142 FERC ¶ 61,115
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. OR13-9-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued February 15, 2013)

1. On December 7, 2012, Sunoco Pipeline L.P. (Sunoco) filed a petition for a declaratory order (Petition) approving priority service, the tariff and rate structure, and the service allocation methodology for its proposed Mariner East Project (Project). Sunoco maintains that the Project will provide additional transportation alternatives for natural gas liquids (NGL), which will relieve the oversupply of NGLs (in this case, ethane and propane) in central and western Pennsylvania.

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

I. Description of the Filing

3. Sunoco states that the Marcellus Shale region extends through much of the Appalachian Basin from West Virginia through the Mid-Atlantic and into New York. According to Sunoco, the U.S. Geological Survey estimates that the Marcellus Shale region contains as much as 141 trillion cubic feet of recoverable natural gas.[1] Sunoco emphasizes that production in the region has increased dramatically as new technology has improved the technical and economic feasibility of recovering the natural gas reserves, but that the increased natural gas production has created an oversupply of NGLs, which are byproducts of the natural gas production.[2]

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[1] Sunoco cites U.S. Energy Information Administration, Annual Energy Outlook 2012 Early Release Overview 9 (2012), http://www.eia.gov/forecasts/aeo/er/.

[2] Sunoco cites The Associated Press, *New Industry Report Says Marcellus Shale Natural Gas Production Has Quadrupled Since 2009*, July 20, 2011, available at

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4. According to Sunoco, there is no major market in the Northeast for the excess NGLs,[3] so it will construct the Project to transport the excess NGLs from the Marcellus Shale region in southwestern Pennsylvania and eastern Ohio's Utica Shale region to an existing pipeline that will then transport the NGLs to a Sunoco, Inc. terminal in eastern Pennsylvania and Delaware for storage, processing, and subsequent transportation to alternative markets by water or truck. Sunoco anticipates that the Project will commence propane service by the second half of 2014 and ethane service in the first half of 2015.

5. Sunoco projects that throughput for the Project will be approximately 72,250 barrels per day (bpd). According to Sunoco, it will make available up to 90 percent of the new capacity for committed volumes and will reserve at least 10 percent for uncommitted volumes. Sunoco states that it will accomplish NGL transportation via the Project using (1) a new 12-inch pipeline from the NGL fractionation complex near Houston, Pennsylvania, that connects with an existing Philadelphia-to-Pittsburg pipeline near Delmont, Pennsylvania; and (2) significant modifications to the existing eight-inch Philadelphia-to-Pittsburgh pipeline, which extends from Delmont to eastern Pennsylvania and northern Delaware. Sunoco adds that the Project may include the construction of 12 new pump stations and modifications to three existing pump stations to accommodate the increased volumes.

6. Sunoco states that it conducted a widely-publicized open season from August 9 to September 28, 2012. Sunoco further states that 16 shippers chose to participate in the open season. According to Sunoco, it asked the committed shippers to execute both a confidentiality agreement and an Ethane Pipeline Transportation Services Agreement or a Propane Pipeline Transportation Services Agreement (each, a TSA). Sunoco explains that the TSAs included the proposed initial priority service and uncommitted tariff rates, a *pro forma* rules tariff, and a *pro forma* prorationing policy that would exempt the committed volumes from prorationing under ordinary operating circumstances. Sunoco maintains that the shipper term and volume commitments are essential to the success of

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http://blog.syracuse.com/news/print.html?entry=/2011/07/new_industry_report_says_marce.html.

[3] Sunoco cites *Ethane Disposition Poses Risk for Marcellus Production*, Oil & Gas Financial Journal, Sept. 10, 2010, available at http://www.ogfj.com/index/article-display/3871741726/articles/oil-gas-financial-journal/unconventional/marcellus-shale/ethane-disposition.hmtl (stating that an overabundance of "must-recover ethane" is leading to ethane oversupply and limitations on gas shipments).

the Project and that the terms of the tariff and priority service structure conform to Commission precedent.[4]

7. Sunoco states that three shippers executed a total of four TSAs (two for ethane and two for propane). Sunoco explains that shippers executing the propane TSA committed to pay a premium rate for shipment of at least 5,000 bpd for either a 10-year or 15-year term, while shippers executing the ethane TSA agreed to a 15-year term with the same ship-or-pay requirement. Further, states Sunoco, in exchange for the shipper commitments, it will provide priority service to those shippers on up to 90 percent of the Project's capacity. Sunoco emphasizes that the committed shippers' premium rate will protect their committed volumes from prorationing.

8. Sunoco states that, commencing in 2015, it will have the right to adjust the committed rates annually, effective as of January 1 of each year, based on the annual FERC oil pipeline index, or if FERC indexing terminates, by the annual change in the Producer Price Index (PPI) published in the immediately preceding calendar year, to the extent permitted by applicable law. However, continues Sunoco, if either the FERC index or a change in the PPI would result in a tariff rate decrease, it will reduce the committed rates, but not below the committed rate established in the TSAs. Similarly, Sunoco states that it will have the right to adjust the uncommitted rate annually in accordance with the annual FERC oil pipeline index.

9. Sunoco asserts that declaratory orders such as it seeks here are permissible under the Interstate Commerce Act (ICA)[5] and the Commission's regulations. Sunoco further contends that the terms and rate structure it proposes are consistent with Commission precedent and that its proposal is a reasonable, non-discriminatory means of meeting the needs of both the pipeline and its shippers.

10. Sunoco explains that the applicable ICA provisions contain broad delegations of authority to the Commission to determine whether certain practices of oil pipelines are reasonable and not unduly discriminatory.[6] Further, states Sunoco, courts historically

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[4] Sunoco cites, *e.g.*, *Sunoco Pipeline, LP*, 139 FERC ¶ 61,259 (2012); *Sunoco Pipeline, LP*, 137 FERC ¶ 61,107 (2011); *Skelly-Belvieu Pipeline Co.*, LLC, 138 FERC ¶ 61,153 (2012); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040 (2006); *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,253 (1995), *order denying reh'g*, 77 FERC ¶ 61,188, at 61,755 (1996).

[5] 49 app. U.S.C. § 1, *et seq*. (1988).

[6] Sunoco cites the following ICA provisions: (a) section 1, which makes the ICA applicable to oil pipeline common carriers providing transportation in interstate

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have interpreted these statutory provisions as investing the Commission with considerable discretion to assess the reasonableness of pipeline practices, taking into consideration all current industry conditions, and not merely conditions as they existed when the statute was adopted.[7]

11. Sunoco points out that the Commission previously has recognized that there is no single method of allocating capacity in times of excess demand and that pipelines should have some latitude in establishing allocation methods to meet circumstances specific to their operations.[8] For example, states Sunoco, the Commission repeatedly has approved requests to offer priority service at a premium rate to shippers agreeing to long-term volume commitments in support of projects that create new pipeline capacity, while also preserving access for uncommitted shippers.[9] Sunoco adds that the Commission also recognizes the importance of priority shippers to the pipeline's capital financing, stating as follows:

> In this case, premium rate firm shippers are not similarly situated with the pipeline's non-firm shippers. Premium rate firm shippers have made long-term agreements and must pay for their contracted amounts even if not used, but they are not

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commerce, (b) section 1(4), which requires common carriers to provide and furnish transportation upon reasonable request, and (c) section 3(1), which prohibits undue preference for or prejudice against particular shippers or classes of shippers.

[7] Sunoco cites, *e.g., Sea-Land Services Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984) ("[D]iscrimination has never been a static concept, but instead has steadily evolved over the past century to reflect not only refinements in ratemaking methodology, but changes in the national economy as well. . . ."); *Indiana Harbor Belt R.R. v. United States*, 510 F.2d 644, 649 (7th Cir.), *cert. denied*, 422 U.S. 1042 (1975) ("That a body should exist fitted to make a primary determination from the facts as to whether a preference or discrimination obtains was one of the reasons for the creation of the Commission.").

[8] Sunoco cites *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at 61,336 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999) and *Total Petroleum Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996)); *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008); *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 (2005).

[9] Sunoco cites, *e.g., CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008).

> subject to prorationing. Uncommitted shippers may choose to ship on [the pipeline] in any month. Thus uncommitted shippers have maximum flexibility to react to changes in their own circumstances or in market conditions, although they do not provide the assurances and financial support for the [pipeline] that the firm shippers provide.[10]

12. Sunoco next asserts that the Commission previously has permitted initial agreed-upon rates in situations where a pipeline is beginning a new service that includes premium committed rates, as well as an open season available to all interested shippers. Further, continues Sunoco, in such cases, the Commission requires that at least one non-affiliated shipper planning to use the new service agrees to the rate.[11] Sunoco argues that, because the Project involves building a new pipeline segment and making significant upgrades to the existing pipeline infrastructure, it is effectively a new pipeline project for purposes of Commission regulation.[12]

13. Sunoco contends that the TSAs for the Project also comply with Commission precedent by providing that committed shippers will pay a premium rate of at least $0.01 over the uncommitted rate.[13] Further, continues Sunoco, the TSAs permit the committed shippers to pay the uncommitted rate for their movements of uncommitted volumes.[14]

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[10] *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007).

[11] Sunoco cites, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at PP 14, 19 (2007). *See also* 18 C.F.R. § 342.2(b) (2012); *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, FERC Stats. & Regs. Regulations Preambles 1991-1996 ¶ 30,985, at 30,960 (1993) (stating that "in furtherance of the Commission's policy to encourage settlements," initial rates could be established "through agreement of the pipeline and potential shippers, at least one of which must not be affiliated with the pipeline").

[12] Sunoco cites, *e.g.*, *Rio Grande Pipeline Co.*, 178 F.3d 533, 542 (1999) (citing *Longhorn Partners Pipeline*, 73 FERC ¶ 61,335, at 62,112-13 (1995)).

[13] Sunoco cites *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007). *See also Sunoco Pipeline, LP*, 137 FERC ¶ 61,107, at PP 7, 15 (2011).

[14] Sunoco states that, when capacity is oversubscribed, it will allow committed shippers to ship their committed volumes without prorationing and will apportion the remaining pipeline capacity among all nominated uncommitted volumes. Further, states Sunoco, if *force majeure* or other causes reduce the pipeline's normal operating capacity,

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14. Sunoco maintains that its proposal also is consistent with Commission precedent in reserving 90 percent of capacity for committed volumes while ensuring that uncommitted volumes will have access to 10 percent of capacity.[15] Sunoco observes that the Commission has not established a minimum percentage of capacity that must be set aside for uncommitted shippers and has emphasized that it evaluates each proposal on its own merits.[16] Further, states Sunoco, the Commission has found that the reservation of 10 percent of capacity for uncommitted shippers is sufficient to provide reasonable access.[17] Sunoco contends that, as long as uncommitted shippers have reasonable access to the pipeline's capacity, there is nothing inequitable or unfair about preserving on a priority basis a portion of the pipeline's capacity for those shippers whose commitments make the pipeline capacity possible.[18]

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it will reduce proportionately the capacity available for committed volumes. Sunoco emphasizes that, while committed volumes will have first call on the reduced amount of priority space, uncommitted volumes will continue to have access to the same percentage of total available capacity, even in times of reduced overall capacity.

[15] Sunoco cites *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at PP 9-15 (2012).

[16] Sunoco cites *CCPS Transportation, LLC*, 122 FERC ¶ 61,123, at P 14 (2008).

[17] Sunoco cites *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at PP 9-15 (2012) (approving reservation of 90 percent of total pipeline capacity for committed shippers paying a premium rate); *see also CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.3 (2007) (requiring 10 percent of expansion volumes to be reserved for uncommitted shippers to ensure that uncommitted shippers' access to overall post-expansion capacity did not drop below 10 percent); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008) (suggesting that a 90 percent reservation of capacity for committed priority shippers paying premium rates would not be an undue preference).

[18] Sunoco cites *Enbridge Energy Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at PP 39-40 (2012) (finding it appropriate that uncommitted shippers would not be protected from prorationing because they were not providing the financial backing required for the project); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007) (finding it not discriminatory to treat uncommitted shippers differently because they have maximum flexibility to react to changes in their own circumstances or market conditions, but do not provide the assurances and financial support for the project that committed shippers provide).

II. Notice and Interventions

15. Notice of the Petition was issued December 11, 2012. Interventions and protests were due January 14, 2013. Pursuant to Rule 214 of the Commission's regulations,[19] all timely-filed motions to intervene and any unopposed motions 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.

III. Commission Analysis

16. The Commission will grant the unopposed Petition. Sunoco has demonstrated that additional NGL transportation is necessary in the active natural gas production areas to be served by the Project. Additionally, the proposed terms of service and rate structure are consistent with applicable Commission policy and precedent.

17. Sunoco has demonstrated a need for additional pipeline capacity to transport excess NGLs produced in association with natural gas in the Marcellus and Utica Shale production regions. Specifically, Sunoco has shown that the level of excess NGLs (for which no major market exists in the Northeast) may limit production of natural gas from those regions.

18. To meet this demand, Sunoco must undertake a substantial capital investment to construct new pipeline facilities and modify existing facilities to transport the NGLs to a Sunoco, Inc. terminal in Eastern Pennsylvania and Delaware, for storage, processing, and subsequent transportation to alternative markets by water or truck. Without the substantial financial investment of shippers that commit to move barrels on the Project, it is possible that construction of the Project will not occur in a timely manner.

19. To minimize the risk that the Project will not move forward, and to provide financial assurance to Sunoco, the TSAs require shippers to commit to ship-or-pay contracts at premium rates for initial 10- to 15-year terms. In exchange for these commitments, Sunoco will reserve 90 percent of the available capacity for those shippers and will assure such shippers that it will not prorate their committed volumes. Sunoco also will provide an appropriate amount of capacity (10 percent) for uncommitted shippers that do not provide the financial assurances that the committed shippers provide. Sunoco's open season appropriately gave all potential shippers the opportunity to become committed shippers by entering into TSAs.

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[19] 18 C.F.R. § 385.214 (2012).

20. Accordingly, the Commission grants the Petition, based on the representations made in the Petition. While the Commission approves Sunoco's proposed rate design and overall tariff structure, when Sunoco files its actual tariffs for the Project, it must comply with the applicable provisions of Part 342 of the Commission's Rules and Regulations.

<u>The Commission orders</u>:

Sunoco's Petition is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.