

169 FERC ¶ 61,118  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Saddlehorn Pipeline Company, LLC

Docket No. OR19-31-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued November 21, 2019)

1. On August 7, 2019, Saddlehorn Pipeline Company, LLC (Saddlehorn) filed a petition for declaratory order (Petition) requesting various rulings related to a recent expansion of its crude oil pipeline system (Saddlehorn Pipeline or Pipeline) that serves origins at multiple Rockies production regions and destinations at the mid-continent trading and storage hub at Cushing, Oklahoma. We grant the Petition as discussed below.

**Expansion Project**

2. Since 2016, Saddlehorn Pipeline has transported crude oil to Cushing from multiple Rockies production regions from two origins at Platteville and Carr, Colorado. The Pipeline's Platteville origin allows shippers to source crude oil from the Denver-Julesburg basin (D-J Basin) of the Niobrara shale formation. The Pipeline's Carr origin allows shippers to source crude oil from the Powder River and Bakken production areas. At the Cushing crude oil hub, shippers have access to many options for storage and further transportation.<sup>1</sup>

3. Saddlehorn states in its Petition that in response to market demand for additional takeaway capacity from the D-J Basin, Powder River, and Bakken production areas it is extending and expanding Saddlehorn Pipeline (Expansion Project). The Expansion Project offers shippers up to 100,000 barrels per day (bpd) of new capacity from added facilities and a significant, though unspecified, amount of additional capacity on underutilized existing capacity (together, Offered Capacity). The Expansion Project

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<sup>1</sup> Petition at 3-4.

also extends the Pipeline to a new origin at Ft. Laramie, Wyoming, using leased pipeline and storage capacity. The new Ft. Laramie origin will provide shippers with access to additional interconnections from the Powder River and Bakken production areas. The new capacity is created through the addition of pumps, valves, and drag-reducing-agent injection facilities at new and existing sites and through leased operational storage at the Carr origin.<sup>2</sup>

### **Offered Terms of Service**

4. Saddlehorn states that after preliminary discussions with shippers, it conducted an open season from July 1 through July 31, 2019, to secure shipper support for the Expansion Project. Saddlehorn states that it sought to ensure awareness of the open season among all potential shippers by undertaking extensive marketing efforts, including issuing a widely disseminated press release. Saddlehorn states that it sought to provide all interested shippers an equal opportunity to secure Offered Capacity by providing each interested shipper a formal notice summarizing proposed terms of service and, upon further expression of interest, a transportation services agreement (Expansion TSA). Saddlehorn states that more than twelve shippers requested detailed information in the open season. Through its open season, Saddlehorn offered shippers access to the Offered Capacity under the terms of the Expansion TSA whereby a shipper would commit to ship or nevertheless pay (ship or pay) for a specified volume of crude oil on the Expansion Project on a long-term basis, receiving in exchange either priority service or a discounted rate. Saddlehorn explains that the Offered Capacity includes existing capacity that has been underutilized since Saddlehorn Pipeline began operating in 2016. Saddlehorn affirms that offering this underutilized capacity in connection with the Expansion Project will not negatively affect any existing shipper.<sup>3</sup>

5. Saddlehorn explains that it developed proposed contract terms to correspond with the production profiles of interested shippers, including anticipated increases in production over the term of the commitments.<sup>4</sup> In addition, the Expansion TSA provided that shippers would choose from a menu of service tiers whereby large commitments

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<sup>2</sup> *Id.* at 5-9.

<sup>3</sup> *Id.* at 10-15.

<sup>4</sup> *Id.* at 11-16.

receive firm service at a premium rate and smaller commitments receive service at a discounted rate, as follows:<sup>5</sup>

- Tier 1 – firm service at a premium rate for a seven-year term; ramping up in stages to a minimum commitment level of 125,000 bpd;
- Tier 2 – firm service at a premium rate for a seven-year term; ramping up in stages to a minimum commitment level of 65,000 bpd, including a “Flex-Up Option” whereby within 30 days of the close of the open season the shipper may increase its commitment to a maximum of 110,000 bpd;
- Tier 3 – discounted service for a 71-month term; at a fixed minimum commitment level of 20,000 bpd;
- Tier 4 – discounted service for a 71-month term; at a fixed minimum commitment level of 10,000 bpd.

6. Saddlehorn states that it currently has three prorationing policies, each corresponding to a different segment of its system, that apply in the event nominations exceed the capacity of the Saddlehorn Pipeline in any given month: (i) Laramie County Central Delivery Point, Laramie County, Wyoming to Cheyenne Junction, Wyoming; (ii) Cheyenne Junction, Wyoming to Platteville, Colorado; and (iii) Platteville, Colorado to Cushing, Oklahoma. Saddlehorn proposes to establish a fourth prorationing policy to apply to the new service offered from Ft. Laramie to Cheyenne Junction. Additionally, Saddlehorn proposes to make limited modifications to update two of the existing three prorationing policies to reflect the terms of the Expansion TSAs. Saddlehorn states that the new prorationing policy for Ft. Laramie to Cheyenne Junction will be consistent with the three existing prorationing policies where new shippers will be allocated up to 10 percent of the total capacity of the Saddlehorn pipeline facilities and regular shippers will be allocated capacity during periods when nominations exceed the Pipeline’s capacity, based on an historical prorationing model, using the average historical shipments of each shipper on a rolling 12-month basis. Saddlehorn notes that neither the new nor existing prorationing policies will preclude uncommitted shippers from obtaining capacity on the pipeline in the event prorationing is necessary, and no existing shippers will be harmed by the Expansion Project or the modifications to the prorationing rules.

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<sup>5</sup> Rate premiums and discounts in Saddlehorn’s proposed rate structure are established with respect to the uncommitted rate for the corresponding volume level.

**Requested Rulings**

7. Saddlehorn requests various regulatory assurances through its Petition whereby the Commission would confirm that the overall rate structure and terms of service offered to interested shippers in Saddlehorn's July 2019 open season are consistent with Commission policy and precedent under the Interstate Commerce Act<sup>6</sup> (ICA).<sup>7</sup> Saddlehorn requests the following specific rulings and argues that each is supported by Commission precedent involving rates and terms of service for liquids pipelines under circumstances similar to its own:<sup>8</sup>

- a. Saddlehorn requests that the Expansion TSAs will be honored, and their key provisions will govern the transportation services on Saddlehorn Pipeline for Expansion Committed Shippers during the term of the Expansion TSA;
- b. Saddlehorn may allocate up to 90 percent of the Saddlehorn Expansion Facilities capacity to Expansion Committed Shippers, provided that at least 10 percent of the expansion capacity is reserved for uncommitted shippers;
- c. Saddlehorn may implement a rate structure pursuant to which Expansion Committed Shippers obtain firm service not subject to prorationing at premium rates that are one cent above the uncommitted rates for the same volume level, or discounted volume incentive rates for non-firm service subject to prorationing, that vary based on volume, term length, and origin;
- d. Saddlehorn may use underutilized capacity on the Existing Saddlehorn Facilities together with new expansion capacity and a new and/or underutilized leased capacity to provide firm and non-firm transportation service pursuant to the terms of the Expansion TSAs;
- e. Tier 2 Expansion Committed Shippers may exercise the "Flex-up Option" for 30 days after the close of the Expansion Open Season to increase their volume commitments;

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<sup>6</sup> 49 U.S.C. app. § 1 *et seq.* (1988).

<sup>7</sup> Petition at 18-19.

<sup>8</sup> *Id.* at 17-34.

- f. The volume commitments of the Tier 1 and Tier 2 Expansion Committed Shippers may ramp up over time;
- g. Saddlehorn may escalate the Expansion Committed Shipper rates as set forth in the Expansion TSAs;
- h. The Expansion Committed Shipper rates may be adjusted or a surcharge may be imposed in the future due to a qualifying “Change in Law;”
- i. Adjustments to the committed rates provided for in the Expansion TSAs will be treated as settlement rates pursuant to section 342.4(c) of the Commission’s regulations and the “verified statement” required will be waived;
- j. An Expansion Committed Shipper may extend the term of its Expansion TSA for two periods of up to two years each;
- k. Saddlehorn may add additional origin points and destination points on the Saddlehorn Expansion Facilities, all of which will be governed by the Expansion TSAs;
- l. Saddlehorn or the Expansion Committed Shippers may assign the Expansion TSAs under the terms provided in the Expansion TSAs;
- m. Saddlehorn may modify the prorationing policies on the Existing Saddlehorn Facilities and adopt the new Ft. Laramie to Cheyenne Junction prorationing policy as described in the Petition;
- n. The regulatory assurances provided by the Commission in the 2015 Declaratory Order<sup>9</sup> and the 2016 Declaratory Order<sup>10</sup> are not affected by the Saddlehorn Expansion Project, the Expansion Open Season, the Expansion TSAs, or the Prorationing Policy.

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<sup>9</sup> *Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067 (2015) (*Saddlehorn 2015*).

<sup>10</sup> *Saddlehorn Pipeline Co., LLC*, 155 FERC ¶ 61,225 (2016) (*Saddlehorn 2016*).

### **Public Notice and Response**

8. Notice of the Petition was issued on August 13, 2019, providing for motions to intervene, comments, and protests to be filed on or before September 6, 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 are granted.<sup>11</sup> No motions to intervene, comments, or protests have been filed; the Petition is thus unopposed.

### **Commission Determinations**

9. Based upon the representations in the Petition, we grant the rulings requested by Saddlehorn as discussed below.

10. Saddlehorn has appropriately demonstrated in its Petition that through its July 2019 open season Saddlehorn made the Offered Capacity available to all interested shippers in a manner that was neither unduly discriminatory nor unduly preferential to any party. We therefore find that the provisions of the Expansion TSAs reflect terms of service appropriately offered to all interested parties. We affirm that the provisions of the Expansion TSAs as set forth in the Petition will be upheld and will govern the transportation services of committed shippers during their term, consistent with prior Commission orders.<sup>12</sup>

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<sup>11</sup> 18 C.F.R. § 385.214 (2019).

<sup>12</sup> *Enbridge Pipelines (S. Lights) LLC*, 122 FERC ¶ 61,170, at P 13 (2008) (“the 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”); *Enbridge Energy (N.D.) LLC*, 133 FERC ¶ 61,167, at P 40 (2010) (finding that priority service offered at a premium rate “appropriately distinguishes committed and uncommitted shippers and provides for rates consistent with the obligations of each class of shipper.”). See also *Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087, at P 19 (2011); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 23 (2012) (*Pony Express*); *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); *Palmetto Prod. Pipe Line LLC*, 151 FERC ¶ 61,090, at P 29 (2015) (*Palmetto*); *Seaway Crude Pipeline Company LLC*, 146 FERC ¶ 61,151, at P 20 (2014); *CenterPoint Energy Bakken Crude Servs., LLC*, 144 FERC ¶ 61,130, at P 17 (2013).

11. We confirm that Saddlehorn may offer for committed-rate service up to 90 percent of the new pipeline capacity created by the Expansion Project. The Commission has previously found that reserving at least 10 percent of a pipeline's capacity for uncommitted service is sufficient to provide reasonable access to the pipeline.<sup>13</sup>
12. We approve the proposed rate structure set forth in the tiers that Saddlehorn offered to interested shippers. The Commission has previously approved rate structures that include committed rates offered at a volume discount,<sup>14</sup> and rate levels that vary according to the level, term, and route of the volume commitments.<sup>15</sup> Additionally, we confirm Saddlehorn's request to implement a rate structure where committed shippers obtaining firm service pay a premium rate as consistent with Commission policy.<sup>16</sup> 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 in an open season.<sup>17</sup>
13. We approve Saddlehorn's offer in its July 2019 open season of providing existing capacity that has been historically underutilized together with new expansion capacity.

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<sup>13</sup> *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); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6, 15 (2011) (*Sunoco*).

<sup>14</sup> *Saddlehorn 2015*, 153 FERC ¶ 61,067, at PP 10, 35; *Shell Pipeline Co.*, 141 FERC ¶ 61,017, at P 5 (2012) (*Westward Ho*).

<sup>15</sup> *Westward Ho*, 141 FERC ¶ 61,017 at PP 5, 11, 14; *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at PP 16, 20 (2012) (*Shell Ho Ho*).

<sup>16</sup> *NORCO*, 152 FERC ¶ 61,170 at P 16; *Shell Ho Ho*, 139 FERC ¶ 61,228 at PP 16, 21; *CenterPoint*, 144 FERC ¶ 61,130 at P 26.

<sup>17</sup> *Oasis Midstream Servs. LLC*, 156 FERC ¶ 61,083, at P 15 (2016); *Platte River Midstream, Inc.*, 155 FERC ¶ 61,107, at P 13 (2016); *CenterPoint*, 144 FERC ¶ 61,130 at P 27; *EnLink Crude Pipeline, LLC*, 157 FERC ¶ 61,120, at P 15 (2016); *Sunoco*, 137 FERC ¶ 61,107 at PP 11, 15.

The Commission has previously approved contracting arrangements on underutilized existing capacity where there is no negative impact on existing shippers.<sup>18</sup>

14. We approve Saddlehorn's offer to allow shippers to exercise a "Flex-up Option" and increase their committed volume levels after the close of the open season. We find this consistent with Commission policy.<sup>19</sup>

15. We approve Saddlehorn's proposal to make offered capacity become available incrementally, either phased or ramped up, as consistent with Commission policy.<sup>20</sup>

16. We find Saddlehorn's proposal to include an annual rate escalation agreed upon by committed shippers as part of the terms of the Expansion TSA consistent with Commission policy.<sup>21</sup>

17. We confirm Saddlehorn may make additional rate adjustments should a qualifying change in law occur consistent with Commission policy.<sup>22</sup>

18. We confirm that rate adjustments pursuant to the Expansion TSAs are settlement rate adjustments—they have been agreed to in writing by each committed shipper as required by section 342.4(c) of the Commission's regulations.<sup>23</sup> We grant Saddlehorn's

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<sup>18</sup> *EPIC Crude Pipeline, LP*, 167 FERC ¶ 61,026, at 23 (2019); *Magellan Pipeline Co.*, 166 FERC ¶ 61,181, at P 37 (2019); *Wolverine Pipe Line Co.*, 153 FERC ¶ 61,109, at P 19 (2015); *Palmetto*, 151 FERC ¶ 61,090 at P 33.

<sup>19</sup> *Oryx So. Del. Oil Gathering and Transp. LLC*, 154 FERC ¶ 61,065, at P 21 (2016); *EPIC*, 167 FERC ¶ 61,026 at PP 11, 22-23.

<sup>20</sup> *Medallion Pipeline Co. LLC*, 167 FERC ¶ 61,265, at P 29 (2019); *Tesoro High Plains Pipeline Co LLC*, 148 FERC ¶ 61,160, at P 29 (2014); *Pony Express*, 141 FERC ¶ 61,180 at P 62.

<sup>21</sup> *Bayou Bridge Pipeline LLC*, 153 FERC ¶ 61,322, at P 28 (2015); *Saddlehorn 2015*, 153 FERC ¶ 61,067 at P 34; *CenterPoint*, 144 FERC ¶ 61,130 at PP 21-22.

<sup>22</sup> *Magellan*, 166 FERC ¶ 61,181 at P 40; *Stakeholder Midstream Crude Oil Pipeline, LLC*, 160 FERC ¶ 61,010, at P 17 (2017).

<sup>23</sup> 18 C.F.R. § 342.4(c) (2019). Saddlehorn makes no request regarding the filing of initial rates. Saddlehorn has already filed initial committed and uncommitted rates described in the Petition. The filing was made August 12, 2019, in Docket No. IS19-738-000 pursuant to a sworn affidavit that the rates had been "agreed to by at least one non-affiliated person who intends to use the service in question" consistent with section



request for waiver of the otherwise-required verified statement under that section because the Petition serves the same purpose and covers the entire term of the Expansion TSAs.

19. We confirm Saddlehorn may allow a committed shipper to extend the term of the Expansion TSA for two periods of up to two years each as consistent with Commission policy.<sup>24</sup>

20. We find that Saddlehorn may add additional origin and destination points that would be covered by the TSAs, consistent with Commission policy.<sup>25</sup>

21. We confirm that Saddlehorn may allow contracting parties to assign their rights as provided for by contract terms as consistent with Commission policy.<sup>26</sup>

22. We confirm the appropriateness of Saddlehorn's proposal to revise its prorationing policy on existing capacity and to adopt a new policy for the leased Ft. Laramie to Cheyene Junction segment in connection with the Expansion Project and Expansion TSAs.<sup>27</sup>

23. We find that the regulatory assurances provided in the 2015 Declaratory Order<sup>28</sup> and the 2016 Declaratory Order<sup>29</sup> issued for Saddlehorn are not affected by the circumstances surrounding the Expansion Project.<sup>30</sup>

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342.2(b) of the Commission's regulations. Saddlehorn's initial rates in Tariff Nos. 2.8.0 and 10.0.0 became effective on September 1, 2019.

<sup>24</sup> *GT Pipeline, LLC*, 161 FERC ¶ 61,066, at P 25 (2017); *Marathon Pipe Line LLC*, 152 FERC ¶ 61,237, at P 13 (2015); *Medallion Pipeline Co., LLC*, 148 FERC ¶ 61,095, at PP 7, 18 (2014).

<sup>25</sup> *Saddlehorn 2015*, 153 FERC ¶ 61,067 at P 37; *Sunoco Pipeline L.P.*, 149 FERC ¶ 61,191, at P 27 (2014).

<sup>26</sup> *Saddlehorn 2015*, 153 FERC ¶ 61,067 at P 34; *Westward Ho*, 141 FERC ¶ 61,017 at P 16; *NuStar Crude Oil Pipeline L.P.*, 146 FERC ¶ 61,146, at P 14 (2014).

<sup>27</sup> Petition at 32-33.

<sup>28</sup> *Saddlehorn 2015*, 153 FERC ¶ 61,067.

<sup>29</sup> *Saddlehorn 2016*, 155 FERC ¶ 61,225.

<sup>30</sup> Petition at 18.

The Commission orders:

The Petition is granted as discussed in this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.