152 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

NORCO Pipe Line Company, LLC — Docket No. OR15-27-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 31, 2015)

1. On June 1, 2015, and as supplemented June 12, 2015,[1] NORCO Pipe Line Company, LLC (NORCO) filed a petition for declaratory order (Petition) requesting approval of committed shipper rates and the overall tariff rate structure and terms of service, in connection with new and reconfigured interstate common carrier pipeline facilities to transport petroleum products from Indiana to Illinois (the Pipeline).

2. NORCO requests Commission action on the Petition no later than August 31, 2015 to provide shippers with certainty of service as soon as possible. The Commission grants the rulings requested by NORCO, as discussed below.

<u>Background</u>

3. The Pipeline will provide transport for specific grades of reformulated regular gasoline blendstock and ultra-low sulfur diesel (the Products) from the east side of the Chicago market (which is located in northwest Indiana) to the west side of the Chicago market (which is located in northeastern Illinois), where shipping is currently constrained.[2] The Pipeline will be capable of transporting approximately 18,000 barrels

[1] The June 12, 2015 supplement consisted of an update to the affidavit of Marc L. Davidson, and certain revisions for the sake of accuracy to language at pages 5 and 26 of the Petition.

[2] Petition at 3.

per day ("bpd") of Products, including 10,000 bpd of newly created capacity and 8,000 bpd of reconfigured currently unused capacity.[3]

4. Developing the Pipeline would involve entering into a capacity lease with NORCO affiliate Wood River Pipe Lines LLC ("Wood River") for leased capacity ("Leased Capacity"). NORCO would then construct, or reimburse Wood River for constructing, an additional pump on Wood River's pipeline system and an upgrade to a separate, existing pump on Wood River's system.[4] The estimated cost for these upgrades is $9,500,000.[5]

5. To finance the Pipeline, NORCO held a well-publicized open season between March 18, 2015 and April 30, 2015. NORCO sought long-term volume commitments by shippers (Committed Shippers) willing to execute a transportation services agreement (TSA). During the open season, NORCO made open season materials and other information available to all interested shippers. At the close of the open season, NORCO concluded that the level of volume commitments it had received from Committed Shippers was sufficient to support development of the Pipeline.[6]

Terms of the Project

6. NORCO states that under the terms of the TSA, Committed Shippers were required to commit to ship specified volumes for a term of between 1 and 5 years, subject to automatic 1 year renewals unless cancelled by one of the parties.[7] The rates are volume specific, but in each case at least $0.01 per barrel higher than the rates payed by Uncommitted Shippers, as defined in the TSA, shipping comparable volumes.[8]

7. Up to 90 percent of the total capacity was made available to Committed Shippers in the open season, while 10 percent was reserved for Uncommitted Shippers. Following

[3] *Id.* at 4-5, as supplemented.

[4] *Id.*

[5] *Id*. at 5.

[6] *Id*. at 6-8.

[7] *Id.* at 14.

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

the open season, the Pipeline had sufficient capacity to meet subscriptions from all Committed Shippers and did not need to allocate capacity among Committed Shippers.[9]

8. Each Committed Shipper agrees to ship an amount equal to their volume commitment ("Volume Commitment"). Additionally, they would be required to have a monthly volume commitment ("Monthly Volume Commitment") equal to the percentage of Volume Commitment represented in the number of days of a given month.

9. NORCO states that the TSA permits a Committed Shipper to nominate barrels ("Priority Incremental Barrels") for shipment in a given month in excess of its Monthly Volume Commitment, so long as (1) it does not reduce the ability of additional Committed Shippers from receiving their committed volumes and (2) 10 percent of capacity is still available to Uncommitted Shippers.[10]

10. Under the Proration Policy, as set forth in the TSA, the Non-Priority Capacity, as defined in the TSA, if oversubscribed, would be allocated providing 90 percent first to Regular Shippers, as defined in the TSA, then the remaining 10 percent to New Shippers, as defined in the TSA. The TSA and lease with Wood River also provides that NORCO may lease any unused portion of the Leased Capacity back to Wood River each month in accordance with the terms of the lease and the TSA.

11. Committed Shippers are required to make deficiency payments where their Actual Firm Transportation Charges are below the Annual Firm Transportation Charge, as defined in the TSA.[11]

<u>Requested Rulings</u>

12. NORCO requests a declaratory order confirming the following:

A. The TSA will be honored and its provisions will be upheld and will govern the transportation services the Pipeline provides to a Committed Shipper during the term of the TSA.

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[9] *Id.* at 10.

[10] *Id.*

[11] *Id.*

B. A Committed Shipper may receive firm transportation service on the Pipeline in exchange for paying a premium rate for such transportation, as compared to the rate applicable to a similarly-situated Uncommitted Shipper.

C. NORCO may transport Committed Shippers' Priority Incremental Barrels on a priority basis, at the Committed Rates, provided that the transportation of such barrels does not reduce the amount of capacity reserved for Uncommitted Shippers.

D. NORCO may use the Leased Capacity to provide firm transportation services, pursuant to the terms of the TSA.

E. NORCO may allocate up to 90 percent of the total capacity available on the Pipeline to Committed Shippers, while reserving the remaining 10 percent of capacity for Uncommitted Shippers.

F. The Proration Policy, as set forth in the TSA, is reasonable and will govern the allocation of capacity on the Pipeline during months when the Pipeline is in prorationing.

G. NORCO may file, at its election, the Committed Rates as settlement rates during the term of the TSA.

H. NORCO may lease any unused portion of the Leased Capacity back to Wood River each month in accordance with the terms of the lease and the TSA.

I. NORCO may implement automatic extensions of the Initial Term of the TSA in accordance with the provisions of the TSA.

<u>Public Notice, Interventions, Protests, and Comments</u>

13. Notice of the Petition was issued on June 9, 2015, providing for motions to intervene, comments and protests to be filed on or before July 2, 2015. Pursuant to Rule 214 of the Commission's regulations,[12] 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.

[12] 18 C.F.R. § 385.214 (2015).

Commission Analysis

14. The Commission will grant the rulings requested in the Petition. Granting these rulings will provide the regulatory certainty required for the Pipeline to proceed, while providing a needed outlet for the Products to move from the east side of the Chicago market to the west side of the Chicago market.

15. The Commission grants the requested ruling to honor and uphold the TSA governing the transportation services. The Commission has previously approved the terms of the agreements executed between Committed Shippers and pipelines for volume commitments entered into during an open season and confirmed those terms would be applied during the established agreement.[13]

16. The Commission approves NORCO's proposal to offer priority service at a premium rate over the uncommitted rate, as discussed in the Petition. The Commission has held priority service permissible under the Interstate Commerce Act provided Committed Shippers pay a premium over Uncommitted Shippers, and the committed rates and priority service options were offered during an open season.[14]

17. The Commission approves NORCO's proposal to transport Priority Incremental Barrels pursuant to the terms of the TSA. The Commission has previously approved the terms of the agreements executed between Committed Shippers and pipelines related shipment of incremental barrels on similar terms.[15]

18. The Commission approves NORCO's usage of Leased Capacity to provide firm transportation services, pursuant to the terms of the TSA. The Commission has

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[13] *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180, at P 23 (2012); *Enbridge Pipelines (Southern 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[.]").

[14] *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at P 21 (2012).

[15] *Centerpoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 8, 17 (2013).

previously approved similar terms where expansion capacity is made available similar to the new capacity made available here.[16]

19. NORCO's reservation of 10 percent of the overall capacity for Uncommitted Shippers is appropriate. The Commission finds the amount of capacity set aside ensures sufficient access to the Pipeline for shippers who did not enter into term agreements.

20. The Commission approves NORCO's Proration Policy. This policy is similar to others the Commission has approved in the past[17] and provides sufficient access for existing and new shippers who did not enter into term agreements.

21. The Commission grants the request permitting NORCO to file Committed Shipper rates as settlement rates during the term of the TSA. Although the Commission's regulations do not provide specifically for negotiated initial rates with agreed-to future rate changes, the Commission has ruled that such contracts are consistent with the spirit of section 342.4(c) of the Commission's regulations.[18]

22. The Commission finds NORCO may lease any unused portion of the Leased Capacity back to Wood River each month in accordance with the terms of the lease and the TSA as described in the Petition. The Commission has approved similar terms in the past[19] to allow efficient use of capacity that would otherwise be idle.

23. The Commission approves the contract extension rights. The Commission has approved similar contract extension/rollover rights in prior declaratory orders addressing new pipeline capacity.[20]

24. Based upon the circumstances described in the Petition and the representations made therein, the Commission finds that NORCO 's proposed rate structure and terms

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[16] *CCPS Transportation, LLC*, 122 FERC ¶ 61,123, at P 15 (2008) (Expansion permissible so long as at least 10 percent of capacity is set aside for uncommitted shippers).

[17] *See id*.

[18] *Seaway Crude Pipeline Co. LLC,* 142 FERC ¶ 61,201, at P 12 (2013).

[19] *Palmetto Products Pipe Line LLC,* 151 FERC ¶ 61,090, at P 34 (2015).

[20] *Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC*, 141 FERC ¶ 61,249, at P 39 (2012).

and conditions of service as described in the Petition as contained in the TSA are just and reasonable, and do not result in undue discrimination or undue preference. Accordingly, the Commission grants the rulings sought in NORCO's Petition.

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.

Document Content(s)