169 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Sunoco Pipeline L.P. Docket No. OR19-25-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued October 31, 2019)

1. On June 3, 2019, Sunoco Pipeline L.P. (Sunoco) filed a petition for declaratory order (Petition) requesting approval of its proposed committed rate structure and priority service for the Mariner East Expansion Project. We grant Sunoco's Petition, as discussed below.

**Background**

2. Sunoco states that the Mariner East Expansion Project serves the Marcellus and Utica shale regions that extend through the Appalachian Basin from eastern Ohio and West Virginia through the Mid-Atlantic and into New York. The Project will create additional pipeline capacity to transport ethane from Houston, Pennsylvania to the Sunoco Partners Marketing & Terminals L.P. Terminal in Marcus Hook, Pennsylvania and Claymont, Delaware (SPMT Terminal). Sunoco states that the Mariner East Expansion Project will add 30,000 - 40,000 barrels per day (bpd) of new capacity[1] to the two Mariner East pipeline projects that the Commission previously approved.[2]

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[1] Petition at 4-5.

[2] *Id*. at 3 (citing *Sunoco Pipeline L.P.*, 142 FERC ¶ 61,115 (2013) (discussing Project Mariner East); *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191 (2014) (discussing Project Mariner East 2)).

3. Sunoco explains that Project Mariner East commenced operations on April 1, 2016, and was originally designed to transport excess natural gas liquids (NGLs) from the Marcellus Shale region to Sunoco terminals for storage, processing, and transportation to alternative markets. Thereafter, Project Mariner East 2 became operational on December 29, 2018, and provided a separate batched propane and butane service, in order to increase the capacity and versatility of the original Project Mariner East.[3]

4. According to the Petition, the Mariner East Expansion Project will relieve a continuing oversupply of ethane by creating an additional pipeline capacity to transport ethane from Houston, Pennsylvania to the SPMT Terminal and by changing the Project Mariner East mixed use propane and ethane pipeline from those points to dedicated ethane service. Sunoco states that the Project will involve the construction of a new parallel 16-inch pipeline and will use underutilized capacity of Project Mariner East from Houston, Pennsylvania to Delmont, Pennsylvania. Sunoco states that once the Mariner East Expansion Project is completed, the Mariner East pipelines will have a total system capacity of approximately 400,000 bpd.[4]

5. According to Sunoco, the open season for the Mariner East Expansion Project commenced on September 10, 2015 and following several extensions concluded on August 10, 2017. Notice of the open season was provided to interested parties, with additional notice by press release to more than 200 trade and general circulation print and online publications.[5] Sunoco states that the open season allowed shippers to make a volume commitment in any combination for NGLs, ethane, and condensate. Three different Transportation Service Agreements (TSAs) were offered as part of the open season, covering (a) NGLs, (b) ethane, and (c) condensate. Each of the TSAs included the proposed initial priority service, uncommitted tariff rates, *pro forma* rules tariff, and *pro forma* proration policy. As a result of the open season, only the ethane TSA was the subject of a signed commitment.

**TSA Terms, Rates, and Priority Service**

6. According to the Petition, the TSA requires the committed shipper either to ship during each month its monthly minimum volume commitment at the committed tariff rate (Priority Service Tariff Rate) or make a deficiency payment for the shortfall.[6] The ethane TSA provides that a committed shipper that meets its monthly minimum volume

[3] *Id.* at 4.

[4] *Id.* at 7.

[5] *Id.* at 9; *see also* Attachments A and B to Petition.

[6] *Id.* at 9-10.

commitment may ship additional volumes at the uncommitted tariff rate and such additional volumes may be banked and applied to a future month when the monthly minimum volume commitment is not otherwise met, with any difference between the amount paid and the priority service rate due when the credit is used. Sunoco also states that a deficiency payment will be treated as a prepaid charge for transportation of ethane in excess of the committed shipper's monthly minimum volume commitment during any of the next twelve months. Potential shippers were given the option of selecting a seven-, ten-, or fifteen-year term. Sunoco states that, in exchange for its long-term ship-or-pay obligation and payment of a premium rate for priority service, a committed shipper will be exempt from prorationing under ordinary operating circumstances.[7]

7. Sunoco asserts that the TSA provides that the committed rate for priority service of ethane will be a premium rate that is at least $0.01 more than the uncommitted tariff rate.[8] Sunoco states that under the TSA, it will have the right to adjust the committed rate annually, effective on January 1 of each year, commencing on January 1, 2020, based on the annual FERC oil pipeline index, or if the FERC oil index terminates, by the annual change in Producer Price Index for Finished Goods published in the immediately preceding calendar year, except that the committed rate will never be less than the initial rate set forth in the TSA.[9] In addition, Sunoco states that under the TSA, it reserves the right to add additional origin and destination points to the pipeline at Sunoco's sole discretion.[10]

8. Sunoco states that it will allocate to committed volumes priority service for up to 90 percent of the capacity created by the Mariner East Expansion Project, and 10 percent of total pipeline capacity will be reserved for uncommitted volumes. The allocation of capacity for committed and uncommitted volumes for the Mariner East Expansion Project is the same as what the Commission approved for Project Mariner East and Project Mariner East 2.[11]

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[7] *Id.* at 11-12, 17.

[8] *Id.* at 11-12, 16-18.

[9] *Id.* at 11, 21-22.

[10] *Id.* at 10, 23-24.

[11] *Id*. at 11.

**Requested Rulings**

9. Sunoco requests that the Commission approve the following rate structure and terms of service for the Mariner East Expansion Project as consistent with the Interstate Commerce Act (ICA)[12] and Commission precedent:

A. The treatment of the Priority Service Tariff Rate, once established initially under section 342.2 of the Commission's regulations,[13] as a settlement rate for changes made thereafter during the term of the TSA, pursuant to section 342.4(c) of the Commission's regulations;

B. The ability of Sunoco to provide up to 90 percent of the capacity created through the Mariner East Expansion Project, including capacity of Project Mariner East between Houston and Delmont that is currently underutilized because of existing capacity restraints downstream of Delmont, as priority service space at a premium rate;

C. The ability of Sunoco to adjust upward the Priority Service Tariff Rate, consistent with the Commission's oil indexing methodology, any successor methodology or, if the oil indexing methodology is terminated, based on the annual change in the Producer Price Index for Finished Goods; and

D. The right of Sunoco to add origin and delivery points, at the same rates as those provided for in the TSA.

**Public Notice, Intervention, Protests and Comments**

10. Notice of the Petition was issued on June 3, 2019, providing for motions to intervene, comments and protests to be filed on or before July 3, 2019. Pursuant to Rule 214 of the Commission's regulations, all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order

[12] 49 U.S.C. app. § 1 *et seq.* (1988).

[13] On September 5, 2019, Sunoco filed a Supplemental Letter clarifying that the request in its Petition to provide an initial priority service rate as well as adjustments of the priority service rate inadvertently cited only section 342.4(c) and omitted a reference to section 342.2. Sunoco states it intended to cover both the initial rates and subsequent changes to the initial rates under the appropriately applicable regulations, and therefore both sections 342.2 and 342.4(c) should have been cited in the Petition.

are granted.[14] No motions to intervene, comments, or protests were filed. The Petition is thus unopposed.

**Discussion**

11. Based upon the representations made in the Petition,[15] we grant the rulings requested by Sunoco.

12. We approve the request to treat the initial Priority Service Tariff Rate for the Mariner East Expansion Project as an initial rate pursuant to section 342.2 of the Commission's regulations. We also approve the request to treat subsequent adjustments of the Priority Service Tariff Rate under the terms of the TSA as settlement rates pursuant to section 342.4(c) of the Commission's regulations.[16]

13. We approve Sunoco's request to provide priority service to shippers committing to transport volumes of ethane at a premium rate. The Commission has held that priority service is permissible under the ICA provided that the committed shippers pay a premium rate of at least one cent per barrel more than uncommitted shippers and that the committed rates and priority service options were offered during an open season.[17] Sunoco offered the committed capacity pursuant to a widely-publicized open season and all potential shippers were afforded the opportunity to accept the terms for priority service of ethane.[18] According to the Petition, the existing segment of the Project Mariner East pipeline between Houston and Delmont that will form part of the Mariner

[14] 18 C.F.R. § 385.214 (2019).

[15] 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.

[16] Sunoco's September 5, 2019 Supplemental Letter and Petition at 13, 15-16; *see also Targa NGL Pipeline Co. LLC*, 166 FERC ¶ 61,179, at P 20 (2019) ("pipelines must meet the requirements under section 342.2(a) or (b) when filing initial rates, including negotiated committed rates in TSAs offered through open seasons").

[17] *E.g.*, *Sunoco Pipeline L.P.*, 167 FERC ¶ 61,159, at P 13 (2019) (*Sunoco*); *Oryx S. Del. Oil Gathering and Transp. LLC*, 154 FERC ¶ 61,065, at P 17 (2016) (*Oryx*).

[18] *E.g.*, *Sunoco*, 167 FERC ¶ 61,159 at P 13; *Medallion Pipeline Co., LLC*, 160 FERC ¶ 61,055, at P 22 (2017).

East Expansion Project has been consistently underutilized and therefore no existing shippers will have their historical service curtailed as a result of the proposed priority service.[19] We find that Sunoco's proposal to provide up to 90 percent of the Project's capacity to committed shippers for priority service at a premium rate, while ensuring that 10 percent of the total pipeline capacity will be reserved for uncommitted volumes, is appropriate.[20]

14. We approve as consistent with Commission precedent Sunoco's request to allow for adjustments to the Priority Service Tariff Rate based on the Commission's oil indexing methodology or, if the oil indexing methodology is terminated, based on the annual change in the Producer Price Index for Finished Goods.[21] We also approves the ability of Sunoco to add origin and delivery points, as consistent with precedent.[22]

The Commission orders:

Sunoco's petition is granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[19] Petition at 18.

[20] *E.g., Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191 at P 31.

[21] *See, e.g.*, *Stakeholder Midstream Crude Oil Pipeline, LLC*, 160 FERC ¶ 61,010, at P 17 (2017); *Oryx*, 154 FERC ¶ 61,065 at P 27.

[22] *E.g.*, *Medallion Pipeline Co., LLC*, 155 FERC ¶ 61,268, at P 26 (2016); *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191 at P 27.