141 FERC ¶ 61,005
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.

Oxy Midstream Strategic Development, LLC
Magellan Midstream Partners, L.P.

Docket No. OR12-25-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 1, 2012)

1. On August 13, 2012, Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P. (collectively, Sponsors), on behalf of BridgeTex Pipeline Company, LLC (BridgeTex) filed a petition for a declaratory order approving the proposed tariff and rate structure for a new interstate pipeline project that will transport crude oil from the Permian Basin, located in West Texas and New Mexico, to the Houston, Texas Gulf Coast area (BridgeTex Pipeline Project).[1] The Sponsors seek expedited consideration of the Petition, by early October 2012 if possible.[2] As discussed below, the Commission grants the requested declaratory order.

Background

2. The Permian Basin is an 800 mile long and 300 mile wide area located primarily in the desert regions of West Texas and Southeastern New Mexico. Production in the Permian basin, state the Sponsors, is approximately 1.2 million barrels of crude oil per day with the potential to exceed 2.0 million barrels per day (bpd) over the next

[1] Oxy Midstream Strategic Development, LLC and Magellan Midstream Partners, L.P. August 13, 2012 Petition for Declaratory Order at 1 (Petition).

[2] The Sponsors explain that the Commission's Declaratory Order would be helpful in addressing any potential landowner claims that the pipeline does not intend to hold itself out as a common carrier subject to the Commission's jurisdiction. Petition at 13-14.

decade.[3] Due to the increase in production of crude oil in the Permian Basin, argue the Sponsors, there currently exists insufficient pipeline infrastructure in the region to transport crude oil out of the Permian Basin and into refining facilities.[4] The BridgeTex Pipeline Project, according to the Sponsors, will help alleviate the constrained pipeline infratstructure in the Permian Basin by providing 278,000 bpd of pipeline capacity to the Houston Gulf Coast.[5]

The Project

3. The proposed BridgeTex Pipeline Project will provide crude oil transportation services for West Texas Intermediate and West Texas Sour from Colorado City, Texas to the Houston Gulf Coast area.[6] The project, according to the Petition, will require (i) construction of a new pump station, tankage, and terminal facilities in Colorado City; (ii) construction of approximately 400 miles of 20-inch pipeline between Colorado City and Houston; (iii) construction of tankage at Magellan's East Houston Terminal facilities located in Houston; and (iv) leased capacity on an expansion of Magellan's pipeline distribution system to increase the delivery capacity from 350,000 bpd to approximately 700,000 bpd from East Houston to Texas City.[7] Upon completion, the project will provide pipeline transportation capacity of 278,000 bpd from Colorado City to the Houston Gulf Coast area.

Open Season

4. The BridgeTex Pipeline Project will, according to the Petition, require a substantial investment in new pipeline construction.[8] Due to this substantial investment requirement, the Sponsors conducted an open season to secure long-term volume commitments pursuant to long-term Transportation Service Agreements (TSAs).[9]

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[3] Petition at 6.

[4] Petition at 6.

[5] Petition at 7.

[6] Petition at 4.

[7] Petition at 4.

[8] Petition at 7.

[9] Petition at 7.

5. The Open Season for the BridgeTex Pipeline Project commenced on June 11, 2012, and concluded on July 18, 2012. Announcements of the open season were distributed in press releases and notices to interested market participants. Interested Shippers received pro forma TSAs, which included the proposed committed and uncommitted rates for the project and the proposed rules tariff.[10]

Rates and Terms for the BridgeTex Pipeline Project

6. According to the Sponsors, shippers that enter into TSAs (Committed Shippers) will make binding long-term volume commitments for stated contract quantities of crude oil. These Committed Shippers are then further classified into two distinct categories: (i) Non-Firm Committed Shippers that pay discounted rates as compared to Uncommitted Shippers for non-priority service (i.e., subject to prorationing); and (ii) Firm Committed Shippers that elect to pay a premium rate as compared to Non-Firm Committed Shippers for priority, or firm, service (not subject to prorationing).[11] Sponsors state that ninety percent of total capacity of the BridgeTex Pipeline Project was made available during the open season for volume commitments from Committed Shippers, with 11 percent available to Firm Committed Shippers and 79 percent available to Non-Firm Committed Shippers. The remaining 10 percent was reserved for Uncommitted Shippers.[12]

7. With respect to Committed Shippers, the Open Season offered a four-tiered rate and term structure. Tier 1 includes Firm Committed Shippers that elect to transport between 10,000 and 30,000 bpd for a premium rate of $3.84 per barrel ("Tier 1 Shippers"). The required contract term for Tier 1 Shippers is approximately seven years, with two 2-year extensions available at the option of the shipper. Tier 2 includes Non-Firm Committed Shippers that elect to transport between 100,000 and 200,000 bpd for a discounted rate of $2.38 per barrel ("Tier 2 Shippers"). Tier 3 includes Non-Firm Committed Shippers that elect to transport between 75,000 and 95,000 bpd for a discounted rate of $3.17 per barrel ("Tier 3 Shippers"). Tier 4 includes Non-Firm Committed Shippers that elect to transport between 50,000 and 70,000 bpd for a discounted rate of $3.43 per barrel ("Tier 4 Shippers"). The required contract term for Tiers 2, 3 and 4 Shippers is approximately ten years, with two 2-year extensions available at the option of the shipper. The projected rate for Uncommitted Shippers is $3.69 per barrel.[13]

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[10] Petition at 8.

[11] Petition at 9.

[12] Petition at 9.

[13] Petition at 9-10.

8. In the event that volume commitments received during the open season exceeded available capacity, the Sponsors established an Open Season subscription process that allocated subscriptions from Firm Committed Shippers on a pro rata basis.[14] For Non-Firm Committed Shippers, allocation was based upon the highest Net Present Value (NPV) of the binding offers within each tier starting with Tier 2.[15] If in any given month nominations exceed capacity, Firm Committed Shippers paying premium rates for priority service would not be subject to prorationing. Non-Firm Committed Shippers and Uncommitted Shippers would be allocated capacity based on an historical prorationing model, using average historical shipments of each shipper on a rolling 18-month basis.[16]

Requested Ruling

9. The Sponsors seek an order approving (1) the allocation of Open Season volume commitments by Non-Firm Committed Shippers based on a uniform, non-discriminatory NPV ranking; (2) the proposed capacity service tier and rate structure making available 90 percent of total capacity to Committed Shippers (11 percent Firm and 79 percent Non-Firm), with four tiers based on shipper commitments; (3) the proposed prorationing methodology; and (4) Two 2-year TSA extensions at the option of the shipper. The Sponsors state that the Commission, in several orders, has emphasized the importance of obtaining the necessary regulatory assurances through the declaratory order mechanism so that a pipeline's proposed tariff and rate structure can be resolved prior to a tariff filing.[17]

10. The Sponsors state that the proposed NPV methodology is fully consistent with the NPV methodology the Commission recently approved with respect to Shell Pipeline Company LP.[18] This proposed methodology, argue the Sponsors, will allow them to ensure that a greater percentage of the pipeline's capacity is subject to the contract

[14] Petition at 10.

[15] Petition at 10-11. As explained by the Sponsors, NPV will be calculated using a discount factor of 8 percent, the 10-year term, and an annual payment equal to 365 days multiplied by the initial tariff rate multiplied by the applicable shipper's subscription volume. Petition at Ex. 1. Affidavit of Mark E. Daggett at 7.

[16] Petition at 11.

[17] Petition at 14, *citing Seaway Crude Pipeline Co.*, 139 FERC ¶ 61,109 (2012), *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007).

[18] Petition at 15, *citing Shell Pipeline Co.*, 139 FERC ¶ 61,228 (2012).

service, increasing the likelihood that the BridgeTex Pipeline Project will be economically viable.[19]

11. The Sponsors state that they provided to shippers during the Open Season a detailed description of the NPV methodology and how the methodology would be implemented for Tiers 2, 3, and 4.[20] The Sponsors also explained that Tier 1 Shippers would not be subject to the NPV methodology.[21]

12. The Sponsors state that their proposal to make 90 percent of the total capacity on the BridgeTex Pipeline Project available for volume commitments during the Open Season is consistent with Commission precedent. The Commission, argue the Sponsors, has found that the reservation of at least 10 percent of a pipeline's capacity for uncommitted shippers is sufficient to provide reasonable access.[22]

13. Priority service, argue the Sponsors, where shippers pay a premium rate in exchange for shipments not being subject to prorationing, is supported by Commission precedent and is, according to the Sponsors, a reasonable, non-discriminatory means of meeting the needs of both the pipeline and its shippers with respect to this the BridgeTex Pipeline Project.[23] The Sponsors state that courts have historically interpreted the Interstate Commerce Act (ICA) to invest the Commission with considerable discretion to

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[19] Petition at 16.

[20] Petition at 16.

[21] Petition at 17.

[22] Petition at 20, *citing Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011) (approving reservation of 90 percent of total pipeline capacity for committed shippers); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007) ("*CCPS*") (requiring 10 percent of expansion volumes to be reserved for uncommitted shippers in order to ensure that uncommitted shippers' access to overall post-expansion capacity did not drop below ten percent); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008) (suggesting that 90 percent of available capacity for committed shippers would be acceptable to the Commission).

[23] Petition at 21.

assess the reasonableness of pipeline practices.[24] Consistent with this principle, argue the Sponsors, the Commission has approved requests for priority service that reserve sufficient capacity for uncommitted shippers.[25]

14. The proposed discount rate structure for Non-Firm Committed Shippers, claim the Sponsors, is also consistent with Commission precedent. The Sponsors cite *TransCanada Keystone Pipeline, LP*, where the Commission approved a discounted rate structure that provided for greater rate discounts based on the length of the contract term.[26] The Commission, argue the Sponsors, found that the discounted rate did not violate the anti-discrimination provisions of the ICA because all potential shippers were aware of and could have contracted for the discounted rates.[27] The Sponsors state that they conducted a widely publicized Open Season in which any interested shipper that was willing and able to meet the terms of the TSA for Non-Firm Committed Shippers were able to qualify for the discounted rates.[28]

15. The Sponsors state that they have developed a prorationing policy that is reasonable, non-discriminatory and supported by Commission precedent. Capacity, claim the Sponsors, will first be allocated to Firm Committed Shippers.[29] Next, New Shippers receive an allocation of capacity no more than 2 percent per shipper, up to a total of 10 percent of capacity.[30] Following the allocation of capacity to New Shippers,

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[24] Petition at 22, *citing Sea-Land Services Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984).

[25] Petition at 23-24, *citing CCPS*, 121 FERC ¶ 61,253; *Enbridge Energy Pipelines (North Dakota)*, 133 FERC ¶ 61,167, at P 40 (2010).

[26] 125 FERC ¶ 61,025 (2008), cited in Petition at 26.

[27] Petition at 26.

[28] Petition at 28.

[29] Petition at 29.

[30] Petition at 29.

Regular Shippers receive an allocation based on nominations and historical shipments.[31] The Sponsors claim that the Commission has approved similar prorationing policies.[32]

16. Finally, the Sponsors seek an order approving the use of contract extensions enabling shippers to extend the initial terms of the TSA for up to two additional 2-year terms. The Sponsors note that the Commission has not yet specifically ruled on the lawfulness of contract extensions in the context of oil pipelines.[33]

Notice and Interventions

17. Public notice of the Petition was issued on August 22, 2012, with interventions and protests due on or before September 4, 2012. No interventions, protests or other comments were filed.

Commission Analysis

18. The Commission finds that the Sponsors' proposal is consistent with applicable policy and precedent. The Sponsors have demonstrated a demand for transportation of crude petroleum out of the Permian Basin to the Houston Gulf Coast area. To meet this demand, the Sponsors must undertake a substantial capital investment in constructing the BridgeTex Pipeline Project. Without the substantial financial investment of shippers that commit to transport crude on BridgeTex, there exists the possibility that the project will not occur in a timely manner. To provide financial assurances to the Sponsors, the proposed TSAs require shippers to enter into long-term volume commitments. In exchange for these commitments, the TSAs provide for either discounted rates, or for higher rates for premium service not subject to prorationing.

19. The Sponsors provide an appropriate amount of capacity for Uncommitted and New Shippers, at least ten percent, while affording benefits to Committed Shippers who enter into long-term TSAs. The proposed allocation of Open Season volume commitments based on a uniform, non-discriminatory NPV ranking is consistent with Commission precedent. Further, the Commission affirms the use of contract extensions

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[31] Petition at 30. A "Regular Shipper" is defined in the Petition as a shipper that has made a shipment during at least 12 months of the base period or has executed a TSA for Tier 2, Tier 3, or Tier 4 non-firm service.

[32] Petition at 32, *citing TransCanada Keystone Pipeline*, *LP*, 131 FERC ¶ 61,139, at PP 9, 12 (2010), *Mid-America Pipeline Co.*, 116 FERC ¶ 61,040, at P 24 (2006).

[33] Petition at 33.

giving shippers the ability to extend the initial terms of the TSAs. The Sponsors' open season offered an opportunity to all potential shippers to become Committed Shippers by entering into TSAs. Accordingly, the Commission grants the Sponsors' petition for declaratory order, based on the representations made in the petition.

20. While the Commission approves the Sponsors' proposed rate design and overall tariff structure, the Sponsors 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:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)