

137 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Mid-America Pipeline Company

Docket No. IS11-604-000

ORDER ACCEPTING AND SUSPENDING TARIFF SUBJECT TO REFUND
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 28, 2011)

1. This order accepts and suspends, to be effective October 1, 2011, subject to refund, Mid-America Pipeline Company, LLC's (Mid-America) FERC Tariff No. 82.1.0. The order also establishes a hearing, and holds the hearing in abeyance pending the outcome of settlement judge procedures.

Background

2. Mid-America operates a 6-inch product pipeline from Coffeyville, Kansas to El Dorado, Kansas where it terminates at tankage owned by NuStar Pipeline Operating Partnership, L.P. (NuStar) (Coffeyville Outbound Line). From the NuStar tankage, volumes can be transported on the Nustar Pipeline or pipelines owned by Magellan Pipeline Company, L.P. (Magellan). Both the NuStar and Magellan pipelines serve interstate destinations and intrastate destinations within Kansas. Mid-America and Coffeyville have been parties to a lease agreement in which Coffeyville leased all of the capacity on the Coffeyville Outbound Line. During the term of the lease, while Mid-America physically operated the pipeline, Coffeyville was the common carrier and was responsible for posting tariffs for transportation on the line. After the lease agreement expired on September 30, 2011, Mid-America became the common carrier and was obligated to have tariffs on file in order for transportation to continue on the line. Mid-America made the subject filing with the Commission for interstate transportation rates. In addition, the Kansas Corporation Commission (Kansas Commission) directed that interim intrastate rates on the Coffeyville Outbound Line filed by Mid-America be set at the level of the lease agreement, subject to true-up depending on the outcome of the ongoing Kansas Commission proceeding.

Mid-America's Filing

3. On September 29, 2011, Mid-America filed FERC Tariff No. 82.1.0 to establish an initial rate of 341.32 cents per barrel of 42 U.S. gallons for the pipeline transportation of refined petroleum products from Coffeyville, Kansas to El Dorado, Kansas in accordance with section 342.2(a) of the Commission's regulations (18 C.F.R. § 342.2(a) (2011)). Mid-America submitted cost, revenue, and throughput data supporting the initial rate as required by Part 346 of the Commission's regulations (18 C.F.R. Part 346 (2011)). Mid-America states that because it is establishing a rate for new service, the test period is based on a 12-month projection of costs and revenues in accordance with 18 C.F.R. § 346.2.

4. Mid-America states that the filing constitutes a request for waiver of the 30-day notice requirement as provided for in section 6(3) of the Interstate Commerce Act (ICA) consistent with the procedures at 18 C.F.R. § 341.14 (Special Permission). Mid-America states that the line segment in question as of September 29, 2011, is leased to another company responsible for maintaining tariffs for transportation. Mid-America submits that since the lease agreement expiration date is September 30, 2011, it must have a rate in place to allow transportation to continue on the pipeline. Mid-America therefore requests permission to file FERC Tariff No. 82.1.0 to be effective October 1, 2011.

Interventions, Protest and Answer

5. A notice of intervention was filed by the Kansas Commission on October 14, 2011. A motion to intervene and protest was filed on October 7, 2011 by Coffeyville Resources Refining and Marketing, LLC (Coffeyville). These interventions are granted. Coffeyville states that it operates a refinery in Coffeyville, Kansas and is the only shipper on the Coffeyville Outbound Line. Coffeyville states while it plans for a majority of its volumes in the future to be intrastate shipments, it anticipates that a material amount of its future volumes will continue to ship on an interstate basis. Coffeyville requests that the Commission reject, or in the alternative, suspend for the maximum statutory period and set for investigation and hearing, Mid-America's proposed tariff. Coffeyville contends that Mid-America's request to file its proposed tariff on short notice is patently deficient and its tariff filing is *prima facie* unjust and unreasonable, thereby requiring rejection, as it will result in the unjust and unreasonable double recovery of costs. Coffeyville asserts that Mid-America's filing appears to be an attempt to evade Kansas Commission orders denying Mid-America's intrastate request for rate relief. Coffeyville asserts that the Kansas Commission denied Mid-America's request to institute, on an interim basis, an identical rate increase to that proposed in the instant proceeding.

6. Coffeyville asserts that Mid-America's tariff filing is an attempt to sidestep the Kansas Commission's order denying Mid-America's request to institute an interim rate increase of over 900% on the Coffeyville Outbound Line. Coffeyville submits that the Kansas Commission properly rejected Mid-America's request for this interim rate,

declaring that the current rate for intrastate transportation will remain in effect until the Kansas Commission has determined a new just and reasonable rate for the Coffeyville Outbound Line. Coffeyville states that the Kansas Commission found that Mid-America would suffer no irreparable harm from the maintenance of the current intrastate rate.

7. Coffeyville argues that Mid-America's tariff filing is facially deficient and should be summarily rejected as unjust and unreasonable. Coffeyville contends that Mid-America faces no emergency or unique situation and it has thus failed to demonstrate any good cause to waive the 30-day notice requirement established by the Commission's rules. Coffeyville asserts that Mid-America has effectively filed the same supporting cost of service for its interstate tariff as it did to support its proposed intrastate tariff before the Kansas Commission. Coffeyville submits that not only is the cost of service itself substantially overstated, but Mid-America has failed to allocate any of its costs between interstate and intrastate service. Coffeyville contends that approving Mid-America's interstate rate would therefore unreasonably guarantee a double recovery of costs in direct contravention of Commission precedent and policy and the ICA's just and reasonable requirements.

8. Coffeyville asserts that various aspects of Mid-America's filing reflect rate design and cost-of-service elements that are in direct contravention of ICA requirements and of Commission policy and precedent. First, Coffeyville argues that Mid-America's rate filing does not allocate costs between interstate and intrastate transportation services, thereby necessarily resulting in an unreasonable double recovery of costs. Second, Coffeyville asserts that Mid-America's rate filing proposes the recovery of an excessive amount for litigation expenses, an item which is entirely unwarranted in a pipeline-initiated proceeding and which similarly reflects an effort to improperly double recover costs. Third, Coffeyville contends that Mid-America's rate filing proposes the recovery of approximately \$4 million for pipeline integrity expenses, a charge that is unsupported and that, if included at all, should, at minimum, be normalized pursuant to Commission regulation and be partly capitalized and amortized and not expensed. Finally, Coffeyville argues that Mid-America's proposed 11.96 percent return on equity is excessive and inconsistent with Commission policy and precedent.

9. Mid-America filed an answer to Coffeyville's protest asserting that while certain specific cost-of service issues raised by Coffeyville may need to be resolved through a hearing, there is no valid reason not to follow established Commission policy and suspend the tariff for a nominal period subject to refund and hearing. Mid-America submits that it in no way seeks to undermine or evade the Kansas Commission's authority over intrastate rates. Mid-America asserts that the Kansas Commission orders cannot waive Mid-America's obligation to file interstate rates with the Commission consistent with the ICA and Commission regulations. Mid-America argues that given the expiration of the lease agreement on September 30, 2011, it is necessary for Mid-America to have an interstate rate on file effective October 1, 2011, so there is no break in interstate

service. Mid-America asserts that Coffeyville will not be harmed by permitting the tariff to take effect on short notice subject to refund. Mid-America submits that Coffeyville will have a full opportunity to review Mid-America's interstate rate during the Commission proceeding and will be protected with refunds to the extent the filed rate is shown to exceed a just and reasonable level. Mid-America contends that its rate design does not result in double recovery. Mid-America submits that since both interstate and intrastate volumes use the same facilities and travel the same distance, it appropriately designed both its interstate and intrastate rates by allocating total system costs over total system volumes. Mid-America submits that while the actual amount of rate case litigation costs may need to be updated to account for actual costs incurred during the proceeding, its amortization of its estimated rate case expense over a five-year period is fully consistent with Commission precedent. Mid-America argues that the appropriate level of pipeline integrity costs to be included in rates plainly involves factual issues that will need to be resolved at hearing, and provides no reason to reject the tariff. Finally, Mid-America asserts that it faces a very high level of operating and business risk with respect to the line at issue, which merits use of an ROE at the upper end of the proxy group range.

Discussion

10. Mid-America has filed an initial rate for transportation service from Coffeyville, Kansas, to El Dorado, Kansas, and requests that it be made effective October 1, 2011, on short notice. Coffeyville asserts that the filing should not be made effective October 1, 2011 and that it conflicts with Kansas Commission orders. In addition, Coffeyville challenges a number of rate design and cost-of-service elements of the proposed initial rates. Coffeyville requests summary rejection or, in the alternative, suspension of the rates for the full statutory period subject to the outcome of a hearing.

11. The Commission finds that Coffeyville's protest raises a number of material issues of fact concerning Mid-America's proposed initial rate that must be addressed at a hearing. Contrary to Coffeyville's assertions, there is no basis for summarily rejecting Mid-America's proposed initial rate. The issues raised by Coffeyville concerning litigation expenses, pipeline integrity costs and return on equity are the typical contested rate case issues that are appropriately addressed at a trial-type hearing. The fact that Mid-America filed the same initial rate with the Kansas Commission for intrastate movements does not relieve Mid-America of its obligation to file an initial rate for interstate transportation with the Commission. The Coffeyville Outbound Line volumes are not wholly intrastate. Whether an intrastate or interstate rate should be charged for a particular movement on the subject line depends on whether the movement ends in Kansas or is a through movement into interstate commerce. As Coffeyville itself states

“a material amount of its future volumes will continue to ship on an interstate basis.”¹ Finally, the Commission finds that it is appropriate to grant special permission and allow the initial rate to take effect October 1, 2011. Since the lease agreement with Coffeyville expired September 30, 2011, Mid-America now is operating the pipeline as a common carrier and must have a rate on file for interstate transportation pursuant to the ICA. Further, since the rates are being accepted and suspended subject to refund and the outcome a hearing, Coffeyville’s interests are fully protected.

12. Accordingly, the Commission accepts and suspends Mid-America’s initial rate effective October 1, 2011, subject to refund and the outcome of the hearing established in this order. The Commission will hold the hearing in abeyance pending the outcome of settlement judge procedures established by this order.

The Commission orders:

(A) Pursuant to the authority contained in the Interstate Commerce Act, particularly section 15(7) thereof, Mid-America’s FERC Tariff No. 82.1.0 is accepted for filing and suspended, effective October 1, 2011 subject to refund and subject to the hearing established by this order.

(B) Pursuant to the authority contained in the Interstate Commerce Act, particularly sections 15(1) and 15(7) thereof, and the Commission’s regulations, a hearing is established to address the issues raised by Mid-America’s filing.

(C) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described herein.

(D) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2011), the Chief Administrative Law Judge is directed to appoint a settlement judge in this proceeding within 10 days of the date this order issues. To the extent consistent with this order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(E) Within 60 days of the date this order issues, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days

¹ Coffeyville Protest at 6.

thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.