170 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Tallgrass Pony Express Pipeline, LLC Docket No. OR20-3-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 2, 2020)

1. On November 4, 2019, Tallgrass Pony Express Pipeline, LLC (TPEP) filed a petition requesting that the Commission issue a declaratory order (Petition) approving its proposed rate structure and terms of service for its expansion project (Expansion Project). We grant TPEP's petition, as discussed below.

# I. Background

2. The Pony Express pipeline system is an approximately 860-mile crude oil pipeline that originates in Guernsey, Wyoming and Northeast Colorado and serves producers in the Bakken, Powder River, and Denver-Julesburg basins as it runs through Wyoming, Colorado, Nebraska, Kansas, and Oklahoma, and terminates in Cushing, Oklahoma. According to TPEP, the purpose of the Expansion Project is to expand capacity of existing Pony Express facilities by remanufacturing pumps at the 14 pump stations located between Guernsey and Cushing.[1] TPEP expects the Expansion Project to add a total of 70,000 barrels per day (bpd) to Pony Express's existing capacity, 17,000 bpd of which will be allocated to the Expansion Project.[2] According to TPEP, 15,000 bpd was made available to committed shippers in the open season, and 2,000 bpd was reserved for uncommitted volumes.[3]

3. TPEP states that the Expansion Project will increase capacity to move petroleum from the Bakken and Powder River plays for delivery to the Cushing oil hub. In addition

[1] Petition at 3.

[2] *Id*. and n.2. TPEP states that the remaining new capacity has been or will be offered in open seasons in connection with joint movements on the Hiland and Iron Horse Pipelines and local refinery movements, with at least 10% of such capacity reserved for uncommitted volumes.

[3] *Id*. at 3.

to increased capacity from Guernsey to Cushing (Primary Path), TPEP states that the Expansion Project will also have a secondary origin at Platteville, Colorado that will connect at Sterling, Colorado, which is downstream of Guernsey, and secondary destinations upstream of Cushing.[4]

## II. Open Season

4. TPEP held an open season from October 1, 2019 to October 30, 2019. On September 30, 2019, TPEP issued a press release giving notice of the open season, which was picked up by other publications. According to TPEP, all existing and potential shippers had the right to participate in the open season for contracts with a five-year term that included a one time right to extend the term for an additional five-year period.[5] TPEP notes that based on interest expressed by existing and potential committed shippers, TPEP commenced construction of the Expansion Project while preparing to conduct the open season, and that a condition precedent of all executed transportation service agreements (TSAs)[6] is that the Commission approve the requested term. TPEP further states that no affiliates of TPEP submitted volume commitments.[7]

## III. TSA Rates and Terms

5. TPEP states that the TSA offers service from Guernsey to Cushing, with options to nominate volumes to intermediate upstream destinations and from a secondary origin located at Platteville, and potentially, further secondary origins added by TPEP in the future.[8] TPEP states that the TSA provides the opportunity to make a minimum volume commitment of between 5,000 and 15,000 bpd.[9]

6. TPEP explains that it has a history-based prorationing policy that governs capacity allocation when nominations exceed available capacity.[10] TPEP states that it will

---

[4] *Id*. at 2, 4.

[5] *Id*. at 6.

[6] TPEP filed the TSA on November 21, 2019.

[7] Petition at 6.

[8] *Id*. at 7. TPEP states that if TPEP adds new origin or destination points under the TSA, TPEP will file applicable interstate or intrastate tariffs, notifying all shippers of the availability of these new origins or destinations. *Id.* at 30.

[9] *Id.* at 7.

[10] *Id.* at 28.

continue to have a history-based prorationing system and will allocate at least 10% of the Expansion Project's 17,000 bpd capacity to uncommitted volumes.[11] According to TPEP, the TSA requires a committed shipper to ship its monthly volume commitment at the committed rate or make a deficiency payment for any shortfall. TPEP states that the TSA provides that a committed shipper accrues history equal to its minimum volume commitment (composed of shipped barrels and deficiency payments) on the Primary Path, so long as the shipper is not in payment default.[12] According to TPEP, the committed shippers will accrue history in the Primary Path at the time they make deficiency payments (which are then credited to their Deficiency Payment Accounts).[13]

7. TPEP states that a committed shipper may ship volumes in excess of its monthly minimum volume commitment (Excess Barrels) at the same committed rate.[14] Excess Barrels may be shipped, pursuant to the committed shipper's election, either as (1) "Extra Barrels" if the shipper has a zero balance in its Deficiency Payment Account,[15] or as (2) "Incremental Barrels." For Incremental Barrels, TPEP states it will apply any balance in the Deficiency Payment Account to the transportation charges at the committed rate, and the committed shipper will be responsible for paying any remaining charges.[16] If a shipper decides to pay the transportation charges for any Incremental Barrels rather than apply any balance from the Deficiency Payment Account, that payment will be credited to an Incremental Payment Account that can be applied to future deficiency payments owed by the committed shipper during the TSA term. According to TPEP, a committed shipper will not accrue history on the shipment of Incremental Barrels but will accrue

[11] *Id*. at 12.

[12] *Id.* at 28.

[13] TPEP states that such deficiency payments are stored in the Deficiency Payment Account until they are applied to the transportation charges for Incremental Barrels or expire after 12 months. *Id.* at 9.

[14] *Id*. at 8.

[15] *Id.* at 25-26. According to TPEP, if Excess Barrels are treated as Extra Barrels, the shipper will pay the applicable committed shipper rate and will receive history at the time of shipment. Only Extra Barrels will accrue history for shipments that are not in the Primary Path. Except for Extra Barrels, nominations by committed shippers to origins or destinations that are not in the Primary Path will be allocated capacity after nominations to regular and new shippers are satisfied. *Id.* at 9-10, 12-13, 26, 28.

[16] TPEP confirms that committed shippers will not receive additional history when amounts in the Deficiency Payment Account are applied to the transportation charges for Incremental Barrels. *Id*. at 25-26.

history when amounts in the Incremental Payment Account are applied to deficiency payments.[17]

8. TPEP explains that the TSA provides that any existing committed shipper that entered into a TSA pursuant to the open season that commenced on May 12, 2012 (the 2012 TSA) can convert its existing minimum volume commitment into a minimum volume commitment in the current open season (Extension Minimum Volume Commitment), in which the shipper's 2012 TSA terminates as of the in-service date of the Expansion Project.[18] According to TPEP, shippers who convert from the 2012 TSA to the new TSA will receive the lower committed rate in the new TSA. TPEP states that a shipper who exercises such conversion right also has the option to bring the balance of its previously accrued history under the 2012 TSA to a historical deficiency payment account under the new TSA, which may be applied to the transportation charges payable by such committed shipper for Incremental Barrels if it elects to pay a higher committed rate under the new TSA. TPEP states that transportation charges for Incremental Barrels paid from such historical deficiency payment account shall be credited at the then-applicable committed shipper rate plus 15 cents.[19] TPEP states that its proposal will not impact any capacity set aside for uncommitted shippers as the capacity for the Extension Minimum Volume Commitment comes from the capacity designated for existing committed service.[20]

9. According to TPEP, committed shippers will pay the committed rates for the Primary Path, even if shipments are from or to secondary origin and destination points. TPEP states that it will have the right to adjust the committed rates annually based on the FERC oil pipeline index or any successor methodology.[21] TPEP explains that the tariff rate structure will be tiered with respect to volume, namely, the greater the volume, the greater the discount relative to the rates of lower-volume committed shippers.[22] The TSA further provides for two separate volume-tiered committed rate structures: (A) Committed Shipper A volume-tiered rates apply to (1) all new committed shippers that make minimum volume commitments for expansion capacity and (2) existing shippers

---

[17] *Id*. at 9, 26, 28.

[18] *Id*. at 9, 13, 20, 28.

[19] *Id*. at 8.

[20] *Id.* at 20, 28-29.

[21] TPEP also states that it may increase the committed rate to recover certain increased costs incurred as a result of a change in applicable laws. *Id.* at 10.

[22] *Id.* at 10.

that make Extension Minimum Volume Commitments, but do not elect to bring forward any unused balance of their deficiency payment account under their 2012 TSAs; and (B) Committed Shipper B volume-tiered rates apply to existing shippers that make Extension Minimum Volume Commitments and elect to bring forward into the new TSAs any unused balance of their deficiency payment account from their 2012 TSAs. TPEP states that Committed Shipper B rates are higher than Committed Shipper A rates at all volume tiers to reflect a premium in exchange for allowing these Committed Shipper B shippers to elect to bring forward their unused 2012 TSAs' Deficiency Payment Account balances.[23]

10. TPEP states that the Expansion Project's new TSA includes one five-year extension right for committed shippers that are not in default. According to TPEP, the new TSA provides that if TPEP elects to terminate such TSA based on an uncured default by a committed shipper, TPEP will, if permitted by applicable law, hold an open season for capacity equal to the minimum volume commitment in the terminated TSA.[24]

## IV. Requested Rulings

11. TPEP seeks an order from the Commission approving each of the following aspects of the rate structure and terms of service:[25]

A. TPEP's proposal to file the committed rates, both during the initial term of the TSAs and any renewal term(s), as settlement rates pursuant to 18 C.F.R. § 342.4(c) (2019) of the Commission's regulations.

B. The right of committed shippers that entered into the 2012 TSA to: (1) convert their existing volume commitments into new minimum volume commitments in the open season and agree to apply existing accrued history on TPEP to those Extension Minimum Volume Commitments and pay the committed rate provided for in the new TSA; and (2) elect to bring forward any unused deficiency payment balances to the new TSA and apply such balance to the transportation charges for any Incremental Volumes, in exchange for payment of Committed Shipper B rates that are higher than Committed Shipper A rates otherwise payable by committed shippers in accordance with the new TSA.

[23] *Id*. at 11-12.

[24] *Id*. at 13.

[25] *Id*. at 14-15.

C. The rate structure, including (1) tiered rates that reflect volume-based discounts, and (2) indexing.

D. The shipper history rights granted to committed shippers in accordance with the TSA, including (1) Excess Barrel provisions, and (2) the prorationing process.

E. TPEP's right to add secondary origin and destination points at the same committed tariff rates as those provided for in the TSA for the Primary Path.

F. The right of the committed shippers to extend the term of their new TSAs for one five-year term.

G. TPEP's right, if it terminates a TSA based on a committed shipper's uncured default, to hold an open season for the default capacity.

## V. Public Notice, Intervention, Protests, and Comments

12. Notice of the Petition was issued on November 5, 2019 providing for motions to intervene, comments and protests to be filed on or before December 4, 2019. No adverse comments or protests were filed. The Petition is thus unopposed.

## VI. Discussion

13. We grant the rulings requested by TPEP, as set forth below.

14. The Petition requests that the committed rates provided for in the TSA be treated as settlement rates pursuant to 18 C.F.R. § 342.4(c) (2019). Commission regulations require that pipelines meet the requirements for initial rates under 18 C.F.R. § 342.2(a) (2019), file cost, revenue, and throughput data supporting the rate as required by part 346 of the Commission's regulations, or 18 C.F.R. § 342.2(b) (2019), file a sworn affidavit that the rate is agreed to by a non-affiliated shipper who intends to use the service in question, when the tariff is filed with the Commission.[26] TPEP confirms that it will meet the Commission's requirements under 18 C.F.R. § 342.2(b) (2019) by filing a sworn affidavit with its tariff that the committed rates are agreed to by at least one non-affiliated shipper that intends to use the service.[27] We find that TPEP's proposal is consistent with Commission policy and that TPEP may file the committed rates under 18 C.F.R. § 342.2(b) (2019) and treat subsequent adjustments to those rates

[26] 18 C.F.R. § 342.2 (2019).

[27] Petition at 17.

under the terms of the TSA as settlement rates pursuant to 18 C.F.R. § 342.4(c) (2019) of the Commission's regulations.[28]

15. We approve TPEP's request that existing committed shippers may convert their 2012 TSA volume commitments into Extension Minimum Volume Commitments. We find TPEP's request to be reasonable and consistent with Commission precedent, as committed shippers will receive the benefit of a lower rate in exchange for signing a new TSA for the Expansion Project, and the turnback of capacity by existing committed shippers will not reduce the 10% of capacity set aside for uncommitted shippers.[29]

16. We grant TPEP's request to allow existing committed shippers to elect to bring forward any unused deficiency payment balances to the new TSA and apply such balances to transportation charges for Incremental Volumes in exchange for payment of higher rates. We find TPEP's Committed Shipper A or Committed Shipper B rate framework reasonable as either the A or B rate is elective and will be agreed to by the committed shippers to whom it will apply. Providing all shippers the flexibility to decide whether or not to carry over unused deficiency payment balances will allow them the opportunity to take advantage of the more favorable rates and terms under the new TSA, depending on their particular circumstances.[30]

17. We find TPEP's proposed tiered discount rate structure is consistent with Commission precedent.[31] We also accept TPEP's proposal to adjust the committed rates according to the FERC index, as consistent with Commission policy.[32]

---

[28] *See Sunoco Pipeline L.P.*, 169 FERC ¶ 61,088, at P 12 (2019) (granting requests to treat an initial committed rate "as an initial rate pursuant to section 342.2 of the Commission's regulations" and to treat subsequent adjustments to the rate under the terms of the TSA "as settlement rates pursuant to section 342.4(c) of the Commission's regulations."); *BridgeTex Pipeline Co., LLC*, 167 FERC ¶ 61,251, at P 25 (2019); *Medallion Pipeline Co., LLC*, 169 FERC ¶ 61,202, at PP 23-24 (2019); *Cactus II Pipeline LLC*, 168 FERC ¶ 61,192, at P 8 (2019).

[29] *E.g.*, *Medallion Pipeline Co., LLC*, 160 FERC ¶ 61,139, at P 24 (2017); *Medallion Pipeline Co., LLC*, 167 FERC ¶ 61,265, at P 24 (2019).

[30] Petition at 21 and n.28.

[31] *E.g.*, *Tallgrass Pony Express Pipeline LLC*, 147 FERC ¶ 61,266, at P 14 (2014).

[32] *E.g.*, *Cactus II Pipeline LLC*, 167 FERC ¶ 61,205, at P 32 (2019); *Stakeholder Midstream Crude Oil Pipeline, LLC*, 160 FERC ¶ 61,010, at P 17 (2017); *Oryx S. Del. Oil Gathering and Transp. LLC*, 154 FERC ¶ 61,065, at P 27 (2016).

18. We approve TPEP's proposed terms for allocating capacity to committed shippers during periods of prorationing. We find that the prorationing terms of the TSA are consistent with TPEP's existing tariff and Commission policy.[33] We approve TPEP's Excess Barrel provisions, as they provide reasonable flexibility to committed shippers and are consistent with Commission policy.[34]

19. We approve TPEP's proposal regarding secondary origin and destination points. TPEP's proposal is consistent with Commission precedent and any additional origin and destination points added to the TPEP system will improve shipper access to production and market areas.[35]

20. We approve TPEP's proposal to allow committed shippers to extend the term of their new TSAs for one five-year term as consistent with Commission precedent and prior approvals of similar extension rights.[36]

21. We grant TPEP's request to hold an open season for capacity made available by the termination of a TSA based on a shipper's uncured default. TPEP's proposal would allow terminated capacity to be offered to anyone interested on an equal basis and will not impact the 10% of capacity reserved for uncommitted shippers.[37]

---

[33] Petition at 27-28; *see also Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,249, at PP 27-31 (2012).

[34] *E.g.*, *Kinder Morgan Pony Express*, 141 FERC ¶ 61,249 at PP 33-37; *Tallgrass Pony Express Pipeline LLC*, 147 FERC ¶ 61,266 at PP 17-18.

[35] *E.g.*, *Medallion Del. Express, LLC*, 163 FERC ¶ 61,170, at P 21 (2018); *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067, at P 37 (2015); *Sunoco Pipeline LP*, 149 FERC ¶ 61,191, at P 27 (2014).

[36] *E.g.*, *Marathon Pipe Line LLC*, 164 FERC ¶ 61,014, at P 29 (2018).

[37] *See, e.g.*, *Sunoco Pipeline L.P.*, 167 FERC ¶ 61,159, at P 13 (2019) (approving pipeline's offering of previously committed capacity that was freed up following the cancellation of a TSA to all potential shippers in a new open season).

The Commission orders:

The Petition is granted as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,
Secretary.