

130 FERC ¶ 61,123
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 Nos. IS06-520-000
IS06-520-001

Williams Energy Services, LLC
and Williams Power Company, Inc.

Docket No. OR06-5-000

v.

Mid-America Pipeline Company, LLC
and Seminole Pipeline Company

ORDER ON INITIAL DECISION, REHEARING, AND CLARIFICATION

(Issued February 18, 2010)

1. On September 3, 2008, the Presiding Administrative Law Judge (ALJ) issued an initial decision (ID)¹ addressing consolidated proceedings in Docket No. IS05-216-000, *et al.*² On August 18, 2009, Mid-America Pipeline Company, LLC (MAPL) and the Propane Group³ filed an uncontested offer of partial settlement (Settlement), which the

¹ *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,016 (2008).

² The consolidated proceedings included Docket Nos. IS06-520-000 and OR06-5-000.

³ The Propane Group consists of the National Propane Gas Association, AmeriGas Propane, L.P., CHS Inc., ConocoPhillips Company, Targa Liquids Marketing and Trade, and Ferrellgas, L.P.

Commission approved in an order issued October 23, 2009.⁴ However, the Settlement did not resolve issues remaining in Docket Nos. IS06-520-000, IS06-520-001, and OR06-5-000.⁵ In the order accepting the Settlement, the Commission directed the participants to submit supplemental filings identifying portions of the ID and portions of their briefs on and opposing exceptions that they wished the Commission to resolve in a subsequent order.

2. As discussed below, the Commission affirms the ID with respect to the remaining issues in Docket Nos. IS06-520-000 and OR06-5-000, grants clarification and denies rehearing in Docket No. IS06-520-001.

I. Background and History of the Related Proceedings

3. MAPL owns and operates a jurisdictional interstate natural gas liquids (NGL) pipeline, consisting of three systems: the Rocky Mountain, Northern, and Central Systems. Seminole's NGL pipeline system, which is located entirely within the State of Texas, originates at the Hobbs-Gaines interconnection with MAPL and extends to a loop near the Gulf Coast, at Clemens, Stratton Ridge, and Mont Belvieu, Texas (Group 950). MAPL and Seminole provide a joint service from origin points on MAPL's Rocky Mountain System to Group 950 on the Seminole system under a joint tariff filed by MAPL.

A. Docket No. IS05-99-000

4. On December 17, 2004, Seminole filed FERC Tariff No. 3 to establish an initial local interstate rate supported by the affidavit of an unaffiliated shipper in accordance with section 342.2(b) of the Commission's regulations.⁶ The rate applied to service from

⁴ *Mid-America Pipeline Company, LLC.*, 129 FERC ¶ 61,061 (2009) (October 23, 2009 Order).

⁵ In the October 23, 2009 Order, the Commission stated that the issues not resolved by the Settlement include Williams' complaint against Seminole in Docket No. OR06-5-000 and Williams' protest in Docket No. IS06-520-000 concerning the Rocky Mountain System/Seminole joint rates and the cancellation of certain ethane discounts in MAPL's FERC Tariff No. 45. *Mid-America Pipeline Company, LLC.*, 129 FERC ¶ 61,061, at P 7 (2009). However, the Settlement did resolve the issues in Docket No. IS09-364-000. While the Commission did not consolidate that filing with the ongoing consolidated proceedings, the Commission accepted it subject to the outcome of the consolidated proceedings. *Mid-America Pipeline Company, LLC.*, 127 FERC ¶ 61,303 (2009). Therefore, Docket No. IS09-364-000 was not addressed in the ID.

⁶ 18 C.F.R. § 342.2(b) (2009).

the Hobbs-Gaines interconnection to the Group 950 destinations. No person protested the filing, and the tariff became effective January 17, 2005. This proceeding was not part of the consolidated proceedings and, therefore, was not subject to the Settlement. However, FERC Tariff No. 3 is addressed below insofar as it is a component of a joint rates tariff filed by MAPL.

B. Docket No. IS05-216-000

5. On March 31, 2005, MAPL filed FERC Tariff Nos. 37, 38, and 39 to increase most of the rates on its three systems effective May 1, 2005.⁷ Various parties protested the filing. The Commission accepted and suspended the tariffs, subject to refund and investigation, and established hearing and settlement procedures.⁸ This proceeding was resolved by the Settlement.

C. Docket No. IS05-260-000

6. On May 20, 2005, MAPL filed FERC Tariff No. 40, further revising the Rocky Mountain System rates and cancelling FERC Tariff No. 37. Various parties protested the filing, which the Commission accepted and suspended to become effective July 1, 2005, subject to refund and investigation. The Commission also consolidated the filing with the investigation in Docket No. IS05-216-000.⁹ Following settlement efforts, which resulted in the withdrawal of only one party's protest, the Chief Administrative Law Judge terminated the settlement judge procedures and directed that the matter be set for hearing.¹⁰ This proceeding was resolved by the Settlement.

D. Docket No. OR06-5-000

7. On March 6, 2006, Williams filed a complaint against MAPL and Seminole. Williams contended that the MAPL/Seminole joint rates, as well as the underlying local rates (including Seminole's FERC Tariff No. 3), were unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Williams asked the Commission to reduce the

⁷ FERC Tariff No. 37 applied to the Rocky Mountain System, FERC Tariff No. 38 applied to the Northern System, and FERC Tariff No. 39 applied to the Central System.

⁸ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128 (2005).

⁹ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,483 (2005).

¹⁰ *See Mid-America Pipeline Company, LLC, Order of Chief Judge Terminating Settlement Judge Procedures, Designating Presiding Administrative Law Judge, and Establishing Track III Procedural Schedule*, Docket No. IS05-216-000, *et al.* (February 15, 2006).

rates to just and reasonable levels and grant relief, including reparations, in accordance with the Interstate Commerce Act (ICA).¹¹

8. Williams argued that FERC Tariff No. 3 should be nullified because Seminole improperly used the affidavit procedure provided in section 342.2(b) of the Commission's regulations¹² to establish the initial rate in that tariff. Williams further asserted that FERC Tariff No. 3 did not establish an initial rate for new service because the rate previously had been a component of the joint rate with MAPL and should have been filed with the support of current shippers pursuant to section 342.4(a)-(c) of the regulations.¹³

9. In an order issued August 24, 2006, the Commission dismissed the complaint insofar as it related to MAPL's rates, but set for hearing the complaint against Seminole's FERC Tariff No. 3 and, to that extent, consolidated the complaint with the ongoing proceedings in Docket No. IS05-216-000, *et al.*¹⁴ The Commission specifically rejected Williams' claim that Seminole did not properly establish its initial rate in FERC Tariff No. 3. The Commission further ruled that, prior to FERC Tariff No. 3, Seminole did not have a local rate on file with the Commission for the interstate movement; therefore, Seminole properly filed its local rate in accordance with section 342.2(b) of the regulations. The Commission stated that, although Seminole was at the time providing a joint interstate service with MAPL and continued to do so, the initial rate proposed by Seminole was for an entirely new local service to be provided solely by Seminole. Additionally, the Commission pointed out that Williams shipped NGLs on the MAPL/Seminole systems under a joint rate and was aware that Seminole filed the initial local rate. The Commission emphasized that Williams could have protested Seminole's FERC Tariff No. 3 filing in Docket No. IS05-99-000, which would have required Seminole to make a cost-of-service filing in accordance with section 342.2(a) of the

¹¹ 49 U.S.C. app § 1 *et seq.* (1988).

¹² 18 C.F.R. § 342.2(b) (2009). That section reads in part as follows:

A carrier must justify an initial rate for new service by: ... (b) Filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question, *provided* that if a protest to the initial rate is filed, the carrier must comply with paragraph (a) of this section.

¹³ 18 C.F.R. § 342.4(a)-(c) (2009).

¹⁴ *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175 (2006) (August 24, 2006 Order).

Commission's regulations;¹⁵ however, Williams failed to protest the Seminole FERC Tariff No. 3 filing.

10. Although it concluded that Seminole properly established its local rate in accordance with the applicable regulation, the Commission stated that the justness and reasonableness of that rate had not been determined. The Commission explained that Seminole's local rate was not grandfathered pursuant to the provisions of the Energy Policy Act of 1992 (EPA 1992)¹⁶ and thus was subject to a challenge based on reasonable grounds for believing that the rate was unlawful.¹⁷ The Commission further stated that, because Seminole's local rate was an underlying component of MAPL's joint rate, the level of the Seminole rate was relevant to determining the appropriate level of MAPL's joint rate.

11. Williams filed a motion for clarification of the Commission's order, but withdrew the motion on June 5, 2008. The justness and reasonableness of Seminole's FERC Tariff No. 3 was not resolved by the Settlement. That issue is discussed below.

E. Docket No. IS06-238-000

12. On March 31, 2006, MAPL filed FERC Tariff No. 41 to increase most of the rates on the Northern System effective May 1, 2006. Various parties protested the filing, which the Commission accepted and suspended to be effective May 1, 2006, subject to refund and investigation. The Commission also consolidated the proceeding with the previously-consolidated proceedings.¹⁸ This proceeding was resolved by the Settlement.

F. Docket No. IS06-285-000

13. On May 1, 2006, MAPL withdrew its FERC Tariff Nos. 37 and 40 and filed FERC Tariff No. 42, which returned the Rocky Mountain System rates to the levels effective prior to commencement of the consolidated proceedings. Williams protested FERC Tariff No. 42; however, the Commission rejected the protest and allowed FERC Tariff

¹⁵ 18 C.F.R. § 342.2(a) (2009) provides as follows: "A carrier must justify an initial rate for a new service by: (a) Filing cost, revenue, and throughput data supporting such rate"

¹⁶ Pub. L. No. 102-486, 106 Stat. 2772 (1992).

¹⁷ *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58,753 (November 4, 1993), FERC Stats. & Regs. ¶ 30,985, at 30,956 (1993).

¹⁸ *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,124 (2006).

No. 42 to become effective May 1, 2006, without suspension or investigation.¹⁹ Williams filed a request for rehearing of that order, but withdrew its request on June 5, 2008. With MAPL's FERC Tariff No. 40 having been withdrawn and its replacement having been approved by the Commission without suspension or investigation, Docket No. IS05-260-000 became moot. While the parties did not specifically reserve the issues in Docket No. IS06-285-000 to be addressed in this order, certain issues relating to FERC Tariff No. 42 are addressed below.

G. Docket Nos. IS06-520-000 and IS06-520-001

14. On August 18, 2006, MAPL filed FERC Tariff No. 45 to cancel FERC Tariff No. 42. The new tariff revised certain rates for the Rocky Mountain – Four Corners region. Additionally, MAPL stated that the tariff cancelled a portion of Item 210, i.e., the separate rates for the ethane component of demethanized mix originating in Groups 100, 101, and 102 and moving to the Hobbs Fractionator (Group 120 plant) and Group 950. MAPL explained that these movements would become subject to the single demethanized mix rate reflected in Item 210. MAPL further stated that the tariff cancelled the discounted rates from Groups 100-110 to the Hobbs Fractionator also established in Item 210. In addition, MAPL pointed out that the local rates to the Hobbs Fractionator (Group 120 plant) would become the same as rates to other Group 120 destinations, and the joint rates from Groups 100-104 to Group 950 would be increased. Finally, MAPL stated that the rates from Groups 105 and 110 to Group 950 would remain unchanged. MAPL asserted that all of the joint rates were equal to or less than the sum of the local rates applicable to the movements.

15. Williams protested the filing, asking the Commission to suspend the elimination of the lower ethane incentive rate for Group 100 and the corresponding increase in the joint rate for ethane, especially in light of the fact that MAPL retained the lower rate in its new volume incentive program. Williams also challenged MAPL's definition of "Base Capacity" as impermissibly vague and maintained that a MAPL affiliate would benefit from MAPL's previously submitted capacity allocation proposal to the detriment of Williams. Moreover, Williams contended that MAPL had submitted several tariff proposals directed at Williams in retaliation for its participation in another pipeline project. Williams claimed that the requested MAPL/Seminole joint rate increase was excessive and asked the Commission to consolidate the proceeding with the ongoing consolidated proceedings.

¹⁹ *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,258 (2006).

16. In an order issued September 15, 2006,²⁰ the Commission accepted and suspended FERC Tariff No. 45 to be effective September 18, 2006, subject to refund, and consolidated the proceeding with the other consolidated proceedings. However, the Commission specifically rejected the allegation that MAPL's tariff filings represented retaliation against Williams for its participation in another pipeline project.

17. In its motion filed September 29, 2006, seeking clarification or rehearing of the September 15, 2006 Order, MAPL questioned whether that order allowed Williams to protest the capacity allocation provisions in MAPL's Rocky Mountain tariff that were approved in orders issued July 19, 2006,²¹ and August 4, 2006,²² and were not changed by MAPL's FERC Tariff No. 45. To the extent the September 15, 2006 Order permitted Williams to protest the existing, Commission-approved capacity allocation procedure, MAPL asked the Commission to grant rehearing and hold that those provisions cannot be challenged by Williams' protest of FERC Tariff No. 45 or be at issue in the consolidated proceeding. Finally, MAPL asked the Commission to grant rehearing of its decision to suspend FERC Tariff No. 45 (Docket No. IS06-520-000), subject to investigation and refund, because Commission precedent precludes Williams' challenge to the two proposed tariff changes, including the elimination of certain discounted rates for the movement of the ethane component of demethanized mix.

²⁰ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,249 (2006) (September 15, 2006 Order).

²¹ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006) (July 19, 2006 Order). In this order in Docket No. IS06-444-000, *et al.*, the Commission accepted MAPL's Supplement No. 3, as corrected by Supplement No. 4, to FERC Tariff No. 42 to be effective July 1, 2006. The Commission rejected Williams' protests challenging MAPL's new Item 330 incentive program and its capacity allocation rules. The Commission also rejected Williams' claim that Seminole was not an interstate pipeline and thus could not participate in a joint rate with MAPL. Further, the Commission rejected Williams' challenge to the rate differential because MAPL's proposed rates did not change the differential previously accepted by the Commission and, at any rate, they were below applicable ceiling levels. The Commission declined Williams' request that this proceeding be consolidated with the ongoing proceedings in Docket No. IS05-216-000, *et al.*, or Williams' complaint in Docket No. OR06-5-000.

²² *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,120 (2006) (August 4, 2006 Order). In this letter order in Docket No. IS06-472-000, the Commission accepted MAPL's Supplement No. 5, which cancelled its Supplement No. 3 to its FERC Tariff No. 42. The Commission rejected Williams' protest, stating that Williams raised no new substantive issues not already raised and rejected in response to MAPL's Supplement Nos. 1 through 4 to FERC Tariff No. 42.

18. In an order issued October 19, 2006, the ALJ determined that, although the Seminole local rate and the MAPL/Seminole joint rates remained subject to investigation, MAPL's Rocky Mountain System local rates were beyond the scope of the hearing.²³ In the ID, the ALJ found no reason to depart from his earlier ruling.²⁴ The remaining issues in Docket Nos. IS06-520-000 and IS06-520-001 are addressed below.

H. Docket No. IS09-364-000

19. On May 29, 2009, MAPL filed FERC Tariff No. 66 to increase certain Northern System rates. The Propane Group protested the filing; however, the Commission accepted and suspended the filing to be effective July 1, 2009, subject to refund and subject to the outcome of the consolidated proceedings, although it did not consolidate the case with the proceedings in Docket No. IS05-216-000, *et al.*²⁵ This proceeding was resolved by the Settlement.

II. Supplemental Filings

20. In its supplemental filing in response to the Commission's directive in the Settlement order, Williams attached its entire Brief Opposing Exceptions of the Commission Trial Staff, the applicable sections of Trial Staff's Brief on Exceptions,²⁶ and P 1 through P 8, P 12, P 18, P 86 through P 97, P 546 through P 552, and P 1212 through P 1390 of the ID.

21. In its supplemental filing, Trial Staff identified P 10-14 and P 1225-1388 of the ID as relevant to Docket No. OR06-5-000. Trial Staff further stated that the ALJ addressed the issues of the MAPL/Seminole joint rates and the ethane discounts in Docket No. IS06-520-000 in P 1215 through 1224 and P 1371-1388 of the ID. Trial Staff identified sections V.G. and V.H. (pages 61-74) of its Brief on Exceptions. Finally, Trial Staff stated that it did not oppose any exceptions relating to Seminole's rates and did not address the ethane discount issue.

22. In their supplemental filing, MAPL and Seminole stated that the matters at issue in Docket Nos. IS06-520-000 and OR06-5-000 are addressed in the ID at P 4-5 and P 1215-1388. They further stated that they did not take exception to the ID with respect to any of

²³ *Mid-America Pipeline Company, LLC*, 117 FERC ¶ 63,013, at P 25 (2006).

²⁴ *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,016, at P 1225 (2008).

²⁵ *Mid-America Pipeline Company, LLC*, 127 FERC ¶ 61,303 (2009).

²⁶ Williams stated that it included sections G and H of the Trial Staff's Brief on Exceptions, although it pointed out that it did not take exception to section G.

the matters at issue in these dockets. Finally, they explained that the only participant to take exception to those issues was Trial Staff; however, MAPL and Seminole took no position with respect to the two exceptions raised by Trial Staff.

23. In its supplemental filing, Propane Group identified no part of its briefs on or opposing exceptions as pertinent to the issues in Docket Nos. IS06-520-000 and OR06-5-000. It stated that P 4-7 and P 1215-1390 of the ID are relevant to these issues.

III. Discussion

A. Regulations Applicable to Commission Review

24. Applicable sections of the Commission's regulations limit its review here to certain issues briefed on exceptions by Williams and Trial Staff. Sections 385.711 and 385.712 of the Commission's regulations address exceptions to initial decisions.²⁷

25. In this case, neither MAPL nor Propane Group filed timely briefs on or opposing exceptions challenging the ID insofar as it relates to Docket Nos. IS06-520-000 or OR06-5-000. Their supplemental filings acknowledged as much. While Williams cited Paragraphs 546-552 of the ID in which the ALJ addressed the issue of whether the reasonableness of MAPL's rates should be determined based on the cost of service for the total company system or separately for each of MAPL's three systems, Williams did not brief this issue on exceptions. In fact, Williams did not file a brief on exceptions, although it filed a brief opposing Trial Staff's exceptions concerning reparations. That issue is addressed below. Trial Staff designated only the portions of its brief on exceptions addressing Seminole's throughput volumes and reparations. Because they did not brief exceptions to all other portions of the ID, the Commission, in accordance with section 385.711(d) of the regulations,²⁸ concludes that Trial Staff and Williams have waived any objections to the other portions of the ID.

B. Throughput Volumes Applicable to Seminole's Transportation Rates (Trial Staff's Exception V.G.)

1. The ID

26. At the hearing, Williams and Trial Staff contended that Seminole's transportation rates should be designed based on its three-year average throughput; however, the ALJ rejected that approach and accepted Seminole's proposal to use the pipeline's base period volume, finding that figure more representative of its future throughput.

²⁷ 18 C.F.R. §§ 385.711, 385.712 (2009).

²⁸ 18 C.F.R. § 385.711(d) (2009).

27. Citing *Iroquois Gas Transmissions System, L.P. (Iroquois)*, the ALJ stated that the purpose of using a limited historical base period and a forward looking test period is “to capture recent, actual or known and measurable throughput levels that provide the *best evidence* of what throughput can be expected following the close of the test period and record.”²⁹ The ALJ also pointed out that the Commission’s regulations define the base and test periods to be employed by an oil pipeline seeking an initial rate or a change in an existing rate.³⁰

28. According to the ALJ, Williams and Trial Staff asserted that, because of increasing volumes on Seminole’s system, the appropriate volume for this purpose was 68.575 million barrels, representing an average of actual volumes that moved on the system in 2004, 2005, and 2006. He stated that Trial Staff claimed that this was a more representative figure than the single, actual figure Seminole used and that the Commission has accepted volumetric adjustments to test year results.

29. In contrast, continued the ALJ, Seminole argued that the appropriate volume to use in designing its rates was the actual February 2005 through January 2006 base period volume, which totaled 65.892 million barrels. The ALJ also stated that Seminole contended that the Commission regulations require the use of actual base period volumes

²⁹ 84 FERC ¶ 61,086, at 61,471 (1998) (emphasis added). The ALJ acknowledged that *Iroquois* involved natural gas transportation, but he found it equally applicable to the base and test periods in the oil context.

³⁰ (a) Section § 346.2(a)(1) of the regulations provides as follows:

Base and test periods defined. (1) For a carrier which has been in operation for at least 12 months:

(i) A base period must consist of 12 consecutive months of actual experience. The 12 months of experience must be adjusted to eliminate nonrecurring items (except minor accounts). The filing carrier may include appropriate normalizing adjustments in lieu of nonrecurring items.

(ii) A test period must consist of a base period adjusted for changes in revenues and costs which are known and are measurable with reasonable accuracy at the time of filing and which will become effective within nine months after the last month of available actual experience utilized in the filing. For good cause shown, the Commission *may allow reasonable deviation from the prescribed test period.*

18 C.F.R. § 346.2(a)(1) (2009) (emphasis supplied).

except when: (1) known and measurable changes exist, or (2) the base period volume level is nonrecurring and requires normalization, neither of which Seminole believed would apply in this case. Moreover, continued the ALJ, Seminole maintained that, even if the actual base period volumes were lower than the 2004, 2005, and annualized 2006 volumes, the base period volumes are not necessarily abnormal or nonrecurring.

30. The ALJ concluded that neither Williams nor Trial Staff had provided sufficient justification for deviating from the use of Seminole's base period volume, which was 65.892 million barrels. The ALJ found this volume to be most representative of the pipeline's future throughput level; therefore, he did not find good cause for adjusting or deviating from the base period volumes.³¹ He added that, although actual base period volumes were lower than the 2004, 2005, and annualized 2006 volumes, this alone did not convince him that the base period volumes were nonrecurring or abnormal. He pointed out that actual base period volumes were lower than Williams' average by only four percent,³² and he found it significant that, if the year 2003 volumes were included to develop a four-year average, the difference would be only 2.2 percent between the actual base period volumes and the average.

31. The ALJ distinguished the cases cited by Williams and Trial Staff in support of their claim that the Commission has accepted volumetric adjustments to test year results

³¹ The ALJ noted that, although he might have preferred to use Seminole's end-of-test period actual throughput, and in view of the Commission's preference for it, he was surprised that no party proffered that figure into evidence. Therefore, he stated that he was compelled to find the base period actual throughput data tendered by Seminole as the next best evidence. He cited *Williston Basin Interstate Pipeline Co.*, 67 FERC ¶ 61,137, at 61,364 n.51 (1994); *Williston Basin Interstate Pipeline Co.*, 71 FERC ¶ 61,019, at 61,084 (1995).

³² The ALJ stated that this small difference could be considered *de minimis*. See *Eastern Natural Gas Co.*, 61 FERC ¶ 61,179 (1992). Additionally, he pointed out that the difference between the actual base period volumes and the 2004 and 2006 volume levels is also quite small, as the 2004 volumes are only 4.5 percent greater than the base period volumes, and the 2006 volumes are only 6.3 percent greater than the base period volumes. Citing Ex.WIL-2 at 11-12. He was further persuaded that Williams' proposal may not even be directionally more representative because Seminole's witness Collingsworth testified that traffic on the Seminole System may not return to current levels until 2011 or 2012. Tr. 3166-67.

or averages of throughput where they are representative.³³ First, he stated that, in *Williston Basin Interstate Pipeline Co. (Williston)*,³⁴ the Commission accepted the presiding judge's decision to use the actual volumes for only the last 12 months of the 21-month test period specified in section 154.63(e)(2)(i) of the regulations.³⁵ The ALJ found that, in *Williston*, the Commission did not use the data from the entire prescribed test period, but did limit its use of data to that which fell within the prescribed test period and consisted of the most currently available actual volumetric data.³⁶ The ALJ concluded that the proposal of Williams and Trial Staff to use an average of three years of actual experience would go well beyond the time frame of the applicable base and test periods.

32. The ALJ next distinguished *Viking Gas Transmission Co. (Viking)*, explaining that the Commission in that case accepted a seven-month average of volumes as more representative of future throughput than a one-month actual volume level.³⁷ The ALJ pointed out that the Commission did not deviate from the base or test period, as Williams proposed in the instant case. Further, he stated that, in *Viking*, only seven months of available actual relevant data existed, and the proposed one-month actual volume level was abnormally low when compared to the other six months.³⁸ In contrast, continued the ALJ, Seminole's data for 12 consecutive months of actual experience were available, and the actual base period volumes were not abnormally low when compared to the actual volume levels of the three years (2004, 2005, and 2006) used in Williams' proposed average.

33. The ALJ also reviewed *Natural Gas Pipeline of America*, stating that the Commission did not deviate from a base or test period in that case. In fact, he pointed out that the Commission determined that the last 12 months of available data should be used

³³ Citing *Williston Basin Interstate Pipeline Co.*, 52 FERC ¶ 61,170, at 61,648-49 (1990); *Natural Gas Pipeline Company of America*, 105 FERC ¶ 61,383, at 62,713 (2003); *Viking Gas Transmission Co.*, 64 FERC ¶ 61,072, at 61,644 (1993).

³⁴ 52 FERC ¶ 61,170, at 61,647-48 (1990).

³⁵ 18 C.F.R. § 154.63(e)(2)(i) (2009).

³⁶ Citing *Williston Basin Interstate Pipeline Co.*, 52 FERC ¶ 61,170, at 61,647-48 (1990).

³⁷ Citing *Viking Gas Transmission Co.*, 64 FERC ¶ 61,072, at 61,644 (1993).

³⁸ *Id.*

to establish a representative level of throughput rather than a 24-month average of throughput.³⁹

2. Trial Staff

34. Trial Staff contended that the ALJ improperly ignored controlling Commission precedent requiring the use of average throughput when that is more representative of future volumes than a single base period year.⁴⁰ Further, Trial Staff claimed that the Commission has accepted the use of a three-year average of throughput as an estimate of future billing determinants.⁴¹ According to Trial Staff, to determine which measure of throughput is appropriate, the Commission compares average throughput with actual base period throughput.⁴² Trial Staff maintained that, in this proceeding, Seminole clearly selected a base period with an abnormally low throughput. Trial Staff reiterated that the three-year average utilized Seminole's 2004, 2005, and 2006 (year-to-date figures annualized) interstate volumes,⁴³ and Trial Staff emphasized that Seminole's base period⁴⁴ volume was lower than the three-year average, lower than any of the three years used in Williams/Trial Staff's average, and lower than Seminole's actual 2006 volumes.⁴⁵

35. No participant opposed Trial Staff's exception concerning the appropriate throughput volumes to use in determining Seminole's rates.

³⁹ Citing *Natural Gas Pipeline Company of America*, 105 FERC ¶ 61,383, at P 20 (2003).

⁴⁰ Citing *Iroquois Gas Transmission System, L.P.*, 84 FERC ¶ 61,086, at 61,471 (1998).

⁴¹ *See, e.g., Cranberry Pipeline Corp.*, 112 FERC ¶ 61,268, at P 35 (2005) (Commission accepted the use of a three-year average throughput, plus a recent capacity addition, in designing transportation rates).

⁴² Citing *Natural Gas Pipeline Company of America*, 105 FERC ¶ 61,383, at 62,713 (2003) (Commission compared last 12 months of test period throughput with two-year average, to determine most representative volumes).

⁴³ Citing Ex. WIL-2, at 11.

⁴⁴ Seminole's base period consisted of the 12-month period from February 1, 2005, through January 31, 2006, and the test period extended through October 31, 2006. Citing Ex. SPL-5 at 3.

⁴⁵ Ex. SPL-13 at 70.

3. Commission Ruling

36. The Commission concludes that the ALJ reasonably determined to use Seminole's base period volumes in calculating throughput volumes for the purpose of determining Seminole's transportation rates. Trial Staff failed to justify its preferred alternative method for establishing Seminole's throughput volumes by utilizing a three-year average. The record supports the ALJ's analysis and conclusion, and the Commission affirms the ID on this issue.

C. Trial Staff's Exception V. H. Concerning Reparations

1. The ID

37. The ALJ found Seminole's FERC Tariff No. 3 to be unjust and unreasonable, so he established a formula for determining a just and reasonable Seminole local rate and required a compliance filing by MAPL/Seminole to establish that rate. The ALJ explained that, should the MAPL/Seminole compliance filing result in an actual joint rate that is less than the rate Williams paid from January 17, 2005 (the effective date of FERC Tariff No. 3) to September 18, 2006 (the effective date of FERC Tariff No. 45), then the joint rate established in FERC Tariff No. 42 also is unjust and unreasonable. Accordingly, should the rate to be calculated be less than the rate Williams actually paid, and because he also ruled that Williams is the complainant in Docket No. OR06-5-000, the ALJ stated that Williams would be entitled to reparations based on the difference between the FERC Tariff No. 42 rate actually paid and the just and reasonable rate, multiplied by the number of barrels Williams shipped during that period.⁴⁶

38. According to the ALJ, Williams argued that, because FERC Tariff No. 3 was a component of the MAPL/Seminole joint rate, and assuming the MAPL/Seminole joint rate was at the maximum, to the extent the rate authorized by Seminole's FERC Tariff No. 3 was unjust and unreasonable, the rate authorized by the MAPL/Seminole joint tariff was necessarily unjust and unreasonable. He also observed that Williams claimed that, if the joint rate was unjust and unreasonable, shippers transporting NGLs under the joint tariff were entitled to refunds, and Williams, as the only complainant, was owed reparations.

39. In contrast, continued the ALJ, Trial Staff and Seminole argued that, because no shipper moved product under that tariff, Seminole does not owe reparations to Williams

⁴⁶ The ALJ explained that Williams filed the complaint on March 6, 2006, challenging the justness and reasonableness of the Seminole FERC Tariff No. 3 rate. He further stated that the FERC Tariff No. 3 rate became effective, January 17, 2005, which fell within two years prior to the filing date.

even if Seminole's FERC Tariff No. 3 rate was unreasonably high.⁴⁷ In fact, he stated, Trial Staff maintained that shipping product under that tariff alone was technically impossible because it is an interstate tariff applicable to a pipeline system located wholly within the State of Texas. He further noted that Trial Staff asserted that shipments originating on MAPL and traveling on Seminole's system to Mont Belvieu, Texas, move under the MAPL/Seminole joint rate, and shipments originating and terminating entirely on Seminole's line move under Seminole's intrastate tariff filed with the Texas Railroad Commission. However, the ALJ pointed out that Seminole acknowledged that shipments can move in interstate commerce under FERC Tariff No. 3.

40. The ALJ emphasized that the Commission can award reparations to shippers that file successful complaints in the amount of "the difference between *the rates they paid* and the rates the Commission retrospectively determines to be just and reasonable."⁴⁸ However, the ALJ concluded that, because no product had been shipped solely pursuant to FERC Tariff No. 3, and despite the fact that he had determined that FERC Tariff No. 3 may be unjust or unreasonable, no reparations can be awarded as a result of this finding. At any rate, continued the ALJ, the more significant inquiry is whether the Commission should award reparations if the MAPL/Seminole joint rate is determined to be unjust or unreasonable.

41. The ALJ then examined the effect of the Seminole FERC Tariff No. 3 on the joint rate established in MAPL's currently-effective FERC Tariff No. 45.⁴⁹ He pointed out that 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

⁴⁷ The ALJ stated that both Seminole's witness Collingsworth and Williams' witness Olson testified that no barrels had been moved under FERC Tariff No. 3.

⁴⁸ *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 962 (D.C. Cir. 2007) (*ExxonMobil*).

⁴⁹ The ALJ stated that Seminole contended that the only MAPL rates that are currently equal to the sum of the local rates of MAPL and Seminole and are likely to be affected if the Seminole local rate were required to be lowered are the joint rates for movements from points on the Rocky Mountain System (Groups 100-104) to the Mont Belvieu, Texas area destinations on Seminole (Group 950). He stated that MAPL explained that the joint rates for those movements were established in its FERC Tariff No. 45.

with the Commission.”⁵⁰ Thus, he continued, should one rate component of the joint rate be lowered by the Commission, the joint rate also must be lowered if the sum of the newly established rate and the other rate components is lower than the effective joint rate.

42. The ALJ stated that Williams argued that the carrier should decrease the joint rate to Group 950 by 20.29 cents per barrel (the difference between the Seminole rate of 98.85 cents per barrel and Williams’ recommended just and reasonable rate of 78.56 cents per barrel). According to the ALJ, Seminole and Trial Staff agreed that MAPL must lower its joint rates only to the extent that the Commission establishes a new, lower Seminole rate, and the sum of the new rate and the local MAPL rates is lower than the currently effective joint rate. The ALJ also observed that Seminole and Trial Staff maintained that MAPL owes Williams no reparations because they claim that Williams filed a protest rather than a complaint against the joint rates.

43. The ALJ explained that Trial Staff and Seminole asserted that, while the Commission suspended the new joint rates in FERC Tariff No. 45, subject to refund, the Commission will not require MAPL to pay refunds. The ALJ stated that Seminole contended that the joint rates remain just and reasonable until they exceed the sum of the local rates, which will occur, if at all, only when the Commission directs Seminole to lower its local rate prospectively.

44. The ALJ further stated that Williams filed both a “complaint” and a “protest.” He pointed out that the Commission, in its August 24, 2006 Order, stated as follows: “On March 6, 2006, Williams . . . filed a complaint . . .”⁵¹ Further, he cited the Commission’s statement that “Williams alleges that [MAPL’s and Seminole’s] joint rates, as well as the underlying local rates are unjust, unreasonable, unduly discriminatory, or otherwise unlawful.”⁵² He also noted that Williams characterized the issue as follows: “Whether the joint rates charged by [MAPL] and Seminole for transportation from Groups 100, 105, and 110 to Group 950 are unjust and unreasonable.”⁵³ More significantly, he observed that the Commission stated:

⁵⁰ *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128, at P 23 (2005); *see also Big West Oil Co. v. Frontier Pipeline Co.*, 94 FERC ¶ 61,339, at 62,259 (2001); *Express Pipeline, LLC*, 104 FERC ¶ 61,207, at P 8 (2003) (*Express*); *Chevron Pipe Line Co.*, 115 FERC ¶ 61,173, at P 6 (2006).

⁵¹ *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 1 (2006).

⁵² *Id.* P 2.

⁵³ *Id.* P 11.

Although Seminole's local rate was properly established . . . , the justness and reasonableness of Seminole's local rate has not been determined. Seminole's local rate is not grandfathered pursuant to the provisions of the EAct and may be challenged by a complaint based on "reasonable grounds" for believing that the rate is unlawful. *Because Seminole's local rate is one underlying component of [MAPL's] joint rate, the level of the Seminole local rate is relevant to determining the appropriate level of [MAPL's] joint rate.* The Commission finds that Williams has stated reasonable grounds for believing that Seminole's local rate is unlawful. Accordingly, the Commission will set Seminole's FERC Tariff No. 3 for hearing and will consolidate it with the ongoing proceeding in Docket No. IS05-216-000, *et al.* At the hearing, Complainant Williams will bear the burden of showing that the rate is not just and reasonable.⁵⁴

The ALJ concluded that Williams filed a complaint,⁵⁵ that the MAPL/Seminole joint rate is at issue in this proceeding,⁵⁶ and that, should Williams carry its burden of proof, it is entitled to reparations. Further, he explained that, should the compliance filing at the conclusion of this proceeding establish a joint rate that is less than the rate Williams paid from January 17, 2005,⁵⁷ to September 18, 2006, then it follows that the joint rate established by FERC Tariff No. 42 also is unjust and unreasonable. In that event, concluded the ALJ, Williams would be entitled to reparations in the amount of the difference between the FERC Tariff No. 42 rate and the just and reasonable rate

⁵⁴ *Id.* P 39 (footnote omitted; emphasis supplied).

⁵⁵ The ALJ stated that, in addition to filing its complaint, Williams protested MAPL's March 31, 2005, May 20, 2005, March 31, 2006, and August 18, 2006, tariff filings. *See Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,128 (2005); *Mid-America Pipeline Company, LLC*, 111 FERC ¶ 61,483 (2005); *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,124 (2006); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,249 (2006).

⁵⁶ The ALJ stated that the fact that FERC Tariff No. 45 replaced FERC Tariff No. 42 is irrelevant to this question.

⁵⁷ The ALJ stated that Williams filed its complaint on March 6, 2006, and would be entitled to reparations for two years before that date. *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 1 (2006). However, he stated that the joint rate did not become effective until January 17, 2005. Citing Ex. SPL-1 at 3.

calculated pursuant to the formula he established, multiplied by the number of barrels Williams shipped during that period.⁵⁸

45. Finally, the ALJ stated that, because the period for which Williams is entitled to reparations terminated on September 18, 2006, the date when FERC Tariff No. 45 replaced FERC Tariff No. 42 pursuant to the Commission's September 15, 2006 Order, Williams is entitled to refunds from that date forward.⁵⁹

2. Summary of Participants' Positions on Exceptions

46. Trial Staff argued that Seminole does not owe reparations under its joint rate with MAPL. First, Trial Staff asserted that the ALJ improperly applied the Commission's joint rate policy. Second, Trial Staff contended that the ALJ's ruling that MAPL's FERC Tariff No. 42 is unjust and unreasonable is beyond the scope of the hearing in this proceeding. Third, Trial Staff claimed that the ALJ's decision with respect to FERC Tariff No. 42 violates the prohibition against retroactive ratemaking addressed in *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co. (Arizona Grocery)*.⁶⁰

47. In response, Williams maintained that Trial Staff misstated the reparations rulings. First, Williams contended that the ALJ made no finding that the filed Seminole FERC Tariff No. 3 rate was unjust and unreasonable, ruling instead that, should the rate calculated using the formula he established be less than the rate stated in FERC Tariff No. 3, then the rate set forth in that tariff is unjust and unreasonable. Next, Williams claimed that the ALJ did not rule that Williams is automatically entitled to reparations, but instead conditioned his reparations ruling on the amount of the new, as yet undetermined, just and reasonable MAPL joint rate compared to the joint rate in effect during the potential reparations period.

48. The Commission addresses each of these issues separately below.

3. Application of the Joint Rates Policy

a. Trial Staff

49. Trial Staff stated that the ALJ properly determined that Seminole's FERC Tariff No. 3 was unjust and unreasonable. However, Trial Staff contended that the ALJ

⁵⁸ Citing *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 962 (D.C. Cir. 2007).

⁵⁹ Citing *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,249, at P 14 (2006).

⁶⁰ 284 U.S. 370 (1932).

erroneously used this finding in determining that the MAPL/Seminole joint rate also was unjust and unreasonable, and thus there is no basis for ordering the carriers to pay reparations under the joint rate.

50. Trial Staff argued that the Commission's policy is that a joint rate which is greater than or equal to the sum of the local interstate rates *currently on file* for that route is presumed to be unjust and unreasonable.⁶¹ Trial Staff argued that the rates in FERC Tariff No. 42 were lower than the sum of the local interstate rates (which included FERC Tariff No. 3) that were on file during the period when the joint tariff was effective. Therefore, continued Trial Staff, the FERC Tariff No. 3 rate may be lowered only prospectively,⁶² and MAPL's joint tariff cannot possibly exceed the sum of its local interstate rates until FERC Tariff No. 3 actually is lowered. As such, added Trial Staff, MAPL's joint rate must be lowered prospectively only to the extent the Commission establishes a new, lower Seminole rate, and such that the new Seminole rate plus the local MAPL rates produce a sum lower than the currently effective joint rate.

51. Trial Staff asserted that Williams cited no precedent permitting the award of reparations for a joint rate based on a finding that a local component rate was unjust and unreasonable. In fact, stated Trial Staff, such a case could not exist, because reparations are awarded only when a joint rate exceeds established rates already on file. Finally, Trial Staff stated that the Court of Appeals examined this issue in *Frontier Pipeline Co. v. FERC*, and concluded that a joint rate that exceeds the sum of the local rates is

⁶¹ Citing Brief on Exceptions of the Commission Trial Staff, October 31, 2008, at 65. Trial Staff cited ICA section 4, observing that it provides: “[i]t shall be unlawful for any common carrier . . . to charge any greater compensation as to a through rate than the aggregate of the intermediate rates subject to the provisions of this chapter.” 49 U.S.C. app. § 4(1) (1988). Trial Staff stated that “intermediate rates” are the local or proportional rates covering the individual movements that constitute a through route. *See Seaboard Coast Line R.R. v. United States*, 724 F.2d 1482, 1485 (11th Cir. 1984). *See also Patterson v. Louisville & Nashville R.R. Co.*, 269 U.S. 1, 10 n.2 (1925); *Express Pipeline, LLC*, 104 FERC ¶ 61,207, at 61,717-18 (2003) (*Express*); *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 18 (2006).

⁶² Trial Staff cited ICA § 15(1), 49 U.S.C. app. § 15(1) (1988) (in a complaint proceeding, the Commission is authorized “*after full hearing*” to “prescribe what will be the just and reasonable . . . rate . . . to be *thereafter* observed”) (emphasis supplied); *Arizona Grocery v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370, 387-89 (1932) (*Arizona Grocery*).

rebuttably presumed unreasonable only by reference “to the *contemporaneously filed* rates.”⁶³

b. Williams

52. Williams disagreed that both the Seminole local rate and the MAPL joint rate can be lowered only prospectively. First, stated Williams, pursuant to the ICA, a rate challenged by a complaint is subject to reparations. Williams cited *ExxonMobil*:

The ICA permits reparations for successful challenges to the justness and reasonableness of existing rates. . . . If the Commission determines that the pipeline rates are not “just and reasonable,” shippers who file complaints – and only those shippers – are entitled to the difference between the rates they paid and the rates the Commission retrospectively determines to be just and reasonable. The period for potential reparations generally includes two years prior to the filing date of the Complaint.⁶⁴

53. Williams argued that joint rates are subject to the same rule and, if they are challenged by a complaint and found to be unjust and unreasonable, reparations are appropriate. Thus, continued Williams, if it is found to be unjust and unreasonable, Seminole’s local rate may be deemed lowered retroactively to the just and reasonable level for the purpose of calculating reparations. In that event, explained Williams, the MAPL maximum joint rate must be adjusted correspondingly to establish the sum of the local rates as the test for just and reasonable joint rates. Williams agreed with the ALJ

⁶³ *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 785 (D.C. Cir. 2006) (*Frontier*) (citing *Patterson v. Louisville & Nashville R.R. Co.*, 269 U.S. 1, 10 n.2 (1925) (emphasis in original)).

⁶⁴ 487 F.3d 945, 962 (D.C. Cir. 2007); *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263, 1305-06 (D.C. Cir. 2004) (*BP West Coast*). Williams stated that, in *BP West Coast*, the Court of Appeals pointed out that “[t]he ICA . . . allows reparations for up to two years prior to the date of the filing of the complaint if the rates paid in those two years exceed the just and reasonable rates established in the complaint proceeding. See 49 U.S.C. app. § 16(3) (b) (1988).” See also *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,013, at P 1369 (2008) (quoting *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 962 (D.C. Cir. 2007) (“As noted by the Court of Appeals for the District of Columbia Circuit, the Commission is permitted to award reparations to shippers that file a complaint against a rate and prove successful in their challenge in the amount of ‘the difference between *the rate they paid* and the rates the Commission retrospectively determines to be just and reasonable.”)) (emphasis in original)).

that it filed a complaint challenging the Seminole local and MAPL joint rates.⁶⁵ Further, stated Williams, no party presented evidence supporting the Seminole rate on file with the Commission; therefore, the ALJ adopted a formula for calculating a just and reasonable Seminole local rate. Additionally, Williams stated that the ALJ's ruling is consistent with the Commission's holding that the Seminole local rate "is relevant to determining the appropriate level of MAPL's joint rate."⁶⁶ Williams pointed out that the ALJ stated:

Should the compliance filing, which Mid-America and Seminole will be required to make . . . result in an actual joint rate which is less than the rate Williams has been charged . . . then it follows that the joint rate established by FERC Tariff No. 42 is also unjust and unreasonable.⁶⁷

Williams also contended that the ALJ added that "should that be the case, Williams is entitled to reparations."⁶⁸

54. Williams maintained that the ALJ correctly ruled that Williams' complaint subjected both the Seminole local rate and the MAPL Rocky Mountain system joint rates to potential retroactive adjustment and, depending on the adjusted Seminole local rate, may result in an actual joint rate that is less than the joint rate in effect during the reparations period. In that event, continued Williams, it would be entitled to reparations

⁶⁵ Citing *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 39 (2006); *see also Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,013, at P 1386 (2008), in which the ALJ cited the Commission's order and stated "[t]hus, it is quite clear that Williams did file a complaint, and that the Mid-America/Seminole joint rate is at issue here." (footnotes omitted). Indeed, added Williams, the ALJ further stated that "[t]he Seminole/Staff argument that Williams is not a claimant and is not entitled to reparations because it did not file a complaint is, in fact, so totally without merit as to be ludicrous." *Id.*

⁶⁶ Citing *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 39 (2006). Williams also noted that the ALJ, in assessing the impact of the Commission's decision to set MAPL's FERC Tariff No. 45 for hearing, ruled that the "scope" of the hearing would be limited to the justness and reasonableness of the Seminole rate and the justness and reasonableness of the sum of that rate and the Rocky Mountain System rate. *Mid-America Pipeline Company, LLC*, 117 FERC ¶ 63,013, at P 25 (2006).

⁶⁷ *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,013, at P 1387 (2008).

⁶⁸ *Id.*

equal to the difference in the joint rates it paid and the recalculated joint rates. Williams asserted that the ALJ simply ordered a compliance filing by Seminole calculating the Seminole local rate in accordance with the ID, as well as a compliance filing by MAPL establishing the maximum joint rates using the recalculated Seminole local rate and the local Rocky Mountain pipeline system rates on file at the time.⁶⁹ Therefore, explained Williams, the ALJ did not find merely that, should the Commission find the Seminole local rate to be unjust and unreasonable, the MAPL joint rate would automatically be deemed unjust and unreasonable.

55. Williams argued that adoption of Trial Staff's position would preclude a shipper/complainant from recovering reparations for an unjust and unreasonable rate that comprised part of a joint rate. Williams pointed to Trial Staff's claim that, if a shipper does not protest a local rate, and the non-protested local rate subsequently is used to increase a joint rate, a successful complaint challenging the local and joint rates would not entitle the shipper to reparations because the non-protested local rate, even if subsequently determined in a complaint proceeding to be unjust and unreasonable, was "on file" with the Commission. Williams added that, under Trial Staff's scenario, the shipper would be entitled only to prospective relief, i.e., refunds rather than reparations.

c. Commission Ruling

56. The ALJ correctly applied the Commission's policy concerning joint rates, which is that a joint rate is just and reasonable if it is less than or equal to the sum of the local interstate rates. The Commission relied on this policy in the August 24, 2006 Order, citing *Express* and further explaining that "the policy caps the joint rate at an amount that is no greater than the combination of local rates applicable to the movement. The justness and reasonableness of these underlying local rates making up the joint rate . . . can be challenged by means of a complaint."⁷⁰

⁶⁹ Williams noted that the ALJ's joint rate findings are consistent with the position advocated by Trial Staff. Citing Initial Brief of the Commission Trial Staff at 146 ("Mid-America need only adjust its joint rates to the extent the Commission establishes a new, lower Seminole rate, and such that the new rate plus the local Mid-America rate produce a sum lower than the currently effective joint rate.").

⁷⁰ *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 18 (2006) (quoting 104 FERC ¶ 61,207, at P 8 (2003) (footnote omitted)).

57. The Commission's joint rates policy always must be read in harmony with the ICA and judicial determinations concerning reparations.⁷¹ In this case, Seminole's local rate was "on file" because it was filed in accordance with the Commission's regulations, but in the absence of a protest challenging it, FERC Tariff No. 3 became effective by operation of law. Had a protest been filed, Seminole would have been required to establish the justness and reasonableness of FERC Tariff No. 3 on a cost-of-service basis. However, as the Commission explained in the August 24, 2006 Order, the justness and reasonableness of the Seminole local rate (filed pursuant to the Commission's regulations, but not grandfathered pursuant to the EPCRA 1992) had not been determined and was subject to challenge in a complaint.

58. Trial Staff argued that the ALJ erroneously used his finding that FERC Tariff No. 3 is unjust and unreasonable as the basis for determining that the joint rate likewise is unjust and unreasonable. However, Trial Staff's premise is incorrect. The ALJ did not rule that the FERC Tariff No. 3 rate is unjust and unreasonable. He merely held that, "[S]hould the rate calculated by using the formula I set out here be less than the rate set forth in FERC Tariff No. 3, the rate set forth in FERC Tariff No. 3 is unjust and unreasonable."⁷² The ALJ then examined whether, if the FERC Tariff No. 3 rate is found to be unjust and unreasonable, Seminole might owe refunds or reparations. Likewise, his ruling did not specifically conclude that the joint rate is unjust and unreasonable:

Should the compliance filing, which Mid-America and Seminole will be required to make after this Order becomes final, result in an actual joint rate which is less than the rate which Williams has been charged [for the applicable period], then it follows that the joint rate established by FERC Tariff No. 42 also is unjust and unreasonable.⁷³

59. Trial Staff's reliance on *Frontier* is misplaced. The Court of Appeals remanded that case to the Commission and directed it to explain why earlier Supreme Court cases

⁷¹ For example, the ALJ cited *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 962 (D.C. Cir. 2007), in which the Court of Appeals clearly stated that the ICA permits reparations for successful challenges to the justness and reasonableness of existing rates, and successful complainants are entitled to the difference between the rates they paid and the rates the Commission retrospectively determines to be just and reasonable.

⁷² *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,013, at P 1358 (2008). The ALJ had previously found none of the parties' FERC Tariff No. 3 rate proposals to be acceptable; therefore, he established a formula to determine the just and reasonable rate for FERC Tariff No. 3.

⁷³ *Id.* P 1387.

construing ICA section 5 did not preclude the joint rates policy applied by the Commission.⁷⁴ On remand, the Commission explained the history of its joint rates policy and emphasized that “the standards established in ICA sections 1(5) and 4(1) remain essential foundations of oil pipeline ratemaking.”⁷⁵ In that case, for purposes of determining the just and reasonable joint rate, the parties agreed to substitute a lower rate for one underlying local segment that had a higher rate on file during the period at issue. The Commission established a hearing to determine the just and reasonable joint rate by also giving consideration to the other underlying segments of that rate, emphasizing that the reasonableness of a joint rate cannot be judged on the basis of some but not all of the underlying segments. On rehearing of the order on remand, the Commission pointed out that its regulations allow a carrier to seek relief from the limitation that a just and reasonable joint rate cannot exceed the sum of the underlying local rates.⁷⁶ The Commission stated, “Although ceiling levels and filed rates equal to or lower than the applicable ceiling levels are presumed to be just and reasonable, the Commission’s regulations anticipate the possibility that they may not be, so the regulations provide for challenges to rates established by means of the indexing process.”⁷⁷

60. In the August 24, 2006 Order, the Commission found that Seminole properly established its initial rate in FERC Tariff No. 3 pursuant to section 342.2(b) of the regulations.⁷⁸ Thus, the rate was subject to the indexing requirements of Part 342 of the regulations.⁷⁹ Accordingly, the Commission did not err in setting FERC Tariff No. 3 for hearing to determine whether it is just and reasonable, and following the hearing, the ALJ did not err in ruling that the just and reasonable rate to be calculated for FERC Tariff No. 3 will be considered to be one of the underlying local rates in assessing whether the joint rate is unjust and unreasonable.

61. As the ALJ also correctly held, these determinations and Williams’ potential entitlement to reparations will be made when MAPL and Seminole make their

⁷⁴ *Frontier Pipeline Co. v. FERC*, 452 F.3d 774, 778-89 (D.C. Cir. 2006).

⁷⁵ *Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249, at P 19 (2007).

⁷⁶ *Big West Oil Co. v. Frontier Pipeline Co.*, 122 FERC ¶ 61,138, at P 11 (2007).

⁷⁷ *Big West Oil Co. v. Frontier Pipeline Co.*, 122 FERC ¶ 61,138, at P 25. In a footnote, the Commission cited 18 C.F.R. 343.2(c).

⁷⁸ *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 37 (2006) (citing 18 C.F.R. § 342.2(b)).

⁷⁹ *See* 18 C.F.R. § 342.3 (2009).

compliance filings at the conclusion of this proceeding. The ALJ indicated that the reparations period extended from January 17, 2005, when Seminole's FERC Tariff No. 3 became effective, to September 18, 2006, when MAPL's FERC Tariff No. 42 containing the joint rate was superseded by MAPL's FERC Tariff No. 45.

62. The ALJ also correctly ruled that Williams filed a complaint against Seminole's local rate and the MAPL joint rate, a component of which was Seminole's local rate. Further, he found that there was little dispute that no product was shipped solely under FERC Tariff No. 3; therefore, no reparations could be awarded for shipment solely under that tariff. However, as the ALJ stated, the more significant inquiry is whether the Commission should award reparations under the joint tariff if it is determined to be unjust and unreasonable.

63. The process of establishing the just and reasonable FERC Tariff No. 3 rate and the just and reasonable joint rate will occur after the carriers submit their compliance filings. Even if the newly calculated just and reasonable FERC Tariff No. 3 local rate is lower than the local rate that was on file, MAPL will have the opportunity to demonstrate that the joint rate resulting from the sum of the just and reasonable FERC Tariff No. 3 rate and the other underlying rates remains below the applicable joint rate ceiling and is, therefore, presumed to be just and reasonable. The Commission will not determine the just and reasonable joint rate solely on the basis of its examination of the just and reasonable FERC Tariff No. 3 rate.

64. Accordingly, the Commission affirms the ID with respect to the ALJ's interpretation and application of the Commission's joint rates policy.

4. Whether the ALJ's Ruling Concerning FERC Tariff No. 42 Exceeded the Scope of the Hearing

a. Trial Staff

65. Trial Staff asserted that only the justness and reasonableness of the FERC Tariff No. 3 rate and the appropriate prospective level of MAPL's joint rate are at issue in this case. Trial Staff contended that the ALJ made that clear when he stated that the issue was "if the Tariff No. 3 Rate is unjust and unreasonable, how should the MAPL/Seminole Joint Rates to Group 950 Destinations be adjusted?"⁸⁰ In Trial Staff's view, this statement does not encompass a possible award of reparations. According to Trial Staff, if Williams were to obtain reparations under MAPL's joint rate based on the sum of local

⁸⁰ *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,016, at Issue No. 14 (2008).

interstate rates, that would require an examination of the joint rate itself and not merely an examination of one of the component rates.

66. Trial Staff again cited *Frontier*, contending that the ALJ misinterpreted *Frontier*'s effect on the Commission's joint rate policy. Trial Staff also cited *Texaco*,⁸¹ stating that, in applying the policy, the ALJ determined that:

Should the compliance filing, which [MAPL] and Seminole will be required to make after this Order becomes final, result in an actual joint rate which is less than the rate which Williams has been charged for the period beginning January 17, 2005, and ending September 18, 2006, then it follows that the joint rate established by FERC Tariff No. 42 also is unjust and unreasonable.⁸²

67. Trial Staff submitted that this is the converse of the Commission's holding in *Texaco* and is an inaccurate statement of the Commission's joint rate policy after *Frontier*. Trial Staff claimed that *Frontier* and the Supreme Court decisions cited therein require the Commission to examine the joint rate separately to determine if it is just and reasonable.

b. Williams

68. Williams responded that, in setting Seminole's local rate for hearing and consolidating that with the ongoing consolidated proceedings, the Commission unequivocally ruled that the Seminole "local rate is relevant to determining the appropriate level of MAPL's joint rate."⁸³ Indeed, contended Williams, Trial Staff recognized this fact in its Initial Brief by stating that Seminole filed FERC Tariff No. 3 solely to establish a rate as the Seminole component of the joint tariff with MAPL, thus providing a basis for assessing the justness and reasonableness of the joint rate.⁸⁴

⁸¹ *Texaco Pipeline, Inc.*, 72 FERC ¶ 61,313, at 62,310 (1995).

⁸² 124 FERC ¶ 63,016, at P 1387 (2008).

⁸³ See *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 39 (2006). Williams again notes that, with respect to the joint rate specified in MAPL FERC Tariff No. 45, the ALJ ruled that "the hearing is limited to the question of the justness and reasonableness of the Seminole rate and the justness and reasonableness of the sum of that rate and the Rocky Mountain System Rate." See *Mid-America Pipeline Company, LLC*, 117 FERC ¶ 63,013, at P 25 (2006).

⁸⁴ Citing Initial Brief of the Commission Trial Staff at 144 (citing Tr. 3133-34).

Moreover, continued Williams, Trial Staff also expressly acknowledged that if the Seminole local rate was lowered, the MAPL joint rate would be subject to adjustment.⁸⁵ Therefore, continued Williams, all parties to the proceeding were clearly on notice that a possible consequence of (1) the Seminole FERC Tariff No. 3 local rate being found to be unjust and unreasonable and (2) a lower Seminole local rate calculated in the required compliance filing could result in the maximum MAPL Rocky Mountain system/Seminole joint rates being lowered prospectively and deemed lowered for reparations purposes during the applicable reparations period.

69. Williams cited Trial Staff's claim that the issue of reparations was not fully developed at hearing, and that, if Williams were to obtain reparations on MAPL's joint rate based on the sum of local interstate rates, it would have to be through an examination of the joint rate itself rather than merely an examination of one of the component rates as was the case here. However, Williams argued that the opportunity to address whether it was entitled to reparations was present prior to and at the hearing, but that Trial Staff failed to avail itself of the opportunity. Williams reiterated that the ICA expressly provides that reparations may be awarded for rates successfully challenged by complaint,⁸⁶ and the Commission, in granting the Williams complaint against Seminole and setting the Seminole local rate for hearing, placed the reparations issue squarely before the ALJ and the parties.⁸⁷ In fact, continued Williams, Court of Appeals precedent involving oil pipeline proceedings holds that the setting of a rate for hearing pursuant to challenge by complaint necessarily places reparations for the complainant at issue in the proceeding for a period up to two years prior to the filing of the complaint.⁸⁸

70. Williams argued that the ALJ's rulings on the joint rate and reparations issues are consistent with *Frontier*. Williams noted that the ALJ explained that *Frontier* requires the Commission to base its assessment of the justness and reasonableness of a joint rate on an examination of the joint rate itself rather than on the rate of only one of its segments.⁸⁹ Williams also asserted that, on remand of the *Frontier* case, the

⁸⁵ *Id.* at 147.

⁸⁶ 49 U.S.C. app. § 16(3)(b) (1988).

⁸⁷ Citing *Williams Energy Services, LLC*, 116 FERC ¶ 61,175, at P 39 (2006).

⁸⁸ See *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263, 1306 (D.C. Cir. 2004) ("The ICA . . . allows reparations for up to two years prior to the date of the filing of a complaint if the rates paid in those two years exceed the just and reasonable rate established in a complaint proceeding. See 49 U.S.C. app. § 1(3)(b) (1988)").

⁸⁹ *Mid-America Pipeline Company, LLC*, 117 FERC ¶ 63,013, at P 22 (2006).

Commission's holdings were consistent with the ALJ's interpretation of *Frontier* in this case.⁹⁰

71. Finally, Williams reiterated that the ALJ ordered that, within 30 days of a final Commission order, MAPL and Seminole must (1) file revised tariff sheets in accordance with the findings and conclusions of the ID, as adopted or modified by the Commission, and (2) calculate and distribute reparations and refunds in accordance with the findings and conclusions of the ID, as adopted or modified by the Commission. Williams maintained that Trial Staff will have the opportunity to assert its arguments again at the time the newly-calculated Seminole local rate and the new MAPL joint rates are proposed.

c. Commission Ruling

72. Again, Trial Staff's argument has no merit. In the August 24, 2006 Order, the Commission clearly stated, "Because Seminole's local rate is one underlying component of MAPL's joint rate, the level of the Seminole local rate is relevant to determining the appropriate level of MAPL's joint rate."⁹¹ The parties were on notice from that point that the justness and reasonableness of MAPL's joint rate would be assessed as a result of that ruling. The Commission emphasizes that the just and reasonable FERC Tariff No. 3 rate is relevant to determining the just and reasonable joint rates, but that rate cannot by itself render the joint rates unjust and unreasonable. The Commission will examine all of the components of the joint rate, including the just and reasonable FERC No. 3 rate, in assessing whether MAPL's joint rate is unjust and unreasonable. Neither the Commission in the August 24, 2006 Order nor the ALJ in the ID stated that the assessment of the justness and reasonableness of MAPL's joint rate would be determined solely on the basis of whether Seminole's FERC Tariff No. 3 rate ultimately was determined to be just and reasonable.

73. Trial Staff failed to consider the Commission's lengthy and clear explanations of its joint rates policy on remand of the *Frontier* case.⁹² The ALJ did not deviate from the Commission's joint rates policy, and he did not improperly expand the scope of the hearing on this issue. In his ruling, the ALJ stated that, should the Commission lower one rate component of the joint rate, the joint rate likewise must be lowered if the sum of

⁹⁰ *Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249 (2007).

⁹¹ *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 39 (2006).

⁹² *Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249, at P 15-31 (2007), *order on reh'g and clarification*, 122 FERC ¶ 61,138, at P 22-29 (2008).

the new rate and the other effective rate components is lower than the currently effective rate.⁹³ He also made it clear that this determination would be made when Seminole and MAPL make their compliance filings at the conclusion of this proceeding.

74. The Commission reiterates that, at the time the compliance filing is made, a new Seminole FERC Tariff No. 3 just and reasonable rate will be established. If that new rate results in a MAPL/Seminole joint rate that is lower than the joint rate paid by Williams, then it will be a rate that exceeds the sum of the local rates, and consistent with applicable precedent, it will be presumed to be unjust and unreasonable. However, that presumption is rebuttable, not conclusive. The showing that the joint rate exceeds the sum of the local rates shifts the burden of proof of reasonableness to the joint rate participants to justify the excess.⁹⁴ Whether reparations may be owed cannot be determined until that stage of the proceeding.

75. Accordingly, the Commission affirms the ID with respect to this issue.

5. Whether the ALJ's Ruling Concerning FERC Tariff No. 42 Violates the Prohibition Against Retroactive Ratemaking

a. Trial Staff

76. Trial Staff contended that *Arizona Grocery* prohibits retroactive revision of established rates through an award of reparations.⁹⁵ According to Trial Staff, the purpose of this rule is to ensure that, when pipelines rely on the Commission's determinations regarding just and reasonable rates, they will not then be forced to pay reparations when the Commission later reconsiders its prior approval.⁹⁶ Trial Staff added that, in order for *Arizona Grocery* to apply, the Commission must have "approved or prescribed" or "declared" a reasonable rate upon which the carrier has relied.⁹⁷ Trial Staff further maintained that FERC Tariff No. 42 clearly was approved over the protest and complaint

⁹³ *Mid-America Pipeline Company, LLC*, 124 FERC ¶ 63,013, at P 1381 (2008).

⁹⁴ *See Big West Oil Co. v. Frontier Pipeline Co.*, 119 FERC ¶ 61,249, at P 24 (2007).

⁹⁵ 284 U.S. 370, 390 (1932).

⁹⁶ *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 967 (D.C. Cir. 2007).

⁹⁷ *Id.*

of Williams on several occasions, and was sufficiently relied upon by MAPL to qualify for protection under *Arizona Grocery*.⁹⁸

b. Williams

77. Williams stated that Trial Staff read the acceptance of MAPL's FERC Tariff No. 42 much too broadly. Williams pointed out again that the Commission set the Seminole local rate for hearing and, in so doing, stated that the Seminole local rate was relevant to determining the appropriate level of MAPL's joint rate.⁹⁹ Further, continued Williams, because the Seminole local rate was not final, the maximum joint rates set out in MAPL FERC Tariff No. 42 never were final. Rather, stated Williams, the Commission intended that a finding of finality for the joint rate be conditioned in part upon the Seminole local rate, which was to be determined after the hearing and a Commission ruling on exceptions. Thus, continued Williams, the ALJ's finding that the MAPL/Seminole joint rate is at issue here not only follows the Commission's directive that the Seminole local rate is relevant to determining the appropriate level of the MAPL joint rate, but also negates any claim that reparations are improper. Williams emphasized that, because the joint rates were at issue pursuant to a complaint filed pursuant to the ICA and, therefore, not final, the prohibition against awarding reparations for previously approved tariffs does not apply.

78. Williams pointed out that the ICA does not require that remedies for unlawful rates be established only prospectively; rather, if the unlawfulness of a rate is raised by complaint and is proved in a complaint proceeding, then with respect only as to the complainant(s), the unlawful rate can be retroactively deemed undone for a period of up to two years by the award of reparations (the difference between the unlawful rate and the rate determined to be just and reasonable during that period) to the complainant(s).¹⁰⁰ Williams maintained that the Commission recognized that reparations potentially could

⁹⁸ Citing *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,258 (2006); *Williams Energy Services, LLC v. Mid-America Pipeline Co. LLC*, 116 FERC ¶ 61,175 (2006).

⁹⁹ Citing *Williams Energy Services, LLC v. Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,175, at P 39 (2006).

¹⁰⁰ Citing *BP West Coast Products, LLC v. FERC*, 374 F.3d 1263, 1306 (D.C. Cir. 2004). See *Atchison, T. & S. F. R. Co. v. Spiller*, 249 F. 677 (8th Cir. 1918) (“[W]here a shipper has paid a rate afterwards declared to be excessive by the Interstate Commerce Commission, he may recover as damages the difference between the excessive rate and the rate declared to be just and reasonable by the Commission, without proof of actual injury.”).

be ordered in the instant proceeding when it set for hearing the Williams complaint with respect to the lawfulness of the Seminole FERC Tariff No. 3 local rate.

79. Finally, stated Williams, the Court of Appeals has held that *Arizona Grocery* and its prohibition on retroactive ratemaking does not apply in ICA oil pipeline complaint proceedings analogous to the instant proceeding. For example, Williams cited *ExxonMobil*,¹⁰¹ in which the Court of Appeals held that *Arizona Grocery* was not applicable:

We hold that where, as here, the Commission accepts a pipeline's proposed tariff subject to suspension and refund without even establishing the methodology for determining the final rate, the Commission cannot properly be considered to have prescribed a just and reasonable rate until the proposed tariff is approved at the completion of compliance proceedings. Consequently, we hold that *Arizona Grocery* does not preclude reparations in this case.¹⁰²

c. **Commission Ruling**

80. It is hardly a matter of dispute that reparations may be appropriate for the two years prior to a complaint proceeding if the complainant successfully demonstrates that the rates in question were not just and reasonable during that period. That does not constitute retroactive ratemaking. An award of reparations represents an acknowledgement that the complainant has demonstrated that it was required to pay a rate that was in excess of the just and reasonable rate, and it is intended to provide a remedy for the overcharges paid during the limited two-year period.

81. Trial Staff's citation to *Arizona Grocery* does not support its claim that reparations may not be awarded in this proceeding. Trial Staff points to the following language:

Where the Commission has upon complaint, and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not at a later time . . . by declaring its own finding as to reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured by what the Commission now holds it should have decided in the earlier proceeding to be a reasonable rate.¹⁰³

¹⁰¹ 487 F.3d 945 (D.C. Cir. 2007).

¹⁰² *Id.* at 968.

¹⁰³ 284 U.S. 370, 390 (1932).

82. Prior to this proceeding, the Commission has not determined “upon complaint, and after hearing” the maximum reasonable rate that Seminole can charge. As discussed above, Seminole’s FERC Tariff No. 3 simply became effective by operation of law in the absence of a protest. As also stated above, the Commission will determine the just and reasonable FERC Tariff No. 3 rate at the conclusion of this proceeding when the carriers submit their compliance filings. Should Seminole’s FERC Tariff No. 3 rate be found to be unjust and unreasonable, the Commission then will determine whether MAPL’s joint rate is unjust and unreasonable by examining all of the underlying rates, including any revised rate applicable to FERC Tariff No. 3. The Commission made that clear in the August 24, 2006 Order, and the ALJ’s rulings are consistent with the Commission’s order.

83. Trial Staff also ignores the fact that the Commission has not “approved,” “prescribed,” or “declared” a just and reasonable joint rate in FERC Tariff No. 42. In its order issued April 27, 2006, the Commission merely “accepted” and suspended the tariff, subject to refund, and consolidated it with the ongoing consolidated proceedings after finding that Williams’ protest had no merit and provided no basis for determining that the rates were unjust and unreasonable.¹⁰⁴ Williams’ complaint represented a second effort to demonstrate that the FERC Tariff No. 42 joint rate was unjust and unreasonable, and it is only through a complaint proceeding that it may demonstrate that it is entitled to reparations. Whether it has succeeded in that effort will be determined when the Commission establishes the just and reasonable rates upon examination of the compliance filings.

84. The ALJ’s conclusion that reparations may be warranted in this proceeding if the Commission finds that Seminole’s FERC Tariff No. 3 rate and MAPL’s FERC Tariff No. 42 rate to be unjust and unreasonable does not violate the holding of *Arizona Grocery* cited above. In the event that the Commission finds the rates to have been unjust and unreasonable, it may, as *Arizona Grocery* makes clear, order reparations to Williams as the sole complainant in this proceeding.

D. Motion for Clarification and Rehearing of the September 15, 2006 Order in Docket No. IS06-520-000

85. On August 18, 2006, MAPL filed FERC Tariff No. 45 to cancel FERC Tariff No. 42. MAPL explained that it was cancelling separate rates for the ethane component of demethanized mix. MAPL further explained that it was cancelling certain discounted

¹⁰⁴ *Mid-America Pipeline Company, LLC*, 115 FERC ¶ 61,258, at P 15-17 (2006).

rates and increasing certain joint rates, although these rates would be equal to or less than the sum of the local rates utilized to make these moves.¹⁰⁵

86. Williams filed a motion to intervene, protest, and request that this proceeding be consolidated with the then-pending consolidated proceedings in Docket No. IS05-216-000, *et al.* In particular, Williams asked the Commission to suspend the joint rate increase pending completion of the consolidated proceedings. Williams further asserted that the proposed joint rate increase exceeded the sum of the local rates and that part of the joint rate (Seminole's local rate) already was subject to a justness and reasonableness review as a result of the complaint in Docket No. OR06-5-000. Additionally, Williams asserted that cancellation of the separate ethane rate should be suspended and alleged that MAPL's action in proposing the joint rate increase represented retaliatory conduct toward Williams. Next, Williams contended that MAPL's method of allocating capacity that was carried forward from Supplement No. 1 to MAPL's FERC Tariff No. 42 was unduly discriminatory and provided an undue preference to certain shippers. Finally, Williams asked the Commission to re-examine its July 19, 2006 Order¹⁰⁶ and its August 4, 2006 Order.¹⁰⁷

87. In the September 15, 2006 Order, the Commission accepted and suspended FERC Tariff No. 45 to be effective September 18, 2006, subject to refund. The Commission also consolidated this proceeding with the ongoing consolidated proceedings. The Commission pointed out that MAPL proposed changes to rates that were at issue in the consolidated proceedings to which Williams was a party. The Commission also specifically rejected the allegations of retaliatory conduct on the part of MAPL, stating that MAPL had the right to propose changes to its tariffs as often and for whatever reasons it chose.¹⁰⁸

88. On September 29, 2006, MAPL filed its motion for clarification or rehearing of the September 15, 2006 Order. MAPL asked the Commission to clarify whether the order allowed Williams to protest MAPL's existing capacity allocation provisions, which were not changed by FERC Tariff No. 45. To the extent the September 15, 2006 Order intended to permit Williams to protest those allocation provisions, MAPL sought rehearing. MAPL also sought rehearing of the Commission's suspension of FERC Tariff

¹⁰⁵ Mid-America Pipeline Company, LLC, Oil Pipeline Tariff Filing Transmittal No. 66, August 18, 2006.

¹⁰⁶ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040 (2006).

¹⁰⁷ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,120 (2006).

¹⁰⁸ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,249 (2006).

No. 45, claiming the changes proposed in FERC Tariff No. 45 were not subject to protest under Commission precedent.

1. Protest of Unchanged Capacity Allocation Provisions

89. MAPL argued that a party may not challenge an existing, unchanged rate or practice through a protest. MAPL contended that existing rates or practices are subject to challenge only by a complaint. MAPL also asserted that the Commission previously ruled on the provisions challenged by Williams. Specifically, MAPL maintained that, in its July 19, 2006 Order, the Commission rejected Williams' challenge to MAPL's capacity allocation program.¹⁰⁹ Further, stated MAPL, in the August 4, 2006 Order, the Commission rejected Williams' attempt to reargue this issue, explaining that Williams' challenge "represents a collateral attack on earlier Commission orders addressing MAPL's rates and its Incentive Program."¹¹⁰ MAPL contended that these orders were final, and there is no reason for the Commission to reverse or re-examine its determinations in these orders.

90. The Commission clarifies that the September 15, 2006 Order in Docket No. IS06-520-000 did not permit Williams to challenge MAPL's allocation procedure. In its filing in that docket, MAPL did not propose any change to its existing capacity allocation provisions, which had been accepted in earlier Commission orders. In the September 15, 2006 Order, the Commission properly declined to examine those provisions again.

2. Whether the Commission Properly Suspended FERC Tariff No. 45 and Made It Subject to Investigation

91. MAPL stated that Williams challenged two proposed changes in FERC Tariff No. 45: (1) an increase in the joint rates from Groups 100-104 to Group 950 in Item 210 to the sum of the local rate ceilings; and (2) cancellation of certain discounted rates for ethane component movements. However, MAPL asserted that there is no basis under Commission precedent to protest a joint rate that is below the sum of the local rates or to protest the cancellation of a discounted rate. Thus, continued MAPL, there is no ground to suspend these proposed changes and to make them subject to investigation and refund.

92. MAPL contended that, under the Commission's joint rate policy, a pipeline's joint rates are deemed just and reasonable if they are at or below the sum of the underlying

¹⁰⁹ Citing *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 23-24 (2006).

¹¹⁰ Citing *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,120, at P 6 (2006).

local rates. Therefore, continued MAPL, because its proposed joint rates were no higher than the sum of the underlying local rates, they are valid under the Commission's joint rate policy, and "they are acceptable on that basis alone."¹¹¹ Here, stated MAPL, it had not proposed to change either of the local rates underlying the joint rates at issue, and given the Commission's clear policy and precedent, the proposed increase of the joint rate to a level no higher than the sum of the underlying local rates should have been permitted to go into effect without suspension and investigation.

93. Finally, MAPL asserted that there is no basis for suspending or investigating the cancellation of a discounted rate. MAPL emphasized that the ethane component rates are discounted rates, which MAPL is not required to offer, and cancellation of those discounts is entirely within MAPL's discretion.¹¹² Moreover, MAPL pointed out that the Commission's regulations provide that "a rate charged by a carrier may be changed, at any time, to a level which does not exceed the ceiling level."¹¹³ Thus, continued MAPL, cancellation of the ethane component discounts merely means that ethane will be moved at the same rate as the other components of the demethanized mix, and because the proposed ethane component rates are within the applicable ceiling, there is no ground to suspend and investigate MAPL's proposed cancellation of these discounts.

94. The Commission denies rehearing on this issue. While MAPL is correct that it is not required to offer discounted rates and may cancel the discounts at any time and that it may increase its rates to the applicable ceiling levels, MAPL is incorrect that there was no basis for the Commission to suspend its filing in this docket and set it for investigation in the then-pending consolidated proceeding. As the Commission stated in the September 15, 2006 Order, FERC Tariff No. 45 proposed changes to rates that were at issue in the consolidated proceeding and further, that FERC Tariff No. 45 had not been shown to be just and reasonable. The Commission properly consolidated FERC Tariff No. 45 with the then-pending consolidated proceedings.

The Commission orders:

- (A) The ID is affirmed, as discussed in the body of this order.

¹¹¹ *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 22 (2006).

¹¹² *See Express Pipeline LLC*, 99 FERC ¶ 61,229, at P 10 (2002) (approving cancellation of joint rate over shipper protests since the joint rate was a "discount . . . based on a voluntary agreement among the pipeline carriers that none of the carriers is obligated to continue").

¹¹³ 18 C.F.R. § 342.3(a) (2009).

(B) Clarification of the September 15, 2006 Order is granted, as discussed in the body of this order.

(C) Rehearing of the September 15, 2006 Order is denied, as discussed in the body of this order.

(D) Within 30 days of the date of this order, Seminole and MAPL must file revised rates in compliance with the provisions of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.