

127 FERC ¶ 61,011
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Missouri Interstate Gas, LLC	Docket Nos. CP06-407-003
Missouri Gas Company, LLC	CP06-408-002
Missouri Pipeline Company, LLC	CP06-409-002
Missouri Interstate Gas, LLC	RP06-274-002
MoGas Pipeline LLC	CP06-407-003

ORDER DENYING REHEARING

(Issued April 3, 2009)

1. On February 19, 2008, the Commission issued an order¹ addressing requests for rehearing of, and filings to comply with, its April 20, 2007 Certificate Order in this proceeding.² The Missouri Public Service Commission (MoPSC), MoGas Pipeline LLC (MoGas) and the Municipal Intervenors³ filed requests for rehearing of the February 19, 2008 Order. For the reasons discussed, we are denying those requests.

Background

2. On April 20, 2007, the Commission issued an order (Certificate Order) authorizing Missouri Interstate Gas, LLC (Missouri Interstate), Missouri Gas Company, LLC (Missouri Gas) and Missouri Pipeline Company, LLC (Missouri Pipeline) (hereinafter, collectively “the applicants” or “MoGas”) to merge their affiliated pipelines into a new

¹ *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,136 (2008) (February 19, 2008 Order).

² *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007) (April 20, 2007 Certificate Order).

³ The Municipal Intervenors consist of the Municipal Gas Commission of Missouri and the Cities of St. James, St. Robert, Richland, and Waynesville, Missouri.

interstate natural gas company now known as MoGas Pipeline LLC.⁴ On July 5, 2007, MoGas made a filing in purported compliance with the requirements of that order (first compliance filing). The February 19, 2008 Order addressed both the requests for rehearing of the April 20, 2007 Certificate Order and MoGas' first compliance filing. Among other things, the February 19, 2008 Order found that the Zone 1 initial rates set forth by MoGas in its first compliance filing were not properly calculated because while the Zone 1 rate base included the costs associated with the facilities of both the former Missouri Pipeline and Missouri Interstate systems, only the billing determinants associated with the Missouri Pipeline system were used. Therefore, the February 19, 2008 Order directed MoGas either to add 18,430 decatherms per day (Dth/d) of billing determinants attributable to service subscribed on Missouri Interstate for purposes of calculating rates for Zone 1, or create a separate rate zone for service over the former Missouri Interstate facilities. In addition, the April 20, 2007 Certificate Order had permitted the applicants to base the billing determinants for the new pipeline's initial rates on the contractual volumes of the merging pipelines rather than on the physical capacity of the facilities. The February 19, 2008 Order affirmed that determination on rehearing.

3. On February 29, 2008, MoGas made a filing in purported compliance with the February 19, 2008 Order (second compliance filing). However, instead of either recalculating the Zone 1 rates by adding the 18,430 Dth/d or creating a separate rate zone, MoGas put forth as its Zone 1 rate an illustrative rate shown in a footnote to the February 19, 2008 Order. Several parties filed protests objecting to MoGas' adoption of the footnote rate, as well as other aspects of the filing. In its protest, the MoPSC calculated a Zone 1 firm rate based on the addition of 18,430 Dth/d of billing determinants for Zone 1. MoGas responded by asserting that, in fact, the rate for Zone 1 should be higher than that shown in the footnote and adopted in its filing. MoGas further argued that the addition of 18,430 Dth/d to the billing determinants of Missouri Pipeline double-counts certain subscribed capacity and arbitrarily adds volumes subscribed after the certificate application was filed.

4. In the May 7, 2008 Order on MoGas' second compliance filing,⁵ the Commission clarified that the rate in footnote 59 of the February 19, 2008 Order was for illustrative purposes only and was not intended to establish the initial firm rate for MoGas. Also in the May 7, 2008 Order, the Commission established a Zone 1 initial rate based on billing

⁴ *Missouri Interstate Gas*, 119 FERC ¶ 61,074 (2007). Missouri Gas and Missouri Pipeline were entities exempt from Commission jurisdiction pursuant to section 1(c) of the Natural Gas Act (NGA) (the Hinshaw exemption), and regulated by the MoPSC.

⁵ *MoGas Pipeline LLC*, 123 FERC ¶ 61,131 (2008) (*MoGas*).

determinants totaling 104,977 Dth/d, plus 1,000 Dth/d for interruptible service.⁶ However, the Commission deferred a final ruling on the appropriate level of billing determinants for Zone 1 initial rates, noting that the issue was also raised in requests for rehearing of the February 19, 2008 Order. Accordingly, we will address that issue here.

5. The February 19, 2008 Order also responded to the MoPSC's request for clarification of the Commission's finding in the Certificate Order that the Commission did not need to reach the issue of whether the NGA preempted Missouri state law. The Commission made that finding in the context of denying the MoPSC's motion requesting the Commission to abstain from acting on MoGas' application during the pendency of a state court action for injunctive relief initiated by the MoPSC against Missouri Pipeline and Missouri Gas. In the state court action the MoPSC was seeking to enforce a Missouri law requiring the MoPSC's approval before utilities that are regulated by the MoPSC can merge with other companies, as well as conditions it had imposed on Missouri Pipeline's and Missouri Gas' state certificates. Those conditions were designed to prevent the pipelines from transporting gas outside the State of Missouri, which would potentially render them ineligible for a Hinshaw-exemption from Commission jurisdiction.⁷ In denying the MoPSC's request to abstain, the Commission explained in the Certificate Order that abstention was not necessary because the issues in the state court proceeding were different than those in the certificate proceeding.⁸

6. In our February 19, 2008 Order the Commission clarified, at the MoPSC's request, that although it had found that the issues in the state court proceeding and the Commission certificate proceeding were different, the Commission had not intended to imply that the MoPSC could apply state law in a manner that would prevent the applicants from "availing themselves of the exclusive jurisdiction afforded the

⁶ On May 30, 2008, the Commission issued an order accepting, effective June 1, 2008, initial rates filed by MoGas that were revised consistent with the Commission's May 7, 2008 Second Compliance Order. *See MoGas Pipeline, LLC*, 123 FERC ¶ 61,236 (2008). MoGas began service on or shortly after that date.

⁷ *See* section 1(c) of the Natural Gas Act, 15 U.S.C. § 717 (2009).

⁸ *Missouri Interstate Gas*, 119 FERC ¶ 61,074 at P 25. We stated that while the state proceeding involved enforcement of conditions on the state certificates and Missouri law, this proceeding involved whether granting the applicants' proposal was required by the public convenience and necessity.

Commission by the NGA.”⁹ We explained that the MoPSC could pursue remedies for the applicants’ alleged improper behavior during the time they were subject to state jurisdiction as long as the Commission’s exclusive jurisdiction over interstate transportation under the NGA was not impinged upon.¹⁰

Procedural Issues

7. On April 4, 2008, the MoPSC filed a motion for leave to answer and an answer to MoGas’ request for rehearing. The MoPSC states that while it understands that the Commission’s regulations prohibit answers to rehearing requests, its answer should be permitted because MoGas, in its rehearing request, for the first time set out how it computed its proposed Zone 1 billing determinants. Thus, the MoPSC asserts that an answer is required to address that information. MoGas filed an answer opposing MoPSC’s motion for leave to file an answer to MoGas’ rehearing request.¹¹ MoGas asserts that the Commission should not permit the MoPSC to continue filing various motions and answers in the MoGas proceedings because such filings are attempts by the MoPSC to retain jurisdiction over Missouri Gas and Missouri Pipeline and to delay the integration of the applicants into one interstate pipeline.

8. As the MoPSC points out, the Commission has accepted answers where information in the answer will assist the Commission in its decision-making process.¹² The MoPSC’s answer meets this criterion; therefore, for good cause, we will accept the answer. The substance of this pleading is discussed below. MoGas’ answer is appropriate because answers to motions are permitted by the Commission’s Rules of Practice and Procedure.

⁹ *Missouri Interstate Gas*, 122 FERC ¶ 61,136 at P 12. The Commission noted that the state court had agreed with its view because the court had denied the injunctive relief that the MoPSC had sought. *Id.* n.14. As noted below, since the issuance of the February 19, 2008 Order, a Missouri appellate court reversed the lower court’s decision and remanded the case for further consideration. However, the court subsequently withdrew that opinion. *See infra* P 10 and n.13.

¹⁰ *Missouri Interstate Gas*, 122 FERC ¶ 61,136 at P 13.

¹¹ MoGas’ filing also included an answer to the MoPSC’s April 2, 2008 Answer to MoGas’ March 19, 2008 Opposition to the MoPSC’s March 12, 2008 Motion to Reject and Protest of the MoGas’ February 29, 2008 compliance filing.

¹² *Citing SFPP, LP*, 117 FERC ¶ 61,275, at P 2 (2006), *Central Maine Power Co.*, 40 FERC ¶ 61,075 (1987), and *New England Power Pool and ISO New England Inc.*, 117 FERC ¶ 61,106, at P 15 (2006).

9. We also note that on June 26, 2008, the MoPSC filed in this proceeding a motion to lodge a June 24, 2008 opinion issued by the Missouri Court of Appeals Western District, in which the court overturned a Missouri lower court's finding that the NGA preempted the MoPSC from enforcing Missouri law regarding mergers of utility companies or the conditions on Missouri Gas' and Missouri Pipeline's state certificates.¹³ The MoPSC submitted that this determination by the state court was relevant to the arguments it raises on rehearing regarding its jurisdiction over Missouri Gas and Missouri Pipeline to enforce Missouri law and state-imposed certificate conditions. However, we note that the Missouri Court of Appeals Western District has withdrawn its June 24, 2008 opinion. We will, therefore, dismiss as moot the MoPSC's motion to lodge.

Discussion

The February 19, 2008 Order's Findings on Initial Rates

10. The MoPSC and the Municipal Intervenors request clarification that it was not the Commission's intent to set an initial rate for MoGas when it stated a firm rate in footnote 59 of the February 19, 2008 Order. If we do not clarify the intent of footnote 59 in this manner, the parties request rehearing because they contend that the rate is not correct and that, in any event, the Commission did not explain the rate's derivation and MoGas did not provide supporting calculations consistent with the Commission's regulations.¹⁴

Response

11. As described above, in its May 7, 2008 Second Compliance Order, the Commission clarified that the rate set out in footnote 59 of the February 19, 2008 Order was intended only for illustrative purposes and that the Commission was not setting an initial firm rate for MoGas' service. Further, the Commission waived no filing regulations in its February 19, 2008 Order. Thus, the MoPSC's and the Municipal Intervenors' requests for clarification and/or rehearing on this issue are moot and we dismiss those requests.

¹³ *Mo. Public Service Comm. v. Missouri Interstate Gas, LLC, et al.*, Case No. WD68506 (Mo. Court of Appeals Western District June 24, 2008), *opinion withdrawn*, (July 29, 2008).

¹⁴ The Municipal Intervenors also request clarification, regardless of whether the rate in footnote 59 was intended to be the approved initial rate, that the Commission did not intend to waive the cost-support regulations in sections 154.201(b) and 154.203(a)(2) of the Commission's regulations and that MoGas still must provide calculations demonstrating the support for that rate.

Appropriate Level of Zone 1 Billing Determinants

12. MoGas requests rehearing of the Commission's determination in the February 19, 2008 Order that it should add 18,430 Dth/d in billing determinants to the 86,547 Dth/d that MoGas had used in calculating its proposed initial Zone 1 rate. Zone 1 comprises all the facilities that were owned and operated by Missouri Pipeline and Missouri Interstate prior to the merger. MoGas contends that 86,547 Dth/d is the appropriate level of billing determinants to use in calculating the Zone 1 rate and that, as reflected in its certificate application and in its first compliance filing on July 5, 2007, this figure includes 11,174 Dth/d in billing determinants attributable to service over the former Missouri Interstate facilities. MoGas states that support for this number is found in Exhibits G-I and G-II and Exhibit P, Part II, to the original certificate application filing. MoGas asserts that the Commission explicitly permitted MoGas to use the level of capacity under contract as the billing determinants for rate design purposes in this case and that the 86,547 Dth/d represents the subscribed Zone 1 capacity.

13. MoGas states that calculations in the original certificate application were based on an assumed pressure of 681 psig at the Panhandle receipt point, a number that represented Missouri Pipeline's most recent experience at that time. According to MoGas, based upon this pressure, the former Missouri Pipeline's design capacity is 75,373 Dth/d. The difference between 86,547 Dth/d (the billing determinants MoGas attributes to Zone 1 in the certificate application) and a design capacity of 75,373 Dth/d is 11,174 Dth/d. According to MoGas, the 11,174 Dth/d represents contracted capacity on the former Missouri Interstate, as well as capacity on the Missouri Interstate facilities that MoGas uses to compensate for lower pressures on Missouri Pipeline when delivery pressures from Panhandle drop, as described in more detail below.

14. In response to MoGas' rehearing request, the MoPSC supports the Commission's finding in the February 19, 2008 Order that the 86,547 Dth/d figure does not include any billing determinants for service over the former Missouri Interstate pipeline. The MoPSC asserts that the Commission correctly recognized that under MoGas' proposal, the former Missouri Pipeline shippers would subsidize the former Missouri Interstate shippers, contrary to the public interest. The MoPSC argues that the proper level of billing determinants attributable to service over the former Missouri Interstate facilities is 18,430 Dth/d.

15. The MoPSC also takes issue with MoGas' claim that the 86,547 Dth/d figure reflects capacity on the Missouri Interstate facilities that the former Missouri Pipeline relied on to meet its contractual obligations when the delivery pressure from Panhandle was too low. The MoPSC maintains that the record in this proceeding does not support MoGas' view. The MoPSC states that MoGas' October 3, 2006 responses to the Commission staff's September 20, 2006 data request show that Missouri Interstate transported gas on only 50 days during 2005 and that no gas was flowing during the

winter period of January 1, 2005 through March 16, 2005. The MoPSC suggests that if capacity on Missouri Interstate was really required to support the gas flows on Missouri Pipeline, there would have been gas flowing over Missouri Interstate during that winter period.

16. In addition, the MoPSC notes that Laclede Gas Company (Laclede Gas) has stated that it was unable to receive the gas it had nominated from Panhandle, which would normally be delivered into and transported by Missouri Pipeline, during eleven days between 2004 and December 11, 2007. However, according to the MoPSC, a review of MoGas' data responses indicates that on December 9, 2005, a date on which Laclede Gas claims that Missouri Pipeline's deliveries to it were allegedly deficient by approximately 6,000 Dth, Missouri Interstate transported zero volumes to backstop those deliveries from Panhandle.

17. Finally, the MoPSC urges the Commission to reject MoGas' arguments regarding the appropriate billing determinants for Zone 1 rates because MoGas is now asking the Commission to accept billing determinants based upon flow/capacity information. The MoPSC asserts that that method of calculating billing determinants is contrary to MoGas' position throughout this proceeding that its billing determinants should be based upon contract demand rather than design capacity. The MoPSC notes that the Commission approved MoGas' proposal to base billing determinants on contract demand.

Response

18. In their certificate application, the applicants proposed initial rates based on the billing determinants, i.e., volumes under contract, of the three merging pipelines, instead of on the capacity of each pipeline's system. MoGas proposed that Zone 1 would comprise the facilities that had previously been owned and operated by Missouri Pipeline and Missouri Interstate, and Zone 2 would comprise the facilities previously owned and operated by Missouri Gas. The Commission approved that approach in the Certificate Order. However, on rehearing the Commission reexamined the information provided by MoGas to support its proposed initial rates and found that MoGas had designed its Zone 1 firm rate using only the contracted capacity of Missouri Pipeline and had not included any billing determinants for Missouri Interstate.

19. Further, the Commission determined that because of this omission, Missouri Pipeline's former customers that do not subscribe to service over the former Missouri Interstate facilities would subsidize those customers who do take such service.¹⁵ We

¹⁵ *Missouri Interstate*, 122 FERC ¶ 61,136 at P 72.

explained that although the Certificate Policy Statement¹⁶ did not strictly apply to the applicants' merger proposal, its prohibition against existing customers' subsidizing other customers should guide the Commission's determination of whether the proposal in this case was in the public interest.¹⁷ Accordingly, to avoid any subsidization by Missouri Pipeline's existing customers, the Commission required MoGas either to include the billing determinants for Missouri Interstate in the calculation of its Zone 1 rates or to create a separate, third rate zone for service over the Missouri Interstate facilities. If MoGas chose the former option, the Commission directed it to add 18,430 Dth/d to the billing determinants for Zone 1.¹⁸

20. The Commission will deny MoGas' request for rehearing on the issue of the Zone 1 billing determinants because, as we explain below: (1) the Commission did not misinterpret the information in the record supporting its conclusion that 18,430 Dth/d should be added to the Zone 1 billing determinants; (2) MoGas' alternative explanation relies, in part, on incorrect assumptions; and (3) MoGas' alternative explanation relies on the purported capacity of the former Zone 1 pipelines, rather than on contractual volumes as proposed by MoGas and approved by the Commission.

The Record Supports the Commission's Determination on Zone 1 Billing Determinants

21. The Commission disagrees with MoGas' contention that the Commission erred in the February 19, 2008 Order by not finding that the billing determinants for Zone 1 should be 86,547 Dth/d. The evidence in the record of this proceeding suggests that we were not mistaken on this point. For example, Attachment 5, appended to MoGas' October 3, 2006 response to Data Request No. 24, shows the contracted capacity for Missouri Pipeline as 86,547 Dth/d and the capacity under contract for Missouri Interstate as 18,430 Dth/d.¹⁹ These are the billing determinants the Commission approved for MoGas to use in designing its initial rates. Further, in the May 7, 2008 Second Compliance Order, the Commission noted that in MoGas' July 5, 2007 first compliance filing, MoGas states the figure of 86,547 Dth/d in Revised Exhibit N-1, Schedule J-1,

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *further order on clarification*, 92 FERC ¶ 61,094 (2000).

¹⁷ *Missouri Interstate*, 122 FERC ¶ 61,136 at P 71.

¹⁸ We note that MoGas chose not to create a third zone.

¹⁹ Data Request No. 24 had asked MoGas to provide a schedule for the contracts it had filed in Exhibit P, Part 2, of its initial application.

page 8 of 8, and “characterizes it as the maximum daily quantity for Missouri Pipeline.”²⁰ We noted that Missouri Interstate is not mentioned on that page.²¹

22. Moreover, MoGas never argued in response to the requests for rehearing of the April 20, 2007 Certificate Order that the 86,547 Dth/d of billing determinants were not attributable to service on Missouri Pipeline alone. The requests for rehearing alleging that the Commission’s approval of the applicant’s Zone 1 rate design would result in impermissible subsidization were predicated on the petitioners’ understanding that the 86,547 Dth/d of billing determinants used by MoGas to calculate the Zone 1 rate were attributable solely to Missouri Pipeline. While in its rehearing request the MoPSC focused on the cost-shifting that might occur because of the underuse of the Missouri Interstate facilities, Union Electric Co. d/b/a AmerenUE (AmerenUE) explained in detail that MoGas had designed its Zone 1 rate by taking all of the costs associated with Missouri Pipeline and Missouri Interstate and dividing the total by Missouri Pipeline’s billing determinants.²² In a footnote, AmerenUE explicitly stated its understanding that Missouri Pipeline’s billing determinants were 86,547 Dth/d.²³ Likewise, the Municipal Intervenors refer to Missouri Pipeline’s subscribed capacity as 86,547 Dth/d, noting that the pipeline is oversubscribed because its physical capacity was 75,000 Dth/d.²⁴

23. Notwithstanding the repeated references to subsidization that would result if the costs of both Missouri Pipeline and Missouri Interstate were rolled into the Zone 1 rates,

²⁰ *MoGas*, 123 FERC ¶ 61,131 at P 32 (2008).

²¹ Arguably there is some ambiguity in the record regarding the level of Zone 1 billing determinants. For example, Question No. 21 of the September 20, 2006 data request stated the certificated capacity of Missouri Interstate as 20,000 Mcf/d and asked the applicants to provide the capacity of Missouri Gas and Missouri Pipeline, and further to explain how those separate capacities and the proposed combined capacity for the new MoGas pipeline system related to the proposed billing determinants for the two proposed zones on MoGas’ system. In response, MoGas explained Missouri Gas and Missouri Pipeline had no authorized capacity levels, so the billing determinants used in Exhibits N-1 and N-2 “represent the sum of the contracted capacity for these zones.” The Zone 1 billing determinants were stated in that filing as 86,547 Dth. However, on balance, we believe the record shows that MoGas represented Missouri Pipeline’s billing determinants alone as 86,547 Dth/d.

²² AmerenUE’s May 21, 2007 Request for Rehearing at 32.

²³ *Id.* at note 84.

²⁴ Municipal Intervenors’ May 21, 2007 Request for Rehearing at note 20.

as well as the specific references to the parties' understanding that Missouri Pipeline's billing determinants were 86,547 Dth/d, MoGas did not correct that view in its answer to the rehearing requests of the Certificate Order. Instead, it argued that if there was subsidization, the parties were overstating it and that any adverse effect would be offset by rate reductions in Zone 2 or justified by the benefits that would flow to all customers on the new pipeline.²⁵ Thus, the Commission had no reason to doubt that 86,547 Dth/d were the billing determinants for Missouri Pipeline because the record supported that figure and MoGas did not seek to modify the record on this issue.

We Reject MoGas' Proposed Revisions to the Zone 1 Billing Determinants

24. An applicant has a continuing obligation to correct any errors in its filing or to file new information in a timely manner. If it does not do so, resolution of the issues in a proceeding may be delayed unnecessarily. Nevertheless, in the context of a request for rehearing, the Commission can consider additional information on an issue and modify a previous order.²⁶ Therefore, we will review MoGas' argument as to why the Zone 1 billing determinants should be limited to 86,547 Dth/d and why this figure includes billing determinants for Missouri Interstate.

25. MoGas contends that 18,430 Dth/d is not an appropriate level of billing determinants for Missouri Interstate because it includes a 5,930 Dth/d increment of service that is already being counted on Missouri Pipeline. Specifically, MoGas explains that in 2005, Missouri Pipeline had a contractual obligation of 5,930 Dth/d that was sourced over the Missouri Interstate facilities. However, because Missouri Interstate has no delivery points, MoGas asserts the 5,930 Dth/d should only be counted as billing determinants for Missouri Pipeline, not for both Missouri Pipeline and Missouri Interstate.

26. Further, MoGas asserts that the 18,430 Dth/d arbitrarily includes another 12,500 Dth/d of capacity that was not subscribed until after 2005. MoGas argues that 2005 is the relevant period for establishing initial recourse rates in this proceeding, contending that it is the period used for every other cost element in its initial rate calculations. MoGas urges that it would be arbitrary and capricious and contrary to Commission precedent to consider additional capacity that was subscribed after 2005 without considering other changes to costs and billing determinants that also may have occurred after that date. The

²⁵ MoGas' July 7, 2007 Answer at p.7.

²⁶ NGA section 19(a). *See also, Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 2 (2007) (Commission considered new evidence filed in the context of rehearing requests).

5,930 Dth/d and the 12,500 Dth/d contested by MoGas equal the 18,430 Dth/d that the Commission required MoGas to add to its Zone 1 billing determinants.

27. The MoPSC questions whether Missouri Interstate's contract demand was only 5,930 Dth/d in 2005. It points out that Missouri Interstate's March 17, 2006 cost and revenue study filing in Docket No. RP06-274-000 shows a contract with Missouri Pipeline during 2005 with a demand level of 15,000 Dth/d.²⁷

28. The Commission finds MoGas' arguments regarding why the 5,930 Dth/d and the 12,500 Dth/d should not be added to the 86,547 Dth/d unpersuasive. First, MoGas proposed in its application to base the billing determinants for its initial rates on the contracted capacity for each pipeline. In connection with this proposal, the Commission solicited information on each pipeline's contracts for service. As described, MoGas submitted contracts for Missouri Interstate totaling 18,430 Dth/d of service, as well as contracts for the other merging pipelines. Those contracts reflect that one customer paid rates for 5,920 Dth/d of service on both the former Missouri Pipeline and Missouri Interstate systems, because the customer's gas was indeed transported by both pipelines. Although there was only a single increment of gas involved in the transactions, the fact remains that before the merger of the three pipelines, service under two agreements was contributing billing determinants and, therefore, revenues, to the future Zone 1. It is true if the customer continues to ship on the merged pipeline, there will be only one increment of 5,930 Dth/d shipped and the customer will pay only a single Zone 1 rate. However, some cost of service associated with the former Missouri Interstate system remains,²⁸ and if the billing determinants for the former Missouri Interstate service are not included in the new Zone 1 rate, the resultant unit rate will be higher, causing the Zone 1 shippers not using the former Missouri Interstate facilities to subsidize shippers who do. Accordingly, we will deny MoGas' request that it not be required to increase its Zone 1 billing determinants by 5,930 Dth/d.

29. Additionally, the Commission does not agree with MoGas' contention that including the 12,500 Dth/d in the billing determinants for Zone 1 would be contrary to Commission precedent. Aside from the fact that MoGas submitted the contract for that

²⁷ We note that in the Certificate Order, we terminated the proceeding on Missouri Interstate's cost/revenue study because that pipeline would no longer be a stand-alone pipeline once it merged with Missouri Gas and Missouri Interstate. *Missouri Interstate*, 119 FERC ¶ 61,074 at P 102.

²⁸ MoGas maintained in its application that merging the three pipelines would result in administrative savings since it would no longer be necessary to incur the costs of operating three separate pipelines. Nevertheless, some costs specifically attributable to the Missouri Interstate facilities will remain and need to be recovered.

level of service in its Exhibit P, as the MoPSC points out in its answer, the Commission allows initial rates to be based on projections of billing determinants that reflect changes in service requirements over a period of time.²⁹ We agree with the MoPSC that because the Commission is departing from its usual policy by permitting MoGas to use contract demand in lieu of physical capacity to establish its billing determinants, it is reasonable to base such billing determinants on contracts that were entered into during the pendency of the certificate proceeding. Further, as we stated in *Enbridge Pipelines (KCP)*, “there is no requirement *per se* that all cost-of-service items must be estimated, or actual, or perfectly synchronized. Frequently, particularly in the context of establishing initial section 7 rates in a certificate proceeding, the Commission uses a combination of both estimated and actual cost items.”³⁰ For the reasons discussed above, the Commission finds that 18,430 Dth/d is the correct figure to reflect service over the former Missouri Interstate facilities.

MoGas’ Alternative Explanation Relies on Capacity Instead of Contractual Volumes

30. After arguing that the 18,430 Dth/d should not be added to the 86,547 Dth/d of billing determinants for Zone 1, MoGas sets out an alternative view of what level of billing determinants attributable to Missouri Interstate are already included in the 86,547 Dth/d. As noted, MoGas contends that if required receipt pressures associated with deliveries from Panhandle were being maintained, the capacity of the former Missouri Pipeline facilities would be 75,373 Dth/d. MoGas explains that if you subtract this figure from the 86,547 Dth/d, which it claims reflects the combined billing determinants for the former Missouri Pipeline and Missouri Interstate, a figure of 11,174 Dth/d is obtained. MoGas avers that this level of capacity is attributable to service provided by Missouri Interstate. MoGas states that 5,930 Dth/d of the 11,174 Dth/d is the amount of service subscribed under contract on Missouri Interstate when the application was filed in this proceeding and that the remaining 5,244 Dth/d represents the capacity it can use to backstop capacity lost on the former Missouri Pipeline due to low pressures.

31. MoGas explains that since its system has no compression, pressure on the system is completely dependent on the pressure at which Panhandle makes deliveries of gas to MoGas. However, MoGas indicates that when Panhandle’s delivery pressure drops, Missouri Pipeline relies upon an alternate source of supply from CenterPoint Energy-Mississippi River Transmission Corp., which interconnects with MoGas’ system at the

²⁹ See *Northern Natural Gas Co.*, 119 FERC ¶ 61,035, at P 38-41 (2007) (allowing initial rates to be determined on billing determinants that reflect a decrease in production and a discount that will occur over a period of time).

³⁰ *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,042, at P 72 (2004).

border of Missouri and Illinois, to backstop capacity shortfalls. MoGas asserts that the 5,244 Dth/d of Missouri Interstate capacity can be used to backstop capacity lost on the former Missouri Pipeline due to low pressures.

32. Finally, MoGas contends that the 104,977 Dth/d of billing determinants that would result from adding 18,430 Dth/d to the existing 86,547 Dth/d exceeds the physical capacity of the Zone 1 facilities. It asserts setting rates which reflect a level of service that it is physically incapable of delivering is clearly in error.

33. We reject MoGas' proposal to use an alternative method of computing the proper billing determinants for Zone 1. MoGas initially requested permission to base its billing determinants on contractual volumes because it alleged that the capacity of Missouri Pipeline and Missouri Gas could not reliably be ascertained due to variations in the pressure at which Panhandle makes deliveries of gas into the former Missouri Pipeline's system. Yet, MoGas' alternative approach described above relies on capacity rather than contractual volumes. To reach the 11,174 Dth/d figure for Missouri Interstate, MoGas started with what it alleges to be the capacity of the Missouri Pipeline facilities and subtracted that capacity from the 86,547 Dth/d total billing determinants it proposed for Zone 1. This approach mixes apples and oranges. Billing determinants should be based on the capacity of the facilities or on the contractual volumes, not a combination of the two.

34. If MoGas now wants to base its billing determinants on capacity, it must seek to do so in an NGA section 4 proceeding, not in this certificate proceeding, because the merged pipelines have gone into service and are operating as one natural gas company.³¹ While MoGas may pursue that option at any time, we note it was required in the Certificate Order to file a rate case 18 months after commencing service. Should MoGas chose to pursue that option at that time, it likely can be explored in more depth because

³¹ See, e.g., *Texas Eastern Transmission Corp.*, 55 FERC ¶ 61,482 at 62,606 (1991) (pipeline may only modify initial rates after pipeline is in service under NGA section 4). Even if the pipeline had not yet gone into service, such a fundamental modification to its rate proposal would most likely require an amendment to the certificate application. See, e.g., *Iroquois Gas Transmission System, LP*, 53 FERC ¶ 61,194, at 61,742 (1990)(Opinion No. 357) (1990) (pipeline proposing modification of initial rates was seeking to amend its certificate application "in the guise of a rehearing request" and it may "file a certificate amendment, or . . . a rate case to effectuate its modification proposal (and any other rate changes) sooner than the [time]. . . set by the [certificate order]").

MoGas will have actual operational data on the merged system, as well as more accurate cost-of-service information.³²

35. For the reasons described above, MoGas' request for rehearing is denied.

Preemption

36. In its request for rehearing, the MoPSC asserts that in the February 19, 2008 Order, the Commission for the first time found that the NGA preempted the MoPSC or the state courts from enforcing: (1) state law requiring state-regulated utilities to seek MoPSC approval before merging with another company; and (2) conditions the MoPSC had imposed on Missouri Pipeline's and Missouri Gas' MoPSC-issued certificates. The MoPSC contends that in clarifying its finding in the certificate proceeding that the Commission did not need to reach the preemption issue, the Commission "significantly modified its stance in the . . . [certificate order] with respect to preemption of the Missouri Enforcement Proceeding," such that "the MoPSC is compelled to seek further rehearing."³³

37. We disagree that the Commission's clarification in the February 19, 2008 Order significantly modified any determination by the Commission in the Certificate Order. First, the Certificate Order denied the MoPSC's request that the Commission dismiss the application under Rule 2001³⁴ and that it abstain from acting on the application on other grounds. The Commission stated that abstention was not appropriate because the issues in the state court and MoPSC proceedings were different from the issues in the certificate

³² Regarding MoGas' contention that using 104,977 Dth/d for Zone 1 billing determinants will cause it to have rates based on billing determinants that are greater than the Zone 1 capacity, as noted above, MoGas initially pursued the approach of basing its billing determinants on contractual volumes because it maintained that the physical capacity of Missouri Pipeline and Missouri Gas could not reliably be ascertained. MoGas will have the opportunity, if appropriate, to establish the capacity of its system, based on actual operating history, in its upcoming rate case. In addition, it is often possible, through, for example, backhauls or shorthauls, for a pipeline to provide service exceeding its design capacity. In that vein, we note that the record indicates that the former Missouri Pipeline had contracts to transport more than its now alleged capacity of 75,373 Dth/d.

³³ MoPSC March 30, 2008 Request for Rehearing at 12.

³⁴ Section 385.2001 of the Commission's Regulations provides that the Commission may reject a filing that does not comply with any applicable statute, rule, or order. 18 C.F.R. § 385.2001(b) (2008).

proceeding. Preemption was not cited as the basis for the Commission's denial of either the MoPSC's request to dismiss the application or its request for abstention.³⁵

38. Despite the fact that Federal preemption of state law was not an issue in the certificate proceeding nor the stated reason why the Commission accepted and reviewed MoGas' application, the MoPSC asked the Commission to clarify its understanding of the Commission's intent or meaning when it stated it was not reaching the issue of preemption. The Commission's brief clarification in the February 19, 2008 order merely stated the broad principle of law that the states (or local agencies) may not interfere with Federal jurisdiction, where it exists.

39. The Commission's clarification was, in essence, dicta, in that the clarification did not change the substance of the Certificate Order or the findings that led the Commission to conclude that the applicants' proposal was required by the public convenience and necessity. But such a clarification, if it does not modify either the outcome of a proceeding or the basis for the Commission's decisions on substantive issues, cannot be the basis for a rehearing request.³⁶ Under these circumstances, we conclude that the MoPSC cannot request rehearing on a clarification that was unrelated to the underlying determinations the Commission made in the Certificate Order. The MoPSC's request for rehearing of our clarification in the February 19, 2008 Order is denied.

³⁵ In stating that it was unnecessary to reach the preemption issue, the Commission commented in the Certificate Order, 119 FERC ¶ 61,074 at P 31, that "as a general matter . . . 'the right to acquire and the right to operate an interstate pipeline is an essential adjunct to' the right to transport and sell gas in interstate commerce and that these matters are subject to the Commission's jurisdiction." *Citing Public Service Comm'n of West Virginia v. Federal Power Comm'n and Mountain Gas Co.*, 437 F.2d 1234 (4th Cir. 1971). We note that the MoPSC did not ask for rehearing of the Commission's decision not to dismiss the application or to abstain from acting on it. It likewise did not request rehearing of the Commission's general statement regarding its jurisdiction presumably because that reference was not the basis of the Commission's decision to accept the application.

³⁶ *See Symbiotics, L.L.C.*, 99 FERC ¶ 61,064 at 61,300 (2002) ("[r]ehearing of an order on rehearing lies when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection").

The Commission orders:

(A) MoGas' request for rehearing of the February 19, 2008 Order is denied.

(B) The MoPSC's request for rehearing of the clarification in the February 19, 2008 Order is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.