Mid-America Pipeline Company, LLC

ORDER ON PETITION FOR DECLARATORY ORDER

136 FERC ¶ 61,087 (August 5, 2011)

In this case, Mid-America Pipeline Company, LLC (Mid-America) filed a petition for a declaratory order seeking a decision by the Commission approving, among other things, a rate and priority of service structure for a proposed expansion of its pipeline system that transported certain natural gas liquids (NGL), including propane, ethane, naphtha and natural gasoline, from the Green River Basin in Wyoming, the Uintah Basin in Utah and the Piceance Basin in Colorado. After an open season for all potential shippers, shippers who executed a ship-or-pay transportation service agreement in which they committed to move over the expansion capacity certain volumes of NGLs through August 31, 2021, and who paid a premium relative to uncommitted shippers, would not have their volumes subject to proration under normal operating conditions. According to Mid-America, committed volumes moving over the expansion capacity would not compete with uncommitted shippers for base system capacity. The Commission granted the petition for a declaratory order.

136 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mid-America Pipeline Company, LLC Docket No. OR11-11-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 5, 2011)

1. On May 26, 2011, Mid-America Pipeline Company, LLC (Mid-America) filed a petition for a declaratory order approving the overall tariff, rate, and priority service structure for a proposed expansion (Expansion) of its existing Rocky Mountain pipeline system (Rocky Mountain System). Mid-America requests Commission action on its petition by August 1, 2011.

2. Mid-America states that the Expansion will provide much-needed additional capacity for the transportation of natural gas liquids (NGL) on the Rocky Mountain System from three producing basins (Green River in Wyoming, Uintah in Utah, and Piceance in Colorado) to the terminus of the Rocky Mountain System at the Hobbs/Gaines, Texas fractionation hub (Hobbs). Further, states Mid-America, the Expansion will make it possible to increase the NGL supply to downstream destinations served by connecting pipelines, such as the pipeline owned by its affiliate Seminole Pipeline Company (Seminole).[1] Mid-America emphasizes that existing shippers' capacity rights will be preserved and that uncommitted shippers will continue to have access to the majority of Rocky Mountain System capacity after the Expansion goes into service.

3. As discussed below, the Commission grants Mid-America's petition for a declaratory order.

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[1] Mid-America explains that it participates with Seminole in joint rates for the transportation of demethanized mix from Mid-America's Rocky Mountain System origins to Mont Belvieu, Texas.

Background

4. Mid-America states that it is a common carrier oil pipeline regulated by the Commission pursuant to the Interstate Commerce Act (ICA)[2] and that it transports NGLs, including propane, butane, isobutane, naphtha, natural gasoline, and ethane. Mid-America explains that it has achieved the current capacity on the Rocky Mountain System by constructing six previous expansions to meet increased demand, beginning in 1973 and extending to the last one in 2007.

5. Mid-America states that gas production and processing in the Green River, Uintah, and Piceance Basins are increasing rapidly.[3] In fact, continues Mid-America, Wyoming (particularly the Green River Basin) is one of the top natural gas producing states, typically accounting for almost one-tenth of U.S. gas production. Further, states Mid-America, production in Utah (particularly the Uintah Basin) typically accounts for two percent of U.S. gas production, while Colorado typically accounts for almost five percent of gas production.[4] Mid-America adds that natural gas production and the need for gas processing in the region are expected to continue to increase, with several gas processing plants in the region either having completed capacity expansions or planning major capacity increases.

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[2] 49 U.S.C. App. § 1 (*et seq.*) (1988).

[3] Mid-America states that, in the period from 1995 to 2004, gas processing capacity grew from 4,730 million cubic feet per day (cfd) to 6,920 million cfd in Wyoming (46.3 percent increase); from 1,490 million cfd to 2,093 million cfd in Colorado (40.5 percent increase); and from 779 million cfd to 970 million cfd in Utah (24.5 percent increase). *See* U.S. Energy Information Administration (EIA), Natural Gas Processing: The Crucial Link Between Natural Gas Production and Its Transportation to Market. Mid-America states that this information is *available at* http://www.eia.doe.gov/pub/oil_gas/natural_gas/feature_articles/2006/ngprocess/ngprocess.pdf). Moreover, states Mid-America, over that same time period, proven natural gas reserves in Wyoming and Colorado grew by more than 18.6 trillion cubic feet (45 percent increase).

[4] Mid-America cites Natural Gas Production, Transmission, and Consumption, by State, 2009. Mid-America points out that this information is *available on-line at* http://www.eia.doe.gov/natural_gas/data_publications/natural_gas_annual/nga.html.

Description of the Expansion

6. Mid-America states that the Expansion will increase pumping power by adding up to 275 miles of new 16-inch pipeline loops and pump modifications.[5] According to Mid-America, when the Expansion is completed, it will increase capacity on the Rocky Mountain System by as much as 85,000 barrels per day (bpd), from 275,000 bpd to 360,000 bpd, depending upon the level of volume commitments received. Further, continues Mid-America, the Expansion is expected to require a capital investment of up to $735 million. To meet its schedule of placing the Expansion in service by the third quarter, Mid-America explains that it must begin various engineering, procurement, and permitting activities and that it must obtain regulatory approvals as soon as possible.

7. Additionally, Mid-America emphasizes that it must obtain sufficient volume commitments to make the Expansion possible, which in turn requires that committed shippers be assured that they will be able to ship their barrels through the Rocky Mountain System. Mid-America points out that it conducted a public open season (from March 29, 2011, to April 29, 2011), offering all interested shippers an equal right to participate.[6] Mid-America explains that it asked shippers to execute Transportation Service Agreements (TSA), committing to ship-or-pay contracts, and it obtained initial shipper volume commitments totaling 38,500 bpd. Mid-America also states that it afforded each committed shipper a one-time right (to be exercised no later than December 31, 2011) to request additional capacity up to an aggregate total of 46,500 bpd, thereby potentially increasing the size of the Expansion to 85,000 bpd.

8. According to Mid-America, those shippers making volume commitments during the open season will pay a premium rate that will exceed the existing applicable general commodity rates. In return, continues Mid-America, those shippers will not be subject to prorationing of their committed volumes under normal operating conditions, but instead will be subject to prorationing only in unusual circumstances, such as shipper breach or *force majeure*. However, Mid-America emphasizes that existing shippers' capacity rights will be preserved.

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[5] Mid-America states that the various components of the Expansion are described in greater detail in the Affidavit of James M. Collingsworth, which Mid-America includes with its petition as Attachment 1.

[6] Mid-America states that the Notice of Open Season incorporated the *pro forma* TSA, which includes as an exhibit the proposed amendments to Mid-America's rules and regulations tariff that would exempt the committed volumes, which pay a premium rate, from prorationing under ordinary operating circumstances. According to Mid-America, other than filling in the blanks, all shippers executed the TSA without modification.

9. Mid-America seeks the following rulings:

   a. That the terms of the TSA executed by the committed shippers (including the agreed-upon tariff, rate, and priority service structure) will be upheld and applied during the agreed term of the TSA as between Mid-America and the shippers that made volume commitments during the open season.

   b. That Mid-America may provide the new capacity created by the Expansion as priority committed space for shippers that have committed to move volumes on ship-or-pay basis at a premium rate pursuant to the terms of the TSA.

Mid-America contends that the Commission has approved similar TSA terms providing priority service for committed shippers.[7]

Description of the TSA[8]

10. Because of the substantial investment required (up to $735 million), Mid-America maintains that it cannot justify constructing the Expansion without the financial support of committed shippers who will share in the financial risk of the project. Mid-America points out again that those shippers have executed TSAs committing them to move a total of 38,500 bpd of new volumes on the expanded segments of the Rocky Mountain System, with the option of increasing their commitments to a total of 85,000 bpd. Mid-America states that, in addition, the TSAs obligate the committed shippers to ship-or-pay for their committed volumes for an initial term ending August 31, 2021, with the option of one additional five-year term.[9] Mid-America emphasizes again that committed shippers paying a premium rate will not be subject to prorationing under normal operating conditions, in contrast to the uncommitted shippers that pay lower rates and make no

[7] Mid-America cites *Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 37-41 (2010) (*Enbridge North Dakota*); *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 24 (2006).

[8] Attachment 2 to Mid-America's petition is the Notice of Binding Open Season. The notice includes the *pro forma* TSA.

[9] Mid-America cites the TSA at Articles 6.1 and 2.2.1. Mid-America states that, under the TSA, "Commitment Volumes" are those volumes the committed shippers have agreed to ship above their historical "Base Volumes."

long-term financial commitment to support the Expansion.[10] Mid-America also maintains that uncommitted shippers will benefit from the Expansion because the committed volumes will move on the Expansion space and will not compete for space with uncommitted shippers on the base capacity.

11. Mid-America explains that the uncommitted shippers will continue to be charged a significantly lower rate than the rate applicable to the committed volumes and will pay on a volumetric or usage basis. According to Mid-America, the TSA establishes rates for committed volumes of 495.60 cents per barrel (cpb) for shipments to Hobbs and 567.00 cpb for shipments to Mont Belvieu destinations (referred to in the tariff as "Group 950").[11] Mid-America emphasizes that those rates exceed the highest general commodity rates to the applicable destinations that uncommitted shippers pay (392.12 cpb to Hobbs and 499.85 cpb to Group 950). Finally, Mid-America explains that the TSAs establish that the higher rates for committed volumes also will be subject to annual escalation adjustments.[12]

Mid-America's Argument

12. Mid-America asserts that an expedited declaratory order is appropriate in this case, as the Commission has recognized in other cases.[13] For example, states Mid-America, in *Express Pipeline System* (*Express*), the Commission issued a declaratory order over the objection of parties that argued that the issues should be deferred until the pipeline was built. The Commission stated as follows:

[10] The provisions of the proposed *pro forma* tariff amendments reflecting those procedures are included as Exhibit B to the TSA.

[11] Mid-America states that movements to Mont Belvieu are made pursuant to the Mid-America/Seminole joint rate set forth in Mid-America's tariff. Mid-America explains that the premium rate for committed movements to Mont Belvieu will be pursuant to a new joint rate to be included in Mid-America's tariff.

[12] Mid-America cites TSA at Articles 4.1.3 through 4.1.6. Mid-America states that the deficiency fee set forth in Article 4.1.2 of the TSA also will be subject to such escalation adjustments. Exhibit C to the TSA provides examples of how the rate and escalation calculations described in Article 4 of the agreement would work in practice.

[13] Mid-America cites, *e.g., Enbridge Pipelines (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 40 (2010); *CCPS Transportation, LLC*, 121 FERC ¶ 61,253 (2007); *Calnev Pipe Line LLC*, 120 FERC ¶ 61,073 (2007); *Enbridge Energy Company., Inc.*, 110 FERC ¶ 61,211 (2005); *Plantation Pipe Line Co.*, 98 FERC ¶ 61,219 (2002).

> [I]t is better to address these issues [term rate structure and validity of proposed rates] in advance of an actual tariff filing than to defer until the rate filing is made, when the decision-making process would be constrained by the deadlines inherent in the statutory filing procedures. The public interest is better served by a review of the issues presented before a filing to put the rates into effect.[14]

13. Mid-America asserts that, to minimize the risk of the in-service date slipping beyond the third quarter of 2014, it needs to move forward with a number of items so that the construction team can be ready once it receives the required regulatory approvals. Mid-America explains that those items include detailed engineering and procurement activities, power infrastructure commitments, and Bureau of Land Management and Bureau of Indian Affairs permitting. Mid-America cautions that, if it is forced to defer planned near-term execution activities for longer periods of time, a number of risks to the project could arise: (1) the potential loss of commercial relationships; (2) the risk of incurring additional internal/external labor costs to re-do or update work left idle too long; and (3) a higher risk that power infrastructure upgrades and long-lead materials could be late. Moreover, Mid-America contends that delays in this project could delay natural gas drilling and increased production initiatives currently underway in the Green River, Uintah, and Piceance Basins.

14. Mid-America argues that the Commission has broad discretion under the ICA to approve its proposal, including the discretion to approve priority contract service under appropriate circumstances.[15] Similarly, continues Mid-America, this Commission has exercised its discretion under the ICA to approve various methods for allocating capacity among different categories of shippers. Mid-America emphasizes that the Commission has stated that "[t]here is no single method of allocating capacity in times of excess demand . . . and pipelines should have some latitude in crafting allocation methods to meet circumstances specific to their operations."[16]

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[14] Mid-America cites *Express Pipeline Partnership*, 76 FERC ¶ 61,245, at 62,253, *reh'g denied*, 77 FERC ¶ 61,188 (1996).

[15] Mid-America cites ICA §§ 1(4), 3(1). Mid-America also cites, *e.g.*, *Sea-Land Services, Inc. v. ICC*, 738 F.2d 1311, 1319 (D.C. Cir. 1984) (explaining that "Congress has delegated broad legislative discretion to the Commission to determine when differential treatment amounts to improper discrimination among shippers and when such treatment is justified by relevant dissimilarities in transportation conditions").

[16] Mid-America cites *Mid-America Pipeline Co., LLC,* 106 FERC ¶ 61,094, at 61,336 (2004) (citing *SFPP, L.P.*, 86 FERC ¶ 61,022, at 61,115 (1999); *Total Petroleum*

(continued)

15. Mid-America maintains that the Commission generally has found similar proposals to be reasonable and non-discriminatory if uncommitted shippers have sufficient capacity available to them and are not denied access to the line. Mid-America contends that, in *Enbridge North Dakota*, the Commission approved a proposal that gave committed shippers priority service on 40 percent of overall pipeline capacity while reserving 60 percent of capacity for uncommitted shippers.[17] Mid-America also cites another Commission decision approving the reservation of approximately a quarter of overall capacity for existing dedicated shippers, with the remaining capacity available to uncommitted shippers.[18] Mid-America emphasizes that the Commission found in that case that proposal was "not discriminatory" because all shippers were "equally eligible to participate," and no shipper would "be denied access even if they do not sign long-term volume dedications."[19]

16. By contrast, continues Mid-America, in instances where the Commission has rejected priority service proposals for oil pipelines, it typically has done so where it found that uncommitted shippers would be denied reasonable access to the line. Mid-America recognizes that, while the Commission "has not established a stated minimum percentage of capacity that must be set aside" for uncommitted shippers and has made clear that "[e]ach proposal presented to the Commission is appraised on its own merits,"[20] the Commission "has never approved anything less than a 10-percent set-aside for uncommitted shippers to preserve the common carrier obligation."[21] Thus Mid-America

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Inc. v. Citgo Products Pipeline, Inc., 76 FERC ¶ 61,164, at 61,947 (1996)). Mid-America also cites, *e.g.*, *Bridger Pipeline, LLC*, 123 FERC ¶ 61,081 (2008); *ConocoPhillips Transportation Alaska, Inc.*, 112 FERC ¶ 61,213 (2005).

[17] Mid-America cites *Enbridge Energy (North Dakota) LLC*, 133 FERC ¶ 61,167, at P 7, 12, 40 (2010). *Id.* P 37, 40.

[18] Mid-America cites *Mid-America Pipeline Company, LLC*, 116 FERC ¶ 61,040, at P 23-24 (2006).

[19] *Id.*

[20] Mid-America cites *CPS Transportation, LLC*, 122 FERC ¶ 61,123, at P 14 (2008).

[21] Mid-America cites, *e.g.*, *CCPS Transportation, LLC*, 121 FERC ¶ 61,235, at P 17 n.33 (2007) (requiring 10 percent of expansion volumes to be reserved for uncommitted shippers in order to ensure that uncommitted shippers' access to overall post-expansion capacity did not drop below 10 percent).

states that, in *Enbridge (U.S.) Inc. and ExxonMobil Pipeline Co.*,[22] the Commission found that reserving 90 percent of total system capacity for priority shippers would unreasonably restrict access by uncommitted shippers. Mid-America also cites *Texaco Pipeline Inc.*,[23] in which the Commission rejected "as preferential a proposed tariff provision that would essentially lock Uncommitted Shippers out of 80 percent of the pipeline's [total] capacity." Likewise, continues Mid-America, in another case, the Commission also rejected as unreasonable a proposal that would provide "uncommitted shippers with access to only 5.75 percent of the pipeline's capacity" and reserve 94.25 percent of total system capacity for committed shippers.[24]

<u>Notice and Interventions</u>

17. Public notice of the petition was issued on June 21, 2011, with interventions and protests due on or before July 8, 2011. Pursuant to Rule 214,[25] all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

<u>Commission Analysis</u>

18. The Commission finds that Mid-America's proposal is consistent with applicable policy and precedent, including orders addressing previous expansions of Mid-America's system. Mid-America has demonstrated that current volumes and projected increases in production from the Green River, Uintah, and Piceance Basins have strained the capacity of its Rocky Mountain System. To alleviate this strain and move high demand NGLs to processing facilities and ultimately to market, Mid-America needs to undertake a capital-intensive expansion project, requiring over $700 million of investment. Without the support of committed shippers to share in the financial risk of the Expansion, there is the possibility that the additional capacity would not be constructed in a timely manner. To provide financial clarity to move the project forward, Mid-America's proposed TSA requires shippers to commit to a ship-or-pay contract at premium rates for an initial term ending August 31, 2021. In exchange for the commitment, the TSA provides that the committed volumes will not be subject to prorationing.

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[22] 124 FERC ¶ 61,199 (2008).

[23] 74 FERC ¶ 61,071, at 61,201 (1996).

[24] *TransCanada Keystone Pipeline, L.P.*, 125 FERC ¶ 61,025, at P 47-48 (2008).

[25] 18 C.F.R. § 385.214 (2011).

19. Mid-America appropriately distinguishes committed and uncommitted shippers and provides for rates consistent with the obligation of each class of shipper, while providing a significant amount of capacity for uncommitted shippers. In addition, the open season gave all potential shippers the opportunity to become committed shippers. Accordingly, the Commission grants Mid-America's unopposed petition for a declaratory order.

The Commission orders:

Mid-America's petition for a declaratory order is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)