

153 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Enterprise TE Products Pipeline Company LLC

Docket No. OR15-35-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 19, 2015)

1. This order addresses Enterprise TE Products Pipeline Company LLC's (Enterprise TE) August 17, 2015 petition for declaratory order seeking approval of the proposed rate structure and terms of service for an expansion of Enterprise TE's Aegis pipeline system (Aegis Expansion Project). Enterprise TE requests that the Commission act on the petition no later than November 17, 2015, to allow Enterprise TE to timely complete the Aegis Expansion Project and meet its transportation service obligations. For the reasons discussed below, the Commission grants Enterprise TE's petition.

Background

2. The Aegis pipeline is a 270-mile pipeline designed to transport purity ethane from Mont Belvieu, Texas to Napoleonville, Louisiana, with various intermediate delivery points in Texas and Louisiana. Although the pipeline is still being constructed, the 60-mile segment from Mont Belvieu to Beaumont, Texas began providing intrastate transportation service in September 2014. The remainder of the pipeline is schedule to be completed in two phases, the latter phase of which is scheduled for completion by the end of 2015.

3. Enterprise TE sought term and volume commitments from potential shippers for the initial capacity of the Aegis pipeline during an initial and supplemental open season held in 2013. Enterprise TE received sufficient commitments to proceed with the construction of the pipeline. On May 29, 2013, Enterprise TE filed a petition for declaratory order seeking approval of the committed rate structure and proration policy for the initial Aegis pipeline, and the Commission granted the original Aegis petition on July 31, 2013.¹

¹ *Enterprise Liquids Pipeline LLC*, 144 FERC ¶ 61,083 (2013) (*Enterprise Liquids*).

4. Following the initial open seasons, Enterprise TE expanded the capacity of the pipeline several times to meet additional requests for service, and it held an open season for each expansion. Even with those expansions, Enterprise TE has continued to receive request for service on the pipeline. Therefore, Enterprise TE is now proposing to substantially expand the pipeline's capacity through the Aegis Expansion Project. The Aegis Expansion Project will require Enterprise TE to make an additional capital investment in order to add new mainline pumps and related appurtenances, and to construct a pipeline lateral that will extend from the terminus of the pipeline at Napoleonville to a nearby petrochemical plant. Enterprise TE expects that this will create additional mainline and lateral capacity of up to approximately 40,000 barrels per day (bpd). The Aegis Expansion Project is expected to be fully operational during the second quarter of 2018.

5. The Aegis Expansion Project will provide shippers with needed additional pipeline capacity to transport purity ethane to petrochemical plants in Texas and Louisiana. The increased output of ethane, a byproduct of natural gas production and gas liquids processing, has made shippers seek expanded transportation options for these supplies. A high percentage of existing ethylene plants (the principal consumers of ethane) is located on the U.S. Gulf Coast, and plans for construction of more plants have been announced. By providing additional pipeline capacity to serve these ethylene plants, the Aegis Expansion Project will offer timely and cost-effective support for these petrochemical producers.

6. The open season for the Aegis Expansion Project was held from April 9, 2015 through May 11, 2015. The open season was widely publicized. Enterprise TE provided interested parties with an open season notice that outlined the open season process and provided a high-level summary of the proposed terms and conditions of service set forth in the Expansion Project transportation services agreement (Expansion Project TSA). In addition, Enterprise TE provided all shippers that chose to participate in the open season with a *pro forma* version of the Expansion Project TSA, which included a *pro forma* rules, regulations, and rates tariff. Enterprise TE states that the Expansion Project TSA contained substantially similar terms and conditions of service as that provided for the initial open season capacity. By the close of the open season, Enterprise TE determined that it had received a sufficient level of volume commitments to proceed forward with the development of the Aegis Expansion Project.

7. The open season provided potential shippers with the opportunity to make long-term ship-or-pay contractual commitments to the Aegis Expansion Project. Each contract shipper was required to make a minimum volume commitment for an initial term of 10 years. If a contract shipper fails to ship its contract volume during any given month, the contract shipper is required to make a shortfall payment to Enterprise TE.

8. Enterprise TE offered 90 percent of the total capacity available on the Aegis Expansion Project for volume commitments of contract shippers. The remaining 10 percent of the capacity was reserved for non-contract shippers. During periods of prorationing, this 10 percent of capacity is reserved for non-contract shippers that are considered “New Shippers” under the proration policy. New Shippers are defined as non-contract shippers that, along with any affiliates, have not transported volumes during a historical allocation period.

9. During periods of prorationing, Enterprise TE proposes to allocate to shippers the available expansion capacity using the same prorationing policy Enterprise TE developed for the Aegis pipeline during the initial open season. Under the proration policy, the capacity available for transportation services (which include both the available pipeline capacity, as well as the available expansion capacity) would be allocated on a historical basis. Ninety percent of the available capacity would be allocated on a non-discriminatory basis to Historical Shippers, while the remaining 10 percent of available capacity would be reserved for New Shippers. Contract shippers would be deemed Historical Shippers but would not have any firm capacity rights. Their capacity allocation would be calculated based upon their contract volume regardless of whether they actually shipped that volume of ethane. The ten percent of capacity reserved for New Shippers will be made available to New Shippers on a *pro rata* basis, provided that no New Shipper would be allocated more than one percent of the available capacity. If the aggregate volume nominated by New Shippers is less than 10 percent of the available capacity, the remaining available capacity would be allocated to Historical Shippers.

10. Enterprise TE proposes to charge contract shippers a discounted rate for transportation service as compared to the rate it will charge to non-contract shippers. Enterprise TE shall increase the contract rate each year by the positive FERC index adjustment for the year (if any), but that in no event will the contract rate exceed the rate applicable to non-contract shippers.

11. The TSA has an initial term of ten years. The initial term will automatically extend for successive one-year periods (renewal term) unless terminated by either party upon written notice to the other party no less than 12 months prior to the expiration of the initial term or then-current renewal term.

Enterprise TE’s Petition and Requested Rulings

12. Enterprise TE submits that Commission precedent supports its request to obtain the regulatory assurances it seeks. Enterprise TE states that the Commission has previously recognized the appropriateness of providing advance rate guidance for

projects of this nature through the issuance of a declaratory order.² Enterprise TE asserts that the provisions of the Aegis Expansion Project TSA are lawful and consistent with Commission precedent, and therefore asks that the Commission approve as just and reasonable and not unduly discriminatory or preferential the requests discussed below.

13. Enterprise TE requests confirmation that the TSA will be honored and its provisions will be upheld and will govern the transportation services that Enterprise TE provides to contract shippers during the term of the TSA. Enterprise TE submits that such a ruling is supported by Commission precedent.³

14. Enterprise TE requests that the contract rate may be at a discount compared to the rate applicable to non-contract shippers. Enterprise TE contends that the proposed contract rate applicable to contract shippers is consistent with Commission precedent. Enterprise TE submits that the Commission has previously accepted discounted rate structures for other pipeline projects, stating that volume discounted rates are entirely consistent with the non-discrimination provisions of the Interstate Commerce Act (ICA), so long as the opportunity to execute a TSA, and therefore to participate in the discounted rate structure, is openly available to all interested parties.⁴ Enterprise TE asserts that, as in the cited cases, non-contract shippers are not required to ship or pay for a minimum volume commitment, and therefore are not similarly situated to contract shippers.

15. Enterprise TE requests that the Commission find that the proration policy is reasonable and will govern the allocation of capacity on the Aegis Expansion Project during periods of prorationing. Enterprise TE submits that the proration policy is just and reasonable and appropriately allocates capacity among shippers during periods of prorationing. Enterprise TE states that in response to the petition for declaratory order for the initial capacity for the pipeline, the Commission approved the identical proration policy for which Enterprise TE is seeking approval here.⁵ Enterprise TE states the

² Citing *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,253 (1996), *reh'g denied*, 77 FERC ¶ 61,188, at 61,755 (1996).

³ Citing *Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087, at P 18 (2011); *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 22 (2012); and *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 17 (2013).

⁴ Citing *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at PP 19-22 (2008); *Kinder Morgan Cochin LLC*, 141 FERC ¶ 61,056 (2012); and *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at PP 8, 24 (2006).

⁵ *Enterprise Liquids*, 144 FERC ¶ 61,083 at P 8.

Commission held that the proration policy was just and reasonable and was consistent with other prorating provisions that the Commission approved previously.⁶ Enterprise TE states the Commission also found that all shippers had the opportunity in well-publicized open seasons to take advantage of these proposed terms, and thus there is no issue of undue discrimination or undue preference.⁷ Enterprise TE asserts the same facts are true here, and the discounted rate contract shippers are not granted any priority or firm capacity rights.

16. Enterprise TE requests confirmation that it may implement automatic extensions of the initial term of the TSA. Enterprise TE submits that the TSA extension rights afforded to a contract shipper are appropriate. Enterprise TE submits that the proposed extension rights align with those extension provisions that the Commission has previously approved.⁸ Enterprise TE asserts that the proposed extension rights are reasonable because the extension rights are merely in lieu of a longer term contract, and simply give the shippers the right (but not the obligation) to have their contract volumes automatically renew, unless affirmatively terminated. Further, the open season allowed all interested parties that were willing to meet the term and volume commitments to execute a TSA, which includes the referenced automatic renewal provision.

17. Accordingly, Enterprise TE requests that the Commission grant the declaratory rulings requested in the petition so that Enterprise TE and the contract shippers may receive certainty regarding the commitments the contract shippers made to the Aegis Expansion Project as soon as possible.

Discussion

18. In its petition for declaratory order, Enterprise TE is seeking regulatory assurances for the rate structure and terms and conditions of service for its Aegis Expansion Project, which will be part of its existing pipeline that transports ethane from Texas to Louisiana. The purpose of the Aegis Expansion Project is to serve an increasing need for the transportation of ethane in the Gulf Coast region. Consistent with Commission

⁶ Citing *Enterprise Liquids Pipeline LLC*, 142 FERC ¶ 61,087, at P 28 (2013) and *Shell Pipeline Co. LP*, 141 FERC ¶ 61,017, at PP 8, 20 (2012).

⁷ *Enterprise Liquids*, 144 FERC ¶ 61,083 at P 8.

⁸ Citing *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 34 (2013) and *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 15 (2012).

precedent, Enterprise TE is seeking approval of its rate structure and terms and conditions of service through a petition for declaratory order. In accordance with prior orders, the contracts for committed rates for the Aegis Expansion Project were offered to all potential shippers in a widely publicized open season.

19. Specifically, Enterprise TE is seeking approval that (1) the TSAs will be upheld during their terms, (2) committed shippers will be charged a discount rate compared to uncommitted shippers, (3) the proration policy is reasonable, and (4) automatic one-year extensions of the initial term of the TSAs will be permitted. The Commission finds that the rates and terms and conditions of service offered to potential committed shippers during the open season are consistent with the ICA and Commission precedent and policy cited by Enterprise TE in its petition and discussed above. The historical proration policy proposed by Enterprise TE has already been approved by the Commission for the initial capacity for the existing pipeline and there appears to be no reason why it should not apply here as well. The other rulings requested by Enterprise TE have been fully addressed by the Commission in various prior orders and no further discussion is necessary. Accordingly, Enterprise TE's petition for declaratory order is granted.

The Commission orders:

The rulings requested by Enterprise TE in its August 17, 2015 petition for declaratory order are granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.