167 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Cactus II Pipeline LLC — Docket No. OR18-32-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 3, 2019)

1. On August 9, 2018, Cactus II Pipeline, LLC (Cactus II) filed a petition seeking a declaratory order (Petition) approving the rate structure, terms of service and open season procedures for its proposed Cactus II pipeline project, consisting of new and expanded pipeline facilities to transport crude oil from the Permian basin in West Texas to Corpus Christi, with additional destination points located closer to Corpus Christi and McMullen, Texas. The Commission partially grants the Petition, subject to conditions, as discussed below.

The Project

2. Cactus II states that the project will provide needed additional capacity to ship oil to Gulf Coast refineries and export destinations and is designed to meet current and future needs, citing an Energy Information Agency projection of increased production in the basin.[1] Cactus II states that the project will utilize existing, new, and expanded capacity and will be capable of transporting 585,000 barrels per day (bpd) of crude petroleum and condensate. Cactus II states that it will lease existing, newly constructed and expanded capacity from its affiliate, Plains Pipeline, LP (Plains) for the movements from origin points upstream of McCamey, Texas. Cactus II states that it will construct a new 26-inch, 575-mile pipeline with approximately 585,000 bpd of capacity from McCamey to the destination points. Cactus II states that the project is expected to enter into service in the third quarter of 2019.[2]

[1] Petition at 4.

[2] *Id.* at 3, 13.

Open Seasons

3. Cactus II states that it conducted two widely-publicized open seasons to solicit shipper support for the project. Cactus II states that the first open season, from December 13, 2017 to January 22, 2018, was held to determine whether one or more anchor shippers would make a substantial long-term volume commitment in order to support the viability of the project. Cactus II states that the first open season was noticed by way of a press release posted on the Plains All American Pipeline, L.P. (Plains All American) website and was also publicized in online publications, such as *Business Wire*, *The New York Times*, *Reuters* and *Natural Gas Intelligence Shale Daily*. Cactus II states that it transmitted the form of Transportation Services Agreement (TSA) for anchor shippers to 18 potential shippers participating in the first open season pursuant to a non-disclosure agreement. Cactus II states that, during the first open season, it sought volume commitments of 300,000 bpd, on a ship-or-pay basis, up to 526,500 bpd (equal to 90 percent of the project capacity). Cactus II represents that during the first open season, one anchor shipper submitted a signed TSA (Anchor Shipper TSA).[3]

4. Cactus II states that it held a second open season for the remaining 226,500 bpd of capacity from January 22 to February 21, 2018. Notice of the second open season and a press release were published on the Plains All American website and the second open season was publicized in a number of online publications, including *Business Wire*, *The New York Times*, *Reuters* and *Oil & Gas 360*. Cactus II states that the second open season TSA included different committed rates and the availability of acreage dedications. Cactus states that 18 potential shippers participated. Cactus II states that the terms of the second open season provided that, after the original TSAs had expired or been terminated early, Cactus II had the option to hold another open season for the capacity made available by such expiration or termination. Cactus II represents that two shippers submitted signed TSAs during the second open season (Second OS TSAs). Pursuant to the second open season notice, the Anchor Shipper was permitted to incorporate terms offered in the second open season into its Anchor Shipper TSA.[4] Cactus II reports that Plains All American announced on February 22, 2018 that Cactus II was fully committed with long-term third-party shipper contracts totaling 525,000 bpd.[5]

[3] *Id.* at 4-6.

[4] *Id.* at 15. This order refers to shippers acquiring capacity in the second open season as "Second OS Committed Shippers" and refers to the Anchor Shipper and Second OS Committed Shippers collectively as "committed shippers."

[5] *Id.* at 6-8. Cactus II states that after the close of the open seasons, affiliates of two of the committed shippers exercised options to participate as joint venture partners of Cactus II. *Id.* at 8.

TSA Terms, Rates, and Other Provisions

5. Cactus II describes the Anchor Shipper TSA as establishing six-month shipping periods and obligating the Anchor Shipper to ship 300,000 bpd times the number of days in the period, or make a deficiency payment covering any shortfall (with the volume commitment reduced until Cactus II makes a connection available at Corpus Christi). Cactus II states that the initial term of the Anchor Shipper TSA is based on a commitment to ship an aggregate number of barrels, based on the Anchor Shipper's volume commitment, not on a specified number of years. Cactus II states that basing the initial term of the Anchor Shipper TSA on a commitment to ship an aggregate number of barrels gives the Anchor Shipper the flexibility to potentially shorten the initial term by shipping incremental barrels above its volume commitment. Cactus II states that the Anchor Shipper may renew for two successive two-year terms.[6]

6. Cactus II indicates that the Anchor Shipper may credit its deficiency payments against transportation charges incurred for volumes shipped in excess of the Anchor Shipper's six-month volume commitment in the following 36 months. Cactus II states that the term of the Anchor Shipper TSA may be extended on a limited basis for up to one year, if any credits remain outstanding at the end of the term.[7]

7. Cactus II states that the Second OS Committed Shippers' TSAs commit each shipper to ship each quarter a fixed volume of 25,000, 50,000 or 75,000 bpd, multiplied by the number of days in the quarter, or make a deficiency payment. According to the Petition, the Second OS Committed Shippers were permitted to select either a seven or ten-year initial term for the fixed volume commitment with up to three renewal terms, for three years the first time and two years each for the second and third renewals, if exercised.[8]

8. Cactus II states that each Second OS Committed Shipper that made a fixed volume commitment also had the option to make an acreage dedication of volumes that fall within a minimum and maximum band selected by the shipper in its TSA.[9] Cactus II states that a Second OS Committed Shipper making an acreage dedication is only obligated to ship or pay a deficiency payment for the dedication to the extent its

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[6] *Id.* at 8, 18-19.

[7] *Id.* at 10-11.

[8] *Id.* at 9.

[9] *Id.* at 9 (describing threshold and cap of each band).

dedicated volumes are both produced and fall within the band.[10] Cactus II states that a Second OS Committed Shipper can substitute equivalent volumes produced from areas other than the dedicated acreage to meet its dedicated volume obligation. Cactus II states that the TSA for the Second OS Committed Shippers includes procedures for conversion of acreage dedication volume commitments into fixed volume commitments under certain circumstances.[11]

9. Cactus II states that the term for a Second OS Committed Shipper's initial acreage dedication, if made, will start on the same day as the term for its initial fixed volume commitment but will continue three years longer, with up to two successive renewal terms of two years each at the shipper's option.[12] Cactus II indicates that renewals for acreage dedications and fixed volume commitments may be made independently.[13]

10. Cactus II states that a Second OS Committed Shipper may credit deficiency payments to transportation charges for volumes shipped in excess of its aggregate volume commitments (i.e., the fixed volume commitment plus any acreage dedication) in the following 36 months. In the alternative, if any unused credits remain at the end of the term, a Second OS Committed Shipper may credit the payments to the transportation charge for all volumes shipped by such shipper for a limited period not exceeding one year after the end of the term.[14]

11. Cactus II explains that it offered tiered committed rates in the second open season that are discounted from the initial uncommitted rates. Cactus II states that it offered three tiers of fixed volume commitments, Tier A for 75,000 bpd, Tier B for 50,000 bpd and Tier C for 25,000 bpd. In addition, Cactus II states that it offered the same three tiers of fixed volume commitment plus four tiers of acreage dedications. According to Cactus II, the committed rates are tiered based on the level of the fixed volume commitment selected, with separate rate tiers if the Second OS Committed Shipper makes an acreage dedication. Cactus II states that the committed rates for Second OS Committed Shippers with an acreage dedication are based on the three tiers of fixed

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[10] *Id.* at 10.

[11] *Id.* at 35-36.

[12] *Id.* at 9.

[13] *Id.*

[14] *Id.* at 11.

volume commitments linked to the four tiers of actual shipments (or deficiency payments) in excess of those commitments.[15]

12. In addition, Cactus II describes additional volume-based discounts it offered committed shippers. First, Cactus II asserts that a volume discount based on total annual average shipments on the project is available to the Anchor Shipper or to Second OS Committed Shippers that make a fixed volume commitment and an acreage dedication that satisfies a threshold specified in the TSA equal to the highest available tier. Cactus II states that the discount varies based on the shipper's volume commitment and term and applies to deliveries made to an eligible origin point.[16]

13. Second, Cactus II states that a Second OS Committed Shipper that makes an acreage dedication has the right to pay the committed rate applicable to the higher tier of volume commitment if it satisfies the threshold specified in the TSA equal to the higher tier in the preceding month.[17] Third, Cactus II proposes to allow a Second OS Committed Shipper making an acreage dedication to pay the committed rate applicable to a higher tier of volume if its adjustment volumes[18] are less than the higher tier, subject to an additional payment calculated based on (a) volumes associated with the higher tier, (b) the shipper's adjusted volumes for the month, (c) the applicable committed rate and (d) the number of days in the month.[19] Cactus II claims that these provisions give the Second OS Committed Shippers the ability to obtain a greater discount by shipping additional volumes or by paying an additional fee that is the equivalent of shipping additional volumes.[20]

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[15] *Id.* at 20-21.

[16] *Id.* at 22-23.

[17] *Id.* at 23-24.

[18] Cactus II states that "[t]he 'adjustment volumes' of a Second OS Committed Shipper in any month are the sum of such shipper's (a) Fixed Volume Commitment, (b) actual shipment of its Acreage Dedication Volume Commitment and any excess shipments in such month, and (c) any volumes of Product that such shipper nominated, but Cactus II did not accept (with certain exceptions for reasons outside Cactus II's control) up to the shipper's maximum volume commitment, less (d) any barrels to which shipper applied deficiency credits in such month." *Id.* at 24 n.28.

[19] *Id.* at 24.

[20] *Id.* at 27.

14. Cactus II proposes to allow committed shippers to ship an incremental volume at the applicable committed rate. Cactus II states that committed shippers will have the right to pay the applicable committed rate on incremental barrels up to 25 percent, or up to 75 percent for the Anchor Shipper until March 31, 2020, of their monthly volume commitments and, if applicable, acreage dedications. Cactus II states that incremental barrels may only be shipped if there is space available under history-based prorationing.[21]

15. Cactus II states that the TSAs provide for annual index adjustments to the committed rates beginning July 1, 2020, based on the Commission's oil pipeline index.[22] Cactus II asserts that the Anchor Shipper's rate will never be less than the initial committed rate and may be reduced in the first year of any renewal term if the index adjustments over such term exceed certain thresholds. Cactus II also states that the Second OS Committed Shippers' rates will not increase or decrease by more than three percent and Cactus II may bank any adjustments that could not be made as a result of the cap or floor to be used to offset subsequent adjustments.[23]

16. Cactus II also states that the TSAs provide for a surcharge not to exceed $0.15 per barrel for additional costs in excess of a certain threshold resulting from new or changed laws or regulations. Cactus II represents that committed shippers have the right to challenge Cactus II's filing to implement such surcharge.[24]

17. According to Cactus II, the TSAs also include most-favored nation clauses as follows. For the Anchor Shipper, if Cactus II enters into a TSA with another party during the first five years after the in-service date of the pipeline that provides for committed rates that are lower than the Anchor Shipper's committed rates, a volume commitment that is equal to or less than the Anchor Shipper's commitment and a term that is equal to or shorter than the Anchor Shipper's initial term, then the Anchor Shipper's rates will be reduced to such lower rates. For the Second OS Committed Shippers, if Cactus II enters into a TSA with another party during the initial term of the Second OS Committed Shipper's fixed volume commitment that provides for (a) committed rates that are lower than a Second OS Committed Shipper's rates, (b) a volume commitment that is equal to or less than the Second OS Committed Shipper's volume commitment and (c) a term that

[21] *Id.* at 28.

[22] *Id.* at 29 (citing 18 C.F.R. § 342.3).

[23] *Id.* at 29-31.

[24] *Id.* at 31.

is equal to or shorter than the Second OS Committed Shipper's initial term, then the Second OS Committed Shipper's rates will be decreased to such lower rates.[25]

18. Cactus II explains that the TSAs include product loss allowance percentages for the committed shippers. Cactus II states that the loss allowance for the Second OS Committed Shippers is 0.20 percent by volume for each shipment on the pipeline, while the allowance for the Anchor Shipper varies based on the destination or connection point.[26]

19. Cactus II states that Second OS Committed Shippers that make an acreage dedication in addition to a fixed volume commitment have the right to assign all or a portion of the dedicated acreage without Cactus II's consent subject to certain conditions. In particular, Cactus II states that (1) if a Second OS Committed Shipper transfers acreage that exceeds 15 percent of the number of acres specified in the TSA, then a portion of such shipper's acreage dedication is converted into a fixed volume commitment, and (2) if a Second OS Committed Shipper transfers its interest in its TSA to a third party without also transferring all of its interest in the dedicated acreage to the same entity, then all of such shipper's acreage dedication is converted into a fixed volume commitment. Cactus II represents that any such conversions will have no impact on the reservation of 10 percent of available capacity for new shippers.[27]

20. Cactus II asserts that the TSAs and *pro forma* tariff establish a prorationing policy under which up to 10 percent of the available pipeline capacity will be allocated to nominations by new shippers and the remaining available pipeline capacity will be allocated among regular shippers based on volume history. Cactus II states that regular shippers include uncommitted shippers that have shipped during the base period and committed shippers. Cactus II states that for all receipt points except Orla, Texas, a committed shipper will be deemed to have shipper history for any proration month equal to the greater of (1) the monthly average of all such shipper's shipments during the applicable base period as set forth in the *pro forma* tariff or (2) such shipper's monthly maximum volume commitment, including acreage dedication. For product received at Orla, Cactus II states that a committed shipper will be deemed to have shipper history for any proration month in the first two years of service equal to the greater of (1) the monthly average of all such shipper's shipments from Orla during the applicable base period as set forth in the *pro forma* tariff or (2) one third of such shipper's monthly

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[25] *Id.* at 32-33.

[26] The Petition includes a chart showing the loss allowance for the Anchor Shipper based on the destination or connection point. *Id.* at 34-35.

[27] *Id.* at 35-36.

maximum volume commitment. Thereafter, Cactus II states that a committed shipper's history at Orla will be based on the monthly average of such shipper's shipments during the applicable base period.[28]

21. According to Cactus II, the TSA provides Cactus II the ability to add new origin or delivery points. Cactus II also states that the Anchor Shipper may request that Cactus II make commercially reasonable efforts to connect the pipeline at new destination points located within a 60-mile radius from Taft, Texas.[29] Cactus II claims that the TSA also gives the committed shippers the right to request additional quality streams. Cactus II states that the TSAs provide that committed shippers may request a segregated product quality stream (outside of the quality streams set forth in the tariff) in exchange for a per barrel surcharge (including in their deficiency payments).[30]

22. Cactus II proposes to allocate the volumes under an expired or terminated TSA to the remaining committed shippers upon their request. Cactus II states that if one or more of the TSAs expires or is terminated prior to the expiration or termination of all of the TSAs, the remaining committed shippers have an option to assume a portion of the fixed volume commitment associated with the expired or terminated TSA.[31]

23. Cactus II requests that upon the expiration or termination of the Anchor Shipper TSA and Second OS Committed Shipper TSAs, Cactus II shall have the option to hold an additional open season for the capacity made available by such expiration or termination. Cactus II argues that the option to offer the capacity in a future open season upon the expiration or termination of the TSAs is an essential component in ensuring the viability of the project and provides shippers the ability to respond to future market conditions.[32]

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[28] *Id.* at 38-39.

[29] *Id.* at 40.

[30] *Id.*

[31] *Id.* at 41.

[32] *Id.* at 43-46.

Requested Rulings

24. Cactus II requests that the Commission approve the following aspects of the rate structure and terms of service for the project as consistent with the Interstate Commerce Act (ICA)[33] and Commission precedent:

a. Cactus II's use of leased capacity to provide service,

b. The procedures for the first and second open season,

c. Cactus II's proposal to file the committed rates as settlement rates pursuant to 18 C.F.R. § 342.4(c) of the Commission's regulations, both during the initial term of the TSAs and any renewal term, including upon the initial filing of the rates,

d. The initial term of the Anchor Shipper TSA, which is based on a commitment to ship an aggregate number of barrels, rather than a specified number of years,

e. The rate structure, including (i) for the initial committed rates, especially the tiered rates, (ii) the volume-based discounts, (iii) the provision allowing committed shippers to ship an incremental volume at the applicable committed rate and (iv) the rate and other adjustments in the TSAs, including indexing, a change of law surcharge, most favored nations provisions and product loss allowance percentages,

f. The conversion of an acreage dedication volume commitment into an additional fixed volume commitment, in the event of a transfer of dedicated interests in land,

g. The shipper history rights granted to committed shippers in the event of prorationing,

h. The provisions that allow Cactus II to add additional origin and destination points and the Anchor Shipper to request additional destination points, and the option for committed shippers to request a new segregated stream in exchange for payment of a surcharge on all of their volumes (including deficiency payments) up to a specified limit,

[33] 49 U.S.C. app. § 1 *et seq.* (1988).

i. The ability of Cactus II to apportion any fixed volume commitments associated with an expired or terminated TSA to other committed shippers upon their request,

j. The option for Cactus II to hold another open season for up to 90 percent of capacity of the pipeline upon the expiration or early termination of the TSAs.

Public Notice, Intervention, and Comments

25. Notice of the Petition was issued on August 14, 2018, providing for motions to intervene, comments and protests to be filed on or before September 7, 2018. Pursuant to Rule 214 of the Commission's regulations,[34] 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 Determination

26. Based on the representations in the Petition,[35] the Commission will partially grant the rulings requested by Cactus II, subject to the conditions set forth below.

27. The Commission finds that the use of leased capacity is consistent with Commission precedent.[36] Cactus II represents that the leased capacity from Plains will not in any way degrade service to or negatively affect Plains' existing shippers. Cactus II explains that before the in-service date of the pipeline, the capacity to be leased from Plains will be expanded through the construction of new pipeline and the addition of new pumps, pipe, and valve improvements. Accordingly, Cactus II asserts that Plains will continue to provide the capacity it provides today to its existing shippers.[37]

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[34] 18 C.F.R. § 385.214 (2018).

[35] In cases where the TSA offered in the open season is not included with the Petition, the declarations granted by the Commission are necessarily based on the Petition's characterizations of the TSA provisions as set forth in the Petition, and not from any independent assessment of the TSA terms.

[36] *See, e.g.*, *Palmetto Products Pipe Line LLC*, 151 FERC ¶ 61,090, at PP 4, 20 (2015); *Buckeye Pipe Line Transp., LLC*, 154 FERC ¶ 61,130, at P 18 (2016).

[37] Petition at 14.

28. The Commission finds that the open seasons appropriately followed Commission guidelines and offered all interested parties an equal opportunity to become committed shippers.[38] Cactus II represents that it offered the terms available in the second open season to the Anchor Shipper,[39] which is consistent with Commission policy that "any new terms or conditions offered in a Second Open Season must also be offered to the Initial Committed Shippers so that all committed shippers will be afforded the opportunity to accept the same terms or conditions."[40]

29. Cactus II proposes to file the committed rates as settlement rates pursuant to 18 C.F.R. § 342.4(c) of the Commission's regulations, both during the initial term of the TSAs and any renewal term, including upon the initial filing of the rates.[41] Commission regulations require that the committed rates must meet the requirements for initial rates under 18 C.F.R. §342.2(a), file a cost-of-service rate, or 18 C.F.R. § 342.2(b), file a sworn affidavit that the rate is agreed to by at least one non-affiliated shipper who intends to use the service in question, when the tariff is ultimately filed with the Commission.[42] Cactus II indicates that it received a sufficient level of committed shipper volume to proceed with the project following the open seasons; however, it did not specify whether at least one of those shippers was not an affiliate.[43] The Commission grants Cactus II's request to treat the committed rates as settlement rates, conditioned upon Cactus II providing (1) a sworn affidavit that the rate is agreed to by at least one non-affiliated

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[38] *See, e.g., Medallion Pipeline Co., LLC*, 160 FERC ¶ 61,055, at P 22 (2017); *EnLink Delaware Crude Pipeline, LLC*, 166 FERC ¶ 61,226, at P 17 (2019).

[39] Petition at 15.

[40] *NuStar Logistics, L.P.*, 152 FERC ¶ 61,100, at P 17 (2015). *See also EnLink Delaware Crude Pipeline, LLC*, 166 FERC ¶ 61,226, at P 19 (2019).

[41] Petition at 11, 16-17.

[42] 18 C.F.R § 342.2 (2018).

[43] Cactus II states that Plains All American announced that the Project was "fully committed with long-term third-party shipper contracts totaling 525,000 [bpd]." Petition at 8 (citing Attachment E to the Petition). However, Cactus II also states that after the close of the open seasons, affiliates of two of Cactus II's committed shippers exercised their right to participate as joint venture partners. *Id.* n.7.

shipper who intends to use the service, in accordance with 18 C.F.R. § 342.2(b), or (2) a cost-of-service rate, in accordance with 18 C.F.R. § 342.2(a). The Commission will treat any subsequent rate adjustments thereto pursuant to the TSA as settlement rates under 18 C.F.R. § 342.4(c).[44] The request for waiver of the verified statement under 18 C.F.R. § 342.4(c) is granted.[45]

30. The Commission finds that, in this case, basing the initial term of the Anchor Shipper TSA on a commitment to ship an aggregate number of barrels, as opposed to a specified number of years, is reasonable. The provision affords the Anchor Shipper the flexibility to potentially shorten the initial term by shipping incremental barrels above its volume commitment if space is available. All potential shippers had a fair and equal opportunity to accept the terms of the Anchor Shipper TSA in a widely-publicized open season.

31. The Commission finds that the tiered rate structure for committed shippers is consistent with Commission precedent.[46] In addition, the Commission approves the use of volume-based discounts for committed shippers, including discounts based on total annual average shipments on the project that vary based on volume commitment, actual shipments, term and origin point, and discounts based on shipping a higher volume or paying an additional fee that is the equivalent of shipping additional volumes.[47] The Commission also finds that the provision allowing committed shippers to ship an incremental volume at the applicable committed rate is consistent with Commission precedent.[48]

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[44] 18 C.F.R. § 342.4(c).

[45] Cactus II requests waiver of the verified statement requirement. *See* Petition at 17.

[46] *See, e.g.*, *Western Refining Conan Gathering, LLC*, 161 FERC ¶ 61,038, at P 18 (2017); *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095, at P 18 (2014).

[47] *See, e.g.*, *Belle Fourche Pipeline Co.*, 162 FERC ¶ 61,091, at P 18 (2018); *Monarch Oil Pipeline, LLC*, 151 FERC ¶ 61,150, at P 32 (2015).

[48] *See, e.g.*, *Bayou Bridge Pipeline, LLC*, 153 FERC ¶ 61,322, at PP 4, 27 (2015); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 29 (2013).

32. The Commission approves the adjustments to the committed rates pursuant to indexing,[49] and the surcharge applicable to committed shippers for compliance costs related to new or changed laws or regulations.[50] The Commission previously has approved provisions that allow for adjustments and surcharges to committed rates, finding that committed shippers freely entered into the contracts and consequently assumed all the rights and obligations thereunder.[51] Further, Cactus II avers that the committed shippers have the right to challenge Cactus II's filing to implement a surcharge for compliance costs.[52]

33. The Commission finds that the most favored nation provisions and product loss allowances for committed shippers described in the Petition are consistent with Commission precedent.[53]

34. The Commission finds that the provisions under which a Second OS Committed Shipper's acreage dedication may be fully or partially converted into a fixed volume commitment as described in the Petition are reasonable. Cactus II states that such provisions afford the Second OS Committed Shippers flexibility in tailoring the acreage dedication to production needs and will not affect the 10 percent of capacity reserved for new shippers.[54]

35. The Commission approves the shipper history rights for committed shippers described by Cactus II in the Petition. Cactus II states that up to 10 percent of available

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[49] *See, e.g.*, *Stakeholder Midstream Crude Oil Pipeline, LLC*, 160 FERC ¶ 61,010, at P 17 (2017) (*Stakeholder*); *Oryx Southern Delaware Oil Gathering and Transport LLC*, 154 FERC ¶ 61,065, at P 27 (2016).

[50] *See, e.g.*, *Magellan Pipeline Co., L.P.*, 166 FERC ¶ 61,181, at P 40 (2019) (*Magellan*); *Stakeholder*, 160 FERC ¶ 61,010 at P 17.

[51] *See, e.g.*, *Magellan*, 166 FERC ¶ 61,181 at P 40; *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067, at P 36 (2015) (*Saddlehorn*).

[52] Petition at 31.

[53] *See, e.g.*, *Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at P 11 (2013); *Sunrise Pipeline LLC*, 164 FERC ¶ 61,140, at PP 9, 13 (2018); *Marathon Pipe Line LLC*, 164 FERC ¶ 61,014, at PP 14, 19, 26 (2018).

[54] Petition at 36-37.

capacity will be allocated to nominations by new shippers.[55] The reservation of up to 10 percent of capacity for new shippers is sufficient to provide reasonable access consistent with Cactus II's common carrier obligations.[56]

36. The Commission finds that the provisions that allow Cactus II to add additional origin and destination points and the Anchor Shipper to request additional destination points are consistent with Commission precedent.[57] The Commission also approves the option for committed shippers to request a new segregated stream in exchange for payment of a surcharge up to a specified limit. The option to add new quality streams allows the pipeline flexibility to transport new product types.

37. The Commission approves the ability of Cactus II to apportion any fixed volume commitments associated with an expired or terminated TSA to other committed shippers upon their request. The Commission finds that these provisions applicable to committed shippers are reasonable terms of service that have been formally agreed to by all shippers to whom they apply.

38. The Commission declines to approve at this time Cactus II's request for the option to hold another open season for up to 90 percent of capacity of the pipeline upon the expiration or early termination of the TSAs. The Commission finds that Cactus II's proposal is premature and not ripe for the Commission's review. The rates and terms of service to be offered in any potential future open season and market conditions that may exist at such time are undetermined.[58]

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[55] *Id.* at 38. Cactus II did not include the *pro forma* tariff with the proposed prorationing policy in the Petition. The declarations granted by the Commission are necessarily based on the Petition's characterizations of the prorationing provisions as set forth in the Petition, and not from any independent assessment of the *pro forma* tariff.

[56] *Permian Express Terminal LLC*, 162 FERC ¶ 61,112, at P 17 (2018).

[57] *See, e.g.*, *Stakeholder*, 160 FERC ¶ 61,010 at P 19; *Saddlehorn*, 153 FERC ¶ 61,067 at P 37.

[58] Cactus II relies on the Commission's decision to allow CCPS Transportation, LLC to re-contract a portion of the capacity of the Spearhead Pipeline upon the expiration of certain contracts. Petition at 44 (citing *CCPS Transportation, LLC*, 163 FERC ¶ 61,206 (2018)). In that case, however, the pipeline requested approval to re-contract the capacity shortly before the contracts were expected to expire and described the rate structure and terms to be offered.

The Commission orders:

Cactus II's Petition is partially granted, subject to conditions, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.