171 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Explorer Pipeline Company | Docket No. OR20-8-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 1, 2020)

1. On February 26, 2020, Explorer Pipeline Company (Explorer) filed a petition for declaratory order (Petition) requesting approval of its terms and conditions of service related to its new transportation service (Project). We grant Explorer's petition, as discussed below.

I. Background

2. Explorer owns and operates approximately 1,830 miles of refined petroleum products pipeline that extends from the U.S. Gulf Coast to Hammond, Indiana. Explorer's system is comprised of (1) a 28-inch diameter mainline that extends from Port Arthur, Texas, to Tulsa, Oklahoma (28-inch Mainline or Mainline), (2) a 24-inch diameter mainline that extends from Tulsa, Oklahoma to Hammond, Indiana, and (3) a 10-inch diameter mainline that extends from Houston, Texas to Arlington, Texas.[1] The 28-inch Mainline also serves a 12-inch diameter delivery line that extends from Greenville, Texas to Fort Worth, Texas.[2]

3. Explorer states that demand for refined petroleum products in the Dallas, Texas area is expected to exceed the infrastructure capacity available to meet a growing demand for refined petroleum products in the Dallas, Texas area.[3] According to Explorer, the

[1] Petition at 4-5.

[2] *Id.* at 5.

[3] *Id.* at 4.

Project will help meet the growing demand by providing approximately 50,000 barrels per day (bpd) of additional refined petroleum product pipeline capacity.[4]

4. Explorer explains that the Project will involve a combination of new pipeline build and the use of existing, underutilized capacity on the 28-inch Mainline. Explorer states that the 28-inch Mainline has a capacity of 675,000 bpd, and over the past four years, approximately 35% of that capacity (i.e., 239,000 bpd) has been unutilized. The Project would combine approximately 50,000 bpd of the unutilized capacity on Explorer's 28-inch Mainline (Unutilized Capacity) with a new 12-inch diameter, 34-mile pipeline that would extend from Greenville, Texas to Melissa, Texas (Pipeline Extension) to provide transport from the U.S. Gulf Coast (Receipt Points) to a new delivery point in Melissa, Texas (Destination Point). Explorer states that the Project is the most cost-effective approach to meet the growing demand in the Dallas, Texas area.[5]

5. Explorer represents that the existing shippers on Explorer's pipeline system will not be negatively affected by the Project's use of the Unutilized Capacity because the capacity has not been used by existing shippers for an extended period. Explorer states that the Project will benefit existing shippers by alleviating capacity constraints on Explorer's existing 10-inch diameter mainline that serves the Arlington, Texas area and 12-inch diameter pipeline that serves the Fort Worth, Texas area.[6]

II. Open Season

6. Explorer held an open season from September 10, 2019 to December 4, 2019.[7] On September 10, 2019, Explorer issued a press release giving notice of the open season, which was advertised by other publications. Explorer represents it also undertook marketing efforts to inform its existing shippers of the open season, which included the issuance of a bulletin notice to all existing shippers.[8]

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

[5] *Id.* at 5.

[6] *Id.* at 6.

[7] *Id.* at 7. Explorer notes that the open season was initially scheduled to close on November 11, 2019, but was extended to December 4, 2019, in response to potential shippers' interest in the Project. *Id.* n.33.

[8] *Id.* at 7.

7. According to Explorer, all interested shippers had the right to participate in the open season after execution of a confidentiality agreement. Explorer provided interested shippers with the opportunity to provide comments on the proposed terms and conditions being offered by Explorer in the Transportation Services Agreement (TSA).[9] Explorer states that it received comments from multiple interested shippers during the open season, and those comments were incorporated into the TSA. Explorer states that by the close of the open season, Explorer determined that it had received sufficient volume commitments, including volume commitments from unaffiliated shippers, to proceed with developing the Project, and a press release announcing the successful conclusion of the open season was issued on December 19, 2019.[10]

III. TSA Rates and Terms

8. Explorer offered potential shippers a TSA allowing for a binding commitment to ship or pay for specified volumes in return for the committed shipper being eligible for priority service on the Project during periods of prorationing. The TSA further provides that, during periods in which the Project is not in prorationing, or if a committed shipper elects not to receive or does not receive priority service, the committed shipper will qualify for discounted rates as compared to the rates available to uncommitted shippers.[11] Explorer explains that the amount of the rate discount is dependent on the level of a committed shipper's volume commitment. Explorer represents that the minimum volume commitment under the TSA was 2,500 bpd.[12] Specifically, the TSA provides that, for committed shippers that elect a volume commitment between 2,500 and 5,000 bpd, the discounted committed rate would be 20 cents per barrel lower than the corresponding transportation rate for uncommitted shippers. For committed shippers that elect a volume commitment between 5,001 to 7,500 bpd, the discounted committed rate would be 35 cents per barrel lower than the corresponding uncommitted rate. For committed shippers that elect a volume commitment of 7,501 bpd or greater, the discounted committed rate would be 45 cents per barrel lower than the corresponding uncommitted rate.[13]

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[9] *Id.* at 9.

[10] *Id.*

[11] *Id.* at 7.

[12] *Id.* at 10.

[13] *Id.* at 12-13.

9. Explorer explains that premium rates that are one cent per barrel higher than the then-applicable uncommitted rates will be charged for barrels shipped by a committed shipper, up to the level of such committed shipper's volume commitment, for which the committed shipper elected to receive priority service and did receive priority service on the Project.[14] Explorer further explains that if a committed shipper elects not to receive or does not receive priority service, the committed shipper will qualify for discounted rates as compared to the rates available to a shipper that did not execute a TSA during the open season.[15]

10. According to Explorer, the rates shall be subject to adjustment in accordance with Explorer's authority to charge market-based rates, provided that the TSA includes certain upward rate adjustment limitations. The TSA provides that, upon any adjustment to the uncommitted rates, the committed rates for priority service will be adjusted so they remain one cent per barrel higher than the corresponding uncommitted rates, and the discounted committed rates for non-priority service may be adjusted to maintain the same or higher discount levels. The TSA further contemplates future adjustments to the committed rates in the event there is a change in rule or regulation that imposes additional requirements with respect to the Project and causes Explorer to incur additional expenses in excess of $2,500,000 to comply.[16]

11. Explorer states that the initial term of the TSA is seven years. After the expiration of the initial term, the TSA provides a committed shipper the option to extend its term for two successive one-year renewal terms. The TSA also provides that the parties may mutually agree to extend the TSA for successive five-year terms.[17]

12. Explorer explains that if, during the first two contract years of the TSA, a committed shipper fails to tender volumes for transportation equal to the initial two-year volume commitment, the TSA provides that the committed shipper shall pay a deficiency payment to Explorer equal to the committed shipper's initial two-year deficient barrels multiplied by the Deficiency Payment Rate.[18] Explorer states that starting with the third contract year and for each remaining contract year of the term of the TSA, the TSA provides that if a committed

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[14] *Id.* at 13.

[15] *Id.* at 10.

[16] *Id.* at 13-14.

[17] *Id.* at 15.

[18] *Id.* at 10-11. The Deficiency Payment Rate is defined as the then-effective discounted rate applicable to shipper's volume commitment tier and that applies to movement from the Pasadena-Houston Texas receipt point to the destination point.

shipper fails to tender volumes for transportation on the Project during each contract year that is at least equal to the committed shipper's annual volume commitment, the committed shipper shall pay a deficiency payment to Explorer, which shall be equal to the committed shipper's annual deficient barrels multiplied by the then applicable Deficiency Payment Rate.[19] The TSA also provides that any incremental barrels shipped by a committed shipper in excess of its monthly volume commitment (Incremental Barrels) will be credited against any deficient barrels the committed shipper otherwise incurred during the applicable period.[20]

IV. Proration Policy

13. Explorer proposes to revise its proration policy to address the allocation of capacity on the Project in the event Explorer receives more nominations for transportation service on the Project than it is able to provide. In times of prorationing, Regular Capacity[21] will be allocated first to committed shippers that elected to receive priority service, up to the level of their respective volume commitments. New Shippers[22] will be allocated up to 10% of Regular Capacity on the Project. Finally, Regular Shippers[23] will be allocated the remaining Regular Capacity based on their historical shipments over a 12-month base period. A committed shipper that does not elect to receive priority service will be treated as a Regular Shipper and will be allocated capacity based on its historical shipments on the Project during the 12-month base period. Explorer asserts that the Proration Policy provides that at least 10% of the Project's capacity will be made available to New Shippers.[24]

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[19] *Id.* at 11.

[20] *Id.*

[21] Regular Capacity is capacity available after the allocation of Bid Capacity, which is up to 10% of the capacity on the 28-inch Mainline, allocated between Regular and New Shippers according to the bid process currently set forth in Explorer's current tariff.

[22] A "New Shipper" is a shipper that does not qualify as a Regular Shipper.

[23] A "Regular Shipper" is a shipper that (1) received deliveries during the first month of the applicable base period, (2) previously has been classified as a Regular Shipper and continues to receive deliveries in any one or more months of any succeeding base period, or (3) is a Committed Shipper.

[24] *Id.* at 14-15.

V. Requested Rulings

14. Explorer requests the following rulings from the Commission:

A. The open season process was appropriately conducted by Explorer and was not unduly discriminatory or unduly preferential;

B. The TSA provisions will be upheld and will govern the transportation services Explorer provides to a committed shipper during the term of the TSA;

C. During periods of prorationing, a committed shipper may elect to receive priority service for transportation of its volume commitment in exchange for paying premium rates. Alternatively, a committed shipper may receive discounted rates as compared to the corresponding uncommitted rates for volumes transported during periods in which priority service on the Project is not elected or received by the committed shipper;

D. Explorer may offer priority service on the Unutilized Capacity that comprises a part of the Project facilities;

E. Explorer may allocate up to 90% of the total capacity available on the Project to committed shippers, while making the remaining 10% of capacity available for New Shippers, including uncommitted shippers;

F. The proration policy is reasonable and not unduly discriminatory;

G. The term of the TSA may be extended in accordance with the provisions of the TSA.

VI. Public Notice, Intervention, Protests and Comments

15. Notice of the Petition was issued on March 11, 2020, providing for motions to intervene, comments and protests to be filed on or before April 1, 2020. No adverse comments or protests were filed. The Petition is thus unopposed.

VII. Discussion

16. We grant the rulings requested by Explorer, as set forth below.

17. Explorer has appropriately demonstrated in its Petition that its open season was widely publicized and available to all interested shippers in a manner that was not unduly discriminatory or unduly preferential, and we find the open season consistent with Commission policy.[25]

18. We find that the TSA provisions will govern the transportation services Explorer provides to a committed shipper during the term of the TSA. The Commission has held on numerous occasions that the provision of a transportation agreement executed between a committed shipper and a pipeline during an open season will be honored and upheld during the term of the agreement.[26]

19. We approve Explorer's proposal to allow for either a discount rate for the committed shipper or a premium rate, depending on the shipper's election. We confirm that during periods of prorationing, a committed shipper may elect to receive priority service for transportation of its volume commitment in exchange for paying premium rates.[27] This is consistent with policy and precedent.[28] We approve the proposal that a committed shipper may receive discounted rates as compared to the corresponding uncommitted rates for volumes transported on the Project during periods in which priority service on the Project is not elected or received by the committed shipper.[29]

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[25] *See, e.g.*, *EnLink Del. Crude Pipeline, LLC*, 166 FERC ¶ 61,226, at P 17 (2019); *Medallion Pipeline Co., LLC*, 170 FERC ¶ 61,192, at P 13 (2020).

[26] *E.g.*, *Enbridge Pipelines (S. Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008) ("[T]he Commission clarifies that the agreed-upon terms of the TSA will govern the determination of the committed shippers' rates over the term of the TSA"); *NORCO Pipe Line Co., LLC*, 152 FERC ¶ 61,170, at P 15 (2015); *Belle Fourche Pipeline Co*., 151 FERC ¶ 61,139, at P 18 (2015); *CenterPoint Energy Bakken Crude Servs., LLC,* 144 FERC ¶ 61,130, at P 17 (2013).

[27] *Explorer Pipeline Co*., 140 FERC ¶ 61,098, at P 21 (2012).

[28] *See, e.g.*, *NORCO*, 152 FERC ¶ 61,170 at P 16; *Palmetto Prod. Pipe Line LLC*, 151 FERC ¶ 61,090, at P 29 (2015); *MarkWest Liberty Ethane Pipeline, L.L.C*., 145 FERC ¶ 61,287, at PP 23-24 (2013).

[29] *E.g.*, *Tallgrass Pony Express Pipeline, LLC*, 170 FERC ¶ 61,176, at P 17 (2020); *Cactus II Pipeline LLC*, 167 FERC ¶ 61,205, at P 31 (2019).

20. We grant the request to offer priority service on the Unutilized Capacity that comprises a part of the Project facilities.[30]

21. We approve Explorer's capacity allocation proposal, which provides that Explorer may allocate up to 90% of the total capacity available on the Project to committed shippers. The Commission has previously found that reserving at least 10% of a pipeline's capacity for uncommitted service is sufficient to provide reasonable access to the pipeline.[31] We find Explorer's proposed proration policy for the project is reasonable and not unduly discriminatory.[32]

22. We approve the TSA extension provisions to allow committed shippers to extend the terms of their TSAs either (1) in one-year increments, up to two years, and/or (2) by agreement of both parties, in five-year increments.[33]

<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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[30] *See, e.g.*, *Magellan Pipeline Co.,* 166 FERC ¶ 61,181, at P 37 (2019); *Wolverine Pipe Line Co.*, 153 FERC ¶ 61,109, at PP 19, 21 (2015); *Palmetto*, 151 FERC ¶ 61,090 at P 33; *Saddlehorn Pipeline Co., LLC*, 169 FERC ¶ 61,118, at P 13 (2019).

[31] *E.g.*, *BridgeTex Pipeline Co., LLC*, 167 FERC ¶ 61,251, at P 26 (2019); *Buckeye Pipe Line Transp., LLC*, 154 FERC ¶ 61,130, at P 19 (2016); *Saddlehorn*, 169 FERC ¶ 61,118 at P 11.

[32] *See, e.g.*, *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 15 (2012) (approving proration policy allocating capacity first to committed shippers, then new shippers up to 10 percent of capacity, then regular shippers based on historical shipments); *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067, at PP 25-26, 34 (2015).

[33] *E.g.*, *GT Pipeline, LLC,* 161 FERC ¶ 61,066, at P 25 (2017); *Marathon Pipe Line LLC,* 152 FERC ¶ 61,237, at P 13 (2015).