

141 FERC ¶ 61,017
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.

Shell Pipeline Company LP

Docket No. OR12-23-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued October 5, 2012)

1. This order grants Shell Pipeline Company LP's (Shell) petition for declaratory order requesting that the Commission approve Shell's proposed rate and service structure for shippers for proposed transportation service on a new pipeline project, known as the Westward Ho project, to be constructed between St. James, Louisiana and Houston, Texas.

Background

2. Shell states that the Gulf Coast of Louisiana is the major landing point for U.S. domestic crude production as well as foreign crude imports, and that Texas and Louisiana are also home to almost 50 percent of U.S. refining capacity. Shell explains that the supply/demand dynamics in the U.S. Gulf of Mexico are changing, and more domestic sour production is expected to land in Louisiana while the refineries best suited to use that crude are located further to the west. Shell also notes that large new supplies of offshore Gulf of Mexico production is expected to arrive from new deep water projects and other sources starting in 2015. Shell states that the crude types being produced by these sources are typically heavier and more "sour" crudes relative to crudes produced onshore in Texas, and refineries in the Houston area tend to prefer heavier, more "sour" crudes.¹ As a result, Shell has received strong shipper support for a pipeline system that would provide expanded access to Houston and nearby refining markets for Gulf and imported crude types.

¹ Crude oil is considered "sweet" if it contains less than 0.5 percent sulfur. In comparison, "sour" crude oil contains impurity sulfur levels larger than 0.5 percent.

3. Shell proposes to construct a new pipeline system, known as the Westward Ho project, from St. James, Louisiana to the Houston and Nederland, Texas markets, capable of transporting up to 900,000 barrels per day (bpd), with a projected in-service date in the third quarter of 2015. Shell states that the Westward Ho project would provide Gulf Coast producers expanded access to Houston refineries and would provide an outlet to more than 4 million bpd of refining capacity in the Houston, Port Arthur, and Lake Charles markets. Shell states that the Westward Ho project would also complement the new storage and logistics infrastructure that is currently being built in the St. James and Clovelly, Louisiana areas.

4. Shell states that in 2011 it held a non-binding open season for the Westward Ho project, and the results reflected substantial shipper interest. Since the Westward Ho project is expected to cost in excess of \$1 billion and Shell cannot undertake a project of this magnitude without first acquiring binding shipper commitments to support the investment, Shell commenced a binding open season on April 2, 2012, with terms posted on its website. The open season terms were amended as of May 23, 2012, based on further shipper input and discussions of the shippers' commercial requirements. On May 31, 2012, based on additional shipper feedback, Shell provided a further clarification regarding how contract rates would be determined and extended the open season until June 15, 2012. Shell states that the open season concluded successfully, and Shell received adequate volume commitments to support the continuation of the project.

5. In the Westward Ho open season, potential shippers were given an opportunity to submit binding contractual commitments in the form of executed Transportation Service Agreements (TSAs). The key terms of the TSA include the following:

(1) Committed Shippers would obtain the right to use discounted contract rates relative to initial Uncommitted Rates, subject to non-negative FERC escalation, reflecting incentive rates based on larger volume movements and longer commitment terms. Shippers could elect to enter into 10, 15 or 20-year contracts, for volume commitments at five different levels: 20,000-49,999 barrels per day; 50,000-99,999 barrels per day; 100,000- 199,999 barrels per day; 200,000-299,999 barrels per day; and 300,000+ barrels per day. The rates range from \$0.50 per barrel to \$1.54 per barrel based on various combinations of volume, route length, and commitment terms.

(2) Shippers desiring to combine different volumes and terms into a single, longer term contract could do so, and as volumes would change over the term of the contract, the shipper's transportation rate would adjust accordingly per the applicable term- and volume-related rates under the tariff. For example, if during the open season period, a shipper were to

have submitted a TSA that combined a 100,000 barrel per day bid for 15 years with a 50,000 barrel per day bid for 10 years, the shipper's transportation rate would be the 150,000 barrel per day rate (for a 10-year term) for the first ten years (\$1.19) and the 50,000 barrel per day rate (for a 15-year commitment) for the last five years (\$1.18). A shipper seeking this rate treatment for a bid involving different volumes for different time periods would need to indicate in its TSA that its contract requests should be treated as a single contract.

(3) Committed Shippers would be subject to prorationing, including a set-aside of capacity for new shippers, but would have their initial volume history set by their contractual volume commitment. Shell does not propose to provide any firm capacity rights for the Westward Ho project. Shell proposes to use a historical rolling 12-month average of the higher of actual movements or volumes paid for under the TSAs, to determine capacity allocation in periods of prorationing. Committed Shippers would have the ability to assign or transfer their contract rights and shipper history.

(4) Up to 10 percent of pipeline capacity would be reserved for non-contract volumes.

(5) Shell plans to file an initial Uncommitted Rate pursuant to 18 C.F.R. § 342.2 that will be at least 20 percent higher than the tariff posted for the shortest term at the lowest committed volume but does not request advance approval of that rate in the declaratory order.

6. Notice of Shell's petition was issued on August 14, 2012, providing that motions to intervene, protests and comments be filed by August 30, 2012. No protests or adverse comments were filed.

Shell's Petition

7. Shell specifically requests approval regarding the following elements of the Westward Ho project. Shell requests a declaration that the terms of the TSA and the accompanying *pro forma* tariff rate structures and service terms for Committed Shippers are lawful, and that the stated contract rate and prorationing provisions will govern the Committed Shippers' service during the terms of the TSA, irrespective of changes that may occur as to the uncommitted rates. This request includes the Committed Rates set out in Schedule B to the *pro forma* TSA as clarified on May 31 concerning the treatment of combined contracts for differing volumes over the term of the contract, the agreed-upon escalation by the Commission's index during the contract term, and the viscosity surcharge.

8. Shell also requests confirmation that it may provide Committed Shippers with immediate base period volume histories equal to their Committed Volume in the TSA as of the commencement date, although Shell's rolling 12-month and other existing prorationing terms as provided in the TSA and *pro forma* tariff would govern all shippers thereafter, and Committed Shippers would calculate historical volumes based on either volumes shipped or paid for, with the right to transfer volume histories associated with assigned contract rights. Committed Volumes under the TSAs would account for up to 90 percent of the capacity of the Westward Ho project initially.

9. Shell submits that there is expected to be strong demand for the proposed transportation service on the Westward Ho project by the third quarter of 2015. Once the Ho-Ho System² is reversed, there will be limited pipeline outlets for Louisiana crude to move to Texas other than by water until Westward Ho is built. Shell states that the Westward Ho system would be a major greenfield pipeline construction project, which requires many steps and significant lead time for the acquisition of needed equipment, particularly pipe, well in advance of commencing construction. Shell asserts that it will not be able to make the necessary contractual commitments to new pipe and other equipment until it receives the requested declaratory order to confirm the lawfulness of the proposed rate, service, and allocation elements of the Westward Ho project. Consequently, Shell requests that the Commission issue the requested declaratory order no later than the end of October 2012 in order for service to be available to meet increased shipper demand in 2015.

10. Shell submits that since *Express Pipeline Partnership*,³ it has been the Commission's policy to create regulatory certainty by giving pipelines up-front regulatory approvals through a declaratory order before they undertake major capital

² Service from Clovelly and Houma, Louisiana to Nederland/Port Neches and Houston area destinations is currently being provided via Shell's Ho-Ho System, but Shell plans to reverse that pipeline system to provide service from Houston and other points eastward to Houma, St. James and Clovelly, Louisiana to accommodate Eagle Ford and other growth crudes reaching a market better suited to their consumption. The projected in-service date for that project is in 2013. On June 21, 2012, the Commission issued an order granting Shell's request for a declaratory order concerning certain rate and service terms for the Ho-Ho Reversal project. *Shell Pipeline Company LP*, 139 FERC ¶ 61,228 (2012). The Ho-Ho Reversal project, however, involves different pipeline facilities, a different in-service date (2013 versus 2015), different origins (St. James is not an origin for the current Ho-Ho service in the direction of Houston) and different services, from those that are being proposed in the Westward Ho project.

³ 76 FERC ¶ 61,245, *order on reh'g*, 77 FERC ¶ 61,188 (1996).

expenditures.⁴ Shell asserts that it is appropriate to issue a declaratory order to create regulatory certainty regarding the lawfulness of the rates and terms of service of the Westward Ho project.

11. Shell contends that the proposed Committed Shipper contract rates should be approved as consistent with Commission precedent. Shell states that the Commission has treated similar proposals as settlement rates binding on both the carrier and Committed Shippers, during the duration of the TSAs, irrespective of the uncommitted rates.⁵ Shell submits that the Commission has long recognized that shippers committing to larger volumes may appropriately pay a discounted rate relative those not committing to transport larger volumes.⁶ Shell also states that the Commission has also recognized that shippers making longer term commitments incur costs and liabilities and undertake risks that make them not similarly situated with shippers that do not make longer term commitments.⁷

12. Shell states that the terms of the TSA offered in the open season reflect commercial requirements of the potential Committed Shippers, and those terms were required to induce shippers to make the massive commitments for long-term capacity obligations implicit in the TSAs. Accordingly, the terms of the TSAs offered in the open season for Westward Ho provide that Committed Shippers would be deemed as of the commencement date of service to have base period volumes (monthly volumes for 12 months prior) equal to their Committed Volumes. Shell states that after the commencement of service, a Committed Shipper's allocation of capacity would be calculated based on the higher of the volumes shipped or paid for as a consequence of the TSA Committed Volume obligations after the commencement of service. In addition,

⁴ See, e.g., *Skelly-Belvieu Pipeline Co., L.L.C.*, 138 FERC ¶ 61,153 (2012); *Sunoco Pipeline, L.P.*, 137 FERC ¶ 61,107 (2011); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 25 (2007); *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 44 (2006); *Enbridge Energy Co., Inc.*, 110 FERC ¶ 61,211 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002).

⁵ Citing, *Mid-America Pipeline Company*, 136 FERC ¶ 61,087, at P 9 (2011); *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008); and *Express Pipeline Partnership*, 76 FERC ¶ 61,245.

⁶ Citing, see, e.g., *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040 (2006); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002); *Williams Pipe Line Co.*, 80 FERC ¶ 61,402 (1997).

⁷ *Express Pipeline Partnership*, 76 FERC at 62,254.

Committed Shippers would have the right to permanently assign or transfer their contract rights, with associated shipper volume histories.

13. Shell submits that the Westward Ho prorationing provisions are fully consistent with the Commission's policies regarding new pipeline capacity. Shell explains that unlike some other projects, Shell does not request that the Committed Shippers for Westward Ho be granted priority rights in prorationing. Shell states that New Shippers will be able to transition into the status of Regular Shippers if they ship volumes as specified by the tariff. However, Shell asserts that given the very substantial commitments being made by Committed Shippers, they are not "similarly situated" with uncommitted shippers that have made no commitment to transport on Westward Ho, and face no risks as to market or supply circumstances. Shell argues that its proposed prorationing provision allows its contract shippers to avoid being "shut out" from the use of the pipeline facilities, but without granting them "firm" rights.⁸ Shell contends that by ensuring that shipper histories include either volumes moved or paid for, shippers can commit to expected volumes without losing their right to ship because of gaps in offshore volumes coming online. Shell submits that the ability to transfer assignment rights together with shipper histories for prorationing purposes affords a limited but meaningful opportunity for contract shippers to find a willing transferee, which mitigates the risks of commitment over the long contract terms in the TSAs. Finally, Shell asserts that the Westward Ho proposal sets aside at least 10 percent of pipeline capacity for new shippers, a percentage that the Commission has approved in a number of orders as adequately preserving access for "new shippers,"⁹ consistent with the common carriage obligation under the Interstate Commerce Act (ICA)

Discussion

14. Shell's petition for Commission declaratory approval of a rate structure where Committed Shippers who have access to 90 percent of the pipeline capacity based on long-term contractual commitments that are discounted based upon volume and length of term, is consistent with Commission precedent implementing the ICA. Shell has provided an appropriate amount of capacity for future Uncommitted Shippers who have chosen not to sign long term contracts.¹⁰ Committed Shippers would not have firm or priority capacity with respect to prorationing. Instead, their contract volumes would be deemed their initial history for purposes of prorationing, and the subsequent history would be based on the higher of shipped or contract volumes. The Commission finds that

⁸ Citing, *TransCanada Keystone Pipeline, LP*, 131 FERC ¶ 61,139, at P 12 (2010).

⁹ See e.g., *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 56 (2006).

¹⁰ See, e.g., *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107 (2011).

the imputation of an initial shipping history based on Committed Shippers' contracts is appropriate. Such a feature of the contracts protects Committed Shippers, who are financially supporting the construction of the pipeline, by allowing them to commit to an expected amount of volumes without diminishing their shipping rights due to the uncertainties regarding when their production will be available, and is consistent with Commission precedent.¹¹ Committed Shippers would also be permitted to assign their contracts along with the related shipping history. All of these contract terms were offered to all potential shippers in a widely publicized open season, so any potential shipper could have elected to become a Committed Shipper if it chose to.

15. As was its recent Houston, Texas to Houma, Louisiana (Ho-Ho reversal) project, Shell's subject Westward Ho proposal is consistent with Commission precedent concerning advance approval for rate and terms of service structures for financially significant new projects or expansions. Shell has filed a declaratory order seeking advance approval prior to construction.¹² As noted above with respect to the capacity reservation and allocation elements of the proposal, since all potential shippers were given the opportunity to become Committed Shippers in a widely publicized open season, there is no issue of undue discrimination or undue preference under the ICA¹³ with respect to the rate structure elements of the project either.

16. A final issue which has not been previously addressed by the Commission is Shell's proposal to allow Committed Shippers to assign their contracts along with their shipping history. The Commission finds that Shell's proposal is just and reasonable because if the market changes it will permit the shipper being assigned the contract to step into the shoes of the original shipper and it will be responsible for providing the continued long term financial support of the pipeline. If such assignment rights were not available, the contracts would be rendered less valuable because other Committed Shippers who have established shipping histories would gain a larger percentage of capacity during prorationing. Moreover, Shell explained that the assignment rights, along with the other parts of the prorationing proposal, were an important basis of the bargain for the Committed Shippers making the major volume commitments needed to support the project.

17. In sum, based upon the circumstances described in the petition and the representations made therein, the Commission finds that Shell's proposed rate structure

¹¹ See, *TransCanada Keystone Pipeline LP*, 131 FERC ¶ 61,139 at P 12.

¹² *Express Pipeline Partnership*, 76 FERC ¶ 61,245, *order on reh'g*, 77 FERC ¶ 61,188.

¹³ *Id.*

and terms and conditions contained in the TSA would be just and reasonable and would not result in undue discrimination or undue preference. Accordingly, the Commission grants all the requested confirmations and approvals sought in Shell's petition for declaratory order.

18. While the Commission approves Shell's proposed rate design and overall tariff structure, Shell 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:

Shell's petition for declaratory order is granted, as more fully 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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