

Mid-America Pipeline Company
Order Accepting and Suspending Tariff Subject to Refund and Conditions
104 FERC ¶61,263 (2003)

Mid-America Pipeline Company (Mid-America) filed a new tariff to institute an experimental, one-year propane line fill program to assure that a shipper could withdraw all of its product immediately upon receipt of its product into the system.

The Commission approved the program, on the conditions that: 1) Mid-America reflect the actual cost of the propane line-fill, 2) the cost reflect only the actual tax rates of the corporations that pay taxes, 3) the cost reflect an after-tax rate of return of 12.66 percent, and 4) the cost reflect a throughput volume of 22 million barrels. The Commission also determined that the on demand service was a new service that needed cost support (since it was protested), but that the data need only relate to the specific new service and did not require an inquiry into the underlying costs of transportation on Mid-America's system.

COMM-OPINION-ORDER, 104 FERC ¶61,263, Mid-America Pipeline Company, LLC, Docket No. IS03-471-000, (September 10, 2003)

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Mid-America Pipeline Company, LLC, Docket No. IS03-471-000

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Order Accepting and Suspending Tariff Subject to Refund and Conditions

(Issued September 10, 2003)

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

1. On August 7, 2003, Mid-America Pipeline Company, LLC (MidAmerica) filed oil pipeline tariff FERC No. 16¹ to institute a new Propane Assurance Supply Program (PASP). As detailed below, we accept the instant tariff to be effective October 1, 2003, subject to conditions set forth in this order. This order benefits the public interest because the proposed experimental one-year program attempts to resolve propane delivery problems which have necessitated transit time restrictions and reduced allocations of available propane to customers served by MidAmerica. Permitting the PASP to proceed offers shippers an on-demand propane service that also ultimately benefits end-users in times of high demand and possible supply shortages.

Background

2. MidAmerica states that its proposed PASP will solve a chronic seasonal propane supply constraint by providing a new, continuous on-demand service for its Northern Propane System, which transports propane north from its Conway, Kansas marketing hub to points in Iowa, Kansas, Minnesota, Missouri and Wisconsin.² MidAmerica states that the instant proposal stems from the significant product shortages that have routinely existed at the Conway marketing hub during recent winters. Those shortages were sufficiently severe that MidAmerica implemented supply allocations. The restrictive allocations were required when the pipeline system did not receive product in excess of the minimum amount necessary to operate the pipeline, referred to as "line fill." In periods of supply allocation, new product received into the pipeline is reduced or allocated. This results in shippers receiving only a portion of their product actually delivered into the pipeline, thus, creates a disincentive for shippers to put product into the system. Additionally, the disincentive for shippers becomes a price risk for the shippers during periods of high demand if product is trapped in the pipeline. MidAmerica further states that these circumstances have been to the detriment of shippers and propane consuming public.

MidAmerica's Proposal

3. MidAmerica states it discussed with its shippers various options to create a mechanism to redirect propane into the supply constrained Conway marketing hub and address the findings of the Commission in the prior owners³ line fill proceeding.⁴ As a result, MidAmerica proposes an on-demand system that permits a customer to withdraw all of its product immediately upon receipt of its product into the system. An on-demand system requires that a static quantity of propane line fill must be in the pipeline at all times. In order to provide a new, continuous on-demand service, MidAmerica now proposes to invest in propane quantities to supply the entire line fill barrels for its Northern Propane System. MidAmerica will

[61,851]

recover the cost of that investment through a fee, applied as a per-barrel surcharge to the base transportation rates for the Northern Propane System. Only those shippers benefiting from the service will be required to pay the fee.

4. MidAmerica proposes a fee of 16.0 cents per barrel based on an after-tax rate of return of 12.66 percent. Pursuant to 18 C.F.R. §342.2 (b), MidAmerica submitted an affidavit stating that a non-affiliated shipper agreed to the surcharge. The tax component of the rate is based on a 37.6 percent rate. MidAmerica states that the fee is composed solely of the cost of acquiring the propane and the return and taxes on the investment. In its cost of service data, it estimates that the cost of acquiring 700,000 barrels of propane for line fill at a cost of 60.125 cents per gallon, for a total cost of acquisition of \$17,676,750. The 16 cents per barrel surcharge rate recovers the estimated cost of service of \$3,520,000 using a projected throughput of 22,000,000 barrels per year.

5. MidAmerica proposes the PASP as a one-year experimental program to determine if it resolves the shortage and allocation issues. If successful, MidAmerica will institute the PASP as a permanent feature of its services. In order to begin the program this fall, MidAmerica requests the Commission issue an order approving the program by September 10, 2003, so it may begin acquiring the line fill to provide the new, on-demand service by October 1, 2003, the beginning of the heating season for residential, commercial and other customers in the Mid-western marketing area.⁵

Protests and Interventions

6. ConocoPhillips Company (ConocoPhillips) filed a timely motion to intervene and protest. ConocoPhillips asserts it ships on MidAmerica and has a substantial economic interest in the proposed tariff. It objects to the proposal for the following reasons: (1) insufficient data has been submitted by MidAmerica to support the proposed rate; (2) the proposed 16 cents per barrel surcharge is not a new service, but a rate increase, which MidAmerica has not justified by meeting the requirements of the indexing regulations in 18 C.F.R. §342.3; (3) as the filing is protested, the carrier must file cost, revenue, and throughput data pursuant to Section 342.2 (a) of the Regulations, and therefore, the Commission cannot act on the tariff filing until such data is filed by MidAmerica; (4) the Commission should allow the tax component claimed only if there is a tax liability on the corporations owning an equity interest in MidAmerica; (5) the Commission should require MidAmerica to show whether other shippers on its other pipeline segments will benefit from the line fill assurance service and thus spread the cost over more customers; and (6) MidAmerica failed to prove that the 22 million barrels proposed to design the per barrel rate is appropriate. ConocoPhillips requests that until all challenges are addressed, the rate should be suspended for the maximum statutory period.

7. ConocoPhillips also filed a motion to be allowed to answer MidAmerica's answer. Answers to answers are permitted only upon a showing of good cause. ConocoPhillips's motion, therefore, is denied.

8. The National Propane Gas Association (NPGA) filed a timely motion to intervene and protest. NPGA is a national trade association which represents various industries involved in the liquid petroleum business, including propane producers, transporters and wholesalers, as well as manufacturers and distributors of associated equipment, containers and appliances. The issues raised by NPGA are included in those raised by ConocoPhillips.

9. Kinder Morgan Operating L.P. "A" filed a late motion to intervene on August 28, 2003. Kinder Morgan did not in its motion set forth good cause as to why the time limitation for filing motions to intervene should be waived, and therefore its motion will be denied pursuant to 18 C.F.R. §385.214 (b)(3) (2003).

MidAmerica Answer

10. On August 27, 2003, MidAmerica filed a response to the motions to intervene and protests. MidAmerica also submitted the affidavit of J.M. Collingsworth, Senior Vice President of the carrier. Mr. Collingsworth states that MidAmerica's instant proposal attempts to respond to a long-standing problem and is entirely different from

the earlier proposal in Docket No. IS01-482-000, where it sought to require shippers to provide the line fill on a pro rata basis,⁶ and MidAmerica imposed supply allocations on propane deliveries in five of the last eight years. Further, he submitted data showing that current propane inventories are lower this year as compared to prior years. He also stated that business usage of propane is increasing, users are reluctant to tie up capital in inventories, and the experience of last winter is likely to recur in the forthcoming heating season in the territory served by the Northern Propane System that is affected by the PASP proposal. He also supplied clarification showing that propane throughput data included in the company's Form 6 Reports for volumes originating in Kansas included volumes delivered to storage and third- parties which did not move through the Northern Propane System. Deducting these volumes from the Form 6 data, Mr. Collingsworth asserts, results

[61,852]

in a 22 million barrel throughput design factor in calculating the unit surcharge.

Discussion

11. The Commission will conditionally approve MidAmerica's PASP proposal. No party disputes the need for line fill to support an on- demand propane supply operation. We consider below each of the issues raised in the protests and find that the proposal will be in the public interest and assure shippers that the rate collected will be just and reasonable and supported by actual data we will require MidAmerica to submit.

Need for Additional Data

12. We agree with ConocoPhillips on the need for actual data on the cost of propane acquired for line fill. We will require MidAmerica to file data supporting the actual cost of the acquired propane, and if it varies from the estimated cost of 60.125 cents per gallon, to adjust its unit surcharge to reflect the actual cost. In addition, if the propane acquired varies from the estimated 700,000 barrels, MidAmerica will adjust its unit surcharge.

Tax Rate Support

13. MidAmerica proposes an effective tax rate of 37.8 percent. We agree with ConocoPhillips that the appropriate tax rate to use when calculating this cost of service should reflect the actual tax rates of the corporations that pay taxes, consistent with our decision in *Lakehead Pipe Line Co., L.P.*, 71 FERC ¶61,338, at p. 62,315; 75 FERC ¶61,181, at p. 61,596 (1996).

Rate of Return

14. MidAmerica proposes a 12.66 percent rate of return on the projected 700,000 barrel propane line fill. In view of the experimental nature of the proposal, MidAmerica assumes the risk of acquiring line fill at 60 cents per gallon and, in the event the program terminates after one year, disposing of the line fill at a lower price. We find that 12.66 percent return is not unreasonable, considering the risk that MidAmerica assumes to provide this on-demand service.

MidAmerica's Line Fill Proposal is a New Service

15. MidAmerica will be providing an on-demand service that will allow shippers to withdraw product from the pipeline as soon as they put product into the system. This is a change from MidAmerica's current tariff, which provides for a period of time for product to transit from origin to destination before product can be withdrawn from the system. We consider this a new service. ConocoPhillips argues that MidAmerica should support its proposal

with a full cost of service filing for the entire system, as specified in the regulations at 18 C.F.R. §342.4 (a). We reject that argument because the proposed service is not offered for the entire system, but is limited to propane shipments north of Conway, Kansas, which comprises approximately 10 percent of the propane transported. Only the direct beneficiaries of the new service will pay the properly designed unit surcharge rate. As MidAmerica's proposal is a rate for a new service, application of Section 342.4 is not warranted in these circumstances. We also conclude that MidAmerica need support its proposal with only costs directly related to acquiring and providing the line fill. MidAmerica's proposed new service depends upon MidAmerica providing line fill for its entire Northern Propane System. The new service, however, does not depend upon any change in the basic nature of the underlying transportation provided, which is the movement of product from Conway, Kansas, to points of delivery. We thus consider it unnecessary to look at the costs of the underlying transportation on the Northern Propane System.

16. MidAmerica has complied with Section 342.2(b), by supporting its filing with an affidavit from a non-affiliated shipper requesting the service. Given that ConocoPhillips and NPGA protested, however, we will require MidAmerica to submit the actual cost, revenue and throughput data for the line fill program as required by Section 342.2(a) for a new service, to assure that the actual surcharge paid by shippers is just and reasonable.

Throughput Volumes

17. ConocoPhillips argues that the proposed 22 million barrels throughput for the North of Conway system is too low.⁷ MidAmerica submitted data in its answer showing that the higher numbers suggested by ConocoPhillips are not appropriate because not all barrels at Conway go to the Northern Propane Marketing System. We agree with MidAmerica that it is appropriate to base the unit surcharge, at this time, on a throughput of 22 million barrels.

Conclusion

18. Based upon a review of the filing, the protests and the answer, the Commission will accept FERC No. 16 subject to the conditions discussed above.

Suspension of the Tariff

19. ConocoPhillips requests that the tariff be suspended for the maximum period until all issues are resolved. The Commission will not suspend the tariff for the maximum period as we are satisfied that the proposal is in the public interest for a one year experimental program to resolve the shortages that have impacted the public in this area. Suspending the tariff for the maximum period would prevent the availability of the PASP in the forthcoming winter period. We will however

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suspend for the minimal period as MidAmerica's proposed surcharge has not been shown to be just and reasonable. By requiring a compliance filing to be supported with the actual data, the concerns of the interveners should be addressed.

The Commission orders:

(A) MidAmerica's FERC No. 16 is accepted for filing and suspended to become effective October 1, 2003, subject to refund and adjustments based on the conditions set out below and subject to further order of the Commission.

(B) MidAmerica will submit a compliance filing, as described in this order, to the Commission and all parties to

this proceeding within 30 days of issuance of this order.

¹ MidAmerica proposes to add a new Item No. 167 and new language in Item No. 230 to FERC No. 16, which supercedes FERC No. 15.

² MidAmerica notes that it previously attempted to institute a propane line fill program in Docket No. IS01-482-000, orders issued at 99 FERC ¶61,119 (2002) and 103 FERC ¶61,233 (2003). MidAmerica's program would have required shippers to provide permanent line fill.

³ MidAmerica is currently owned by Enterprise Products Partners, L.P. In the 2001 line fill proceedings, MidAmerica was owned by the Williams Companies.

⁴ The Commission noted that one option to possibly resolve the shortage and allocation problems was for MidAmerica to provide the line fill. 99 FERC ¶61,119, at p. 61,511. MidAmerica's proposed program would have required shippers to provide permanent line fill.

⁵ MidAmerica's existing tariff provides in FERC Tariff No. 2, Item 20, transit time controls on receipts and deliveries. In its compliance filing, MidAmerica needs to explain how its proposed line fill proposal will operate in conjunction with Item 20.

⁶ *MidAmerica Pipeline Co.*, 99 FERC ¶61,119 (2002) and 103 FERC ¶61,233 (2003).

⁷ ConocoPhillips based its throughput question on Form 8 data.