

140 FERC ¶ 61,195  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunoco Pipeline L.P.  
West Texas Pipe Line Company  
Mobil Pipe Line Company

Docket No. OR12-16-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued September 14, 2012)

1. On May 14, 2012, Sunoco Pipeline L.P. (Sunoco), West Texas Gulf Pipe Line Company (West Texas Gulf), and Mobil Pipe Line Company (MPLCO) (collectively “Petitioners”) filed a petition for a declaratory order approving (1) priority service for the Petitioners proposed West Texas-Nederland Access project (Project); and (2) the overall tariff and rate structure for the Project. Petitioners seek prompt Commission action to make additional infrastructure available to serve the West Texas production area as soon as possible. As discussed below, the Commission grants the requested declaratory order.

**Background**

2. The purpose of the Project, state the Petitioners, is to create an additional transportation route for West Texas Sour crude petroleum centers in West Texas and New Mexico to reach the Nederland terminal in Nederland, Texas. The Petitioners explain that they designed the Project to provide a transportation route for crude petroleum from Midland, TX to Nederland, TX. The Project interconnects four separate pipelines, which are: (1) the Sunoco Mesa Pipeline from Midland, TX to Colorado City, TX; (2) the West Texas Gulf CC-Wortham Pipeline from Colorado City, TX to Wortham, TX; (3) the Sunoco Pipeline running from Wortham, TX to Corsicana, TX; and (4) the Mobil Pegasus Pipeline running from Corsicana, TX to Nederland, TX. The Project will involve substantial upgrades to these four pipelines to increase capacity and throughput, as well as provide an additional injection point on the Pegasus pipeline.

### **Petitioners' Proposal**

3. The Petitioners state the Project will extend from Midland, Texas to Nederland, Texas. The Petitioners assert the Project will require a substantial capital investment. Capital improvements in the Project include: (a) expansion of the capacity of the Sunoco Mesa Pipeline through the installation of piping and valves; (b) installation of additional pumps and other facilities to expand the operating capacity of the West Texas Gulf CC-Wortham Pipeline to near the maximum capacity; (c) expansion of the capacity of the Sunoco Pipeline via additional flow capacity added by virtue of pumping capacity coming from the West Texas Gulf CC-Wortham Pipeline; and (d) installation of new pumping facilities for the Mobil Pegasus Pipeline and improvements to the Sunoco Corsicana tank farm. Sunoco anticipates the Project will commence service in the first quarter of 2013 and will add 40,000 barrels per day (bpd) of capacity.<sup>1</sup>

4. The Project includes both committed and uncommitted volumes. Due to the substantial investment required for the Project, the Petitioners contend its success depends on support from committed shippers. Therefore, the Petitioners conducted an open season from April 11 through May 11, 2012, offering service on the Project pursuant to a Transportation Service Agreement (TSA).

5. Shippers executing TSAs (i.e., committed shippers) will commit to ship or pay for a minimum volume of 5,000 bpd for a term of 5 or 10 years. Committed shippers also receive priority service at a premium rate (i.e., a rate in excess of the uncommitted rate). The Petitioners point out that committed shippers will pay a premium rate of at least \$0.01 more per barrel than the rate charged to uncommitted shippers moving volumes to the same delivery points.

6. Committed shippers are also exempt from any prorationing of their committed volumes under normal operating conditions. In exchange for the term and volume commitments, committed shippers receive priority service on up to 90 percent of the expansion capacity. Petitioners reserved ten percent of the remaining capacity for uncommitted shippers' volumes.<sup>2</sup> The Petitioners also maintain that the terms of the

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<sup>1</sup> Volumes are reduced to 30,000 bpd during January, February, and March for operational reasons.

<sup>2</sup> The Petitioners state 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.

proposed tariff and the service structure of the Project are consistent with Commission precedent.<sup>3</sup>

7. Petitioners will offer joint tariffs for transportation on both committed and uncommitted volumes. The initial joint rate payable committed volumes transported on the Project from Midland, TX to Nederland, TX is \$2.47 per barrel. The initial joint rate from Midland, TX to Nederland, TX will be \$2.43 per barrel for uncommitted shippers. Each of the pipelines will also post local committed and uncommitted tariffs prior to commencement of service on the Project. The initial local tariff rates for committed volumes is \$.17 per barrel on the Sunoco Mesa Pipeline, \$.26 per barrel on the WTG CC-Wortham Pipeline, \$.60 per barrel on the Sunoco Pipeline, and \$1.44 per barrel on the Mobil Pegasus Pipeline.<sup>4</sup> Petitioners will have the right to adjust the committed rates annually, effective July 1 of each year. The adjustment will be based on the annual FERC oil pipeline index, or, if that methodology ends, by the annual change in the PPI published in the immediately preceding calendar year. Further, Petitioners will have the right to adjust uncommitted rates annually using the Commission's indexing process.

8. The Petitioners emphasize that they will not subject committed shippers' volumes to prorationing under normal operating conditions. The Petitioners maintain this protects committed shippers against the risk that barrels moved under the TSAs will be prorated out of the pipeline by uncommitted shipper volumes who that made no financial commitment to support the Project. At the same time, Petitioners continue, the rate for uncommitted volumes will be lower than the rate for committed volumes.

9. The Petitioners also emphasize that their 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 infrastructure project. The Petitioners argue the Interstate Commerce Act (ICA) gives the Commission discretion to approve priority contract service under appropriate circumstances.<sup>5</sup> They also point out that courts

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<sup>3</sup> The Petitioners cite *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007), *order on reh'g*, 122 FERC ¶ 61,123 (2008) (*CCPS*); *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006).

<sup>4</sup> The initial local tariff rates for transportation of uncommitted volumes will be \$.16 per barrel on the SunocoMesa Pipeline, \$.25 per barrel on the West Texas Gulf CC-Wortham Pipeline, \$.59 per barrel on the Sunoco Pipeline, and \$1.43 per barrel on the Mobil Pegasus Pipeline

<sup>5</sup> The Petitioners cite *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

(continued...)

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.

10. The Petitioners further contend that their proposed priority service terms and rate structure for the Project are likewise consistent with Commission precedent. Petitioners rely on *CCPS*,<sup>6</sup> where the Commission approved a request to offer shippers priority service at a premium rate who executed contracts for 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. The Petitioners also emphasize that the Commission has recognized the importance of priority shippers to the pipeline's capital financing.

### **Notice**

11. Public notice of the petition issued on May 16, 2012, with interventions and protests due on or before June 13, 2012. No interventions or protests were filed.

### **Commission Analysis**

12. The Commission finds that the Petitioners' proposal is consistent with applicable policy and precedent. The Petitioners have demonstrated that the Project will provide additional capacity, thereby avoiding possible constraints on the production of crude from West Texas and New Mexico. As such, the Project will enhance domestic energy production and allow the expansion of crude markets. The Petitioners also have demonstrated that the Project entails a significant capital investment, which requires the support of committed shippers to share the financial risk of the Project.

13. As has been the case in other proposals approved by the Commission and cited by Petitioners the 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

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methodology, but changes in the national economy as well. . . ."); *Indiana Harbor Belt R.R. v. U.S.*, 510 F.2d 644, 649 (7<sup>th</sup> Cir.) ("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.").

<sup>6</sup> *CCPS*, 121 FERC ¶ 61,253.

operating conditions. The Petitioners offered the terms of its proposal in an open season that gave all potential shippers the opportunity to become committed shippers. Accordingly, the Commission finds this satisfies the ICA's common carriage requirements, and the Commission grants the subject petition for declaratory order.

14. The Commission issues this order based on the facts and projections presented by the petition. If any of the facts or projections supporting the petition change, the petitioners must make a filing with the Commission to determine whether the ruling in this order would still be applicable.

The Commission orders:

The Petitioners' request for a declaratory order is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Document Content(s)

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