151 FERC ¶ 61,140
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.

Panola Pipeline Company, LLC Docket No. OR15-14-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued May 15, 2015)

1. On February 10, 2015, Panola Pipeline Company, LLC (Panola) filed a petition for declaratory order regarding a proposed expansion (Expansion Project) which would provide additional natural gas liquids (NGL) transportation capacity on its current system. Specifically, Panola seeks Commission approval of its proposed priority service, tariff rate structure, and terms of service for the Expansion Project by May 15, 2015, to ensure the Expansion Project can meet its targeted in-service date by the first quarter of 2016.

2. The Commission grants the rulings requested by Panola, as discussed below.

Background

3. Panola is a 181-mile pipeline that currently transports mixed NGLs from the Carthage, Texas area through Lufkin, Texas continuing to Mont Belvieu, Texas. The capacity of the pipeline between Carthage and Lufkin is approximately 50,000 barrels per day (bpd) and the capacity of the pipeline between Lufkin and Mont Belvieu is approximately 60,000 bpd.

4. Panola's planned Expansion Project involves the installation of 60 miles of 10-inch pipeline between Carthage and Lufkin that will loop the existing Panola system, creating approximately 50,000 bpd of additional capacity. Moreover, the Expansion Project will convert an existing connection with the West Texas LPG Pipeline at Lufkin into a delivery point that will offer access to fractionation facilities in Louisiana, creating an interstate movement, in addition to Panola's existing intrastate service. Panola explains the Expansion Project will include the installation of additional pumps and equipment, which will increase system capacity from Lufkin to Mont Belvieu by an additional 40,000 bpd. In total, the Expansion Project is expected to increase Panola's system capacity to approximately 100,000 bpd.

5. Panola explains the Expansion Project will provide additional takeaway capacity for growing production in the Haynesville and Cotton Valley producing regions. Panola contends that new capacity will facilitate continued development of natural gas reserves in the region and enhance transportation access to NGL fractionation and storage hubs and petrochemical facilities along the Gulf Coast. Panola states this new capacity will also alleviate the lack of fractionation capacity for new barrels of NGLs in the region, remove takeaway constraints, and benefit the public by reaching additional markets.

6. The Expansion Project involves a substantial capital investment, totaling approximately $110 million. To finance the Expansion Project, Panola conducted a widely publicized open season from December 15, 2014 to January 16, 2015, seeking term and volume dedications for priority service offered at a premium rate. Panola states that all interested parties had an equal opportunity to participate in the open season and a copy of the open season package was provided to any requesting party. Panola explains that each interested party also received a *pro forma* tariff to be filed with the Commission before the Expansion Project enters service.

7. As a result of the open season, four shippers executed transportation service agreements (TSAs), undertaking obligations to ship dedicated volumes for 15-year terms (Dedicated Shippers). According to the terms of the TSA, the Dedicated Shippers agreed to ship all owned or controlled petroleum products at the current and future natural gas processing plants connected to Panola for a term of fifteen years.[1] In exchange for the commitment, the Dedicated Shippers were offered priority service at a premium rate, and will receive priority service not subject to prorationing for aggregate dedicated volumes. In contrast, uncommitted shippers are subject to prorationing.

8. Based on the TSAs submitted through the open season, the aggregate initial volume eligible for priority service is 20,000 bpd for service between Carthage and Lufkin. As noted above, Panola is currently an intrastate pipeline in Texas, and the Expansion Project will enable it to offer interstate movements as well. In conjunction with the Expansion Project, Panola now intends to offer priority service to intrastate shippers as well, subject to the terms and conditions of its existing intrastate tariff on file with the Texas Railroad Commission. Panola states that although dedicated volumes may fluctuate throughout the term of the TSAs, at no time will the aggregate priority service to all shippers (both intra- and interstate) exceed ninety percent of the Expansion

[1] Petition at Appendix A, 3.

Project.[2] Thus, Panola states ten percent of the Expansion Project capacity will be reserved for uncommitted volumes.

9. Panola affirms the Dedicated Shippers' rates for priority service will always be at least one cent more than the uncommitted rates for service on Panola, and that such rates will be adjusted annually as applicable based upon the Commission's indexing methodology. Panola states the TSAs will continue on a year-to-year basis at the then-effective rate unless terminated by Panola or the Dedicated Shipper.

10. Panola explains that regulatory certainty provided by a Declaratory Order will allow Panola to proceed with investments for the Expansion Project.

Requested Rulings

11. Panola requests Commission confirmation and approval of the following aspects of the Expansion Project:

A. The tariff rate structure, which provides different rates for committed (dedicated) volumes and uncommitted (walk-up) volumes;

B. The TSA provisions, which will govern the transportation services Panola provides to Dedicated Shippers; specifically, Dedicated Shippers will pay the contracted rates for dedicated volumes on the basis set forth in the TSAs for the duration of the contract term;

C. The rates for dedicated volumes provided in the TSAs can be treated as settlement rates during the term of the TSAs, including upon the initial tariff filing for Panola, pursuant to section 342.4(c) of the Commission's regulations;

D. Reservation of up to 90 percent of the Expansion Project capacity as priority service at a premium rate;

E. The extension provision in the TSA allows the agreement to rollover from year-to-year after the primary term until terminated by Panola or the Dedicated Shipper.

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[2] Petition at 6, n.4.

Panola's Arguments

12. Panola maintains the proposed priority service terms and rate structures are reasonable, non-discriminatory, and consistent with Commission policy and precedent. Panola states the Commission has consistently honored agreed-upon rates and terms of service entered into by a common carrier and shippers who make long-term agreements during a valid open season to support a project during the terms of those agreements.[3] Panola states that regulatory certainty is essential to allow the proposed Expansion Project to proceed.[4]

13. Panola explains all Dedicated Shippers will pay a premium rate of at least one cent per barrel more for transportation of their dedicated volumes than the uncommitted rate for the same service. Panola states that the Commission has previously approved similar priority service requests so long as all interested shippers were granted access to the same TSA terms and the open season was widely publicized and non-discriminatory.[5] Panola explains that the Commission has approved circumstances in which a premium rate of at least one cent per barrel more is paid for transporting dedicated volumes rather than uncommitted volumes.[6]

14. Panola further states the Commission has previously approved volume commitments in the form of volume dedications.[7] Panola explains that, although such volume commitments fluctuate during the term of the agreements based on the amount produced at the applicable processing plants, such arrangements commit shippers to support the Expansion Project, thereby allowing the pipeline to use the commitment as collateral to secure loans, and justify the investment.

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[3] *Id*. at 9, citing *Kinder Morgan Pony Express Pipeline LLC [and] Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 21 (2012); *Seaway Crude Pipeline Co. LLC* 146 FERC ¶ 61,151, at P 13 (2014); *Tesoro High Plains Pipeline Co. LLC and Tesoro Logistics Operations, L.L.C.*, 148 FERC ¶ 61,129, at P 23 (2014); *Enable Bakken Crude Services, LLC,* 148 FERC ¶ 61,048, at P 14 (2014) (*Enable*).

[4] Petition at 8.

[5] Petition at 10.

[6] *Id.*

[7] Petition at 12, citing *Enable*, 148 FERC ¶ 61,048 at PP 6, 14; *Alpha Crude Connector, LLC,* 149 FERC ¶ 61,001, at P 27 (2014) (*Alpha*); *Mid-America Pipeline Co., LLC*, 116 FERC ¶ 61,040, at PP 8, 23 (2006).

15. Panola also explains that reserving at least 10 percent of the Expansion Project's capacity for uncommitted volumes is consistent with Commission precedent, and provides reasonable access to the expansion capacity for uncommitted shippers.[8] Panola states its priority service proposal is non-discriminatory and fully conforms to its Interstate Commerce Act (ICA) common carrier obligations.

16. Panola maintains its request for the Commission to approve its filing of initial rates for dedicated volumes upon start-up of the Expansion Project and subsequent adjustments to file the rates for dedicated volumes as settlement rates is consistent with Commission precedent. Panola explains the Commission has previously held a common carrier pipeline can file committed rates as settlement rates pursuant to section 342.4(c) of the Commission's regulations,[9] relying upon the fact that the committed rates were offered in a well-publicized open season and interested shippers had notice and an opportunity to sign up.

17. Panola asserts the extension provisions in the TSAs are also consistent with Commission policy. Panola explains the TSAs have a primary term of 15 years which will automatically rollover on a year-to-year basis at the then-effective rate for Dedication Shippers until the agreement is terminated by either Panola or the Dedicated Shippers. Panola explains the rollover provision is similar to others approved by the Commission, and that such rights provide shippers "the ability to adjust to changing market conditions without being locked into a long term contract."[10]

<u>Public Notice, Interventions, Protests, and Comments</u>

18. Notice of the Petition was issued on February 13, 2015, providing for motions to intervene, comments and protests to be filed on or before March 10, 2015. Pursuant to

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[8] Petition at 14, citing *JBBR Pipeline LLC*, 150 FERC ¶ 61,012, at P 21 (2015) (*JBBR*). *JBBR*, however, concerned a project that was only interstate in nature, but the Panola petition does not state that the reserved 10 percent of expansion capacity is reserved for uncommitted interstate shippers.

[9] Petition at 15-16, citing *NuStar Crude Oil Pipeline L.P.*, 146 FERC ¶ 61,146, at P 15 (2014); *Sunoco Pipeline L.P.,* 149 FERC ¶ 61,191, at P 29 (2014); *JBBR*, 150 FERC ¶ 61,012 at P 20.

[10] Petition at 17, citing *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 35 (2013).

Rule 214 of the Commission's regulations,[11] 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.

Commission Analysis

19. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide regulatory certainty required for the Expansion Project to proceed and will facilitate continued development of natural gas reserves in the Haynesville and Cotton Valley production regions. Granting these rulings will also enhance access to NGL fractionation and storage hubs.

20. The Commission will continue to apply its policy of honoring contracts signed by Dedicated Shippers, such as TSAs, which include the commitment to ship certain volumes during the contract term. The terms of Panola's proposal, including a tariff rate structure that provides different rates for Dedicated Shippers and uncommitted shippers based upon volumes, is consistent with Commission precedent. The Commission has previously approved acreage dedications, or agreements between shippers and pipelines whereby the shipper agrees to transport all commodities derived from a designated area through a specified pipeline system.[12] The Commission acknowledges that such arrangements help pipelines secure investment in new expansions.

21. The Commission affirms the provisions of the TSA will govern transportation services provided to Dedicated Shippers for the duration of the contract, and Dedicated Shippers must pay the agreed upon rates for the contracted term. The Commission has previously approved similar agreements and confirms that agreed-upon terms would be applied during the established terms of the agreement.[13]

22. Panola's proposal to treat the rates of the dedicated volumes, including the initial tariff filing, provided in the TSAs as settlement rates, pursuant to section 342.4(c) of the Commission's regulations, is consistent with Commission precedent. As the Commission has previously stated, "although the Commission's regulations do not provide specifically for negotiated initial rates with agreed-to future rate changes, the Commission has ruled

[11] 18 C.F.R. § 385.214 (2014).

[12] *Alpha*, 149 FERC ¶ 61,001 at P 27.

[13] *Enbridge Pipelines (Southern Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008); *Tesoro High Plains Pipeline Co. LLC*, 148 FERC ¶ 61,160, at P 22 (2014).

that such contracts 'are consistent with the spirit of section 342.4(c) of the Commission's regulations.'"[14]

23. Panola's proposed capacity allocation is consistent with those that the Commission has previously approved. Panola will offer up to 90 percent of the expansion capacity to Dedicated Shippers that will receive priority service capacity at a premium rate. The Commission has previously held that reservation of ten percent of capacity for uncommitted interstate volumes provides reasonable access for uncommitted shippers,[15] consistent with the Commission's policies ensuring interstate oil pipelines' common carrier obligations under the ICA.[16] The Commission's approval here is therefore premised on a similar reservation of 10 percent of Panola's uncommitted capacity for uncommitted interstate shippers.

24. Finally, the provision in the TSAs under which the agreement terms will rollover from year-to-year after the primary term, unless terminated by Panola or the Dedicated Shipper, is similar to provisions the Commission has approved elsewhere.[17]

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[14] *See Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2014), citing *Express Pipeline P'ship*, 76 FERC ¶ 61,245, at 62,258-59 (1996).

[15] *Sunoco Pipeline L.P.*, 139 FERC ¶ 61,259, at P 14 (2012); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007).

[16] The subject petition presents a novel fact pattern, where the applicant intends to offer *intrastate as well as interstate* priority service up to 90 percent of the capacity of the pipeline after the Expansion Project. It is not entirely clear from the petition how the reservation of 10 percent of capacity would apply to interstate shippers, and whether this would ensure a consistent application of the Commission's policies implementing the ICA. The Commission's existing policy requires 10 percent of capacity be reserved for uncommitted jurisdictional shippers under the ICA; therefore, to the extent there are service nominations from both intrastate and interstate uncommitted shippers that exceed the 10 percent of uncommitted capacity available, the Commission's grant of this declaratory order is made and conditioned upon the understanding that *interstate* uncommitted shippers shall have the first right to service from that 10 percent of uncommitted capacity.

[17] *Alpha*, 149 FERC ¶ 61,001 at P 27.

The Commission orders:

The Petition for Declaratory Order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)