UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Mojave Pipeline Company | Docket No. RP07-310-000

ORDER ACCEPTING TARIFF SHEET,
AND ESTABLISHING HEARING PROCEEDINGS

(Issued March 28, 2007)

1. On February 26, 2007, Mojave Pipeline Company (Mojave) filed primary[1] and alternate[2] tariff sheets to its FERC Gas Tariff Second revised Volume No. 1, pursuant to section 4 of the Natural Gas Act (NGA). The primary sheet effectuates a decrease in Mojave's rates for all currently effective services. Mojave proposed a March 1, 2007 effective date, and is requesting a waiver of the Commission's 30-day notice requirement. As discussed below, the Commission accepts the primary proposed tariff sheet to be effective March 1, 2007, subject to the outcome of the hearing established herein.

Background

2. On December 1, 2000, at Docket No. RP01-172-000, Mojave filed tariff sheets to implement a system-wide rate case under section 4 of the NGA to re-establish Mojave's transportation rates. On October 23, 2001, Mojave filed an Offer of Settlement to resolve all issues in that proceeding, which the Commission accepted by order issued December 21, 2001.[3] Article IV of the Offer of Settlement obligates Mojave to file a system-wide rate case establishing new base tariff rates to be effective on March 1, 2007. The instant filing complies with that requirement.

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[1] Seventeenth Revised Sheet No.11, to Mojave's FERC Gas Tariff, Volume 1.

[2] Alternate Seventeenth Revised Sheet No.11, to Mojave's FERC Gas Tariff, Volume 1.

[3] *Mojave Pipeline Company*, 97 FERC ¶ 61,332 (2001).

Description of Filing

3. Mojave's primary proposal is a decrease in all base tariff rates, and no customer or class of customers will experience an increase in rates for any service. Specifically, Mojave's total revenues are projected to decrease from approximately $40,150,000 to approximately $26,820,000, which represents a reduction of approximately 33%. This decrease in revenues reflects a large decrease in Mojave's cost of service, driven by a large decrease in its rate base since its last rate case. Mojave has also proposed to amortize its $20.3 million regulatory liability resulting from its existing levelized rates, which rates Mojave proposes to change to traditionally designed rates. These plans also contribute to the rate decrease.

4. Mojave has offered two alternate proposals to eliminate the $20.3 million regulatory liability. The first option, in its primary proposal, is to design its rates based on the full design capacity of the pipeline, which would result in lower rates than rates designed on billing determinants. Mojave's liability would be reduced each month by the difference between the proposed and ultimately approved cost of service and the actual revenues received by Mojave under all jurisdictional services. Mojave estimates that, under this option, its regulatory liability would be amortized in four years.

5. Mojave's alternate proposal, for which it has supplied an alternate tariff sheet, would require nine years to fully amortize the full regulatory liability, and result in higher rates. This proposal would design rates based on actual billing determinants rather than the full capacity of the pipeline, and would change the cost of service and accounting from the primary proposal to reflect a nine year amortization. Specifically, the alternate proposal would design rates using actual billing determinates of 312,500 MMcf based on contracts that exist as of March 1, 2007. The proposal would also have the cost of service credited by $800,000 in revenue projected to be produced by interruptible revenue.

6. In addition to the amortization plans, Mojave is also requesting changes in its rate design. Mojave claims that circumstances on the pipeline have changed dramatically as a result of (1) Mojave's retiring all debt associated with the cost of the pipeline, and (2) all firm contracts on the system expiring prior to March 1, 2007. Mojave is therefore requesting to design its rates based on a traditional, non-levelized cost of service rather than on the levelized cost of service currently in effect. Mojave claims that this change to a non-levelized cost of service would also necessitate a change from a 10 year remaining life depreciation rate of 4.00 percent to a straight line depreciation rate of 1.64 percent based upon a calculation of a 30-year remaining economic life of Mojave's assets.

7. Mojave is also requesting an overall cost of capital of 12.14 percent with an overall cost of common equity of 14.65 percent, an overall cost of debt of 8.33 percent, with a capital structure comprised of an equity percentage of 60.19 percent, and a debt percentage 39.81 percent. Mojave claims that the overall cost of capital is lower than the amount it could claim since it has retired all of its debt, and is using the capital structure of its parent company to lower rates in order to stay competitive. Mojave also claims that the cost of equity is lower than the amount it would be entitled to since it is using the median of a proxy group of companies in its discounted cash flow (DCF) analysis, and Mojave asserts it has substantially more risk than the average company in the proxy group. Mojave, a non-MLP pipeline, includes master limited partnerships (MLPs) in the proxy group to determine the cost of common equity. Mojave claims it is proper to use MLPs in the proxy group here, recognizing that the Commission has rejected the inclusion of MLPs in a proxy group in a number of cases.

8. Finally, Mojave is requesting that the Commission limit the adjustment period to four months, which would end on February 27, 2007, the day before the new rates are proposed to go into effect, and that the Commission waive the 30-day notice requirement in order to allow the proposed decreased rates to go into effect as soon as possible.

<u>Public Notice, Interventions, and Protest</u>

9. Public notice of Mojave's filing was issued on February 1, 2005. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. §154.210 (2006)). Pursuant to Rule 214 (18 C.F.R. §385.214 (2006)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burden on existing parties.

10. Kern River Gas Transmission Company, and Pacific Gas and Electric Company filed a timely motion to intervene. On March 12, 2006, BP America Production Company, BP Energy Company, ConocoPhillips Company, Chevron Natural Gas, and Occidental Energy Marketing (collectively, Indicated Shippers) filed timely motions to intervene and a protest.

11. In their protest and comments, Indicated Shippers request that the rates go into effect immediately because the rates are a decrease from the existing rates.

12. However, Indicated Shippers also request that the Commission set all components of the filing for an evidentiary hearing, and state their objections on two aspects of Mojave’s filing. First, Indicated Shippers claim that the return on equity is unjustly inflated because of Mojave’s inclusion of MLPs in the DCF proxy group. Indicated Shippers assert that the Commission has rejected inclusion of MLPs in proxy groups

because MLPs' distributions reflect a return on and a return of capital, which skews the percentage upward, *citing Kern River Gas Transmission Gas Company*, 117 FERC ¶ 61,077 at 61,345-49 (2007), and *High Island Offshore System, L.L.C.*, 112 FERC ¶ 61,050 at 61,354-58 (2005).

13. Secondly, Indicated Shippers note that Mojave's fuel tracker does not contain a true-up mechanism. Indicated Shippers argue that because Mojave uses a fuel tracker and makes periodic limited Section 4 rate filings, Commission precedent requires Mojave's tariff to contain a true-up provision, *citing ANR Pipeline Co.*, 110 FERC ¶ 61,069 P 28 (2005).

Discussion

14. In the primary tariff sheet, Mojave proposes to change from levelized rates, to the traditional, non-levelized cost of service rates. No protest was filed as to this aspect of the filing. In addition, Mojave's primary proposal is a decrease in all base tariff rates, and no customer or class of customers will experience an increase in rates for any service. However, issues raised by the cost-of-service, such as are discussed in Indicated Shippers' protest, warrant further examination at hearing. Therefore, the Commission will accept the primary tariff sheet, to become effective March 1, 2007, but will set all issues raised by the primary proposed tariff sheet for further investigation at a hearing before an Administrative Law Judge. The issues to be examined include, but are not limited to, rate design, cost-of-service, cost allocation, the fuel tracker provision, and the return on equity. Specifically, the parties and staff should be prepared to develop a detailed record on the inclusion of MLPs for the proxy group used in Mojave's discounted cash flow or other alternative calculation to determine the return on common equity.[4] In light of the fact that Mojave did not originally propose an alternative to the DCF analysis in its filing, there may be parties, not yet intervenors, who wish to comment on a possible alternative, if one is proposed. If an alternative to the DCF analysis is proposed, the Commission would favor granting late intervention at that time to permit all interested parties to participate on this particular issue.

15. Since Mojave submitted the alternate tariff sheet only in the event the Commission rejected the primary tariff sheet, the Commission will reject Mojave's alternate proposed tariff sheet as moot, because we have accepted the primary tariff sheet.

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[4] As we noted in *Kern River Gas Transmission Co.*, 117 FERC ¶ 61,077, at P 154 (2006), "[w]e do not intend in this order to foreclose non-MLP pipelines from proposing to include MLPs in the proxy group, with an appropriate adjustment to reflect the differences between MLPs and corporations."

16. Since the rates in the accepted primary sheet are lower than Mojave's currently effective rates, any rates ordered as a result of the hearing established herein, to determine the justness and reasonableness of those accepted rates, will be prospective only, and no refunds may be ordered. In addition, the burden in establishing the justness and reasonableness of rates lower than the accepted rates is upon protestors and the Commission.

17. Finally, the Commission will grant Mojave's request for a waiver of the 30-day notice requirement, as well as its request for a four month adjustment period to allow the proposed rates to go into effect as soon as possible.

The Commission orders:

(A) The primary tariff sheet listed in footnote 1 is accepted to be effective March 1, 2007, subject to the outcome of the hearing established in this order.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4,5,8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP07-310-000 concerning Mojave's filing.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. §375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of the clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.