

141 FERC ¶ 61,212
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Sunoco Pipeline L.P.

Docket No. OR13-2-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 17, 2012)

1. On October 9, 2012, Sunoco Pipeline L.P. (“SPLP”) filed a petition for a declaratory order approving the proposed tariff and rate structure, and the service request allocation methodology, for the proposed Permian Express Phase I Project (the Project) transporting crude petroleum from Wichita Falls and Ringgold, Texas to Nederland, Texas.¹ SPLP seeks the order by December 17, 2012. As discussed below, the Commission grants the requested declaratory order.

Background

2. The Permian Basin is an 800 mile long and 300 mile wide area located primarily in the desert regions of West Texas and Southeastern New Mexico. SPLP owns a 16-inch diameter pipeline that extends from Corsicana, Texas to Wichita Falls, Texas (the Central Texas System), currently shipping approximately 28,000 barrels per day (bpd) out of its 180,000 bpd capacity from Corsicana to Wichita Falls, and a 24-inch diameter pipeline that is currently configured to flow north from Wortham, Texas to Corsicana, Texas (the Wortham-Corsicana Pipeline).² SPLP leases capacity from West Texas Gulf Pipeline Company (WTG) on a 26-inch diameter pipeline extending from Wortham, Texas to Nederland, Texas (the WTG South Pipeline), with a current capacity of 40,000 bpd southeast from Wortham to Goodrich and approximately 300,000 bpd

¹ Sunoco Pipeline L.P. October 9, 2012 Petition for Declaratory Order at 1 (Petition).

² Petition at 1-2.

flowing west from Nederland to Sour Lake.³ The Project will interconnect these pipelines into a continuous system from Wichita Falls and Ringgold to the Nederland Terminal. The Project will create an additional transportation route to the Nederland/Beaumont, Texas markets for West Texas Sour and West Texas Intermediate crude petroleum shipped from production centers in West Texas, New Mexico and Oklahoma.⁴

Project Details

3. The Project entails necessary improvements to the Central Texas System, the Wortham-Corsicana Pipeline and the WTG South Pipeline. The upgrade work required on the Central Texas System includes the reversing of the flow direction from Wichita Falls to Corsicana, and the addition of pumping facilities.⁵ Upgrades to the Wortham-Corsicana Pipeline include upgrading pumps at Corsicana to make the pipeline segment bi-directional and to permit pumping in a southerly direction for up to 7.5 hours per day at 20,000 barrels per hour (up to 150,000 bpd). As part of the Project, SPLP will lease from WTG most of the capacity on the WTG South Pipeline from Wortham to Nederland.⁶ WTG and SPLP will make alterations and improvements to the WTG South Pipeline to (1) reactivate the pipeline segment from Goodrich to Sour Lake and reverse the flow of that segment, (2) reverse the flow of the segment from Nederland to Sour Lake, and (3) increase the capacity of the WTG South Pipeline by a minimum of 150,000 bpd on the entire transit from Wortham to Nederland once it is placed in full service.⁷ The Project will require capital investment in new piping and valves, realignment of pumps, tankage, and new facilities for interconnecting the various segments.⁸

³ *Id.* at 2.

⁴ *Id.* at 7.

⁵ *Id.* at 4.

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.* at 8.

Open Season

4. Due to this substantial investment requirement, SPLP conducted an open season to secure long-term volume commitments pursuant to long-term Transportation Service Agreements (TSAs).⁹

5. The Open Season for the Project commenced on June 25, 2012, and concluded on September 6, 2012. Notice of the open season was provided to interested parties, with additional notice distributed in press releases to more than 200 trade and general circulation print and online publications.¹⁰ *Pro forma* TSAs were provided to shippers who chose to participate in the open season; the TSAs included the proposed priority service and uncommitted rates for the project and the proposed rules tariff that would exempt committed volumes from prorationing under ordinary operating conditions.¹¹

Rates and Terms for the Project

6. According to SPLP, shippers that enter into TSAs (Committed Shippers) will make binding volume commitments for stated contract quantities of crude oil. Shippers that sign TSAs will commit to ship at least 3,000 bpd on a ship-or-pay basis for three-, five- or seven-year terms.¹² Shippers may choose Wichita Falls or Ringgold as the designated origin point for nominated volumes.¹³ Committed Shippers agree to pay a premium rate for transportation of committed volumes in exchange for an allocation of up to 90 percent of the capacity created by the Project.¹⁴ Committed volumes from Committed Shippers will not be subject to prorationing under normal operating conditions.¹⁵ SPLP states that at least ten percent of the capacity created by the Project will be reserved for uncommitted volumes.¹⁶

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 8.

7. With respect to Committed Shippers, the Open Season offered a tiered rate and term structure. Committed Shippers at each level of volume commitment will pay a premium relative to the rate applicable to the uncommitted shipper for that volume tier. The longest volume commitment term, seven years, will result in a premium rate greater than or equal to \$0.01 above the uncommitted rate.¹⁷ Shorter-term volume commitments (three or five years) will result in premium rates greater than the seven year premium rate as well as the uncommitted rate.¹⁸ SPLP seeks the right to adjust the committed rates annually.¹⁹

8. SPLP also proposes to offer discounted uncommitted rates relative to those shipping lesser volumes. The Project's rate structure offers discounts that increase in amount as the size of the volume commitment increases, while ensuring that Committed Shippers always pay a premium of at least \$0.01 more than the uncommitted rate.²⁰

9. In the event that volume commitments received during the open season exceeded available capacity, SPLP proposed during the Open Season a process that allocated subscriptions from Committed Shippers on a Net Present Value (NPV) basis.²¹ Capacity would be allocated based on the NPV of each TSA, taking into account the elections made by each potential shipper for origin point, term, and volume commitment.²² Shippers submitting TSAs with identical NPV would be allocated capacity on a pro rata basis.²³

10. SPLP also plans to offer early service on the sections of the Project running from Wichita Falls to Ringgold. SPLP will construct a temporary connection at Wichita Falls at its own expense to accommodate current shipments.²⁴ The temporary connection will

¹⁷ *Id.* at 9-10. The proposed initial uncommitted rates vary depending on origin point and volume commitment, and range from \$1.57 per barrel to \$2.42 per barrel.

¹⁸ *Id.*

¹⁹ *Id.* at 11.

²⁰ *Id.* at 9-10.

²¹ *Id.* at 11.

²² *Id.*

²³ *Id.* at 12.

²⁴ *Id.*

cease to operate once the permanent connection at Wichita Falls is complete, which is expected to occur in March of 2013.²⁵

11. During construction of the Project, certain restraints will affect throughput capacity over the entire system. As a result, available uncommitted capacity will temporarily exceed that available once the Project is completed.²⁶ SPLP plans to offer this uncommitted capacity until the Project reaches completion.

Requested Rulings

12. SPLP seeks an order approving (1) the proposal to provide up to 90 percent of the capacity created through the Project as priority committed space at a premium rate for shippers that commit to move volumes on a ship-or-pay basis; (2) the proposal to allocate capacity among prospective committed shippers on a Net Present Value basis; and (3) approval of the plan to offer early transportation service from Wichita Falls to Ringgold with the proviso that any shipping history developed during this early service may be overridden by volumes secured by committed shippers during the open season process.

13. SPLP argues that under the Interstate Commerce Act (ICA), the Commission has discretion to approve its proposed priority service terms and rate structures.²⁷ The provisions of the ICA, argues SPLP, contain no specific requirements and prohibitions with respect to common carrier obligations, but instead impose a “general reasonableness” standard to be applied by the Commission.²⁸ Courts, states SPLP, historically have interpreted the statutory provisions of the ICA to invest the Commission with considerable discretion to assess the reasonableness of pipeline practices.²⁹

14. The Commission, argues SPLP, has also exercised discretion under the ICA to approve various methods for allocating capacity among different categories of shippers.³⁰

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 13 (citing 49 U.S.C. app. § 1 (1988)).

²⁸ Petition at 14.

²⁹ *Id.* at 14 (citing *Sea-Land Services Inc. v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984)).

³⁰ Petition at 15.

Pipelines have been granted latitude by the Commission, states SPLP, in crafting allocation methods to meet circumstances specific to their operations.³¹

15. SPLP argues that the Commission has approved requests for priority service comparable to those offered in its Petition.³² The Commission, states SPLP, has permitted initial agreed-upon rates in situations where a pipeline will begin a new service that includes premium committed rates and (1) the pipeline holds an open season available to all interested shippers, and (2) at least one non-affiliated shipper that plans to utilize the line agrees to the rate.³³ SPLP contends that the TSA for the Project complies with Commission precedent by providing that committed shippers will pay a premium rate of at least \$0.01 over uncommitted rates.³⁴ SPLP further argues that the Commission has long recognized that shippers committing to transport large volumes may pay a discounted rate,³⁵ and that reserving 90 percent capacity for committed volumes is consistent with Commission precedent.³⁶

16. SPLP states that the Commission has approved an allocation methodology based on NPV rankings of TSAs.³⁷ In *Shell*, states SPLP, the Commission found such an NPV methodology appropriate for allocating capacity in the event of oversubscription during an oil pipeline open season.³⁸ SPLP argues that its NPV methodology will ensure full utilization of the Project's capacity by those shippers whom value it the most.³⁹

³¹ *Id.* at 15 (citing *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094 (2004), *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008)).

³² Petition at 16 (citing *Sunoco Pipeline LP*, 139 FERC ¶ 61,259 (2012), *Sunoco Pipeline LP*, 137 FERC ¶ 61,107 (2011)).

³³ Petition at 16-17 (citing *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008) (*CCPS*)).

³⁴ Petition at 17 (citing *CCPS*, 121 FERC ¶ 61,253 at P 19)).

³⁵ Petition at 17 (citing *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228 (2012)).

³⁶ Petition at 18 (citing *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259 (2012)).

³⁷ Petition at 20 (citing *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228 (2012)).

³⁸ Petition at 20.

³⁹ *Id.*

17. SPLP argues that Commission precedent supports allowing certain facilities to enter service prior to the completion of a project.⁴⁰ SPLP's proposal to allow early service on an uncommitted basis without affecting priority service commitments that will become effective when the Project is completed is consistent with Commission precedent, argues SPLP.⁴¹ SPLP states that allowing early service will benefit uncommitted shippers by allowing access to capacity that would otherwise go unused.⁴² SPLP's proposal would allow for uncommitted shipper usage while protecting volume commitments from committed shippers by providing 90 percent of the ultimate capacity of the completed Project to committed shippers.⁴³

Notice and Interventions

18. Public notice of the petition was issued on October 11, 2012, with interventions and protests due on or before November 9, 2012. No interventions, protests or other comments were filed.

Commission Analysis

19. The Commission finds that SPLP's proposal is consistent with applicable policy and precedent. SPLP has demonstrated a demand for transportation of crude petroleum out of the Permian Basin to the Nederland/Beaumont, Texas markets. To meet this demand, SPLP must undertake a substantial capital investment in making the necessary improvements to the Central Texas System, the Wortham-Corsicana Pipeline and the WTG South Pipeline. Without the substantial financial investment of shippers that commit to transport crude, there exists the possibility that the Project will not occur in a timely manner.

20. To provide financial assurances to SPLP, the proposed TSAs require shippers to enter into long-term volume commitments. In exchange for these commitments, the TSAs provide for higher rates for premium service not subject to prorationing. The proposal also provides for discounted rates for uncommitted shippers who agree to certain volume commitments. Both the provision of higher rates for premium service, and discounted rates based on volume commitments, are consistent with Commission policies and precedent.

⁴⁰ *Id.* at 21 (citing *Florida Natural Gas Trans. Co.*, 93 FERC ¶ 61,203 (2000)).

⁴¹ *Id.*

⁴² Petition at 21.

⁴³ *Id.* at 21-22.

21. SPLP provides an appropriate amount of capacity for Uncommitted and New Shippers, at least ten percent, while affording benefits to Committed Shippers who enter into long-term TSAs. The proposed allocation of Open Season volume commitments based on a uniform, non-discriminatory NPV ranking is consistent with Commission precedent.⁴⁴ SPLP's open season gave all potential shippers the opportunity to become Committed Shippers by entering into TSAs.

22. Finally, the Commission will approve SPLP's proposal to offer early service for uncommitted shippers as much as possible, while ensuring that ultimately 90 percent of final Project capacity will be reserved to premium service. This service structure will avoid capacity desired by uncommitted shippers to go unused during early phases of construction prior to completion of the Project, while providing assurance to committed shippers that the terms of their TSAs concerning capacity will be maintained upon Project completion. Accordingly, the Commission grants SPLP's petition for declaratory order, based on the representations made in the petition.

The Commission orders:

SPLP's Petition for declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴⁴ *Shell Pipeline Co. L.P.*, 139 FERC ¶ 61,228 (2012).