

167 FERC ¶ 61,251
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

BridgeTex Pipeline Company, LLC

Docket No. OR18-3-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 19, 2019)

1. On October 30, 2017, BridgeTex Pipeline Company, LLC (BridgeTex) filed a petition for declaratory order (Petition) requesting approval of the proposed tariff and overall rate structure and terms of service for a proposed expansion of the existing BridgeTex pipeline system and the addition of a new origin in Midland, Texas, for service to Houston, Texas (BridgeTex II Expansion Project). BridgeTex also requests a ruling that the regulatory assurances provided by the Commission in its prior declaratory orders regarding the original BridgeTex pipeline system¹ and the 2016 expansion of that system² are not affected by the BridgeTex II Expansion Project. The Commission grants the Petition and the specific rulings requested by BridgeTex, as discussed below.

Background

2. The original BridgeTex pipeline system is a 300,000 barrels per day (bpd) pipeline that transports crude oil from Colorado City, Texas, to the Houston Gulf Coast area. In 2016, the original system was expanded to deliver Eaglebine crude oil and condensate from Bryan, Texas, to the Houston Gulf Coast area (Eaglebine Expansion Project).

3. According to the Petition, the BridgeTex II Expansion Project will expand the existing BridgeTex facilities and add the new Midland origin to transport crude oil and condensates from the Permian Basin to the Houston Gulf Coast area (BridgeTex II

¹ *Oxy Midstream Strategic Dev., LLC*, 141 FERC ¶ 61,005 (2012) (2012 Declaratory Order).

² *BridgeTex Pipeline Co., LLC*, 156 FERC ¶ 61,121 (2016) (2016 Declaratory Order).

Facilities).³ To provide this service, the BridgeTex II Expansion Project will expand the throughput capacity of the existing BridgeTex facilities by approximately 100,000 bpd and may further expand capacity by an additional 30,000 bpd if warranted by shipper demand.⁴ To establish the new Midland origin, BridgeTex is leasing capacity on Plains All American Pipeline, L.P.'s Sunrise Pipeline from Midland to Colorado City and leasing additional operational tankage from Magellan Pipeline Company, L.P. (Magellan) at Magellan's East Houston terminal (collectively, Leased Capacity).⁵ According to the Petition, service on the BridgeTex II Expansion Project was expected to commence on January 1, 2018.⁶

4. BridgeTex states that it held an open season for the BridgeTex II Expansion Project from July 6, 2017, to August 4, 2017 (Expansion Open Season), during which it offered potential shippers an opportunity to execute a Transportation Service Agreement (Expansion TSA).⁷ BridgeTex represents that it issued a press release announcing the start of the Expansion Open Season, a notice was published on Magellan's public website, and news of the project was reported in the trade press.⁸ According to BridgeTex, shippers that executed a confidentiality agreement received the Expansion TSA and an Expansion Open Season Summary.⁹ BridgeTex states that it offered up to 90 percent of non-firm expansion capacity subject to prorationing to committed shippers (Expansion Committed Shippers) and set aside the remaining 10 percent for uncommitted shippers (Expansion Uncommitted Shippers).¹⁰

5. BridgeTex states that it received sufficient volume commitments through the Expansion Open Season process to move forward with developing the BridgeTex II

³ Petition at 5.

⁴ *Id.*

⁵ *Id.* at 6.

⁶ *Id.* at 7.

⁷ *Id.* at 7-8.

⁸ *Id.* at 8.

⁹ *Id.*

¹⁰ *Id.* at 9.

Expansion Project.¹¹ BridgeTex also states that it determined that demand was sufficient to conduct a supplemental open season, which it expected to conduct in the fourth quarter of 2017 (Supplemental Open Season).¹² BridgeTex planned to offer up to 40,000 bpd of additional expansion capacity to committed shippers while setting aside 10 percent of the total expansion capacity for uncommitted shippers.¹³

TSA Terms, Rates, and Prorationing Policy

6. During the Expansion Open Season, interested shippers had the choice of two commitment tiers, Tier 1 and Tier 2, which allowed them to elect between the Midland and Colorado City origins and a range of volume and term commitment levels.¹⁴ Tier 1 offered non-firm volume discount service from the Midland origin with a ten-year term and a volume commitment that ramps up over three phases.¹⁵ Tier 2 offered non-firm volume discount service from either the Midland or Colorado City origins, the option of a five-year or seven-year term, and the option of making a volume commitment of between 10,000 and 40,000 bpd.¹⁶

7. BridgeTex notes that the committed rates (Expansion Committed Shipper Rates) vary according to the origin selected, term length, and volume commitment.¹⁷ Moreover, under the Expansion TSA, Expansion Committed Shippers are eligible for discounts on volumes in excess of their commitments.¹⁸ An Expansion Committed Shipper will be eligible to ship, on a monthly, space-available basis, volumes up to 120 percent of its monthly commitment, at the committed rate applicable to the shipper's Daily Contract

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 9-10. The volume commitment for Tier 1 Expansion Committed Shippers ramps up from 35,000 bpd in Phase 1, to 50,000 bpd in Phase 2, to 75,000 bpd in Phase 3. *Id.* at 10.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

Volume Commitment as defined in the Expansion TSA.¹⁹ If an Expansion Committed Shipper does not meet its volume commitment in a given contract quarter, it must make a deficiency payment to BridgeTex equal to the difference between the payments it made for that contract quarter and its minimum quarterly payment under the Expansion TSA.²⁰

8. BridgeTex explains that the Expansion TSA provides for future adjustments to the Expansion Committed Shipper Rates. Annual adjustments will occur on July 1 in amounts equal to the FERC Oil Pipeline Index, not to exceed five percent in any year.²¹ If the Index for a particular year would result in an increase in excess of five percent, the increase above five percent will be banked for use in subsequent years when the Index increase is less than five percent.²² If applying the Index would result in a decrease of the Expansion Committed Shipper Rates, those rates will not be decreased and the decrease will instead be banked and used to offset increases in subsequent years.²³ The Expansion TSA also provides for rate adjustments or surcharges in the event that BridgeTex is required to incur certain additional expenses due to a “Change in Law.”²⁴

9. Under the Expansion TSA, BridgeTex will not voluntarily adjust the uncommitted rate applicable to the BridgeTex II Facilities to be less than the highest of the Expansion Committed Shipper Rates for such shipments plus \$0.10. If BridgeTex does so, it will adjust the corresponding Expansion Committed Shipper Rates so that they are \$0.10 less than the uncommitted rates.²⁵

10. BridgeTex represents that the Expansion TSA contains a most-favored-nations provision stating that, if BridgeTex offers a lower committed rate in any subsequent open season to a shipper that is similarly situated to a Tier 1 Expansion Committed Shipper, for a commitment of equal or lesser volume and an initial term equal to or less than

¹⁹ *Id.* BridgeTex explains that volumes in excess of 120 percent of the shipper’s commitment will be transported at the uncommitted rate. *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 11-12.

²³ *Id.* at 12.

²⁴ *Id.*

²⁵ *Id.*

ten years, then BridgeTex will adjust the Tier 1 Expansion Committed Shipper Rates to equal that lower committed rate.²⁶

11. BridgeTex explains that the Expansion TSA provides Expansion Committed Shippers with the right to extend their initial Expansion TSA term for two periods of two years each, and at the end of the second period, an evergreen term will apply and the Expansion TSA will continue from year to year unless either party terminates the agreement.²⁷ BridgeTex also states that the Expansion TSA allows it to add additional origin points and crude oil grades to the BridgeTex II Facilities.²⁸ In addition, no party may assign the Expansion TSA or its rights thereunder without the prior written consent of the other party, which consent may not be unreasonably withheld or delayed.²⁹

12. BridgeTex's proposed prorationing policy (Expansion Prorationing Policy) describes how capacity will be allocated in the event that nominations on the BridgeTex II Facilities exceed its available capacity (Expansion Capacity). According to BridgeTex, Expansion Capacity will be prorated separately from the capacity of the existing BridgeTex facilities.³⁰ BridgeTex proposes to use three tranches of capacity during times of prorationing, corresponding to the original BridgeTex system, the Eaglebine Expansion Project facilities, and the BridgeTex II Expansion Project.³¹

13. Under the Expansion Prorationing Policy, up to 10 percent of Expansion Capacity is first allocated to BridgeTex II New Shippers³² on the appropriate segment of the

²⁶ *Id.*

²⁷ *Id.* at 13.

²⁸ *Id.*

²⁹ *Id.* at 34-35.

³⁰ *Id.* at 13.

³¹ *Id.*

³² BridgeTex II New Shippers are uncommitted or "spot" shippers that do not qualify as BridgeTex II Regular Shippers. *Id.* at 29. A BridgeTex II Regular Shipper, in turn, is defined as (1) a shipper that has shipped on the BridgeTex II Facilities during at least 12 months of an 18-month base period, or (2) an Expansion Committed Shipper. *Id.* at 30.

BridgeTex II Facilities (i.e., either the Midland segment or the Colorado City segment).³³ BridgeTex states that of the 10 percent of Expansion Capacity set aside for BridgeTex II New Shippers, each BridgeTex II New Shipper may be allocated up to two percent of the total Expansion Capacity.³⁴ If the allocation among all BridgeTex II New Shippers would exceed 10 percent of the total Expansion Capacity, then allocations will be reduced on a *pro rata* basis.³⁵ BridgeTex will administer a lottery to allocate the capacity to BridgeTex II New Shippers in the event that *pro rata* allocation results in no BridgeTex II New Shipper being able to meet the monthly minimum volume batch size.³⁶

14. All Expansion Capacity not allocated to BridgeTex II New Shippers will be allocated to BridgeTex II Regular Shippers on a historical basis.³⁷ A BridgeTex II Regular Shipper's historical shipment status for any proration month will equal the greater of (1) its average shipments during the applicable base period, or (2) its Expansion TSA volume commitment in effect for that proration month.³⁸ Once BridgeTex has allocated Expansion Capacity to BridgeTex II New Shippers and BridgeTex II Regular Shippers, it will allocate any remaining Expansion Capacity among all shippers having remaining unmet nominations in proportion to each shipper's initial capacity allocation.³⁹

³³ *Id.* at 29.

³⁴ *Id.* at 14, 29.

³⁵ *Id.* at 29-30.

³⁶ *Id.* at 30. Under the lottery process, BridgeTex will use a software-generated random number process to assign each BridgeTex II New Shipper a number from one to the number representing the total number of participating BridgeTex II New Shippers. The BridgeTex II New Shipper assigned number one will receive the first minimum nomination allocation, and thereafter minimum nomination allocations will be assigned sequentially, from the lowest to the highest assigned number, until 10 percent of available Expansion Capacity is fully allocated. *See* Attachment F to Roles Affidavit (Expansion Prorationing Policy).

³⁷ *Id.* at 30.

³⁸ *Id.* at 14, 30.

³⁹ *Id.* at 30.

15. BridgeTex states that, during times of curtailment, it will allocate operational capacity among its three capacity tranches according to a proportional methodology.⁴⁰

Requested Rulings

16. BridgeTex requests that the Commission approve the following rate structure and terms of service for the BridgeTex II Expansion Project as consistent with the Interstate Commerce Act (ICA)⁴¹ and Commission precedent:

- A. The Expansion TSA will be honored and its key provisions will be upheld and will govern the transportation services BridgeTex provides to Expansion Committed Shippers during the term of the Expansion TSA.
- B. The Expansion Committed Shipper Rates provided for in the Expansion TSA will be treated as settlement rates during the term of the Expansion TSA, including upon their initial filing with the Commission and any subsequent adjustments pursuant to 18 C.F.R. § 342.4(c) of the Commission's regulations or pursuant to the terms of the Expansion TSA.
- C. BridgeTex may provide non-firm capacity to Expansion Committed Shippers that represents no more than 90 percent of the total approximate 100,000 to 130,000 bpd of the Expansion Capacity, with at least 10 percent of the Expansion Capacity reserved for uncommitted volumes (i.e., for BridgeTex II New Shippers).
- D. BridgeTex may use the Leased Capacity to provide service on the BridgeTex II Facilities pursuant to the Expansion TSA and the supplemental Transportation Service Agreement executed pursuant to the Supplemental Open Season (Supplemental Open Season TSA).
- E. BridgeTex may implement a rate structure in which Expansion Committed Shippers pay discounted volume incentive rates that vary based on volume, term length, and origin, and apply to volumes up to 120 percent of their commitment levels.

⁴⁰ *Id.* at 13, 32. Under this methodology, BridgeTex will first divide each tranche's design capacity by the aggregate design capacity of all tariff tranches. BridgeTex will then multiply the resulting percentage for each tranche by the aggregate operational capacity available during the period of curtailment and use the resulting figures as the available allocable capacity for each tariff tranche. *Id.* at 32.

⁴¹ 49 U.S.C. app. § 1 *et seq.* (1988).

- F. A Tier 1 Expansion Committed Shipper may commit to a lower volume level during Phase 1 of its commitment, with an increased volume commitment and lower volume incentive rates in Phases 2 and 3 of its commitment.
- G. Expansion Committed Shipper Rates may be increased annually by the amount of the FERC Index up to five percent. If the FERC Index would result in an increase in the Expansion Committed Shipper Rates in excess of five percent, the increase above five percent may be “banked” for use in subsequent years where the Index increase is less than five percent. If the Index would result in a decrease of the Expansion Committed Shipper Rates, such rates will not be decreased but the decrease may be “banked” and used to offset increases in subsequent years.
- H. The Expansion Committed Shipper Rates may be increased or a surcharge may be imposed in the future due to a qualifying “Change in Law,” as defined in the Expansion TSA.
- I. BridgeTex may adjust the Expansion Committed Shipper Rates so that they are maintained at a level that is \$0.10 lower than the uncommitted rates, if it voluntarily reduces the uncommitted rates.
- J. BridgeTex may reduce the Expansion Committed Shipper Rates for Tier 1 Expansion Committed Shippers if it offers lower committed rates to a similarly situated shipper for a commitment of equal or lesser volume and years.
- K. An Expansion Committed Shipper may extend the term of its Expansion TSA for two periods of two years each, with annual evergreen renewals thereafter if an Expansion Committed Shipper exercises the option to extend its Expansion TSA four years.
- L. BridgeTex may implement the Expansion Prorationing Policy in the event that nominations on the BridgeTex II Facilities in any given month exceed available Expansion Capacity.
- M. During times of curtailment, BridgeTex may allocate capacity among its three capacity tranches according to the proportional methodology set forth in Section III.J of the Petition.
- N. BridgeTex may add additional origin points, destination points, and crude oil grades on the BridgeTex II Facilities, all of which will be governed by the Expansion TSA.
- O. BridgeTex and the Expansion Committed Shippers may assign the Expansion TSA with the consent of the non-assigning party.

- P. BridgeTex may conduct the Supplemental Open Season for the BridgeTex II Expansion Project and enter into TSAs with reduced commitment and rate levels with no additional terms not offered in the Expansion TSA.
- Q. The regulatory assurances provided by the Commission in its Declaratory Orders in Docket Nos. OR12-25 and OR16-19 are not affected by the BridgeTex II Expansion Project or Expansion Open Season, the Expansion TSA, the Expansion Prorationing Policy, the Supplemental Open Season, or the Supplemental Open Season TSA.

Public Notice, Intervention, Protests and Comments

17. Notice of the Petition was issued on November 1, 2017, providing for motions to intervene, comments, and protests to be filed on or before November 21, 2017. Occidental Energy Marketing, Inc. (Occidental) filed a timely motion to intervene, protest, and motion to consolidate the Petition with a complaint it filed against BridgeTex in Docket No. OR18-6-000.

18. On December 21, 2017, in Docket No. IS18-102-000, BridgeTex filed FERC Tariff No. 6.0.0, which set forth rules and regulations governing operations of the BridgeTex II Facilities, and FERC Tariff No. 7.0.0, which specified the uncommitted rates and the committed shipper rates for transportation service on the BridgeTex II Facilities. BridgeTex's filing included an affidavit certifying that a non-affiliated shipper that intends to use the service had agreed to the uncommitted and committed rates. Occidental protested BridgeTex's tariff filing.

19. On January 19, 2018, the Commission consolidated Docket Nos. OR18-6-000 and IS18-102-000, established hearing and settlement judge procedures to address the issues raised in those dockets, and accepted and suspended FERC Tariff Nos. 6.0.0 and 7.0.0 subject to the outcome of the consolidated proceedings.⁴² The Commission held action on the Petition in abeyance pending the outcome of the hearing in the consolidated proceedings.⁴³

20. On January 30, 2018, in Docket No. IS18-147-000, BridgeTex filed FERC Tariff No. 7.1.0 to add new committed incentive rates provided for in the Supplemental Open Season TSA for the transportation of crude oil and condensate on the BridgeTex II Facilities. BridgeTex's filing included an affidavit certifying that the new rates had been

⁴² *BridgeTex Pipeline Co., LLC*, 162 FERC ¶ 61,036, at PP 29-31, 33, ordering paras. (A)-(D) (2018).

⁴³ *Id.* P 32, ordering para. (G).

agreed to by at least one non-affiliated shipper that intends to use the new services offered. Occidental protested the tariff filing. The Commission accepted and suspended FERC Tariff No. 7.1.0 and consolidated it with the ongoing hearing established in Docket Nos. IS18-102-000 and OR18-6-000.⁴⁴

21. On February 19, 2019, Occidental filed notices of withdrawal stating that it had reached a final settlement agreement with BridgeTex resolving the claims set forth in Occidental's complaint in Docket No. OR18-6-000, its protests in Docket Nos. IS18-102-000 and IS18-147-000, and its protest to the Petition. As such, Occidental stated that it was withdrawing its complaint and protests with prejudice. The withdrawals became effective by operation of law⁴⁵ and the Chief Administrative Law Judge terminated the hearing in the consolidated proceedings on March 14, 2019.⁴⁶

22. As the hearing in the consolidated proceedings has been terminated and Occidental has withdrawn its protest to the Petition, the Petition is now unopposed and ripe for consideration.

Discussion

23. Based upon the representations made in the Petition,⁴⁷ the Commission grants the rulings requested by BridgeTex.

⁴⁴ *BridgeTex Pipeline Co., LLC*, 162 FERC ¶ 61,189, at P 14, ordering paras. (A)-(B) (2018).

⁴⁵ See 18 C.F.R. § 385.216(b)(1) (2018).

⁴⁶ As a result, Tariff Nos. 6.0.0 and 7.0.0 in Docket No. IS18-102-000 were accepted effective January 1, 2018 ([BridgeTex Exp II Rules, BridgeTex Expansion II Rules Regs. 6.0.0](#) and [BridgeTex Exp II Rates, BridgeTex Expansion II Rates, 7.0.0](#)), and Tariff No. 7.1.0 in Docket No. IS18-147-000 was accepted effective February 1, 2018 ([BridgeTex Exp II Rates, BridgeTex Expansion II Rates, 7.1.0](#)).

⁴⁷ 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.

24. The Commission affirms that the Expansion TSA will be honored and will govern the transportation services BridgeTex provides to Expansion Committed Shippers during its term.⁴⁸

25. The Petition requests that the Expansion Committed Shipper Rates be treated as settlement rates pursuant to 18 C.F.R. § 342.4(c). However, Commission regulations require that rates for new services, such as the Expansion Committed Shipper Rates, meet the requirements for initial rates under 18 C.F.R. § 342.2(a), cost of service, or 18 C.F.R. § 342.2(b), filing 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 filed with the Commission.⁴⁹ BridgeTex has completed its filing of initial rates pursuant to 18 C.F.R. § 342.2(b), by filing a sworn affidavit that the rate is agreed to by at least one non-affiliated shipper.⁵⁰ The Commission will treat any subsequent rate adjustments thereto pursuant to the Expansion TSA as settlement rates under 18 C.F.R. § 342.4(c).⁵¹

26. The Commission confirms that BridgeTex may provide non-firm capacity to Expansion Committed Shippers that represents no more than 90 percent of the total Expansion Capacity, while reserving at least 10 percent of the Expansion Capacity for BridgeTex II New Shippers. The Commission has previously found that reserving at least 10 percent of a pipeline's capacity is sufficient to provide reasonable access to the pipeline.⁵²

⁴⁸ See *Sunrise Pipeline LLC*, 164 FERC ¶ 61,140, at P 12 (2018); 2016 Declaratory Order, 156 FERC ¶ 61,121 at P 16; *NORCO Pipe Line Co., LLC*, 152 FERC ¶ 61,170, at P 15 (2015).

⁴⁹ 18 C.F.R. § 342.2 (2018).

⁵⁰ See Docket No. IS18-102-000, BridgeTex Pipeline Company, LLC, FERC Oil Tariff, Local Tariff, BridgeTex Exp II_Rates, BridgeTex Expansion II_Rates, 7.0.0. The rates went into effect on January 1, 2018. See *BridgeTex Pipeline Co., LLC*, 162 FERC ¶ 61,036 at P 30.

⁵¹ 18 C.F.R. § 342.4(c) (2018).

⁵² See *Targa NGL Pipeline Co. LLC*, 166 FERC ¶ 61,179, at P 17 (2019); *Buckeye Pipe Line Transp., LLC*, 154 FERC ¶ 61,130, at P 19 (2016); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6, 15 (2011).

27. The Commission approves BridgeTex's proposal to use the Leased Capacity to provide service on the BridgeTex II Facilities pursuant to the Expansion TSA and the Supplemental Open Season TSA.⁵³

28. The Commission finds that BridgeTex may implement a rate structure in which Expansion Committed Shippers pay discounted volume incentive rates that vary based on volume, origin, and term length, and apply to volumes up to 120 percent of their commitment levels on a space-available basis.⁵⁴ The Commission has previously approved rate structures where rates paid by committed shippers vary according to the level and term of the volume commitments.⁵⁵ Moreover, the Commission has approved rate structures that allow committed shippers to ship volumes in excess of their commitment and pay discounted rates where sufficient capacity remains available for uncommitted shippers.⁵⁶

29. The Commission finds that BridgeTex's proposal to allow Tier 1 Expansion Committed Shippers to ramp up their volume commitments in three phases is consistent with Commission precedent.⁵⁷

30. The Commission approves the Expansion TSA provision allowing for annual increases to the Expansion Committed Shipper Rates by the amount of the Index, not to exceed five percent in any year, and providing that Expansion Committed Shipper Rates will not be decreased in the event that applying the Index would result in a rate decrease. These provisions are consistent with Commission precedent approving index-related rate

⁵³ See *Buckeye Pipe Line Transp., LLC*, 154 FERC ¶ 61,130 at P 18; *NORCO Pipe Line Co., LLC*, 152 FERC ¶ 61,170 at P 18.

⁵⁴ The Commission observes that, while the Petition remained in abeyance, BridgeTex filed the Expansion Committed Shipper Rates in Docket No. IS18-102-000 and thereafter filed revisions to those rates in Docket Nos. IS18-593-000, IS18-595-000, and IS19-222-000.

⁵⁵ See *Shell Pipeline Co. LP*, 141 FERC ¶ 61,017, at PP 5, 11, 14 (2012); *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at PP 16, 20 (2012).

⁵⁶ See 2016 Declaratory Order, 156 FERC ¶ 61,121 at P 17; *Bayou Bridge Pipeline, LLC*, 153 FERC ¶ 61,322, at PP 4, 27 (2015) (*Bayou Bridge*); *Sunoco Pipeline, L.P.*, 151 FERC ¶ 61,192, at P 12 (2015).

⁵⁷ See *Medallion Delaware Express, LLC*, 163 FERC ¶ 61,170, at P 21 (2018); *Medallion Pipeline Co., LLC*, 155 FERC ¶ 61,268, at PP 13, 26 (2016); *Medallion Pipeline Co., LLC*, 150 FERC ¶ 61,156, at PP 12, 15 (2015).

adjustment mechanisms with a ceiling or floor.⁵⁸ The Commission also approves the provisions allowing BridgeTex to bank any rate increase in excess of five percent and any rate decrease resulting from application of the Index for future use.⁵⁹

31. The Commission affirms that BridgeTex may increase Expansion Committed Shipper Rates or impose a surcharge in the future due to a qualifying “Change in Law.” The Commission has previously approved similar provisions allowing for adjustments and surcharges to committed rates to recover costs to comply with changes in the law.⁶⁰

32. The Commission confirms that BridgeTex may adjust the Expansion Committed Shipper Rates to maintain them at a level that is \$0.10 lower than the uncommitted rates, if it voluntarily reduces the uncommitted rates. This provision is consistent with Commission precedent approving adjustments to committed and uncommitted rates so as to maintain them at a specific level in relation to one another.⁶¹ In addition, the Commission approves BridgeTex’s proposal to adjust Tier 1 Expansion Committed Rates pursuant to a most-favored-nations provision.⁶² Thus, the Commission confirms that BridgeTex may reduce the Expansion Committed Shipper Rates for Tier 1 Expansion

⁵⁸ See *Oryx S. Delaware Oil Gathering & Transp. LLC*, 154 FERC ¶ 61,065 at P 27; *Marathon Pipe Line LLC*, 152 FERC ¶ 61,237, at PP 6, 15 (2015); *Medallion Pipeline Co. LLC*, 150 FERC ¶ 61,156, at PP 11, 15 (2015).

⁵⁹ See, e.g., 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 9, 18; see also *Platte River Midstream, Inc.*, 155 FERC ¶ 61,107, at PP 7, 15 (2016).

⁶⁰ See *Magellan Pipeline Co., L.P.*, 166 FERC ¶ 61,181, at P 40 (2019); *Stakeholder Midstream Crude Oil Pipeline, LLC*, 160 FERC ¶ 61,010, at P 17 (2017).

⁶¹ See *Marathon Pipe Line LLC*, 162 FERC ¶ 61,078, at PP 8, 16 (2018) (approving proposal to allow adjustments to committed rate to maintain \$0.05 per barrel differential relative to uncommitted rate); *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310, at PP 27, 30-31 (2007), *order on clarification and reh’g*, 122 FERC ¶ 61,170, at PP 12-13 (2008) (conditionally approving rate design where committed rate was determined annually and uncommitted rate was set at two times the committed rate); see also *Marathon Pipe Line LLC*, 152 FERC ¶ 61,005, at PP 11-12, 19 (2015).

⁶² See *Permian Express Terminal LLC*, 162 FERC ¶ 61,112, at PP 7, 15 (2018); 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 11, 18; *Bayou Bridge*, 153 FERC ¶ 61,322 at PP 14, 27, 29; *Dakota Access, LLC*, 149 FERC ¶ 61,275, at PP 20, 32 (2014).

Committed Shippers if it offers lower committed rates to a similarly situated shipper for a commitment of equal or lesser volume and years.⁶³

33. BridgeTex's proposed prorationing policy is reasonable and nondiscriminatory. Under the Expansion Prorationing Policy, 10 percent of the Expansion Capacity will be reserved to BridgeTex II New Shippers, and capacity not allocated to BridgeTex II New Shippers will be allocated among BridgeTex II Regular Shippers on a historical basis. A BridgeTex II Regular Shipper's historical shipment status for a given proration month is the greater of its average shipments during the relevant base period or its Expansion TSA volume commitment for that month. BridgeTex will allocate any remaining Expansion Capacity among all shippers having remaining unmet nominations in proportion to each shipper's initial capacity allocation. This policy is consistent with similar prorationing policies that the Commission has approved, ensures that new shippers will continue to have access to at least 10 percent of the Expansion Capacity during times of prorationing, and provides a process for new shippers to become regular shippers.⁶⁴

34. The Commission also approves BridgeTex's proposal to allocate capacity among its three capacity tranches during times of curtailment according to a proportional methodology⁶⁵ and its proposed lottery mechanism for allocating Expansion Capacity available to BridgeTex II New Shippers in months where no BridgeTex II New Shipper will meet the monthly minimum volume batch size under *pro rata* allocation.⁶⁶

35. The Commission finds that the Expansion TSA provisions regarding term extensions⁶⁷ and assignment rights⁶⁸ are consistent with Commission precedent. The

⁶³ See 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 11, 18.

⁶⁴ 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 10, 19; *see also Sunoco Pipeline, L.P.*, 151 FERC ¶ 61,192 at PP 7-8, 13.

⁶⁵ See *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115, at PP 13 n.14, 16 (2013); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at PP 9 n.17, 37 (2010).

⁶⁶ See *Permian Express Terminal LLC*, 162 FERC ¶ 61,112 at PP 10-11, 18; 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 10, 20.

⁶⁷ See 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 11, 18; *GT Pipeline, LLC*, 161 FERC ¶ 61,066, at P 25 (2017); *Marathon Pipe Line LLC*, 152 FERC ¶ 61,237 at P 13; *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095, at PP 7, 18 (2014).

⁶⁸ 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 12, 18; *Powder River Crude Servs., LLC*, 163 FERC ¶ 61,091, at PP 9, 16 (2018); *Saddlehorn Pipeline Co., LLC*,

Commission also approves the provisions allowing BridgeTex to add additional origin points, destination points, and crude oil grades on the BridgeTex II Facilities, which will be governed by the Expansion TSA.⁶⁹

36. The Commission confirms that BridgeTex may conduct the Supplemental Open Season and enter into TSAs with interested shippers.⁷⁰ The Commission has stated that carriers should conduct a supplemental open season when awarding additional expansion capacity after an initial open season,⁷¹ and that a carrier offering terms in a supplemental open season not offered in the initial open season must seek prior Commission approval of such terms.⁷² Here, BridgeTex states that the terms offered in the Supplemental Open Season will vary from those offered in the Expansion Open Season insofar as BridgeTex will offer only Tier 2 service and will offer a three-year term length, in addition to the five and seven-year term lengths offered in the Expansion Open Season. With the exception of these terms, the Supplemental Open Season TSA will contain no material non-rate terms not included in the Expansion TSA, and BridgeTex states that it will make the Supplemental Open Season TSA available to all potential shippers.⁷³ Based on these representations, the Commission affirms that BridgeTex may conduct the Supplemental Open Season and enter into the Supplemental Open Season TSA. The Commission has

153 FERC ¶ 61,067, at PP 13, 31, 34 (2015).

⁶⁹ See 2016 Declaratory Order, 156 FERC ¶ 61,121 at PP 12, 18; *Wolverine Pipe Line Co.*, 153 FERC ¶ 61,109, at PP 7, 20, 25 (2015); *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191, at PP 10, 24, 27 (2014).

⁷⁰ BridgeTex's representations in tariff filings submitted after the Petition indicate that it has already conducted the Supplemental Open Season for which it seeks approval in the Petition. See BridgeTex, Tariff Filing, Docket No. IS18-147-000, Transmittal at 1 (filed Jan. 30, 2018) (stating that BridgeTex conducted the Supplemental Open Season from November 30, 2017, to December 30, 2017, and obtained additional volume commitments pursuant to a supplemental TSA); see also BridgeTex, Tariff Filing, Docket No. IS18-595-000, Transmittal at 1 (filed May 31, 2018); BridgeTex, Tariff Filing, Docket No. IS19-222-000, Transmittal at 1 (filed Feb. 28, 2019).

⁷¹ See *White Cliffs Pipeline, L.L.C.*, 148 FERC ¶ 61,037, at PP 47, 52 (2014).

⁷² *Alpha Crude Connector, LLC*, 149 FERC ¶ 61,001, at P 26 (2014).

⁷³ Petition at 36-38.

previously found that carriers may offer different terms in a supplemental open season than in an initial open season.⁷⁴

37. Finally, the Commission confirms that the 2012 Declaratory Order⁷⁵ and the 2016 Declaratory Order⁷⁶ remain effective and are not affected by the BridgeTex II Expansion Project. BridgeTex represents that the Expansion Capacity will be prorated separately from the existing BridgeTex pipeline system capacity, so that committed and uncommitted shippers' access to capacity on the existing BridgeTex facilities will be unaffected. Moreover, the TSAs entered in the initial open season conducted in 2012 and in the Eaglebine Expansion Project open season have not been changed or modified. Based on the facts and BridgeTex's representations, the Commission finds that the regulatory assurances provided in the 2012 Declaratory Order and the 2016 Declaratory Order are not affected by the BridgeTex II Expansion Project, the Expansion Open Season, the Expansion TSA, the Expansion Prorating Policy, the Supplemental Open Season, or the Supplemental Open Season TSA.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁴ *Enbridge Pipelines (Southern Lights) LLC*, 141 FERC ¶ 61,244, at P 26 (2012) (“There is no requirement that rates, or terms and conditions offered in an initial open season must be identically offered in any subsequent open seasons.”).

⁷⁵ 141 FERC ¶ 61,005.

⁷⁶ 156 FERC ¶ 61,121.