

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Valero MKS Logistics, L.L.C.) Docket No. OR20-___-000
)

**REQUEST FOR TEMPORARY WAIVER OF TARIFF FILING
AND REPORTING REQUIREMENTS AND
REQUEST FOR EXPEDITED CONSIDERATION**

Pursuant to Rule 204 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.204, Valero MKS Logistics, L.L.C. (“MKS”) requests that the Commission grant a temporary waiver of the filing and reporting requirements of Sections 6 and 20 of the Interstate Commerce Act (“ICA”) and Parts 341 and 357 of the Commission’s regulations promulgated thereunder, as more fully described below.

In support of this Request for Waiver, MKS states as follows:

I. DESCRIPTION OF REQUESTING PARTIES

MKS is a Delaware limited liability corporation and a wholly-owned, indirect subsidiary of Valero Energy Corporation (“Valero”). Valero is a publicly-traded holding company, incorporated in Delaware, whose shares are traded on the New York Stock Exchange. Valero, through its subsidiaries and affiliates, is primarily engaged in petroleum refining and marketing operations in the United States and abroad. Valero acquired the MKS assets, consisting of both crude and refined products pipeline assets in the greater Memphis area, in a merger with Premcor Inc. in September 2005.

MKS’s crude pipelines and terminaling assets deliver crude oil from the Capline, Dakota Access, and Diamond pipelines to the Valero Memphis Refinery in Shelby County, Tennessee, and consist of multiple segments of bi-directional crude pipeline and a terminal in Marshall County, Mississippi, featuring three storage tanks (“Collierville Crude System”).

MKS's product system is the primary outlet for refined petroleum products produced at the Valero Memphis Refinery and consists of products pipelines connected to a Valero affiliate terminal in West Memphis, Arkansas, an ExxonMobil products terminal in Memphis, and the Memphis International Airport.

MKS is operated by Valero Partners Operating Co. LLC, a Delaware limited liability corporation which is a wholly-owned, indirect subsidiary of Valero.

II. COMMUNICATIONS

All communications and correspondence relating to this Waiver Request should be served on the following persons¹:

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III. REQUEST FOR TEMPORARY WAIVER

A. Description of Facilities

MKS's crude and products pipelines and terminals serve Valero's Memphis Refinery and consist of several assets in Mississippi, Tennessee, and Arkansas. Although not all of these facilities are subject to FERC jurisdiction they are described here for completeness. A map of the complete MKS system is attached as Exhibit A hereto.

1. Collierville Crude System

The Collierville Terminal is located in Marshall County, Mississippi. The facility consists of three storage tanks with 975,000 barrels of storage capacity and receives crude oil from the

¹ Persons designated to receive service pursuant to Rule 203 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.203.

Capline, Dakota Access, and Diamond pipelines. The Collierville pipeline system is operated under FERC Tariff Nos. 9.0.0 and 10.10.0.

The Collierville pipeline consists of a 52-mile, 10- to 20-inch bi-directional crude oil pipeline connecting the Collierville Terminal and the Valero Memphis Refinery. MKS leases approximately 13 miles of the Collierville pipeline, extending from the Mississippi state line to the Valero Memphis Refinery, from Memphis Light, Gas and Water (“MLGW”). Under the terms of this and the other MLGW lease agreements described herein, MKS is the sole operator of and maintains the pipelines, and all pipeline assets revert to MLGW at the termination of the lease. The initial terms of the leases, along with renewal periods available at MKS’s option, extend through 2046. MLGW does not have the right to terminate during the initial and renewal periods of the leases.

The Capline and Dakota Access Pipelines connect to the Collierville system at the Collierville Terminal. The Diamond Pipeline connects to the Collierville system via the Valero Diamond Connecting Lateral (owned by an affiliate of MKS) at the Memphis Diamond Crude Tie-In, located at the refinery trap and meter site. From the tie-in, crude generally travels to the Valero Memphis refinery through intrastate plant piping but for operational reasons (primarily to accommodate refinery tank storage optimization) may intermittently be sent to the Collierville Terminal before being pumped back to the refinery.

2. Shorthorn Products System

The Shorthorn pipeline system consists of the seven-mile, 14-inch West Memphis Shorthorn pipeline that delivers diesel and gasoline produced at the Valero Memphis Refinery to the Valero West Memphis Terminal (both facilities owned by affiliates of MKS) and the two-mile, 12-inch West Memphis Exxon Lateral pipeline that delivers diesel and gasoline from the Valero West Memphis Terminal and the Valero Memphis Refinery to Exxon’s Memphis refined

petroleum products terminal. MKS leases the 14-inch Shorthorn West Memphis pipeline from MLGW under similar terms as those governing the Collierville Crude System.

The Shorthorn pipeline system is operated pursuant to FERC Tariff No. 11.10.0.

3. Memphis Airport Jet

The Memphis Airport Jet fuel pipeline system consists of a nine-mile, six-inch pipeline that delivers jet fuel produced at the Valero Memphis Refinery to the Swissport Fueling, Inc. terminal located at the Memphis International Airport. MKS leases the pipeline from MLGW. The Memphis Jet system is an intrastate pipeline not subject to Commission jurisdiction.

B. Description of Shipper and Movements

An affiliate of MKS, Valero Marketing and Supply Company (“VMSC”), which is also a wholly-owned, indirect subsidiary of Valero Energy Corporation, is the only shipper on the overall MKS system. Despite the close proximity of the Valero Memphis Refinery to the various assets of the MKS system, the MKS system is characterized by its location at the intersection of three states (Arkansas, Mississippi, and Tennessee), and portions of the system cross into each of these states. Based on the geographic and physical configuration of the overall system, and VMSC’s intent to ship crude oil from the Collierville Terminal to the Valero Memphis Refinery and refined products between the Valero Memphis Refinery, the Valero West Memphis Terminal, and the Exxon Memphis terminal, MKS believes that transportation on the Shorthorn Products System and Collierville Crude System is subject to Commission jurisdiction under the ICA.

C. Request for Temporary Waiver

The Commission has historically granted regulated interstate pipelines temporary waivers of the filing and reporting requirements of Sections 6 and 20 of the ICA subject to certain

conditions.² The Commission has granted these waivers to pipelines that were not exempt from the ICA under the “private carrier” doctrine, but for which the factual circumstances showed that the filing and reporting requirements of the ICA were not necessary to protect the interests of an unaffiliated shipper.³

The Commission’s primary concern in evaluating whether to permit a waiver is the protection of third parties. Where the subject pipeline (or leased or owned portion of the subject pipeline) does not provide transportation service to third-party shippers, and there is no expectation that it will do so in the future, the Commission has found that there is no third-party interest to protect. Thus, in *Hunt*, the Commission granted a waiver after finding that “there are no immediate or prospective shippers on Hunt other than itself and no other shippers on [the pipeline] other than its parent company to protect under the provisions of the ICA.” 70 FERC ¶ 61,035, 61,113 (1995). Likewise, in *Ciniza*, the Commission found that “there are no other shippers on the [pipeline] to protect under the provisions of the ICA.” 73 FERC ¶ 61,377, 62,173 (1995).

Well-established Commission precedent permits a waiver where “(1) the pipelines (or their affiliates) own 100 percent of the throughput on the line; (2) there is no demonstrated third-party interest in gaining access to or shipping on the line; (3) no such interest is likely to

² See, e.g., *Sinclair Oil Corp.*, 4 FERC ¶ 62,026 (1978); *Hunt Refining Co. and East Mississippi Pipeline Co.*, 70 FERC ¶ 61,035 (1995); *Ciniza Pipe Line Inc.*, 73 FERC ¶ 61,377 (1995); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 110 FERC ¶ 61,159 (2005); *Enbridge Pipelines (NE Texas Liquid) L.P.*, 117 FERC ¶ 51,646 (2006); *Giant Pipeline Co. & Giant Industries, Arizona, Inc.*, 120 FERC ¶ 61,275 (2007); *Jayhawk Pipeline, L.L.C.*, 128 FERC ¶ 61,079 (2009); *Parnon Gathering, Inc.*, 129 FERC ¶ 61,273 (2009); *Pelican Gathering Systems, LLC*, 141 FERC ¶ 61,245 (2012); *Saddle Butte Pipeline*, 136 FERC ¶ 61,071 (2011); *Sinclair Pipeline Co., L.L.C. and Sinclair Transportation Co.*, 134 FERC ¶ 61,077 (2011); *Whiting Oil and Gas Corp.*, 131 FERC ¶ 61,263 (2010); *MarkWest Pipeline Co., LLC*, 147 FERC ¶ 61,035 (2014).

³ See *In Re Pipe Line Cases*, 234 U.S. 548 (1914).

materialize; and (4) there is no opposition to granting the waivers.”⁴ These criteria were formalized as a test in *Enbridge* and affirmed by *Whiting* and other orders.⁵

The facts presented here fully satisfy the Commission’s concerns for the protection of traditional third-party shippers. Since at least 2005, only VMSC has shipped crude oil and refined products on the various portions of the MKS system (whether FERC jurisdictional or non-jurisdictional). No unaffiliated party has ever requested to ship on the MKS system. And given MKS’s experience with its pipeline system as well as its configuration, it is highly unlikely that an unaffiliated party will seek or request service involving any portion of the MKS system.

Crude oil arrives on the Collierville pipeline, either from the Collierville Terminal or from the Diamond Pipeline. Either way, there is only one destination and purpose for the crude oil—the Valero Memphis Refinery, to be consumed in the refinery’s production of refined petroleum products. There is no foreseeable reason for another shipper to make these movements. No shippers or third parties have tank positions at the Valero Memphis Refinery, no shippers on the Diamond Pipeline, the Dakota Access Pipeline, or Capline have expressed interest in supplying crude oil to the Valero Memphis Refinery, and the refinery has not expressed a current interest in receiving crude oil supply from any third party.

Similarly, any interstate petroleum product movements on the MKS system all originate at Valero-affiliated facilities (the Memphis Refinery or the West Memphis Terminal) and all terminate at one of two destinations near these origins (either the Valero West Memphis Terminal or the Exxon Memphis terminal). VMSC has title to all petroleum products shipped on these

⁴ *Agave Energy Co.*, 136 FERC ¶ 61,094 at ¶ 5 (2011). *See also ONEOK Rockies Midstream*, 138 FERC ¶ 61,333 at ¶ 4 (2012); *Sinclair Pipeline Co.*, 134 FERC ¶ 61,077 at ¶ 6 (2011); *Chevron Pipe Line Co.*, 134 FERC ¶ 61,073 at ¶ 4 (2011); *MarkWest Pipeline Co., LLC*, 147 FERC ¶ 61,035 (2014).

⁵ *See* footnote 2, *supra*.

routes, and there is no foreseeable reason for another shipper to make these movements.

Furthermore, there are no shippers who have expressed interest in making any of these petroleum products movements.

In light of these facts, MKS does not believe or anticipate that there will be any opposition to this waiver request.

Accordingly, MKS respectfully requests that the Commission grant a temporary waiver of the tariff filing and reporting requirements under Sections 6 and 20 of the ICA and Parts 341 and 357 of the Commission's regulations for the MKS system as described above. MKS recognizes its obligation to (i) maintain all books and records in a manner consistent with the Uniform System of Accounts for Oil Pipelines⁶ and (ii) make such books and records available to the Commission or its authorized agents upon request. Further, MKS acknowledges that it must report any changes that may alter the Commission's determination including, but not limited to (i) increased accessibility of other pipelines or refiners to the subject facilities; (ii) changes in the ownership of the facilities; (iii) changes in the ownership of the crude oil or petroleum products shipped; and (iv) shipment tenders or requests for service by any person.

⁶ 18 C.F.R. Part 352.

IV. CONCLUSION

For the foregoing reasons, MKS respectfully requests that the Commission grant the waiver requested herein for the MKS System as described above. A form notice of this waiver request is attached hereto as Exhibit B for publication.

Respectfully submitted,

/s/ Steven A. Adducci

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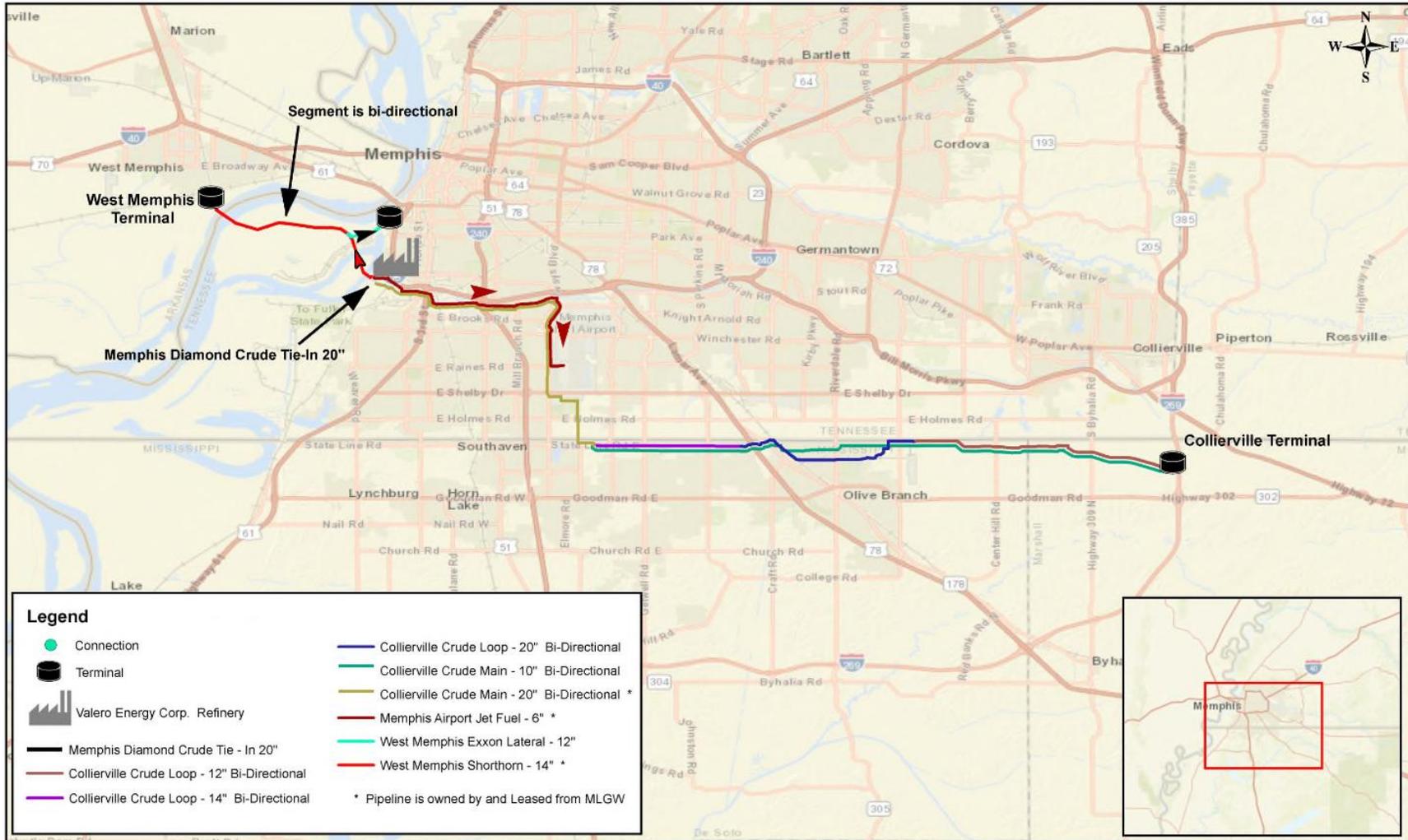
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Dated this 31st day of March, 2020



ATTACHMENT B

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Valero MKS Logistics, L.L.C.) Docket No. OR20-____-000

**NOTICE FOR TEMPORARY WAIVER OF
FILING AND REPORTING REQUIREMENTS**

_____, 2020

Take notice that on _____, 2020, pursuant to Rule 204 of the Commission's Rules of Practice and Procedure, 18 CFR § 385.202, Valero MKS Logistics, L.L.C. requested that the Commission grant a temporary waiver of the Interstate Commerce Act's ("ICA") Section 6 and Section 20 tariff filing and reporting requirements applicable to interstate common carrier pipelines.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214) on or before 5:00 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests. Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov. or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on _____, 2020.

Kimberly D. Bose, Secretary.

Document Content(s)

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