142 FERC ¶ 61,087
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.

Enterprise Liquids Pipeline LLC Docket No. OR13-7-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued February 1, 2013)

1. On November 14, 2012, Enterprise Liquids Pipeline LLC (Enterprise, or Petitioners) filed a petition for a declaratory order (Petition) approving (1) the rate structure and terms of service agreed to by Enterprise and shippers that have signed Transportation Service Agreements (TSA) under which shippers have made long-term commitments to utilize, or pay for, capacity on the Appalachia-to-Texas (ATEX) Pipeline (committed shippers); and (2) a proration policy for ATEX Pipeline that recognizes an established historical pattern of shipment for committed shippers based on the greater of their historical volumes or commitments. The proposed project will provide ethane pipeline capacity from the Marcellus/Utica region to the U.S. Gulf Coast market. The Petition is unopposed, and Petitioners request that the Petition be granted by February 1, 2013, so that the project may move forward without delay.

2. As discussed below, the Commission grants the Petition.

I. Background

3. Petitioners state that in 2010, Enterprise began working with producers in the Marcellus/Utica region to address the growing logistical need to transport the ethane produced in association with the natural gas production from this liquids-rich region. Through this process, Petitioners state that the ATEX pipeline system was designed to maximize the use of existing pipeline assets and existing pipeline corridors, thereby allowing Enterprise to bring the pipeline into service faster, cheaper, and with a smaller environmental footprint as compared with other potential alternatives. Petitioners state that the project has significant shipper support, as evidenced by long-term volume commitments to utilize or pay for the capacity on the pipeline being made available for committed shippers. Petitioners seek assurance for a rate structure that allows the contract rates to be discounted compared to the uncommitted rate, and for Committed

Shippers' volume commitments to serve as the initial historical baseline for allocation purposes.

4. Petitioners note that the Marcellus/Utica region represents an important new source of domestic energy and economic growth potential. Petitioners submit that production of natural gas liquids set an all-time record in April, 2012, at almost 2.4 million barrels per day, with ethane and propane production accounting for 42 percent of this volume. Petitioners note, however, that natural gas in the region requires processing to remove natural gas liquids (NGL) and to meet gas transmission pipelines' quality specifications.

5. Petitioners note that ethane accounts for approximately 40 to 50 percent of the volume of NGLs typically extracted by gas processing, but in the Marcellus/Utica region, ethane volumes can be as much as 60 percent. Petitioners state that ethane is used almost entirely as a petrochemical feedstock in the production of a variety of consumer plastics. Petitioners note that historically, because there has not been a pipeline in the area to transport ethane, the ethane was not recovered during processing, but remained entrained in natural gas produced in the Marcellus/Utica region.

6. Petitioners note that leaving ethane in the residue natural gas has distinct limits; the more ethane that is left in the residue natural gas, the more difficult it becomes for the residue natural gas to meet the gas pipelines' quality specifications. Additionally, Petitioners note that to the extent ethane remains in the residue natural gas stream, producers lose the ability to realize a higher value for the ethane as a purity product than its value when left in the residue natural gas.[1]

7. Petitioners note that over the last three years, the Marcellus/Utica region has seen a dramatic increase in regionally available natural gas processing and NGL fractionation capacity. Further, Petitioners state that as liquids-rich natural gas production in the Marcellus/Utica region increases, along with the corresponding increases in gas processing and NGL fractionation capacities, the supply of ethane will dramatically increase to a level where, because of gas pipeline specifications, the ethane can no longer be left in the residue natural gas.

8. Petitioners state that this significantly increased new output of ethane requires sufficient ethane transportation infrastructure to provide adequate economic options for producers. Petitioners state that approximately ninety percent of the nation's ethylene plants are located on the U.S. Gulf Coast. Petitioners state that the ATEX pipeline will provide sufficient pipeline take-away capacity for ethane all the way to that market, so

[1] *See* Petition at 5.

that efficient production of natural gas and other NGLs in the Marcellus/Utica region can be maximized.

9. Petitioners note that by providing Marcellus/Utica region producers with direct pipeline access to the U.S. Gulf Coast petrochemical market, the ATEX Pipeline offers a timely, cost-effective, and expandable solution for meeting the nation's long-term energy needs from both a supply and demand perspective. Petitioners state that producers will gain reliability in their natural gas production and access to markets.

A. Details of Project

10. Petitioners state that the ATEX Pipeline is a 1,230-mile project designed to facilitate natural gas production in the Marcellus/Utica region by providing producers with takeaway capacity for ethane from Pennsylvania, West Virginia, and Ohio to the U.S. Gulf Coast petrochemical market. Petitioners note that the project utilizes a combination of new and existing infrastructure. Petitioners note that while there is clear market justification for the ATEX Pipeline, making it a valuable and worthwhile undertaking, the project requires a substantial capital investment, approximately $1.4 billion.

11. Petitioners state that the northern portion of the pipeline will involve the construction by Enterprise of 369 miles of 20-inch diameter pipeline from Washington County, Pennsylvania to Seymour, Indiana following existing pipeline corridors, which minimize the environmental footprint of the project. At Seymour, Petitioners state that the pipeline will interconnect with an existing 16-inch diameter line currently owned by Enterprise TE Products Pipeline Company, LLC (TE Products). Petitioners state that the 16-inch diameter line from Seymour to El Dorado, Arkansas, along with a 14-inch line from El Dorado to Beaumont Texas, will be transferred to Petitioners and reversed to accommodate southbound delivery of ethane to the U.S. Gulf Coast. Petitioners state that the 16-inch/14-inch TE Products pipeline is one of two lines owned by TE Products in that corridor that currently transports refined products and NGLs from the U.S. Gulf Coast to the Midwest and Northeast.[2] At the southern terminus of the existing 14-inch line in Beaumont, Petitioners state a new 55 mile pipeline will be constructed that will extend ATEX Pipeline to the existing NGL storage complex at Mont Belvieu, Texas.

12. Petitioners state that the ATEX Pipeline will provide an initial capacity of 125,000 barrels per day (bpd), which can be efficiently expanded to meet increased demand.

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[2] Petitioners state that the other pipeline is the TE Products 20-inch pipeline. Petitioners state that TE Products will continue to provide service on that pipeline for refined products and NGLs from the Gulf Coast to the Midwest and for NGLs from the Gulf Coast to the Northeast. *See* Zulim Affidavit at 4.

Petitioners state that the ATEX Pipeline is expected to be in service in the first quarter of 2014.

B. The Open Seasons

13. Petitioners state that in 2011 and 2012, Enterprise sought term and ship-or-pay volume commitments in return for a discounted transportation rate through three open seasons (October/November 2011; January 2012; and August/September 2012). Notice for each opportunity was provided to interested parties, with additional notice provided by press releases to more than 1,600 trade and general circulation print, broadcast and online outlets. Petitioners state that all shippers had an opportunity to participate in each open season, and to execute a TSA.

14. The TSA requires the shipper to commit to ship a minimum volume of ethane, on a ship-or-pay basis, for at least ten years in consideration for negotiated, discounted transportation rates.

C. Rate Structure

15. Petitioners explain that the terms set forth in the TSA are the result of extensive negotiations. Petitioners state that, under the TSA, shippers agreed to utilize, or pay for, capacity for a minimum daily volume, at different rates depending upon the volume and term commitments agreed to. Petitioners note that the contracted rates (Contract Rates) are discounted below the uncommitted rates (General Commodity Rates). Petitioners provide the following schedule for illustration:

Term and Volume Commitment (BPD)		**Contract Rate (Per Barrel)**
15 or 20 years	For 30,000 ramping up to 75,000	5.88
	20,000 and above	6.09
	3,000 to 19,999	6.51

16. Petitioners note that the fifteen-year term option carries with it a 100 percent ship-or-pay obligation for the entire term. Petitioners further note that the twenty-year term option provides for a 100 percent ship-or-pay obligation for the first ten years, followed by a ten-year dedication to ATEX Pipeline (but not a ship-or-pay obligation) for transportation of ethane produced at any fractionation facility that sourced volumes during the first ten years. Petitioners state that regardless of the term selected, committed shippers at each level of volume commitment will have discounted contract rates.

17. Petitioners state that the General Commodity Rate, required by 10 C.F.R. § 342.2, pursuant to the TSA, will be no less than $8.40 per barrel. Petitioners state that discounts from the General Commodity Rate recognize the economic advantage and risks for those shippers that have made substantial financial commitments to the project as compared to shippers that have not made such commitments.

18. Petitioners state that Enterprise will have the right to upwardly adjust the Contract Rates annually, based on the annual FERC oil pipeline index, or if FERC indexing is terminated, an agreed-upon substitute. Petitioners state that in the case of shippers agreeing to the highest level of volume commitment, such adjustments are capped over the term of the contract at $10.50 per barrel. Additionally, Petitioners state that if the Contract Rates as indexed exceed the General Commodity Rate at any time, the Contract Rates shall be reduced to equal the General Commodity Rate.

19. Petitioners state that under the terms of the TSA, a committed shipper has the option to increase its contracted volumes by a total of up to 20,000 bpd, but the shipper was required to exercise that option by December 31, 2012. Petitioners state that committed shippers also have the option to utilize incremental available capacity at the Contract Rates, should they have additional equity production.

20. Petitioners state that under the terms of the TSA, Enterprise has not made more than 90 percent of the capacity of the pipeline available for volume commitments. Petitioners note that the TSA also requires Enterprise to provide committed shippers with immediate base period volume histories equal to the greater of (1) the volumes the shipper transported during the historical base period or (2) the contract volume applicable to any allocation period. Petitioners state that its FERC tariff and rates will be filed at least thirty days prior to the in-service date of the system, which is currently estimated to occur in the fist quarter of 2014.

II. <u>Requested Rulings</u>

21. Petitioners request an order declaring that the terms of the TSA and the accompanying *pro forma* tariff rate structures and service terms are lawful, and that the stated Contract Rates and prorationing provisions will govern the contracted shippers' service during the terms of the TSA, irrespective of changes that may occur as to the General Commodity rates, except that the Contract Rates shall not be higher than the General Commodity Rate. Petitioners note that this request includes the Contract Rates set out in each TSA and Item 300 to the *pro forma* tariff, and the agreed-upon escalation pursuant to the Commission's index.

22. Petitioners also request confirmation that they may provide committed shippers with immediate base period volume histories equal to the greater of either the volumes the shipper transported during the historical base period or the contract volume applicable

to the allocation period as set out in Item No. 80 of the *pro forma* tariff. Petitioners state that Enterprise is not seeking approval of any specific General Commodity Rate.

III. Notice and Interventions

23. Notice of the Petition was issued November 15, 2012. Interventions and protests were due December 4, 2012. Pursuant to Rule 214 of the Commission's regulations,[3] all timely filed motions to intervene and any unopposed motion 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.

IV. Discussion

24. Consistent with the precedent established by the Commission's order in *Express Pipeline Partnership* (*Express*),[4] Petitioners have sought advance approval for the rates, terms, and conditions of a financially significant project in order to obtain regulatory certainty and to address issues outside the compressed timetable of normal tariff filings.[5] Also, consistent with *Express* and Commission precedent, Petitioners have offered rates to all shippers in a widely publicized open season.

25. Petitioners' proposal of a volume incentive program to support the pipeline's efforts to have shippers make long-term commitments is akin to other volume incentive programs approved by the Commission in other cases.[6] The Commission affirms that a volume incentive (or discounted) rate does not violate the anti-discrimination or undue

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[3] 18 C.F.R. § 385.214 (2012).

[4] 76 FERC ¶ 61,245, at 62,253 (*Express*), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

[5] Petitioners cite, *e.g.*, *Shell Pipeline Co.*, 139 FERC ¶ 61,228 (2012); *Skelly-Belvieu Pipeline Co.*, 138 FERC ¶ 61,153 (2012); *Sunoco Pipeline, L.P*, 137 FERC ¶ 61,107 (2011); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 23 (2007); *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 9 (2006); *Enbridge Energy Co.*, 110 FERC ¶ 61,211 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002).

[6] Petitioners cite *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 21 (2008); *Shell Pipeline Co., LP,* 139 FERC ¶ 61,228, at PP 13, 20 (*Shell*); *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at P 31 (2007); *Mid-America Pipeline Company LLC*, 116 FERC ¶ 61,040, at P 23 (2006); *Enbridge Energy Co., Inc*. 110 FERC ¶ 61,211 at P 38; *Plantation Pipe Line Co*., 98 FERC at ¶ 61,866.

preference provision of the Interstate Commerce Act (ICA) by virtue of being lower than the general commodity rate, so long as (1) all potential shippers had the opportunity to take advantage of the discounted rate and (2) the discount rate reflects the relevant differences among shippers.[7] The proposed committed rates in the instant petition vary inversely based on the size of the volume commitment (the higher the volume the greater the discount relative to the rate for the lowest volume commitment), and the TSA also prevents the Contract Rates from exceeding the General Commodity Rate throughout the term of the agreement.

26. Because all shippers had the opportunity in well publicized open seasons to take advantage of competitive rates based on volume commitment and contract term, there is no issue of undue discrimination or undue preference among the resulting classes of shippers differentiated by contract term and volume commitment. Committed shippers are not similarly situated to shippers that did not enter into a commitment by their own choices.

27. The ATEX Pipeline rate structure as presented in the instant petition is consistent with Commission precedent, ensuring that new shippers have access to at least 10 percent of total capacity.[8] These preferential prorationing rights were also offered during an open season and the appropriate amount of capacity (10 percent) reserved to Uncommitted Shippers is consistent with Commission policy.

28. Additionally, the ATEX Pipeline proposal regarding volume histories is consistent with the Commission's approval of Shell's *pro forma* tariff provision. As the provision noted, "a shipper which has executed a 10, 15, or 20 year contract committing that Shipper to pay rates set forth in this tariff (Contract Shipper) shall have the committed volumes specified in its contract be deemed as its historical shipment volumes for the first twelve (12) months immediately prior to the commencement date. This treatment will immediately grant Contract Shipper status as a Regular shipper." Such treatment of the initial commitment as an historical baseline is appropriate because it protects Committed Shippers who are financially supporting the construction of the pipeline, by allowing them to commit to an expected amount of volumes without diminishing their shipping rights due to the uncertainties regarding when their full production will be available.[9]

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[7] *See Express Pipeline P'ship,* 77 FERC at 61,755.

[8] Petitioners cite *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at PP 9-11 (2012).

[9] Petitioners cite *Shell Pipeline Co. LP*, 141 FERC ¶ 61,017, at P 14 (2012).

<u>The Commission orders</u>:

The Petition for a declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.