

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

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

MoGas Pipeline LLC

Docket No. RP09-185-001

ORDER ON COMPLIANCE FILING

(Issued February 22, 2010)

1. On February 6, 2009, MoGas Pipeline LLC (MoGas) filed revised tariff sheets¹ to comply with the Commission's order issued January 23, 2009.² As discussed below, the Commission accepts MoGas' revised tariff sheets subject to conditions to be effective January 26, 2009.

I. Background

2. On December 23, 2008, MoGas filed revised tariff sheets (1) to comply with Order Nos. 712 and 712-A,³ which modified the Commission's capacity release regulations, (2) to provide additional flexibility with regard to its treatment of new facility costs, (3) to change the provision related to the reservation of capacity for new service, (4) to change the provision related to the reservation of capacity for expansion projects, and (5) to make other minor revisions to its tariff.

3. The January 2009 Order accepted and suspended MoGas' proposed tariff sheets subject to conditions. The Commission directed MoGas to file revised tariff sheets and explanations consistent with the order within 15 days. On February 6, 2009, MoGas submitted its compliance filing to the January 2009 Order.

¹ See Appendix.

² *MoGas Pipeline LLC*, 126 FERC ¶ 61,064 (2009) (January 2009 Order).

³ *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008) (Order No. 712) *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712-A).

4. Notice of MoGas' filing issued on February 11, 2009. Protests were due on February 18, 2009 as provided by section 154.210 of the Commission's regulations, 18 C.F.R. 154.210 (2009). Union Electric Company (Union Electric) filed a protest. Furthermore the Missouri Public Service Commission (MoPSC) requests that the Commission accept late-filed comments which MoPSC filed on February 18, 2009, after the 5:00 p.m. deadline. The Commission accepts MoPSC's late-filed comments, as doing so does not delay or disrupt the proceeding or create additional burdens on the other parties.

5. On February 26, 2009, MoGas filed a motion for leave to answer and an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MoGas' answer because it has provided information that assisted us in our decision-making process.

II. Discussion

6. Except as provided below, the Commission finds that MoGas' compliance filing complies with our January 2009 Order.

A. New Facilities Cost Reimbursement

7. Among the conditions enumerated in the January 2009 Order, the Commission accepted MoGas' proposal to file revised tariff sheets consistent with MoGas' January 13, 2009 answer specifying the criteria that MoGas will use to determine whether new facilities required by a shipper are economical and thus subject to waiver of the shipper's obligation to reimburse MoGas for the costs of the new facilities.⁴

8. In its February 6, 2009 compliance filing, MoGas filed tariff sheets to modify the new facilities cost reimbursement provisions by adding a provision to section 23.2

⁴ January 2009 Order, 126 FERC ¶ 61,064 at P 18. MoGas proposed language stating:

For purposes of determining whether a project is economical, Transporter will evaluate projects on the basis of various economic criteria, which will include the estimated transportation throughput, cost of the facilities, operating and maintenance as well as administrative and general expenses attributable to the facilities, the revenues Transporter estimates will be generated as a result of such construction, and the availability of capital funds on terms and conditions acceptable to Transporter.

Id. P 14 (quoting MoGas January 13, 2009 Answer at 3-4).

identifying the criteria to be used in determining whether to grant waiver to a shipper of its obligation to provide new facility reimbursement costs.

9. In its protest to the compliance filing, Union Electric states that while MoGas has listed a number of criteria that it will use when determining if a project is economical, MoGas has not included additional criteria included in the FERC Gas Tariffs of East Tennessee Natural Gas, Empire Pipeline, and Texas Eastern Transmission cited by the Commission in the January 2009 Order.⁵ Union Electric requests that the Commission direct MoGas to include these additional criteria in section 23.2 of its tariff or explain why these factors would not be considered by MoGas when evaluating whether to grant a waiver.

10. In its answer, MoGas states that the tariff language in its compliance filing was accepted by the January 2009 Order.⁶ MoGas states that compliance filings are limited to responding to a Commission order and that if Union Electric disagreed with the requirements of the Commission Order, it should have raised such concerns in a request for rehearing.

11. The Commission finds that the criteria included by MoGas in its compliance filing comply with the January 2009 Order. The January 2009 Order accepted the language proposed by MoGas in its January 13 Answer as reasonable for use in determining when to waive facility cost reimbursement. MoGas has filed the exact language it proposed in its January 13 answer, and found acceptable by the Commission. Although the Commission has accepted other pipelines' tariff filings which included the additional language cited by Union Electric, we did not in the January 2009 Order intend to require MoGas to file tariff sheets containing those additional terms. Rather, we determined that the language offered by MoGas contained reasonable criteria for assessing, in a non-discriminatory manner, whether to waive new facility reimbursement costs. Inasmuch as the sole purpose of a compliance filing is to implement the specific directives of a

⁵ Citing January 2009 Order, 126 FERC ¶ 61,064 at P 18. Specifically, Union Electric states that MoGas should add the following language:

In estimating the revenues to be generated, Transporter will evaluate the existence of capacity limitations downstream of the facilities, the marketability of the capacity, the location of the markets, the interruptible versus the firm nature of the transportation service, and other similar factors which impact whether the available deliverability will actually be transported.

Union Electric, February 18, 2009 Protest, at P 3-4.

⁶ MoGas, February 26, 2009 Answer at 5 (citing January 2009 Order, 126 FERC ¶ 61,064 at P 18).

Commission order,⁷ if a party is dissatisfied with any aspect of a Commission order, it should seek rehearing or clarification as appropriate. Union Electric did not request rehearing or clarification of the January 2009 Order, and its effort to modify the subject language at the compliance stage is beyond the scope of this compliance proceeding.

B. Reservation of Capacity for New Service

12. The January 2009 Order required MoGas to separately identify on its Internet website all capacity that is expected to become available within the next 180 days.⁸

13. Union Electric and MoPSC state that MoGas' compliance filing omits the word "separately" from its proposed changes to section 6.4(a). They assert that unless MoGas "separately" identifies the expected available capacity, shippers will be unable to monitor MoGas' capacity to assure that a customer that wishes to enter into a prearranged deal is not given preferential treatment.

14. In its answer, MoGas asserts that neither MoPSC nor Union Electric has shown how inclusion or omission of the word "separately" in any way changes the meaning of the tariff language or how MoGas would post such available capacity on its website.

15. The Commission directs MoGas to modify its proposed tariff sheets to specify that all capacity that is expected to become available within the next 180 days will be "separately" identified on its website. The January 2009 Order requires MoGas to "separately" identify such capacity on its website.⁹ Because MoGas' proposed tariff sheets in the compliance filing exclude the word "separately," MoGas' compliance filing does not comply with that requirement. MoGas' failure to include the word "separately" could potentially cause confusion; the January 2009 Order's requirement to list such capacity "separately" helps to ensure that the available capacity is clearly identified so that all customers can monitor available capacity. MoGas is directed to modify its tariff accordingly.

C. Reservation of Capacity for Expansion Projects

16. Paragraph 43 of the January 2009 Order required MoGas to add language to proposed section 6.4(b) to reserve the right to limit extension rights of interim service agreements involving capacity that has been reserved for a future expansion project.¹⁰

⁷ See, e.g., *El Paso Natural Gas Co.*, 115 FERC ¶ 61,280, at P 5 (2006).

⁸ January 2009 Order, 126 FERC ¶ 61,064 at P 32.

⁹ *Id.*

¹⁰ *Id.* P 43.

17. In its compliance filing, MoGas states that it has not included the language specified in paragraph 43 in its compliance filing. MoGas states that paragraph 30 of the January 2009 Order required MoGas to adopt language proposed in its January 13, 2009 Answer to add a provision at the end of section 6.4(b) stating, “Service available on such limited term basis shall not be eligible for a right of first refusal or contract extension for purposes of sections 22.1 and 22.2.”¹¹ MoGas states that adding the language specified in paragraph 43 would be redundant with the quoted provision and only cause unnecessary confusion.

18. MoPSC disagrees with MoGas’ assertion that additional language pursuant to paragraph 43 of the January 2009 Order is redundant or causes unnecessary confusion. MoPSC states that the language that MoGas proposes to add at the end of section 6.4(b) is directed at the shipper acquiring the limited-term capacity. In contrast, MoPSC states the Commission’s language in paragraph 43 is intended to preserve the contract provisions of existing shippers who hold firm capacity. Therefore, MoPSC contends, both additions provide needed clarity. In addition, MoPSC states that MoGas also agreed in its January 13, 2009 Answer to add the revised tariff language restricting contract extension rights at the end of both sections 6.4(a) and 6.4(b). However, MoPSC observes that the compliance filing includes the language in the middle of each tariff section, which MoPSC states causes more confusion.

19. In its answer, MoGas asserts that the language in 6.4(b) as revised by its compliance filing accomplishes the result intended by paragraph 43 of the January 2009 Order. MoGas also avers that there has been no demonstration that the organization of 6.4(a) and 6.4(b) leads to confusion.

20. The Commission finds that MoGas’ compliance filing satisfies the requirement of paragraph 43 in the January 2009 Order to limit extension rights in “interim service agreements” for capacity that has been reserved for a future expansion project. As modified in the compliance filing, section 6.4(b) now provides, “Service available on such limited term basis shall not be eligible for a right of first refusal or contract extension for purposes of sections 22.1 and 22.2.” This language adequately accomplishes the stated purpose of paragraph 43 of the January 2009 Order.

21. The Commission rejects the distinction made by MoPSC regarding the effect of the proposed language in 6.4(b) and paragraph 43 of the January 2009 Order. In paragraph 43, the Commission required MoGas to limit extension rights of “interim service agreements,” not, as claimed by MoPSC, to address the contract provisions of existing shippers holding firm capacity. Moreover, to the extent MoPSC is concerned about current shippers, such concerns are ill-founded. Current shippers are already

¹¹ *Id.* PP 28, 30. Identical language was also added to section 6.4(a) related to reservation of capacity for new service.

protected by the existing language in 6.4(b), which states that MoGas may only reserve for a future expansion project capacity that is either “currently available unsubscribed” capacity or capacity that will “become available at some future date” and is not subject to a ROFR.

22. However, the Commission finds that the placement of the revised language in section 6.4(b) limiting extension rights in interim service agreements is inconsistent with what MoGas offered and the Commission accepted in the January 2009 Order,¹² and may be potentially misleading. In the compliance filing, this revised language is placed near the beginning of section 6.4(b), appearing before the language in section 6.4(b) explaining that MoGas will make capacity reserved for a future expansion project available on a limited-term basis.¹³ Because the revised language limiting extension rights imposes a restriction on such limited-term capacity, it is confusing to include the language limiting extension rights before the availability of such limited-term capacity is identified or defined by the tariff. Thus, the Commission will require MoGas to revise section 6.4(b) to place the language limiting the extension rights of limited-term shippers after the sentence stating that MoGas will offer capacity on a limited-term basis.

23. MoPSC raises similar concerns with respect to the placement of identical language in 6.4(a). However, in this provision, MoGas placed the sentence stating “Transportation service made available on such limited-term basis shall not be eligible for a right of first refusal or contract extension for purposes of sections 22.1 and 22.2” at the end of the tariff language proposed in MoGas’ original December 23, 2008 filing, and not in the midst of it. Thus, the placement of the language complies with our January 2009 Order.¹⁴ The Commission does not find the placement of the revised language in 6.4(a) to be confusing, and will not require a change in placement of this sentence in section 6.4(a), as is directed above with respect to section 6.4(b).

¹² See January 2009 Order, 126 FERC ¶ 61,064 at P 28, which stated that “MoGas proposes to add the [subject] language at the *end* of both section 6.4(a) and 6.4(b).” (emphasis added); MoGas January 13, 2009 Answer at 7 & n.14.

¹³ Specifically, we are referring to the language in section 6.4(b) stating, “Transporter shall, on a limited-term basis up to the in-service date of the expansion project, make generally available any capacity reserved under this section.”

¹⁴ As noted *supra* this is consistent with the placement proposed in MoGas’ January 13, 2009 Answer as adopted by the January 2009 Order, where MoGas represented that the language would be at the “end” of both sections 6.4(a) and 6.4(b). See January 2009 Order, 126 FERC ¶ 61,064 at P 28; MoGas January 13, 2009 Answer at 7 & n.14.

The Commission orders:

(A) The tariff sheets in the Appendix are accepted effective January 26, 2009, subject to the conditions identified herein.

(B) MoGas is directed to file revised tariff sheets consistent with this order within 15 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

**MoGas Pipeline LLC
FERC Gas Tariff
First Revised Volume No. 1**

Tariff Sheets Accepted Effective January 26, 2009 Subject to Conditions

Second Revised Sheet No. 58
Original Sheet No. 58.1
Second Revised Sheet No. 61
Second Revised Sheet No. 80
Second Revised Sheet No. 82