

148 FERC ¶ 61,079
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-American Pipeline, LLC

Docket No. IS14-587-000

ORDER ACCEPTING TARIFF FILING

(Issued July 31, 2014)

1. On July 1, 2014, Mid-American Pipeline, LLC (MAPL) filed FERC Tariff No. 74.1.0 in Docket No. IS14-578-000 to revise an off-specification (off-spec) penalty provision. As discussed below, MAPL's filing is accepted effective August 1, 2014.

Background

2. The subject filing consists of FERC Tariff No. 74.1.0, cancels FERC Tariff No. 74.0.0, makes changes to a pre-existing off-spec penalty provision, and increases the penalty amount. The wording change serves to make the penalty applicable if off-spec product is delivered to MAPL, whereas the original language required actual contamination of the fungible stream making part, or all, of the stream undeliverable. The penalty is being increased from 100 cents per barrel to 104 cents per barrel.

Protests and Answer

3. On July 16, 2014, ConocoPhillips Company (ConocoPhillips) filed a motion to intervene and a protest. ConocoPhillips states that MAPL has not established that the tariff change or penalty fees are necessary to address quality issues on the MAPL system. Additionally, ConocoPhillips argues that MAPL does not justify the penalty fee of \$1.04, and that MAPL has not shown the original \$1.00 or the proposed \$1.04 penalty are necessary to deter shippers from delivering off-spec product.

4. On July 21, 2014, MAPL filed an answer to ConocoPhillips's protest. MAPL points out that the penalty provision already existed prior to the tariff filing at issue in this docket and this filing just clarifies that provision. Additionally, MAPL states that the wording changes just reflect MAPL's current operational procedures regarding the treatment of off-spec product delivered to the pipeline. Also, MAPL says that the 4 cent

increase in the penalty amount is just an inflation adjustment to ensure the deterrent effect of the penalty is not weakened by inflation.

5. MAPL argues that ConocoPhillips may not challenge the penalty provision as the provision is not new and the wording changes do not affect how the penalty is applied. Furthermore, MAPL states the penalty provision as well as the penalty amount are consistent with Commission precedent and is reasonably designed to deter conduct that is detrimental not only to MAPL but to other shippers who deliver product that fits the product specifications. MAPL explains that off-spec product needs to be deterred because should off-spec product enter the common stream, such product increases the pipeline's expenses through additional horsepower and processing to balance the system and can potentially harm the physical integrity of the pipeline resulting in shutdowns, costly repairs and possible safety risks to both pipeline employees and people who reside and work near the pipeline right-of-way. MAPL also suggests shippers may be unable to receive off-spec product resulting in MAPL's system slowing or stalling.

Discussion

6. Pursuant to Rule 214 of the Commission's Rules and Regulations, 18 C.F.R. § 385.214 (2013), all timely filed motions to intervene and any unopposed motion to intervene out of time filed before this order issues are granted.

7. The Commission will accept FERC Tariff No. 74.1.0. ConocoPhillips's protest is not sufficient to prevent the Commission from approving MAPL's proposed tariff change and allowing it to go into effect. The *Enbridge* case,¹ relied on by ConocoPhillips in its protest, is not applicable to the current docket. In *Enbridge*, the Commission concluded the pipeline had not presented evidence to support the need for and levels of the proposed penalties. Here, in contrast, MAPL is merely revising its existing off-spec penalty provision, therefore, the first concern in *Enbridge* (i.e., need for the penalty) is not at issue in the instant proceeding.² Namely, in *Enbridge*, the pipeline proposed a new penalty provision, which was challenged. Lastly, the existing off-spec penalty provision has existed unchallenged for over a decade.

¹ *Enbridge Pipelines (North Dakota) LLC*, 138 FERC ¶ 61,087 (2012) (*Enbridge*).

² The existing off-spec penalty provision was in effect prior to the time MAPL adopted the Mid-American Pipeline Company, LLC's tariffs. *See, e.g.*, Mid-American Pipeline Company, LLC, Docket No. IS02-450-000, filed August 30, 2002. Effective by operation of law, September 1, 2002.

8. The Commission also finds the proposed 4 cent increase in the off-spec penalty charge to be acceptable. MAPL has not increased the penalty amount in over a decade, therefore, the Commission does not believe the 4 cent increase from the current level to account for inflation is inappropriate. Furthermore, the penalty level is in line with penalty provisions on other pipelines.³ Finally, the Commission has previously found that increases in penalty fees are reasonable when the increase is designed to preserve their effectiveness as a deterrent.⁴ For the above referenced reasons, the Commission approves MAPL's proposed tariff revisions.

The Commission orders:

MAPL's FERC Tariff No. 74.1.0 is accepted, effective August 1, 2014.

By the Commission.

(S E A L)

Kimberly D. Bose
Secretary.

³ See, e.g., DCP Sand Hills Interstate Pipeline, LLC, Tariff No. 1.1.0, Docket No. IS13-493-000 (July 2, 2013).

⁴ *Williams Natural Gas Co.*, 78 FERC ¶ 61,342, at 62,463 (1997).