

131 FERC ¶ 61,190
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 28, 2010

In Reply Refer To:
Midcontinent Express Pipeline LLC
Docket No. RP10-687-000

Midcontinent Express Pipeline LLC
3250 Lacey Road, Suite 700
Downers Grove, IL 60515-7918

Attention: Bruce H. Newsome, Vice President

Reference: Periodic Fuel Filing and Expansion Capacity Rate Adjustment

Ladies and Gentlemen:

1. On April 30, 2010, Midcontinent Express Pipeline LLC (MEP) filed revised tariff sheets¹ to its FERC Gas Tariff, Original Volume No. 1. One set of MEP's proposed tariff sheets reflect the revised recourse rates from the Midcontinent Expansion Project approved by the Commission on September 17, 2009, to be effective June 1, 2010, with another set of tariff sheets to be effective June 1, 2010, in the event that expansion is not in service by June 1, 2010.² In addition, MEP included proposed tariff sheets to reflect its second semi-annual Periodic Rate Adjustment tracking filing. MEP requests the Commission approve the tariff sheets to become effective June 1, 2010, and requests limited waiver of sections 36.2(b) and 36.4 of the General Terms and Conditions (GT&C) of its tariff that define the Base Period for the Periodic Rate Adjustment filing and the methodology for calculating the Current Component of its fuel reimbursement percentages.

¹ Second Revised Sheet No. 8, Original Sheet No. 8A, Third Revised Sheet No. 10, Original Sheet No. 10A, Third Revised Sheet No. 12 and First Revised Sheet No. 13.

² *Midcontinent Express Pipeline LLC*, 128 FERC ¶ 61,253 (2009) (Amended Certificate Order).

2. The Commission accepts MEP's tariff sheets effective June 1, 2010, as requested, subject to conditions as discussed below. The Commission also grants a limited waiver of sections 36.2(b) and 36.4 of the GT&C of MEP's FERC Tariff as requested.

3. On July 25, 2008, in Docket No. CP08-6-000, the Commission authorized, among other things, MEP's request to construct and operate a new 506-mile pipeline extending from southeastern Oklahoma to western Alabama (Initial Certificate Order).³ In addition, the Initial Certificate Order authorized MEP to lease up to 272,000 Dth/day of capacity on the Oklahoma intrastate pipeline system of Enogex Inc. (Enogex).⁴ The Initial Certificate Order further approved MEP's proposal to construct its project in two phases: an initial phase and an expansion phase. Therefore, as proposed, MEP's system will have two capacity zones in addition to the Enogex leased capacity: Zone 1 with an initial capacity of 1.43 million Dth/day and Zone 2 with an initial capacity of 1 million Dth/day. Upon completion, the final expanded system's capacities will be 1.53 million Dth/day in Zone 1 (Pre-Approved Zone 1 Expansion) and 1.2 million Dth/day in Zone 2 (Pre-Approved Zone 2 Expansion).

4. On December 4, 2008, in Docket No. RP09-136-000, MEP filed to implement its FERC Tariff, including establishing its recourse rates, in compliance with the Initial Certificate Order.⁵ In that filing, among other things, MEP proposed to place into effect as of June 1, 2010, tariff sheets setting out the rates and reimbursement percentages for fuel gas and unaccounted for gas for both the Pre-Approved Zone 1 and Zone 2 Expansion capacity. MEP anticipated that both facilities would be in service as of June 1, 2010. The Commission approved MEP's tariff filing on February 25, 2009.⁶

5. On March 31, 2010, in Docket No. RP10-553-000, MEP filed tariff sheets to place the revised rates and fuel reimbursement percentages for the Pre-Approved Zone 1 Expansion I into effect on May 1, 2010, to reflect the facilities being in service on that date, instead of the June 1, 2010 date that MEP initially anticipated. MEP's tariff filing was accepted on April 19, 2010.⁷

³ *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089 (2008), *order denying reh'g and granting clarification*, 127 FERC ¶ 61,164 (2009).

⁴ *Id.*

⁵ *Id.*

⁶ *Midcontinent Express Pipeline LLC*, 126 FERC ¶ 61,175 (2009).

⁷ *Midcontinent Express Pipeline LLC*, Docket No. RP10-553-000 (Apr. 19, 2010) (unpublished letter order).

6. In Docket No. CP09-56-000, MEP filed a request to further expand the capacity of Zone 1 of its system by 300,000 Dth/day, from 1.53 million Dth/day to 1.83 million Dth/day (Zone 1 Expansion II). In its application, MEP also requested to roll-in the costs of the Zone 1 Expansion II facilities into its Pre-Approved Zone I Expansion rates.

7. On September 17, 2009, the Commission issued a certificate for the Zone 1 Expansion II project.⁸ In that order, the Commission approved “initial rates for the Midcontinent Expansion Project service which reflect rolling the costs of that project into the previously-approved, but-as-yet-to-be-implemented expansion phase rates and which will replace the expansion phase rates approved in the [Initial Certificate Order] for all Zone 1 shippers upon the in-service date of the Midcontinent Expansion Project.”⁹ The Commission also required MEP to file actual tariff sheets consistent with the pro forma tariff sheets filed in the proceeding not less than 30 days, and not more than 60 days, prior to the commencement of service on the proposed Zone 1 Expansion II facilities.¹⁰

8. Section 36 of MEP’s GT&C provides for reimbursement percentages for its Fuel Gas, Unaccounted For (UAF) Gas and Booster Compression Fuel. The reimbursement percentages are derived by adding the Current Component (section 36.4 of the GT&C) and the Deferred Component (section 36.5 of the GT&C) for each fuel component. The Current Component and Deferred Component reimbursement percentages for MEP’s UAF Gas and Booster Compression Fuel were originally approved by the Commission in the Initial Certificate Order.¹¹

9. On October 30 2009, in Docket No. RP10-107-000, MEP filed its first semi-annual fuel tracking filing reflecting changes to the above reimbursement percentages, to be effective December 1, 2009. MEP also requested limited waiver of sections 36.2(b) and 36.4 of the GT&C of its tariff. Specifically, MEP requested waiver of: (1) section 36.2(b) regarding the Base Period so that it ends two months, rather than three months before the next recovery period begins (December 1, 2009); and (2) section 36.4 of its GT&C, regarding the methodology for calculating the current component of the reimbursement percentages so that it could continue to use the currently effective current component that was approved in the Initial Certificate Order. The Commission approved

⁸ Amended Certificate Order, 128 FERC ¶ 61,253 at Ordering Paragraph (B).

⁹ *Id.* P 31.

¹⁰ *Id.* Ordering Paragraph (F).

¹¹ *See generally*, Initial Certificate Order, 124 FERC ¶ 61,164.

MEP's semi-annual tracker filing tariff and limited waiver request on November 30, 2009.¹²

10. On April 30, 2010, MEP filed proposed tariff sheets reflecting revised recourse base and fuel rates for the Pre-Approved Zone 2 Expansion and the Zone I Expansion II project. MEP states it previously moved to place its base rates for its Pre-Approved Zone 1 and Zone 2 Expansions into effect on June 1, 2010, in anticipation of both Pre-Approved Zone Expansions being in service on June 1, 2010, noting that it filed to place the Pre-Approved Zone 1 Expansion rates into effect earlier, on May 1, 2010. MEP states that it anticipates that the Zone 1 Expansion II facilities will be placed in service on or about June 1, 2010. If these facilities are placed in service, MEP states that it will have a total Zone 1 capacity of 1.83 million Dth/day and a total Zone 2 capacity of 1.2 million Dth/day. If the Zone I Expansion II is not placed in service on June 1, 2010, MEP states that it will have a total Zone 1 capacity of 1.53 million Dth/day and a Zone 2 capacity of 1.2 million Dth/day. As such, MEP submitted revised tariff sheets reflecting both scenarios.¹³

11. MEP states that it also is making its second semi-annual tracker filing under section 36 reflecting the Fuel, Booster Compression, and Unaccounted For gas reimbursement percentages for the Pre-Approved Expansion capacity for Zone 2 and the Zone 1 Expansion II facilities to account for these facilities being in-service as of June 1, 2010. MEP states that the tariff sheets containing the Fuel, Booster Compression, and Unaccounted For gas reimbursement percentages associated with the Zone 1 Expansion II service will only become effective once the facilities are placed in service.

12. MEP's Second Revised Sheet No. 8, Third Revised Sheet No. 10 and Third Revised Sheet No. 12 contain revised rates to reflect a June 1, 2010 in-service date for both the Pre-Approved Zone 2 Expansion and the Zone 1 Expansion II, to be effective June 1, 2010. MEP states that in the event that the Zone 1 Expansion II facilities are not placed in service on June 1, 2010, these rates will not be used until those facilities are placed in service. MEP also submits Original Sheet No. 8A, Original Sheet No. 10 and First Revised Sheet No. 13, to be effective June 1, 2010, which MEP states it would use

¹² *Midcontinent Express Pipeline LLC*, 129 FERC ¶ 61,181 (2009) (Fuel Tracker Order).

¹³ Both sets of revised base rates assume that the Pre-Approved Zone 2 Expansion facilities are in-service by June 1, 2010. However, MEP's proposed Original Sheet No. 8A contains a footnote explaining that rates for the Pre-Approved expansion capacity will become effective upon placing in service the facilities associated with this capacity and will terminate at the point in time the facilities associated with the Zone 1 Expansion II capacity are placed in service.

to bill shippers if the Zone 1 Expansion II facilities are not placed in-service on June 1, 2010.

13. MEP also requests a limited waiver of sections 36.2(b) and 36.4 of the GT&C of its tariff. MEP states that section 36.2(b) defines the base period for Periodic Rate Adjustment (PRA) filings as being the six months ended three months prior to the commencement of a new recovery period. Specifically, MEP requests a waiver so that the base period for this PRA filing ends three months prior to the new recovery period, and as such, MEP would report five months of base period information instead of the contemplated six months of information. MEP asserts that commencing with its fuel tracking filing to be effective December 1, 2010, MEP will begin to reflect the base period information as specified in the tariff. MEP claims that the effect of the waiver is that the based period consisting of five months of actual data would end February 28, 2010 for reimbursement percentages to be effective June 1, 2010.

14. Notice of MEP's filing was issued on May 3, 2010. Interventions and protests were due May 12, 2010, as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214,¹⁴ all timely filed 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 this proceeding or place additional burdens on existing parties. No protests were filed.

15. The Commission finds that the proposed base rates and Periodic Rate Adjustment reimbursement percentages on the various tariff sheets comply with the Commission's prior orders and properly reflect whether the Zone 1 Expansion II facilities are or are not in-service on June 1, 2010. However, because of uncertainty over the date that various expansion facilities will be in-service, MEP has filed overly complicated and confusing sets of tariff sheets. MEP has drafted these proposed sheets to essentially be alternative sets of tariff sheets, each applicable depending on which Zone 1 Expansion II scenario occurs and each assuming a June 1, 2010 in-service date of the Pre-Approved Zone 2 Expansion, which has not gone into service. However, contrary to our policies on the effectiveness of tariff sheets, each set confusingly would remain in the tariff without being superseded. As such, we will direct that they be refiled as directed below. As discussed below, we also find that the form of pagination MEP has selected is confusing and should be revised.

16. Following issuance of the Initial Certificate Order, MEP filed various initial and revised Pre-Approved Zone 1 Expansion II rates on three different tariff sheet pages, i.e., Sheet No. 7, Sheet No. 8, and a new Sheet No. 8A, which, confusingly, all appear simultaneously effective in the tariff. All the same type of rates (e.g., Rates Schedule

¹⁴ 18 C.F.R. § 385.214 (2009).

FTS Zone 1 and Zone 2 base rates) should be contained on one single tariff sheet page, with revisions to such rates appearing on revised sheets of the same page number. For example, if initial base rates appearing on an Original Sheet No. 8 are revised, the revised rates should appear on a tariff sheet designated as "First Revised Sheet No. 8." The second revision to those rates would appear on "Second Revised Sheet No. 8," and so forth. We have no preference as to whether MEP chooses Tariff Sheet No. 7 or 8 to locate its base rates, but it should choose one and re-file tariff sheets repaginated to reflect that choice.

17. To clarify MEP's filing obligation, for example in the case of base rates, a tariff sheet repaginated as directed below should be filed to contain the base rates shown on Original Sheet No. 8A, which MEP states it would use to bill shippers if the Zone 1 Expansion II facilities are not placed in-service on June 1, 2010, to be effective June 1, 2010.¹⁵ That sheet would be superseded by a second repaginated tariff sheet to be filed containing the base rates and fuel reimbursement percentages shown on Second Revised Sheet No. 8, to be effective the later of June 1, 2010, or the date the Zone 1 Expansion II facilities go into service. The same directives apply to tariff sheets containing fuel percentages. Once MEP has received authorization to place the facilities into service, and has notified the Commission of the actual in-service date, the Commission will assign an effective date to the tariff sheet reflecting the Zone 1 Expansion II rates and change the status of the first sheet to be superseded. Finally, MEP should revise any tariff sheet headings and footnotes consistent with the directives above.

18. Accordingly, we direct MEP to file revised tariff sheet consistent with the foregoing directives within 20 days of this order to be effective as directed above.

19. Section 36.2(b) of MEP's GT&C defines the base period for PRA filings as being the six months ended three months prior to the commencement of a new Recovery Period. MEP requests waiver so that the Base Period for this PRA filing ends three months prior to the new Recovery Period and, as such MEP would report five months of Base Period information instead of the contemplated six months of information. MEP states that commencing with MEP's fuel tracking filing to be effective December 1, 2010, it will commence reflecting Base Period information as contemplated under the tariff. Section 36.4 of MEP's GT&C defines the method for calculating the Current Component of the Fuel, Booster Compression, and Unaccounted For Gas Reimbursement Percentages. MEP states that it is appropriate to use as the Current Component of the Fuel Gas reimbursement percentages the fuel rates authorized in the CP Dockets because

¹⁵ However, if the Pre-Approved Zone 2 Expansion facilities are not in-service by June 1, 2010, as MEP assumes, MEP must refile that sheet to reflect the initial Zone 2 rates and a sheet superseding that sheet to be effective on such later date when the Pre-Approved Zone 2 Expansion does go into service.

it has no actual experience operating its system with a capacity of 1,832,500 Dth/day in Zone 1 and 1,200,000 Dth/day in Zone 2.

20. MEP has shown good cause for its request to waive section 36.2(b). The Commission previously approved a limited waiver of section 36.2(b) so that the effective date of MEP's second PRA filing would coincide with the in-service date of the Midcontinent Expansion Project.¹⁶ Therefore, granting this waiver will ensure consistency so that those dates coincide. Accordingly, we find good cause to grant limited waiver of section 36.2(b). In light of the lack of experience that MEP has with respect to fuel use following the in service date of the new expansions, the Commission also grants MEP's request for a limited waiver of 36.4 to the extent necessary.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁶ Fuel Tracker Order, 129 FERC ¶ 61,181 at P 6.