146 FERC ¶ 61,182
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Crosstex NGL Pipeline, L.P. Docket No. OR14-11-000

DECLARATORY ORDER

(Issued March 14, 2014)

1. On December 13, 2013, Crosstex NGL Pipeline, L.P. (Crosstex) filed a Petition for Declaratory Order (Petition). Crosstex seeks approval of the overall tariff and rate structure for a new interstate pipeline that will transport natural gas liquids (NGL) from the vicinity of Mont Belvieu, Texas (Mont Belvieu), to various NGL fractionation facilities in Acadia, Ascension, and Iberville Parishes, Louisiana (Project). Crosstex requests Commission approval of its proposal by March 14, 2014.

2. As discussed below, the Commission grants the requested rulings.

Summary of Proposal

3. Crosstex states that the Project requires two phases of construction. According to Crosstex, during approximately the first year of operation, the Project will provide interim transportation service from Mont Belvieu to Acadia and Ascension Parishes, Louisiana (Initial NGL Pipeline), with an approximate maximum capacity of 77,000 barrels per day (bpd). Crosstex further states that following approximately the first year of operations, the Project will provide transportation service from Mont Belvieu to fractionation facilities in Acadia and Iberville Parishes (Expansion NGL Pipeline), with approximately 132,000 bpd maximum capacity. Crosstex explains that the purpose of the Initial NGL Pipeline is to provide transportation service to the Acadia Parish (Acadia) delivery point and interim service to the Ascension Parish (Ascension) delivery point pending completion of the facilities necessary for the Project to make NGL deliveries to the Iberville Parish (Iberville) delivery point on the Expansion NGL

Pipeline.[1] Crosstex anticipates that the Project will be fully operational by the second half of 2014 and that the total cost of the Project will be approximately $750 million.

4. Crosstex emphasizes that the Project will provide a much needed additional outlet for unfractionated NGLs produced from the rapidly developing natural gas fields of the Permian Basin, Eagle Ford Shale, Barnett Shale, and surrounding areas. Crosstex points out that the production of NGLs in the U.S. reached record highs in recent years and additional natural gas production may be curtailed in the next few years unless fractionation capacity is increased.

5. Crosstex states that the significant investment required to construct the Project depends on support from shippers that are willing to make long-term volume and ship-or-pay commitments by executing a Transportation Service Agreement (TSA). Crosstex further states that it conducted a widely-publicized open season from May 24, 2013, through June 21, 2013 (Open Season) seeking such commitments and providing potential shippers the pro forma TSA, which contained proposed committed and uncommitted rates, as well as the applicable rules and regulations.[2] Crosstex reports that by the close of the Open Season, it had received sufficient volume commitments to allow it to proceed with the Project.

6. Crosstex explains that as a result of the Open Season, it entered into a number of TSAs with shippers (Committed Shippers). According to Crosstex, other shippers (Uncommitted Shippers) chose not to make the commitments undertaken by the Committed Shippers. Crosstex further explains that each Committed Shipper made an aggregate monthly minimum volume commitment (Committed Volume) for a primary term of 10 years, which the Committed Shipper may meet by shipments to any of the delivery points on the system. Crosstex emphasizes that the Project design allows Committed Shippers the flexibility to choose the level of volumes to be shipped to specific destinations rather than locking them into deliveries of specific volumes to specific fractionators for the term of their TSAs. Additionally, Crosstex states that because a shipper may split its volumes in that manner and because there are different

[1] Crosstex states that the Ascension and Iberville delivery points are collectively referred to as the Downstream Delivery Points.

[2] Crosstex states that it filed FERC No. 1.0.0 in Docket No. IS13-470-000 to establish the rules, regulations, and rates for the Initial NGL Pipeline. Crosstex further states that the tariff became effective on August 1, 2013, and that the Initial NGL Pipeline currently is operational.

rates associated with each delivery point, Crosstex developed a mechanism for calculating the rate to be used for shortfall calculation purposes (Shortfall Rate).[3]

7. According to Crosstex, the first approach to calculating a shortfall payment will apply when it has less than three consecutive months of a Committed Shipper's data available. In that case, Crosstex states that it will calculate the Shortfall Rate by using the average rate for the Initial NGL Pipeline delivery points or the Expansion NGL Pipeline delivery points, as applicable, without reference to the volume of deliveries by the Committed Shipper to any particular delivery point.

8. Crosstex further states that the second approach will apply when it has three consecutive months of the Committed Shipper's shipment data that it can use to identify that shipper's proportional use of the available delivery points. In such a case, continues Crosstex, it will calculate the Shortfall Rate by multiplying the weighted average of the transportation rates actually paid by that shipper during the three-month period by the number of barrels it failed to ship during the relevant month.

9. Crosstex states that during the Open Season, it offered up to 90 percent of the total capacity available on the Project for volume commitments of the Committed Shippers, with the remaining 10 percent of available capacity reserved for Uncommitted Shippers. Crosstex points out that all shippers generally are subject to the same rules and regulations, except for the Committed Shippers' obligation to make shortfall payments in certain situations and the prorationing policy applicable to the Committed Shippers.

10. In addition, Crosstex states that it proposed an Open Season subscription allocation process to be applied if it received binding volume commitments from Committed Shippers in excess of the 90 percent of capacity made available to those shippers. Should that be necessary, Crosstex proposed to allocate Open Season subscriptions to Committed Shippers based on the net present value (NPV) methodology. According to Crosstex, under that methodology, it would award capacity to Committed Shippers from the highest NPV to the lowest NPV based on the submitted binding volume commitments from each Committed Shipper. Crosstex further explains that if two or more Committed Shippers had the same NPV, and there was insufficient capacity to meet their capacity requests, it would award those shippers the lower of their subscription volume or their pro rata share of the remaining available capacity.

[3] Crosstex describes in detail its methodology for calculating the Shortfall Rate. Crosstex NGL Pipeline, L.P. December 13, 2013 Petition for Declaratory Order at 8.

11. Crosstex explains that under normal operating conditions, Committed Shippers generally will not be subject to prorationing for their collective Committed Volumes for up to 90 percent of the Project's capacity, while the remaining 10 percent of capacity reserved for Uncommitted Shippers will be allocated among those shippers on a pro rata basis according to each Uncommitted Shipper's nomination for the proration month. However, Crosstex points out that in limited circumstances, such as *force majeure* or other events that reduce capacity, the Committed Volumes may be subject to prorationing as well. Moreover, continues Crosstex, Committed Volumes may be prorated during interim service on the Initial NGL Pipeline and thereafter because of the Project's design, which includes varying pipeline capacities between Acadia and the Downstream Delivery Points that may prevent Committed Shippers from shipping all of their Committed Volumes to the most distant delivery point(s) on the Project. However, Crosstex emphasizes that potential shippers made it clear during the Open Season that they intended to ship the majority of their nominated volumes to Acadia, which will leave sufficient capacity available to transport remaining volumes to the Downstream Delivery Points.

12. Crosstex proposes to charge different rates for Committed Shippers and Uncommitted Shippers, with the rates applicable to Committed Shippers being at a premium (at least $0.01 per barrel) relative to the rates to be charged Uncommitted Shippers. Crosstex asserts that this rate structure is consistent with Commission precedent because the Committed Shippers will receive priority service and will not be subject to prorationing during normal pipeline operations, except for certain situations, as described above. Crosstex also points out that it will have the right to adjust the Committed Rates to reflect inflation adjustments, but that no such adjustment will exceed the annual inflation adjustment permitted by the Commission. Additionally, Crosstex proposes to file the Committed Rates as settlement rates pursuant to section 342.4(c) of the Commission's regulations.[4]

<u>Rulings Sought by Crosstex</u>

13. Crosstex seeks confirmation and approval of the following elements of the Project:

a. The provisions of the TSA will be upheld and will govern the transportation services that Crosstex provides to Committed Shippers during the term of their TSAs.

[4] 18 C.F.R. § 342.4(c) (2013).

b. At its election, Crosstex may file the Committed Rates as settlement rates pursuant to section 342.4(c) of the Commission's regulations.[5]

c. During the Open Season, Crosstex appropriately offered up to 90 percent of the total available Project capacity for volume commitments by Committed Shippers, with the remaining 10 percent of the Project's total available capacity reserved for Uncommitted Shippers.

d. Crosstex appropriately proposed in its Open Season to use an NPV subscription allocation process to allocate capacity to Committed Shippers should the total volume commitments received during the Open Season exceed the capacity available for such commitments.

e. Crosstex may provide priority transportation service to Committed Shippers on up to 90 percent of the total available Project capacity at a premium rate relative to the rates applicable to Uncommitted Shippers for the same transportation service.

f. Crosstex may implement its proposed mechanism for calculating shortfall payments owed by Committed Shippers that fail to ship their Committed Volumes in any given month.

g. Crosstex may implement its prorationing policy for Committed and Uncommitted Shippers.

Crosstex's Arguments

14. Crosstex asserts that Commission precedent supports its request to obtain the regulatory assurances it seeks. Crosstex cites *Express Pipeline Partnership*, in which the Commission stated as follows:

> [I]t is better to address these issues [rate structure and validity of proposed rates] in advance of an actual tariff filing than to defer until the rate filing is made, when the decisionmaking process would be constrained by the deadlines inherent in the statutory filing procedures. The public interest is better served by a review of the issues presented before a filing to put the rates into effect.[6]

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[5] Crosstex states that it filed a cost of service to support rates for interim service on the Initial NGL Pipeline.

[6] *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,253 (1996).

Crosstex further states that on rehearing, the Commission added that "issuing a declaratory order [is] procedurally appropriate for a new pipeline entrant . . . because [the pipeline] needs to acquire and guarantee financing in order to begin construction."[7] Crosstex also cites *Colonial Pipeline Co*., in which the Commission stated that "in certain instances, it is useful to remove uncertainty regarding rate methodology issues prior to construction of a project and prior to the filing of proposed rates because the assurances facilitate financing and other investment decisions."[8]

15. Crosstex contends that the key provisions of the pro forma TSA are consistent with Commission policy.[9] Additionally, Crosstex asserts that its proposal to file the Committed Rates, at its election, as settlement rates during the term of the TSA pursuant to section 342.4(c) of the Commission's regulations is consistent with Commission precedent.[10] Crosstex cites the Commission's statement in *CenterPoint* that while "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."[11]

16. Crosstex maintains that the factual circumstances of its request here mirror those underlying the *Pony Express* and *CenterPoint* decisions. Crosstex cites its well-

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[7] Crosstex cites *Express Pipeline Partnership*, 77 FERC ¶ 61,188, at 61,755 (1996).

[8] *Colonial Pipeline Co.*, 116 FERC ¶ 61,078, at P 45 (2006). *See also Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 32 (2007); *Sunoco Pipeline L.P*., 137 FERC ¶ 61,107, at PP 14-15 (2011); *Mid-America Pipeline Co*., LLC, 136 FERC ¶ 61,087, at P 18 (2011) (*Mid-America*); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *Plantation Pipe Line Co*., 98 FERC ¶ 61,219 (2002); *Seaway Crude Pipeline Co. LLC*, 139 FERC ¶ 61,109, at P 25 (2012).

[9] Crosstex cites *Mid-America Pipeline Co*., 136 FERC ¶ 61,087, at P 9 (2011); *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at PP 22-23 (2012) (*Pony Express*); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130 (2013) (*CenterPoint*).

[10] Crosstex cites *Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18 (2013).

[11] *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 18 (2013). *See also Seaway Crude Pipeline Co. LLC*, 142 FERC ¶ 61,201, at P 12 (2013).

publicized Open Season that gave interested shippers notice and the opportunity to sign TSAs. Crosstex emphasizes that these shippers are sophisticated parties that are capable of fully understanding the terms of the pro forma TSA.

17. Crosstex next contends that its proposed reservation of 90 percent of the Project's capacity for Committed Shippers and the remaining 10 percent of the Project's capacity for Uncommitted Shippers is consistent with Commission precedent. Crosstex points out that the Commission has not established a minimum percent of capacity that must be set aside for shippers that do not make long-term financial commitments to ship on a pipeline.[12] However, continues Crosstex, the Commission has found repeatedly that the reservation of 10 percent of the pipeline's capacity is sufficient to afford those shippers reasonable access to the pipeline.[13]

18. Likewise, continues Crosstex, Commission precedent also supports its use of an NPV Open Season subscription allocation process for Committed Shippers.[14] Crosstex reiterates that this process would apply if it received volume commitments from Committed Shippers that exceeded the amount of capacity available to those shippers. Crosstex points out that the Commission approved an NPV methodology in *Shell Pipeline Co.*, stating as follows:

> The Commission finds that such an [NPV] allocation methodology is . . . appropriate for allocating capacity in the event of oversubscription during an oil pipeline open season. Here, all potential shippers had notice of the use of the NPV methodology . . . . There is no issue of discrimination because all shippers had the ability to determine how their contracts would be structured based on volume and term, and knew in advance what the

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[12] Crosstex cites *CCPS Transportation, LLC*, 122 FERC ¶ 61,123, at P 14 (2008).

[13] Crosstex cites *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 24 (2013); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at PP 6-15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 17 n.33 (2007); *Enbridge (U.S.) Inc.*, 124 FERC ¶ 61,199, at P 35 (2008); *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 19 (2012); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010).

[14] Crosstex cites *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 8 (2012).

> impact of the contract term would be for the purpose of evaluating their bid.[15]

Crosstex adds that the Commission also found in that case that the NPV approach would ensure full utilization of the pipeline's capacity by shippers that value it the most and make the greatest financial contribution to the pipeline.

19. Crosstex further asserts that its proposed priority service for Committed Shippers is consistent with Commission precedent. Crosstex emphasizes that in exchange for the priority service, Committed Shippers will be required to ship or pay for their Committed Volumes each month during the terms of their TSAs. Additionally, Crosstex points out that Committed Shippers will pay a higher rate for the transportation service than will the Uncommitted Shippers.

20. Crosstex maintains that the Interstate Commerce Act (ICA) does not specifically address the issue of priority contract service; however the relevant ICA provisions consist of broad delegations of authority to the Commission to determine what pipeline practices are reasonable and not unduly discriminatory or preferential. Crosstex cites the pipelines' obligations to furnish transportation upon reasonable request and to refrain from causing any undue or unreasonable advantage to any particular person.[16] Further, Crosstex contends that courts have interpreted the ICA provisions as investing the Commission with considerable discretion to assess the reasonableness of pipeline practices, taking into consideration all current industry conditions, not merely the conditions existing at the time the ICA became law.[17]

21. Crosstex emphasizes that the Commission has stated that "[t]here is no single method of allocating capacity in times of excess demand . . . and pipelines should have some latitude in crafting allocation methods to meet circumstances specific to their operations."[18] Additionally, states Crosstex, the Commission has recognized the

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[15] *Shell Pipeline Co. LP*, 139 FERC ¶ 61,228, at P 22 (2012).

[16] 49 U.S.C. app. §§ 1(4), 3(1) (1988).

[17] Crosstex cites, *e.g.*, *Sea-Land Service Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984).

[18] Crosstex cites *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 26 (2013) (citing *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004). *See also Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at PP 6, 19 (2012).

necessity of according a priority to shippers that contribute to a new pipeline's financing, distinguishing premium rate priority shippers from those shippers that do not make long-term financial commitments and may choose whether they ship on the pipeline's system each month.[19]

22. Crosstex also points out that the Commission approved priority rights for committed volumes when the pipeline conducted an open season because that would provide an opportunity to all potential shippers to become Committed Shippers by entering into a TSA.[20] Moreover, continues Crosstex, the Commission has required that a pipeline's proposal should appropriately distinguish committed and uncommitted shippers by providing rates consistent with the obligations of the respective shipper classes.[21] Crosstex points out that the Commission recently approved a rate structure and priority service that included tiered rates that would apply to committed shippers based on their volume levels. According to Crosstex, the Commission pointed out in that case that the premium rates were at least one cent higher than the rates for uncommitted shippers for comparable volume levels.[22]

23. Moreover, continues Crosstex, its proposed mechanism for calculating shortfall payments is consistent with Commission policy. While a Committed Shipper must ship or pay for shipping its Committed Volumes, Crosstex explains that the shipper may split its Committed Volumes among the various delivery points. However, continues Crosstex, each delivery point on the system is subject to a separate rate, so Crosstex developed a mechanism for calculating the Shortfall Rate.[23] Crosstex maintains that approval of its shortfall calculation methodology is warranted because it allows the shippers to respond quickly to market conditions and to ensure that their volumes will be transported to the most desirable delivery point(s). Crosstex also emphasizes that all

[19] Crosstex cites *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007).

[20] Crosstex cites *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 19 (2012). *See also Skelly-Belvieu Pipeline Company, L.L.C.*, 138 FERC ¶ 61,153, at P 18 (2012).

[21] Crosstex cites *Enbridge Energy Pipelines (North Dakota)*, 133 FERC ¶ 61,167, at P 40 (2010).

[22] Crosstex cites *Shell Pipeline Co*., 139 FERC ¶ 61,228, at P 21 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 27 (2013).

[23] Crosstex states that the full text of its proposed mechanism is attached to its petition as Exhibit D.

potential shippers received notice of the provisions of this mechanism during the Open Season.

24. Crosstex also contends that its proposed prorationing policy meets Commission criteria. Citing its common carrier duties under the ICA, Crosstex emphasizes that it is required only to make reasonable efforts to maintain the public service at all times.[24] According to Crosstex, the Commission has found that these principles apply equally to allocating capacity.[25] Crosstex reiterates that the Commission has found that there is no single capacity allocation methodology that applies to all pipelines.

25. Crosstex maintains that its proposed prorationing policy is reasonable and non-discriminatory and that it notified potential shippers of this policy during the Open Season. Crosstex explains that it will first allocate up to 10 percent of the available capacity on the Project to Uncommitted Shippers on a pro rata basis according to each of those shippers' nominations for the proration month. Next, continues Crosstex, it will allocate capacity to Committed Shippers in amounts equal to the lesser of each Committed Shipper's nominated volume or its Committed Volumes. Crosstex adds that subject to certain capacity limitations described above, Committed Shippers will not be subject to prorationing of their Committed Volumes during normal operations. However, states Crosstex, if the aggregate Committed Volumes cannot be transported on a particular Project segment due to certain capacity restraints, then a Committed Shipper's level of priority service will be based on the proportion of its Committed Volumes relative to the available capacity for priority service on the relevant Project segment. Crosstex points out that its prorationing policy establishes processes for allocating any remaining capacity, including allocating any capacity that becomes available during the month, as well as penalizing shippers without shortfall payment obligations for their failure to use their capacity allocations.

26. Crosstex asserts that its proposed prorationing policy is consistent with previous Commission decisions concerning priority service for committed shippers when that

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[24] Crosstex cites *Brotherhood of Railway and Steamship Clerks v. Florida East Coast Railway Co*., 384 U.S. 238, 245 (1966). *See also Pennsylvania Railroad Co. v. Puritan Coal Mining*, 237 U.S. 121, 133 (1915).

[25] Crosstex cites *Suncor Energy Marketing Inc.*, 132 FERC ¶ 61,242, at P 24 (2010). *See also Kinder Morgan Pony Express Pipeline LLC*, 141 FERC ¶ 61,180, at PP 40-41 (2012); *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at P 31 (2013).

service is subject to interruption due to pipeline maintenance or force majeure events.[26] Moreover, states Crosstex, it does not anticipate implementing this prorationing approach beyond the interim operation of the Initial NGL Pipeline because it is aware that shippers intend to deliver the majority of volumes to Acadia, with reduced volumes flowing beyond that point to the Downstream Delivery Points. Crosstex also reiterates that the Project will be sized based on projected use, that it will give shippers the flexibility to deliver to multiple delivery points, and that potential shippers received notice of its terms of service, including those governing prorationing, during the Open Season.

Public Notice and Interventions

27. Notice of the filing was issued December 17, 2013, with interventions and protests due January 13, 2014. Pursuant to Rule 214 of the Commission's regulations,[27] 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 delay or disrupt the proceeding or place additional burdens on existing parties. The Petition is unopposed.

Commission Analysis

28. The Commission finds that Crosstex's proposal is consistent with applicable policy and precedent. Crosstex's Project is intended to create additional outlets to move NGLs produced from the Permian Basin, Eagle Ford Shale, Barnett Shale, and other NGL-producing areas to various fractionation facilities in Louisiana. To provide financial support for the substantial investment necessary for Crosstex to construct the Project, it sought long-term volume and ship-or-pay commitments embodied in the TSAs executed by Committed Shippers. In exchange for those commitments, the TSAs establish higher rates for premium service that will be subject to prorationing should nominations of Committed Volumes to the Downstream Delivery Points exceed the available capacity to those delivery points. Crosstex's proposal also provides for discounted rates for Uncommitted Shippers that make timely monthly nominations. Both the provision of higher rates for premium service and discounted rates based on volume commitments are consistent with Commission policies and precedent.

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[26] Crosstex cites, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 7, 26-27 (2013).

[27] 18 C.F.R. § 385.214 (2013).

29. The proposed allocation of Open Season volume commitments based on a uniform, non-discriminatory NPV ranking is consistent with Commission precedent. Crosstex's Open Season gave all potential shippers the opportunity to become Committed Shippers by entering into TSAs. The Commission finds that such an allocation policy also is appropriate for allocating capacity in the event of oversubscription during an oil pipeline open season. Here, all potential shippers had notice of the potential use of the NPV methodology, including detailed examples of how the methodology would be implemented. There is no issue of discrimination because all potential shippers had the ability to determine how their contracts would be structured based on volume and term, and they knew in advance what the impact of the contract terms would be for the purpose of evaluating their bids. The Commission finds that such an approach ensures full utilization of the Project's capacity by the shippers that value it the most and who provide the greatest financial value to the system. The Commission also finds that the prorationing consistent with Commission policy and precedent.

30. Accordingly, the Commission grants the rulings sought by Crosstex, finding that its proposed rate structure and terms and conditions are just and reasonable and will not result in undue discrimination or undue preference.

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)