

137 FERC ¶ 61,107
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Sunoco Pipeline L.P.

Docket No. OR11-22-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 4, 2011)

1. On September 2, 2011, Sunoco Pipeline L.P. (Sunoco) filed a petition for a declaratory order approving: (1) priority service for Sunoco's proposed Mariner West ethane pipeline (Project); and (2) the overall tariff and rate structure for the Project. Sunoco seeks prompt Commission so that the additional infrastructure will be available to serve the Marcellus Shale production area as soon as possible. No person protested the petition, and as discussed below, the Commission grants the requested declaratory order.

Background

2. Sunoco explains that one segment of its existing pipeline system consists of an eight-inch pipeline extending approximately 130 miles from Toledo, Ohio, north to Marysville, Michigan, and the international border. Sunoco also states that another segment consists of an eight-inch pipeline that runs approximately 140 miles from Toledo south and east to Hudson, Ohio, and a 10-inch pipe that runs approximately 80 miles east from Hudson to a location near Vanport, Pennsylvania. According to Sunoco, the pipelines transport natural gas liquids (NGL) and refined products to Marysville and Detroit, Michigan, and Sarnia, Ontario, as well as transporting refined products to the eastern Ohio and Pittsburgh, Pennsylvania markets.

3. Sunoco explains that the Marcellus Shale formation extends through much of the Appalachian Basin from West Virginia through the Mid-Atlantic states and into New York. Sunoco points out that the U.S. Geological Survey estimates that the

Marcellus Shale contains as much as 363 trillion cubic feet of recoverable natural gas.¹ Further, continues Sunoco, development and production of Marcellus Shale natural gas has increased dramatically as new technology has improved the technical and economic feasibility of recovering the region's natural gas reserves.² Specifically as it relates to the Project, Sunoco adds that the increased natural gas production from a large number of new wells in southwestern Pennsylvania³ has created an abundance of NGL production, including ethane. However, Sunoco contends that there is currently no major market in the Northeastern United States for the ethane production, and if markets are not developed, natural gas production could be curtailed.⁴

Sunoco's Proposal

4. Sunoco states that the Project will extend from Pennsylvania to Marysville, Michigan, and on to downstream markets. Sunoco anticipates that the Project will commence service in July 2013 and that it will add 45,000-50,000 barrels per day (bpd) of transportation capacity. Further, continues Sunoco, it conducted a widely-publicized open season offering to provide transportation on the Project pursuant to a Transportation Services Agreement (TSA).

5. Sunoco explains that the Project consists of two components. Sunoco states that the first component will be the conversion, expansion, and partial reversal of approximately 350 miles of the existing eight-inch and 10-inch refined products pipeline between a location near Vanport, Pennsylvania, and the U.S.-Canadian border. Sunoco adds that the second component will be the construction of approximately 37 miles of

¹ Sunoco cites DANIEL J. SOEDER AND WILLIAM M. KAPPEL, USGS Fact Sheet: WATER RESOURCES AND NATURAL GAS PRODUCTION FROM THE MARCELLUS SHALE 3 (2009), <http://md.water.usgs.gov/publications/fs-2009-3032/fs-2009-3032.pdf>.

² *See id.* (stating that, with current reserve estimates and technology, the Marcellus Shale could provide the entire current natural gas needs of the United States for approximately 15 years).

³ Clifford Krauss, *There's Gas in Those Hills*, N.Y. Times, Apr. 8, 2008, available at <http://www.nytimes.com/2008/04/08/business/08gas.html>.

⁴ *See 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.html> (stating that an overabundance of "must-recover ethane" is leading to ethane oversupply and limitations on gas shipments).

new pipeline from Houston, Pennsylvania, to the existing Sunoco pipeline near Vanport, Pennsylvania. Sunoco asserts that the Project will require a substantial capital investment and, when completed, will provide a much-needed outlet for the market-constrained ethane production.

6. According to Sunoco, during the open season, it sought shipper commitments in return for priority service at a premium rate, which will exempt the priority shippers from prorationing of their committed volumes under normal operating conditions. Sunoco states that the projected additional ethane transportation includes both committed and uncommitted volumes. Specifically, Sunoco states that up to 90 percent of the capacity will be available for the committed shippers' volumes and at least 10 percent will be reserved for uncommitted shippers' volumes.⁵

7. Sunoco explains that the Project's tariff structure is based on a traditional one-part rate, differentiated based on whether a shipper chooses Marysville, Michigan, or the U.S.-Canadian border as the delivery point. Sunoco points out that committed shippers will pay a premium rate of at least \$0.01 more than the rate charged to uncommitted shippers moving volumes to the same delivery points. Further, states Sunoco, there will be no rate discount for volume shipping. Sunoco maintains that the terms of the proposed tariff and the service structure of the Project are consistent with Commission precedent.⁶

8. Because of the substantial investment required for the Project, Sunoco contends that its success depends on support from committed shippers. Sunoco states that shippers executing TSAs will commit to ship or pay for a minimum of at least 5,000 bpd for a term extending through June 30, 2020, for volume commitments to the U.S.-Canadian border or for a term ending December 31, 2028, for volume commitments to Marysville, Michigan. Sunoco adds that it will have the right to adjust the committed rates annually, effective January 1 of each year, commencing on January 1, 2017. According to Sunoco, the adjustment will be based on the FERC inflation index, or, if that methodology ends, by the annual change in the PPI published in the immediately-preceding calendar year. Further, states Sunoco, uncommitted volumes moving on the Project will be subject to a one-part rate, which Sunoco will be permitted to adjust annually in accordance with the Commission's indexing process.

⁵ Sunoco states that, in case of *force majeure*, committed volumes will have first call on the reduced amount of priority space, and uncommitted volumes will continue to have access to the same percentage of total available capacity, even in times of reduced overall capacity.

⁶ Sunoco cites *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007) (*CCPS*); *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006).

9. Sunoco reiterates that committed shippers' volumes will not be subject to prorationing under normal operating conditions. Sunoco maintains that this protects committed shippers against the risk that the barrels they have committed to move under the TSAs will be prorated out of the pipeline by uncommitted shippers that made no burdensome financial commitment to support the pipeline project. At the same time, continues Sunoco, the rate for uncommitted volumes will be discounted relative to the rate for committed volumes.

10. Sunoco emphasizes that its proposal is consistent with Commission precedent and is a reasonable, non-discriminatory means of meeting the needs of both the pipeline and its shippers with respect to this critical new infrastructure project. Sunoco argues that the ICA gives the Commission discretion to approve priority contract service under appropriate circumstances.⁷ Sunoco also points out that courts historically 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 just conditions as they existed when the statute was adopted.

11. Sunoco further contends that its proposed priority service terms and rate structure for the Project are likewise consistent with Commission precedent. Sunoco relies on *CCPS*,⁸ stating that, in that proceeding, the Commission approved a request to offer priority service at a premium rate to shippers that entered into long-term volume commitments in support of a pipeline expansion, while preserving access by uncommitted shippers to at least 10 percent of total post-expansion capacity. Sunoco also emphasizes that the Commission in that case recognized the importance of priority shippers to the pipeline's capital financing.

12. Sunoco emphasizes the serious financial obligation accepted by shippers that agree to take-or-pay commitments, which add to the shippers' liabilities and can affect their ability to borrow additional funds during the term of commitment. Conversely, continues Sunoco, uncommitted shippers will have no obligation to use the pipeline at any time.

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. U.S.*, 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 *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008) (CCPS).

Sunoco reiterates that, so 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 made the pipeline capacity possible.⁹ Sunoco states that the priority service terms proposed here have been crafted based on projected volumes of ethane transported from the Marcellus Shale area and the expected need for prorationing, and Sunoco further asserts that its proposal is not discriminatory and fully conforms to the pipeline's common carrier obligations.

Notice

13. Public notice of Sunoco's petition was issued on September 13, 2011, with interventions and protests due on or before September 27, 2011. No timely interventions or protests were filed.

Commission Analysis

14. The Commission finds that Sunoco's proposal is consistent with applicable policy and precedent. Sunoco has demonstrated that the Project will provide additional capacity for increased production of ethane from the Marcellus Shale area, thereby avoiding likely constraints on the production of natural gas from that area. As such, the Project will enhance domestic energy production and allow the expansion of ethane markets. Sunoco also has demonstrated that the Project entails a significant capital investment, which requires the support of committed shippers to share the financial risk of the Project.

15. As has been the case in other proposals approved by the Commission and cited by Sunoco, its proposal provides an appropriate amount of capacity for uncommitted shippers, while affording protection to the committed shippers who provide consistent long-term financial support for the Project. These committed shippers will pay premium rates for the assurance that their much greater volumes will not be prorated under normal operating conditions. Sunoco offered the terms of its proposal in an open season that gave all potential shippers the opportunity to become committed shippers. Accordingly, the Commission grants Sunoco's petition for a declaratory order.

⁹ Sunoco cites *Enbridge Energy Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 39-40 (2010) (finding it appropriate that "uncommitted shippers . . . will not enjoy [prorationing] protection because they are not providing the financial backing required for the [project]"); *CCPS*, 121 FERC ¶ 61,123 at P 19 (finding it not discriminatory to treat committed shippers differently because "uncommitted shippers have maximum flexibility to react to changes in their own circumstances or market conditions, although they do not provide the assurances and financial support for the Expansion that the firm shippers provide.").

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The Commission orders:

Sunoco's petition for a declaratory order is granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

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