146 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Mid-America Pipeline Company, LLC Docket No. IS14-157-000

ORDER ACCEPTING TARIFF

(Issued February 26, 2014)

1. On January 28, 2014, Mid-America Pipeline Company, LLC (Mid-America) filed a tariff record,[1] to be effective January 28, 2014, on less than one day's notice pursuant to section 341.14 of the Commission's rules and regulations.[2]

2. Chevron Products Company (Chevron) filed a protest, arguing that certain language in the tariff record is inconsistent with the provisions of the Interstate Commerce Act (ICA),[3] the Commission's regulations, and the August 5, 2011 order in Docket No. OR11-11-000 (Declaratory Order).[4]

3. As discussed below, the Commission denies the protest and accepts the tariff record to be effective as of January 28, 2014.

Description of the Filing

4. Mid-America states that on January 2, 2014, it filed FERC No. 78.8.0 containing tariff changes for its Rocky Mountain System expansion project (Expansion). Mid-America further states that, on January 17, 2014, Chevron filed a protest, or in the alternative, a request for clarification challenging Mid-America's FERC No. 78.8.0.

---

[1] Mid-America Pipeline Company, LLC., FERC Oil Tariff, Tariffs, Rocky Mtn/4 Corners Sys, F.E.R.C. No. 78.10.0.

[2] 18 C.F.R. § 341.14 (2013).

[3] 49 U.S.C. § 1 *et seq*. (1988).

[4] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087 (2011).

According to Mid-America, it is submitting the instant filing to address Chevron's concerns by (a) correcting the new language contained in Item 128, Allocation of Demethanized Mix by removing an inadvertent reference to "Open Season" in the fifth line of the item; and (b) adding clarifying language to the beginning of the second sentence of Item 128. Mid-America emphasizes that it made no other changes and that the cancellation of the language on the title page is related to its previous filing.[5] Mid-America submits that good cause exists for granting short notice so that the correction and clarification can take effect immediately.

5. In Item No. 128, Mid-America has revised "Open Season Expansion Capacity" so that the revised section states as follows:

> The up to 85,000 bpd of increased capacity that resulted from the Open Season Expansion shall be deemed "Open Season Expansion Capacity." Under normal operating conditions, in the event Shippers' total requirements are greater than can be currently handled by Carrier, each Committed Shipper will first be allocated its Committed Shipper Nomination to Hobbs-Gaines, and any remaining pipeline capacity shall be allocated using the same procedures outlined above for *Open Season* Expansion Capacity allocation and for Base Capacity allocation; provided that if the sum of all volumes allocated to Committed Shippers under this Item 128 exceeds the currently available capacity, the allocated volumes of such Committed Shippers will be reduced pro rata based on their respective Volume Commitments.[6]

Protest

6. On February 12, 2014, Chevron filed a protest to FERC Tariff No. 78.10.0. Chevron asserts that Mid-America's proposed changes are inconsistent with the ICA, the Commission's regulations, and the Declaratory Order.

7. Chevron cites two Commission orders addressing Mid-America's proposals to expand its Rocky Mountain System and to obtain Committed Shippers to provide the financial assurances necessary for the expansions to go forward.[7] In particular, Chevron

---

[5] On the title page of the tariff, Mid-America has removed the following language: "Issued under the authority of 18 CFR §342.2(b) – Establishing Initial Rates."

[6] Mid-America proposes to add the underlined words and to delete the words in italics.

[7] Chevron cites *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006); *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087 (2011).

asserts that in the filing addressed in the Declaratory Order, Mid-America represented that its priority service for Committed Shippers would fully preserve the capacity rights of existing committed shippers with respect to the then-current capacity of 275,000 barrels per day (bpd). Further, states Chevron, Mid-America also represented that the Expansion volumes would move on the Expansion Capacity.

8. According to Chevron, Mid-America's stated purpose in the January 2, 2014 filing of revised Item 128 was to clarify that the new Expansion Capacity (85,000 bpd) would be allocated first to Committed Shippers on a priority service basis, consistent with the priority allocation methodology approved by the Commission in the Declaratory Order. Chevron states that it protested the January 2, 2014 filing, arguing that Mid-America's proposed tariff language was ambiguous and inconsistent with the pipeline's previous representations concerning Committed Shippers' capacity rights. Chevron acknowledges that Mid-America withdrew the January 2, 2014 filing and submitted the filing at issue in this proceeding, but Chevron emphasizes that the revisions noted above do not address its concerns.

9. Chevron contends that before Mid-America submitted the two January 2014 filings, the Commission stated that Mid-America's existing capacity allocation procedures in Item No. 128 applied during curtailment.[8] Chevron explains that this is because Item No. 128 took the reduced capacity into account by applying a ratio (based on a shipper's historical receipts) to the available capacity to determine each shipper's allocation during prorationing.

10. However, continues Chevron, Mid-America now proposes to revise Item No. 128 to add priority rights for its Committed Shippers for a stated volume of capacity, rather than a percentage of available capacity, under "normal operating conditions." Chevron argues that this proposed tariff language is silent as to how this capacity set aside for Committed Shippers will be reduced when the pipeline's volumes are curtailed due to *force majeure* or another event. Thus, states Chevron, the proposed tariff leaves open the question of how capacity will be allocated under "non-normal" operating conditions. Chevron challenges Mid-America's "wait and see" approach as inconsistent with the requirements of the ICA and the Commission's regulations.[9]

---

[8] Chevron cites *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P12 (2006).

[9] Chevron cites 49 U.S.C.§ 1(4) (1998) (duty of each common carrier to make reasonable rules and regulations); 18 C.F.R. § 341.0(b) (2013) (tariffs must contain in "clear, complete, and specific form" all of the rules and regulations associated with its rates and charges); 18 C.F.R. § 341.8 (2013) (pipelines must publish in tariffs the rules

(continued…)

11. Chevron also rejects Mid-America's position that its system has been in prorationing only rarely and that Chevron's concerns are hypothetical. Chevron contends that Mid-America's prorationing record prior to the expansions is irrelevant because the expansions involve new shippers, higher volumes, and new facilities.

12. In Chevron's view, Mid-America's proposed tariff language allows the pipeline to allocate its capacity in a manner that interferes with the capacity rights of existing shippers, contrary to Mid-America's earlier representations. Chevron states that in the Declaratory Order, the Commission relied on these representations that existing capacity rights would not be diminished. Chevron believes that the proposed tariff language of Item No. 128 is contrary to these representations because during periods of capacity constraint it would allow Mid-America to provide Committed Shippers priority service on the first 85,000 bpd, even when existing shippers' volumes are being curtailed for some operational reason. Chevron asserts that this allocation of available capacity favoring Committed Shippers violates ICA section 3(1).[10]

Mid-America's Response

13. On February 18, 2014, Mid-America filed its response to Chevron's protest. According to Mid-America, Chevron's protest is procedurally improper, lacks merit, and would allow Chevron to take advantage of capacity for which it does not pay a premium rate. Further, states Mid-America, Chevron's interpretation of the tariff at issue would reduce the willingness of other shippers to purchase priority service, which would serve as a disincentive to the construction of new pipeline capacity.

14. First, states Mid-America, Chevron's protest is an improper collateral attack on the Declaratory Order. Mid-America contends that Chevron's protest seeks to re-write the capacity allocation rules approved in the Declaratory Order. Mid-America also states that if Chevron believed that the capacity allocation provisions in Mid-America's tariff should be revised, it should have raised that issue during the open season for the additional capacity or during the Commission's review of Mid-America's petition for Declaratory Order.

---

governing such matters as prorationing that might increase or decrease the value of the service to the shipper).

[10] 49 App. U.S.C. § 3(1) (1988).

15. Mid-America emphasizes that the Commission has made it clear that shippers may not challenge tariff provisions previously approved in declaratory orders.[11] Moreover, states Mid-America, Chevron's protest challenges the tariff provisions after Mid-America and the Committed Shippers have entered into long-term commercial arrangements involving approximately one billion dollars in reliance on the Commission's rulings in the Declaratory Order.

16. Mid-America also asserts that Chevron's challenge to the prorationing provisions is not ripe and is based on Chevron's speculation concerning future events.[12] Mid-America emphasizes that it is not now in prorationing and does not anticipate that any allocation on its system will impact any of its shippers in the foreseeable future because of the design of its system. Mid-America states that its available records back to 2007 do not contain any report of an allocation lasting more than a few hours or impacting any shipper and that Chevron does not challenge this fact.

17. Mid-America further argues that Chevron's protest lacks substantive merit because the proposed tariff language in fact makes it clear how capacity will be allocated under both normal operating conditions and unusual circumstances. Mid-America explains that under normal operating conditions, the Committed Shippers will be allocated capacity equal to their full cumulative nomination. Mid-America adds that any remaining pipeline capacity will be allocated pursuant to the procedures for Expansion Capacity allocation and Base Capacity allocation (also contained in Item No. 128), "provided that if the sum of all volumes allocated to Committed Shippers under this Item 128 exceeds the currently available capacity, the allocated volumes of such Committed Shippers will be reduced pro rata based on their respective Volume Commitments."

18. According to Mid-America, the cited language explains what will happen in an unusual circumstance when there is insufficient capacity to satisfy the Committed Shippers' nominations. Mid-America explains that in such a situation, the Committed Shippers' volumes will be allocated pro rata, and, by definition, there would not be "any remaining pipeline capacity" to allocate under the Expansion Capacity and Base Capacity allocation procedures.

---

[11] Mid-America cites *Imperial Oil and ExxonMobil Oil Corp. v. Enbridge Pipelines (Southern Lights) LLC*, 136 FERC ¶ 61,115, at P 9 (2011); *Enbridge Pipelines (Southern Lights) LLC*, 144 FERC ¶ 61,044, at P 74 (2013); *Keyspan-Ravenswood, Inc.*, 107 FERC ¶ 61,142, at P 22 (2004).

[12] Mid-America cites *Mid-America Pipeline Company, LLC*, 106 FERC ¶61,094, at P 14 (2004).

19. Mid-America also refutes the charge that it would be unduly discriminatory for it to provide a priority to Committed Shippers, while curtailing existing shippers' volumes during an emergency event. Mid-America points out that Chevron cites no Commission precedent to support this claim, and in fact, the Declaratory Order approved the challenged provision. Mid-America further points out that the Commission explained that Mid-America "appropriately distinguishes committed and uncommitted shippers and provides for rates consistent with the obligation of each class of shipper, while providing a significant amount of capacity for uncommitted shippers."[13] In addition, continues Mid-America, the Commission pointed out that "the open season gave all potential shippers the opportunity to become committed shippers."[14] Mid-America emphasizes that the Commission has held repeatedly that it is consistent with the ICA and not discriminatory to give a priority to committed shippers that pay a premium rate and agree to make volume commitments during a valid open season process.[15]

20. Further, continues Mid-America, the Commission also has made it clear that "[t]here is no single method of allocating capacity in times of excess demand on oil pipelines and pipelines should have some latitude in crafting capacity allocation methods to meet circumstances specific to their operations."[16] Mid-America emphasizes that the Commission never has held that "excess demand" applies only in the context of "normal operating conditions." In fact, adds Mid-America, there would be no logic to drawing such a distinction, because excess demand is exactly that – regardless of the cause.

21. On the other hand, argues Mid-America, it is entirely logical and commercially reasonable to give the Committed Shippers a priority because they agreed to pay a higher rate and to ship or pay for a minimum volume over the terms of their contracts with Mid-America.[17] Moreover, states Mid-America, the other existing shippers benefit from

---

[13] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 19 (2011).

[14] *Id.*

[15] Mid-America cites, *e.g.*, *CenterPoint Energy Bakken Crude Services, LLC*, 144 FERC ¶ 61,130, at PP 25-27 (2013); *Enbridge Pipeline (Illinois) LLC*, 144 FERC ¶ 61,085, at P 23 (2013); *Skelly-Belvieu Pipeline Co., L.L.C.*,138 FERC ¶ 61,153, at P 16 (2012); *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at PP 37, 40 (2010); *Sunoco Pipeline L.P.*, 137 FERC ¶ 61,107, at P 15 (2011); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at PP 16-19 (2007).

[16] *Mid-America Pipeline Company, LLC*, 106 FERC ¶ 61,094, at P 14 (2004).

[17] Mid-America cites, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,253, at P 19 (2007) ("premium rate firm shippers are not similarly situated with the pipeline's non-firm shippers . . . [p]remium rate firm shippers have made long-term agreements and

(continued…)

the Expansion Capacity because the Committed Shipper volumes made it possible to expand the line, and thus the Committed Shippers are no longer competing with the other shippers for the smaller amount of capacity that existed prior to the expansion.

22. Mid-America disputes Chevron's claim that Mid-America represented to the Commission that the Committed Shippers would not receive "priority service" in the case of *force majeure*, and that, by implication, all shippers would be allocated equally in cases of *force majeure* or other circumstances that diminish the pipeline's capacity. Mid-America asserts it made clear that the Committed Shippers would not be subject to prorationing under normal operating conditions, but that they would only be subject to prorationing in unusual circumstances such as shipper breach or *force majeure*. In other words, continues Mid-America, it explained to the Commission that in unusual circumstances such as an outage so severe that there would not be sufficient capacity to serve the Committed Shippers, the Committed Shippers also would need to be allocated. As is self-evident, adds Mid-America, in that highly unlikely situation, Mid-America simply sought to explain that there would be no capacity available for other shippers. Mid-America emphasizes that it did not state that it would allocate capacity to all shippers, including uncommitted shippers, in capacity constraint situations.

23. Moreover, continues Mid-America, there is no inconsistency between the tariff and the representation in its Petition for Declaratory Order that the priority allocation for Committed Shippers fully preserves the capacity rights of existing shippers with respect to the pre-Expansion 275,000 bpd of capacity. According to Mid-America, the Committed Shippers' priority is limited to the amount of the additional capacity resulting from the Expansion. Thus, states Mid-America, if a *force majeure* or other event were to cause capacity to be curtailed, the existing shippers would be allocated by the same amount anyway. For example, explains Mid-America, if the pre-Expansion capacity were constrained by 25,000 bpd, the existing shippers would have had to share the remaining 250,000 bpd. According to Mid-America, after the Expansion, because Committed Shippers are allocated all of the Expansion Capacity, a 25,000 reduction in overall capacity will still result in the existing shippers sharing 250,000 bpd of pre-Expansion capacity. In other words, emphasizes Mid-America, the existing shippers will fare no worse in a *force majeure* or similar event than they would have without the Expansion and the Committed Shipper agreements that made it possible. In fact, adds Mid-America, the existing shippers are better off because they will no longer need to compete with the Committed Shippers for the lesser amount of capacity that existed prior

---

must pay for their contracted amounts even if not used . . .[whereas] uncommitted shippers have maximum flexibility to react to changes in their own circumstances or in market conditions, although they do not provide assurances and financial support for the [pipeline] that firm shippers provide.").

to the Expansion. Thus, concludes Mid-America, if the Committed Shippers do not use all of their priority capacity, there may be more capacity available to the existing shippers in an allocation scenario.[18]

Commission Analysis

24. The Commission rejects Chevron's protest and will accept Mid-America's FERC Tariff No. 78.10.0 to be effective as of January 28, 2014, as proposed. Chevron's protest represents a collateral attack on the Declaratory Order. Additionally, the protest lacks merit and improperly interprets the Declaratory Order, as well as the tariff revisions at issue here.

25. It is important to point out that Chevron did not intervene in Docket No. OR11-11-000, although as an existing shipper on Mid-America's system, it was entitled to do so. The Commission will not permit Chevron to challenge the rulings in the Declaratory Order that Mid-America seeks to implement with its FERC Tariff No. 78.10.0 more than three years after the Declaratory Order became final. Moreover, Chevron had the same right as any other shipper or potential shipper on Mid-America's system to execute a Transportation Service Agreement (TSA) agreeing to pay a premium rate in return for committing to ship or pay for the shipment of a specified volume of NGLs in return for priority service on the additional 85,000 bpd of Expansion Capacity. Chevron chose not to make that commitment, although it attempts through its protest here to obtain the same rights granted to Committed Shippers, without assuming the substantial financial obligations central to that commitment. In the Declaratory Order, the Commission repeatedly recognized Mid-America's assurance that existing shippers' capacity rights would be preserved and that uncommitted shippers would continue to have access to the majority of the then-existing Rocky Mountain System capacity before service commenced on the projected 85,000 bpd of new Expansion Capacity.[19] Nothing in proposed Item No. 128 impairs the pre-expansion rights of the shippers that chose not to become Committed Shippers in support of the Expansion. Rather, Item No. 128 merely confirms the priority status for Expansion Capacity of the Committed Shippers who pay a premium price for that priority.

26. Additionally, the Declaratory Order recognized that Mid-America conducted a public open season (from March 29, 2011, to April 29, 2011), offering all interested shippers an equal right to participate.[20] The Declaratory Order expressly granted the

---

[18] Mid-America cites Tariff No. 78.10.0, Item No. 11.

[19] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at PP 2, 8, 10, 19 (2011).

[20] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 7 (2011).

ruling sought by Mid-America that would allow it to "provide the new capacity created by the Expansion as priority committed space for shippers that have committed to move volumes on ship-or-pay basis at a premium rate pursuant to the terms of the TSA."[21] This statement also affirms that the capacity to be added, rather than the then-existing capacity, would be available to the Committed Shippers to move their volumes.

27. In the Declaratory Order, the Commission reviewed the precedent cited by Mid-America in support of its petition. That precedent and subsequent Commission orders support Commission approval of the tariff changes proposed by Mid-America in FERC Tariff No. 78.10.0.

28. The Commission has broad discretion under the ICA to approve priority contract service under appropriate circumstances.[22] In fact, the Commission has exercised its discretion under the ICA to approve various methods for allocating capacity among different categories of shippers, emphasizing that "[t]here is no single method of allocating capacity in times of excess demand . . . and pipelines should have some latitude in crafting allocation methods to meet circumstances specific to their operations."[23]

29. The Commission generally has found proposals for priority service to committed shippers paying a premium rate to be reasonable and non-discriminatory if uncommitted shippers had sufficient capacity available to them and were not denied access to the line.[24] In the Declaratory Order, the Commission pointed out as follows:

---

[21] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 9 (2011).

[22] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 14 (2011). (citing ICA §§ 1(4), 3(1); *Sea-Land Services, Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984) (explaining that "Congress has delegated broad legislative discretion to the Commission to determine when differential treatment amounts to improper discrimination among shippers and when such treatment is justified by relevant dissimilarities in transportation conditions.")).

[23] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 14 & n.16 (2011).

[24] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 15 (2011) (citing *Enbridge Energy (North Dakota) LLC*, 133 FERC ¶ 61,167, at PP 7, 12, 37, 40 (2010); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 23-24 (2006)).

> Mid-America appropriately distinguishes committed and uncommitted shippers and provides for rates consistent with the obligation of each class of shipper, while providing a significant amount of capacity for uncommitted shippers. In addition, the open season gave all potential shippers the opportunity to become committed shippers. Accordingly, the Commission grants Mid-America's unopposed petition for a declaratory order.[25]

30. Chevron's protest in this proceeding ignores the Commission's determinations in the Declaratory Order. It also ignores the fact that Item No.128 of FERC Tariff Item No. 78.10.0 establishes allocation methodologies for three distinct categories of allocation on Mid-America's system. Notwithstanding Chevron's allegation that Item No. 128 is ambiguous as to how capacity will be allocated, it is quite clear in operation and was approved in the Declaratory Order as consistent with the grant of priority service on the Expansion Capacity for Committed Shippers.

31. As stated above, the Committed Shippers assumed substantial financial obligations in return for access to the Expansion Capacity. The Commission reiterates that Chevron did not make such a financial commitment for access to that capacity. Chevron remains among the shippers that have access to the capacity that existed prior to Mid-America's proposal to add the Expansion Capacity. Thus, Chevron is not aggrieved by FERC Tariff No. 78.10.8 or its lack of access to the 85,000 bpd of Expansion Capacity whenever the entire system capacity is so constrained that there is less than that amount reserved for the Committed Shippers paying a premium rate. Although such a circumstance may be rare, the allocation in such circumstances, as approved in the Declaratory Order and reflected in Item No. 128, does not contravene the ICA and is not unduly discriminatory. Mid-America's open season gave all shippers the opportunity to pay a premium rate for priority allocation in such a circumstance, and shippers that chose not to pay the premium for the Expansion Capacity still have access to all of the capacity that would have been available to them had the Expansion not occurred. Accordingly, Chevron's protest lacks merit, and the Commission will accept the filed tariff record to be effective as proposed.

---

[25] *Mid-America Pipeline Company, LLC*, 136 FERC ¶ 61,087, at P 19 (2011).

The Commission orders:

Mid-America's tariff record cited in footnote 1 of this order is accepted, effective January 28, 2014.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.