

127 FERC ¶ 61,303  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Mid-America Pipeline Company, LLC

Docket No. IS09-364-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO REFUND  
AND CONDITION

(Issued June 26, 2009)

1. On May 29, 2009, Mid-America Pipeline Company, LLC (Mid-America) filed FERC Tariff No. 66 cancelling FERC Tariff No. 62 to be effective July 1, 2009. Mid-America states that the tariff is filed pursuant to the authority of section 342.3 of the Commission's regulations.<sup>1</sup> Mid-America further states that the tariff is issued in compliance with the Notice of Change in the Producer Price Index for Finished Goods issued May 14, 2009, in Docket No. RM93-11-000. Additionally, Mid-America explains that the tariff will increase certain joint tariff rates and the rates in its Seasonal Discount Program.

2. AmeriGas Propane, L.P., CHS, Inc., ConocoPhillips Company, Ferrellgas, L.P., and the National Propane Gas Association (collectively, Propane Group) filed a Motion to Intervene and Protest. Propane Group asks the Commission to reject the filing and require Mid-America to provide data sufficient for Propane Group to assess whether the rates meet the standard established in section 343.2(c)(1) of the Commission's regulations,<sup>2</sup> or at a minimum, to make FERC Tariff No. 66 subject to refund and require Mid-America to provide the requested data.

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<sup>1</sup> 18 C.F.R. § 342.3 Indexing (2008).

<sup>2</sup> 18 C.F.R. § 343.2(c)(1) (2008) provides in part:

A protest or complaint filed against a rate proposed or established pursuant to § 342.3 of this chapter must allege reasonable grounds for asserting that the rate violates the applicable ceiling level, or that the rate increase is so substantially in excess of the actual cost increases incurred by the carrier that the rate is unjust and unreasonable . . . .

3. Mid-America filed a response to the protest, pointing out that the Commission's regulations require that the indexed rates in FERC Tariff No. 66 be automatically subject to refund.<sup>3</sup> Mid-America also contends that Propane Group has not claimed that the FERC Tariff No. 66 rates violate the applicable ceiling level, but instead incorrectly argues that the rates may be substantially in excess of Mid-America's actual cost increases. Finally, Mid-America asserts that Propane Group's challenge to the adequacy of the information contained in Mid-America's Form No. 6, Page 700, has no merit.

4. As discussed below, the Commission accepts and suspends FERC Tariff No. 66 to be effective July 1, 2009, subject to refund and subject to the outcome of the proceedings in Docket No. IS05-216-003, *et al.*

### **Description of the Filing**

5. Mid-America states that, in addition to complying with the annual price indexing requirement, FERC Tariff No. 66 also increases joint rates in Item Nos. 230 (Propane), 240 (Normal Butane), 245 (Isobutane), and 250 (Natural Gasoline). Mid-America asserts that all joint tariff rates are less than the sum of the applicable local rates and have the concurrence of the participating carriers.

6. Mid-America further states that FERC Tariff No. 66 also increases rates in Item No. 400 (Seasonal Discount Program). According to Mid-America, the seasonal discount rates in Item No. 400 are below the published General Commodity rates in Item Nos. 230 (Propane), 240 (Normal Butane), 245 (Isobutane), 250 (Natural Gasoline), 260 (Naphtha), and 270 (Refinery Grade Butane).

### **Propane Group's Protest**

7. Propane Group states that the underlying rates proposed to be increased are currently under investigation and subject to refund in Docket No. IS05-216-003, *et al.*, in which the Presiding Administrative Law Judge (ALJ) has issued the Initial Decision.

8. Propane Group points out that section 1(5) of the Interstate Commerce Act (ICA)<sup>4</sup> requires that changes made for any service rendered in the transportation of petroleum

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<sup>3</sup> Citing 18 C.F.R. § 342.3(a) (2008) ("A filing under this section proposing to change a rate that is under investigation and subject to refund, must take effect subject to refund.") The rates proposed to be changed in this proceeding are currently before the Commission following an initial decision issued September 3, 2008, in *Mid-America Pipeline Co.*, Docket No. IS05-216-003, *et al.*, 124 FERC ¶ 63,016 (2008) (Initial Decision).

<sup>4</sup> 49 U.S.C. app. § 1(5) (1988).

products must be just and reasonable. Propane Group further cites ICA section 15(7), which allows the Commission to suspend and investigate a proposed rate increase for a maximum period of seven months and to require refunds. Propane Group recognizes that section 342.3(a) of the regulations requires that a filing proposing to change a rate that is under investigation and subject to refund must take effect subject to refund.<sup>5</sup>

9. Propane Group maintains that the proposed rate increase in FERC Tariff No. 66 may be so substantially in excess of the actual cost increases incurred by Mid-America as to render the rate unjust and unreasonable. However, Propane Group contends that Mid-America is in sole possession of the data that would be necessary to make this showing, and it has failed to provide such data with its tariff filing.

10. Propane Group asserts that the standard set out in section 343.2(c)(1) of the regulations compares the actual change in costs to the change in rate, based on data from Page 700 of the pipeline's FERC Form 6,<sup>6</sup> which is the only source of information available to shippers seeking to protest an index filing on the basis that the rate increase is so substantially in excess of the pipeline's actual cost increases that the rate is unjust and unreasonable. Propane Group contends that the index rate increase proposed in FERC Tariff No. 66 – and the corresponding comparison of the change in costs to the change in rates – relates only to Mid-America's Northern System. However, Propane Group emphasizes that Mid-America's Page 700 for 2008 provides cost and revenue data on a total company basis, without differentiating between the Northern, Central, and Rocky Mountain Systems.<sup>7</sup>

11. Propane Group states that, in the Initial Decision, the ALJ addressed the need to assess cost and revenue matters relating to Mid-America on a segmented basis, rather than on a total company basis:

Commission precedent and the facts of this case require that the reasonableness of Mid-America's rates be determined on the basis of a segmented cost of service, rather than on the costs and revenues of the pipeline company as a whole. For example, in a prior proceeding, the Commission held that the reasonableness of SFPP's rates should be

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<sup>5</sup> 18 C.F.R. § 342.3(a) (2008).

<sup>6</sup> 18 C.F.R. § 343.2(c)(1) (2008). *BP West Coast Products, LLC v. SFPP, L.P.*, 119 FERC ¶ 61,241, at P 9 (2007).

<sup>7</sup> *Citing Motion to Intervene and Protest of AmeriGas Propane, L.P., CHS, Inc., ConocoPhillips Company, Ferrellgas, L.P., and National Propane Gas Association* (June 12, 2009) Ex. A.

determined on the basis of separate analyses of its East Line and West Line segments, rather than on the basis of its South System as a whole, reasoning that the two lines served different markets and different shippers, reflected different investment patterns, and were of different sizes. *SFPP, L.P.*, 86 FERC ¶ 61,022, at pp. 61,079-81 (1999). In so holding, the Commission sought “to assure that shippers pay for the costs of the services they are using,” i.e., costs incurred on one line should not cause a rate increase on another. *Id.* at p. 61,080 (citing *Williams Pipe Line Co.*, 84 FERC ¶ 61,022 (1998)).<sup>8</sup>

12. Propane Group also points out that the ALJ found that Mid-America’s Northern, Central, and Rocky Mountain Systems required separate treatment for a variety of reasons, and Propane Group claims that the characteristics of Mid-America’s three pipeline systems have not changed since the Initial Decision was issued. Propane Group adds that Mid-America’s own witness in the proceedings in Docket No. IS05-216-003, *et al.*, admitted that the rates at issue there applied only to the Northern System and that a total company cost of service would not reveal the existence of a substantial divergence.<sup>9</sup> Propane Group further claims that the ALJ recognized the inequity of allowing a pipeline to file only total company data when the rate increase at issue affects only one of the pipeline’s systems.<sup>10</sup>

13. Despite that, Propane Group acknowledges that the Commission recently evaluated the format and contents of its Form No. 6 and declined to require any data for separate pipeline systems on Page 700, instead maintaining its policy of requiring only total company data.<sup>11</sup> Propane Group explains that the Commission stated that “the information need only be of sufficient detail for a complainant to make a *prima facie* [sic] case that existing rates are not just and reasonable.”<sup>12</sup> Yet, continues Propane Group, addressing a change in Northern System costs largely on the basis of data relating to three very distinct systems creates a bizarre mismatch even at a threshold stage.<sup>13</sup>

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<sup>8</sup> *Mid-America Pipeline Co.*, 124 FERC ¶ 63,016, at P 550 (2008).

<sup>9</sup> Tr. 2242, lines 21-24.

<sup>10</sup> *Mid-America Pipeline Co.*, 124 FERC ¶ 63,016, at P 505 n.277 (2008).

<sup>11</sup> *Review of FERC Form Nos. 6 and 6-Q*, 125 FERC ¶ 61,308, at P 7-9 (2008).

<sup>12</sup> *Id.* P 7.

<sup>13</sup> *See Mid-America Pipeline Co.*, 124 FERC ¶ 63,016, at P 550-51 (2008).

### **Mid-America's Response**

14. Mid-America emphasizes that the Commission's regulations require that indexed rates applicable to rates that are under investigation must take effect subject to refund. Mid-America further contends that Propane Group's claim that it suspects the FERC Tariff No. 66 rates might be substantially in excess of Mid-America's actual cost increases does not constitute reasonable grounds for rejection of the tariff by the Commission. Additionally, Mid-America points out that its FERC Form No. 6, Page 700 demonstrates that its actual cost of service increased at a rate far higher than the indexed rates permitted by the regulations (34.5 percent versus 7.6025 percent).<sup>14</sup> Finally, Mid-America refutes Propane Group's contention that the FERC Form No. 6, Page 700 data are inadequate to determine whether the rate increases contained in FERC Tariff No. 66 are substantially in excess of the increases in Mid-America's costs. Mid-America points out that the Commission has stated repeatedly that the Page 700 data are sufficient for the screening purposes for which they are intended.<sup>15</sup> Mid-America asks the Commission to permit FERC Tariff No. 66 to take effect subject to refund and subject to the outcome of the proceedings in Docket No. IS05-216-003, *et al.*

### **Commission Analysis**

15. The Commission will accept and suspend FERC Tariff No. 66 to be effective July 1, 2009, subject to refund and subject to the outcome of the proceedings in Docket No. IS05-216-003, *et al.* In that proceeding, the Commission will establish just and reasonable rates for Mid-America's Northern System, to which FERC Tariff No. 66 applies. Both Propane Group and Mid-America acknowledge that the Commission's regulations<sup>16</sup> require that the FERC Tariff No. 66 rates take effect subject to refund because the underlying rates are still subject to the outcome of the proceedings in Docket No. IS05-216-003, *et al.*

16. Propane Group alleges that the rates in FERC Tariff No. 66 are so substantially in excess of Mid-America's actual cost increases as to render the rates unjust and unreasonable. Propane Group has presented this argument in Docket No. IS05-216-003, *et al.*, in which the Commission is currently reviewing briefs on exceptions and briefs

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<sup>14</sup> *Citing* Motion to Intervene and Protest of AmeriGas Propane, L.P., CHS, Inc., ConocoPhillips Company, Ferrellgas, L.P., and National Propane Gas Association (June 12, 2009) Ex. A.

<sup>15</sup> *Citing, e.g., Review of FERC Form Nos. 6 and 6Q*, 125 FERC ¶ 61,308, at P 6-9 (2008).

<sup>16</sup> 18 C.F.R. § 342.3(a) (2008).

opposing exceptions to the Initial Decision. Thus, the Commission will defer addressing Propane Group's argument in the instant case, and will address these arguments in Docket No. IS05-216-003, *et al.*, when it conducts a merits review of the objections to the Initial Decision.

The Commission orders:

FERC Tariff No. 66 is accepted and suspended to be effective July 1, 2009, subject to refund and subject to the outcome of the proceedings in Docket No. IS05-216-003, *et al.*

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.