

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Mid-America Pipeline Company, LLC

Docket No. IS05-216-000

ORDER ACCEPTING AND SUSPENDING TARIFFS,
SUBJECT TO REFUND AND CONDITIONS, AND ESTABLISHING
A HEARING AND SETTLEMENT PROCEDURES

(Issued April 29, 2005)

1. On March 31, 2005, Mid-America Pipeline Company, LLC (MAPL) submitted a tariff filing with a cost of service justification that proposes to increase most general commodity rates for transportation of natural gas liquids (NGLs) on its three pipeline systems.¹ As detailed below, the Commission accepts and suspends the tariffs to become effective May 1, 2005, subject to refund, and sets this matter for hearing and settlement judge procedures. The hearing will be held in abeyance pending the outcome of the settlement process.

2. This order benefits customers because it provides for refunds and requires the parties to enter into settlement discussions to attempt to resolve issues relating to the filing prior to participating in formal hearing procedures.

Background

3. MAPL consists of three pipeline systems. The Rocky Mountain/Four Corners System is approximately 2,548 miles long and transports NGLs from points in Wyoming to Hobbs-Gains, Texas. The Central System is a bi-directional pipeline approximately 1,938 miles long that extends between Hobbs-Gains, Texas, and Conway, Kansas. The Northern System is a 2,740 mile pipeline that moves NGLs north from Conway, Kansas, through the upper Midwest to destinations in Minnesota and Wisconsin.

¹ Rocky Mountain/Four Corners System, FERC Tariff No. 37; Northern System, FERC Tariff No. 38; and Central System, FERC Tariff No. 39.

MAPL's Filing

4. MAPL proposes to increase the majority of its general commodity rates by 23 percent based upon a cost of service showing. MAPL proposes no changes to the remainder of its rates. MAPL states that, in accordance with 18 C.F.R. Part 346 of the Commission's regulations, it submitted cost, revenue, and throughput data supporting the revised rates. MAPL claims that its supporting schedules show "a substantial divergence between the actual costs experienced by the carrier and the rates resulting from application of the index..." as required by 18 C.F.R. § 342.4(a) of the Commission's regulations.

5. MAPL states that, with respect to the income tax component of the cost of service, it recognizes that the Commission's decision on the appropriate tax allowance for oil pipeline partnerships, in the Docket No. PL05-5-000 proceeding remains pending. As a result, MAPL continues the practice of applying a full income tax allowance to its proposed cost of service. However, for illustrative purposes only, MAPL also includes a second set of cost of service schedules that assumes no income tax allowance. MAPL contends that its schedules demonstrate that calculating a cost of service either with or without a tax allowance would leave MAPL's test year revenues substantially below the test year cost of service.

Interventions, Protests, and Responses

6. On April 15, 2005, Burlington Resources Trading, Inc. (Burlington) and Navajo Refining Company, L.P. (Navajo) filed timely motions to intervene and protests. On April 18, 2005, Williams Power Company, Inc. and Williams Energy Services, LLC (collectively, Williams) filed a motion to intervene one day out of time and a protest. The Commission grants Williams' motion to intervene out of time for good cause shown. Granting the motions to intervene out of time at this point does not disrupt or delay the proceeding or create additional burdens for the existing parties. On April 20, 2005, MAPL filed separate responses to Burlington's and Navajo's protest, and similarly responded to Williams' protest on April 22, 2005.

7. The protesting parties generally contend that MAPL's filing violates Commission policy and regulations and that MAPL fails to provide adequate support for the increased rates. Burlington and Williams urge the Commission to reject the filing summarily, or in the alternative, to suspend it for the maximum statutory seven-month period and set it for evidentiary hearing. Navajo also urges the Commission to suspend the tariffs and set this matter for investigation and hearing in light of the magnitude of the increase sought by MAPL. Alternatively, Williams asks the Commission to order the parties to enter into good faith settlement negotiations to resolve the contested issues.

Burlington's Protest

8. Burlington states that, prior to 2005, it paid joint tariff rates of 209.43 cents per barrel (Group 105) and 170.33 cents per barrel (Group 110) for the joint MAPL/Seminole Pipeline Company (Seminole) movement to Group 950 destinations. According to Burlington, in late 2004, Seminole filed an initial "local" rate of 98.85 cents per barrel for movement from its interconnection with MAPL at West Texas (Hobbs-Gains) to Group 950 destinations, but did not at that time seek any increase in the MAPL/Seminole joint rate for Group 950. Burlington asserts that, prior to that filing, Seminole had no local rate on file for its portion of the "joint" rate, and MAPL increased the "joint" rate based on the Commission's indices. Burlington maintains that Seminole's increased local rate of 98.85 cents approximately doubles the implicit Seminole portion of the joint rate, yet the filing contained no cost support for the new local rate. Furthermore, MAPL only supported that filing with an affidavit stating that a non-affiliated shipper agreed to pay that rate.

9. Shortly thereafter, MAPL filed to increase the joint rates for movements to Group 950 destinations by 26.85 cents per barrel. Although MAPL already applied the 2004 annual index increase to those joint rates, it purportedly justified its further rate increase because the increased joint rates were still less than the sum of the underlying local rates. Burlington contends that its increased charges total approximately \$3.1 million per year in addition to the increase proposed in the instant filing.

10. Burlington argues that MAPL's filing is deficient in a number of respects. Burlington argues that first, MAPL impermissibly seeks a second rate increase during the current index year,² and second, without justification, seeks a general 23 percent increase to most tariff rates, although it sought a rate decrease for certain other tariff rates two weeks earlier.³ Moreover, continues Burlington, MAPL fails to provide credible cost,

² Burlington cites *Cost-of-Service Reporting and Filing Requirements for Oil Pipelines*, Order No. 571, FERC Stats. & Regs., (Regulations Preambles 1991-1996) ¶ 31,006 at 31,164 (1994).

³ Burlington cites MAPL's March 18, 2005 filing in Docket No. IS05-203-000 and states that MAPL has not explained the anomalous treatment of its various rates. Burlington also cites *Yellowstone Pipe Line Co.*, 79 FERC ¶ 61,098 at 61,458 (1997) (Commission rejected proposed rate increase in part because the pipeline had failed to explain why it was lowering one rate while claiming that costs were substantially higher than what would be recovered under index rates).

revenue, and throughput information to establish a “substantial divergence” between its actual costs and the rates allowed under indexing, as required by the applicable regulations. Further, Burlington asserts that MAPL fails to comply with the Commission’s base period and test period regulations, fails to support a near doubling of Outside Services costs and other large increases to operation and maintenance expenses, fails to provide required revenue information, and *inter alia*, fails to support its claimed capital structure and cost of capital.

11. Burlington states that MAPL’s 2003 FERC Form No. 6 reports total throughput of 242.0 million barrels and its third-quarter 2004 Form No. 6-Q indicates that it will exceed the 2003 level. Burlington also cites a press release from MAPL’s corporate parent indicating that the Rocky Mountain segment of the MAPL pipeline is running near full capacity. Despite this, concludes Burlington, MAPL projects a 21 percent decrease in throughput from the 2003 level.

MAPL’s Answer

12. In response, MAPL first asserts that Burlington does not have standing to protest and the Commission should not permit it to intervene. According to MAPL, Burlington does not allege that it ships on any of the routes whose rates are at issue here and MAPL’s records confirm this fact. MAPL contends that Burlington’s only claimed interest in MAPL’s Tariff No. 37 is that it may, in the future, impact rates paid under the joint MAPL/Seminole tariff. MAPL maintains that this is not a sufficient basis to confer standing.⁴

13. MAPL further argues that the Commission’s policies and regulations do not prohibit it from filing cost of service rates within one year of an indexed rate increase. Moreover, continues MAPL, the alleged deficiencies highlighted by the protests are without merit, and its prior reduction of other rates does not require rejection of the instant filing. MAPL also contends that its throughput numbers are accurate, as are its base and test period numbers, which it normalized to account for certain cost changes, consistent with its FERC Form No. 6. MAPL also claims that it adequately supported the aspects of its filing that Burlington challenges. For example, MAPL asserts that its increased costs related to Outside Services are largely driven by a pipeline integrity program mandated by the U.S. Department of Transportation. According to MAPL, its

⁴ MAPL cites *Equilon Pipeline Co.*, 91 FERC ¶ 61,210 (2000).

filing also provides the required revenue information. In conclusion, MAPL argues that, because Burlington does not have standing to challenge MAPL's tariff filing, its protest cannot provide a basis for suspending the filing.

Navajo's Protest

14. Navajo protests all increased rates in FERC No. 39, particularly Item 240 regarding normal butane, Item 245 regarding isobutene, and Item 250 regarding natural gasoline. Even though it does not ship other products at this time, Navajo protests all increased rates in FERC No. 39 because it may ship other products in the future. Further, while Navajo acknowledges that it is not directly impacted by the rate increases under FERC Nos. 37 and 38, it recognizes that a calculation of a just and reasonable rate under FERC No. 39 may be related to the calculation of just and reasonable rates under FERC Nos. 37 and 38.

15. As did Burlington, Navajo questions the propriety of the base and test periods employed in the filing, as well as whether the filing provides sufficient information to support the requested rate increases and whether MAPL properly applied Commission policy concerning allocation of costs. Navajo also asserts that MAPL fails to provide proper support for the tax allowance it claims, the return on equity, the level of claimed operating expenses, the capital structure, the rate base and depreciation, and the projected throughput.

MAPL's Answer

16. In its response, MAPL asserts that Navajo also lacks the requisite standing to intervene and challenge the filing because Navajo does not ship under the tariffs at issue. MAPL also asserts that the instant filing fully complies with the Commission's cost of service regulations with respect to base and test periods. MAPL claims that Navajo's concerns are unwarranted insofar as they relate to MAPL's claimed tax allowance, rate of return, operating expenses, capital structure, rate base and depreciation, and throughput. Finally, MAPL argues that Navajo fails to justify its request that the Commission suspend the filing for the maximum seven-month statutory period.

Williams' Protest

17. Williams states that it ships approximately 61,000 barrels per day of NGLs under the joint MAPL/Seminole tariff. Additionally, Williams states that it sells approximately 6,500 barrels per day of NGLs that MAPL subsequently ships on the MAPL/Seminole system. According to Williams, the NGLs it ships originate from Group 100 and Group 105, and it has processing plants and NGL sales originating in Group 110.

18. Williams asserts that the Opal to Ignacio rate increase will cause its shipments between these points to become more uneconomical than it is now.⁵ Williams also criticizes what it terms “back-door” rate increases and the potential “Catch 22” situation it may face. According to Williams, it will suffer no initial effect as a result of the increases for the shipment of NGLs. However, Williams claims a potential subsequent and significant effect in that these proposed increases are for local rates, which MAPL, in turn, can use to increase a joint rate almost unilaterally because the pipeline has the ability to increase a joint rate if the increase is less than or equal to the sum of the two local rates. Williams predicts that it will face increased costs of more than \$30 million per year.

19. Williams maintains that MAPL already has levied a back-door joint rate increase. Williams explains that, in December 2004, Seminole sought permission to increase the local rate for shipment of NGLs over one route. Williams states that it did not protest this increase because it did not ship over that route. Further, continues Williams, MAPL subsequently sought to increase the joint tariff rate for certain shipments, but Williams did not protest the increase because it was less than or equal to the sum of the local Seminole and MAPL rates.

20. Williams raises essentially the same issues raised by Burlington and Navajo. First, Williams claims that MAPL improperly seeks a second rate increase during the same index year. Further, Williams lists the areas of the filing that it believes are deficient and unsupported. In particular, Williams cites a lack of support for the base and test period costs and revenues claimed by MAPL, lack of support for the proposed increase to Account Nos. 320 and 390, failure to explain the change in its debt/equity ratio, and failure to explain test period property additions. In addition, Williams notes that the Commission’s regulations do not require MAPL to specify how it allocates its cost of service among the three systems at this stage of the proceeding, but requests permission to reserve the right to review and, if necessary, contest cost allocation and rate design issues at hearing.

MAPL’s Answer

21. Consistent with its responses to Burlington and Navajo, MAPL argues that Williams does not have standing to protest the tariff filing and therefore the Commission should not permit Williams to intervene. According to MAPL, Williams only ships

⁵ Williams acknowledges that, through its subsidiaries, it is a two-percent indirect owner of MAPL and Seminole.

under a joint rate contained in Tariff No. 37 that MAPL does not propose to change. MAPL emphasizes that Williams' only claimed interest in FERC No. 37 is that it may, in the future, affect rates paid under the joint MAPL/Seminole tariff. Again, MAPL maintains that this is not a sufficient basis to confer standing. Further, MAPL contends that there is no merit to Williams' various allegations of deficiencies in MAPL's cost of service filing. In addition, MAPL acknowledges that if the Commission does not dismiss the protest and the case proceeds to hearing, MAPL agrees that it will properly address the cost allocation and rate design issues there.

Discussion

22. The Commission finds that MAPL met its burden related to the required content of its cost of service filing, as required under section 346.1 of the Commission's regulations.⁶ Accordingly, the Commission denies Burlington's and Williams' request to reject the filing summarily. Additionally, we deny Burlington's and Williams' request to suspend the filing for the maximum statutory seven-month period. The protestors' interests are fully protected as the entire rate increase is subject to refund at the conclusion of the hearing, and they will, to the extent part or all of the rate increase is found to be unjust and unreasonable, receive refunds with interest, as prescribed in the Commission's regulations.⁷

23. Contrary to MAPL's assertions, the Commission finds that the protestors have standing to protest MAPL's filing. As pointed out by MAPL, Burlington and Williams both transport under unchanged joint rates shown on MAPL's Tariff No. 37. However, both protestors are concerned that MAPL will use the increased local rates to increase its joint rates in the future. The Commission's policy has been that a joint rate is just and reasonable if it is less than or equal to the sum of the individual tariff rates for that movement currently on file with the Commission.⁸ In the instant case, if the protestors are not permitted to protest an increase to MAPL's local rate, and that rate is approved, then a future increase by MAPL to its joint rate would be deemed just and reasonable as long as that joint rate did not exceed the sum of individual tariff rates for that movement currently on file with the Commission. Thus, the Commission would be denying Burlington and Williams the ability to protest this increased local rate now, as well as in the future.

⁶ 18 C.F.R. § 346.1 (2004).

⁷ 18 C.F.R. § 340.1 (2004).

⁸ See *Texaco Pipeline, Inc.*, 72 FERC ¶ 61,313 (1995).

24. Accordingly, the Commission finds that the protestors have an economic interest in MAPL's proposed increase to its local rates, since Burlington and Williams are subject to joint rates that are determined using MAPL's local rates.⁹

25. Navajo's protest of the proposed base tariff rate increases for MAPL's FERC Tariff No. 39 Item 240 – normal butane, Item 245 – isobutane, and Item 250 – natural gasoline are permissible because they are the rates used to establish the volume incentive program under Item 340 - purity products, and Item 350 – ethane/propane mix. In its response to Navajo's protest, MAPL points out that Navajo's movements on MAPL are all pursuant to Item 340/345 of FERC Tariff No. 39, an incentive rate that is significantly lower than the changed rates. However, MAPL's incentive rates are derived from the base rates which in this case MAPL proposes to increase. Also, Navajo, as a participant in the incentive program, is subject to a specific set of rules one of which requires the participant to pay a penalty which involves using the general commodity rate in calculating the penalty. Navajo has an economic interest in the level of the base rates because they have a direct impact on the incentive rate.

26. Thus, the Commission finds that the protestors do have an economic interest, and thus standing, with regard to all three of MAPL's proposed FERC tariffs. The reasonableness of MAPL's cost of service showing which supports all three of the proposed tariffs has been protested. As a result, MAPL's data supporting its proposed individual rates, including allocation of its cost-of-service between its three pipeline systems, and rate design applicable to those three systems are subject to scrutiny. Therefore, a calculation of a just and reasonable rate under one of MAPL's proposed tariffs may be related to the calculation of just and reasonable rates under the other two tariffs proposed.

27. At issue are the data and methods used to determine the costs of service that MAPL used to determine its proposed rates. The resolution of these factual disputes will affect Burlington, Navajo and Williams as individual shippers on MAPL's systems. At present, however, there is insufficient data before the Commission to resolve these disputes. In addition, the Commission has concerns regarding the allocation of MAPL's cost of service among its individual rates. It is therefore appropriate to establish hearing procedures to examine all issues raised by the filing.

⁹ See *Big West Oil Company v. Frontier Pipeline Company*, 94 FERC ¶ 61,339 (2001).

28. The Commission has, however, consistently encouraged parties to resolve disputes of this nature through settlement, and is of the view that formal settlement procedures may lead to a resolution of this case. The issues in this case related to the support for MAPL's cost-of-service rate proposal may be resolvable by settlement. Therefore, the Commission will hold the hearing in abeyance pending the outcome of formal settlement procedures in this matter. To aid the parties in their settlement efforts, a settlement judge shall be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge; otherwise, the Chief Judge will select a judge for this purpose.¹¹ If a settlement cannot be reached, the instant docket will be set for hearing.

Suspension

29. Based upon a review of the filing, the Commission finds that MAPL's FERC Tariff Nos. 37, 38 and 39 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend them, to be effective May 1, 2005, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) FERC Tariff Nos. 37, 38 and 39 are accepted for filing and suspended, to be effective May 1, 2005, subject to refund and subject to further order of the Commission.

(B) Pursuant to the authority of the Interstate Commerce Act, particularly sections 13(1) and 15(1) thereof, and the Commission's regulations, a hearing is established to address the issues raised by MAPL's filing.

(C) Pursuant to the section 375.304 of the Commission's regulations, 18 C.F.R. § 375.304 (2004), the Chief Administrative Law Judge shall designate a presiding

¹⁰ 18 C.F.R. § 385.603 (2004).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 219-2500 within five days of this order. The Commission's website contains a list of the Commission's judges and a summary of their background and experience at www.ferc.gov/legal/oalj/bio/judges.htm.

administrative law judge for the purpose of conducting a hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and to the Commission's Rules of Practice and Procedure.

(D) The hearing established in Ordering Paragraph (B) is hereby held in abeyance pending the outcome of the settlement proceedings described in the body of this order.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), 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.

(F) Within 30 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 thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.