

156 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oasis Midstream Services LLC

Docket No. OR16-15-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 1, 2016)

1. On May 10, 2016, Oasis Midstream Services LLC (Oasis) filed a petition for declaratory order (Petition) requesting approval for the overall transportation, tariff, and rate structure for a new interstate crude oil pipeline that will gather and transport crude oil to a central delivery point within McKenzie County, North Dakota (Project or Pipeline).
2. Oasis requests Commission action on the Petition no later than August 1, 2016, to ensure timely completion of the Project and fulfillment of its transportation service obligations. The Commission grants the rulings requested by Oasis, as discussed below.

Background

3. According to the Petition, the Project is expected to be approximately 19-miles long and have a capacity of approximately 50,000 barrels per day (bpd). The Project will be located entirely in McKenzie County, North Dakota. The Pipeline will begin at a receipt point located at Oasis' central processing facilities in the Wild Basin production area, approximately 19 miles west of Johnson's Corner, North Dakota. The Pipeline will terminate near Johnson's Corner, and provide initial interconnections with two third-party pipelines, the Energy Transfer Partners Dakota Access Pipeline and the Tesoro High Plains Pipeline.
4. Commercial operation of the Project is expected to begin in the third quarter of 2016. Oasis argues the Project will benefit the region by providing additional pipeline capacity within the Wild Basin production area in McKenzie County, North Dakota. Moreover, Oasis states that the Project will provide access to downstream pipeline and refining markets in the Midwest and Gulf Coast regions.

5. To determine the viability of the pipeline, Oasis states that it held a well-publicized open season between April 8, 2016, through May 9, 2016, seeking shippers (Committed Shippers) willing to execute transportation service agreements (TSAs) for approximately a five-year period. Oasis states that only one prospective shipper executed the TSA for the Project. Following the completion of the open season, Oasis determined that it had a sufficient level of commitment from the prospective shipper to move forward with the Project.

TSA and Rates

6. The Pipeline will offer two types of service, one for Committed Shippers and one for Uncommitted Shippers. Oasis is making ninety percent of the capacity available to Committed Shippers, while not less than ten percent of the capacity will be available for Uncommitted Shippers. Committed Shippers are required to complete and execute a TSA with Oasis making a minimum volume commitment of at least 3,500 bpd and pay the Committed rate which will be at least one cent greater than the Uncommitted rate.

7. The Daily Volume Commitment is used to calculate the Annual Commitment. Committed Shippers that execute the TSA and do not satisfy their Annual Commitment will owe a Shortfall Fee. The Shortfall Fee is a deficiency-type fee that is owed by the Shipper when it fails to satisfy its Annual Commitment.

8. Oasis states that in return, Committed Shippers will receive priority service whereby a Committed Shipper's Minimum Volume Commitment shall not be subject to prorationing under normal operating conditions. Subject to Oasis retaining at least ten percent of available capacity for Uncommitted Shippers, Committed Shippers will not be subject to prorationing to accommodate Uncommitted Shippers. For Uncommitted Shippers, when nominations to Oasis exceed the capacity of a particular line segment, delivery point, or the Pipeline, prorationing will apply to those Shippers according to Item 150 of the Pro Forma Tariff.

9. The TSA will have a minimum initial term through December 31, 2021. During the initial term or any renewal term, the Committed Shipper may elect to renew the TSA on an annual basis and remain a Committed Shipper. The Committed Shipper must notify Oasis of its election to renew no later than three months prior to the last day of respective term.

Requested Rulings

10. Oasis 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 Oasis provides to a Committed Shipper during the term of the TSA.
- B. Oasis may allocate up to ninety percent of the total capacity 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. Oasis 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.¹
- E. For purposes of the Committed rate, the requirement in 18 C.F.R. § 342.4(c) concerning the filing of a verified statement is waived.
- F. The Committed rate will be subject to an annual adjustment starting on July 1, 2022, pursuant to the Commission's Oil Pipeline Index, or if such Index is no longer available, the Commission's rate change methodology generally applicable at the time.
- G. The contract extension rights provided to a Committed Shipper in the TSA are consistent with Commission policy.
- H. Oasis' proposed proration procedure, as set forth in Item 150 of its Pro Forma Tariff, is reasonable, not unduly discriminatory and consistent with Commission policy.
- I. A Committed Shipper shall have a right of first offer for Pipeline capacity that is not allocated to another Committed Shipper through a TSA or reserved for Uncommitted Shippers, subject to the terms outlined in the TSA.

¹ 18 C.F.R. § 342.4 (2015).

- J. The Minimum Volume Commitment ramp-up election provided to a Committed Shipper in the TSA is consistent with Commission precedent.

Public Notice, Interventions, Protests, and Comments

11. Notice of the Petition was issued on May 16, 2016, providing for motions to intervene, comments, and protests to be filed on or before June 10, 2016. No parties filed motions to intervene, comments, or protests in this proceeding. The Petition is unopposed.

Discussion

12. 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)² 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.

13. The Commission confirms that the TSA will be honored and its provisions will be upheld and will govern the transportation services Oasis provides to the Committed Shipper during the term of the TSA.³

14. The Commission finds that Oasis may allocate up to ninety percent of the total capacity available on the pipeline to the Committed Shipper, while reserving the remaining ten percent of capacity for Uncommitted Shippers.⁴

15. The Commission approves Oasis' 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

² 49 U.S.C. app. § 1 *et seq.* (1988).

³ *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).

⁴ *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).

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.⁵

16. Oasis 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 Oasis' tariff, pursuant to section 342.4(c) of the Commission's regulations. However, the Commission has allowed pipelines to request waiver of this verified statement, "reasoning that all the committed shippers subject to the committed rate schedule have agreed to pay the associated rate over the period of their contracts."⁶ For purposes of the Committed Rate, the requirement in 18 C.F.R. § 342.4(c) concerning the filing of a verified statement is waived.

17. Oasis proposes to use the Commission's Oil Pipeline Index for purposes of adjustment to the Committed rate, starting on July 1, 2022. 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.⁷

18. The Commission finds that Oasis 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.⁸

⁵ E.g., *Chicap Pipe Line Co.*, 154 FERC ¶ 61,176, at P 14 (2016) (*Chicap*); *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at P 21 (2012).

⁶ E.g., *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18, 21 (2013) (*CenterPoint*).

⁷ See, e.g., *CenterPoint*, 144 FERC ¶ 61,130 at P 21; *CCPS Transportation*, 121 FERC ¶ 61,253 at P 22.

⁸ 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).

19. Finally, the Commission confirms that Oasis and the Committed Shipper will have the right to extend the term of the TSA in accordance with the provisions of the TSA.⁹

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.

⁹ *E.g.*, *Buckeye*, 154 FERC ¶ 61,130 at P 24; *CenterPoint*, 144 FERC ¶ 61,130 at P 34.