131 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Mid-America Pipeline Company, LLC Docket No. IS10-168-000

ORDER ACCEPTING TARIFF

(Issued April 9, 2010)

1. On March 11, 2010, Mid-America Pipeline Company, LLC (Mid-America) filed Supplement No. 2 to its FERC Tariff No. 67 to cancel Item 260-Naphtha, Item 270-Refinery Grade Butane, and Item 400-Seasonal Discount Program effective April 12, 2010. Flint Hills Resources, L.P. (Flint Hills) intervened and protested the filing, stating that Mid-America had not shown that Supplement No. 2 to its FERC Tariff No. 67 is just and reasonable and free from unjust discrimination or undue or unreasonable preference.

2. As discussed below, the Commission accepts Supplement No. 2 to Mid-America's FERC Tariff No. 67 to become effective April 12, 2010.

Background

3. Flint Hills states that Mid-America is a subsidiary of Enterprise Product Partners L.P. and that it owns and operates a natural gas liquids (NGL) pipeline consisting of three systems: the Rocky Mountain System, the Central System, and the Northern System. Further, states Flint Hills, as relevant here, Mid-America's Northern system consists of approximately 2,740 miles of pipeline that moves NGLs from Conway, Kansas, through the upper Midwest to points in Minnesota and Wisconsin. Flint Hills explains that the Northern System has a West Leg that runs from Conway to Pine Bend, Minnesota. Additionally, states Flint Hills, the West Leg is further segmented into the West Blue Line, which runs from Conway to Mankato, Minnesota, and the East Blue Line, which runs from Conway to Pine Bend. Flint Hills also explains that the East Leg of the Northern System is likewise divided into an East Blue Line, extending from Conway to Janesville, Wisconsin, and an East Red Line, extending from Conway to Iowa City, Iowa, and Morris, Illinois.

4. Flint Hills states that Mid-America filed FERC Tariff No. 67 in accordance with a settlement agreement with its propane shippers (Propane Settlement) approved by the Commission.[1] According to Flint Hills, prior to the changes in Mid-America's rates pursuant to the Propane Settlement, the propane shippers and shippers of butane, isobutane, natural gasoline, naphtha, and refinery grade butane (collectively, heavies) paid the same discounted rate of $2.6783 per barrel for transportation between Conway and Pine Bend on the Northern System. However, continues Flint Hills, Mid-America's FERC Tariff No. 67 reduced the rates for the propane movements to $2.2189 per barrel, while leaving in place the discounted rate for heavies at $2.6783 per barrel. Now, claims Flint Hills, after it filed a complaint in Docket No. OR10-2-000 seeking to obtain the same rates enjoyed by propane shippers for movements between Conway and Pine Bend, Mid-America proposes to cancel the seasonal discount rate and charge the ceiling rate of $3.1248 per barrel for transportation of heavies (to the extent the movements are not cancelled outright).

<u>Flint Hills' Protest</u>

5. Flint Hills states that the filing proposes three changes. First, explains Flint Hills, the filing would cancel Item 260 under which Mid-America currently transports naphtha from the Conway Holding and Group 140 origin points in Kansas to Flint Hills' Pine Bend destination point in Minnesota. Second, states Flint Hills, the filing cancels Item 270 under which Mid-America transports refinery grade butane between the Conway Holding and Group 140 origin points and Flint Hills' Pine Bend destination point. Flint Hills emphasizes that these cancellations would permit Mid-America to eliminate these movements entirely. Third, adds Flint Hills, Mid-America proposes to cancel the seasonal discounted rates for NGLs under Item 400.

6. Flint Hills explains that it is an independent refining and chemicals company that, among other things, operates a refining complex at Pine Bend, Minnesota. Along with two other refineries, continues Flint Hills, its combined crude oil refining capacity is more than 800,000 barrels per day (bpd). Flint Hills asserts that it currently ships propane, butane, isobutane, natural gasoline, naphtha, and refinery grade butane on Mid-America's Northern System from Conway, Kansas, to Flint Hills' Pine Bend refinery, and the rates and services that Mid-America proposes to cancel apply to Flint Hills' shipments. Flint Hills contends that this cancellation could increase Flint Hills' NGL transportation costs considerably.

7. Flint Hills also claims that Mid-America's proposal to cease transporting naphtha and refinery grade butane on a mere 30 days notice could have a substantial economic impact on Flint Hills. Flint Hills maintains that the naphtha and refinery grade butane

[1] *Mid-America Pipe Line Company, LLC,* 129 FERC ¶ 61,061 (2009).

shipped on Mid-America's Northern System are essential products for Flint Hills' refining operations, and it does not have any reasonable and readily available alternative for transportation of these products. At a minimum, Flint Hills asks the Commission to suspend the effectiveness of these cancellations for seven months to allow it to obtain alternative arrangements.

8. Flint Hills states that there is currently a 45.94 cents-per-barrel difference between the settled propane rate of $2.2189 per barrel and the discounted rate for heavies of $2.6783 per barrel. Flint Hills argues that cancellation of the seasonal discount will increase the rate disparity between propane and heavies to 90.59 cents per barrel for transporting the heavies that are not subject to the instant cancellation, representing a difference of approximately 41 percent.

9. Flint Hills states that it filed a complaint against Mid-America's Northern System rates in Docket No. OR10-2-000. Flint Hills points out that the Commission issued an order on the complaint on February 2, 2010, setting the complaint for hearing.[2] Flint Hills further states that the parties are engaged in settlement discussions with regard to the complaint.[3]

10. Flint Hills asks the Commission to exercise jurisdiction over Mid-America's proposed elimination of Item Nos. 260-Naphtha and 270-Refinery Grade Butane and establish an investigation. Flint Hills states that Mid-America offers no explanation for its proposed cessation of service, and it apparently does not intend to take any plant out of service in connection with these cancellations because it will continue to transport other heavies, as well as propane, between Conway and Pine Bend and other destination points. Flint Hills argues that cancellation of these movements presumably cannot be

[2] *Flint Hills Resources, LP v. Mid-America Pipeline Co.*, 130 FERC ¶ 61,086 (2010).

[3] The Commission observes that, on March 26, 2010, in Docket No. OR10-11-000, Flint Hills filed a complaint against Mid-America's rates for the transportation of butane, isobutane, natural gasoline, naphtha, and refinery grade butane. Flint Hills alleges that such rates are unjustly discriminatory in relation to Mid-America's rates for propane transportation. Flint Hills also asks the Commission to consolidate the complaint in Docket No. OR10-11-000 with the pending complaint in Docket No. OR10-2-000, in which Flint Hills contends that Mid-America's rates for the transportation of NGLs other than propane are unjust and unreasonable. The parties are discussing settlement in Docket No. OR10-2-000 with the aid of a Settlement Judge. In this proceeding, which concerns Supplement No. 2 to its FERC Tariff No. 67, Mid-America proposes to cancel the movement of two of the heavier NGLs (naphtha and refinery grade butane) from Conway, Kansas, to Pine Bend, Minnesota.

justified on lack of use, and thus the unjustified cancellation of some portion of the service is unjust, unreasonable, discriminatory, and contrary to Mid-America's common carrier obligation to provide transportation upon reasonable request therefore.[4]

11. Flint Hills acknowledges that the Commission generally does not have jurisdiction to review complete abandonment of service by oil pipelines.[5] However, continues Flint Hills, the Commission has exercised jurisdiction over cancellation of services where, as here, the carrier is proposing to cancel individual origin/destination movements without completely abandoning service on the relevant system.[6] While it recognizes that the Commission ultimately granted the proposed cancellation in the *Amoco* case, Flint Hills maintains that the Commission did so largely on the basis that there had been little if any tender of product for transportation through the origin points proposed for cancellation,[7] which is not the case here.

12. Flint Hills next contends that the significant differences in rates for propane and heavies is unjustly discriminatory and constitutes undue or unreasonable preference. Flint Hills states that, with the proposed cancellation of the seasonal discount, the rate for all movements of heavies between Conway and Pine Bend (to the extent not cancelled altogether) will be 41 percent higher than the settled propane rate ($3.1248 per barrel vs. $2.2189 per barrel) or a difference of more than 90 cents per barrel. Flint Hills argues that Mid-America has not justified the rate disparity.[8]

13. Flint Hills states that Mid-America's transportation of propane and heavies between Conway and destinations in and around Pine Bend are "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions" within the meaning of section 2 of the Interstate Commerce Act (ICA).[9] Flint Hills claims that propane, normal butane, isobutane, natural

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[4] 49 U.S.C. App. § 1(4) (1988).

[5] *See, e.g., Rocky Mountain Pipeline System LLC*, 126 FERC ¶ 61,301, at P 9-10 (2009); *see also Farmers Union Cent. Exchange v. FERC*, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984).

[6] *See Amoco Pipeline Co.*, 83 FERC ¶ 61,156, at 61,672-73 (1998) (*Amoco*).

[7] *Id*.

[8] *New York v. United States*, 331 U.S. 284, 296 (1947); *see also, e.g., Platte Pipe Line Co.*, 117 FERC ¶ 61,296, at P 63 (2006); *Ayrshire Collieries Corp. v. United States*, 335 U.S. 573, 583-84 (1949); 49 U.S.C. App. §§ 2, 3(1) (1988).

[9] *United States v. Illinois Cent. R. Co.*, 23 U.S. 515, 524 (1924).

gasoline, naphtha, and refinery grade butane are all NGLs that Mid-America transports using the same facilities under the same tariff between the same origin and destination points. Flint Hills acknowledges the technical differences involved in the transportation of each product, but submits that the transportation of such products is not substantially similar for purposes of the ICA.

14. According to Flint Hills, Mid-America has not shown and likely cannot show that there is any reasonable basis for the 90-cent rate disparity between propane and heavies that would exist if the Commission accepts the instant filing. Flint Hills urges the Commission to suspend the filing for seven months because of the undue hardship Flint Hills will face if Mid-America ceases transportation of naphtha and refinery grade butane on just 30 days' notice.

Mid-America's Response

15. Mid-America filed a timely response, contending that the Commission should dismiss the protest and accept Supplement No. 2 to Mid-America's FERC Tariff No. 67 without suspension or investigation. Mid-America asserts that Commission precedent clearly permits it to cancel discounted rates and to eliminate from its tariff distinct services that it elects not to provide to any shipper. Mid-America asserts that the volumes of naphtha and refinery grade butane moved on the West Red Line do not justify the expense involved in continuing to move them. Mid-America also points out that Commission precedent allows it to cancel seasonal discount rates.[10] Mid-America emphasizes that Flint Hills does not address these cases, but instead challenges the differential between the existing propane rates and the existing base rates for heavies. However, continues Mid-America, a challenge to those rates is not the proper subject of a protest because it has not proposed to change the base rates for propane and heavies.[11] Mid-America also observes that Flint Hills filed complaints in Docket No. OR10-2-000 and, more recently, in Docket No. OR10-11-000, challenging Mid-America's existing rates.

16. Mid-America argues that the Commission has no jurisdiction over the cancellation of Mid-America's naphtha and refinery grade butane transportation. Mid-America asserts that, under the ICA, a pipeline's obligations extend only to those services that it

[10] *See, e.g.*, *TE Products Pipeline Co.*, 129 FERC ¶ 61,269, at P 5 (2009); *Laclede Pipeline Co.*, 119 FERC ¶ 61,236, at P 8 (2007); *Dome Pipeline Corp.*, 117 FERC ¶ 61,364, at P 11 (2006); *Shell Pipeline Co.*, 100 FERC ¶ 61,139, at P 6, *aff'd on reh'g*, 100 FERC ¶ 61,330 (2002); *Express Pipeline LLC*, 99 FERC ¶ 61,229, at P 10 (2002).

[11] 18 C.F.R. § 343.1 (2009); *BP West Coast Products v. FERC*, 374 F.3d 1263, 1278 (D.C. Cir. 2004).

holds itself out to provide.[12] Further, continues Mid-America, the ICA does not authorize the Commission to prohibit an oil pipeline from abandoning a service.[13] Additionally, Mid-America states that, when a pipeline proposes to abandon a service in its entirety, the Commission has found that it has no authority to suspend the cancellation of that service.[14]

17. Mid-America observes that Flint Hills acknowledges that the Commission does not have jurisdiction to review complete abandonment of service by oil pipelines, although Flint Hills claims that Mid-America is cancelling only discrete individual movements, while the line remains in place providing substantially identical service for substantially similar products.

18. Mid-America states that Flint Hills' reliance on *Amoco* is misplaced. Mid-America states that the pipeline in that case moved only one product on the segment in question, and it simply sought to cancel individual movements from certain origins. In that case, continues Mid-America, the Commission found that this did not amount to an abandonment of service because the provision of transportation from one origin or another was not a "distinct service" where the pipeline continued to move the same product on the same pipeline segment from other origins. In contrast, however, continues Mid-America, transportation of a new product is a distinct service.[15] Mid-America states that, with the instant filing, it does not propose to continue providing naphtha and refinery grade butane transportation service between some origins and destinations and not others. Instead, explains Mid-America, it is completely cancelling its transportation service for naphtha and refinery grade butane on the Northern System. Mid-America emphasizes that the transportation of each product is a distinct service, and the ICA does not allow the Commission to interfere with the complete cancellation of a distinct service.

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[12] *See, e.g., Potomac Electric Power Co. v. ICC,* 584 F.2d 1058, 1063 (D.C. Cir. 1978).

[13] *Farmers Union Cent. Exchange v. FERC*, 734 F.2d 1486, 1509 n.51 (D.C. Cir. 1984); *Williams Pipe Line Co*., 21 FERC ¶ 61,260, at 61,690 n.217 (1982).

[14] *West Texas LPG Pipeline L.P*., 128 FERC ¶ 61,098, at P 8 (2009); *Chevron Pipe Line Co*., 64 FERC ¶ 61,213, at 62,616 (1993); *Tesoro High Plains Pipeline Co*., 115 FERC ¶ 61,163, *reh'g denied*, 117 FERC ¶ 61,006 (2006); *Plantation Pipe Line Co*., 98 FERC ¶ 61,219, at 61,864 (2002); *Texaco Pipeline Inc*., 58 FERC ¶ 62,051 (1992); *ARCO Pipe Line Co*., 55 FERC ¶ 61,420 (1991).

[15] *SFPP, L.P*., 86 FERC ¶ 61,022, at 61,063 (1999), *pet. for rev. denied sub nom., BP West Coast Products v. FERC*, 374 F.3d 123, 1272-75 (D.C. Cir. 2004).

19. Mid-America cites the affidavit of James M. Collingsworth, Senior Vice President of Regulated Natural Gas Liquids Pipelines for Enterprise Products Company (Attachment A to its Response). Mid-America points out that, contrary to Flint Hills allegations, Mr. Collingsworth describes the products moved on the West Red Line as distinct commodities that, among other things, have distinct chemical and physical properties, as well as different uses, prices, markets, and transportation characteristics.

20. Mid-America refutes Flint Hills' claim that these are not distinct products because Mid-America does not intend to take any plant out of service in connection with the proposed cancellation. Mid-America points out that a pipeline can use the same plant to provide different services.[16] For example, states Mid-America, the Commission has held that it does not have authority to review or suspend a pipeline's decision to cancel transportation in one direction, even though the pipeline continues to provide service over the same facilities in the opposite direction.[17]

21. Mid-America emphasizes that, in this case, shippers of naphtha and refinery grade butane are not similarly situated to each other or to shippers of other products. In fact, continues Mid-America, a carrier may no more be prohibited from canceling transportation service for a specific product than it can be required to transport a new product or change from a refined petroleum products line to a crude oil line. Because it proposes to cancel the naphtha and refinery grade butane transportation services in their entirety – and equally for all shippers – Mid-America reiterates that the Commission is without jurisdiction to review or suspend the cancellation of these services.

22. Mid-America questions Flint Hills' claim that elimination of the ability to ship refinery grade butane will have a substantial adverse impact on it. Mid-America states that the facts do not support this claim. In any event, continues Mid-America, Flint Hills' claim of hardship does not outweigh the settled right of a pipeline to determine the services it chooses to offer. Mid-America emphasizes that it has no obligation to continue providing naphtha and refinery grade butane transportation service and that it has shown the costs of continuing to do so are not justified by the volumes of those products that are moved on its system.

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[16] *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,063 (1999).

[17] *Holly Refining & Marketing Co. v. Plains All American Pipeline, L.P.*, 127 FERC ¶ 61,074, at P 12-1 (2009); *Rocky Mountain Pipeline System LLC*, 126 FERC ¶ 61,301, at P 10 (2009); *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,077 (1999); *ARCO Pipe Line Co.*, 66 FERC ¶ 61,159, at 61,313 (1994).

Commission Analysis

23. The Commission will accept Mid-America's Supplement No. 2 to its FERC Tariff No. 67 to become effective April 12, 2010, as proposed. A pipeline is permitted to remove a rate discount for service provided and raise its rate to a level that does not exceed the ceiling level for that service, as Mid-America proposes here. The Commission also lacks jurisdiction to require a pipeline to hold itself out to provide service that the pipeline proposes to abandon completely, as Mid-America proposes to do here.

24. Mid-America seeks to cancel the transportation of naphtha and refinery grade butane on its West Red Line because the volumes of those products that it transports do not justify the costs involved in the continuation of that service.[18] Mid-America's Mr. Collingsworth explains the differences in the products transported by Mid-America and how it tailors its transportation to the characteristics of the products. Mid-America refers to Mr. Collingsworth's affidavit, pointing out that he states that the six products moved on the West Red Line are distinct commodities that have, among other things, "different chemical and physical properties, different uses, different prices, different markets and different transportation characteristics."[19] Mr. Collingsworth further explains that transportation of several products on a single line requires additional labor costs and causes scheduling and potential contamination problems, and operational problems for end-users such as petrochemical plants.

25. Even if the transportation of naphtha and refinery grade butane did not create additional problems and expense for the pipeline, the Commission lacks jurisdiction to require Mid-America to continue to transport these products. Mid-America correctly points out that transportation of each product is a distinct service, and it proposes complete cancellation of the service of transporting these two products on its West Red Line.[20]

26. Flint Hills relies on the *Amoco* case to support its position, but the facts in *Amoco* are distinguishable from those here. In *Amoco*, the pipeline proposed to cancel crude oil service from selected points on its line, while continuing to transport crude oil from

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[18] Response of Mid-America Pipeline Company, LLC to Protest of Flint Hills Resources, L.P. March 31, 2010, Attachment A.

[19] Response of Mid-America Pipeline Company, LLC to Protest of Flint Hills Resources, L.P. March 31, 2010, at 6, citing Collingsworth Aff. at ¶¶ 6-7, 11.

[20] Response of Mid-America Pipeline Company, LLC to Protest of Flint Hills Resources, L.P. March 31, 2010, at 6.

others. The Commission concluded that Amoco's proposal did not constitute the complete abandonment of a distinct service because Amoco would continue crude oil service over the remainder of the line, and therefore, the Commission had jurisdiction to consider Amoco's proposal to limit that service. In contrast, Mid-America here will terminate all naphtha and refinery grade butane service on its West Red Line, will no longer hold itself out to provide any such services, and thus will completely abandon these distinct services.

27. Moreover, it is settled that a pipeline is not required to maintain voluntary discounts, such as Mid-America's seasonal discount.[21] The fact that shippers of other distinct products, such as propane, may obtain transportation at a lower rate is of no consequence. They are not similarly situated with shippers of naphtha and refinery grade butane. Likewise, the mere claim that Flint Hills, as a shipper of these products, will find it necessary to obtain other transportation arrangements does not overcome the basic principle that the Commission has no jurisdiction to require Mid-America to continue to provide a service that it wishes to cancel in its entirety. Similarly, the Commission does not have jurisdiction to suspend the proposed cancellation to afford Flint Hills additional time to obtain alternative arrangements.

28. Accordingly, the Commission rejects Flint Hills' protest and accepts Supplement No. 2 to Mid-America's FERC Tariff No. 67 to become effective April 12, 2010.

<u>The Commission orders</u>:

As discussed in the body of this order, the Commission accepts Supplement No. 2 to Mid-America's FERC Tariff No. 67 to become effective April 12, 2010.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[21] *See, e.g., TE Products Pipeline Co.*, 129 FERC ¶ 61, 269, at P 5 (2009); *Laclede Pipeline Co.*, 119 FERC ¶ 61,236, at P 8 (2007); *Dome Pipeline Corp.*, 117 FERC ¶ 61,364, at P 11 (2006); *Shell Pipeline Co.*, 100 FERC ¶ 61,139, at P 6, *aff'd on reh'g,* 100 FERC ¶ 61,330 (2002); *Express Pipeline LLC*, 99 FERC ¶ 61,229, at P 10 (2002).