

167 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Andeavor Field Services, LLC

Docket No. OR18-15-001

v.

Mid-America Pipeline Company, LLC and
Enterprise Products Operating LLC

ORDER DENYING REQUEST FOR REHEARING

(Issued April 18, 2019)

1. This order addresses a rehearing request by Andeavor Field Services, LLC (Andeavor) of a June 21, 2018 order¹ which declined to exercise primary jurisdiction over the parties' contractual dispute and, accordingly, dismissed Andeavor's complaint.

2. For the reasons discussed below, we deny the request for rehearing.

I. Procedural History and Background

3. On February 27, 2018, Andeavor filed a complaint against Mid-America Pipeline Company, LLC (Mid-America) and Enterprise Products Operating LLC (collectively, Respondents), pursuant to Rule 206 of the Commission's Rules of Practice and Procedure,² section 343.2 of the Procedural Rules Applicable to Oil Pipeline Proceedings,³ and sections 1(4), 1(6), 2, 3(1), 6(1), 6(3), 6(7), 13(1), 15(1), and 15(13) of

¹ *Andeavor Field Services, LLC v. Mid-America Pipeline Co., LLC and Enterprise Products Operating LLC*, 163 FERC ¶ 61,209 (2018) (June Order).

² 18 C.F.R. § 385.206 (2018).

³ 18 C.F.R. § 343.2 (2018).

the Interstate Commerce Act (ICA).⁴ Andeavor contended that Mid-America misrepresented to the Commission the way it intended to utilize uncommitted capacity in its Transportation Services Agreement (Agreement), approved by the Commission in a 2011 order on petition for declaratory order.⁵ Andeavor stated that Mid-America improperly imposed a ship-or-pay obligation on uncommitted shippers and unjust and unreasonable terms and conditions on the shipment of uncommitted volumes of natural gas liquids on the existing Mid-America pipeline system capacity. Andeavor further contended that Mid-America had unlawfully seized and diverted Andeavor's shipments and thus jeopardized its business relationships.

4. On March 29, 2018, Respondents filed an answer to the complaint. Respondents stated that an application of the Commission's test for assessing whether it has primary jurisdiction over a dispute, as set forth in *Arkla*,⁶ suggested that the Commission should not assert jurisdiction over this case. They asserted that the dispute did not require the Commission's special expertise, did not require a uniform interpretation by the Commission of the contract at issue, and did not implicate the Commission's regulatory responsibilities.

5. On April 12, 2018, Andeavor filed an answer to Respondents' answer.

6. In the June Order, the Commission agreed with Respondents' argument that the Commission should not exercise primary jurisdiction. Reviewing the Agreement in question, the Commission determined that it does not possess special expertise beyond that of the state court to apply principles of contract interpretation to the Agreement, that there was no need for uniform interpretation, and that the circumstances here implicate no areas of special expertise or important regulatory responsibilities of the Commission.⁷ Thus, the Commission dismissed Andeavor's complaint.

⁴ 49 App. U.S.C. §§ 1(4), 1(6), 2, 3(1), 6(1), 6(3), 6(7), 13(1), 15(1) and 15(13) (1988).

⁵ *Mid-America Pipeline Co., LLC*, 136 FERC ¶ 61,087 (2011).

⁶ *See Arkansas Louisiana Gas Co. v. Frank F. Hall, et al.*, 7 FERC ¶ 61,175 (1979) (*Arkla*) (where the Commission devised a three-part test to aid in determining whether to assert primary jurisdiction over a contractual dispute that otherwise would be subject to state court jurisdiction).

⁷ June Order, 163 FERC ¶ 61,209 at P 29.

II. Request for Rehearing

7. Andeavor argues that the Commission erred in declining to exercise primary jurisdiction and in dismissing Andeavor's complaint. Andeavor argues that the Commission failed to address the fact that Respondents' course of conduct violates a Commission order, the Commission's policy, and the ICA.⁸

8. Andeavor argues that even if the primary jurisdiction doctrine, as established in *Arkla*, applied, the Commission misapplied it and provided insufficient reasoning as to why a pipeline imposing ship-or-pay obligations on pre-existing uncommitted volumes did not qualify as a significant policy issue.⁹

9. Similarly, Andeavor states that the Commission erred by declining to interpret contractual documents, i.e., it claims that the Commission was not required to apply the doctrine of primary jurisdiction.¹⁰ Andeavor argues that the Commission was obligated to investigate the claim regardless of whether the alleged acts were pursuant to a contract between the parties, and that the Commission does not have discretion to delay reviewing alleged violations of the ICA while a state court considers other issues.¹¹

10. Andeavor further argues that the Commission erred in finding it did not have jurisdiction under the ICA over Andeavor's claims that Mid-America was using its interstate common carrier pipeline to leverage competitive benefits for its marketing affiliate and sharing shipment information with its marketing affiliate.¹² Andeavor argues that the Commission failed to resolve all factual disputes in the non-moving party's favor when the Commission noted "none of Andeavor's product had been marketed as of the date of the answer of this proceeding" and otherwise improperly rejected the factual positions of Andeavor in the context of a motion to dismiss.¹³

⁸ Request for Rehearing at 6-7.

⁹ *Id.* at 7-8, 13-16.

¹⁰ *Id.* at 16-18.

¹¹ *Id.* at 6-7.

¹² *Id.* at 7-8.

¹³ *Id.*

III. Commission Decision

11. As the Commission explained in the June Order,¹⁴ this matter turns on an interpretation of the Agreement, and an ongoing state court proceeding is currently addressing that issue. The Commission determined that it does not possess special expertise, that there was no need for uniformity of interpretation since this dispute centers on the intent of two parties, and that the issue does not implicate the Commission's regulatory responsibilities under the ICA.¹⁵ In the absence of special Commission expertise, a need for uniform interpretation, or implication of Commission regulatory responsibilities, the Commission properly determined, in the June Order, that it will not exercise primary jurisdiction over this matter. Accordingly, we deny Andeavor's request for rehearing of the June Order.

12. No merit exists to Andeavor's argument that the Commission failed to address Andeavor's allegations that Mid-America's conduct violated Commission precedent, policy and the ICA.¹⁶ As the Commission noted in the June Order, the threshold issue in this case is one of contract interpretation. If Andeavor's assertion is correct and Mid-America violated the Agreement, then questions regarding whether Mid-America's conduct violated Commission precedent, policy or the ICA become moot.

13. Andeavor's argument that the Commission misapplied the primary jurisdiction doctrine also fails.¹⁷ Andeavor is essentially arguing that if Mid-America has correctly interpreted the Agreement, and the parties intended to impose a ship-or-pay obligation on uncommitted shippers, then this would implicate a need for uniform interpretation and be important in relation to the Commission's regulatory responsibilities. But this argument only may become relevant after the contract has been interpreted. This issue will not become ripe until the ongoing state court proceeding is completed, and may never become ripe at all. At this stage, no need exists for the Commission to exercise jurisdiction over the matter.

¹⁴ June Order, 163 FERC ¶ 61,209 at PP 27-32.

¹⁵ *Id.* P 29.

¹⁶ Request for Rehearing at 8-13.

¹⁷ *Id.* at 13-16.

14. Similarly, no merit exists to Andeavor's claim that the Commission diverged from precedent by declining to interpret the contractual documents.¹⁸ Andeavor argues that the Commission does not need to apply the primary jurisdiction doctrine before interpreting contract law.¹⁹ The cases cited by Andeavor merely show that the Commission can exercise jurisdiction over some claims that involve elements of contract interpretation, not that the Commission is required to do so. This is consistent with precedent that "[i]ssues of interpretation of a contract on file with the Commission are within the Commission's concurrent jurisdiction with the courts, and whether the Commission decides to exercise its primary jurisdiction over the case is a matter *within the Commission's discretion*."²⁰ In those cases, no indication suggests that an overlapping state-court proceeding had been instituted. When the same dispute is being adjudicated in two proceedings, however, it is appropriate for the Commission to address the primary jurisdiction doctrine factors.²¹

15. Finally, Andeavor claims that the Commission improperly accepted Mid-America's factual assertions in determining issues related to claims that Mid-America inappropriately diverted Andeavor's product to Mid-America's affiliate.²² We disagree. The Commission did not rely on Mid-America's factual assertions to determine that the threshold contractual issues should be resolved first in the pending state court matter. Andeavor focuses on issues that will become moot if the state court interprets the contract in its favor.

¹⁸ *Id.* at 16-18 (citing *BP Products North America Inc. v. Sunoco Pipeline L.P.*, 159 FERC ¶ 63,020 (2017) (finding pipeline unduly discriminated against shipper in violation of ICA); *CHS v. Enterprise TE Products Pipeline Co.*, 145 FERC ¶ 61,056 (2013) (finding pipeline violated settlement agreement by cancelling tariff for the transportation of jet fuel and distillates); *Texaco Pipeline, Inc.*, 74 FERC ¶ 61,071 (1996) (rejecting proposed tariff as unduly discriminatory under the ICA by designating a portion of pipeline for the exclusive use by certain shippers)).

¹⁹ *Id.*

²⁰ *City of Glendale, California*, 115 FERC ¶ 61,231, at 61,849 (2006) (emphasis in original) (quoting *Doswell Limited Partnership*, 61 FERC ¶ 61,196, at 61,731 (1992), *reh'g denied*, 62 FERC ¶ 61,149, at 62,069 (1993)).

²¹ *See Arkla*, 7 FERC ¶ 61,175.

²² Request for Rehearing at 18-20.

The Commission orders:

Andeavor's request for rehearing is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.