144 FERC ¶ 61,086
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Marketlink, LLC Docket No. OR13-18-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 31, 2013)

1. On April 26, 2013, Marketlink, LLC (Marketlink) filed a Petition for a Declaratory Order (Petition) requesting approval of the rate structure, cost of service calculation, rate principles underlying the uncommitted rates, the methodology to calculate the uncommitted rates and the proposed proration policy for the proposed Cushing Marketlink System Project. Marketlink contends that the Project will provide additional capacity needed to transport crude oil from Cushing, Oklahoma (Cushing) to refinery centers along the Gulf Coast. The Petition is unopposed, and Marketlink requests that the Petition be granted by July 31, 2013, so that Marketlink may prepare tariffs with an expected filing date of November 1, 2013 and an expected in-service date of December 1, 2013. As discussed below, the Commission grants the Petition.

<u>Background and Details of the Project</u>

2. Marketlink is a new common carrier pipeline that will provide crude oil transportation from Cushing to the Texas Gulf Coast. Marketlink states that the Project will address the need for transportation capacity for the current glut of oil in Cushing. According to Marketlink, it will lease its capacity from TransCanada Keystone,[1] and will construct ancillary interconnecting facilities at Cushing, including tanks and metering facilities, allowing shippers an opportunity to ship crude oil from Cushing to the Gulf Coast. Marketlink anticipates commencing operations in December 2013, and plans to offer approximately 400,000 barrels per day of capacity in its first phase.

3. Unique to the Marketlink project, the amount of capacity available to all shippers will be reduced to 150,000 barrels per day (bpd) after the initial service period as

[1] *See* TransCanada Keystone, L.P., "Petition for Declaratory Order," Docket No. OR13-17-000 (filed concurrently with the instant Petition). Marketlink is a wholly owned affiliate of TransCanada Keystone Pipeline, L.P.

TransCanada Keystone's committed shippers come on-line. Marketlink states that all prospective shippers on Marketlink were notified of this reduction as part of the open season. This reduction will take place upon the earlier of three years after the in-service date of Marketlink or the in-service date of the Keystone XL Pipeline.

4. Marketlink will provide transportation service to both committed shippers and uncommitted shippers. Committed shippers have executed binding commitments for ship-or-pay term contracts to delivery points at Houston and Port Authur, Texas. Committed shippers will be subject to prorationing, as their transportation service agreements (TSAs) do not guarantee firm service. Uncommitted shippers will pay rates for transportation service from Cushing to the Gulf Coast that will be greater than the rates paid by committed shippers.

Requested Rulings

5. Marketlink is requesting approval of the rate structure, cost of service calculation, rate principles underlying the uncommitted rates, the methodology to calculate the uncommitted rates, and the proposed proration policy, as set forth below.

Committed and Uncommitted Rate Structure

6. Marketlink's committed shippers executed binding ship-or-pay commitments in exchange for discounted transportation rates as part of the open season. Committed shippers will not receive firm service and will be subject to Marketlink's proration policy. Uncommitted shippers will have the ability to nominate any level of transportation in any month and in exchange will pay an uncommitted rate that is higher than the rates paid by committed shippers. The committed rates will be subject to the Commission's indexing policy, but should the index be negative the rates cannot be reduced below the initial rates at the time Marketlink goes into service.

Cost of Service

7. Marketlink's cost of service will include Marketlink's cost of leasing pipeline capacity from its affiliate TransCanada Keystone Pipeline, L.P. as well as the cost of service of the Marketlink-owned facilities.[2] The lease payments for Marketlink's capacity will be calculated based on Marketlink's proportional share of the total capacity of TransCanada Keystone's Gulf Coast leg. The cost of providing service will be calculated on a stand-alone basis and then allocated to Marketlink based on the amount of capacity leased on the Gulf Coast leg.

[2] For example, tankage and metering facilities.

Revenue Crediting Mechanism

8. Marketlink's uncommitted rates will incorporate a revenue crediting mechanism. Marketlink proposes identifying the cost of service underlying the uncommitted rates by taking the total cost of service of the lease for the TransCanada Keystone pipeline capacity and subtracting revenues received by committed shippers. The difference will be divided by the pipeline capacity available to uncommitted shippers to derive the uncommitted rates.

Uncommitted Rate Calculation Methodology

9. Marketlink's uncommitted rate will be calculated in a multiple step process. First, as stated above, Marketlink will take the total cost of service of the pipeline portion then subtract the total revenues attributable to committed shippers. Marketlink will then divide that number by the uncommitted capacity to derive a stand-alone uncommitted rate. Next, Marketlink will calculate the unit cost for Marketlink Facilities by taking the total cost of service of the Marketlink Facilities and dividing it by Marketlink's leased capacity, resulting in a "Marketlink Facilities Unit Cost." The final step will be to add together the stand-alone Uncommitted Rate and the Marketlink Facilities Unit Cost, resulting the in the total uncommitted rate for transportation from Cushing to the Gulf Coast.

Prorationing Policy

10. Marketlink also requests approval of its prorationing policy. This policy will employ a historical shipment allocation methodology using an 18 month representative period for qualification as a Historical Shipper and a 12 month representative period for calculating shipping histories; deem new shippers who have tendered volumes in 12 months during the last 18 months to be Historical Shippers; deem committed shippers to be Historical Shippers as of the in-service date; and allow a split of 90 percent of the capacity for Historical Shippers and 10 percent of the capacity for new shippers during periods of prorationing.

Notice and Interventions

11. Notice of the Petition was issued April 30, 2013. Interventions and protests were due May 20, 2013. Pursuant to Rule 214 of the Commission's regulations,[3] all timely filed motions to intervene and any unopposed motion 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

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[3] 18 C.F.R. § 385.214 (2013).

parties. Nexen Energy Marketing filed a letter in support of Marketlink's petition. There were no filings in opposition.

Discussion

12. Having considered the Petition, the Commission finds it may approve the requested use of a committed and uncommitted rate structure; the calculation of the Project's cost of service using lease payments plus the cost of service of facilities; the use of a revenue crediting mechanism; the methodology to calculate the total uncommitted rate; and Marketlink's proposed prorationing policy for transportation of crude between Cushing and Texas when the project goes into service and Marketlink files the appropriate tariffs to implement service. The Commission's granting of this Petition is consistent with its approval of similar petitions undergirding oil pipeline infrastructure projects, and it will provide regulatory certainty for the commercial underpinnings of another much-needed infrastructure project.

13. The Commission approves Marketlink's proposed use of committed and uncommitted rates, pursuant to which committed shippers execute binding commitments in exchange for discounted rates. Uncommitted shippers exchange the flexibility in nominations for rates higher than the committed rates. The Commission finds that such committed and uncommitted shippers are not similarly situated, and that such differing rates are therefore not unduly discriminatory or preferential.

14. The Commission confirms that Marketlink is appropriately using a revenue crediting mechanism. The revenue crediting mechanism recognizes that committed shippers who have assumed the risk associated with term and throughput commitments in order to enable the construction of a project are not similarly situated to uncommitted shippers.[4] The use of such a revenue crediting mechanism is consistent with Commission precedent, and is hereby approved.

15. The Commission confirms Marketlink's proposed uncommitted rate calculation methodology will be approved when the project goes into service and Marketlink files rates to initiate transportation service from Cushing to points in Texas. The proposed calculation methodology ensures that both the cost of Marketlink's lease of the TransCanada Keystone pipeline capacity, as well as Marketlink-owned facilities are appropriately allocated to shippers in a non-discriminatory manner. The calculation uses capacity that uncommitted shippers would use, and then derives the uncommitted incremental unit cost. The Commission finds that this methodology ensures no shipper or

[4] *See, e.g., Laclede Pipeline Co.,* 114 FERC ¶ 61,335 (2006), *reh'g denied,* 119 FERC ¶ 61,236 (2007); and *TransCanada Keystone Pipeline LP*, 125 FERC ¶ 61,025 (2008).

group of shippers cross subsidizes any other shipper. Finally, when Marketlink files to implement its initial rates, if the initial uncommitted rate is protested, the Commission will require Marketlink to comply with section 342.2(b)[5] of the regulations and support its uncommitted rate by filing cost, revenue, and throughput data supporting such rate in accordance with Part 346 of the Commission's regulations.[6]

16. The Commission confirms Marketlink's proposed prorationing policy will be approved and utilized when the project goes into service and Marketlink files its tariff(s). The prorationing policy allocates up to 90 percent of the capacity to Historical Shippers and 10 percent to new shippers, and is consistent with Commission precedent.[7] Additionally, giving committed shippers' Historical Shipper status upon the in-service date of the project is also consistent with Commission precedent as is using an 18 month qualification period for allocation. Finally, the Commission finds it to be reasonable to reset shippers' history at the time that Marketlink's total available capacity declines from 400,000 bpd to 150,000 bpd.

<u>The Commission orders</u>:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[5] 18 C.F.R. § 342.2(b) (2013).

[6] 18 C.F.R. § 346.2 (2013).

[7] *See, e.g., ConocoPhillips Transp. Alaska, Inc.*, 112 FERC ¶ 61,213 (2005); and *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 56 (2006).