

141 FERC ¶ 61,143
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 20, 2012

In Reply Refer To:
Tesoro High Plains Pipeline Company,
LLC
Docket No. OR13-1-000

Goldstein & Associates, P.C.
Attention: Melvin Goldstein
1757 P Street, NW
Washington, DC 20036

Reference: Request for Temporary Waiver of Sections 6 and 20 of the Interstate
Commerce Act and Related Commission Regulations

Ladies and Gentlemen:

1. On October 9, 2012, Tesoro High Plains Pipeline Company, LLC (High Plains) filed a request for temporary waiver of the filing and reporting requirements of sections 6 and 20 of the Interstate Commerce Act (ICA) and Parts 341 and 357 of the Commission's regulations¹ with respect to the portions of its pipeline connecting the Saddle Butte Pipeline, LLC (Saddle Butte) and the Arrow Midstream Holdings, LLC (Arrow) gathering systems to the High Plains mainline system at Johnson's Corner, North Dakota. As discussed below, the Commission grants High Plains' request for a temporary waiver.

2. High Plains states that it owns a crude oil pipeline system in North Dakota and Montana, which it operates pursuant to tariffs on file with both this Commission and the North Dakota Public Service Commission (North Dakota PSC). High Plains explains that the instant request for waiver focuses on proposed pipeline spurs (the Saddle Butte

¹ See 49 U.S.C. app. §§ 6, 20 (1988) (requiring all interstate oil pipelines to file all rates, fares, and charges for transportation on their systems, to file copies of contracts with other common carriers for any such traffic, and authorizing the Commission to require annual or special reports from carriers subject to the ICA). See also 18 C.F.R. §§ 341, 357 (2012) (implementing the filing and reporting requirements of sections 6 and 20 of the ICA).

Connector and the Arrow Connector) that will connect the Saddle Butte and Arrow gathering systems to the High Plains mainline at Johnson's Corner, North Dakota.

3. High Plains maintains that its affiliates intend to purchase all of the crude oil from the Saddle Butte gathering system that will enter the Saddle Butte Connector, which will only ship crude oil from that point to High Plains. High Plains further states that, when the crude oil reaches the mainline at Johnson's Corner, it could be transported to Ramberg Station, North Dakota, Dunn Center, North Dakota, or other interstate or intrastate destinations. Similarly, continues High Plains, the Arrow Connector will connect the Arrow gathering system to High Plains' mainline at Johnson's Corner. According to High Plains, its affiliates intend to purchase all of the crude oil that will enter the Arrow Connector, so that the Arrow Connector will only ship crude oil to High Plains' mainline at Johnson's Corner. High Plains emphasizes that no third-party shipper has requested service on the Saddle Butte and Arrow Connectors, and High Plains believes that it is unlikely that a third-party shipper will do so.

4. High Plains contends that the Commission has granted similar requests for temporary waiver of the filing and reporting requirements of its regulations and of sections 6 and 20 of the ICA when four criteria are met.² High Plains cites, *inter alia*, *Agave Energy Company*,³ in which the Commission listed the criteria as follows:

(1) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (2) there is no demonstrated third-party interest in gaining access to or shipping on the line; (3) no such interest is likely to materialize; and (4) there is no opposition to granting the waivers. In these cases, the Commission determined there were no active third-party shipper interests to protect under the ICA, and temporary waivers of the filing and reporting requirements of were therefore warranted.⁴

5. However, the Commission made it clear in *Agave* that it granted such waivers subject to revocation, should the pipelines' circumstances change. It also required the pipelines to keep their books and records in a manner consistent with the Commission's Uniform System of Accounts.

² High Plains cites, *e.g.*, *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009) (*Jayhawk*); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159 (2005) (*Enbridge*); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995) (*Ciniza*); *Hunt Refining Co.*, 70 FERC ¶ 61,035 (1995) (*Hunt*); and *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978) (*Sinclair*).

³ 136 FERC ¶ 61,094 (2011) (*Agave*).

⁴ *Agave*, 136 FERC ¶ 61,094 at P 5.

6. Public notice of High Plains' petition was issued October 11, 2012, with interventions and protests due as provided in accordance with Rules 211 and 214 of the Commission's regulations.⁵ No interventions or protests were filed.

7. The Commission concludes that, given the physical characteristics of the facilities and the limited nature of the High Plains' operations, High Plains meets the criteria necessary to qualify for a temporary waiver, consistent with the Commission's rulings in *Agave*, *Jayhawk*, *Enbridge*, *Ciniza*, *Hunt*, and *Sinclair*.

8. Accordingly, the Commission grants High Plains a temporary waiver of the filing and reporting requirements of ICA sections 6 and 20 and the Commission's related regulations with respect to the pipeline segments that will connect the Saddle Butte and Arrow gathering systems to High Plains' mainline at Johnson's Corner. Because these waivers are temporary, and based solely on the facts presented in the petition for waiver, the Commission also directs High Plains to report immediately to the Commission any change in the circumstances on which these waivers are based. Specifically, High Plains must report any changes including, but not limited to, increased accessibility of other pipelines or refiners to its facilities, changes in the ownership of the facilities, changes in the ownership of the crude being shipped, and shipment tenders or requests for service by any person. Additionally, High Plains must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines, 18 C.F.R. Part 352, and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ 18 C.F.R. §§ 385.211 and 385.214 (2012).