

168 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Midship Pipeline Company, LLC

Docket Nos. CP17-458-000
CP17-458-001

ORDER AMENDING CERTIFICATE

(Issued September 6, 2019)

1. On May 1, 2019, Midship Pipeline Company, LLC (Midship) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² to amend its certificate of public convenience and necessity issued on August 13, 2018, authorizing Midship to construct and operate the Midcontinent Supply Header Interstate Pipeline Project (MIDSHIP Project).³ Midship requests authorization to implement cost-based interim recourse rates to enable Midship to provide up to 1,100,000 dekatherms per day (Dth/d) of interim transportation service on the MIDSHIP Project. As discussed below, we grant the requested authorization for Midship to amend its Certificate Order and approve Midship's associated interim recourse rates.

I. Background and Proposal

2. Midship is wholly-owned by Midship Holdings, LLC, which is indirectly owned by Cheniere Energy, Inc. and one or more funds or companies managed or owned by EIG Management Company. Midship does not currently own any pipeline facilities, nor is it engaged in any natural gas transportation operations. Upon commencement of operations of the MIDSHIP Project, Midship will become a natural gas company within

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. pt. 157 (2018).

³ *Midship Pipeline Co., LLC*, 164 FERC ¶ 61,103 (2018) (Certificate Order).

the meaning of section 2(6) of the NGA,⁴ and, as such, will be subject to the jurisdiction of the Commission.

3. The Certificate Order authorized Midship to construct and operate the MIDSHIP Project, consisting of a 199.7-mile-long mainline pipeline in Oklahoma, two lateral pipelines, three compressor stations, metering and regulation stations, and appurtenant facilities.⁵ The project is designed to provide up to 1,440,000 Dth/d of firm transportation service from the South Central Oklahoma Oil Province and the Sooner Trend Anadarko Basin Canadian and Kingfisher gas plays in the Anadarko Basin in Oklahoma, to existing natural gas pipelines near Bennington, Oklahoma, for subsequent transport to Gulf Coast and Southeast markets.

4. In the Certificate Order, the Commission determined that Midship failed to support its request for a separate income tax allowance and required Midship to revise its initial recourse rates to remove the proposed income tax allowance or provide additional information as to why Midship is entitled to an income tax allowance.⁶ On April 12, 2019, in Docket No. CP17-458-000,⁷ Midship filed to address the Commission's concerns, stating that it elected to be taxed as a corporation, subjecting it to an entity level corporate tax. Thus, Midship asserts that it is entitled to an income tax allowance.

5. Midship states that full commercialization of the MIDSHIP Project is ongoing and that each of Midship's shippers have requested that it provide service at the earliest date possible.⁸ In order to meet its firm shippers' request, Midship proposes to phase construction of the authorized facilities, initially constructing all facilities authorized in the Certificate Order and Reroute Order except for three compressor units—one

⁴ 15 U.S.C. § 717a(6).

⁵ On January 25, 2019, the Commission issued an order in Docket No. CP19-17-000, amending the Certificate Order to reroute 0.8 miles of pipeline in Bryan County, Oklahoma, to avoid a sensitive environmental feature and mitigate stakeholder concerns. *See Midship Pipeline Co., LLC*, 166 FERC ¶ 62,039 (2019) (Reroute Order).

⁶ Certificate Order, 164 FERC ¶ 61,103 at P 30.

⁷ *See* Midship April 12, 2019 Income Tax Allowance Compliance Filing.

⁸ Of the project's 1,440,000 Dth/d total design capacity, 925,000 Dth/d is subscribed by four shippers under long-term precedent agreements. Certificate Order, 164 FERC ¶ 61,103 at P 12.

compressor unit at each of Midship's three compressor stations.⁹ Midship states that proceeding in this manner will enable it to provide up to 1,100,000 Dth/d of interim firm transportation service, which is sufficient to meet its current firm transportation service obligations. Accordingly, Midship requests authorization to implement interim cost-based recourse rates for the interim transportation service. Midship intends to construct the three compressor units later, upon further commercialization of the MIDSHP Project, and states that the interim service will be available until the three compressor units are constructed and placed into service.

6. Midship filed revised Exhibits K, N, and P, which reflect the cost of service underlying the proposed interim recourse rates, as well as the *pro forma* tariff record that sets forth the interim recourse rates. Midship states that its proposed interim recourse rates are based on the applicable cost of service of all facilities approved by the Certificate Order, excluding the three compressor units for which Midship plans to delay construction. Midship proposes an interim monthly recourse reservation charge of \$13.2416/Dth and an interim usage charge of \$0.0031/Dth for firm transportation service. Midship also proposes interim recourse rate of \$0.4385/Dth for interruptible transportation service (IT), authorized overrun service, and parking and loan service (PAL). Midship's proposed interim recourse rates are designed using a total first year cost of service of \$174,789,719¹⁰ and annual billing determinants of 13,200,000 Dth.¹¹

7. Midship developed its proposed interim cost of service using the same cost factors as it did in the Certificate Order, including a 50-50 debt/equity capital structure, a cost of debt of 7.75 percent, a return on equity of 14.00 percent, and a depreciation rate of 2.50 percent. Midship estimates that the total cost of construction for the project, excluding the three compressor units, will be \$971,314,277.

8. Midship proposes to use the same retainage percentage approved in the Certificate Order of 0.80 percent to recover fuel, lost, and unaccounted for gas.¹² In support of its

⁹ Specifically, Midship proposes delaying construction of a 15,900 horsepower (hp) Solar Mars 100 gas-fired turbine unit at the Calumet Compressor Station; a 22,400 hp Solar Titan 130 gas-fired turbine unit at the Tatums Compressor Station; and a 30,000 hp Solar Titan 250 gas-fired turbine unit at the Bennington Compressor Station.

¹⁰ A credit of \$200,000 has been applied to the total cost of service in order to allocate costs to interruptible transportation services.

¹¹ Midship Application, Exhibit N at 3.

¹² Certificate Order, 164 FERC ¶ 61,103 at P 32.

proposed retainage percentage, Midship provided a fuel study in its July 12, 2019, response to a Commission data request.

II. Notice, Interventions, and Responsive Pleadings

9. Notice of Midship's amendment application was published in the *Federal Register* on May 13, 2019, with comments and interventions and due by May 22, 2019.¹³ No comments or motions to intervene were filed.¹⁴

III. Discussion

A. Certificate Policy Statement

10. Because Midship's application pertains to facilities for natural gas services in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of subsections (c) and (e) of section 7 of the NGA.¹⁵

11. The Commission's September 15, 1999 Certificate Policy Statement provides guidance as to how it will evaluate proposals for certifying new construction.¹⁶ In the Certificate Order, the Commission determined that "based on the benefits the project will provide and the minimal adverse impacts on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities," approval of the MIDSHP Project, consistent with the Certificate Policy Statement and NGA section 7(c), is required by the public convenience and necessity.¹⁷ Midship does not propose any changes to the project as approved in the Certificate Order that would require the Commission to revisit its findings. Rather, Midship is merely requesting authority to provide transportation service on an interim basis utilizing certain of the authorized

¹³ 84 Fed. Reg. 20,872 (2019).

¹⁴ We note that several landowners filed complaints and related comments about the ongoing construction of the MIDSHP Project. On July 30, 2019, Commission staff issued letters addressing these complaints.

¹⁵ 15 U.S.C. §§ 717f(c), (e).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, *corrected*, 89 FERC ¶ 61,040 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

¹⁷ Certificate Order, 164 FERC ¶ 61,103 at P 23.

facilities that it will construct and place in service prior to the construction and in-service date of all of the certificated facilities. We find that Midship's proposal is in the public convenience and necessity because it will make additional transportation service available to the market at an earlier date, as requested by Midship's firm shippers. We remind Midship that the conditions of the Certificate Order still apply, including the requirement to complete construction of the project—including construction of the three delayed compressor units—within two years of the date of the Certificate Order.¹⁸

B. Rates

12. In the Certificate Order, the Commission found that Midship's proposed cost of service and initial rates, as updated in its data responses, were generally reasonable for a new pipeline.¹⁹ Accordingly, the Commission accepted Midship's proposed recourse rates, with certain modifications, as the initial rates for service on the MIDSHP Project. Midship states that it developed its interim recourse rates in a manner consistent with the Commission's regulation requiring straight fixed-variable rate design.²⁰

13. Regarding Midship's April 12 compliance filing in response to the Certificate Order's finding that Midship failed to sufficiently support its request for a separate income tax allowance, Midship states that on November 1, 2018, Midship Holdings adopted the Second Amended and Restated Limited Liability Company Agreement of Midship (Agreement), and that pursuant to Section 7.2(a) of the Agreement, Midship Holdings filed Form 8832, *Entity Classification Election*, in which it elected to treat Midship as a corporation for U.S. federal income tax purposes effective November 1, 2018. Midship further states that on January 7, 2019, the Internal Revenue Service notified Midship that it approved the election, and therefore, Midship will be taxed as a corporation effective November 1, 2018. Midship states that federal income tax liability will be reported on Form 1120, *U.S. Corporation Income Tax Return*. Midship included the documentation to support this in the April 12 compliance filing.

¹⁸ See Certificate Order, 164 FERC ¶ 61,103 at ordering para. (B)(1); 18 C.F.R. § 157.20(b) (2018).

¹⁹ Certificate Order, 164 FERC ¶ 61,103 at P 31.

²⁰ 18 C.F.R. § 284.7(e) (2018).

14. Because Midship has elected to be treated as a corporation for income tax purposes, permitting Midship to recover an income tax allowance will not result in a double recovery of income taxes.²¹ As such, Midship is entitled to an income tax allowance, and it is appropriate for Midship to include such income tax allowance in its cost of service.

15. The Commission reviewed all of the information submitted in the amendment application, data request response, and *pro forma* tariff record, and concludes that Midship's proposed cost of service, cost allocation, and rate design used to develop the interim rates and fuel retention percentage reasonably reflect current Commission policy. The Commission therefore approves Midship's proposed interim initial recourse rates and fuel retention percentage for interim service on the project. Midship is reminded to file actual tariff records, as noted in ordering paragraph (D) of the Certificate Order, which also reflect the modifications approved herein. Midship is also reminded that it must make a cost and revenue study filing to justify its existing cost-based firm and interruptible recourse rates within three (3) months after its first three years of actual operation of the full project facilities, as noted in ordering paragraph (E) of the Certificate Order. To the extent Midship has not begun construction on the additional compression authorized in the Certificate Order within the two years provided for in that order, Midship is directed to file the cost and revenue study three years after the in service date of the interim facilities.

C. Environmental Analysis

16. On June 11, 2019, Commission staff issued an Environmental Assessment Report finding that Midship's proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations.²²

The Commission orders:

(A) The certificate of public convenience and necessity issued to Midship authorizing it to construct and operate the MIDSHIP Project is amended, as described and conditioned herein and as more fully described in the application and subsequent filings by the applicant, including any commitments made therein.

²¹ See *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 25 & n.53 (2018) (explaining that no double recovery results when a corporation's cost of service includes an income tax allowance because "the corporate income tax is paid directly by the corporation" and is not an investor-level tax paid by shareholders).

²² 18 C.F.R. § 380.4(a)(27) (2018).

(B) Midship's interim recourse rates and fuel retention percentage are approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.