

126 FERC ¶ 61,271
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Express Pipeline, LLC

Docket No. CP08-6-003

ORDER AMENDING CERTIFICATE

(Issued March 25, 2009)

1. On July 25, 2008, the Commission issued an order granting Midcontinent Express Pipeline LLC, (Midcontinent) certificate authorization under section 7(c) of the Natural Gas Act (NGA), among other things, to construct and operate a new 506-mile pipeline extending from southeastern Oklahoma to western Alabama.¹ On January 9, 2009, Midcontinent filed an application to revise its cost-based recourse rates to reflect increases in the actual and projected costs of construction. This order grants the requested authorization, as discussed below.

Background

2. Midcontinent's authorized facilities consist of: (1) approximately 41 miles of 30-inch diameter pipeline from an interconnection with Enogex Inc. (Enogex)² in Bryon County, Oklahoma, increasing to 42-inch diameter pipeline for the next 265 miles to an interconnect with Columbia Gulf Transmission Company, in Madison Parish, Louisiana (Zone 1); (2) approximately 196 miles of 36-inch diameter pipeline extending to an interconnect with Transcontinental Gas Pipe Line Corporation at its Station 85 in Choctaw County, Alabama (Zone 2); (3) four mainline compressor stations totaling approximately 102,250 horsepower; and (4) a 4.2-mile, 16-inch diameter lateral in Richland and Madison Parishes, Louisiana.³ Midcontinent designed the project to be

¹*Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008) (July 25, 2008 Order).

² Enogex is an intrastate pipeline operating natural gas facilities entirely within the state of Oklahoma.

³ Additionally, the Commission authorized Midcontinent to lease 272,000 dekatherms per day (Dth/d) of capacity on Enogex's intrastate pipeline.

constructed in two phases. The initial phase will have a firm capacity of not less than 1,432,500 Dth/d in Zone 1 and not less than 1,000,000 Dth/d in Zone 2. The expansion phase facilities approved in the July 25, 2008 Order will increase the system design to 1,532,500 Dth/d in Zone 1 and not less than 1,200,000 Dth/d in Zone 2. Midcontinent expects to place the initial facilities in service on or about April 1, 2009.⁴

Proposal

3. Midcontinent now projects the facility costs for the pipeline to be \$1,831,889,578, an increase of \$492,710,796 from the costs the Commission approved in the July 25, 2008 Order. According to Midcontinent, the increase in costs is primarily due to substantially higher contractor construction costs reflecting an overall increase in the market demand for these services. Midcontinent contends that the most significant increase was \$380.4 million for labor costs. Midcontinent states that its original estimate was developed in 2006 and since that time the demand for pipeline construction has spiked, resulting in a dramatic increase in labor and equipment costs to the industry generally and Midcontinent specifically. Midcontinent states that the amendment reflects cost estimates based on current contracts with its contractors and generally reflects higher-priced market conditions for infrastructure projects. In addition, Midcontinent notes that in order to accommodate landowners and others, the pipeline route has been revised several times, which has further increased labor costs.

4. Midcontinent asserts that \$135.5 million of the cost increase resulted from increased material costs primarily due to: (1) changes in pipe configuration and length arising from various pipeline reroutes; (2) the replacement of a supplier in order to ensure timely delivery of pipe; (3) increased steel prices of approximately \$400 per ton, reflecting higher-priced market conditions for infrastructure projects; (4) additional pipe mill inspection costs and; (5) additional freight costs resulting from higher market prices for fuel. Midcontinent notes that the vast majority of its materials have been procured and delivered; therefore, Midcontinent does not expect that its materials costs will change significantly from this estimate.⁵ An additional \$38.8 million in projected cost increases resulted from higher-than-anticipated engineering and inspection costs due to additional personnel added to monitor the construction, environmental and safety activities during

⁴ To facilitate its anticipated April 1, 2009 in-service date, Midcontinent filed tariff sheets on December 4, 2008, in Docket No. RP09-136-000, to comply with Ordering Paragraph (G) of the Commission's July 25, 2008 Order and negotiated rate agreements on February 17, 2009, in Docket No. RP09-369-000, to comply with Ordering Paragraph (H) of the Commission's July 25, 2008 Order. These filings were accepted by orders issued on February 25 and March 29, 2009, respectively.

⁵ See Midcontinent's February 17, 2009 response to a staff data request.

construction, and reroutes and pipeline configuration changes. Midcontinent also updated projected costs for right-of-way land, right-of-way damages, surveys, environmental factors, line pack, permit fees, legal services, contingencies, overhead, and allowance for funds used during construction (AFUDC).

5. In its amended application, Midcontinent includes revised Exhibits K and P to detail its projected cost increases, overall cost of service, and rate derivation. Midcontinent's revised cost of service for the expansion phase capacity is \$362,779,485. Midcontinent states it has not proposed any changes to the rate design billing determinants, return, or other cost of service factors underlying the calculated initial rates included in the July 25, 2008 Order.

6. Midcontinent sets forth its proposed recourse rates on pro forma tariff sheets. According to Midcontinent, for the initial phase facilities, the increased construction costs result in a Rate Schedule FTS reservation rate of \$11.93 per Dth in Zone 1 and \$11.24 per Dth in Zone 2, an increase of \$3.01 per Dth in Zone 1 and \$2.96 per Dth in Zone 2 over the currently approved reservation rates. The cost increases result in a Rate Schedule ITS commodity rate of \$0.3935 per Dth in Zone 1 and \$0.3703 per Dth in Zone 2, an increase of \$0.0989 per Dth in Zone 1 and \$0.0973 in Zone 2 over the currently approved ITS commodity rates. For the expansion phase facilities, the increased construction costs result in a Rate Schedule FTS reservation rate of \$11.65 per Dth in Zone 1 and \$10.23 per Dth in Zone 2, an increase of \$3.09 per Dth in Zone 1 and \$2.65 per Dth in Zone 2 from its currently approved reservation rates. The cost increases result in a Rate Schedule ITS commodity rate of \$0.3843 per Dth in Zone 1 and \$0.3375 per Dth in Zone 2, an increase of \$0.1016 per Dth in Zone 1 and \$0.0869 in Zone 2 over the currently approved ITS commodity rates

7. Midcontinent states that amending its certificate authorization is necessary to insure that its recourse tariff rates reflect current cost estimates at the time initial services commence. Midcontinent also states that the updated initial rates will not have an impact on the current shippers, all of whom have entered into negotiated rate agreements.

Notice

8. Notice of Midcontinent's application was issued on January 23, 2009, and published in the *Federal Register* on January 14, 2009 (74 Fed. Reg. 4175). No comments, interventions, or protests were filed.

Discussion

9. Because revising the initial incremental cost-based recourse rates requires amending the authorization issued in the July 25, 2008 Order, Midcontinent's request is subject to the jurisdiction of the Commission and the requirements of NGA sections 7(c) and (e).

10. The July 25, 2008 Order approved Midcontinent's project in light of the Commission's Certificate Policy Statement⁶ and found that the proposal was in the public convenience and necessity.⁷ Specifically, the July 25, 2008 Order found that, since Midcontinent is a new company with no existing customers, there would be no subsidization of the costs of the project by existing customers.⁸ The July 25, 2008 Order also found that there were no or minimal identified adverse effects on existing pipelines or their customers, landowners, or communities.⁹

11. Midcontinent proposes to revise its initial firm and interruptible transportation rates due to the rising costs associated with constructing the pipeline project. Midcontinent's filing and its February 17, 2009 data response include revised cost exhibits and worksheets that reflect increased costs for constructing these facilities. The increased facility costs include costs associated with material and labor; project relocation; engineering-related costs; and right-of-way acquisitions and damages, surveys, environmental factors, fees, and overhead associated with pipeline construction. No party has protested the proposed level of the increase.

12. The July 25, 2008 Order authorized Midcontinent's proposal based on the findings discussed above. Midcontinent's proposal to revise the firm and interruptible transportation rates due to an increase in the cost to construct the project does not change the basis for any of our findings in the July 25, 2008 Order. Thus, consistent with the public convenience and necessity, we will amend the July 25, 2008 Order to authorize Midcontinent's proposed revised initial firm and interruptible transportation rates for the project.

13. The Commission on its own motion, received and made a part of the record all evidence, including the application, as supplemented, and exhibits thereto, submitted in this proceeding and upon consideration of the record,

⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999); *order on clarification*, 90 FERC ¶ 61,128; *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁷ July 25, 2008 Order at P 68-72.

⁸ *Id.* P 68.

⁹ *Id.* P 69-70.

The Commission orders:

(A) Midcontinent's certificate of public convenience and necessity issued in this proceeding is amended to authorize the proposed revised initial cost-based recourse rates, subject to the qualifications and modifications required by the July 25, 2008 Order.

(B) Midcontinent is directed to file revised tariff sheets, within five days of the date this order issues, reflecting the revised recourse rates.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.