147 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North Dakota Pipeline Company LLC Docket No. OR14-21-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 15, 2014)

1. On February 12, 2014, North Dakota Pipeline Company LLC (North Dakota Pipeline)[1] filed a petition for declaratory order seeking certain rulings regarding its Sandpiper Project.[2] North Dakota Pipeline seeks approval of a tariff structure involving committed rates for priority and non-priority service, as well as uncommitted rates and apportionment principles that are based on Commission precedent. As discussed more fully below, the Commission grants North Dakota Pipeline's petition.

<u>Background</u>

2. The Sandpiper Project is intended to increase substantially the pipeline capacity available for Bakken crude oil produced in western North Dakota and eastern Montana to access downstream markets. The increased capacity will have major benefits to producers of Bakken crude by permitting production to reach market hubs that provide premium netbacks to area producers. The Sandpiper Project comprises two major segments – the Upstream Expansion and the Downstream Extension. The Upstream

[1] North Dakota Pipeline was known as Enbridge Pipelines (North Dakota) LLC, prior to November 25, 2013. The company name changed to reflect Williston Basin Pipeline Company LLC's purchase from Enbridge Energy Partners L.P. of a 37.5 percent interest in the Class B Units of Enbridge Pipelines (North Dakota) LLC.

[2] An earlier petition for declaratory order relating to the Sandpiper Project was denied by the Commission without prejudice in *Enbridge Pipelines (North Dakota) LLC*, 142 FERC ¶ 61,212 (2013). The Commission found that Enbridge North Dakota had not filed a proposal seeking approval of the lawfulness of rate structures or terms of service that was appropriate for consideration in a petition for declaratory order. The Commission also found the proposed rates lacked supporting schedules pursuant to the Commission's regulations as well as any documents that would qualify as an uncontested settlement. *Id.* P 30.

Expansion will consist of a 24-inch pipeline running 375 miles from Beaver Lodge, North Dakota to Clearbrook, Minnesota that will parallel the existing North Dakota Pipeline System mainline. The new line will increase the initial annual average capacity into Clearbrook, Minnesota to approximately 440,000 barrels per day (bpd) (an increase of 230,000 bpd over the existing capacity). Estimated capital cost of the Upstream Expansion totals $1.5 billion.

3. The Downstream Extension will consist of a 30-inch pipeline running 233 miles from Clearbrook, Minnesota to Superior, Wisconsin, with an annual average capacity of 380,000 bpd and a total estimated cost of $1.2 billion. The Sandpiper Project will relocate the interconnection between the North Dakota Pipeline System and the Lakehead System from Clearbrook to Superior, thereby providing direct access to a vast pipeline network serving the Midcontinent, Midwest, and Gulf Coast regions of the United States and eastern Canada. At the time the Sandpiper Project goes into service, North Dakota Pipeline will decommission the connection to the Lakehead System at Clearbrook, while maintaining deliveries at Clearbrook into the Minnesota Pipeline.[3] The 60,000 bpd difference between the upstream capacity of 440,000 bpd and the downstream capacity of 380,000 bpd is accounted for by the volume that is typically delivered to the Minnesota Pipeline at Clearbrook each month.

4. The Sandpiper Project includes four new pump stations (three on the Upstream Expansion and one on the Downstream Extension). The Sandpiper Project also includes new tanks at Beaver Lodge, Stanley, and Berthold, North Dakota, which are necessary to accommodate the additional receipts expected as a result of the project. New tanks at Clearbrook, Minnesota are required to operationally manage the transition from two pipelines (the existing 16-inch line and the new 24-inch Sandpiper line) down to one 30-inch line continuing to Superior, Wisconsin. The new Sandpiper lines will be readily expandable on a cost-effective basis, with the potential to add up to 160,000 bpd of incremental capacity through added pump stations and associated facilities, without building another new line.

<u>North Dakota Pipeline's Petition</u>

5. North Dakota Pipeline requests a number of specific rulings and approvals with respect to the proposed tariff rate and service structure. North Dakota Pipeline projects the Sandpiper Project will begin service in the first quarter of 2016. To maintain the scheduled date, North Dakota Pipeline has already spent about $100 million in development costs based on support from existing and potential shippers and government officials in markets to be served by the Sandpiper Project. North Dakota Pipeline states that substantial additional sums will be needed to keep the project on course pending a

[3] Because the delivery point into the Minnesota Pipeline will be maintained, there will be no crude supply disruption to refineries in the Twin Cities area.

decision by the Commission. Accordingly, North Dakota Pipeline requests a Commission ruling, if possible, by no later than May 15, 2014. North Dakota Pipeline asserts the proposed rate and tariff structure is not unduly discriminatory, conforms to precedent, and therefore, should receive Commission approval.

6. North Dakota Pipeline requests approval of the proposed tariff structure that involves separate rates for committed priority volumes,[4] committed non-priority volumes,[5] and uncommitted volumes. North Dakota Pipeline states a large share of Sandpiper Project costs will be recovered through long-term volume commitments received during a widely publicized open season that concluded on January 24, 2014. North Dakota Pipeline states it received executed Transportation Service Agreements (TSAs) containing ship-or-pay commitments for 155,000 bpd, the majority of which will be subject to payment of the premium tariff rate for priority service. North Dakota Pipeline states the anchor shipper for the Sandpiper Project is Marathon Petroleum Corporation, which is also a part owner of the North Dakota Pipeline through its subsidiary, Williston Basin Pipeline Company, LLC. North Dakota Pipeline states Marathon Petroleum Corporation executed the same TSA that was offered to other interested parties through the open season.

7. For committed shippers (both priority and non-priority) the tariff rates will be determined by the TSA those shippers signed during the open season. North Dakota Pipeline states the committed rates will apply from each committed shipper's selected receipt point to each selected delivery point. Each of the committed rates will have two components: a base component and a flow-through power cost charge. In addition, the committed shippers will be subject to the previously approved Phase 6 Surcharge, which should expire at the end of 2016.[6] North Dakota Pipeline states the initial charge for committed priority volumes with a 10-year term is approximately 30 cents per barrel to Superior, Wisconsin and 15 cents per barrel for movements to Clearbrook, Minnesota. North Dakota Pipeline states the committed priority rates and the committed non-priority rates differ in that the base components of the committed priority rates are designed to provide an initial premium over the estimated uncommitted rates for the same service.

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[4] *See, e.g, Enbridge Pipelines (North Dakota) LLC,* 133 FERC ¶ 61,167, at PP 39-40 (2010); *Shell Pipeline Co. LP,* 139 FERC ¶ 61,228, at P 21 (2012) (*Shell*); *CCPS Transp., LLC,* 121 FERC ¶ 61,253, at P 19 (2007) (orders approving priority service for committed shippers paying a premium rate).

[5] *See, e.g., TransCanada Keystone Pipeline, LP,* 125 FERC ¶ 61,025, at P 22 (2008); *Enbridge Energy Co., Inc.,* 110 FERC ¶ 61,211, at P 36 (2005); *Express Pipeline P'ship,* 77 FERC ¶ 61,188, at 61,756 (1996) (orders approving discounted rates for committed shippers not receiving priority service).

[6] *Enbridge Pipelines (North Dakota) LLC,* 125 FERC ¶ 61,052 (2008).

The base components of the committed non-priority rates are expected to provide a discount below the uncommitted rates.

8. North Dakota Pipeline requests approval that the committed shipper that executed TSA during the open season will pay the committed rates on the volumes for which they contracted during the term of the TSA, and that the committed rates can be filed as the equivalent of settlement rates that have been agreed to by all of the shippers paying those rates under Section 342.4(c) of the Commission's regulations.[7]

9. North Dakota Pipeline requests approval that the recovery from uncommitted shippers of their share of the Upstream Expansion costs will occur through a uniform Expansion Rate Component added to the existing base rates for service to Clearbrook, Minnesota, and that the recovery from uncommitted shippers of their share of the Downstream Extension costs will occur through a uniform Downstream Rate Component included in the rates to Superior, Wisconsin.[8] North Dakota Pipeline states it will base the cost-of-service calculations at the time of start-up of the Sandpiper Project on the Commission's standard Opinion No. 154-B methodology, using the design capacity of the North Dakota Pipeline System to establish the new rates. As part of its initial tariff filing, North Dakota Pipeline states it will submit a cost-of-service calculation in conformance with Part 346 of the Commission's regulations. North Dakota Pipeline states that thereafter the initial uncommitted rates will be subject to the Commission's indexing regulations. North Dakota Pipeline, however, does reserve the same right that all other oil pipelines have to utilize other rate changing-methods set forth in the Commission's regulations to the extent those other methods may apply in the future.

10. North Dakota Pipeline states that with regard to the Upstream Expansion, it intends to follow the basic model approved by the Commission in *Colonial Pipeline Company.*[9] North Dakota Pipeline states that, just as in *Colonial*, it will start with its pre-existing uncommitted rates and add an Expansion Rate Component for all movements to

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[7] *See, e.g., Seaway Crude Pipeline Co. LLC,* 142 FERC ¶ 61,201, at PP 12-13 (2013).

[8] Since North Dakota Pipeline has no receipt point at Clearbrook, there is no stand-alone rate from Clearbrook to Superior. Instead, North Dakota Pipeline proposes that the initial rates from the various upstream points on the system to Superior be set by adding together the rates to Clearbrook (inclusive of the Expansion Rate Component) and the cost-of-service based Downstream Rate Component for the Clearbrook to Superior service.

[9] 116 FERC ¶ 61,078, at PP 54-57 (2006), *order denying reh'g*, 119 FERC ¶ 61,183, at PP 13-19 (2007) (*Colonial*). *See, also, Calnev Pipe Line LLC*, 129 FERC ¶ 61,073 (2007) (*Calnev*).

Clearbrook, Minnesota (and beyond to Superior) to recover the incremental costs of the Upstream Expansion. The Expansion Rate Component will be based on the Opinion No. 154-B methodology and the design capacity of the expanded system into Clearbrook, Minnesota. North Dakota Pipeline will calculate the Downstream Rate Component based on the design capacity and the Opinion No. 154-B cost-of-service for the downstream segment. The Downstream Rate Component, which will apply only to barrels moving beyond Clearbrook, Minnesota, will be included in the posted tariff rates from various receipt points to Superior, Wisconsin. North Dakota Pipeline states that in recognition of the premium rate expected to be paid by priority committed shippers, it will deduct $7.5 million from the cost-of-service of the upstream facilities in calculating the Expansion Rate Component and $7.5 million from the cost-of-service of the downstream facilities in calculating the Downstream Rate Component.

11. North Dakota Pipeline requests approval of the following proration principles. Committed priority shipper volumes will not be prorated under ordinary operating conditions when the applicable tariff rate is higher than the comparable uncommitted rate. A committed non-priority shipper will be deemed to have a history for proration purposes equal to the greater of its volume commitment or its average shipments during the applicable base period. A committed priority shipper will be treated as a committed non-priority shipper during periods (if any) when the tariff rate it pays is not at a premium to the comparable uncommitted rate (but will have the option to retain its priority service by continuing to pay a tariff rate one-cent higher than the comparable uncommitted rate).[10] New shipper volumes will have access to up to 10 percent of the available capacity[11] of each segment of the system.[12] The volume histories of existing historical shippers at the time the Sandpiper Project facilities begin service will be increased to give them access to the space not reserved for committed and new shippers (as well as extended onto the Downstream Extension for shippers transporting volumes to Superior, WI) to the extent they need and use that space.

[10] *See, e.g., Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at PP 16-18 (2012); *Kinder Morgan & Hiland Crude,* 141 FERC ¶ 61,249, at PP 25-26, 30 (2012) (orders allowing committed shippers the option to pay a premium rate in times of apportionment).

[11] *See, e.g., Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *Enbridge Pipelines (Illinois) LLC*, 144 FERC ¶ 61,085, at P 24 (2013); *Shell*, 139 FERC ¶ 61,228 at P 21; *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at P 14 (2012) (orders approving the reservation of at least 10 percent of capacity for uncommitted shippers).

[12] North Dakota Pipeline states that while the percentage of capacity available to uncommitted shippers varies by line segment, in every case more than 50 percent of the space in each line segment has been reserved for uncommitted volumes (including both new and historical uncommitted volumes).

12. North Dakota Pipeline requests a finding that certain contractual benefits offered to any shipper willing to become a committed priority shipper as part of the TSA package are reasonable and not unduly discriminatory. The contractual benefits are as follows: (1) at the beginning of the TSA term, a committed priority shipper has the option to ramp up its ship-or-pay commitment over a four-month period; and (2) at the end of the TSA term, a committed priority shipper has a one-time right to extend the term for five years and can reduce its initial volume commitment within certain limits during the extended term.

Public Notice, Interventions, Protests, and Comments

13. Public notice of North Dakota Pipeline's petition issued on February 19, 2014, providing for motions to intervene, comments and protests to be filed on or before March 14, 2014. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)), 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.

14. A wide variety of parties filed comments in support of North Dakota Pipeline's petition. The parties supporting the petition include state agencies and officials, current and future shippers, as well as producers, gatherers, refiners, and marketers, who while not shipping on the system, will benefit by the access to Bakken crude provided by the additional capacity of the Sandpiper Project. A number of the existing shippers recognized that the costs of the Sandpiper Project will result in an increase to the spot tariff rate but that is outweighed by the benefits of additional capacity available to Bakken producers.

15. The petition was protested by St. Paul Park Refining Co. LLC (St. Paul Park) and Concord Energy LLC, Enserco Energy LLC, Enwest Marketing LLC and WPX Marketing , LLC (Concord Energy). Flint Hills Resources, LP (Flint Hills) filed comments stating that it does not oppose construction of the Sandpiper Project but requested clarification of several aspects of the petition.

16. Flint Hills asserts that the Commission should clarify that uncommitted shippers will not bear financial responsibility for underutilization of the Sandpiper Project should shipper demand prove to be less than anticipated. At the very least, Flint Hills contends the Commission should clarify that approval of the rate structure proposed here does not limit the ability of parties to oppose any future proposal to allocate costs associated with underutilization of the system to uncommitted shippers if and when North Dakota Pipeline submits such a rate filing. Flint Hills submits the Commission should clarify that, to the extent that the proposed tariff rate structure contemplates recoupment through uncommitted rates of any revenue deficiency associated with the discounted committed rates, the Commission should deny petition as inconsistent with its policy. Flint Hills argues that the Commission should require North Dakota Pipeline to provide additional

information concerning its proposal to credit $7.5 million to the cost-of-service of each major segment of the Sandpiper Project. Without additional context, Flint Hills contends it is impossible for the Commission or the participants to determine whether this specific aspect of the proposed tariff rate structure is reasonable.

17. St. Paul Park asserts its protest demonstrates that the proposed expansion pipeline and expansion surcharge (a) are not needed, (b) do not have broad shipper support, (c) will provide no benefit to shippers taking delivery at Clearbrook, and (d) are not based on any intelligible cost allocation or rate design. Accordingly, St. Paul Park asserts the Commission should deny the petition. If the petition is not denied, St. Paul Park contends the Commission should refer the petition to an Administrative Law Judge (ALJ) for discovery and hearing.

18. St. Paul Park avers North Dakota Pipeline's study purports to justify the claim that there is a pressing need for new takeaway capacity out of the Bakken production area. However, St. Paul Park contends the study is based on questionable, unsupported, and unverifiable assumptions. St. Paul Park argues that discovery and hearing are therefore necessary for the Commission to resolve the issues of fact created by the study. St. Paul Park contends there are material issues of fact regarding the extent of prorationing on the North Dakota Pipeline System. St. Paul Park asserts that recent prorationing has been intermittent and that there is no evidence of excess demand for capacity on the system. St. Paul Park submits that information regarding recent system-wide prorationing, which is known by the pipeline, is needed to resolve this factual issue. St. Paul Park argues that there is also a material factual issue regarding the level of independent shipper support for the proposed expansion. St. Paul Park submits that North Dakota Pipeline acknowledges that part-owner Marathon Petroleum accounts for an undisclosed portion of the 155,000 bpd in TSA commitments. St. Paul Park asserts only North Dakota Pipeline has the information necessary to determine the extent to which the 155,000 bpd in TSA commitments is by pipeline affiliates or by independent shippers. St. Paul Park contends discovery is needed to obtain the pertinent information.

19. Concord Energy argues that North Dakota Pipeline's petition represents an effort by the pipeline to use the Commission's processes to require captive shippers to finance and pay for a project that a majority of the shipping community does not want or need. Concord Energy contends there is no justification for imposing on uncommitted shippers the unnecessary burden and unreasonable rate design that North Dakota Pipeline proposes. Concord Energy submits there is no substance to North Dakota Pipeline's claim that an additional 230,000 bpd of capacity from Beaver Lodge, North Dakota to Clearbrook, Minnesota is necessary to meet crude oil demand for North Dakota Bakken production. Concord Energy asserts the study North Dakota Pipeline commissioned to support its contention that additional pipeline capacity is necessary is seriously flawed. Concord Energy argues that the current North Dakota Pipeline is adequate and there is approximately 1 million bpd of rail take-away capacity in Western North Dakota today.

20. Concord Energy contends the North Dakota Pipeline rate design appears to impose inordinate cost burdens on uncommitted shippers. Concord Energy submits that North Dakota Pipeline is proposing to charge committed shippers - largely, they believe, affiliates of the equity owners of the pipeline - as little as one cent above the rates that uncommitted shippers pay in the first year. Concord Energy contends that after the first year of operation, North Dakota Pipeline could, under the rate design that it is now asking the Commission to approve, impose rates on uncommitted shippers that substantially exceed the rates that committed shippers pay. Concord Energy asserts that could well mean that uncommitted shippers would bear the lion's share of the cost of constructing and operating a pipeline that they do not need. Concord Energy argues that based on a review of the North Dakota Pipeline rate structure, it is possible that current captive shippers could see their rates more than double if the Commission approves the rate design. Concord Energy submits the North Dakota Pipeline project structure is inherently discriminatory and appears designed to confer economic benefits on an affiliated shipper, Marathon Petroleum, at the expense of uncommitted shippers.

21. Concord Energy respectfully urges the Commission to reject outright North Dakota Pipeline's proposed Expansion Surcharge on uncommitted shippers and the rate design it proposes to establish. If, however, the Commission does not do so, Concord Energy asserts it should certainly establish evidentiary hearing procedures, with all the attendant rights of discovery, so that disputed issues of fact regarding the underlying justification for the pipeline expansion and the costs that uncommitted shippers should properly bear if the pipeline project proceeds can be fairly resolved.

Discussion

22. At the outset, the Commission finds that it is important to discuss the role of the declaratory order process in the Commission's regulation of oil pipelines because of certain misconceptions contained in the protests. A petition for declaratory order is a voluntary rather than a mandatory process. Since the Commission's decision in *Express Pipeline P'ship (Express)*,[13] oil pipelines have used the declaratory order process to remove uncertainty with respect to proposals for non-traditional rate and tariff structures. By seeking Commission approval of a non-traditional rate and tariff structure through a declaratory order, an oil pipeline mitigates its risk by obtaining approval of a tariff structure for some rates and terms of service, with remaining inputs left to the traditional rate filing process. Even after obtaining a declaratory order approving the general tariff and rate structure, some issues still remain to be resolved in a rate filing; however, uncertainty for the oil pipeline is minimized. The uncertainty removed by the declaratory order process also allows an oil pipeline to obtain appropriate financing and/or move forward with its investment decisions. The declaratory order process allows interested

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[13] 75 FERC ¶ 61,303 (1996), *reh'g and declaratory order*, 76 FERC ¶ 61,245 (1996), *reh'g denied*, 77 FERC ¶ 61,188 (1996).

parties to comment on a pipeline's proposal. Finally, the declaratory order process allows the Commission to ensure that open seasons are conducted in a transparent and non-discriminatory manner and an oil pipeline's proposal conforms to the applicable statutes, regulations, and precedent.

23. While there are a number of important benefits that an oil pipeline can obtain through the declaratory order process, there is nothing in the Commission's regulations or precedent that prohibits an oil pipeline from going forward with any novel proposal absent a declaratory order. In that situation, the oil pipeline would assume all the financial and regulatory risks that could occur when it files tariffs to establish initial rates. More importantly, and especially pertinent to the instant petition, because the Commission does not regulate the entry[14] or exit[15] into the oil pipeline business as it does with natural gas pipelines, there is nothing preventing an oil pipeline from building or expanding a pipeline on a traditional common carrier cost-of-service basis and making the required initial rate filing thirty days prior to the requested effective date. Therefore, while the protesters criticize North Dakota Pipeline's study and assert there is no need for the proposed expansion and extension of the system, the arguments have no bearing on our determination here. Since the Commission does not have jurisdiction to grant certificates to oil pipelines or otherwise authorize or prevent construction, determining whether a pipeline is needed is not within its authority. Therefore, the Commission denies the protesters' requests to reject this petition based upon an alleged lack of need for the new construction or that issues concerning the justification for expanding the pipeline require examination at a hearing, before a declaratory order approving the general framework for the project is granted.

24. The next issue raised by Flint Hills, Concord Energy, and St. Paul Park concerns the cost allocation and rate design of the Sandpiper Project. They assert that because the Sandpiper Project is unnecessary and at risk for significant underutilization, the uncommitted captive shippers will bear a significant amount of the costs of the project resulting in unjust and unreasonable rates. They also assert the Commission should reject the proposed expansion surcharges because the project is not supported by all the shippers. Flint Hills requests the Commission clarify that any attempt by North Dakota Pipeline to recover a revenue deficiency from uncommitted shippers is inconsistent with Commission policy. St. Paul Park and Concord Energy, on the other hand, request the Commission to reject the petition. At the very least, St. Paul Park and Concord Energy request that North Dakota Pipeline submit a full cost-of-service and that the issues be set for hearing with full discovery.

[14] *See, e.g, SFPP. L.P.,* 140 FERC ¶ 61,220, at P 50 (2012).

[15] *See, e.g., ARCO Pipe Line Co.,* 55 FERC ¶ 61,420 (1991).

25. The Commission finds that the uncommitted shippers will have the ability to protect their interests by submitting protests when the initial uncommitted rates are filed. North Dakota Pipeline only seeks approval to recover the uncommitted rates through the expansion surcharges. It is not now seeking approval for specific cost inputs. As North Dakota Pipeline itself states:

> If the uncommitted shippers are concerned that costs are being imposed on them that are not justified under the Commission's regulations and precedents, nothing in this Petition seeks to undermine their ability to complain to the Commission at any time about the specific rates being charged. The rate structure rulings North Dakota Pipeline is seeking in this Petition only relate to (1) honoring the committed rates agreed-to by the committed shippers in the TSAs that were offered through the open season and (2) approving the overall structure of the Expansion Rate Component and the Downstream Rate Component, without prejudice to any issues relating to the specific rate inputs used to set those rate components.[16]

26. The protesters are asking for more process than would be available in the absence of the petition by requesting a hearing on the uncommitted rates prior to those rates even being filed. If North Dakota Pipeline had decided to build a traditional common carrier cost-of-service pipeline, shippers would not have the ability to protest the rates until they are actually filed 30 days prior to the effective date. A hearing would not be administratively efficient because the actual costs of the pipeline would not be fully known until construction is completed and the pipeline is put into service. Setting the petition for hearing would require the parties to deal with moving targets of costs and would serve no other purpose than to delay the project. Therefore, the Commission will not reject the petition or set it for hearing on the speculative and premature argument that the uncommitted rates will be unjust and unreasonable.

27. The open season for the Sandpiper Project appears to have been widely publicized and conducted on an open and transparent basis. Consistent with Commission policy, there are no issues of undue discrimination because all potential shippers had the opportunity to sign a TSA and become either a committed priority shipper or committed non-priority shipper or to forego signing a TSA and be subject to the uncommitted rate. The fact that an affiliate, Marathon Petroleum, is an anchor shipper on the Sandpiper Project does not, in and of itself, indicated any undue discrimination in the process; indeed, no protester indicated that there was any favoritism shown towards Marathon Petroleum during the open season or that it signed a contract or received contract terms that were different than those available to any other potential shipper.

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[16] North Dakota Pipeline Petition at 53-54.

28. As the cases cited in the summary of North Dakota Pipeline's petition above show, the rate and tariff structure for which North Dakota Pipeline seeks approval is consistent with Commission policy and precedent. North Dakota Pipeline has not presented the Commission with any new or novel proposals. The Sandpiper Project will be supported by committed rate contracts and at least ten percent of the capacity will be reserved for uncommitted volumes. Committed shippers who wish to receive priority service will have to pay at least one cent more than the uncommitted rate. Committed shippers who do not pay a premium rate will not receive priority and may pay a discount compared to the uncommitted rate. However, in recognition of their financial commitment, for purposes of prorationing, non-priority committed shippers will have their shipping history based on the greater of their committed volumes or average shipments during the applicable period.

29. Contrary to the arguments of the protesters, the proposed Expansion Rate Component and Downstream Rate Component are consistent with Commission precedent. The fact that most, if not all, shippers in *Colonial* and *Calnev* supported the proposed expansions in those cases, does not render the expansion surcharges here unjust and unreasonable in the absence of similar unanimous support. As already discussed, the Commission does not have the authority to determine the need for the pipeline. That is determined by the pipeline through its own economic assessment of the applicable market. Since pipelines are common carriers, the costs of expansions are rolled into the existing system rates and are not recovered on a stand-alone, incremental basis.[17] The expansion surcharges here are nothing more than the method by which the pipeline will recover a portion of the costs of the expansion from uncommitted shippers.

30. Upon consideration of all the factors discussed above, the Commission grants North Dakota Pipeline's petition for declaratory order and the rulings requested therein. Granting North Dakota Pipeline's petition will allow it to move forward with the Sandpiper Project to provide additional transportation infrastructure for the Bakken producing region. The cost and rate issues raised by the protesters will be addressed after the Sandpiper Project expansion capacity is ready to begin service and North Dakota Pipeline files to implement initial uncommitted rates. All parties retain their ability to argue their position with respect to cost allocation and any other issue at that time.

[17] *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 56 (2006).

The Commission orders:

The February 12, 2014 petition for declaratory order of North Dakota Pipeline is granted, as discussed more fully above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.