

138 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Magellan Pipeline Company, L.P.

Docket No. OR12-7-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued March 15, 2012)

1. This order addresses Magellan Pipeline Company, L.P.'s (Magellan) petition for declaratory order requesting approval of priority committed space and an overall rate structure involving the proposed expansion of Magellan's refined petroleum products pipeline system in Texas. For the reasons discussed below, the Commission denies the rulings requested by Magellan in its petition.

Background

2. Magellan designed the Longhorn Project to provide crude oil transportation to the U.S Gulf Coast for West Texas producers, and to increase the pipeline capacity available for shippers to move refined petroleum products from Houston to El Paso, Texas. The Longhorn Project involves two phases. In Phase I, the Longhorn Pipeline, which currently delivers refined petroleum products from Houston to El Paso, will be partially reversed from Crane, Texas to Houston to provide crude oil transportation to West Texas producers and provide them with access to U.S. Gulf Coast refineries. The Texas Railroad Commission will regulate the crude oil transportation service because it is intended to be an intrastate service.

3. In Phase II, known as the Magellan Refined Products Expansion Project, Magellan will expand the capacity of its refined petroleum products pipeline service from Houston to El Paso. Following the completion of the pipeline reversal in Phase I, Magellan will provide the petroleum products transportation service from Houston to El Paso on an alternate route using a portion of Magellan's South System. The alternate route comprises Magellan's South system from Houston to Frost, Texas, then from Frost to Odessa, Texas and then from Odessa to El Paso. Magellan states that if no other work were done on this system, the capacity would total only 24,000 barrels per day (bpd). However, with the planned expansion work, the system will total approximately 110,000 bpd of refined petroleum product capacity from Frost to Odessa and 64,000 bpd

from Odessa to El Paso. The expansion project will increase capacity on the pipelines by building storage tanks, adding pump stations, and adding or upgrading various other facilities or equipment. Magellan expects the Magellan Refined Products Expansion Project to enter into service the second quarter of 2012, and the crude oil portion of the Longhorn Project to begin service in mid-2013. Magellan estimates the Magellan Refined Products Expansion Project will cost approximately \$100 million.

4. Due in part to the substantial capital investment, Magellan conducted an open season for the refined petroleum products service to obtain shipper volume commitments to support such investment. Magellan solicited up to 35,000 bpd of volume commitments between Houston and El Paso. In the open season, Magellan offered shippers the opportunity to reserve priority committed space in exchange for long-term volume commitments and, with respect to two of the three levels of commitment offered, premium rates compared to the uncommitted shipper rate. Magellan announced the refined petroleum products open season on October 20, 2011. It initially asked for commitments by December 16, 2011. On December 16, 2011, it extended the open season to December 22, 2011. All current Longhorn and South System Shippers and potential shippers had an equal opportunity to participate. With the notice of open season, Magellan also provided shippers a *pro forma* Throughput and Deficiency Agreement (T&D Agreement) that included three proposed rate, volume commitment, and priority committed capacity levels. Magellan also provided a proposed Reserved Capacity Pipeline Tariff that exempts the committed shipper capacity levels from prorationing.

5. Level 1 required a volume commitment of 1.8 million barrels per year for approximately six years, with daily average reserved capacity of 5000 bpd and a rate of \$ 3.5334 per barrel. Level 2 required a commitment of 3.6 million barrels per year for approximately nine years, with daily average reserved capacity of 10,000 bpd and a rate of \$3.1134 per barrel. Level 3 required a commitment of 7.8 million barrels per year for approximately eleven years, with daily average reserved capacity of 21,500 bpd, and a rate of \$2.6934 per barrel. The initial rate for uncommitted shippers is \$2.6934 per barrel and equal to Magellan's market based rate for petroleum product deliveries from Houston to El Paso. Magellan's proposal also allows shippers to reserve up to 150 percent of their Daily Average Reserved Capacity in any given month at the corresponding tariff rate.

6. Magellan states that when the open season closed on December 22, 2011, only one shipper executed a T&D Agreement at the commitment capacity Level 3. Magellan states that if the Level 3 shipper exercises its option to reserve up to 150 percent of its Daily Average Reserved Capacity, the maximum priority committed capacity resulting from the open season is 32,250 bpd, which equals 50 percent of the total petroleum products capacity between Odessa and El Paso and 29 percent of the capacity between Frost and Odessa. If the Level 3 shipper does not exercise its option to reserve additional capacity, the priority committed space is 34 percent between Odessa and El Paso and

20 percent between Frost and Odessa. Magellan contends that this level of priority committed space leaves ample space for uncommitted shippers.

Requested Rulings in Magellan's Petition

7. Magellan seeks a ruling authorizing it to provide up to 50 percent of the total products pipeline capacity to El Paso created by the Magellan Refined Products Expansion Project as priority committed space exempt from prorationing for the shipper who executes a T&D Agreement. Magellan's Level 1 and 2 committed shippers would pay a premium rate over uncommitted shippers. Magellan submits that Level 3 committed shippers would pay a rate equal to the uncommitted rate in recognition of their very high level of commitment in terms of volumes and years. Magellan asserts it designed the terms of the tariff and service structure of its proposal and the open season to conform to Commission precedent consistent with the factual circumstances of the project.¹ Magellan states it intended for the priority committed space to protect a committed shipper from the risk that the barrels it commits to move, and pays to move, could be allocated out of the pipeline by the nominations of uncommitted shippers that pay lower rates and made no long-term financial commitment to support the pipeline project.

8. Magellan contends the Longhorn Project significantly benefits the public interest because it provides much needed access to Gulf Coast refineries for West Texas crude, and expands the amount of capacity to move petroleum products from Houston to El Paso. Magellan maintains the ruling requested in the petition will allow the availability of priority committed space of the expansion capacity and the applicable rate structure to be known as soon as possible.

9. Magellan argues that the Commission has found that awarding priority committed space is entirely consistent with the common carrier and non-discrimination provisions of the Interstate Commerce Act (ICA) so long as it offers the opportunity to participate in the priority space program to all shippers through an open season, as it has done for this project. Magellan contends the anti-discrimination provisions of the ICA are not absolute and it is well established that shippers who are not similarly situated may be treated differently. Magellan submits the Commission has held in numerous cases approving priority space that committed and uncommitted shippers are not similarly situated for purposes of the ICA's anti-discrimination provisions. Magellan asserts that such priority space is justified by the shippers' commitments to pay substantial fixed charges which support the capital costs of the pipeline project.

¹ Citing, *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040 (2006).

10. Magellan contends the Commission “has not established a minimum percentage of capacity that must be set aside” for uncommitted shippers and has made clear that “[e]ach proposal presented to the Commission is appraised on its own merits.”² Magellan asserts the Commission also has not required pipelines to offer priority space at any particular rate level. Magellan believes that in certain, but not all, prior cases in which the Commission approved priority space, committed shippers were paying a premium rate over uncommitted shippers. Magellan asserts the Commission previously approved up to 90 percent priority space with a premium rate of only \$0.01 per barrel higher than the uncommitted rate³. Furthermore continues Magellan, that where the amount of priority space is lower and uncommitted shippers have access to a substantial portion of the capacity, the Commission approved priority space at a discounted rate.⁴ Magellan asserts the Level 3 committed shipper will pay a rate that is equal to the uncommitted shipper rate, and which is not materially different from the \$0.01 per barrel premium rate for committed shippers that the Commission approved in *Sunoco*, and the priority space will be significantly less than the 90 percent level approved in *Sunoco*. Magellan argues that, at a minimum, it will have available 50 percent of the petroleum products capacity for uncommitted shippers and the priority capacity rate structure “provides for rates consistent with the obligation of each class of shipper.”⁵

Public Notice and Interventions

11. Public notice of Magellan’s petition issued on January 19, 2012, providing for protests and motions to intervene to be filed by February 13, 2012. A motion to intervene was filed by Valero Marketing and Supply Company. No protests were filed. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), 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.

Discussion

12. In its petition, Magellan seeks approval for priority committed space and an overall rate structure to support a proposed expansion of its refined products pipeline from Houston to El Paso. As a general matter, Magellan followed the correct procedures

² Citing, *CCPS Transportation, LLC*, 122 FERC ¶ 61,253, at 14 (2007).

³ Citing, *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011) (*Sunoco*).

⁴ Citing, *Mid-America Pipeline Co.*, 136 FERC ¶ 61,087 (2011).

⁵ *Id.* at P 19.

for approval of its proposal by filing a declaratory order⁶ and offering the committed rates to all shippers in a widely publicized open season.⁷ Magellan offered three levels of committed rates which would not be subject to prorationing. The Level 1 rate, which has the shortest term and lowest volume commitment, is 84 cents higher than the uncommitted rate. The Level 2 rate is 42 cents higher than the uncommitted rate. The Level 3 rate, which has the longest term and highest volume commitment, is the same as the uncommitted rate but Level 3 shippers would not be subject to prorationing.

13. The Commission finds that Magellan's proposal to charge Level 3 committed rate shippers the same rate as uncommitted shippers but provide them the benefit of being excluded from prorationing is not consistent with Commission precedent. The Commission has previously found that the carrier must support a preferential prorationing element by premium rates so as to render the preference not undue.⁸

14. The emphasis on price as determined by the Commission in prior cases, as opposed to non-price elements as proposed by Magellan, is consistent with the courts' interpretation of the common carrier duty of non-discrimination under the ICA.⁹ As stated by the courts, "[t]he core concern in the nondiscrimination area has been to maintain equality of pricing for shipments subject to substantially similar costs and competitive conditions, while permitting carriers to introduce differential pricing where dissimilarities in those key variables exist."¹⁰ Applying this principle in *CCPS Transportation LLC*,¹¹ the Commission concluded that "[i]t can be appropriate to charge a premium rate to those shippers willing to meet the contract's terms and pay more for the guarantee of capacity without proration. In this case, premium rate firm shippers are not similarly situated with the pipeline's non-firm shippers. Premium rate firm shippers have made long-term agreements and must pay for their contracted amounts even if not used, but they are not subject to prorationing."

⁶ See, e.g., *Express Pipeline Partnership*, 76 FERC ¶ 61,245 (1996) (approving advance rate guidance through the declaratory order process).

⁷ See, e.g., *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011).

⁸ See, e.g. *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Company*, 124 FERC ¶ 61,199, at P 35 (2008).

⁹ 49 App. U.S.C. §§ 2 and 3(1) (1988)

¹⁰ *Sea-Land Service, Inc. v. ICC*, 738 F.2d 1311, 1317 (D.C. Cir. 1984).

¹¹ 121 FERC ¶ 61,253, at P 19 (2007).

15. Magellan makes a number of arguments in support of its proposal and the Commission will address them in turn. Magellan argues that there is no material difference between its proposal here and the *Sunoco*¹² case where the Commission approved a one cent per barrel premium rate for committed shippers with 90 percent of the capacity allocated as priority space for committed shippers. However, there is a material difference between the proposal approved in *Sunoco* and Magellan's proposal. *Sunoco* required payment of a premium rate for firm service that was higher than the rate paid by shippers subject to prorationing. In its proposal, however, Magellan would charge Level 3 committed shippers a rate for firm service that is the same as that to be charged uncommitted shippers for service subject to prorationing.

16. Magellan also appears to conflate the findings in two separate *Mid-America* cases¹³ into one as justification for its argument that offering priority service at discounted rates is permissible. In the more recent *Mid-America* case from 2011, it is clear that committed shippers were paying premium rates for priority service. *Mid-America* itself stated "that committed shippers paying a premium rate will not be subject to prorationing under normal operating conditions, in contrast to the uncommitted shippers that pay lower rates and make no long-term financial commitment to support the Expansion."¹⁴ *Mid-America* further explained "that the uncommitted shippers will continue to be charged a significantly lower rate than the rate applicable to the committed volumes and will pay on a volumetric or usage basis."¹⁵

17. The 2006 *Mid-America* case cited by Magellan involved *Mid-America*'s volume incentive program for natural gas liquids in which shippers participating in the program would receive reduced rates in exchange for long-term volume commitments. *Mid-America* divided its capacity into Base Capacity and Expansion Capacity. If nominations exceeded capacity, the capacity would be allocated among the different groups of shippers with 80 percent of the capacity set aside for volume incentive shippers and 20 percent available to new shippers. Although volume incentive shippers were paying reduced rates, they were still subject to prorationing because the capacity set aside for volume incentive shippers was still allocated among those shippers according to historical prorationing procedures. Here, however, unlike the *Mid-America* shippers,

¹² *Citing, Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011).

¹³ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006) and *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087 (2011).

¹⁴ *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 10 (2011).

¹⁵ *Id.* P 11.

Level 3 committed shippers under Magellan's proposal are receiving premium, firm service for the same rate as uncommitted shippers.

18. Accordingly, the Commission denies the requested rulings contained in Magellan's petition for declaratory order with respect to Level 3 committed shippers.¹⁶

The Commission orders:

The rulings requested by Magellan in its petition for declaratory order are denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ Given that the open season resulted in only one shipper committing to Level 3 rates, the fact that the Level 1 and 2 rates are consistent with Commission precedent and policy is essentially irrelevant.

Document Content(s)

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