

157 FERC ¶ 61,120
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

EnLink Crude Pipeline, LLC

Docket No. OR16-22-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 16, 2016)

1. On August 16, 2016, EnLink Crude Pipeline, LLC (EnLink) filed a petition for declaratory order (Petition) requesting approval of the overall tariff and rate structure and prorationing policy for a new crude oil pipeline system (Project). EnLink requests the Commission act on the Petition no later than November 16, 2016, in order for EnLink to meet its requirements for timely completion of the Project. The Commission grants the unopposed Petition and the specific rulings requested by EnLink as discussed below.

Background

2. According to the Petition, the Project will gather and transport crude oil from origin points in Upton County and Midland County, Texas to terminals located in Midland County.¹ EnLink states that the Project will consist of approximately 150 miles of 12-inch pipeline that will provide gathering and transportation services from multiple origin points. The Project capacity is approximately 62,000 barrels per day (bpd). EnLink expects the Project to enter service in the first quarter of 2017.²

3. EnLink states that the Project will provide needed additional transportation capacity for rising production in the Midland Basin to access destination points connected to downstream market centers. EnLink states that the Project will help to alleviate current bottlenecks caused by increased production and the lack of accessible pipeline

¹ Petition at 1.

² *Id.* at 2-4.

transportation options in the region, and will enhance the reliability and efficiency of moving crude oil production to market hubs.³

4. EnLink states that it conducted an open season from July 11, 2016 to August 10, 2016 seeking volume commitments for the Project through a throughput and deficiency agreement (T&D).⁴ EnLink offered up to 90 percent of the total capacity available on the Project for volume commitments of committed shippers, reserving 10 percent of capacity for uncommitted shippers.⁵ The open season was announced by press release and widely reported in the trade press. According to the Petition, any interested shippers that signed a confidentiality agreement could have access to the T&D and open season materials. EnLink states that the confidentiality agreement permitted interested shippers to raise concerns about the Project with the Commission, as long as any confidential information is filed under seal. At the close of the open season, EnLink had received only one commitment and that shipper is an affiliate.⁶

T&D Terms, Rates and Prorationing Policy

5. Under the T&D, a committed shipper agrees to ship or to make a deficiency payment for an annual minimum volume for a primary term of 10 years.⁷ EnLink states that committed shippers⁸ will receive firm service that is not subject to prorationing for their annual volume commitment converted to a monthly figure (Monthly Volume Commitment) on up to 90 percent of the Project's capacity.⁹ At least 10 percent of the Project's capacity will be available for nominations by uncommitted shippers.¹⁰

³ *Id.* at 4-5.

⁴ *Id.* at 6.

⁵ *Id.* at 8-9.

⁶ *Id.* at 6-7.

⁷ The T&D provided that the minimum daily volume commitment for the Project be at least 15,000 bpd. *Id.* at 8.

⁸ Although only one shipper signed the T&D, EnLink refers to "committed shippers" in the Petition, T&D and *pro forma* tariffs because EnLink may decide to hold a supplemental open season seeking additional commitments for the Project. *Id.* at 7 n.33.

⁹ *Id.* at 9.

¹⁰ *Id.*

6. EnLink states that the committed rate will be at a premium compared to the uncommitted rates. Under the T&D, the committed rate will be subject to an annual escalation adjustment in accordance with the Commission's indexing policies under 18 C.F.R. § 342.3.¹¹ In particular, EnLink may increase, but is not obligated to decrease, the committed rate pursuant to the Commission's indexing methodology.¹²

7. EnLink states that the T&D allows for rate adjustments or surcharges in the event EnLink is required to bear additional costs in order to comply with a Change in the Law subject to certain specifications.¹³ In particular, EnLink agreed to accept responsibility for up to four million dollars of costs resulting from a Change in the Law. EnLink further agreed that if the application of any rate adjustment or surcharge would cause the then-effective committed rate to increase by more than 25 percent, each committed shipper has the right to terminate the T&D unless EnLink agrees to bear the costs in excess of the 25 percent increase. EnLink states that any rate adjustments or surcharges will be applied equitably between the committed and uncommitted shippers.¹⁴

8. EnLink's proposed prorationing policy describes how capacity will be allocated in the event EnLink receives more nominations for transportation service in a month than it is able to provide. Capacity will first be allocated to committed shippers equal to the lesser of the committed shipper's nomination or its monthly volume commitment.¹⁵ At least 10 percent of the Project's total capacity will be available for nominations of uncommitted shippers moving crude oil in interstate commerce.¹⁶ If the total nominations by uncommitted shippers exceed 10 percent of the Project's

¹¹ *Id.* at 9-10.

¹² *Id.* at 32.

¹³ The Petition defines a Change in the Law as "the enactment, adoption, promulgation, issuance, modification, or repeal after the Effective Date of the T&D of any law, rule, regulation, order or permit or any material change in the interpretation of any law, rule, regulation, order or permit by any Governmental Authority, including any change in federal, state, or local tax law." *Id.* at 10 n.45.

¹⁴ *Id.* at 10-11.

¹⁵ *Id.* at 11.

¹⁶ EnLink states that if an event of force majeure or other operational disruption causes the capacity of a line segment to be reduced for a month, the allocation of capacity to each committed shipper would be reduced by the same percentage as the reduction in capacity to the affected line segment. *Id.* at 11-12.

capacity, each uncommitted shipper will be allocated its *pro rata* share of the 10 percent of capacity in accordance with its nomination. Any remaining capacity will be allocated to committed shippers that nominated incremental barrels in excess of their monthly volume commitments, and then among all shippers with unmet nominations.¹⁷

9. The T&D provides that a committed shipper may designate a third party shipper to transport volumes on behalf of the committed shipper that will receive priority service and count toward the committed shipper's volume commitment. The third party shipper must first execute a short-form transportation services agreement with EnLink agreeing to be bound by the T&D terms including the committed rates. EnLink claims that the provision gives committed shippers the flexibility to use third party shippers in order to fully utilize their rights and meet their obligations under the T&D.¹⁸

10. The T&D contains an evergreen provision that automatically extends the T&D term for additional one-year terms until cancelled by either party.¹⁹ In the event that EnLink decides to expand the Project, the T&D provides committed shippers with a first right to submit binding nominations for committed volumes on expansion capacity not to exceed 90 percent of the total expansion capacity.²⁰

Requested Rulings

11. EnLink requests that the Commission approve the following rate structure and terms of service for the Project as consistent with the Interstate Commerce Act (ICA)²¹ and Commission precedent:

- A. The open season was appropriately conducted and was not unduly discriminatory.
- B. The committed rates provided in the T&D, including the initial committed rate, may be filed as settlement rates pursuant to section 342.4(c) of the Commission's regulations.²²

¹⁷ *Id.* at 12.

¹⁸ *Id.* at 13-14.

¹⁹ *Id.* at 14, 30-31.

²⁰ *Id.* at 12-13.

²¹ 49 U.S.C. app. § 1 *et seq.* (1988).

²² 18 C.F.R. § 342.4(c).

- C. The T&D will be upheld and will govern the transportation services EnLink provides to the committed shippers during its term.
- D. The T&D appropriately provides that the committed rates may be increased, but not decreased, pursuant to the Commission's indexing methodology.
- E. EnLink may implement the T&D mechanism for recovering compliance costs in the event of a Change in the Law.
- F. EnLink may provide priority transportation service to the committed shippers at a premium rate compared to the rate applicable to uncommitted shippers.
- G. EnLink appropriately offered up to 90 percent of the Project's total capacity for volume commitments of committed shippers, with the remaining 10 percent reserved for uncommitted shippers.
- H. The proposed proration policy is just and reasonable, not unduly discriminatory, and consistent with Commission precedent.
- I. A committed shipper may designate a third party shipper to transport volumes on the Project that will count towards the committed shipper's volume commitment.
- J. The automatic term extension provisions in the T&D are consistent with Commission precedent.
- K. The T&D appropriately gives committed shippers a first right to submit a binding nomination for committed volumes on an expansion of the Project's capacity.

Public Notice, Intervention, Protests and Comments

12. Notice of the Petition was issued on August 18, 2016, providing for motions to intervene, comments and protests to be filed on or before September 16, 2016. No motions to intervene, comments, or protests were filed. The Petition is thus unopposed.

Discussion

13. Based upon the representations made in the Petition, the proposed T&D terms appear consistent with Commission precedent under the ICA. The Commission grants the unopposed Petition as discussed below.

14. The Commission finds that the open season appropriately followed Commission guidelines and offered all interested parties an equal opportunity to become committed shippers. The Commission also finds that the proposed rate structure and treatment of the committed rate as a settlement rate is consistent with Commission precedent.²³ In addition, the Commission affirms that the T&D will be honored and will govern the transportation services EnLink provides to the committed shippers during its term.²⁴

15. The Commission approves the proposal to allow committed shippers priority access for up to 90 percent of the Project's capacity, with at least 10 percent of the capacity reserved for uncommitted shippers. The Commission has held that priority service is permissible under the ICA provided that the committed shippers pay a premium rate of at least one cent per barrel more than uncommitted shippers and that the committed rates and priority service options were offered during an open season.²⁵

16. The Commission finds that the T&D provision allowing for adjustments to the committed rates based on the Commission's indexing methodology, under which EnLink is not obligated to decrease the committed rates, is consistent with Commission precedent.²⁶

17. The Commission approves the T&D mechanism regarding rate adjustments or surcharges to recover expenses incurred to comply with a Change in the Law as applied to the committed shippers.²⁷ The Commission's approval of EnLink's request that it may recover compliance costs pursuant to the T&D provision extends only to the committed

²³ See *NORCO Pipe Line Co., LLC*, 152 FERC ¶ 61,170, at P 21 (2015) (*NORCO*); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 21 (2012).

²⁴ See *Oryx Southern Delaware Oil Gathering and Transp. LLC*, 154 FERC ¶ 61,065, at P 14 (2016) (*Oryx*); *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067, at P 33 (2015) (*Saddlehorn*).

²⁵ See *Oasis Midstream Servs. LLC*, 156 FERC ¶ 61,083, at P 15 (2016); *Platte River Midstream, Inc.*, 155 FERC ¶ 61,107, at P 13 (2016); *CenterPoint Energy Bakken Crude Servs., LLC*, 144 FERC ¶ 61,130, at P 27 (2013) (*CenterPoint*).

²⁶ See *Oryx*, 154 FERC ¶ 61,065 at P 27; *Marathon Pipe Line LLC*, 152 FERC ¶ 61,237, at P 15 (2015) (*Marathon*).

²⁷ See *Marathon*, 152 FERC ¶ 61,237 at P 16; *Saddlehorn*, 153 FERC ¶ 61,067 at P 36; *BridgeTex Pipeline Co., LLC*, 156 FERC ¶ 61,121, at PP 9, 13 18 (2016).

shippers that freely entered into the T&D and assumed the rights and obligations thereunder.²⁸ In the event EnLink files a rate increase or surcharge to the uncommitted rates to recover compliance costs due to a Change in the Law, uncommitted shippers will have the ability to protect their interests by submitting protests or raising any issues related to the proposed rate adjustment at that time.

18. The Commission finds that the proposed proration policy is reasonable and nondiscriminatory. The policy does not bar uncommitted shippers from obtaining capacity on the pipeline in the event that prorating is required. Following the allocation of firm capacity to committed shippers, each uncommitted shipper will be allocated capacity equal to its nomination or, if the total uncommitted nominations exceed 10 percent of the Project's capacity, its *pro rata* share of the non-priority capacity in accordance with its nomination. The policy is consistent with Commission precedent and ensures that uncommitted shippers moving crude oil in interstate commerce will continue to have access to at least 10 percent of the Project's capacity during times of prorating.²⁹

19. The Commission finds that the T&D provisions regarding term extensions,³⁰ expansion capacity rights,³¹ and the right to designate third party shippers³² are consistent with prior policy.

²⁸ See *Saddlehorn*, 153 FERC ¶ 61,067 at P 36 (noting that “[t]he Commission previously has approved provisions that allow for adjustments and surcharges to committed rates finding that committed shippers freely entered into the TSA contracts and consequently assumed all the rights and obligations thereunder”).

²⁹ See *Crosstex NGL Pipeline, L.P.*, 146 FERC ¶ 61,182, at PP 11, 25, 29 (2014); *CenterPoint*, 144 FERC ¶ 61,130 at PP 30-31.

³⁰ See *NORCO*, 152 FERC ¶ 61,170 at P 23; *Belle Fourche Pipeline Co.*, 151 FERC ¶ 61,139, at P 25 (2015).

³¹ See *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 27 (2013); *CenterPoint*, 144 FERC ¶ 61,130 at P 33.

³² See *Shell Pipeline Co. LP*, 141 FERC ¶ 61,017, at P 16 (2012); *Oryx*, 154 FERC ¶ 61,065 at P 22.

Docket No. OR16-22-000

- 8 -

The Commission orders:

The Petition is granted as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

OR16-22-000.DOCX.....1-8