

128 FERC ¶ 61,101  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

MoGas Pipeline LLC

Docket No. RP09-791-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET, SUBJECT TO REFUND  
AND CONDITIONS, AND ESTABLISHING HEARING PROCEDURES

(Issued July 29, 2009)

1. On June 30, 2009, MoGas Pipeline L.L.C. (MoGas) filed a revised tariff sheet to implement a Natural Gas Act (NGA) general section 4 rate change.<sup>1</sup> MoGas proposes an effective date of August 1, 2009, or, assuming a five month suspension, January 1, 2010, for its proposed tariff sheet. As discussed below, the Commission will accept and suspend the instant tariff sheet to be effective January 1, 2010, subject to refund and conditions and the outcome of a hearing established in this proceeding.

**Background**

2. On April 20, 2007, the Commission issued an order authorizing three affiliated pipelines<sup>2</sup> to merge and operate as an interstate natural gas pipeline to be known as MoGas Pipeline LLC (MoGas).<sup>3</sup> That order also authorized initial rates for MoGas pursuant to section 7 of the NGA. On June 1, 2008, MoGas commenced service as a

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<sup>1</sup> FERC Gas Tariff First Revised Volume No. 1, Second Revised Sheet No. 5.

<sup>2</sup> The three affiliated pipelines are Missouri Interstate Gas, LLC (Missouri Interstate), Missouri Gas Company, LLC (Missouri Gas), and Missouri Pipeline Company, LLC (Missouri Pipeline). Missouri Interstate operated as a FERC jurisdictional interstate pipeline, while the other two operated as Hinshaw pipelines, subject to the Missouri Public Service Commission.

<sup>3</sup> *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007) (April 20 Order).

FERC jurisdictional interstate pipeline. Subsequently, in the fall of 2008 the Commission issued a certificate authorizing MoGas to construct and operate the first compression on its system,<sup>4</sup> which was placed in service on March 20, 2009. The instant filing is intended to comply with MoGas' obligation under the April 20 Order, to file a rate case under NGA section 4 to establish just and reasonable rates no later than 18 months after interstate service commenced on MoGas' newly configured system.

### **Details of the Instant Filing**

3. MoGas states that its proposed rates are designed to recover its overall cost of service and have been developed using a base period consisting of the twelve-months of actual operations for the period ending March 31, 2009, adjusted for known and measurable changes anticipated to occur during the nine-month period ending December 31, 2009. The filing reflects an increase in revenue for services rendered from the base period of \$11,196,337 to a projected \$16,526,255.

4. MoGas' tariff sheet reflects proposed changes to the initial rates authorized by the Commission in the April 20 Order. The proposed rates are divided into reservation, commodity, and interruptible transportation (IT) for each of MoGas' two zones. For Zone 1, MoGas proposes a revised monthly reservation rate of \$12.713/Dth, a commodity rate of \$0.022/Dth, and an IT rate of \$0.440/Dth. For Zone 2, MoGas proposes a revised monthly reservation rate of \$25.463/dth and an IT rate of \$0.837/Dth. There is no commodity rate for Zone 2.

5. MoGas states that its proposed overall rate of return is derived directly from MoGas' financial statements and is based on a capital structure of 46.6 percent debt and 53.4 percent common equity. MoGas states that the cost of service reflects a return on common equity (ROE) of 14.34 percent. MoGas also states that the requested ROE is derived from a range of returns of comparable entities in a proxy group developed consistent with Commission policy.

6. MoGas proposes to increase its current depreciation rate and proposes to implement a negative salvage rate. The proposed depreciation rate is 2.9 percent, an increase from the existing rate of 2.5 percent, and the negative salvage rate is 0.87 percent. In addition, MoGas proposes a discount adjustment to account for its contract with Laclede Gas Company, its largest customer. MoGas states that the contract with Laclede Gas has a discounted maximum monthly reservation rate of \$6.324 for Zone 1, which triggers the need to reflect a discount adjustment.

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<sup>4</sup> *MoGas Pipeline LLC*, 124 FERC ¶ 61,287 (2008).

7. Since MoGas commenced interstate service, its plant investment has increased by 13 percent totaling \$64 million. MoGas states that this increase is partly due to the new Curryville Compressor Station. The Commission's order in CP06-407 granted MoGas a presumption of rolled-in rate treatment for the costs of the compression. In order to recover the fuel that will be burned at the Curryville Compressor Station, MoGas is proposing a 0.52 percent fuel cost. MoGas also proposes a system gas loss of 0.47 percent.

### **Public Notice, Interventions and Protests**

8. Public notice of the filing was issued on July 2, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2009)). Pursuant to Rule 214, (18 C.F.R. § 385.214 (2009)) all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

9. The Municipal Gas Commission of Missouri and the Cities of St. James, St. Robert, and Waynesville, Missouri (Municipalities); Missouri Public Service Commission (MoPSC); and Union Electric Company d/b/a AmerenUE and Central Illinois Service Company d/b/a AmeranCIPS (collectively, Ameren) filed protests including requests for summary disposition. On July 10, 2009, MoGas filed an answer in response to the parties' protests and requests for partial summary dispositions. Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), answers to protests are not permitted unless otherwise ordered by the decisional authority. The Commission will accept MoGas' answer because it has provided information that assisted us in our decision-making process.

10. Protestors raise numerous concerns with MoGas' proposal, including but not limited to the (1) level of the rate increase; (2) cost of service; (3) rate of return; (4) accumulated deferred income taxes; (5) fuel and lost and unaccounted gas costs; (6) depreciation and negative salvage; (7) billing determinants; (8) two-zone rate structure; and (9) rolled in costs related to the addition of compression on MoGas' system.

11. The protestors claim that there is insufficient data in the filing to analyze such significant rate increases and assert that there is not adequate support in the record for these increases or tariff changes. Thus, the protestors request that the Commission establish an evidentiary hearing for all issues raised by the rate case filing and suspend the effectiveness of the rates for the maximum allowable period, subject to refund and conditions.

12. Protestors urge the Commission to summarily dismiss all or portions of the filing based upon the following: (1) the base period MoGas used violates Commission regulations; (2) the filing lacks sufficient workpapers; (3) the data provided is unverified; (4) the filing does not support good cause for granting any waiver; and (5) there is insufficient evidence to justify the discount adjustment. The Commission may summarily reject all or portions of a proposed filing if it determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation, or Commission policy.<sup>5</sup> The Commission finds that these criteria are not satisfied here and will deny the requests for summary rejection, as discussed below.

## **Discussion**

### **A. Summary Disposition**

#### **1. The Base Period Violates Commission Regulations**

13. The MoPSC and Ameren argue that MoGas' filing should be summarily rejected because it disregards the Commission's base period regulations used to develop cost of service rates. The parties assert that MoGas' base period of "twelve consecutive months of actual operating experience" begins April 1, 2008, yet, as MoGas acknowledges, the combined system did not commence interstate service until June 1, 2008. Therefore, the parties claim, MoGas' base period includes two months (April and May 2008) of cost data that do not represent MoGas' "available actual experience" as a FERC regulated interstate pipeline.

14. In response, MoGas maintains that including the months of April and May 2008 in its twelve-month base period reflects a relevant portion of MoGas' "most recently available actual experience," and that the regulation does not require that the "actual experience" be limited to the time after MoGas has commenced service as an integrated interstate pipeline. MoGas states that data as an interstate pipeline is not a prerequisite to filing a rate case as illustrated by 18 C.F.R. § 154.303(b) which specifically applies to pipelines that have not been in operation for twelve months. Additionally, MoGas asserts that Commission regulations require MoGas to update its test period data with actual data by month and submit it to the Commission within 45 days after the end of the test period,<sup>6</sup> which would require MoGas to submit updated data in mid-February, 2010. This update will include the adjustment period, April, 2009 through December 31, 2009, as well as three immediately preceding consecutive months of January through March, 2009, and will become the twelve month period that will ultimately be relevant.

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<sup>5</sup> *Northern Border Pipeline Co.*, 60 FERC ¶ 61,176 at 61,644 (1992).

<sup>6</sup> 18 C.F.R. § 154.311(a).

Therefore, MoGas asserts that the inclusion of April and May 2008 data in the base-period becomes a moot point.

15. We agree with MoGas and deny the request to reject the filing. The Commission's regulations do not require that the pipeline operate as in interstate pipeline during the base period. MoGas, operating as a new entity, appropriately used the twelve months of its most recently available actual experience. In addition, a review of MoGas' rate schedules indicate that the months in question (April and May 2008) reported lower operating costs than the ten succeeding months. Therefore, if MoGas had waited until it had twelve months of actual interstate operating experience, MoGas' section 4 filing may have resulted in rates higher than what it has proposed.

## **2. The Filing Lacks Sufficient Workpapers**

16. MoPSC states that MoGas' filing lacks complete workpapers and supporting materials, which provides a more than adequate basis for rejecting the filing. MoPSC asserts that the documents provided by MoGas are not "sufficiently detailed to support the company's proposed change" and are devoid of any analytical support for the cost of service claims, adjustments and allocation factors utilized in developing the MoGas revenue requirement and billing determinants. MoPSC also argues that the Zone Gate methodology that MoGas uses for the distribution of the compression project costs, will subject certain customers to costs for services that they did not use and an alternative allocation method should be explored.

17. Section 154.312 of the Commission's regulations, 18 C.F.R. § 154.132, outlines the statements and schedules that must be submitted to support a general section 4 rate case. Our review of MoGas' filing shows that MoGas has filed the required statements in compliance with Commission regulations. Therefore, we will deny MoPSC's request to reject the filing. With regard to the question of the validity of the Zone Gate methodology MoGas proposes, we believe the review of MoGas' proposed rate methodology is more appropriately addressed in the hearing established by this order.

## **3. The Data Provided is Unverified**

18. MoPSC also asserts that the data upon which the filing relies has not been properly verified. Specifically, MoPSC claims that MoGas' failure to timely file its Form 2-A CPA Certification Statement, and MoGas' request for an extension of time to file the Form 3Q deprives intervenors of the ability to compare that information with the schedules in the instant filing.

19. Section 154.308 of the Commission's regulations requires that MoGas' filing must include a statement executed by the chief accounting officer or other authorized accounting representative that the cost statements, supporting data, and workpapers, that purport to reflect the books of the company do, in fact, set for the results shown by such

books. In its answer MoGas states that the filing included a statement of Mr. Mertz, Vice President of MoGas, verifying that the cost statements, data, and workpapers in the filing reflect the company's books and support the rate filing. Since MoGas has provided the required statement verified by the company's vice president, MoGas has met the requirement for verifying the data. Accordingly, the Commission rejects MoPSC's request to summarily dismiss the filing.

#### **4. The Filing Does not Support Good Cause for Waiver**

20. Ameren and MoPSC assert that MoGas has not demonstrated good cause to support waiver of any of the Commission's filing requirements. MoPSC states that MoGas has neither identified the waivers it seeks nor has it provided any showing that would permit the Commission to find that good cause has been demonstrated which would support waiving the applicable regulations. Ameren particularly objects to the usage of "all waivers necessary" in regard to MoGas' application to waive the test period requirements of part 154 of the regulations.

21. The Commission views MoGas' request to grant (all waivers necessary) as a general waiver request, which is typically filed by pipelines. However, the order issued in this proceeding does not effectuate any specific waiver of the Commission's regulations. Additionally, as stated above, we find that MoGas' test period information adequately meets the requirements of the regulations, and therefore no further waiver is required with respect to MoGas' section 4 application.

#### **5. MoGas Does Not Provide Evidence to Support the Discount Adjustment**

22. Municipalities argue that MoGas has not demonstrated that discounts are "required to meet competition" in order to justify a discount adjustment. They state that MoGas did not present adequate arguments and evidence to support the discount adjustment. Moreover, they assert that because MoGas has proposed to offer nearly 57 percent of its contract demand at a rate that is nearly half of the default rate in MoGas' filing, certain customers would be required to make up the difference, thereby subsidizing the discount. Accordingly, they contend that the Commission should require MoGas to remove the discount adjustment from its rate calculation before the rates are permitted to go into effect.

23. In response, MoGas argues that the Municipalities misinterpret Commission precedent, including the *Policy Statement for Selective Discounting by Natural Gas Pipelines* (Policy Statement).<sup>7</sup> MoGas asserts that the Policy Statement permits pipelines

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<sup>7</sup> 113 FERC ¶ 61,173 (2005).

to discount their rates, on a nondiscriminatory basis, in order to meet competition. Moreover the Policy Statement states that “discovery will provide the parties with the information necessary to determine whether a challenge to a discount adjustment is appropriate,”<sup>8</sup> so that summary disposition in the rate case of a proposed discount adjustment is inappropriate. MoGas also asserts it has explained that the discount applies to Laclede Gas Company, MoGas’ largest customer. Because Laclede sources its gas from multiple shippers and receives deliveries of gas from other interconnected pipelines, MoGas asserts that the discount it proposes to give Laclede is driven by competition.

24. Commission policy requires Pipelines that discount their rates to non-affiliates, must do so on a nondiscriminatory basis, and in order to meet competition. Consistent with the Policy Statement and precedent,<sup>9</sup> we shall deny the request for summary disposition on this issue and set all issues raised by MoGas’ discount adjustment proposal for hearing, so that the potential costs and benefits of the proposal can be addressed in light of the other cost-of-service issues.

### **B. Request for Track I Procedural Schedule**

25. Ameren requests that the Commission set this case for an expedited hearing on the Track I, “simple case,” procedural schedule, given the extraordinary size of the proposed rate increase, the small size of the pipeline itself, and the limited number of customers. Ameren submits that the extraordinary nature of the rate increase filed in this proceeding, only 13 months after commencing service, strongly suggests that MoGas expects to use the prospect of these higher proposed rates as leverage to extract through settlement, rates it would never be able to achieve through a litigated proceeding.

26. In response, MoGas states that the timeline associated with a Track I schedule would defeat the entire purpose of the adjustment period and would deprive MoGas the right to have known and measurable changes occurring during the adjustment period included in the rates set in this case as provided by 18 C.F.R § 154.303(a)(4). Moreover, MoGas argues that Ameren’s request is contrary to Ameren’s protest regarding MoGas’ alleged lack of adequate FERC-jurisdictional operating data in the test period. In addition, due to the substantial number of protested issues, eleven of which relate directly to cost of service and rate design issues, MoGas asserts that this case does not merit an expedited hearing on the Track I procedural schedule. We do not find that a basis has been shown to direct an expedited hearing on the Track I procedural schedule. The Commission will allow the Chief Administrative Law Judge to determine the appropriate

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<sup>8</sup> *Id.* P 105.

<sup>9</sup> *See Northern Natural Gas Co.*, 118 FERC ¶ 61,053, PP 14, 35 (2007).

Track for litigation of this proceeding so as to ensure reasonably expeditious resolution of this proceeding.

### **Disposition**

27. MoGas' filing raises issues typical of a general section 4 rate increase filing, as well as issues associated with MoGas' unique pipeline history and circumstances. As explained above, the Commission declines to summarily reject issues raised by the protests and will be set for hearing.

### **Suspension**

28. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.

29. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances do not exist here. Therefore, the Commission will accept and suspend MoGas' Second Revised Sheet No. 5, to be effective January 1, 2010, subject to refund, the conditions of this order and the outcome of the hearing ordered herein.

### **The Commission orders:**

(A) The proposed tariff sheet is accepted and suspended to be effective January 1, 2010, subject to refund and the outcome of the hearing established in this order.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in the captioned docket concerning the lawfulness of MoGas' proposed rates.

(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall convene a prehearing conference in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.