap's proposal to offer priority service at a premium rate of at least one cent per barrel over the uncommitted rate, as discussed in the Petition. The Commission has held priority service permissible under the Interstate Commerce Act provided Committed Shippers pay a premium rate of at least one cent per barrel more than uncommitted shippers, and the committed rates and priority service options were offered during an open season.¹⁵

¹² A Priority Service Shipper is a Committed Shipper who pays a premium rate for priority service. Chicap states it will file the Priority Service Rate shortly before the Expansion is placed into service and will be adjusted pursuant to the Commission's indexing methodology so the premium rate relationship between the Priority Shipper's rate and the uncommitted rate will be maintained. Petition at 8 n.31.

¹³ *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Company*, 141 FERC ¶ 61,180, at P 23 (2012); *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008) (“[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[.]”).

¹⁴ *Seaway Crude Pipeline Co., LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

¹⁵ *Shell Pipeline Company LP*, 139 FERC ¶ 61,228, at P 21 (2012).

15. Based upon the circumstances described in the Petition and the representations made therein, the Commission finds that Chicap's proposed overall rate structure and terms and conditions of service contained in the TDA are just and reasonable and do not result in undue discrimination or undue preference.¹⁶ Accordingly, the Commission grants the rulings as sought in Chicap's Petition.

The Commission orders:

The Petition is granted as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ The specific rates for uncommitted shippers must be separately justified at the time they are filed, consistent with the Commission's regulations. Chicap noted in its Petition at n.31 that it is not seeking approval of any particular uncommitted rate in this declaratory order.