154 FERC ¶ 61,065
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Oryx Southern Delaware Oil Gathering and Transport LLC — Docket No. OR16-3-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued February 1, 2016)

1. On November 3, 2015, Oryx Southern Delaware Oil Gathering and Transport LLC (Oryx) filed a petition for declaratory order requesting approval of the overall tariff and rate structure for a proposed greenfield gathering and trunk line pipeline that will transport crude petroleum from the production areas within Southern Delaware Basin in Texas to a delivery point in Crane and Midland, Texas. Oryx requests Commission action no later than February 1, 2016, to permit it to meet its transportation service obligations for the pipeline prior to the expected in-service date of the pipeline. This order grants the unopposed petition and the specific declaratory rulings requested by Oryx.

Background

2. The pipeline will provide crude petroleum gathering and trunk line transportation services from various origin points within the Southern Delaware Basin located in Ward, Reeves, Pecos and Crane Counties, Texas (Origin Points) to delivery points in Crane and Midland, Texas. The pipeline is scheduled to be completed in two phases. Phase I will provide gathering and transportation services from the Origin Points to a delivery point located at an interconnection with Longhorn Pipeline in Crane, Texas. Phase II involves the addition of a second delivery point at an interconnection with Enterprise's facilities in Midland, Texas. Phase II does not eliminate any gathering or transportation services that were available during Phase I, but rather provides an additional delivery point option to shippers that ship on the pipeline.

3. Oryx expects that Phase I of the pipeline will become operational during the first quarter of 2016, and that Phase II will become operational during the second quarter of 2016. Upon completion of Phase I and Phase II construction, the pipeline will

comprise approximately 130 miles of 12-inch, 8-inch, 6-inch and 4-inch gathering lines and approximately 104 miles of 16-inch trunk line pipeline. In addition, Oryx will construct both truck station Origin Points and tank battery (i.e., pipeline gathering) Origin Points that will be capable of receiving crude petroleum for gathering and trunk line transportation service on the pipeline.

4. The pipeline is expected to have approximately 220,000 barrels per day of capacity once it becomes operational. Oryx has designed the capacity of the pipeline to meet current shipper and producer demands and shipper and producer demands it expects will be needed in the future. Based on commitments received during the open season, more than 45 percent of the pipeline's capacity remains unsubscribed and available for use by shippers that did not make commitments to the pipeline during the open season. Shippers will be able to deliver their crude petroleum into other intrastate or interstate pipeline systems for further distribution to a variety of downstream refinery and terminal destinations, which means that the pipeline will provide transportation service subject to the jurisdiction of the Commission. Oryx estimates that the cost to construct and place the pipeline into service will be approximately $200 million.

5. In order to ensure that shippers will have access to pipeline capacity when crude petroleum production and crude petroleum prices increase, Oryx is willing to accept the up-front risk of sizing the pipeline well beyond 10 percent of the capacity required to be available to Uncommitted Shippers, so that shippers will have the ability to secure firm capacity in the future as their production grows and their need for gathering and trunk line transportation capacity intensifies. The rates that Oryx has developed for the pipeline that were set forth in the open season are based upon fully-subscribed pipeline capacity. This ensures that existing Committed Shippers do not subsidize future committed shippers and shows that Oryx is taking an up-front economic risk based on its analysis of the scale and timeframe of future growth in crude petroleum production in the Southern Delaware Basin.

6. Because of the substantial investment required, the success of the pipeline depends on support from shippers that are willing to either (1) make a long-term ship-or-pay volume commitment to the pipeline (Volume Commitment) or (2) make a long-term dedication to transport on the pipeline all (or a portion, as the case may be) of the crude petroleum produced from certain, specified acreage (Acreage Dedication), by executing a transportation and gathering services agreement (TGSA) or trucking transportation services agreement (TTSA), as applicable, through an open season process.

7. The open season for the pipeline commenced on September 30, 2015 and concluded on October 29, 2015. Oryx issued a press release on September 30, 2015 announcing the commencement of the open season, and the contents of this press release were extensively reported by the trade press. Oryx also published an open season notice, which was publicly accessible via its website and included a summary of the key terms and conditions of service being offered on the pipeline.

8. During the open season, Oryx made available to interested shippers copies of the open season procedures and the *pro forma* TGSA and TTSA. The open season procedures provided a detailed summary of the terms and conditions of service being offered for the pipeline. Both the TGSA and the TTSA contained a *pro forma* FERC rules, regulations, and rates tariff that would govern movements on the pipeline. To obtain the confidential open season documents, Oryx requested that each interested shipper execute a confidentiality agreement with Oryx. The confidentiality agreement expressly permitted interested shippers the ability to raise concerns about the pipeline to the Commission, provided that the party would disclose such information under seal.

9. Oryx also offered firm service to those shippers making an Acreage Dedication to the pipeline with the level of firm service determined through an objective and verifiable review. Oryx had to evaluate the amount of crude petroleum that those potential shippers expected to be produced from their proposed Acreage Dedication in order to determine the amount of pipeline capacity each such shipper would be entitled to receive on a firm basis (Deemed Volume Commitment) during the term of their TGSAs. Each shipper proposing to make an Acreage Dedication submitted to Oryx an estimate of the crude petroleum it expected would be produced on a consolidated basis from its Acreage Dedication each year during the first five years of the TGSA (Estimated Crude Production). The potential Acreage Dedication Shipper also provided Oryx with information to assist Oryx in evaluating the production capabilities of the Acreage Dedication, including production data. Oryx used that data, as well as other independent data available to it, to verify the Estimated Crude Production levels submitted by the interested Acreage Dedication Shipper.

10. Upon completion of the verification, the parties engaged in a consultative process to reach an agreed upon final Estimated Crude Production level for the shipper's proposed Acreage Dedication. That mutually agreed-upon level (Deemed Volume Commitment) is the amount of capacity that the Acreage Dedication Shipper is entitled to receive on a firm basis each month, except in instances of *force majeure* or other operational disruption.

11. At the close of the open season, Oryx had received a sufficient level of Volume Commitments from the truck station Origin Points and Acreage Dedications from the tank battery Origin Points to proceed with the pipeline.

<u>Discussion</u>

12. Based upon the provisions of the Interstate Commerce Act and Commission precedent involving the rates and terms of service for similar pipeline projects, the Commission finds that the provisions of the TGSA and TTSA are lawful and consistent with Commission precedent. The Commission approves as just and reasonable and not unduly discriminatory or unduly preferential the requested rulings discussed below.

13. The Commission finds that the open season process appropriately followed Commission guidelines.[1]

14. The Commission finds that the TGSA and TTSA and their provisions will be honored and upheld and will govern the gathering and transportation services Oryx provides to Committed Shippers during the terms of the TGSA and TTSA.[2]

15. The Commission finds that Oryx's proposal to file the Committed Rates as settlement rates during the terms of the TGSA and TTSA, including upon the initial filing of the Committed Rates in Oryx's tariff, pursuant to section 342.4(c) of the Commission's regulations, is consistent with Commission precedent.[3] The Commission also grants Oryx's request for waiver of the portion of 18 C.F.R. § 342.4(c) that would otherwise require Oryx to file a verified statement in support of the initial Committed Rates and any other changes to the Committed Rates that Oryx makes in accordance with the terms of the TGSA and TTSA.[4]

16. The Commission finds that Oryx appropriately reserved up to 90 percent of the total capacity available on the pipeline to Committed Shippers, while making the remaining 10 percent available for Uncommitted Shippers.[5]

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[1] *See, e.g.*, *NuStar Logistics, L.P.*, 152 FERC ¶ 61,100, at P 17 (2015) (*NuStar*); *Belle Fourche Pipeline Co.*, 151 FERC ¶ 61,139, at P 21 (2015) (*BFPL*); *Palmetto Products Pipe Line LLC*, 151 FERC ¶ 61,090, at P 29 (2015) (*Palmetto*).

[2] *See, e.g.*, *NORCO Pipe Line Company, LLC*, 152 FERC ¶ 61,170, at P 15 (2015) (*NORCO*); *BFPL*, 151 FERC ¶ 61,139 at P 18; *Palmetto*, 151 FERC ¶ 61,090 at P 29; *Seaway Crude Pipeline Co.*, LLC 146 FERC ¶ 61,151, at P 20 (2014) (*Seaway*).

[3] *NORCO*, 152 FERC ¶ 61,170 at P 21; *BFPL*, 151 FERC ¶ 61,139 at P 19; *Palmetto*, 151 FERC ¶ 61,090 at P 29; *Kinder Morgan Pony Express Pipeline LLC and Belle Fourche Pipeline Co.*, 141 FERC ¶ 61,180 at P 21 (2012) (*Belle Fourche)*; *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 17-18 (2013) (*CenterPoint*); *MarkWest Liberty Ethane Pipeline, L.L.C.*, 145 FERC ¶ 61,287, at P 26 (2013) (*MarkWest*).

[4] *TransCanada Keystone Pipeline, LP*, 135 FERC ¶ 61,259, at P 8 (2011).

[5] *See, e.g.*, *NORCO*, 152 FERC ¶ 61,170 at P 19; *BFPL*, 151 FERC ¶ 61,139 at P 23; *Palmetto*, 151 FERC ¶ 61,090 at P 29; *MarkWest*, 145 FERC ¶ 61,287 at P 23; *Oxy Midstream Strategic Development, LLC*, 141 FERC ¶ 61,005, at P 19 (2012);

Enbridge Pipelines (FSP) LLC, 146 FERC ¶ 61,148, at P 27 (2014); *Enterprise Liquids*

(continued ...)

17. The Commission finds that a Committed Shipper will be permitted to receive firm service on the pipeline and, in exchange for this firm service, will pay premium rates compared to the rates applicable to similarly-situated Uncommitted Shippers, in accordance with Commission policy.[6]

18. The Commission finds that the Committed Rates and Uncommitted Rates appropriately distinguish between different classes of shippers that are not similarly situated.[7]

19. The Commission finds that if, upon the fourth anniversary of the effective date of the TGSA and each anniversary thereafter, an Acreage Dedication Shipper has tendered for transportation on the Pipeline under 90 percent of its then-effective Deemed Volume Commitment, on average, during the prior 12-month period, Oryx may reduce such Acreage Dedication Shipper's Deemed Volume Commitment in accordance with the TGSA.[8]

20. The Commission finds that if an Acreage Dedication Shipper's Deemed Volume Commitment is reduced, Oryx may provide that Acreage Dedication Shipper a first right to increase its Deemed Volume Commitment up to its Initial Deemed Volume Commitment level if the Acreage Dedication Shipper establishes, through the submission of Production Data, that it is capable of producing and shipping volumes up to or in excess of its Initial Deemed Volume Commitment. The Commission finds that such a provision is reasonable because it strikes a balance between the needs of the Committed Shippers to have a certain amount of firm capacity on the pipeline and the needs of Oryx to ensure that its pipeline system is being utilized to the greatest extent possible given then-current circumstances.

Pipeline LLC, 142 FERC ¶ 61,087, at P 27 (2013).

[6] *See, e.g.*, *NORCO*, 152 FERC ¶ 61,170 at P 16; *Palmetto*, 151 FERC ¶ 61,090 at P 29; *MarkWest*, 145 FERC ¶ 61,287 at P 24; *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007).

[7] *See, e.g., Magellan Pipeline Co.*, *LP*, 138 FERC ¶ 61,177, at PP 10, 14 (2012); *see also Alpha Crude Connector, LLC,* 149 FERC ¶ 61,001, at PP 17, 27 (2014); *Kinder Morgan Cochin LLC,* 141 FERC ¶ 61,056 (2012); *Plantation Pipe Line Company,* 98 FERC ¶ 61,219, at 61,865-66 (2002).

[8] *Monarch Oil Pipeline, LLC,* 151 FERC ¶ 61,150, at P 25 (2015) (*Monarch*). *See also CenterPoint*, 144 FERC ¶ 61,130 at P 35 (approving contractual provision that permits shippers the ability to adjust to changing market conditions).

21. The Commission finds that Oryx is permitted to allow both Committed Shippers and Uncommitted Shippers the ability to secure additional pipeline capacity on the pipeline following the conclusion of the open season pursuant to the terms outlined in the TGSA and TTSA. This is consistent with the principle recognizing the appropriateness of sizing a pipeline so that it can meet both current and future shipper needs.[9] In addition, all shippers were aware of this mechanism and it will not affect the 10 percent of capacity set aside for Uncommitted Shippers.

22. The Commission finds that the provision under the TGSA allowing Committed Shippers the ability to designate Third Party Shippers, subject to adherence of the terms and conditions set forth in the applicable TGSA, is appropriate.[10]

23. The Commission finds that if there is a change in law that would permit Oryx to recover compliance costs pursuant to the TGSA and the TTSA, Oryx may implement the mechanism described in the TGSA and TTSA for recovering such compliance costs.[11]

24. The Commission finds that the proration policy that governs the allocation of capacity on the pipeline during months when the pipeline is in prorationing is reasonable and consistent with Commission precedent.[12]

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[9] *See Calnev Pipe Line LLC*, 120 FERC ¶ 61,073, at P 9 (2007). *See also TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 32 (2008).

[10] *See Shell Pipeline Company, L.P.*, 141 FERC ¶ 61,017, at P 16 (2012).

[11] *See Dominion NGL Pipelines, LLC*, 145 FERC ¶ 61,133, at PP 11, 20 (2013) (*Dominion*). *See also Saddlehorn Pipeline Co., LLC*, 153 FERC ¶ 61,067, at PP 21, 36 (2015).

[12] *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025, at P 41 (2008). *See also Suncor Energy Marketing, Inc.*, 132 FERC ¶ 61,242, at P 24 (2010); *Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at PP 41-48 (2006).

25. The Commission finds that it is reasonable and appropriate for Oryx to provide a Committed Shipper with the expansion commitment rights specified in the TGSA and the TTSA, as applicable, in the event Oryx decides to expand the capacity of the pipeline.[13]

26. The Commission finds that the automatic term extension provisions set forth in the TGSA and TTSA are consistent with Commission precedent.[14]

27. The Commission finds that it is appropriate for Oryx to increase, but not decrease, the Committed Rates pursuant to the Commission's indexing methodology, with annual increases capped at three percent absent consent by the Committed Shippers.[15]

<u>The Commission orders</u>:

Oryx's November 3, 2015 petition for declaratory order is granted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[13] *MarkWest*, 145 FERC ¶ 61,287 at P 27; *See also CenterPoint*, 144 FERC ¶ 61,130 at PP 32-33; *Enable Bakken Crude Services, LLC*, 148 FERC ¶ 61,048 at PP 11, 14-15 (2014); *Palmetto*, 151 FERC ¶ 61,090 at P 29.

[14] *See, e.g.*, *CenterPoint*, 144 FERC ¶ 61,130 at P 34 (approving pipeline's proposed extension provision that gave committed shippers the ability to extend the term of their transportation services agreements by two additional five-year terms, and to further extend for additional 5-year terms thereafter with the agreement of both the pipeline and the committed shipper). *See also Belle Fourche* at P 15 (approving the requested finding for a project in which each committed shipper had the right to extend the initial term of its contract for an additional five-year term); *Palmetto*, 151 FERC ¶ 61,090 at P 29; *BFPL*, 151 FERC ¶ 61,139 at P 25; *NORCO*, 152 FERC ¶ 61,170 at P 23.

[15] *Monarch,* 151 FERC ¶ 61,150 at PP 28, 33.