

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Williams Energy Services, LLC,
and Williams Power Company, Inc

Docket No. OR06-5-000

v.

Mid-America Pipeline Company, LLC,
and Seminole Pipeline Company

Mid-America Pipeline Company, LLC

Docket Nos. IS05-216-000
IS05-260-000
IS06-238-000

ORDER ACCEPTING COMPLAINT IN PART, DISMISSING COMPLAINT IN
PART, AND CONSOLIDATING PROCEEDINGS

(Issued August 24, 2006)

1. On March 6, 2006, Williams Energy Services, LLC and Williams Power Company, Inc. (jointly, Williams) filed a Complaint and Motion to Consolidate against Mid-America Pipeline Company, LLC (MAPL), and Seminole Pipeline Company (Seminole).¹ Williams states that it ships approximately 61,000 barrels per day (bpd) of natural gas liquids (NGLs) under Respondents' joint tariff, originating at Groups 100, 105, and 110 and terminating at Mont Belvieu, Texas (Group 950). Williams also states that it participates in MAPL's Incentive Rate Program with respect to shipments from Group 100 to Group 950 and that it receives a lower rate in exchange for a commitment to transport all of its NGLs on MAPL's system through 2006.

2. Williams alleges that Respondents' joint rates, as well as the underlying local rates, are unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

¹ In this order, MAPL and Seminole are referred to jointly as Respondents.

Specifically, Williams challenges MAPL's FERC Tariff Nos. 37, 38, 39, and 40,² as well as Seminole's FERC Tariff No. 3. Williams asks the Commission to reduce the rates to just and reasonable levels and grant relief, including reparations, for two years prior to the date of the complaint in accordance with the Interstate Commerce Act (ICA).³ Williams also seeks to have its complaint consolidated with the pending MAPL rate proceedings in Docket Nos. IS05-216-000 and IS05-260-000.⁴

3. As discussed below, the Commission dismisses the complaint in part, accepts the complaint insofar as it challenges Seminole's rates, and consolidates it for hearing with the ongoing proceedings in Docket No. IS05-216-000, *et al.* At his discretion, the Presiding Administrative Law Judge (ALJ) may structure the consolidated proceedings to consider Williams's complaint against Seminole's rates in a separate phase of the proceedings.

Background

A. The Pipeline Systems

4. MAPL, a subsidiary of Enterprise Products Partners, L.P. (Enterprise), owns an NGL pipeline with three segments: the Rocky Mountain/Four Corners System (Rocky Mountain System), the Central System, and the Northern System. The Rocky Mountain System extends from the Overthrust Belt in Wyoming south to Hobbs-Gaines, Texas, where it interconnects with both MAPL's Central System and Seminole's system. The Central System extends from Hobbs-Gaines north to Conway, Kansas, where it interconnects with MAPL's Northern System, which has branches that continue to Pine Bend, Minnesota; Janesville, Wisconsin; and Tuscola, Illinois. MAPL's entire system consists of 7,226 miles of pipeline, including the 2,548-mile Rocky Mountain System, the 1,938-mile Central System, and the 2,740-mile Northern System.

5. Seminole is a separate entity that is owned in large part by certain Enterprise subsidiaries. Seminole's NGL pipeline system originates at the Hobbs-Gaines interconnection and extends to a loop near the Texas Gulf Coast, at Clemens, Stratton Ridge, and Mont Belvieu, Texas. MAPL and Seminole provide a joint service from

² As discussed below, MAPL has withdrawn or filed to cancel certain tariffs challenged by Williams in its complaint.

³ 49 U.S.C. app § 1 *et seq.* (1988).

⁴ In an order issued April 27, 2006, the Commission consolidated MAPL's filing in Docket No. IS06-238-000 with the pending consolidated proceedings in Docket Nos. IS05-216-000 and IS05-260-000. *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,124 (2006).

origin points on the MAPL Rocky Mountain System to Group 950 on the Seminole system under a joint tariff filed by MAPL.

B. Summary of Related Tariff Filings

6. Seminole filed FERC Tariff No. 3 on December 17, 2004, to establish an initial local interstate rate supported by the affidavit of an unaffiliated shipper in accordance with section 342.2(b) of the Commission's regulations.⁵ The rate applies to service from the Hobbs-Gaines interconnect with MAPL to Group 950 destinations. No person protested the filing, and it became effective January 17, 2005.

7. On January 28, 2005, MAPL filed its FERC Tariff No. 35 to increase its joint rates with Seminole for movements to Group 950 destinations. No person protested the filing, and the tariff became effective March 1, 2005.

8. On March 31, 2005, MAPL filed FERC Tariff Nos. 37 (to cancel FERC Tariff No. 35 applicable to the Rocky Mountain System), 38 (Northern System), and 39 (Central System) in Docket No. IS05-216-000 seeking to increase on a cost-of-service basis most general commodity rates for transporting NGLs on the three segments of its pipeline system. The Commission accepted and suspended the tariffs, subject to refund, and established hearing and settlement judge procedures.⁶ On May 20, 2005, MAPL filed FERC Tariff No. 40 in Docket No. IS05-260-000 to cancel FERC Tariff No. 37 and to lower certain General Commodity Rates for Demethanized Mix. In an order issued June 27, 2005, the Commission, *inter alia*, consolidated the filing in Docket No. IS05-260-000 with Docket No. IS05-216-000 for settlement judge and hearing procedures.⁷ The parties were unable to reach a settlement, and a hearing is pending in the consolidated dockets. Williams is a party to the consolidated proceedings.

9. On March 31, 2006, MAPL filed FERC Tariff No. 41 in Docket No. IS06-238-000 canceling FERC Tariff No. 38. Williams intervened in that proceeding. On April 27, 2006, the Commission issued an order accepting and suspending FERC Tariff No. 41 and consolidating that docket with the proceedings pending in Docket Nos. IS05-216-000 and IS05-260-000.⁸

⁵ 18 C.F.R. § 342.2(b) (2006).

⁶ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128 (2005).

⁷ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,483 (2005).

⁸ *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,124 (2006).

10. On May 1, 2006, MAPL filed FERC Tariff No. 42 to replace FERC Tariff Nos. 37 and 40 and to cancel FERC Tariff No. 35. MAPL stated that it made the filing, *inter alia*, to bring forward reduced rates. In an order issued May 26, 2006, the Commission accepted FERC Tariff No. 42, but denied a request by Williams that Docket No. IS06-285-000 be consolidated with Docket No. IS05-216-000, *et al.*⁹

11. In an order issued July 19, 2006, the Commission issued an order in Docket No. IS06-444-000, *et al.*, accepting Supplement Nos. 3 and 4 to MAPL's FERC Tariff No. 42 establishing a new volume incentive program on MAPL's Rocky Mountain System.¹⁰

Summary of Williams' Complaint

Williams lists the following issues in its complaint:

- a. Whether the joint rates charged by MAPL and Seminole for transportation from Groups 100, 105, and 110 to Group 950 are unjust and unreasonable.
- b. Whether the local rate charged by Seminole for transportation from the MAPL interconnect to Group 950 is unjust and unreasonable.
- c. Whether MAPL has properly allocated its cost of service among the three segments of its system.
- d. Whether MAPL's rate differential applicable to service originating at Group 105 and Group 110 is unjust, unreasonable, and unduly discriminatory.
- e. Whether heightened scrutiny is warranted when the Commission's joint rate policy is applied to affiliated pipelines.
- f. Whether Seminole's FERC Tariff No. 3 should be nullified.
- g. Whether MAPL's revised incentive rate program is unduly discriminatory.
- h. Whether the instant complaint should be consolidated for hearing with the consolidated proceedings in Docket No. IS05-216-000, *et al.*

⁹ *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,258 (2006), *reh'g pending*.

¹⁰ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006).

Interventions, Answers, and Motions to Dismiss

12. The National Propane Gas Association, Amerigas Propane, L.P., CHS Inc., Ferrellgas, L.P., and Targa Liquids Marketing and Trade (jointly, Propane Group) filed a motion to intervene and an objection to Williams' motion to consolidate the complaint with the previously-consolidated MAPL proceedings. Burlington Resources Trading Inc. (Burlington) filed a motion to intervene and comments in support of Williams' complaint.¹¹ Seminole filed an answer and motion to dismiss, contending that Williams' complaint fails to meet the requirements of Rule 206 of the Commission's Rules of Practice and Procedure¹² and that Williams has established no reasonable grounds for investigating Seminole's rates. MAPL likewise filed an answer and motion to dismiss, arguing that Williams has not complied with Rule 206, that it has alleged no reasonable grounds for investigating the rates, and that it has not shown substantially changed circumstances sufficient to challenge grandfathered rates. Williams filed an answer opposing the motions to dismiss.

Discussion

13. As discussed below, the Commission dismisses Williams' complaint insofar as it relates to MAPL's rates. The Commission concludes that the ongoing consolidated proceedings in Docket Nos. IS05-216-000, IS05-260-000, and IS06-238-000 afford Williams an appropriate forum in which to address issues relating to MAPL's rates. However, the Commission will set the complaint for hearing as it regards Seminole's Tariff No. 3 and, to that extent, will consolidate the complaint with the ongoing proceedings in Docket No. IS05-216-000, *et al.* The ALJ may phase the consolidated proceedings to consider Williams' complaint against Seminole's rate in a separate phase.

A. The Joint Rate Policy

14. Williams contends that a higher level of scrutiny is necessary if the Commission's joint rate policy is to be applied to affiliated pipelines. Williams states that the policy provides that a joint rate is deemed just and reasonable if the rate is less than or equal to the sum of the local interstate rates on file with the Commission and that a joint rate thus established does not require any review or investigation.¹³ However, Williams

¹¹ Burlington also sought consolidation with a similar complaint it had filed in Docket No. OR06-4-000, which it has since withdrawn.

¹² 18 C.F.R. § 385.206 (2006).

¹³ Williams cites *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128, at P 23 (2005).

emphasizes that, at the time the ICA originally provided for joint rates, such rates were between carriers that were not affiliated companies. Williams states that Respondents MAPL and Seminole are affiliated entities, both of which are owned and operated by Enterprise. Given the economies, efficiencies, and other synergies attendant to affiliated pipelines, Williams submits that the Respondents' adoption of joint rates should be subjected to a heightened level of scrutiny and investigation.¹⁴

15. MAPL responds that Williams' proposal is a direct attack on the Commission's joint rate policy established in *Texaco Pipeline Inc. (Texaco)*.¹⁵ MAPL argues that the policy is straightforward and applicable to all oil pipelines, including affiliates. In fact, continues MAPL, in *Texaco*, the joint rate at issue involved movements on two other affiliated pipelines, as well as movements under two local rates filed by the same company.

16. MAPL distinguishes *Northwest*, contending that the case dealt with purchases and sales of facilities or services between affiliates, not joint rates. Further, states MAPL, oil pipelines are required to account separately for transactions with affiliates, and *Texaco* is compatible with this requirement, which is intended to ensure that the costs involved in affiliate transactions may be scrutinized. Moreover, reasons MAPL, Williams' proposal makes no sense because carriers are not required to offer discounted joint rates,¹⁶ and the Commission should not attempt to determine the appropriate level of discounts. MAPL further contends that, to the extent the Commission rejects Williams' theory, Williams' remaining challenge to the MAPL/Seminole joint rates from Groups 105 and 110 turns solely on whether the Seminole rates are just and reasonable because Williams is not challenging the level of the underlying MAPL local rates.

17. Williams responds that its heightened scrutiny request is not an attack on the Commission's joint rate policy. Williams states that it supports the joint rate policy and asks only that, when affiliated pipelines offer a joint rate, such a rate should reflect in part the efficiencies and synergies available to and utilized by affiliated pipelines.

¹⁴ Williams cites *Northwest Utilities Service Co.*, 66 FERC ¶ 61,332, at 62,090 (1994) (*Northwest*), addressing the degree of scrutiny required of a power sales agreement between affiliates versus that of one at arms length.

¹⁵ 72 FERC ¶ 61,313, at 62,310-11 (1995).

¹⁶ MAPL cites *Express Pipeline LLC*, 99 FERC ¶ 61,229 (2002), holding that joint rates constitute a discount from the sum of individual local rates and one based on a voluntary agreement among the pipeline carriers that none is obligated to continue once their agreement ends.

18. The Commission affirmed its joint rates policy in *Express Pipeline, LLC*, in which it stated as follows: “The Commission’s policy on joint rates . . . states that a joint rate is just and reasonable if it is less than or equal to the sum of the local interstate rates”¹⁷ Thus, the policy caps the joint rate at an amount that is no greater than the combination of local rates applicable to the movement. The justness and reasonableness of these underlying local rates making up the joint rate, whether filed by independent or affiliated companies, can be challenged by means of a complaint. Accordingly, the Commission finds that Williams’ proposed additional scrutiny of a joint rate provided by affiliates is unnecessary.

B. Complaint Against MAPL

19. Williams contends that the increase in Seminole’s local rate followed by the increase in Respondents’ joint rate will impact it by approximately \$34.7 million. According to Williams, the Respondents’ rates never have been submitted to a cost-of-service examination, which Williams contends constitutes reasonable grounds to support an investigation of the rates. Williams also claims that MAPL’s elimination of certain requirements applicable to its volume incentive program constitutes discrimination against shippers who made seven-year commitments in 1999. Further, Williams argues that MAPL’s indexed rate increase and proposed cost-of-service increase violate the prohibition against seeking a second rate increase in a single index year. Additionally, Williams challenges MAPL’s allocation of the cost of providing service among its three pipeline segments, and Williams maintains that the Group 105 and Group 110 rate differential is unjustified. Finally, Williams seeks consolidation of its complaint with the ongoing proceedings in Docket No. IS05-216-000, *et al.*

20. The Propane Group opposes consolidation of the proceedings, asserting that the resulting delay will be burdensome to its members. Seminole also opposes consolidation with the proceedings in Docket No. IS05-216-000, *et al.*

21. In its answer and motion to dismiss, MAPL maintains that the complaint does not meet the requirements of Rule 206 of the Commission’s rules and regulations.¹⁸ MAPL also claims that the information provided by Williams does not establish reasonable grounds to investigate its rates, that the complaint fails to show substantially changed circumstances sufficient to support a claim against rates based on rates that were grandfathered in accordance with the Energy Policy Act of 1992 (EPAAct),¹⁹ that the existence of a rate differential between different movements does not constitute

¹⁷ 104 FERC ¶ 61,207, at 61,717-18 (2003) (footnotes omitted).

¹⁸ 18 C.F.R. § 385.206 (2006).

¹⁹ Pub. L. 102-486, 106 Stat. 2772 (1992).

discrimination,²⁰ that a cost-of-service filing within a year of an indexed rate increase is permitted, and that the revised incentive program is not discriminatory. To the extent the Commission does not dismiss the complaint against its rates, MAPL does not oppose consolidation with Docket No. IS05-216-000, *et al.* However, MAPL opposes consolidation of issues involving Seminole's rates with the consolidated proceedings in that docket.

22. Williams' answer to the motions to dismiss seeks to refute Respondents' arguments. Williams believes that its complaint satisfies the requirements of Rule 206, that it has established reasonable grounds for investigating Respondents' rates, that the rates it challenges are not entitled to protection under the EPAct, and that the cost-of-service filing within a year of an indexed rate increase is improper.

23. The Commission will dismiss Williams' complaint with respect to MAPL's rates. First, Williams' complaint challenges tariffs that have been cancelled or are under review in the consolidated proceedings in Docket No. IS05-216-000, *et al.*, or in other proceedings pending before the Commission. Williams is a party to the consolidated proceedings and can address its concerns about MAPL's rates, cost of service, and allocation of costs at the hearing. Further, in Docket No. IS06-285-000, the Commission accepted MAPL's FERC Tariff No. 42 to replace Tariff Nos. 37 and 40 and to cancel Tariff No. 35, rejecting Williams' protest and request to consolidate. Rehearing is pending in that docket. Finally, Williams challenges MAPL's revised volume incentive program; however, that program is being addressed in the consolidated proceedings in Docket No. IS05-216-000, *et al.*

24. As further support for its dismissal of Williams' challenges to MAPL's rates, the Commission will address certain issues raised by Williams. First, Williams' claim that the Group 105 and Group 110 rate differential is unjustified and lacks merit. Williams cites the varying distances between those Groups and Group 120,²¹ contending that, based on a simple barrel-mile analysis, such a differential on its face is unjust and unreasonable and clearly discriminatory because it does not appear to be cost-based, and MAPL has not provided support for this rate differential.

25. The Commission rejects Williams' claim concerning the alleged disparity in rates for movements from Group 105 and Group 110 to Group 120. The movement from

²⁰ MAPL cites *Texaco Pipeline Inc.*, 72 FERC ¶ 61,313, at 62,310-11 (1995).

²¹ Williams points out that, while the distance from Group 105 to Group 120 is only approximately 10 percent more than the distance from Group 110 to Group 120, the difference in rates from Group 105 and Group 110 to Group 120 was 36 percent prior to this filing.

Group 105 to Group 120 is not the same movement as the movement from Group 110 to Group 120. MAPL correctly cites *Texaco* in which the Commission determined that disparities in rates for different movements do not constitute discrimination.

26. Williams also argues that MAPL's indexed rate increase and proposed cost-of-service increase violate the prohibition against seeking a second rate increase in a single index year. Williams cites section 342.2 of the Commission's regulations, stating that the section authorizes an annual increase in pipeline rates pursuant to a seasonally-adjusted index published by the United States Department of Labor, Bureau of Statistics. According to Williams, MAPL submitted an indexed rate increase on June 29, 2004, and subsequently made its cost-of-service filing in Docket No. IS05-216-000 on March 31, 2005. Thus, argues Williams, MAPL's proposed cost-of-service rate increase improperly seeks a second rate increase during a single index year.²²

27. MAPL responds that the Commission previously rejected this argument in its order in Docket No. IS05-216-000, and the Commission should reject it here as well. MAPL asserts that, while a new ceiling rate established by a cost-of-service showing may not be indexed until the next index adjustment date, nothing prevents an indexed rate from being superseded at any time by a valid cost-of-service rate.²³

28. The Commission agrees that this issue has been resolved in the earlier proceeding. Order No. 561 allows separate rate increase filings within a one-year period under certain circumstances, which apply to MAPL's two filings.

29. MAPL filed to increase its rates in accordance with the *Notice of Annual Changes in the Producer Price Index for Finished Goods* issued May 14, 2004, and in accordance with section 342.3 of the Commission's regulations. Under this procedure, pipelines were allowed to charge rates up to a ceiling level established by the index for the July 1, 2004-June 30, 2005 index year. Within the index year, however, MAPL filed cost, revenue, and throughput data pursuant to section 342.2(b) of the Commission's regulations to support a rate increase to be effective May 1, 2005. The Commission prohibits more than one indexed rate increase in a single year. Additionally, when a rate

²² Williams cites *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58,753 (November 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,954 (1993):

If the rate in effect is changed during the year through a method other than indexing, or if the rate in question is an initial rate established during the year, then the pipeline must defer any rate change pursuant to the indexing system to the next subsequent adjustment date – *i.e.*, the following July.

²³ Williams cites 18 C.F.R. § 342.3(d)(5) (2006).

is changed by a method other than indexing, the new rate becomes the applicable ceiling for that index year, and the pipeline may not increase the rate again by additional indexing during that index year.²⁴ However, a pipeline could, if it chose, seek another rate increase based on a cost-of-service filing during the index year. In Order No. 561, the Commission stated as follows:

To allow a rate established, or changed by a method other than indexing, during the index year to be further increased by the full amount allowed by the index would be contrary to the policy that the ceiling level is established on an annual basis, to be applied during an index year.²⁵

Accordingly, the Commission affirms its earlier determination that MAPL did not violate Commission policy concerning increases to indexed rates.

30. Finally, Williams maintains that MAPL's revised rate incentive program is unduly discriminatory. According to Williams, under the MAPL rate incentive program, shippers like Williams receive a rate discount in exchange for a seven-year commitment to ship all NGLs on the MAPL system. Williams states that, with FERC Tariff No. 40, MAPL now seeks to eliminate the seven-year written commitment for the program, thus establishing different eligibility requirements for receipt of the same service and rate.

31. The Commission also dismisses Williams' complaint with respect to this issue. In the order issued June 27, 2005, in Docket Nos. IS05-216-000 and IS05-260-000, the Commission found that MAPL's newly-proposed incentive rate program might be discriminatory compared to its existing program.²⁶ As a result, this part of MAPL's FERC Tariff No. 40 was accepted and suspended, subject to refund, and consolidated with the proceeding in Docket No. IS05-216-000. FERC Tariff No. 40 was effective July 1, 2005, but was withdrawn effective May 1, 2006. Further, in the order issued July 19, 2006, in Docket No. IS06-444-000, *et al.*, the Commission also rejected Williams' challenge to a subsequent revised incentive program.²⁷

²⁴ 18 C.F.R. § 342.3(d)(5) (2006) provides in part as follows: "When an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year."

²⁵ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58,753 (November 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,954 (1993).

²⁶ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,483, at P 23 (2005).

²⁷ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 23 (2006).

C. Complaint Against Seminole

32. Williams challenges the initial rate established in Seminole's FERC Tariff No. 3, contending that Seminole improperly used the affidavit procedure provided in section 342.2(b) of the Commission's regulations.²⁸ Williams argues that FERC Tariff No. 3 did not establish an initial rate for new service because it had long been a component of the joint rate with MAPL and should have been filed with the support of current shippers pursuant to section 342.4(a)-(c) of the Commission's regulations.²⁹ Williams also challenges the magnitude of the local rate increase.

33. Williams contends that there are reasonable grounds for setting Seminole's local rates for investigation along with MAPL's so that both components of the joint rates will be considered together. Williams asserts that Seminole's filing increased the local rate by 37.3 percent. Further, states Williams, based on Seminole's 2004 FERC Form 6, Seminole's modest earnings and very high equity ratio support a finding that the increase in the local rate significantly increased the return Seminole received.

34. Seminole contends that Williams' complaint does not meet the requirements of Rule 206 and should be dismissed. Seminole asserts that Williams does not clearly identify the nature of its complaint against Seminole and that it does not allege that Seminole's rate is too high, but merely that it should be investigated. Seminole further maintains that Williams fails to make a good faith effort to quantify the financial impact to it of Seminole's rate. Moreover, Seminole maintains that Williams is not a shipper under Seminole's local rate and does not allege that it intends to become a shipper. Seminole points out that Williams ignores the fact that Seminole's cost of service is approximately 60 percent greater than its revenue,³⁰ and Seminole challenges Williams' claim that its current interstate rate is higher than its prior intrastate local rate, emphasizing that no party challenged the Seminole local rate at the time it was filed. Finally, Seminole argues that it properly established its initial interstate rate in accordance with section 342.2(b) of the Commission's regulations.³¹

²⁸ 18 C.F.R. § 342.2(b) (2006).

²⁹ 18 C.F.R. § 342.4(a)-(c) (2006).

³⁰ Seminole cites its 2004 FERC Form No. 6 at 700, a copy of which is attached as Attachment A to Seminole's Answer and Motion to Dismiss.

³¹ 18 C.F.R. § 342.2(b) (2006).

35. In its answer, Williams contends that the Commission should summarily reject Seminole's FERC Tariff No. 3, which purports to initiate a new interstate local rate on the Seminole system. According to Williams, the alleged new service is for a physically impossible and thus non-existent service that can never be used. Specifically, Williams claims that Seminole and MAPL admit that the FERC Tariff No. 3 begins and ends in Texas; therefore, it is an interstate service and not an intrastate service.³² Williams further contends that its complaint meets the requirements of Rule 206, citing the verified statements attached to its complaint in support of its allegations.

36. Williams also renews its assertion that the Seminole rate increase should be investigated. Williams argues that the fact that it did not protest Seminole's FERC Tariff No. 3 at the time it was filed does not now preclude its complaint.³³ Williams contends that reliance on FERC Form No. 6 is misplaced because the figures there represent estimates and have no evidentiary value.

37. The Commission rejects Williams' claim that Seminole did not properly establish its initial rate in FERC No. 3. Seminole filed a local interstate rate in FERC Tariff No. 3 on December 17, 2004, to be effective January 17, 2005, providing for the transportation of NGLs from the Hobbs-Gaines origin to Group 950 (Mont Belvieu, Texas). Prior to that time, Seminole did not have a local rate on file with the Commission for this movement; therefore, Seminole filed its local rate pursuant to section 342.2(b) of the regulations, which provides as follows:

A carrier must justify an initial rate for new service by: ... (b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, *provided* that if a protest to the initial rate is filed, the carrier must comply with paragraph (a) of this section.³⁴

38. Although Seminole was at the time providing a joint interstate service with MAPL and continues to do so, the initial rate proposed by Seminole was for an entirely new local service to be provided solely by Seminole. The Commission finds that Seminole properly filed its FERC Tariff No. 3 consistent with the requirements of section 342.2(b). Further, Williams was shipping NGLs on the MAPL/Seminole systems under a joint rate and was aware that Seminole filed an initial local rate. Williams could have protested

³² Williams cites *All American Pipeline, L.P.*, 105 FERC ¶ 61,155 (2003).

³³ Williams cites *Frontier Oil and Refining Company v. Express Pipeline Partnership*, 86 FERC ¶ 61,115 (1999).

³⁴ 18 C.F.R. § 342.2(b) (2006).

Seminole's filing, which then would have required Seminole to make a cost-of-service filing pursuant to section 342.2(a) of the Commission's regulations.³⁵ However, Williams failed to protest the filing, and accordingly, the Commission will not nullify Seminole's FERC Tariff No. 3 on the basis of an allegation that the rate was not established properly.

39. Although Seminole's local rate was properly established as discussed above, the justness and reasonableness of Seminole's local rate has not been determined. Seminole's local rate is not grandfathered pursuant to the provisions of the EPCRA and may be challenged by a complaint based on "reasonable grounds" for believing that the rate is unlawful.³⁶ Because Seminole's local rate is one underlying component of MAPL's joint rate, the level of the Seminole local rate is relevant to determining the appropriate level of MAPL's joint rate. The Commission finds that Williams has stated reasonable grounds for believing that Seminole's local rate is unlawful. Accordingly, the Commission will set Seminole's FERC Tariff No. 3 for hearing and will consolidate it with the ongoing proceedings in Docket No. IS05-216-000, *et al.* At the hearing, Complainant Williams will bear the burden of showing that the rate is not just and reasonable.

40. Additionally, the Commission authorizes the ALJ to determine whether it may be appropriate to consider issues relating to Seminole's FERC Tariff No. 3 in a separate phase of the consolidated proceeding.

The Commission orders:

(A) The complaint in Docket No. OR06-5-000 is dismissed to the extent stated in the body of the order.

³⁵ 18 C.F.R. § 342.2(a) (2006) provides as follows: "A carrier must justify an initial rate for a new service by: (a) Filing cost, revenue, and throughput data supporting such rate"

³⁶ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58,753 (November 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,956 (1993).

(B) Seminole's FERC Tariff No. 3 is set for hearing and consolidated with the ongoing proceedings in Docket No. IS05-216-000, *et al.*, as stated in the body of the order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.