

126 FERC ¶ 61,175
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 25, 2009

In Reply Refer To:
Midcontinent Express Pipeline LLC
Docket No. RP09-136-000

Midcontinent Express Pipeline LLC
3250 Lacey Road, Suite 700
Downers Grove, IL 60515-7918

Attention: Bruce H. Newsome

Reference: Compliance Tariff Filing

Ladies and Gentlemen:

1. On December 4, 2008, Midcontinent Express Pipeline LLC (Midcontinent) filed its proposed FERC Gas Tariff, Original Volume No. 1¹ to comply with the Commission's July 25, 2008 order² granting Midcontinent a certificate of public convenience and necessity to construct and operate approximately 506 miles of new 30- to 42-inch pipeline, four mainline compressor stations totaling approximately 102,250 hp of compression and to provide open-access transportation services. The Certificate Order required Midcontinent to file revised tariff sheets to comply with the requirements of the order sixty to ninety days prior to commencement of service.

2. The Certificate Order directed Midcontinent to make a variety of changes to its tariff, including recalculating its FTS rate using its system design capacity and recalculating its PAL rate at the 100 percent load factor equivalent of the FTS rate.

¹ See Appendix.

² *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008) (Certificate Order).

Midcontinent's December 4, 2008 filing includes its actual tariff sheets, including the revised FTS and PAL rates and the changes to its tariff to address the other revisions required by the Certificate Order. Midcontinent states that although the certificate application included the provision of interim service that would be available in up to four discrete segments, changes in the construction schedule will allow Midcontinent to commence service in all or a portion of Zone 1 as early as March 1, 2009. In addition, Midcontinent has filed tariff sheets³ reflecting the August 1, 2009 in-service date of its Zone 2 facilities and tariff sheets⁴ reflecting the June 1, 2010 in-service date for the Pre-Approved Expansion Capacity as authorized in the Certificate Order. Midcontinent has also revised Section 14 of its General Terms and Conditions to conform its tariff to the requirements of Order Nos. 712 and 712-A and revised Section 13 of its General Terms and Conditions to reflect the removal of the term "Energy Affiliates" and the references to the posting of organizational charts consistent with Order No. 717. Midcontinent states that these orders were issued after the date of the certificate application and the date of the certificate order.

3. We will accept Midcontinent's FERC Gas Tariff, Original Volume No. 1 to be effective the later of March 1, 2009, or the date Midcontinent's facilities go into service, to be in compliance with the Certificate Order and Order Nos. 712 and 712-A and Order No. 717, subject to the conditions discussed below. In addition, we will accept the tariff sheets reflecting the August 1, 2009 in-service date of its Zone 2 facilities effective the later of August 1, 2009 or the date Midcontinent's Zone 2 facilities go into service and the tariff sheets reflecting the June 1, 2010 in-service date for the Pre-Approved Expansion Capacity, effective the later of June 1, 2010 or the date the Pre-Approved Expansion Capacity goes into service, subject to the conditions discussed below. Moreover, we find good cause to grant waiver of section 154.207 of the Commission's regulations, requiring that pipelines submit tariff filings no more than 60 days before the proposed effective date.

4. Public notice of Midcontinent's filing in Docket No. RP09-136-000 was issued on December 10, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ all timely motions to intervene and any motions to intervene

³ Original Sheet No. 7, Original Sheet No. 9 and Original Sheet No. 12.

⁴ Original Sheet No. 8, Original Sheet No. 10 and Original Sheet No. 13.

⁵ 18 C.F.R. §154.210 (2009).

⁶ 18 C.F.R. §385.214 (2009).

out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Chesapeake Energy Marketing, Inc. (Chesapeake) provided limited comments with respect to the filing. Chesapeake states that although Midcontinent's filing is generally consistent with the requirements of the Certificate Order, Chesapeake has identified three areas of concern. Chesapeake states it has discussed these concerns with Midcontinent and the parties have reached an acceptable resolution on those items. Subject to the further conditions discussed below, we find that Midcontinent has satisfactorily complied with the directives of the Certificate Order.

5. As required by the Certificate Order, Midcontinent revised Original Sheet No. 29 to provide that it will enter into Operational Balancing Agreements ("OBAs") with interstate and intrastate pipelines. However, according to Chesapeake, the tariff language does not cover gathering systems and other interconnections. Chesapeake states that Midcontinent has represented to Chesapeake that it will enter into OBAs with entities other than intrastate and interstate pipelines on a non-discriminatory basis, provided such OBAs are operationally feasible and the counterparties satisfy the other provisions of the Midcontinent tariff, such as credit requirements. Chesapeake states that this understanding resolves Chesapeake's concerns.

6. Chesapeake states that Original Sheet No. 62 implements the requirement of the Certificate Order that a shipper be excused from penalties if it has been directed to remove or return PAL volumes on the Midcontinent system but cannot do so because there has been an interruption on Midcontinent's system. However, as drafted, the waiver of penalties only applies during Non-Critical Times. Chesapeake states the same waiver should apply during Critical Times, because the affected shipper will be prevented from responding to Midcontinent's directives by Midcontinent's operating conditions. Similarly, Chesapeake states that a shipper should be excused during both Critical and Non-Critical Times if Midcontinent cannot schedule the action that it has directed the Shipper to take. Chesapeake states that Midcontinent has represented to Chesapeake that it agrees with this position and that it will file implementing changes to its tariff. Midcontinent is directed to modify its tariff accordingly.

7. Chesapeake states that Original Sheet No. 148 was revised by Midcontinent to remove references to charges for pooling services. However, Chesapeake states that Midcontinent made additional tariff changes that resulted in pooling points being treated as secondary out-of-path points. Chesapeake states this could result in a degradation of service for some shippers. Chesapeake states that Midcontinent has represented to Chesapeake that it will file revisions to its tariff that will establish a deemed physical location for the pooling points in Zones 1 and 2 of its system. Chesapeake states this will

ensure that Midcontinent's scheduling and curtailment priorities will reflect the contractual path for shippers and resolves Chesapeake's concerns. Midcontinent is directed to modify its tariff accordingly.

8. The Commission accepts Midcontinent Express Pipeline LLC's tariff sheets listed in the Appendix to be effective the later of March 1, 2009 or the date Midcontinent's facilities go into service, subject to Midcontinent filing revised tariff sheets, within 15 days of the date of this order, consistent with the discussion in the body of this order.

By direction of the Commission. Commissioner Kelliher is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

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Appendix

**Midcontinent Express Pipeline LLC
FERC Gas Tariff, Original Volume No. 1**

Tariff Sheets Effective the later of March 1, 2009, or the date Midcontinent's facilities go into service, Subject to Conditions

Title Page

Original Sheet Nos. 1 through 6

Original Sheet No. 11

Original Sheet No. 14

Sheet No. 15 (Reserves Sheet Nos. 15 through 19 for future use)

Original Sheet Nos. 20 through 85

Sheet No. 86 (Reserves Sheet Nos. 86 through 99 for future use)

Original Sheet Nos. 100 through 281

Sheet No. 282 (Reserves Sheet Nos. 282 through 299 for future use)

Original Sheet Nos. 300 through 314

Sheet No. 315 (Reserves Sheet Nos. 315 through 399 for future use)