152 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

Marathon Pipe Line LLC
Ohio River Pipe Line LLC

Docket No. OR15-30-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued September 29, 2015)

1. On July 16, 2015, Marathon Pipe Line LLC (MPL) and Ohio River Pipe Line (ORPL) filed a Petition for Declaratory Order (Petition) requesting approval of the tariff and overall rate structure and the terms of service, including priority and non-priority service, for the proposed Cornerstone Pipeline and the associated Utica Build-Out Projects. The Cornerstone Pipeline is planned to be available by late 2016, and the Utica Build-Out Projects by mid to late 2017.

2. MPL and ORPL (collectively, Petitioners) request Commission action on the Petition no later than September 30, 2015 so that the new pipeline and associated facilities will be available as planned to provide transportation of condensate and natural gasoline, including diluent (Specialty Products), to markets in Ohio, elsewhere in the Midwest, and beyond. The Commission grants the rulings requested by Petitioners, as discussed below.

Background and Petition Summary

3. The proposed Cornerstone Pipeline is a new 50-mile pipeline project that will originate in Harrison County, Ohio, with connections to condensate stabilization and fractionation facilities near Cadiz and Scio, Ohio. Pipeline destinations will include Marathon Petroleum Company LP's Canton, Ohio refinery and ORPL's East Sparta, Ohio tank farm. The pipeline is expected to have a capacity of 180,000 barrels per day (bpd) from Cadiz to East Sparta and a capacity of 45,000 bpd from East Sparta to Canton.

4. The Utica Build-Out Projects include both new construction and expansion of existing pipelines. These projects will enable deliveries to points beyond East Sparta and Canton to additional locations in Ohio, and elsewhere in the Midwest. They will also connect Midwestern refineries to Utica shale production, and will ultimately allow

producers to reach Chicago-area refineries and pipelines that supply diluent to western Canada. The Utica Build-Out Projects will create additional Specialty Products capacity of approximately 30,000 to 50,000 bpd. Movements from origin points at Cadiz and Scio will be subject to a joint tariff between MPL and ORPL to destination points at Canton and Lima, Ohio; Robinson, Illinois; and Hammond, Indiana.

5. Petitioners conducted a widely-publicized open season from February 9, 2015 to April 13, 2015 to solicit shipper support for the project through long-term volume commitments by shippers. The Open Season press release was published on February 9, 2015 and a notice was posted to MPL's public website. To interested shippers that signed a confidentiality agreement, Petitioners made available a detailed information memorandum, which described the Open Season process and the key commercial provisions in the Transportation Services Agreement (TSA), as well as a pro forma TSA and joint tariff.[1] These long-term volume commitments, and the terms by which Petitioners would offer service, are embodied in a TSA provided to interested shippers in the Open Season. Based on commitments made in the Open Season, the Petitioners propose to provide priority service at a premium rate when nominations exceed available capacity in a given month and the system is in prorationing, and non-priority service at a discounted rate when the system is not in prorationing. The committed volumes constitute about 20 percent of total capacity on the Cornerstone Pipeline and about 33 percent of total expansion capacity on the Utica Build-Out Projects.[2]

Requested Rulings

6. Petitioners request Commission confirmation and approval of the following aspects of the proposed Cornerstone Pipeline and associated Utica Build-Out Projects:

i. The TSA will be honored, its provisions will be upheld, and it will govern the transportation services Petitioners provide to Committed Shippers during the term of the TSA.

ii. The committed rates provided for in the TSA will be treated as settlement rates during the term of the TSA, including upon their initial filing in the pipeline's tariff and any subsequent adjustments pursuant to section 342.4(c) of the Commission's regulations.

iii. Petitioners may provide Committed Shippers with priority service at a premium rate during times of prorationing or non-priority service at a discounted rate when the pipeline is not in prorationing, with 20 percent of the total capacity on the

[1] Petition at 10-11.

[2] Petition at 4-5.

Cornerstone Pipeline and 33 percent of the expansion capacity on the Utica Build-Out Projects capacity available for Committed Shippers.

iv. The TSA term may be extended for up to two renewal terms of five years each, under the renewal provisions of the TSA.

v. A Committed Shipper that is required to make a Quarterly Deficiency Payment is entitled to a Prepaid Transportation Credit, which can be applied during the next rolling four calendar quarters to amounts due to Petitioners for deliveries of the same type of product that exceed the shipper's commitment.

vi. Rates will be adjusted annually according to the standard FERC annual oil pipeline indexing methodology in effect at the time of escalation. If the annual FERC oil pipeline index rate is negative, committed rates will not be adjusted downward.

vii. If legal developments require Petitioners to bear compliance costs, Petitioners may increase the committed rates or impose a fee on Committed Shippers to recover those costs, with the uncommitted rates being increased on an equivalent basis.

viii. If capacity is available after the Open Season and prior to the in-service date, Committed Shippers may increase their volume commitment according to the terms of the TSA.

ix. Committed Shippers have a right of first offer for expansion capacity per the terms of the TSA, without the need for a second open season.

Public Notice, Interventions, Protests, and Comments

7. Notice of the Petition was issued on July 22, 2015, providing for motions to intervene, comments and protests to be filed on or before August 14, 2015. Pursuant to Rule 214 of the Commission's regulations,[3] 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. The Petition is unopposed.

[3] 18 C.F.R. § 385.214 (2015).

Terms of the Joint Tariff

8. The terms and conditions of service will be set forth in a joint FERC tariff between MPL and ORPL, issued by MPL. The TSA sets forth proposed rates for committed priority, committed non-priority, and uncommitted shippers. The rates vary depending on the level of shipper commitment, the term of the TSA, and the delivery point.

9. Two types of Committed Shipper status were offered during the Open Season. Committed Non-Priority Shipper status allows shippers to receive transportation service at a discounted rate relative to the uncommitted rate in exchange for their commitment. Their service would be subject to prorationing during periods when nominations exceed capacity. Committed Priority Shipper status allows shippers to pay the same discounted rate as Committed Non-Priority Shippers when nominations do not exceed capacity and the system is not in prorationing. But when nominations exceed capacity, Committed Priority Shippers pay a rate one cent higher than the uncommitted rate for the identical service and, in return, receive transportation service not subject to prorationing under normal operating conditions.

Commission Analysis

10. The Commission will grant the rulings requested by MPL and ORPL. The Commission confirms that it will uphold and apply the key provisions of the TSA during the term of the agreement.

11. The Commission also approves the request to file the committed rates as settlement rates. The Commission has ruled that such provisions are consistent with the framework and intent of section 342.4(c) of the Commission's regulations.[4]

12. The Commission approves the priority and non-priority capacity and rate structure. The proposed priority and non-priority service was offered to all interested parties through a widely publicized open season. The proposal is analogous to previously approved rate structures where committed shippers received volume discounts for non-priority capacity with an option to elect priority capacity at a premium rate when the pipeline was prorationing.[5] In this case, rather than having an option, Committed Priority Shippers are automatically provided priority service at a premium rate during times of prorationing and Committed Non-Priority Shippers receive only non-priority service with discounted rates during times of pro-rationing. Such an arrangement still provides

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[4] *Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

[5] *Hiland Crude*, *LLC*, 148 FERC ¶ 61,228, at P 15 (2014); *Explorer Pipeline Co.*, 140 FERC ¶ 61,098, at P 16 (2012).

sufficient choice for Shippers, and is consistent with Commission precedent. Also, uncommitted shippers will have significant access to the capacity of the Cornerstone Pipeline and Utica Build-Out Projects, with 80 percent of the capacity of the Cornerstone Pipeline and 66 percent of the expansion capacity of the Utica Build-Out Projects being available for uncommitted shippers,[6] well above the 10 percent of access deemed reasonable under Commission policy.

13. The Commission approves, as consistent with Commission precedent, the proposed term extension rights, in which a Committed Shipper's TSA will automatically renew for up to two renewal terms of five years each, unless either party provides notice to the contrary in writing.[7]

14. The Commission approves, as consistent with Commission precedent, the Prepaid Transportation Credit provision, which requires a Committed Shipper to pay a Quarterly Deficiency payment (equal to the deficiency quantity multiplied by the applicable rate) if the aggregate volumes shipped by a Committed Shipper are less than its Quarterly Volume Commitment, and then allows the Committed Shipper to apply those payments during any quarter of the subsequent contract year if the shipper's deliveries on the pipeline exceed its commitment under the TSA.[8]

15. The Commission approves the annual committed rate adjustment, which adjusts rates in a manner similar to the FERC annual oil pipeline indexing methodology, but without downward rate adjustments if the index rate is negative. As we have previously approved contractually agreed-upon committed rates containing index-related adjustments but with a ceiling or floor,[9] this proposal is consistent with Commission precedent.

16. The Commission approves the provision allowing Petitioners to adjust their committed rates, if, in the event of a "Change in Law Event," they incur "Compliance Costs" in excess of $1,000,000. The Petitioners assert the Commission has previously approved provisions that allow committed rates to be adjusted to recover amounts incurred for compliance costs due to changes in law.[10]

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[6] Petition at 21.

[7] *See, e.g.*, *Hiland*, 148 FERC ¶ 61,228, at P 24 (2014).

[8] *See, e.g.*, *Marathon Pipe Line LLC*, 152 FERC ¶ 61,005, at P 20 (2015).

[9] *Medallion Pipeline Co.*, 150 FERC ¶ 61,156, at P 11 (2015).

[10] *See, e.g.*, *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at P 11 (2013); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 15 n.7 (2012).

17. However, we clarify that this type of provision does not apply automatically to uncommitted rates, inasmuch as the Petitioners' TSA is only with the committed shippers; Petitioners would need to file separately with the Commission to justify any change in uncommitted rates for the purpose of recouping a portion of such "Compliance Costs" from uncommitted shippers.

18. The Commission approves the provisions allowing Committed Shippers to increase their volume commitments after the Open Season and prior to the in-service date if a portion of the capacity offered in the Open Season remains available.[11] Finally, the Commission approves the provision that gives the Committed Shippers a right of first offer for possible future expanded capacity of the Cornerstone Pipeline or Utica Build-Out Projects.[12] Both these provisions are consistent with Commission precedent.

The Commission orders:

The Commission grants the Petition, consistent with the discussion above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[11] *Sunoco Pipeline, L.P.*, 151 FERC ¶ 61,192, at P 9 (2015).

[12] *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244 (2012).

Document Content(s)