141 FERC ¶ 61,056
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.

Kinder Morgan Cochin LLC Docket No. OR12-22-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 22, 2012)

1. On August 9, 2012, Kinder Morgan Cochin LLC ("Cochin") filed a petition for a declaratory order approving the proposed tariff and rate structure for the United States portion of a proposed reversal and expansion project that will provide transportation service from receipt points in the United States to existing terminal facilities in Western Canada (the "Cochin Reversal Project"). Cochin seeks an expedited determination by mid-October if possible, to help Cochin to meet its timelines for the Cochin Reversal Project and facilitate financing and other investment decisions. As discussed below, the Commission grants the requested declaratory order.

Background

2. The Cochin pipeline is an approximately 1,900 miles long, 12-inch petroleum products pipeline that originates in Fort Saskatchewan, Alberta, Canada, crosses the international boundary near Maxbass, North Dakota, and continues through Minnesota, Iowa, Illinois, Indiana, Ohio and Michigan, where it then re-crosses the international boundary near Detroit, Michigan and continues onward into Canada.[1] Cochin U.S. owns and operates the United States portion of the Cochin Pipeline, whereas the Canadian portion of the pipeline is owned and operated by Cochin Canada.[2] Cochin currently transports propane originating in Canada and moving to destinations in Eastern Canada and the United States.[3] Export of propane from Canada, explains Cochin, has been

[1] Kinder Morgan Cochin LLC August 9, 2012 Petition for Declaratory Order at 4 (Petition).

[2] Petition at 4.

[3] *Id*. at 2.

declining precipitously over the past decade. Concurrently, there has been a rise in the demand for low-density, low viscosity hydrocarbons such as pentanes plus ("Light Condensate") used as diluent for heavy sour crude and bitumen produced from the oil sands area located in Western Canada.[4] The Cochin Reversal Project is intended to satisfy this increasing demand for Light Condensate in Western Canada.

The Project

3. Cochin plans to partially reverse, modify and expand the Cochin Pipeline so that it will be capable of transporting approximately 95,000 barrels per day (bpd) of Light Condensate westerly on the U.S. portion of the pipeline.[5] The Cochin Reversal Project will include the development of tankage and related facilities at a new terminal facility to be constructed and located in Kankakee County, Illinois, and an interconnection with Explorer Pipeline.[6] The Cochin Reversal Project will also require the reversal of 25 pump stations located on the existing Cochin Pipeline right-of-way, the removal of numerous check valves, and the addition of drag reducing agent injectors at each pumping station.[7]

Open Season

4. The Cochin Reversal Project will, according to Cochin, require substantial long-term support from prospective shippers in the form of term volume commitments.[8] To obtain these volume commitments, Cochin held an Open Season commencing on April 24, 2012 and concluding on May 31, 2012.[9] According to Cochin, notice of the Open Season was provided to all parties known by Cochin to have an interest in the project.[10] As part of the Open Season, Cochin offered discounted rates as an incentive to

[4] *Id*. at 2. Heavy oil and bitumen must be blended with low density, low viscosity hydrocarbons in order to be transportable via pipeline.

[5] *Id*. at 6.

[6] *Id*. at 7.

[7] *Id*.

[8] *Id*. at 8.

[9] *Id*.

[10] *Id*.

execute Transportation Service Agreements (TSAs) and make long-term volume commitments to ship on the Cochin Reversal Project.[11]

<u>Rates and Terms for the Cochin Reversal Project</u>

5. According to Cochin, shippers that entered into TSAs (Committed Shippers) made binding long-term volume commitments to ship on the Cochin Reversal Project. Each Committed Shipper was required to commit to ship at least 5,000 bpd and no more than 50,000 bpd, for a minimum term of ten years.[12] Shippers who did not enter into TSAs are classified as Uncommitted Shippers. The rate structure for Uncommitted Shippers will include (1) a local uncommitted rate for transportation service on the United States portion of the pipeline ("U.S. Local Rate"); (2) a local uncommitted rate for transportation service on the Canadian portion of the pipeline ("Canadian Local Toll"); and (3) a joint uncommitted rate for transportation service from the United States to Canada ("Uncommitted Joint Rate"). Cochin proposes that the initial rates will be a U.S. Local Rate of $4.2549 per barrel (USD), a Canadian Local Toll of $3.7559 per barrel (CAD), and an Uncommitted Joint Rate of $7.50 per barrel (USD).[13]

6. According to Cochin, the rate structure for Committed Shippers will include (1) a discounted joint committed rate for transportation service from the United States to Canada ("Committed Joint Rate") and (2) a volume incentive rate for Committed Shippers on volumes that exceed the minimum annual volume commitment for transportation service from the United States to Canada ("Volume Incentive Rate"). Cochin states that the initial rates for Committed Shippers will be a Committed Joint Rate of $4.95 per barrel (USD) applicable to each Committed Shipper's committed volumes, and a Volume Incentive Rate of $4.50 per barrel (USD), adjusted annually so that it is equal to $0.45 per barrel less than the Committed Joint Rate.[14] The Volume Incentive Rate will apply to Committed Shippers that committed during the Open Season to ship the maximum committed volume of 36,000 bpd per calendar year. The Volume Incentive Rate applies only to barrels a Committed Shipper ships during a calendar year in excess of the Committed Shipper's committed volume.[15]

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[11] *Id*.

[12] *Id*.

[13] *Id*. at 9.

[14] *Id*. at 10.

[15] *Id*.

7. Cochin states that at least 10 percent of the capacity on the Cochin Reversal Project will be made available for use by Uncommitted Shippers.[16] All shippers on the United States portion of the Project will be subject to prorationing in the event that capacity on the pipeline is oversubscribed in any given month.[17]

8. According to Cochin, the Open Season received more than 100,000 bpd of binding volume commitments for a minimum of ten years.[18] The capacity requests were prorated down to equal no more than 90 percent of the total capacity of the Cochin Reversal Project. Committed Shippers were allocated 85,000 bpd, with 9,500 bpd reserved for Uncommitted Shippers.[19]

Requested Ruling

9. Cochin seeks an order approving (1) the availability of 90 percent of the capacity on the Cochin Reversal Project for Committed Shippers that make long-term volume commitments, while making available 10 percent of capacity to Uncommitted Shippers; (2) approval for Cochin to charge discounted rates to Committed Shippers that, due to Canadian regulatory rules on the Canadian portion of the pipeline, will essentially create firm service; (3) approval for Cochin to charge discounted rates through joint international tariffs that are equal to or less than the sum of Cochin's U.S. local rate plus Cochin Canada's local rate; (4) approval of Cochin charging a Volume Incentive Rate to Committed Shippers that have executed a TSA to ship the maximum committed volume of 36,000 bpd for volumes in excess of 36,000 bpd during a calendar year; and (5) approval for Cochin to charge a single rate for all shipments originating at the Kankakee County terminal or any point west of the Kankakee County terminal regardless of origin point or length of haul.[20] Cochin argues that it is consistent with Commission precedent to seek advance guidance for projects of this nature through the means of a declaratory order.[21]

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[16] *Id*. at 11.

[17] *Id*.

[18] *Id*. at 12.

[19] *Id*.

[20] *Id*. at 13.

[21] *Id*. at 14, *citing Express Pipeline P'Ship*, 76 FERC ¶ 61,245 (1996), *Colonial Pipeline Co.*, 116 FERC ¶ 61,078 (2006), *Seaway Crude Pipeline Co., LLC*, 139 FERC ¶ 61,109 (2012).

10. Cochin states that its proposal to make 90 percent of the total capacity on the Cochin Reversal Project available for Committed Shippers is consistent with Commission precedent. The Commission, argues Cochin, has repeatedly found that the reservation of at least 10 percent of a pipeline's capacity for uncommitted shippers is sufficient to provide reasonable access.[22] Cochin also argues that Commission precedent supports such an arrangement when a pipeline provides transportation service from the United States into Canada.[23] Any prorationing on the U.S. portion of the pipeline, states Cochin, will be impacted by the method of prorationing on the Canadian portion of the Cochin Reversal Project.

11. Cochin argues that its proposal to offer discounted Committed Joint Rates to Committed Shippers that make long-term volume commitments by executing a TSA is entirely consistent with Commission precedent as well as the non-discrimination provisions of the ICA.[24] Cochin states that, consistent with Commission precedent, it conducted an Open Season in which all potentially interested parties had an equal and ample opportunity to participate and elect to become a Committed Shipper eligible for the Committed Joint Rate.[25]

12. Cochin recognizes that because Cochin Canada is proposing, consistent with Cochin's view of Canadian policies, to allow Committed Shippers to contract for capacity on the Canadian portion of the Cochin Reversal Project, service under the proposed Committed Joint Rate will essentially be firm.[26] However, Cochin argues that

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[22] Petition at 15, *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 16, *citing Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 (2010).

[24] Petition at 17, *citing TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025 (2008).

[25] Petition at 17-19, *citing Express Pipeline P'Ship*, 76 FERC at 62,249, *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219, at 61,863 (2002).

[26] Petition at 19.

it is not necessary under Commission precedent for it to charge premium rates for service that in this instance is comparable to firm priority service.[27]

13. Cochin states that its joint international tariffs between Cochin U.S. and Cochin Canada will be consistent with Commission precedent in that the joint rates to be charged will be equal to or less than the sum of the underlying local rates.[28] Cochin argues that prior Commission decisions support the finding that the Canadian National Energy Board's ("NEB's") oversight of local Canadian rates satisfies the requirement that local rates underlying joint international tariffs be on file as well as just and reasonable.[29]

14. The Volume Incentive Rate for Committed Shippers, claims Cochin, is consistent with Commission precedent.[30] Cochin states that, in accordance with Commission precedent, the Volume Incentive Rate was offered to all parties during the Open Season that were willing to meet the requisite volume commitment.[31] The Volume Incentive Rate, argues Cochin, recognizes the fact that the Committed Shipper has agreed to transport substantial volumes on the Cochin reversal Project, making the reduced rate appropriate.[32]

15. Finally, Cochin requests that the Commission permit Cochin U.S. to charge a single transportation rate for transportation service from all origin points in the U.S.[33] Cochin states that Cochin U.S. is constructing tankage and appurtenant facilities in Kankakee that will enable it to receive batches of Light Condensate from Explorer Pipeline at flow rates which exceed the maximum flow rate of the Cochin Reversal Project.[34] This tankage, claims Cochin, will allow shippers to deliver Light Condensate

[27] *Id*. at 19-20, *citing Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167 at P 17.

[28] Petition at 20-21, *citing Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249, at PP 19-22 (2007).

[29] *Express Pipeline, LLC*, 104 FERC ¶ 61,207 (2003).

[30] Petition at 22, *citing TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 20 (2008).

[31] Petition at 23.

[32] *Id*.

[33] *Id*.

[34] *Id*.

from downstream interconnections.[35] Cochin argues that because all shippers downstream from Kankakee would benefit equally from the tankage facilities, it is reasonable to charge a single transportation rate from all origin points in the United States west of Kankakee.[36]

Notice and Interventions

16. Public notice of the Petition was issued on August 14, 2012, with interventions and protests due on or before August 29, 2012. A Motion to Intervene was filed by Plains Midstream Canada ULC ("Plains Midstream"). Plains Midstream states that it is the largest shipper of propane on Cochin and is a prospective shipper on the Cochin Reversal Project. No other interventions, protests or other comments were filed. The Motion to Intervene of Plains Midstream is granted.

Commission Analysis

17. The Commission finds that Cochin's proposal is consistent with applicable policy and precedent. Cochin has demonstrated a demand for transportation of Light Condensate from the United States to Western Canada. Without the substantial financial investment of shippers that commit to transport Light Condensate on the Cochin Reversal Project, there exists the possibility that the project will not occur in a timely manner. To provide financial assurances to Cochin, the proposed TSAs require shippers to enter into long-term volume commitments. In exchange for these commitments, the TSAs provide for discounted rates, as well as the potential for Volume Incentive Rates.

18. Cochin provides an appropriate amount of capacity for Uncommitted Shippers, at least ten percent, while affording benefits to Committed Shippers who enter into long-term TSAs. Cochin's Open Season offered an opportunity to all potential shippers to become Committed Shippers by entering into TSAs.

19. The Commission approves Cochin's proposal to charge a discounted rate through joint international tariffs. A rate on file with the NEB satisfies the Commission's requirement that the local rates associated with a joint rate must be on file with the Commission.[37]

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[35] *Id*. at 24. Cochin states that no such interconnections are currently planned.

[36] *Id*.

[37] *Express Pipeline, LLC*, 104 FERC ¶ 61,207 at P 1.

20. The Commission considers Cochin's request for approval to charge a single rate for all shipments originating at the Kankakee County terminal or any point west of the Kankakee County terminal to be premature. As Cochin itself states, no such downstream interconnections are planned, and thus Cochin has not included potential downstream origin points in its open season presentation as service intended to be offered. If Cochin at some point in the future establishes such interconnections it can then seek approval of a rate structure to address the services to be offered at those downstream points.

The Commission orders:

Cochin's 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)