

138 FERC ¶ 61,052  
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, LLC

Docket No. IS12-97-000

ORDER ACCEPTING TARIFF SUBJECT TO MODIFICATION AND CONDITIONS

(Issued January 26, 2012)

1. This order accepts, subject to modification and conditions, Mid-America Pipeline Company, LLC's (Mid-America) FERC Tariff No. 82.2.0. The instant tariff proposed adding language in Item 25 to Mid-America's Rules and Regulations requiring shippers to disclose information regarding the jurisdictional status of their movements.

**Background**

2. Mid-America operates a 6-inch petroleum products pipeline from Coffeyville, Kansas to El Dorado, Kansas, where it terminates at a tank owned by NuStar Pipeline Operating Partnership L.P. (NuStar) (Coffeyville Outbound Line). Volumes can be transported from the NuStar tank on a pipeline owned by NuStar or a pipeline owned by Magellan Pipeline Company, L.P. (Magellan). Both pipelines serve interstate destinations and intrastate destinations within Kansas.

3. Coffeyville Resources Refining and Marketing, LLC (Coffeyville) and Mid-America were parties to a lease agreement that terminated September 30, 2011. During this lease, Coffeyville leased all of the capacity on the Coffeyville Outbound Line and was responsible, as the common carrier, for posting tariffs for this transportation. At the expiration of the lease, Mid-America became the common carrier and was subsequently responsible for posting the tariff. Coffeyville is still the only shipper on the Coffeyville Outbound Line.

4. Mid-America proposed tariffs for both the interstate and intrastate movements on the Coffeyville Outbound Line to the Commission and the Kansas Corporation Commission (KCC) prior to September 30, 2011. The Commission accepted and suspended the proposed tariff and established hearing and settlement judge procedures.<sup>1</sup> The KCC ordered that the tariff identified in the lease agreement be used as the interim rate for the intrastate movements subject to a true-up on the outcome of the ongoing KCC proceeding.<sup>2</sup>

### **Mid-America's Filing**

5. In the instant case, Mid-America proposes new language in the interstate tariff that requires shippers to identify (1) the ultimate destination, (2) the specific routing of movements, and (3) the name of all consignees on each barrel shipped through the Coffeyville Outbound Line. The proposed tariff language can be found in Appendix A. Mid-America states that information is needed to determine which volumes move in interstate commerce for billing purposes.

6. Mid-America asserts that, since the Coffeyville Outbound Line is used for both interstate and intrastate movement, the carrier has an obligation to bill shippers correctly for movements made on the pipeline. Further, Mid-America states that the information should be readily available to shippers, as the ultimate destination of the movements in question is, or should be, known by the shipper.

### **Intervention and Protest**

7. Coffeyville filed a motion to intervene and protest in the proceeding, and requests the Commission reject, or to the extent not rejected, suspend for the full statutory time frame, and revise the proposed Tariff No. 82.2.0. Coffeyville asserts that Mid-America's request to add new terms and conditions related to the Coffeyville Outbound Line nominations and shipment is patently deficient, overreaching, unduly discriminatory, unjust, and unreasonable. The motion to intervene is granted.

8. Coffeyville states that when it nominates product movements on the Coffeyville Outbound Line, it notifies Mid-America that all barrels are destined for the El Dorado delivery point where the Coffeyville Outbound Line connects to the NuStar tankage. It is the stated policy of Coffeyville to serve Kansas intrastate demand first, and then serve demand from non-Kansas terminals. Coffeyville notes that at the time the nomination is made, the nature of the nominated volumes would not be known, and the character of the

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<sup>1</sup> See *Mid-America Pipeline Company*, 137 FERC ¶ 61,090 (2011).

<sup>2</sup> See KCC Docket No. 12-MDAP-068-RTS.

shipments would be determined at a date closer to the date of sale. Coffeyville states that ninety percent of the shipments on the Coffeyville Outbound Line are intrastate movements, subject to the KCC tariff currently on file.

9. Coffeyville states that, Coffeyville protested to Mid-America's tariffs on the Coffeyville Outbound Line at both the Commission and the KCC, the instant tariff filing proposing new terms and conditions for service may be "designed more to harass and unreasonably attempt to seek leverage in the ongoing KCC and FERC rate proceeding(s) rather than to address any legitimate purpose or need for these proposed terms and conditions."<sup>3</sup>

10. Coffeyville asserts that, with this language, Mid-America automatically assumes that a shipper will not adhere to its statutory obligation under the Interstate Commerce Act (ICA) to provide information which is as accurate as possible regarding nominations and the nature and character of their shipments to permit accurate billing.<sup>4</sup> Coffeyville states that the proposed tariff revision goes far beyond anything that is reasonable or necessary, and the information requested is irrelevant and commercially sensitive. Coffeyville suggests several changes and rejections, including: (1) requesting that Mid-America's discretion to demand a sworn affidavit from a shipper be conditioned by a good faith belief that a shipper's stated characterization of the volumes shipped does not accurately reflect the interstate or intrastate character of the subject shipments, and to require evidence be presented to justify the request; (2) requesting that the tariff contain a reciprocal requirement that, to the extent a shipper disputes Mid-America's application of rates, a shipper can request and receive all data relied upon to generate the invoice; (3) clarifying that, to the extent that the carrier has a dispute with the nature and character of the disputed volumes, the carrier is free to file a complaint with the FERC for resolution rather than seek commercially sensitive and irrelevant information in violation of ICA requirements; (4) acknowledging that it is not feasible to identify the specific routing of individual barrels, making the requirement to identify the specific routing of the movement unknowable, meaningless and unreasonable; (5) rejecting Mid-America's request for consignee information as wholly irrelevant and unreasonable; and (6) rejecting Mid-America's demand for copies of invoices from any connecting carrier showing the ultimate destination on the connecting carrier for each movement.

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<sup>3</sup> See Motion to Intervene and Protest at 15-16.

<sup>4</sup> See 49 App. U.S.C. § 10(3) (1988).

11. Coffeyville states that the majority of this information is competitively sensitive business information, and disclosure violates the ICA. Coffeyville claims this provision is unique in all of Mid-America's tariffs, and appears to be unduly discriminatory towards Coffeyville.

### **Mid-America's Answer**

12. Mid-America responded to Coffeyville's filing, stating that in order to conform to the ICA, Mid-America requires this information to correctly determine the rate charged for movements on its pipeline. Mid-America asserts that Coffeyville does know the ultimate destination of many of its movements on the Coffeyville Outbound Line, since that information was produced during the discovery process in the KCC proceedings. When Coffeyville ships on the NuStar system, for example, Coffeyville receives an invoice from NuStar showing the number of barrels moved to each destination. Mid-America also states that shipper intent, while relevant, is not determined by relying on unsupported assertions from the shipper regarding the movement; objective factors must be taken into account to determine the fundamental business purpose of the commerce in question.

13. Mid-America states that Coffeyville has a good idea of the demand for interstate and intrastate barrels, as the company engages in marketing activities promoting barrels outside of Kansas. Additionally, it points out that barrels that are shipped on NuStar's system that are delivered to El Dorado are not under an intrastate tariff, making any shipments delivered to third party shippers on NuStar's line interstate. Further, claims Mid-America, the instant tariff filing is consistent with Commission precedent, as certain Trans Alaska Pipeline System (TAPS) carriers and TAPS feeder lines require shippers to provide similar information regarding whether their movements are in interstate or intrastate commerce.

14. Mid-America disputes the characterization that the instant tariff filing is retaliatory in nature, due to the ongoing rate proceedings at both the Commission and the KCC. Mid-America states that the pipeline was forced to make this tariff filing to obtain necessary information for determining the jurisdictional status of the movements on the Coffeyville Outbound Line in order to comply with the requirements of the ICA.<sup>5</sup> Mid-America explains that the Coffeyville nominations were accepted as intrastate, subject to Coffeyville providing updated information regarding the ultimate destination no later than the end of the month of shipment, and that Coffeyville has not updated this nomination information to facilitate billing. Additionally, Mid-America states that the tariff is not discriminatory against Coffeyville; the tariff would apply to any shipper on

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<sup>5</sup> See 49 App. U.S.C. § 10(2) (1988).

the line, and since Mid-America's other systems are not similarly situated, tariff provisions can vary among systems without constituting a violation of the ICA.

15. Mid-America notes that the ICA only forbids a carrier from disclosing confidential shipper information;<sup>6</sup> the shipper may request this information from buyers downstream. Further, the carrier is required to keep this information confidential. Mid-America states that pipelines must have access to confidential information order to operate their systems effectively.

16. Mid-America also asserts that the tariff is necessary and reasonable, and Coffeyville's suggested changes to the tariff have no merit. Further, any unfounded speculation by Coffeyville regarding improper application of the tariff does not require rejection or modification of the tariff language as proposed.

### **Discussion**

17. The Commission accepts FERC Tariff No. 82.2.0 to be effective January 27, 2012, subject to modification as described below. The Commission acknowledges the intent behind Item 25, but also recognizes that the provision, as written, is overly burdensome to Coffeyville. Accordingly, Mid-America's proposed tariff language should be revised as described in Appendix B to this order.

18. A sworn affidavit attesting to the nature of the barrels moved by Coffeyville achieves the goal of identifying interstate and intrastate barrels. The ultimate destination and routing is irrelevant—Mid-America only needs to know, for billing purposes, whether or not the barrels crossed the Kansas border. This information should be readily available to Coffeyville. The sworn affidavit also protects Mid-America in the event that Coffeyville incorrectly identifies the nature of barrels moved. Further, as noted above, Coffeyville has an obligation to provide accurate information regarding the nature of their shipments in order to ensure that the correct rate is charged under the ICA. The modification the Commission suggests removes the burdensome and unnecessary requirements while keeping the original intent of Mid-America's language. As discussed above, Mid-America only needs to know the number of barrels that crossed into interstate commerce, rather than the details requested in the original language. This revision achieves the result sought by Mid-America while allowing Coffeyville to shield information they see as competitively sensitive.

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<sup>6</sup> See 49 App. U.S.C. § 15(13) (1988).

The Commission orders:

(A) Mid-America's FERC Tariff No. 82.2.0 is accepted, to be effective January 27, 2012, subject to the filing of a revised tariff modified as discussed above.

(B) Mid-America shall submit the revised tariff within fifteen days of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

## Appendix A

Mid-America Pipeline Company, L.L.C.  
FERC Tariff No. 82.2.0  
Proposed Item 25 Language

**Item 25.** In order for Carrier to determine the correct rate to be charged Shipper on barrels moving in interstate commerce, Carrier requires information sufficient to determine which of Shipper's volumes that moved between the origin and destination set forth in this tariff ultimately moved in interstate commerce. Shipper therefore shall upon request provide a sworn affidavit certifying which of Shipper's volumes moved in interstate commerce and identifying for each barrel moved by Shipper (1) the ultimate destination(s), (2) the specific routing of the movement, and (3) the name of all consignee(s). If requested by Carrier, Shipper shall also provide copies of invoices from any connecting carrier showing the ultimate destination on the connecting carrier for each movement. To the extent any of the above information is not in the immediate possession of Shipper, Shipper shall take all reasonable steps to obtain such information from consignees, connecting carriers, purchasers and any other party likely to know the information. Shipper shall use its best efforts to identify all interstate volumes at the time of nomination. To the extent Shipper's nomination or any information provided to Carrier by Shipper pursuant to this item is later found by Shipper to be inaccurate, Shipper shall provide corrected information to Carrier in a timely manner. Carrier shall be under no obligation to provide transportation to any Shipper that fails to provide information requested pursuant to this item or which provides false information.

## Appendix B

Mid-America Pipeline Company, L.L.C.  
FERC Tariff No. 82.2.0  
FERC Suggested Revised Tariff Language

**Item 25.** In order for Carrier to determine the correct rate to be charged Shipper on barrels moving in interstate commerce, Carrier requires information sufficient to determine which of Shipper's volumes that moved between the origin and destination set forth in this tariff ultimately moved in interstate commerce. Shipper therefore shall upon request provide a sworn affidavit certifying which of Shipper's volumes moved in interstate commerce. ~~and identifying for each barrel moved by Shipper (1) the ultimate destination(s), (2) the specific routing of the movement, and (3) the name of all consignee(s). If requested by Carrier, Shipper shall also provide copies of invoices from any connecting carrier showing the ultimate destination on the connecting carrier for each movement. To the extent any of the above information is not in the immediate possession of Shipper, Shipper shall take all reasonable steps to obtain such information from consignees, connecting carriers, purchasers and any other party likely to know the information.~~ Shipper shall use its best efforts to identify all interstate volumes at the time of nomination. To the extent Shipper's nomination or any information provided to Carrier by Shipper pursuant to this item is later found by Shipper to be inaccurate, Shipper shall provide corrected information to Carrier in a timely manner. Carrier shall be under no obligation to provide transportation to any Shipper that fails to provide information requested pursuant to this item or which provides false information