

103 FERC ¶ 61,233
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mid-America Pipeline Company

Docket No. IS01-482-002

ORDER DENYING REHEARING

(Issued May 23, 2003)

1. On May 23, 2002, Mid-America Pipeline Company (MAPL) filed a request for rehearing of the Commission's Order Following Technical Conference and Rejecting Tariff that was issued April 26, 2002 (April 26, 2002 order).¹ The April 26, 2002 order rejected MAPL's proposal to establish a requirement for shipper-provided, permanent linefill applicable to propane movements north of Conway, Kansas. As discussed below, the Commission denies rehearing. The Commission finds that this order serves the public interest by protecting customers from bearing costs that have not been shown to be just and reasonable.

BACKGROUND

2. MAPL's Northern System accepts propane receipts from connecting pipelines and storage facilities for transportation and subsequent delivery to 15 affiliated open-access truck terminals, two affiliated private truck terminals, and six non-affiliated private truck terminals in the upper Midwest. The primary origin for shipments on MAPL's Northern System is the mid-continent propane merchant market hub at Conway, Kansas.

3. MAPL explained that it operates its propane pipeline system as an "on-demand" system, which allows virtually instant access to propane across the Northern System. However, MAPL contended that, for the on-demand system to function, a static quantity of propane -- linefill -- must be maintained within the pipeline at all times. MAPL asserted that it never has owned linefill, but instead has relied on shippers' inventory to meet the need for linefill.

¹Mid-America Pipeline Co., 99 FERC ¶ 61,119 (2002).

4. MAPL contended that some shippers recently had begun drawing their inventories below the level required to support the on-demand system. Although MAPL conceded shippers had the right to do so under its tariff, it argued that these withdrawals jeopardized the system and created a disadvantage for other shippers. MAPL claimed that its proposal would remedy this situation by requiring each shipper to provide its proportionate share of the linefill.

5. The Commission accepted and suspended MAPL's FERC Tariff No. 123 - Northern System to be effective the earlier of May 1, 2002, or a date to be established in a subsequent Commission order, subject to refund and subject to the outcome of a technical conference.² The technical conference was held on November 16, 2001, after which the parties submitted comments and reply comments.

6. In the April 26, 2002 order, the Commission rejected MAPL's FERC Tariff No. 123 - Northern System, finding that MAPL had failed to carry the burden of proof necessary to demonstrate that its proposed linefill program was legally justified and necessary to the operation of the Northern System. The Commission also found that MAPL's Northern System had operated for as long as 40 years without a formalized linefill program of the type sought here and that the limited duration of the problem cited by MAPL was insufficient to justify MAPL's proposal. Additionally, the Commission found that MAPL had failed to provide adequate support for the amount of linefill it sought and that MAPL had not justified the basis on which it proposed to determine each shipper's linefill obligation.

7. The Commission emphasized that MAPL's tariff does not require it to operate the Northern System as an on-demand system. Additionally, the Commission found that MAPL's FERC Tariff No. 118, Rules and Regulations, Item 10 provides MAPL ample authority to manage the scheduling of receipts and deliveries to have adequate linefill to support pipeline operations at all times. The Commission stated that, if MAPL wished to provide the on-demand service, MAPL must provide the facilities and the linefill to do so. Moreover, the Commission pointed out that MAPL could recover the costs of the linefill by making a cost-of-service filing with the Commission or by negotiating some form of cost sharing with the shippers.

8. The Commission further found that paragraph 10 of Item 185 (FERC Tariff No. 123) was inconsistent with MAPL's common carrier obligation to hold itself out to provide

²Mid-America Pipeline Co., 96 FERC ¶ 61,368 (2001).

transportation on reasonable request.³ MAPL argued that limiting departed shippers' ability to return to its system was necessary to prevent shippers from gaming the system, and it offered to implement an alternative that would permit it to control a shipper's ability to obtain its propane after it ceased shipping and for "a reasonable period of time to allow for administrative and operational requirements associated with the withdrawal of such Propane."⁴ However, the Commission also found the alternative proposal to be inconsistent with MAPL's common carrier obligation under the Interstate Commerce Act (ICA) to provide transportation upon reasonable request,⁵ as well as vague and overly broad. Finally, the Commission found that MAPL had failed to persuade it that the proposed linefill program did not constitute a cost-of-service rate increase, which would improperly shift the cost of linefill to the shippers.

REQUEST FOR REHEARING

9. MAPL's request for rehearing challenges essentially all aspects of the April 26, 2002 order. MAPL contends that the Commission's rejection of its linefill proposal was arbitrary and capricious and not supported by the evidence. However, as discussed below, the Commission rejects MAPL's arguments and denies rehearing of the April 26, 2002 order.

DISCUSSION

³That item provides as follows:

If a Shipper elects to discontinue business on the pipeline and removes all Propane from their Linefill Inventory Account, said Shipper, any affiliate of said Shipper or essentially the same management team of said Shipper shall be required to wait a minimum of 180 days before being allowed to ship again under this Program at which time Shipper will be treated as a new Shipper.

⁴Comments Following Technical Conference of Mid-America Pipeline Company at 15 (December 21, 2001).

⁵49 App. U.S.C. § 1(4) (1988).

A. Responsibility for Linefill

10. MAPL challenges the Commission's conclusion that the central issue in this proceeding is whether the pipeline or the shippers have provided linefill in the past and whether they should do so in the future. According to MAPL, shippers always have provided the linefill. Additionally, MAPL maintains that it has not represented that it has operated the system for up to 40 years without a formal linefill requirement.⁶

11. MAPL cites its FERC Tariff No. 118, Rules and Regulations Item 20, which provides in part that the shipper will be subject to linefill requirements of up to 21 days' receipts. MAPL contends that this provision demonstrates that shippers are obligated to provide linefill and that MAPL has the right to implement the linefill requirement it has proposed. MAPL argues that circumstances have changed with respect to its system and that it has identified inequities that can and do arise in the absence of a formal linefill requirement.

12. Although MAPL admits that its tariff does not require it to operate an on-demand pipeline system and that permanent linefill is not necessary for operation of the pipeline system under its tariff, MAPL claims that an on-demand system has many benefits, as evidenced by the fact that only two of its approximately 50 shippers protested its proposal. On the other hand, MAPL argues that whether its tariff requires it to operate an on-demand system is immaterial because oil pipelines are free under the ICA to determine how they wish to operate, and once a pipeline chooses its method of operation, shippers must satisfy the requirements associated with the pipeline's election. Because MAPL has chosen to operate its system as an on-demand system requiring permanent linefill for efficient operation, MAPL reasons that its shippers must, as a condition of shipping on the system, provide the linefill. MAPL submits that the proposed linefill program is merely a term or condition of service designed to protect all shippers on MAPL's North of Conway system, comparable to quality standards established by pipelines.

13. In addition, MAPL argues that the April 26, 2002 order is inconsistent with well-established industry practice, which requires shippers to provide linefill. MAPL contends that, because oil pipeline shippers provide linefill, the Commission's requirement that MAPL supply linefill and include it as a component of MAPL's cost of service effectively puts MAPL at a competitive disadvantage vis a vis other pipelines which operate on-demand systems and already have a shipper-provided linefill requirement in their tariff.

⁶MAPL cites the affidavit executed by its Vice President of Natural Gas Liquids, which MAPL submitted with its September 19, 2001 Response to Protests.

MAPL states that, in its December 21, 2002 Comments Following Technical Conference, it cited at least 12 other tariffs filed by other companies containing linefill requirements. Thus, claims MAPL, the April 26, 2002 order not only alters the manner in which MAPL does business, but also changes the landscape of the entire industry.

14. MAPL further claims that there is no authority holding that it is the oil pipeline's responsibility to provide linefill or that a proposal such as the one it has filed constitutes a cost-of-service rate increase. MAPL emphasizes that linefill is not transported, but rather represents a static volume of product remaining in the pipeline at all times. Thus, continues MAPL, inasmuch as rates are based on transportation, there is no rate issue with the proposed linefill program. MAPL also contends that formalization of the linefill program cannot shift costs to entities who always have borne such costs, whether they realized it or not. MAPL states that it would not collect extra revenue or receive any financial benefits under the proposal. Finally, MAPL asserts that the Commission is incorrect in stating that formalization of the linefill requirement would "allow MAPL the use of the linefill at no cost to it." MAPL maintains that it has not used shipper inventory at any time because the linefill always has belonged to the shippers.

15. The Commission rejects the arguments advanced by MAPL. In its response to the Staff's data requests, MAPL stated as follows: "Due to the extreme amount of time that has passed since the inception of MAPL's North of Conway system (approximately 40 years ago), records concerning initial shipments on the propane system are unavailable."⁷ However, regardless of the precise length of time MAPL has operated the Northern System without a formal linefill program, it is clear that the Northern System has operated over a number of years without the type of permanent, shipper-provided linefill requirement now proposed by MAPL. While that does not preclude MAPL from making such a proposal, the Commission remains unpersuaded that MAPL has met the burden of proof necessary to warrant implementation of a permanent, shipper-provided linefill requirement. Moreover, the Commission will not assume that the absence of protests from most of MAPL's shippers demonstrates that those shippers support the proposal.

16. The Commission finds that MAPL's FERC Tariff No. 118, Rules and Regulations Item 20, does not support MAPL's position. Although Item 20 provides in part that the shipper will be subject to "linefill" requirements of up to 21 days' receipts, MAPL does not dispute the fact that shippers have had the right under that provision to withdraw this "linefill" to meet their needs. That requirement differs considerably from MAPL's current

⁷Responses of Mid-America Pipeline Company to Federal Energy Regulator [sic] Commission Data Request, Response to Question 2, November 13, 2001.

proposal, under which shippers' access to their linefill could be severely curtailed.⁸ Such a restriction on shippers' access to their propane for a vague and ill-defined period, with MAPL retaining considerable discretion in determining when and under what circumstances the propane would be returned to the shippers, constitutes an unjustified diminution of the shippers' ownership rights, giving MAPL both possession and absolute control of the linefill until it determines to release the shipper-provided volumes. MAPL's proposal also would subject shippers to unwarranted market risk because the cost of a shipper's share of the linefill might vary considerably from the price the shipper could obtain upon exiting the system and selling the volumes at a time determined by MAPL in its sole discretion.

17. While MAPL's proposal would require shippers to incur costs they have not borne previously, on the contrary, if MAPL provides the linefill, it has the right to seek recovery of those costs in a cost-of-service filing with the Commission. If MAPL demonstrates through such a filing that it should be allowed to recover the linefill costs through its rates, the shippers in fact will pay for the linefill, but in an equitable and systematic fashion that does not calculate a shipper's linefill obligation under a formula that requires periodic balancing and adjustment. Collecting the costs of the linefill in its rates also would resolve MAPL's concern, as discussed below, about the administrative difficulty of adjusting shipper linefill balances more frequently than on an annual basis. Alternatively, as the Commission previously suggested, if MAPL does not wish to make a cost-of-service filing, MAPL and its shippers may negotiate some type of cost-sharing arrangement for the linefill if the shippers place a high value on the on-demand service.

18. The Commission finds that Item 20, in conjunction with Item 10 of MAPL's Rules and Regulations, provides MAPL with tools to manage its system to ensure that linefill adequate for operation of the system is in the system all times, although this may not permit MAPL to operate the system as an on-demand system. The Commission reiterates that MAPL's tariff does not require it to provide an on-demand service, and if it wishes to continue to do so for competitive reasons, it must bear the costs of the amount of linefill necessary to permit that type of operation.

⁸Under MAPL's linefill proposal, each shipper would be required to supply its proportionate share of linefill at all times, as a condition of transportation. MAPL would retain the linefill on a year-round basis, with a single annual adjustment, and the linefill would be unavailable to the shippers for any other purpose. MAPL's proposal also would require new shippers to supply their proportionate share of linefill under a specified formula, while shippers exiting MAPL's system could remove their propane, but would not be able to return to shipping propane on MAPL's system for a minimum of 180 days.

19. The Commission also observes that the parties agree that linefill is necessary to the operation of the pipeline. In that respect, linefill is comparable to all other facilities and equipment that MAPL must provide in order to render the pipeline operable. The fortuitous circumstances that have allowed MAPL to provide an on-demand service by relying on temporary shipper inventories to meet the linefill requirement do not now, in different circumstances, warrant the imposition of a requirement for permanent, shipper-provided linefill. Contrary to MAPL's assertion, the proposed linefill program differs from other conditions that shippers must meet in order to ship on the pipeline, such as quality standards. Quality standards serve a variety of purposes in addition to facilitating the operation of the pipeline in the manner that the operator chooses. For example, quality standards for a fungible product such as propane ensure that the quality and value of product that reaches the destination points is the same as the quality and value of the product that was delivered to the pipeline. Quality standards also ensure the safety of the product, and they ensure that the physical facilities are not damaged by product that contains harmful substances. A linefill requirement, such as MAPL seeks, is distinguishable. As stated above, it is a requirement that obligates shippers to incur costs they have not incurred previously to ship their propane as they have been doing under MAPL's existing tariff, with no demonstrated additional benefit. MAPL's proposed linefill requirement merely would allow MAPL to operate its pipeline in a manner that MAPL believes will make it competitively advantageous.

20. Finally, MAPL overstates the effects of the April 26, 2002 order on the industry. In that order, the Commission ruled only on the proposal of a single pipeline, finding that MAPL had not justified its proposal. The Commission did not state, nor did it intend, that its ruling on MAPL's proposal would prohibit pipelines from proposing linefill requirements. Whether MAPL or another pipeline might propose a linefill program that would meet the requirements of the ICA and the Commission's policies and regulations remains to be answered. While MAPL claims that other pipelines have similar linefill requirements, it failed to show that those pipelines implemented any such provisions in the manner that MAPL seeks to implement its propane linefill proposal, *i.e.*, by imposing new costs on protesting shippers for the same type and quality of service they previously enjoyed under the existing tariffs of those pipelines. The Commission emphasizes again that MAPL failed to meet its burden of proving that its proposed linefill requirement is legally justified and necessary to the operation of the pipeline.

B. Volume Requirement and Periodic Adjustments

21. MAPL contends that, contrary to the Commission's conclusion, it provided sufficient support for the amount of permanent linefill it seeks to operate the on-demand

system. MAPL cites the affidavit attached to its September 19, 2001 Response, where it states that it requires approximately 700,000 barrels of linefill to operate its Northern System, based on the water volume capacities, the historical operating conditions, and the characteristics of the pipe. MAPL likewise disputes the Commission's determination that the record strongly suggests that providing 700,000 barrels on a permanent basis is unnecessary. According to MAPL, the conditions giving rise to the problems it experienced in 2001 can occur at any time without warning so that the potential always exists that the last shipper(s) attempting to draw from their inventory will not be able to do so because their product will be trapped in the line as linefill. MAPL cites Attachment C to its data responses,⁹ which MAPL maintains shows that 75 percent of all shippers have pulled their inventories below their prorated linefill obligations at various times of the year. Thus, continues MAPL, a seasonal or temporary linefill program will not fully meet the objectives of its proposal. Indeed, adds MAPL, its prior filings demonstrate that some shippers have expressed concern that they will be disadvantaged without this proposed linefill program.

22. MAPL proposed to adjust linefill shares only once per year, contending that it was unnecessary and administratively burdensome to make more frequent adjustments. In the April 26, 2002 order, the Commission found that a single annual adjustment might preclude shippers from accessing their own propane for an unreasonable amount of time. On rehearing, MAPL challenges the Commission's finding, arguing again that more frequent adjustments would be too difficult. MAPL also contends that adjusting the program more frequently would have questionable benefits, pointing to its data responses, in which it stated that only small annual adjustments would be made because the quantity shipped by each of its shippers is relatively static.

23. The Commission rejects these arguments. Even if 700,000 barrels of linefill is necessary for operation of the Northern System, it remains unproven that shippers should be required to provide this amount on a permanent basis until some time, determined at MAPL's discretion, after they exit MAPL's system. While MAPL states that it has on at least one occasion displaced propane with other products, which created a variety of problems, MAPL has not shown that it has attempted to use the existing provisions of its tariff, including its FERC Tariff No. 118, Rules and Regulations, Item 10 and Item 20, to manage the amount of propane necessary to meet system operating requirements. Further, even if it is true that 75 percent of MAPL's shippers pull down their inventories below their

⁹See Attachment C to MAPL's responses to Staff's data requests, filed on November 13, 2001, in the above-captioned docket, specifically Attachments C-2, C-3, C-5 through C-8, C-10, C-13 through C-15, C-17, C-19, C-20, C-22, C-23, C-25, C-28 through C-37, C-39, and C-41 through C-47.

"prorated shares" and do so at varying times, the record here reflects only a limited experience that required MAPL to take the extraordinary measure of displacing other products from its system.

24. Further, the Commission finds no merit in MAPL's arguments that more frequent adjustments are unnecessary because its shippers are a relatively stable group and their volumes relatively static. The claims of a stable shipper group and relatively static volumes seem inconsistent with the claim that more frequent adjustments would be difficult. In its data responses, MAPL stated that "anything short of an annual linefill program does not merely involve one-time adjustments or one-time phone calls. Rather, the complete emptying and returning of each customer's account entails an enormous administrative effort."¹⁰ The basis of this assertion is not clear. It would seem that a balancing plan that would not require actual physical return of the shippers' volumes could be accomplished with the use of MAPL's computer systems, perhaps with reasonable modifications. In addition, MAPL's response to Question 18 suggests that the shippers would have considerable latitude with respect to the manner in which they initially supply and ultimately withdraw their proportionate shares of the linefill. Such flexibility is difficult to reconcile with either of the alternatives MAPL offered for returning the linefill to shippers who exit the system. If shippers supply and withdraw their proposed linefill obligations in a piecemeal fashion, a single annual adjustment could make shippers' shares of the linefill even less related to their obligations under MAPL's proposal. Finally, MAPL has not shown that more frequent adjustments would adversely affect shippers, and indeed the Commission concludes that it would not. Thus, MAPL's desire for convenience in its administration of the proposed linefill requirement cannot outweigh the shippers' right to avoid having MAPL hold their proportionate shares of linefill until it exercises its discretion and releases the volumes to the shippers.

25. Moreover, although MAPL argues that the Commission's concern for new shippers entering the system is overstated, the Commission continues to find MAPL's proposal problematic. MAPL states that its proposal requires that new shippers entering the system must supply an initial amount of linefill equal to the total system linefill requirement (700,000 barrels) divided by the total number of propane shippers in the system at the time of the new shipper's request for transportation (*i.e.*, $700,000/50 = 14,000$ bbls). MAPL states that it proposed to recalculate the new shipper's linefill obligation the following December 31 and adjust it on April 1. Indeed, submits MAPL, had it not imposed a linefill requirement on new shippers, it might have been in violation of the ICA by engaging in discrimination or providing undue preference to certain shippers.

¹⁰Responses of Mid-America Pipeline Company to Federal Energy Regulator [sic] Commission Data Request, Question 18 Response at 13 (November 13, 2001).

26. First, MAPL's proposal to recalculate the new shipper's obligations more than annually appears at odds with MAPL's claim, discussed above, that more frequent adjustments are too burdensome. However, even if MAPL recalculates the linefill obligation for new shippers as it has proposed, the Commission remains convinced that MAPL's proposal would deprive shippers of access to their proportionate shares of the linefill for an unreasonable time and that MAPL has not demonstrated that its proposal ensures that a new shipper's share of linefill relates to its usage.

27. In Kinder Morgan Operating L.P. "A" (Kinder Morgan),¹¹ the Commission rejected a similar linefill proposal. While that proceeding is factually distinguishable in some respects, the rationale of the Commission's orders is applicable to the instant case. In Kinder Morgan, the Commission found *inter alia* (1) that the pipeline had not shown that the linefill program was necessary for providing service under its tariff, (2) that the tariff did not obligate it to provide an on-demand service, (3) that Kinder Morgan had ample authority under its tariff to impose scheduling requirements that would allow it to manage inventory effectively, and (4) that "[i]mposition of unnecessary costs in a tariff provision is as unjust and unreasonable as any cost of service element in a rate proceeding, if not necessary to the provision of service."¹² The rationale of the Kinder Morgan orders supports the Commission's determination to deny rehearing in the instant proceeding.

The Commission orders:

Rehearing of the April 26, 2002 order is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

¹¹99 FERC ¶ 61,133 (2002), reh'g denied, 101 FERC ¶ 61,017 (2002).

¹²Kinder Morgan Operating L.P. "A", 101 FERC ¶ 61,017 at P 5 (2002).

Magalie R. Salas,
Secretary.