

155 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Platte River Midstream, Inc.

Docket No. OR16-11-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued April 28, 2016)

1. On February 18, 2016, Platte River Midstream, Inc. (Platte River Midstream) filed a petition for declaratory order (Petition) requesting approval for the overall transportation, tariff, and rate structure for a new crude oil gathering pipeline system that will gather and transport crude oil to a central delivery point within Weld County, Colorado (Project).
2. Platte River Midstream requests Commission action on the Petition no later than April 30, 2016, to ensure timely completion of the Project and fulfillment of its transportation service obligations. The Commission grants the unopposed Petition and the specific declaratory rulings requested by Platte River Midstream.

Background

3. According to the Petition, the Platte River Midstream mainline is expected to be no greater than 15 miles, and the total length of the Project is expected to be approximately 45 miles.¹ The Project will consist of 8-inch and 6-inch diameter gathering lines merging and feeding into a 12-inch diameter mainline that will be capable of gathering up to 157,000 barrels per day (bpd) of crude oil from various production wells in Weld County, Colorado.² The Project will deliver the crude oil to a central delivery point near Lucerne in Weld County, Colorado where shippers will be able to

¹ Petition at 3.

² *Id.*

deliver their crude oil to an interstate pipeline for further transportation to the Cushing, Oklahoma hub.³

4. Platte River Midstream states that the Project will provide new gathering pipeline capacity in the Denver-Julesburg shale formation located in Colorado.⁴ Platte River Midstream asserts that as crude oil production has increased in Colorado, the existing pipeline infrastructure has not kept pace, which has created bottlenecks in moving the oil to refining centers and terminals.⁵ Platte River Midstream explains that the pipeline will be part of a more efficient solution to the existing bottlenecks in the Denver-Julesburg region.⁶

5. To determine the viability of the pipeline, Platte River Midstream states that it held a well-publicized open season between December 18, 2015 and January 18, 2016, seeking shippers (Committed Shippers) willing to execute transportation service agreements (TSAs) for a five-year period.⁷ Each Committed Shipper could choose to either (a) dedicate for transportation on the pipeline all or a portion of the crude oil produced from certain specified acreage (Acreage Dedication Shipper); or (b) commit to ship a specified volume of crude oil on the pipeline (Committed Volume Shipper).⁸ During the open season, Platte River Midstream made open-season materials and other information available to all interested parties.

TSA and Rates

6. The TSA provides that, in exchange for the Committed Shipper's commitment as an Acreage Dedication Shipper, or a Committed Volume Shipper for a primary term of five years, Platte River Midstream will reserve up to ninety percent of the pipeline's capacity for the exclusive use of the Committed Shippers that entered into a TSA with Platte River Midstream during the open season.⁹ Each Committed Shipper has the

³ *Id.* at 3-4.

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

⁹ *Id.* at 7.

opportunity to extend the primary term for one additional five-year period.¹⁰ Platte River Midstream states that at least one potential shipper entered into a TSA with Platte River Midstream.¹¹

7. Platte River Midstream proposes a postage stamp rate design for Committed Shippers and Uncommitted Shippers.¹² The postage stamp rate applicable to a Committed Shipper would be set at a premium relative to the rate applicable to an Uncommitted Shipper. Platte River Midstream explains that the rate applicable to Committed Shippers would always be at least \$0.01 per barrel more than the rate applicable to Uncommitted Shippers.¹³ Platte River Midstream states that both rates would be subject to an annual escalation in accordance with the Commission's index, but that in any year in which there is a reduction in the Commission's index, the TSA rate will not be reduced but will remain the same as the immediately preceding year, provided that any such reduction shall be carried forward to the next Commission's index adjustment and applied as a debit to any positive adjustment in the Commission's index.¹⁴ Platte River Midstream further states that such debit will not reduce the rates below the rates for the immediately preceding year.¹⁵ Platte River Midstream states that the TSA provides that in the event of a future expansion of the pipeline, all Committed Shippers will have a first right to submit a binding nomination to ship or pay for a committed volume of crude oil on the expansion capacity.¹⁶ In the event of a future expansion of the pipeline, the amount of expansion capacity that will be available to Committed Shippers will not exceed ninety percent of the total available expansion capacity.¹⁷

¹⁰ *Id.* at 8.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 8.

¹⁶ *Id.*

¹⁷ *Id.*

Requested Rulings

8. Platte River Midstream requests Commission confirmation and approval of the following as just and reasonable and not unduly discriminatory or preferential:
- A. The TSA will be honored and its provisions will be upheld and will govern the transportation services Platte River Midstream provides to a Committed Shipper during the term of the TSA.
 - B. Platte River Midstream may allocate up to ninety percent of the total capacity available of the Project to Committed Shippers, while reserving the remaining ten percent of the capacity for Uncommitted Shippers.
 - C. A Committed Shipper may receive priority transportation service on the pipeline in exchange for paying a premium rate for such transportation, as compared to the rate applicable to an Uncommitted Shipper.
 - D. Platte River Midstream may file the committed rate as a settlement rate during the term of the TSA, including upon its initial filing in the pipeline's tariff, pursuant to section 342.4(c) of the Commission's regulations.¹⁸
 - E. The committed rate will be subject to a rate escalation in accordance with the Commission's index each year during the primary term of the TSA.
 - F. Platte River Midstream may transport incremental barrels on a priority basis, at the committed rate, provided that its transportation of such incremental barrels does not reduce the amount of capacity that has been reserved for Uncommitted Shippers.
 - G. Platte River Midstream may provide a Committed Shipper with the expansion commitment rights specified in the TSA in the event Platte River Midstream decides to expand the capacity of the pipeline.
 - H. Platte River Midstream and a Committed Shipper shall have the right to extend the term of the TSA in accordance with the extension rights specified in the TSA.

Public Notice, Interventions, Protests, and Comments

9. Notice of the Petition was issued on February 18, 2016, providing for motions to intervene, comments, and protests to be filed on or before March 18, 2016. No parties

¹⁸ 18 C.F.R. § 342.4 (2015).

filed motions to intervene, comments, or protests in this proceeding. The Petition is unopposed.

Discussion

10. Based upon the representations made in the Petition, the Commission finds the provisions of the TSA as explained in the Petition appear consistent with Commission precedent under the Interstate Commerce Act (ICA) as applied in similar declaratory order petitions for oil pipeline projects. 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.

11. The Commission confirms that the TSA will be honored and its provisions will be upheld and will govern the transportation services Platte River Midstream provides to a Committed Shipper during the term of the TSA.¹⁹

12. The Commission finds that Platte River Midstream 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.²⁰

13. The Commission approves Platte River Midstream'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 ICA 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.²¹

14. Platte River Midstream 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

¹⁹ *E.g., Buckeye Pipe Line Transportation, LLC*, 154 FERC ¶ 61,130, at P 15 (2016) (*Buckeye*); *Seaway Crude Pipeline Co., LLC*, 146 FERC ¶ 61,151, at P 20 (2014); *Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087, at PP 9, 18-19 (2011).

²⁰ *E.g., Buckeye*, 154 FERC ¶ 61,130 at P 19; *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 (2007) (*CCPS Transportation*); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008).

²¹ *E.g., Chicap Pipe Line Company*, 154 FERC ¶ 61,176, at P 14 (2016) (*Chicap*); *Shell Pipeline Company LP*, 139 FERC ¶ 61,228, at P 21 (2012).

in Platte River Midstream's tariff, pursuant to section 342.4(c) of the Commission's regulations.²²

15. Platte River Midstream proposes to use the Commission's index for increases under the TSA, but if the index declines, Platte River Midstream will not under the TSA immediately reduce the committed rate, but will carry the reduction forward as a debit to future positive index adjustments. The Commission finds that the proposed TSA rate structure does not violate the antidiscrimination and undue preference provisions of the ICA because such committed TSA rates were made available to all interested shippers in the open season and reflect the differences in service priority between firm Committed Shippers and non-firm Uncommitted Shippers.²³

16. The Commission finds that Platte River Midstream may transport incremental barrels on a priority basis, at the committed rate, provided that its transportation of such incremental barrels does not reduce the ten percent of capacity that has been reserved for Uncommitted Shippers.²⁴

17. The Commission confirms that Platte River Midstream may provide the Committed Shipper with the expansion commitment rights specified in the TSA in the event Platte River Midstream decides to expand the capacity of the pipeline.²⁵

18. Finally, the Commission confirms that Platte River Midstream and the Committed Shipper will have the right to extend the term of the TSA in accordance with the provisions of the TSA.²⁶

The Commission orders:

²² E.g., *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18, 21 (2013) (*CenterPoint*).

²³ See, e.g., *CenterPoint*, 144 FERC ¶ 61,130 at P 21; *CCPS Transportation*, 121 FERC ¶ 61,253 at P 22.

²⁴ E.g., *Buckeye*, 154 FERC ¶ 61,130 at P 17; *CenterPoint*, 144 FERC ¶ 61,130 at P 29; *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 (2014).

²⁵ E.g., *Buckeye*, 154 FERC ¶ 61,130 at P 23; *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012).

²⁶ E.g., *Buckeye*, 154 FERC ¶ 61,130 at P 24; *Center Point*, 144 FERC ¶ 61,130 at P 34.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.