

142 FERC ¶ 61,152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

February 27, 2013

In Reply Refer To:
Western Refining Pipeline Company
Docket No. OR13-14-000

Steptoe & Johnson
1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Attention: Steven H. Brose

Dear Mr. Brose:

1. On January 29, 2013, Western Refining Pipeline Company (Western) 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 new lines (Lines) that it is constructing to transport crude oil from tankage facilities in two counties in New Mexico (New Mexico Facilities) to downstream markets. Western anticipates that it will complete the construction and testing of the Lines by March 15, 2013, and states that it expects to place them in service on or about March 31, 2013. Accordingly, Western requests Commission action on its request by February 28, 2013. As discussed below, the Commission grants Western's request for a temporary waiver.

2. Western states that the Lines will consist of a new 12-inch diameter, 19-mile line (Mason North Line) and two 10-inch diameter feeder lines (10-Inch Lines). Western explains that the New Mexico Facilities consist of two 10,000 barrel tanks that will be connected to a centrally located 30,000 barrel tank by the 10-Inch Lines, one of which runs approximately 12.2 miles from the west, and the other of which runs approximately 6.5 miles from the east. Western points out that the Mason North Line will originate at

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).

the New Mexico Facilities and will extend south to a destination point at Mason, Texas, where it will interconnect with a 450-mile pipeline (Wink Pipeline) that is owned and operated by Kinder Morgan Energy Partners L.P. (Kinder Morgan).²

3. Western maintains that it owns and operates 100 percent of the New Mexico Facilities and that, when the Lines are completed, there will be no intermediate origin and destination points on any of the Lines, and no third-party has requested the construction of an intermediate connection point with the Lines. Western states that one of its affiliates will own all of the crude oil to be transported through the Lines. Additionally, Western acknowledges its continuing obligation to maintain its books and records consistent with the Commission's Uniform System of Accounts and to report any material change in the facts presented in the instant waiver request.

4. Western asserts that the Commission has granted waivers in numerous similar situations involving pipelines that otherwise do not qualify as private lines.³ Western points out that the Commission has granted such waivers when: (1) the pipelines seeking temporary waivers (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) there is no likelihood that such third-party interest will materialize, and (4) there is no opposition to granting the waivers.⁴

5. Additionally, Western observes that the Commission has granted such waivers even where third-party interconnections exist at a destination point if there is no active third-party shipper interest to protect under the ICA.⁵ However, Western points out that the Commission has granted such waivers, subject to revocation should circumstances change, and it has required the pipelines to keep their books and records in accordance

² Western points out that the Wink Pipeline has a published FERC Tariff under the name Kinder Morgan Wink Pipeline LLC.

³ Western cites, e.g., *ONEOK Rockies Midstream, L.L.C.*, 138 FERC ¶ 61,133 (2012) (*ONEOK*); *Saddle Butte Pipeline, LLC*, 136 FERC ¶ 61,071 (2011) (*Saddle Butte*); *Sinclair Pipeline Company, L.L.C.*, 134 FERC ¶ 61,077 (2011) (*Sinclair*); *Enbridge Pipelines (NE Texas Liquids) L.P.*, 117 FERC ¶ 61,046 (2006) (*Enbridge*).

⁴ Western cites, e.g., *ONEOK*, 138 FERC ¶ 61,133, at P 4 (2012).

⁵ Western cites *Enbridge*, 117 FERC ¶ 61,046 at PP 2, 5; *Enbridge Pipelines (NE Texas Liquids) L.P.*, 110 FERC ¶ 61,159, at P 2 (2005); *Sinclair, L.L.C.*, 134 FERC ¶ 61,077 at P 7.

with the Commission's Uniform System of Accounts.⁶ Western contends that its request for waiver meets the Commission's standards for granting such waivers.

6. Public notice of Western's request for waiver was issued February 8, 2013, with interventions and protests due as provided in accordance with Rules 211 and 214 of the Commission's regulations.⁷ No interventions or protests were filed.

7. The Commission concludes that, given the physical characteristics of the Lines and the New Mexico Facilities and the limited nature of their operation, Western meets the criteria to qualify for a temporary waiver, consistent with the Commission's rulings in *ONEOK*, *Sinclair*, and *Enbridge*.

8. Accordingly, the Commission grants Western 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 Lines. Because these waivers are temporary, and based solely on the facts presented in Western's request for waiver, the Commission also directs Western to report immediately to the Commission any change in the circumstances on which these waivers are based. Specifically, Western 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 oil being shipped, and shipment tenders of requests for service by any person. Additionally, Western must maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines⁸ and make such books and records available to the Commission or its duly authorized agents upon request.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ Western cites *Sinclair*, 134 FERC ¶ 61,077 at P 7.

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

⁸ 18 C.F.R. Part 352 (2012).