

139 FERC ¶ 61,259
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. OR12-12-000

ORDER ON PETITION FOR DECLARATORY ORDER

(June 28, 2012)

1. On April 20, 2012, Sunoco Pipeline L.P. (SPLP) filed a petition for a declaratory order approving: (1) priority service and the overall tariff and rate structure for the proposed West Texas – Longview Access pipeline (Longview Access Project); and (2) priority service and the overall tariff and rate structure for the proposed West Texas – Houston Access pipeline (Houston Access Project).¹ SPLP seeks prompt Commission action so that these additions to the available infrastructure serving the West Texas area can be completed as quickly as possible. As discussed below, the Commission grants the requested declaratory order.

Background

2. Until December 2010, SPLP operated a 10-inch crude petroleum pipeline providing north-to-south service from Longview and Kilgore, TX to a terminal in Houston, with a heavy crude capacity of approximately 14,000 barrels per day (bpd). In October, 2008, SPLP entered into a long-term throughput and deficiency agreement (T&D) with a shipper to transport refined products on the existing 10-inch line.² A portion of the pipeline was taken out of crude service in early 2011, for conversion to intrastate refined products service from Huffman, TX to Kilgore while the segment from Huffman south to Houston was idled.³ No movements of refined products ever actually shipped on the northern segment. Upon terminating the T&D agreement, and in light of market demand, SPLP determined to convert the 10-inch pipeline to interstate crude petroleum service.⁴

¹ Sunoco Pipeline L.P. April 20, 2012 Petition for Declaratory Order at 1 (Petition).

² *Id.* at 2.

³ *Id.* at 3.

⁴ *Id.*

The Projects

3. As described by SPLP, the Longview Access Project and the Houston Access Project involve the conversion of the SPLP 10-inch line from refined products to crude petroleum service, travelling north and south from Goodrich, TX.⁵ Each project will involve separate segments of the SPLP 10-inch line.

4. The Longview Access Project will receive West Texas Intermediate crude petroleum from the West Texas Gulf Pipeline near Goodrich and transport that crude approximately 120 miles north to Longview, TX for further transportation on the Mid-Valley Pipeline. The project will involve converting the pipeline from refined products to crude petroleum transportation, the installation of connecting facilities at Goodrich, including tankage and pumps, as well as other necessary modifications.⁶ The conversion will add 30,000 bpd of crude petroleum capacity for transport to Longview.⁷

5. The Houston Access Project will enable a section of the SPLP 10-inch pipeline to receive West Texas Sour crude petroleum from the West Texas Gulf Pipeline near Goodrich and transport that crude petroleum approximately 60 miles south to terminal facilities in Houston.⁸ The project will involve converting the pipeline from refined products to crude petroleum transportation, reversing the direction of the pipeline's flow, the installation of connecting facilities at Goodrich, including tankage and pumps, as well as other necessary modifications.⁹ The conversion will add 40,000 bpd of crude petroleum capacity for transport to Houston.¹⁰

6. SPLP states that these projects will require a substantial capital investment, but when completed, will enhance the transportation alternatives for both West Texas Sour and West Texas Intermediate grades of crude petroleum from West Texas and New Mexico fields, allowing more efficient economic use of domestically-produced crude petroleum.¹¹

⁵ *Id.*

⁶ *Id.* at 4-5.

⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ *Id.*

Open Seasons

7. SPLP explains that volume commitments are integral to the economic viability of the projects. Thus, SPLP conducted separate open seasons for each project, seeking volume commitments in return for priority service at a premium rate.¹²

8. Shipments under priority service will not be subject to prorationing under normal operating conditions.¹³ For both the Longview Access Project and the Houston Access Project, capacity will be shared between committed and uncommitted volumes, with up to 90 percent of capacity available to committed volumes and at least 10 percent reserved for uncommitted volumes.¹⁴ On both projects, committed shippers will pay a premium rate on shipments of committed volumes of at least \$0.01 above the uncommitted rate.¹⁵ Shippers that enter into Transportation Service Agreements (TSA) during the open season also commit to ship a minimum of 5,000 bpd on a ship-or-pay basis for eight year terms (Longview Access Project)¹⁶ or for terms expiring on December 31, 2022 (Houston Access Project).¹⁷

Requested Ruling

9. SPLP seeks an order affirming that SPLP may provide up to 90 percent of the capacity created through the Longview Access Project and the Houston Access Project as priority committed space at a premium rate for shippers that commit to move volumes on a ship-or-pay basis through SPLP's open seasons.¹⁸ SPLP argues that the rulings sought are consistent with the Commission's prior orders concerning priority service terms and tariff rate structures that can be offered to shippers who commit volumes through an open season to support new infrastructure capacity.¹⁹

¹² *Id.*

¹³ *Id.* at 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 13.

¹⁸ Petition at 7-8.

¹⁹ *Id.* at 15.

10. SPLP argues that the Commission enjoys discretion under the Interstate Commerce Act²⁰ to approve priority contract service under appropriate circumstances.²¹ SPLP states that the ICA has been historically interpreted to invest the Commission with considerable discretion to assess the reasonableness of a pipeline's practices.²² SPLP cites to numerous instances where the Commission has exercised its discretion under the ICA to approve of various methods for allocating capacity among different categories of shippers.²³

11. For example, explains SPLP, in *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008), 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 to uncommitted shippers.²⁴ SPLP states that Commission precedent also supports the use of a premium rate of \$0.01 over the uncommitted rate,²⁵ and the reservation of 90 percent of capacity for uncommitted shippers while ensuring that uncommitted shippers have access to at least 10 percent of capacity.²⁶

Notice and Interventions

12. Public notice of the Petition was issued on April 24, 2012, with interventions and protests due on or before May 15, 2012. No interventions, protests or other comments were filed.

²⁰ 49 U.S.C. app. § 1 (1988) (ICA).

²¹ Petition at 15-16 (citing ICA §§ 1(4), 3(1)).

²² Petition at 16 (citing *Sea-Land Services Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984) (explaining that "Congress has delegated broad legislative discretion to the [C]ommission to determine when differential treatment amounts to improper discrimination among shippers and when such treatment is justified by relevant dissimilarities in transportation conditions"))).

²³ Petition at 17 (citing *Mid-America Pipeline Co., LLC*, 106 FERC ¶ 61,094, at 61,336 (2004) and *Total Petroleum Inc. v. Citgo Products Pipeline, Inc.*, 76 FERC ¶ 61,164, at 61,947 (1996)).

²⁴ Petition at 18.

²⁵ *Sunoco Pipeline, L.P.*, 137 FERC ¶ 61,107, at PP 7, 15 (2011).

²⁶ *Id.* PP 6-15.

Commission Analysis

13. The Commission finds that SPLP's proposal is consistent with applicable policy and precedent. SPLP has demonstrated a demand for transportation of crude petroleum from West Texas and New Mexico to Longview and Houston, TX and onward to downstream markets. To meet this demand, SPLP must undertake a substantial capital investment in its existing ten inch line. Without the substantial financial investment of shippers that commit to move barrels on the Longview Access and Houston Access Projects, there exists the possibility that the projects will not occur in a timely manner. To minimize the risk that the project will not move forward, and to provide financial assurance to SPLP, the proposed TSAs require shippers to commit to ship-or-pay contracts at premium rates for initial terms of between 8 years (Longview) and through December 31, 2022 (Houston). In exchange for these commitments, the TSA provides that the committed shipments will not be subject to prorationing.

14. SPLP provides an appropriate amount of capacity for uncommitted shippers, at least ten percent, while affording protection to the committed shippers who enter into long-term TSAs. Further, SPLP's open seasons appropriately gave all potential shippers the opportunity to become committed shippers by entering into TSAs. Accordingly, the Commission grants SPLP's petition for declaratory order, based on the representations made in the petition.

15. While the Commission approves SPLP's proposed rate design and overall tariff structure, SPLP will still be required, upon filing its tariffs, to meet the applicable provisions of Part 342 of the Commission's Rules and Regulations.

The Commission orders:

SPLP's Petition for declaratory order is granted, as discussed in the body of this order.

By the Commission. Commissioner Clark is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.