Seaway Crude Pipeline Company LLC

ORDER ACCEPTING TARIFF

143 FERC ¶ 61,036 (2013)

In this case, Seaway Crude Pipeline Company LLC (Seaway) filed a tariff to revise its prorationing program regarding the apportionment of uncommitted capacity on its long haul pipeline system that it was reversing to a north-to-south flow from Oklahoma to Texas. Under the old tariff, 90 percent of capacity was reserved for Regular Shippers, which were shippers that had gained history moving barrels during a base period, and 10 percent was for New Shippers which were shippers that had not. With the reversal of flow, nominations for uncommitted capacity began to proliferate, and in May 2012, New Shippers nominated barrels in an amount that was almost 2,000 percent of estimated available capacity. To address this challenge, Seaway instituted a lottery system among New Shippers. The Commission approved the tariff revision.

143 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Seaway Crude Pipeline Company LLC — Docket No. IS13-203-000

ORDER ACCEPTING TARIFF

(Issued April 12, 2013)

1. On March 13, 2013, Seaway Crude Pipeline Company LLC (Seaway) filed FERC Tariff No. 2.3.0,[1] proposing an effective date of April 15, 2013. Seaway is a 50/50 joint venture of Enterprise Products Partners L.P. (Enterprise) and Enbridge Energy Partners, L.P. The tariff revises Seaway's current prorationing rules and implements a lottery mechanism for the allocation of uncommitted capacity on Seaway's Longhaul System.[2] The Commission accepts Seaway's FERC Tariff No. 2.3.0 to become effective April 15, 2013.

Background

2. In early 2012, Seaway undertook a reversal of its Longhaul System and began providing the current north-to-south transportation service in May 2012. Seaway states pipeline capacity depends on the type and mix of crude oil transported and that although Seaway expected an initial capacity of 150,000 barrels per day (bpd), actual throughput averaged only approximately 132,000 bpd from May 2012 through December 2012. Seaway added pump stations in January 2013 and expects to place in service a 65-mile lateral from Jones Creek to the Enterprise ECHO terminal in Houston, Texas, in late 2013. Seaway states it plans to commence service in January 2014 using expansion capacity by completing a 30-inch loop pipeline of its Longhaul System and an 85-mile

[1] Seaway Crude Pipeline Company LLC, FERC Oil Tariff, Rates, Rules, & Regs. FERC No. 2.3.0, 2.3.0.

[2] Seaway's Longhaul System is its 512-mile, 30-inch diameter pipeline between Cushing, Oklahoma, and Seaway's Jones Creek terminal located near Freeport, Texas.

lateral to the Beaumont/Port Arthur, Texas area. Once the planned expansions begin service, Seaway anticipates capacity will increase to approximately 850,000 bpd.

Instant Filing

3. Seaway states that when its pipeline is in allocation, it first allocates 90 percent of the available capacity to Regular Shippers (shippers who have gained history moving barrels during a base period consisting of the previous consecutive twelve months), and allocates the remaining ten percent to New Shippers. Seaway states the purpose of its tariff filing is to amend the current allocation procedures to reduce the proliferation of New Shippers and over-nominations on its pipeline. Seaway states in May 2012, there were five New Shippers who submitted nominations totaling 4.4 million barrels, representing in excess of 300 percent of the estimated available capacity. As of March 2013, Seaway states almost 200 potential New Shippers nominated over 1.5 billion barrels, representing almost 2,000 percent of estimated available capacity.

4. Seaway states the impact of this escalating increase in New Shippers on the allocation of the 10 percent to these shippers: (1) resulted in substantial speculation and market uncertainty in the nomination process; (2) made it impossible for New Shippers to satisfy the minimum monthly tender requirement of 60,000 barrels;[3] and (3) created substantial and time-consuming administrative burdens and pipeline inefficiencies. Seaway states that before the number of New Shippers dramatically increased, Seaway informally allowed New Shippers to aggregate their barrels to meet the monthly minimum tender requirement of 60,000 barrels. Also, Seaway states it recently accelerated the date by which shippers must submit nominations from the 25th to the 15th day of the preceding month to allow more time to administer its manual nomination and allocation process.[4]

5. Given current circumstances, Seaway states it has now determined that further action is necessary and proposes to implement a fair and functional allocation procedure to assure that available walk-up capacity is ultimately available to those New Shippers whose long term interests and goals are to become Regular Shippers. Accordingly, Seaway proposes to implement a lottery mechanism using a software-generated random process to establish a fair and non-discriminatory method of allocating the number of minimum volume tenders (60,000 barrels per month) available to New Shippers. Seaway

[3] Under Seaway's existing tariff the "Minimum Volume" is defined as a minimum continuous volume of 60,000 barrels of Crude Petroleum received or delivered at one time.

[4] Docket No. IS13-162-000, filed February 19, 2013, went into effect by operation of law on March 15, 2013, prior to the filing in the instant proceeding.

also proposes to modify the definition of "Affiliate" to ensure there are no affiliated winners obtaining capacity in the same lottery. Finally, Seaway states that although it has not met with all of its shippers to preview the lottery process, the proposed lottery system is consistent with lotteries currently in use. Seaway will monitor its lottery system going forward to determine whether other steps need be taken to make its allocation process as fair as possible.

Interventions and Protests

6. On March 28, 2013, Suncor Energy (U.S.A.) Marketing, Inc. (Suncor) filed a protest and Apache Corporation (Apache) and Noble Energy, Inc. (Noble) filed a joint protest. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), 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. Permitting late comments and intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

7. The protesters assert the Commission should reject Seaway's proposal, or suspend it for the maximum period and establish a technical conference. The protesters state that Seaway failed to convene a shipper meeting. They also argue there is no adequate record to determine whether the proposal appropriately resolves Seaway's claimed dilemmas, and question whether the proposal would unduly discriminate against New Shippers. They add that Seaway's proposed lottery is not the "agreed-upon result" of discussions with all of its shippers.

8. Suncor states a New Shipper must ship a minimum volume of 60,000 barrels in twelve consecutive months to achieve Regular Shipper status. Suncor states the high minimum tender and the low amount of capacity, combined with the requirement that New Shippers need to ship for twelve consecutive months, makes it very difficult for a New Shipper to transition to Regular Shipper status. Suncor states that it and its affiliates have shipped for ten consecutive months, and assuming actual shipments in April 2013, they would have to win the lottery in May 2013 to become Regular Shippers. Suncor states that given the number of New Shippers, the chances that this will occur are less than ten percent. Apache and Noble, using Seaway's numbers from its transmittal letter (Seaway would allocate space to 13 of 200 New Shippers in a given month), state that uncommitted shippers will have a 6.5 percent chance of receiving any allocated capacity in any given month.

9. Suncor states that it would be highly unlikely for a New Shipper to win the lottery in twelve consecutive months, and thereby earn Regular Shipper status. Suncor states this could effectively restrict New Shipper access to the 90 percent of the available capacity allocated to the Committed Shippers, who are currently the Regular Shippers on the system. Suncor states that in *Enbridge (U.S.) Inc. and ExxonMobil Pipeline*

Company, the Commission rejected as unduly discriminatory tariff provisions that essentially locked uncommitted shippers out of the vast majority of available capacity.[5]

10. Suncor states Seaway inaccurately represents that its proposed tariff filing is consistent with tariff provisions already in use by the industry. To the contrary, they continue, existing examples of lottery systems currently employed by oil pipelines do not require new shippers win the lottery process for twelve out of twelve months. Suncor states that in *CCPS Transportation, LLC*, the pipeline only requires a new shipper win the lottery in nine out of the twelve months in the base period,[6] and in *Enbridge Pipelines (North Dakota) LLC*, the pipeline also imposes an identical requirement of actual shipments in nine out of twelve months.[7] In *Enbridge Pipelines (Ozark) LLC*, Suncor states the pipeline imposes a similar requirement of actual shipments in only six out of twelve months.[8] Suncor is not aware of any pipeline with a lottery that allocates New Shipper capacity by requiring the New Shipper to win twelve out of twelve consecutive months to become a Regular Shipper. As such, Suncor argues Seaway's proposed tariff filing would appear to be inconsistent with common industry practices and could be unduly discriminatory.

11. Apache and Noble point out that the three pipelines cited by Suncor either do not have Committed Shippers, or Committed Shippers pay a premium rate for firm service, and their volumes are not subject to prorationing.[9] Further, Apache and Noble state that no entity challenged these other pipelines' lottery mechanisms as unduly preferential towards Committed Shippers and/or affiliates. According to Apache and Noble, Seaway's lottery proposal here serves to insulate and benefit its current Regular Shippers, some of which are Seaway's affiliates, and all of which are Committed Shippers. Thus, the protesters attempt to distinguish the cases cited by Seaway supporting its lottery

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[5] *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Company*, 124 FERC ¶ 61,199, at PP 33-37 (2008) (citing *Texaco Pipeline Inc.*, 74 FERC ¶ 61,071, at 61,201 (1996)).

[6] FERC Tariff No. 37.1.0 at Item No. 17, Docket No. IS12-233-000 (filed April 16, 2012).

[7] FERC Tariff No. 71.13.0 at Item No. 10, Docket No. IS12-548-000 (filed August 15, 2012).

[8] FERC Tariff No. 47.1.0 at Item No. 75(b)(i), Docket No. IS12-37-000 (filed November 18, 2011).

[9] *See, e.g., CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 39 (2010); *Enbridge Pipelines (Ozark) LLC*, FERC Tariff No. 48.2.0 (showing a single rate for transportation service, rather than an uncommitted and a committed rate).

proposal, and allege the Commission was not faced with the discrimination and affiliate abuse issues they argue are present in Seaway's case.

Seaway's Answer

12. On April 2, 2013, in its response to the protests, Seaway filed an answer. Seaway states the purpose of the lottery mechanism is to ensure continued access to the system for New Shippers who could not ship, because the proliferation of New Shippers caused the individual shipper allocations to be significantly below the monthly minimum tender requirement. As of April 2013, Seaway states there are now 275 nominating New Shippers on Seaway (75 more New Shippers in the three weeks since Seaway filed the instant proposal). Despite the large number of shippers, Seaway states only two protests were received. Seaway states the protesters had every opportunity to become Regular Shippers by becoming committed shippers during Seaway's two open seasons, but they voluntarily chose not to do so. In any event, Seaway states the protesters miss the entire point of the lottery, which is to ensure that New Shippers continue to have a meaningful opportunity to gain access to the ten percent of Seaway capacity allocated to them.

13. Seaway states the 275 New Shippers in April 2013 nominated a total of 2.1 billion barrels, which represents approximately 237,000 percent of the capacity available to these 275 New Shippers. Currently, Seaway states its approximately 900,000 barrels of capacity available for the 275 New Shippers each month allows less than 3,300 barrels per month to each New Shipper. Seaway states it currently transports up to six different types of crude oil, and ultimately anticipates moving up to twenty different types. Therefore, Seaway states it is not manageable from an operational perspective to operate its system by moving batches in such small amounts. Furthermore, it does not have the luxury of waiting to resolve the current issues.

Discussion

14. In its filing, Seaway proposes to revise its tariff to implement a lottery system for the allocation of uncommitted capacity on its Longhaul 30-inch system. Seaway asserts the number of shippers seeking to nominate barrels on the pipeline has increased to extraordinary levels. For example, Seaway submits that as of March 2013 over 200 shippers nominated 2000 percent of the available capacity. Seaway asserts the lottery mechanism is a fair and functional allocation procedure given the circumstances, and should ensure the available capacity is ultimately made available to those shippers whose long term interests are to become Regular Shippers.

15. The protesters, Suncor, and Apache and Noble (jointly), assert that the Commission should reject the proposed tariff, or, in the alternative suspend for seven months and establish a technical conference. The protesters contend the proposed tariff will effectively ensure capacity and space for existing Committed Shippers and, from a

practical perspective, will deprive New Shippers of the ability to achieve Regular Shipper status.

16. The Commission has carefully weighed the interest of the pipeline in allocating uncommitted capacity on its system in a fair and efficient manner against the interest of the protesters who are concerned that Seaway's proposal will prevent them from achieving Regular Shipper status. The Commission finds that on balance the proposed revisions represent a just and reasonable solution to the difficult apportionment problems that have affected Seaway since it began moving crude oil north to south in May 2012.

17. The Commission recognizes that the protesters are concerned that the chances of winning Seaway's proposed lottery are low given the high number of nominations. As Seaway itself states, it has grown from five shippers in May 2012 to 275 potential shippers as of April 2013. However, Seaway designed the proposed changes to reduce the substantial speculation and market uncertainty inherent in the current nomination and allocation process. As Seaway stated in its answer, speculators and individuals with no apparent access to oil, as well as shell companies, are attempting to game the system by signing up as New Shippers, presumably in an attempt to broker the capacity in the secondary market.

18. Seaway designed the lottery to ensure that New Shippers will be eligible to ship because they will qualify for the minimum batch size of 60,000 barrels per month. Under Seaway's proposal, thirteen shippers would split 26,500 bpd of capacity. Each shipper would receive just over 2000 bpd of capacity and over thirty days would qualify for the 60,000 barrel monthly minimum batch size. Currently, no New Shipper qualifies for the minimum batch size because of the large number of uncommitted shippers. New Shippers are only qualifying for the monthly minimum batch size on an aggregate basis because Seaway has been informally batching certain shipments together. The Commission understands how such an informal batching procedure can become so unwieldy and creates significant administrative burdens and operational inefficiencies because of the large number of New Shippers, as Seaway claims. As Seaway points out, the process will be even more unworkable when Seaway begins moving twenty different types of crude in 2014.

19. The Commission finds persuasive Seaway's explanation that the lottery will likely reduce the number of speculators because if such an entity wins the lottery it will need to deliver volumes equal to the minimum tender or pay the tariff charge related to the amount of its allocation. The Commission also finds that Seaway's proposal to prevent shippers from nominating for more than the total capacity reserved for New Shippers should also mitigate the current allocation problems.

20. Seaway also indicated it will monitor its experience under the lottery system and will seek to determine if it needs to further amend its tariff. For example, Seaway states it is reviewing the possibility of establishing an affidavit procedure to verify the bona fide status of potential walk up shippers similar to those instituted by other pipelines.

21. The Commission finds the protesters' arguments that the proposal is inconsistent with Commission precedent unpersuasive.[10] While consultation with a pipeline's shippers to discuss proposed tariff revisions can be beneficial it is not required. Therefore, the fact that Seaway did not meet with its shippers does not affect the analysis of its revised allocation procedure. Moreover, crafting an allocation procedure is specific to the circumstances of each pipeline and the fact that other pipelines may use lottery systems that allow shippers to qualify for Regular Shipper status based on parameters less than the twelve out of twelve months required by Seaway does not render it unjust and unreasonable. Given that all New Shippers will be subject to the same lottery system, and therefore treated equally, there is no issue of undue discrimination.

22. While we recognize the concerns raised by protesters regarding their potential to achieve Regular Shipper status when Seaway's proposed lottery system is combined with its existing tariff provisions, those shippers have not shown that they are thereby subject to discrimination when compared to other shippers that are similarly situated. And regardless of our legal standards on discrimination, it appears that Seaway's proposal will leave protesters no worse off in this regard than they would be under the status quo.[11] As we note above, Seaway has committed to monitor its experience under this system and consider further tariff amendments if needed

23. The Commission finds that Seaway has made a good faith attempt to alleviate the apportionment problems with uncommitted capacity on its system in order to protect bona fide shippers who intend to be long term customers on Seaway. Seaway's proposal is therefore superior to allowing the ongoing apportionment problems under the current procedure to continue unchecked. The existing system would allow the unrestrained

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[10] *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Company,* 124 FERC ¶ 61,199 (2008) is not applicable because in that proceeding the pipeline proposed that firm shippers pay a discounted rate compared to uncommitted shippers and also not be subject to prorationing, which was contrary to Commission precedent. Here Committed Shippers do not have firm service.

[11] In fact, if Seaway's proposed lottery system is successful in reducing the proliferation of New Shippers (particularly those speculating in available capacity), Seaway's proposal could improve the odds of New Shippers becoming Regular Shippers.

proliferation of individuals without access to crude oil, to the detriment of New Shippers with actual barrels to ship. Since the various grades of oil on the pipeline render informal batching infeasible, the proposed tariff revisions strike a reasonable balance, and appear to allocate reasonably the available ten percent of the pipeline's capacity reserved for New Shippers. Accordingly, Seaway's proposed FERC Tariff No. 2.3.0, is accepted to take effect April 15, 2013.

The Commission orders:

Seaway's FERC Tariff No. 2.3.0 is accepted, effective April 15, 2013.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)