

123 FERC ¶ 61,131
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

MoGas Pipeline LLC

Docket No. CP06-407-004

ORDER ON COMPLIANCE FILING

(Issued May 7, 2008)

1. On April 20, 2007, the Commission issued an order authorizing three affiliated pipelines¹ to merge and operate as an interstate natural gas pipeline to be known as MoGas Pipeline LLC (MoGas).² On February 19, 2008, the Commission issued an order on rehearing of the April 20 Order and on MoGas' filings to comply with the directives in the April 20 Order, and required further compliance filings from MoGas.³ On February 29, 2008, in compliance with the Rehearing Order, MoGas filed revised tariff sheets and rates, proposed to be effective April 1, 2008, and a status report regarding contract negotiations with the existing customers of the pre-merger pipelines. This order

¹ The three affiliated pipelines are Missouri Interstate Gas, LLC (Missouri Interstate), Missouri Gas Company, LLC (Missouri Gas), and Missouri Pipeline Company, LLC (Missouri Pipeline). Missouri Interstate is subject to the jurisdiction of the Commission; Missouri Gas and Missouri Pipeline currently operate subject to the jurisdiction of the Missouri Public Service Commission (MoPSC). This order refers to the three pipelines as MoGas or the applicants unless, for clarity, it is necessary to specify an individual pipeline.

² *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007) (April 20 Order). The order also issued MoGas a Part 157 blanket construction certificate under which it has a pending application in Docket No. CP07-450-000 to construct additional compression on its system.

³ *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,136 (2008) (Rehearing Order). We note that several parties filed requests for rehearing of this order which the Commission will address in a subsequent order.

addresses these filings and permits MoGas to go into service subject to the conditions discussed herein.

I. Background

2. The April 20 Order accepted MoGas' proposed initial recourse rates and pro forma tariff, subject to specified revisions, and directed MoGas to refile rate and tariff sheets. In its July 5, 2007 compliance filing, MoGas included its proposed FERC Gas Tariff, First Revised Volume No. 1, as well as a recalculation of its rates and various clarifications of its proposals.⁴

3. The Rehearing Order, among other things, accepted the July 5, 2007 tariff filing, subject to certain tariff revisions, the recalculation of initial rates for MoGas' Zone 1 and the Commission's making a finding that MoGas was negotiating in good faith with the existing customers of the pre-merger pipelines to enter into new service agreements. In this regard, the Rehearing Order directed MoGas to file a status report on customer negotiations 15 days before it filed to place into effect revised tariff sheets and rates. The Commission stated that if a review of that status report indicated that "the Applicants have entered into new agreements with a sufficient number of their former customers and that they have been making efforts to negotiate in good faith with those remaining customers, then the Commission will allow MoGas to go into service."⁵

4. The Commission further determined that if MoGas was unable to complete negotiations with the pre-merger pipelines' existing customers for new contracts under either recourse or negotiated rates, after negotiating in good faith, it could file "safe harbor" agreements for those customers. The safe harbor agreement would be in the form of the standard tariff service agreement with the rate a customer was paying under its non-jurisdictional contract on April 20, 2007, excluding certain discounts. The safe harbor agreements, although not technically traditional negotiated rate agreements, were to be treated as such so that MoGas was required to file either the agreement or a tariff sheet representing the agreement when it filed its revised tariff sheets and rates, *i.e.* at least 30 days prior to its proposed in-service date.⁶

5. On February 29, 2008, MoGas filed its revised tariff and rates and the status report on negotiations with existing customers.

⁴ MoGas refers to this filing as its first compliance filing and the filing addressed herein as the second compliance filing.

⁵ Rehearing Order, 122 FERC ¶ 61,136 at P 152.

⁶ See Rehearing Order, 122 FERC ¶ 61,136 at P 154-155 and Ordering Paragraph (C).

II. Procedural Matters

A. Interventions

6. Notice of MoGas' compliance filing was published in the *Federal Register* (73 Fed. Reg. 13,880) on March 14, 2008.⁷ Municipal Intervenors filed a timely, unopposed motion to intervene and the MoPSC filed a timely notice of intervention.⁸ AmerenUE filed a motion to intervene out-of-time. AmerenUE has demonstrated that it has an interest in this proceeding; therefore, since late intervention will not delay this proceeding, prejudice the rights of any party, or place an additional burden on existing parties, for good cause shown, the Commission will grant AmerenUE's motion.

B. Protests and Answers

7. The MoPSC, AmerenUE, and the Municipal Intervenors filed protests to MoGas' February 29, 2008 filings on the grounds that neither the compliance filing nor the customer negotiations status report comply with the Rehearing Order or applicable Commission regulations. The MoPSC and the Municipal Intervenors request that the Commission reject the filings.

8. All of the protestors contend that an initial rate stated for Zone 1 in footnote 59 in the Rehearing Order is incorrect. MoGas adopted that rate as its Zone 1 rate in its compliance filing. The MoPSC provides an alternative calculation of the rate in the footnote, which AmerenUE adopts by reference. AmerenUE opposes MoGas' request for a waiver of the requirement that the customer negotiations status report be filed 15 days prior to MoGas' filing to place its revised tariff and rates into effect.

9. On March 19, 2008, MoGas filed an opposition to the motions to reject the compliance filing and a motion for leave to file an answer to the protests. On April 2, 2008, the MoPSC filed a motion for leave to answer MoGas' opposition. On April 10, 2008, MoGas filed a motion for leave to answer the MoPSC's April 2, 2008 answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests, the Commission will accept both MoGas' and the MoPSC's answers because they provide information that will assist the Commission in addressing the issues in this

⁷ We note that this notice was published under Docket No. RP08-259-000. The compliance filing was subsequently redocketed under Docket No. CP06-407-004.

⁸ Timely, unopposed motions to intervene and notices of intervention are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214. The Municipal Intervenors include the cities of St. James, St. Robert, Waynesville and Richland, Missouri.

proceeding.⁹ The substance of the motions to reject, the protests, and the answers are discussed in more detail below.

C. Request for Waiver

10. In its February 29, 2008 compliance filing, MoGas requests a waiver of the requirement that it file its status report on negotiations with existing customers 15 days before it files to place its revised tariff and rates into effect (i.e., at least 45 days before MoGas intends to go into service). MoGas states that allowing it to file its status report at the same time it files its compliance filing will allow it to go into service on April 1, 2008, and allowing the earlier filing will not prejudice any party to the proceedings. MoGas notes that it had originally hoped to go into service on February 1, 2008, to meet the needs of a new shipper.

11. AmerenUE and the Municipal Intervenors urge the Commission to deny MoGas' request for a waiver. AmerenUE contends the waiver request is an attempt by MoGas to shorten the time period for negotiations with its customers and force them into safe harbor agreements. The Municipal Intervenors note that they may require extra time because their utility boards or city councils must approve their agreements before they can be executed. They also contend that customers will be harmed because they are currently paying rates set by the MoPSC that are lower than either the proposed recourse rates or the rates for the safe harbor agreements and granting the waiver would reduce the time they pay these lower rates by 15 days.

12. We will dismiss as moot MoGas' request for waiver of the requirement that it file the status report 15 days before it files revised tariff provisions and rates. Since MoGas did not go into service within 30 days of its February 29, 2008 filings and may not do so until it complies with the requirements in this order, no one has been prejudiced by MoGas' filing the report and its compliance filing at the same time.

III. Discussion

13. As an initial matter, the Commission denies the requests to reject outright MoGas' compliance filing or its status report on customer negotiations. As discussed below, MoGas substantially complied with the Rehearing Order although legitimate issues have been raised with respect to initial rates and with the Commission's filing requirements to support rate calculations. However, it is not necessary to reject the whole filing on this account. This is especially the case here where the proceeding has been ongoing for a considerable period of time, has already involved the filing of a significant number of pleadings, and MoGas contends that it is urgent that it go into service as soon as possible to meet market demand. Further, as discussed below, footnote 59 of the Rehearing Order

⁹ See, e.g., *Dominion Cove Point LNG*, 118 FERC ¶ 61,007, at P 10 (2007).

may have confused MoGas with respect to whether it was required to independently calculate an initial rate for Zone 1 and provide additional support for that rate.

A. Status Report on Negotiations with Existing Customers

14. In its February 29, 2008 status report, MoGas states that it has entered into new agreements with the pre-merger pipelines' existing customers for 76 percent of the new pipeline's firm transportation capacity, as well as with two customers for interruptible service. It asserts that it has been negotiating in good faith with the remaining customers. MoGas explains that negotiations with small municipal-owned customers have been complicated by the Commission's determination in the April 20 Order that new agreements for such customers may not include provisions allowing the contract quantity to ratchet-up to meet growth in peak load demand, as exist in their current contracts. These contracts are essentially for a customer's full requirements. Thus, according to MoGas, these customers have required more time to determine what fixed volume to include in the new contracts. MoGas also indicates that these contracts often need approval from municipal governments before they can be executed. MoGas further explains that it has offered the remaining shippers the option of selecting either recourse rates or safe harbor rates, i.e., the rates the shippers were paying under their non-jurisdictional contracts on April 20, 2007.

15. As of its April 10, 2008 answer, MoGas states that it is still negotiating with four customers: the cities of Cuba, St. James, and St. Robert and with AmerenUE. MoGas states that Waynesville has agreed to contract terms and that its city council has approved the contract. MoGas indicates that, as of February 27, 2008, Cuba was still trying to determine its maximum daily quantity (MDQ) for firm service under a standard tariff contract for recourse rates, and that the parties discussed discounts on February 29, 2008. MoGas reports that on February 21, 2008, it sent St. James a draft standard tariff contract for firm service and was informed the next day that the contract would be reviewed shortly. The parties also discussed the alternatives and best options for St. James in that conversation. MoGas states it followed up and left a message for the city on February 27, 2008.

16. MoGas avers that on February 21, 2008, it held contract negotiations by telephone with St. Robert, during which conversation St. Robert advised MoGas that it wanted to discuss the matter with counsel. MoGas also provided a draft standard tariff contract for firm service to St. Robert. On February 26, 2008, St. Robert directed MoGas to pursue further discussions with the city's outside counsel, which MoGas did although the outside counsel had no instructions from the city at that time.

17. MoGas states that it initially met with AmerenUE in May 2007 to negotiate a new contract, as it has advised the Commission in various pleadings. MoGas asserts that since then AmerenUE has informed MoGas in writing that it does not desire to enter into a contract for negotiated rates, but has requested significant discounts on recourse rates.

On February 21, 2008, the parties discussed, by telephone, AmerenUE's options of entering into a standard tariff agreement for firm service under recourse rates or a safe harbor agreement. According to MoGas, AmerenUE also advised it that it was still reviewing the Rehearing Order and had an internal meeting scheduled for February 25, 2008. MoGas left a follow-up message with AmerenUE on February 27, 2008. In its April 10, 2008 answer, MoGas advises that AmerenUE has now selected its maximum daily quantity for a standard tariff contract. MoGas urges that the information provided in its report demonstrates that it has made good faith efforts to negotiate agreements with its customers and should be permitted to go into service.

18. The MoPSC contends that the status report is deficient because MoGas did not file any negotiated rate agreements or safe harbor agreements with it nor did it provide information on the recourse rates customers will pay for their service or support for the contention that MoGas already has contracts covering 76 percent of its capacity subscribed. The MoPSC states it is particularly important that the agreements be filed on a timely basis so that the parties will have sufficient time to review and comment on them. The MoPSC asserts this review is needed because it is not clear what rate MoGas will seek to include in such agreements.

19. MoGas asserts that it was not required to provide additional support for its customer negotiations status report or provide the recourse rates customers with contracts will pay. Further, MoGas avers that it was not required at this time to file negotiated rate agreements (or tariff sheets providing information for such agreements) or safe harbor agreements since, at the time of its compliance filing, no existing customers had entered into these types of agreements.¹⁰ Rather, MoGas explains that there are no agreements to file since those customers that have reached agreements with MoGas have entered into recourse rate contracts which do not need to be filed.¹¹ MoGas stresses that although negotiations with customers are continuing, those customers that have not yet entered into service agreements with MoGas have the option of taking service under the safe harbor agreement and can execute such an agreement at any time.

¹⁰ MoGas notes that as of April 10, 2008, the date it filed its second answer, that situation had not changed.

¹¹ MoGas points to Ordering Paragraph (C) of the rehearing order which states that MoGas should "file any negotiated interim agreements or safe harbor agreements at least 30 days before the Applicants propose to go into service," and paragraph 152 of the rehearing order wherein the Commission stated that "[r]egarding negotiated rate agreements, the Applicants should file those agreements or a tariff sheet, consistent with the Commission's filing requirements for negotiated rates, at least 30 days before it intends to commence service under negotiated rates."

Commission Response

20. We conclude that MoGas' status report on customer negotiations fully complied with the Commission's directives. However, MoGas did not file any safe harbor agreements for those customers that had not yet subscribed for new service when the report was filed. MoGas' contention that it did not have to file unexecuted safe harbor agreements is addressed below.

B. Initial Zone 1 Rates

21. MoGas' proposed Zone 1 comprises the area currently served by Missouri Pipeline's and Missouri Interstate's facilities. MoGas calculated its proposed Zone 1 rate using billing determinants of 86,547 Dth/d. The Rehearing Order required MoGas either to include additional billing determinants of 18,430 Dth/day for capacity currently subscribed on Missouri Interstate's facilities in the Zone 1 rate calculations or to create a separate zone rate for service over Missouri Interstate's facilities calculated on the cost of service and billing determinants associated with that pipeline. MoGas notes, however, that in footnote 59 of the Rehearing Order, the Commission found that, if the 18,430 Dth/day were included in the Zone 1 rate calculation, the resulting daily reservation rate would be \$0.225/Dth.¹² It asserts that it accepts this rate, which equates to a monthly reservation rate of \$6.844 and a commodity rate of \$0.002, resulting in a 100 percent load factor IT rate of \$0.227. MoGas provides a chart showing the Zone 1 and Zone 2 rates as originally proposed and as revised in the compliance filings and filed a Substitute Original Sheet No. 5 of its FERC Revised Tariff, First Revised Volume No. 1 (tariff) containing the revised rates.¹³

22. The MoPSC and the Municipal Intervenors point out that MoGas did not file workpapers or show how it calculated the revised Zone 1 rate, as required by section 154.201(b)(2) and 154.203(a)(2) of the Commission's regulations. The Municipal Intervenors state that without the necessary workpapers, they have been unable to verify whether the rate accepted by MoGas is correct and note that the Commission did not explain in the Rehearing Order the basis for its finding that the Zone 1 rate should be

¹² See Rehearing Order, 122 FERC ¶ 61,136 at n.59.

¹³ In the Appendix, we are designating tariff sheets which modify a sheet already listed as an "original" sheet in Appendix B of the Rehearing Order as a "first revised original sheet." However, as discussed, consistent with the Rehearing Order, MoGas refiled tariff sheets that are identical to the original tariff sheets because the Commission had rejected certain proposed modifications to the tariff and directed MoGas to file tariff sheets included in its pro forma tariff as filed in its first compliance filing on July 5, 2007. We will continue to designate those sheets as "original" sheets. However, in the body of the order, we will refer to the sheets filed by MoGas as it has labeled them.

\$0.225. The protestors maintain that the footnote 59 Zone 1 rate of \$0.225 per Dth is incorrect. The MoPSC asserts that the Commission's calculation in footnote 59 was "performed primarily for illustrative purposes to show that its ruling on rehearing should adequately address arguments regarding improper subsidization."¹⁴ The MoPSC provided a detailed analysis, based on material filed by MoGas in the record of this proceeding, of how it believes the rate should be calculated. AmerenUE agrees with this analysis.

23. In its calculation of the Zone 1 rate, the MoPSC uses a cost of service of \$7,533,084, the amount indicated by MoGas in its July 5, 2007 compliance filing responding to the April 20 Order. The MoPSC notes that other than requiring MoGas to remove certain small amounts associated with Land and Land Rights included in General Plant, the Rehearing Order did not require any adjustments to the Zone 1 cost of service. The MoPSC states that if the billing determinants for service over Missouri Interstate of 18,430 Dth/day are added to the billing determinants of 86,547 Dth/day proposed by MoGas for Zone 1,¹⁵ the correct daily reservation rate should be \$0.193/Dth or a monthly demand rate of \$5.873. The MoPSC maintains that the rate accepted by MoGas based on footnote 59 is 16.5 percent higher than that calculated by the MoPSC. The MoPSC requests the Commission to direct MoGas to file revised rates with workpapers showing the calculations.

24. MoGas contends that it fully complied with the Rehearing Order by accepting the rate that was prescribed by the Commission in footnote 59 and that the MoPSC is only seeking to further delay MoGas' in-service date by faulting MoGas for not calculating a different rate from that established by the Commission. Nevertheless, MoGas agrees with the protestors that the rate stated by the Commission in footnote 59 of the Rehearing Order is incorrect. However, it concludes that the rate should be \$0.236 Dth for the daily Zone 1 reservation charge, which is higher than either the rate stated in the footnote or that calculated by the MoPSC. MoGas bases its calculation on a different level of billing determinants than that adopted by the MoPSC, although it agrees that the cost of service of \$7,533,084 and the demand cost of \$7,469,175 were not materially affected by any of the Rehearing Order's required adjustments.

25. MoGas explains that MoPSC and AmerenUE proposed billing determinants for Zone 1 of 104,977 Dth/day (86,547 Dth/day plus the 18,430 Dth/day) double-counts 5,930 Dth/day of capacity subscribed on Missouri Interstate's facilities, and also arbitrarily adds another 12,500 Dth/day that was not subscribed until after "the relevant

¹⁴ MoPSC's March 12, 2008 Motion to Reject/Protest at 11.

¹⁵ See MoGas' July 5, 2007 Compliance Filing, Schedule A, Exhibit N-1 (revised) at 1.

2005 period to be used for establishing initial recourse rates.”¹⁶ Specifically, MoGas indicates that the Zone 1 billing determinants should be based on the information that was filed in Exhibits G-I and G-II (flow/capacity information) and Exhibit P, Part II (contractual agreements) to its original application in this proceeding.

26. With respect to the information in Exhibits G-I and G-II, MoGas explains that Missouri Pipeline’s design capacity of 75,373 Dth/day was based on 2005 information and conditions which, among other things, reflected an assumed Panhandle Eastern Pipeline Company’s (Panhandle) receipt pressure of 681 psig,¹⁷ the most favorable winter operating conditions, and the applicants’ most recent operating experience. MoGas maintains that the difference between 86,547 Dth/day, the amount of capacity for Missouri Pipeline’s system as stated in the application, as well as in the July 5, 2007 compliance filing, and the design capacity of 75,373 Dth/day is 11,174 Dth/day. This figure, according to MoGas, represents deliveries into Missouri Interstate’s system from MRT. MoGas explains the 11,174 Dth/day consists of 5,930 Dth/day, which the applicants had a contractual obligation to transport from the receipt point with MRT into Missouri Interstate’s facilities in 2005, and 5,244 Dth/day, which represents the capacity on Missouri Interstate which is used to backstop the shortfall in pressure from Panhandle by way of deliveries from MRT.

27. Thus, MoGas concludes, the 86,547 Dth/day already includes billing determinants of 11,174 Dth/day for Missouri Interstate facilities and that it is the appropriate figure upon which to base the Zone 1 rates. MoGas posits that this is so because there are no delivery points on Missouri Interstate’s system and the gas is delivered in Zone 2. MoGas also avers that the MoPSC’s proposed billing determinants of 104,977 Dth/day exceeds its physical capacity; therefore, using those billing determinants would result in its charging rates based on determinants that it is physically unable to deliver which, it points out, is not appropriate.

28. MoGas also argues that it is arbitrary and contrary to Commission policy to add the 18,430 Dth/day to the Zone 1 billing determinants because that number includes

¹⁶ MoGas’ March 29, 2008 Opposition at 6.

¹⁷ MoGas emphasizes that since none of the pre-merger pipelines has its own compression, Missouri Pipeline’s and Missouri Gas’s capacity is dependent on delivered pressure from Panhandle of 681 psig. MoGas also explains that while historically Missouri Pipeline could rely on a Panhandle’s delivery pressure of close to 700 psig, that delivered pressure has been dropping, resulting in reductions in available firm capacity during peak delivery days. When this occurs, MoGas states that Missouri Pipeline must rely on Missouri Interstate’s capacity to access Mississippi River Transmission Corp. (MRT) in order to “backstop” the loss of pressure from Panhandle, which benefits all shippers.

12,500 Dth/day of volumes subscribed on Missouri Interstate after the application was filed and if those later volumes are included, then other factors that may have changed, such as additional costs, other changes to billing determinants, and lower pressure on the system, would have to be considered as well.¹⁸ MoGas asserts that its proposed billing determinants of 86,547 Dth/day are reasonable for establishing initial rates because they are based on the situation as it was when the application was filed, whereas changes to the billing determinants underlying initial rates, as well as other rate elements, should be considered in a rate case. MoGas points out that it has agreed to file such a rate case in 18 months.

29. The MoPSC characterizes MoGas' assertions in its opposition as *post-hoc* justifications for the reasonableness of MoGas' preferred Zone 1 billing determinants of 86,547 Dth and as a collateral attack on the Rehearing Order. The MoPSC contends that the appropriate forum to challenge the Commission's requirement that MoGas add billing determinants for Missouri Interstate of 18,430 Dth/day to the 86,547 Dth/day of billing determinants for Zone 1 is on rehearing. In its April 2, 2008 answer, the MoPSC expands its arguments, and, in particular, challenges MoGas' description of volumes that were under contract on Missouri Interstate in 2005 when the application was filed.

30. In its April 10, 2008 answer, MoGas argues that since establishing initial rates does "not require full-blown rate proceedings,"¹⁹ the Commission should allow MoGas to go into service under the rate set by the Commission in the Rehearing Order and wait until the rate case it will file in 18 months to resolve the issue of the appropriate rate. It further emphasizes that at least one shipper is ready for the pipeline to begin interstate service²⁰ and that it understands that there are other shippers seeking to move gas from Panhandle's system to MRT via the MoGas facilities once the new Rockies Express-West pipeline goes into service. It notes that it cited the potential for this market in its application in support of the need for its proposal to merge the pipelines.

Commission Response

31. The Commission clarifies that the \$0.225 per Dth rate stated in footnote 59 of the Rehearing Order was intended solely to illustrate that including 18,340 Dth/day of billing

¹⁸ MoGas cites *Iroquois Gas Transmission System, L.P.*, 63 FERC ¶ 61,285, at 62,902 (1993) for the proposition that the Commission considers all elements in a rate case rather than making changes in rates on isolated pieces of information.

¹⁹ *Citing Entrega Gas Pipeline, Inc.*, 113 FERC ¶ 61,327, at P 26 (2005).

²⁰ MoGas cites Laclede Energy Resources and Laclede Gas Company's December 11, 2007 Answers in Docket No. CP07-450-000 wherein MoGas is seeking to add compression to its system.

determinants for Missouri Interstate in Zone 1 would not result in the subsidization of Missouri Interstate's customers by Missouri Pipeline's shippers. The Commission was not establishing the \$0.225 rate as an initial recourse rate for service in Zone 1. Furthermore, the rate was incorrectly based on MoGas' originally proposed cost of service of \$8,609,089, as opposed to the cost of service of \$7,533,084 as stated in MoGas' July 5, 2007 compliance filing, which reflected adjustments required in the April 20 Order. In addition, it did not reflect the 1,000 Dth/day of billing determinants imputed for interruptible volumes. Had MoGas calculated the rate and filed it with supporting workpapers as required by the Rehearing Order, it would have realized that the rate in footnote 59 was deficient in these respects.

32. Additionally, in order to develop a revised initial rate for Zone 1, the Rehearing Order required MoGas to add 18,430 Dth/day to the billing determinants stated for Missouri Pipeline.²¹ While neither footnote 59 nor the text accompanying it specified that the Commission viewed Missouri Pipeline's billing determinants as 86,547 Dth/day, this fact cannot be in doubt. The only figure provided by MoGas for Zone 1 billing determinants was 86,547 Dth/day. For example, in MoGas' July 5, 2007 compliance filing, Revised Exhibit N-1, Schedule J-1, page 8 of 8, it states that figure and characterizes it as the maximum daily quantity for Missouri Pipeline. Missouri Interstate is not referred to at all on that page. As the MoPSC points out in its answer, at no time in the course of this proceeding did MoGas provide a narrative or clarification to suggest that the 86,547 Dth/day represented something other than the contracted for volumes on Missouri Pipeline.²² For these reasons, in order to comply with the Rehearing Order, MoGas must base its Zone 1 initial rates on the revised cost of service of \$7,469,175 (which is less than the \$7,533,084 used in the MoPSC's calculations because MoGas allocates \$63,909 to the commodity rate), and billing determinants of 105,977 Dth/day (including 1000 Dth/day of interruptible volumes).²³ The resulting revised daily

²¹ Rehearing Order, 122 FERC ¶ 61,136 at P 72-73. As noted, the rehearing order also provided MoGas with the option of creating a separate rate zone for service over Missouri Interstate's facilities.

²² In its request for rehearing of the February 19, 2008 rehearing order, MoGas also argues that the appropriate billing determinants for Zone 1 should be 86,547 Dth/day because that figure already includes the appropriate billing determinants for Missouri Interstate. We note that the MoPSC and the Municipal Intervenors also have raised the issue of proper billing determinants for Zone 1 in their rehearing requests. The Commission will address these arguments in its subsequent order on rehearing.

²³ MoGas' contention that the 105,977 Dth/day cannot be the proper Zone 1 billing determinants because that figure is higher than the stated design capacity will be considered on rehearing of the February 19, 2008 Order.

reservation rate is \$0.193 per Dth. MoGas is ordered to file a revised tariff sheet reflecting this rate at least 30 days before it goes into service.²⁴

C. Rate Base Issues and Tariff Revisions

33. The Rehearing Order required MoGas to provide: (1) an explanation in addition to that provided in its first compliance filing for why there is no Accumulated Deferred Income Tax (ADIT) associated with the acquisition adjustments in the rate bases for Missouri Gas and Missouri Pipeline, and (2) a further explanation regarding the impact on ADIT, if there is any, from the change in these pipelines' corporate form.

34. MoGas explains that the acquisition adjustment reflected in its first compliance filing consists primarily of debt acquisition costs incurred by Gateway Pipeline, LLC (Gateway) in 2002. Gateway is Missouri Gas' and Missouri Pipeline's parent. According to MoGas, the debt represents amounts used by Gateway to acquire the utility assets and, on December 31, 2002, the debt acquisition cost was transferred to Missouri Gas' and Missouri Pipelines' books. MoGas indicates, however, that no tax cost basis was transferred because the cost was expensed for tax purposes on Gateway's tax return. MoGas provides a worksheet in Appendix C that computes the annual addition to Missouri Gas' and Missouri Pipeline's ADIT, which it contends demonstrates that the annual amortization on the acquisition adjustment is removed from the computation and that the annual computation is based on a composite corporate tax rate. Accordingly, MoGas asserts that there is no change in the computation due to the change in corporate ownership.

35. The Rehearing Order also required MoGas to clarify the meaning of the term "economic value" in section 22.5 of MoGas' tariff relating to competing bids for capacity when a shipper is exercising its right of first refusal upon expiration of its contract. MoGas explains it has clarified "economic value" by revising this section to state that a shipper exercising its right of first refusal will only be required to match a bid for its capacity up to the maximum rate for firm service (Substitute Original Sheet No. 81). MoGas states that this language is consistent with section 284.221(d)(2)(ii) of the Commission's regulations.

36. The Rehearing Order noted that MoGas continues to show a small amount of depreciation cost for Land and Land Rights in the General Plant in the Gas Plant in Service despite its being required by the April 20 Order to remove this amount from the

²⁴ Because of confusion engendered by footnote 59, and to expedite MoGas' going into service, the Commission will entertain a waiver request of the 30-day filing time, provided there is full compliance with this order.

calculation of rates.²⁵ The Rehearing Order directed the applicants to remove the amounts associated with this expense from the General Plant for the purpose of calculating depreciation. MoGas states it will not take issue with the Commission's view that this small amount for Land and Land Rights included in General Plant should be removed. MoGas contends this result in an impact on the total cost of service of \$100 for Zone 1 and \$66 for Zone 2. It states that these small dollar amounts do not affect the revised rates as restated in the compliance filing.

37. In its compliance filing, MoGas added a section to its Table of Contents entitled "Statement of Negotiated Rates" (Substitute Original Sheet No. 1) and added such a statement (Substitute Original Sheet No. 6), which appears to be a sample of the tariff sheet it would file when it enters into a negotiated rate agreement. MoGas states that it added this statement to comply with the Rehearing Order at P 152, where we directed MoGas to file negotiated rate agreements (or tariff sheets reflecting the terms of the agreements) or safe harbor agreements 30 days before commencing service under such agreements.²⁶ All of the protestors note that MoGas' filing of Substitute Original Sheet No. 6 in blank form does not comply with the requirement to file negotiated rate or safe harbor agreements (or tariff sheets describing them).

38. MoGas takes exception to the parties' suggestion that MoGas included in its tariff a new Original Sheet No. 6 instead of filing negotiated rate or safe harbor agreements. It explains that it included this sheet to provide a tariff sheet which could be filled in when a customer enters into a negotiated rate agreement in the future. However, it notes that the customers that have not entered into new agreements have indicated they intend to select service under recourse rates.

39. Finally, in compliance with directives in the Rehearing Order, MoGas has removed certain provisions that it had added to its tariff which were not required by the Commission's April 20 Order and has replaced the language with what was originally proposed. Specifically, the revised sections include: section 3.2 of Rate Schedule FT regarding construction of new facilities (Substitute Original Sheet No. 11); section 23

²⁵ This is reflected in the Form 2s filed in Appendices C and D to MoGas' August 16, 2007 Answer to the MoPSC's Protest to its first Compliance Filing, as well as in the Revised Exhibits N-1 and N-2 to the first Compliance Filing, which shows that General Plant is being depreciated at 2.5 percent.

²⁶ MoGas also filed Substitute Original Sheet No. 7, which states "Sheet Nos. 7 through 9 are reserved for future use." This change was necessitated because Original Sheet No. 6 was initially blank and stated that Sheet Nos. 6 through 9 were reserved for future use. As noted, Substitute Original Sheet No. 6 now contains the Statement of Negotiated Rates.

regarding construction of new facilities (Substitute Original Sheet No. 82); and section 6.4 regarding procedures to request service (Substitute Original Sheet No. 58).

Commission Response

40. The Commission finds that MoGas has provided reasonable explanations regarding ADIT. We also find that MoGas has complied with our direction to remove the amount in Land and Land Rights in General Plant. Additionally, we accept MoGas' revision to section 22.5 of its tariff to clarify the meaning of "economic value," as well as the revisions to section 3.2 of Rate Schedule FT, and sections 6.4 and 23 of the tariff. Further, we accept MoGas' tariff sheet entitled "Statement of Negotiated Rates" and the reference to this sheet in the Table of Contents. However, we note that all of the parties agree that this sheet only provides the format for a tariff sheet that would be filed to reflect information about a negotiated rate contract or a safe harbor agreement when one is entered into and MoGas chooses not to file the contract itself.²⁷

D. Negotiated Rate and Safe Harbor Agreements

41. The Rehearing Order directed MoGas to file any negotiated rate agreements it had entered into with the pre-merger pipelines' existing customers 30 days before it intended to commence service under them. This is the usual requirement for negotiated rate agreements. Additionally, recognizing that all of the existing customers may not have agreed to take service under recourse rates or negotiated rates by the time MoGas planned to commence service, the Commission provided for safe harbor agreements. Under these agreements, a customer would take service under the standard tariff contract, but at the rate it was paying for service under its contract with a pre-merger pipeline on April 20, 2007, when the certificate order was issued. This approach would allow the parties to continue negotiations on new service agreements, while assuring customers that their service would not terminate. If a customer later entered into an agreement for service under either recourse or negotiated rates, that agreement would supercede the safe harbor agreement. The Commission directed MoGas to file such safe harbor agreements when it filed to place its tariff and rates into effect at least 30 days prior to the date MoGas proposed to go into service.²⁸

Commission Clarification

42. As noted, MoGas stated that at the time of its compliance filing no safe harbor agreements had been entered into but that existing customers could execute one at any time. Apparently MoGas assumed that if a customer had not executed a safe harbor

²⁷ The tariff sheets that are accepted are listed in the Appendix to this order.

²⁸ See Rehearing Order, 122 FERC ¶ 61,136 at P 154 and Ordering Paragraph (C).

agreement during the negotiation period, it could go into service without filing a safe harbor agreement for that customer. However, in the Rehearing Order, we also explained:

Since these agreements will not necessarily be executed by the customers whose service they cover, they technically are not negotiated rate agreements. Nevertheless, we will treat them as such; therefore, these agreements, or tariff sheets summarizing them, should be otherwise consistent with all requirements related to negotiated rate contracts.²⁹

Thus, the Commission expected that MoGas would file safe harbor agreements for all existing customers who had not entered into other contracts 30 days before its in-service date.

43. Although, arguably, unexecuted safe harbor agreements may not create a contractual obligation for MoGas to provide service for the customers whose service they cover, the Commission has created a regulatory obligation for MoGas to provide service under them during the interim period running from MoGas' in-service date to at least 60 days after new rates go into effect as a result of the rate case MoGas is required to file 18 months after its goes into service.³⁰ The safe harbor agreements or tariff sheets representing them will provide notice to all parties, including the Commission, of the terms and conditions of such service. Therefore, unless a customer that has no other contract in force explicitly declines to take service under a safe harbor agreement, which would mean that its service would terminate, MoGas must provide service for all of the pre-merger customers when it goes into service.³¹ MoGas is directed to file the necessary safe harbor agreements 30 days before it intends to go into service. However, the Commission finds that MoGas has demonstrated that it has been negotiating in good faith with the pre-merger customers.

²⁹ *Id.* P 155.

³⁰ We note that we also held that all interim agreements entered into by pre-merger customers would stay in force at least until 60 days after new rates went into effect. *Id.* P 109.

³¹ For example, MoGas points out that the municipalities cannot actually execute their contracts until a government entity approves them. MoGas states that AmerenUE has agreed to take service under recourse rates and has now selected an MDQ, but that it may not execute an agreement until MoGas goes into service. We think it likely that AmerenUE expects to obtain service under a safe harbor agreement until it executes a new agreement. Therefore, MoGas should provide service under safe harbor agreements for these customers unless they explicitly refuse such service.

IV. Conclusion

44. For the reasons explained above, MoGas' compliance filing is accepted with regard to revised tariff provisions, revisions to its rate base, and explanations relating to ADIT. MoGas' proposal to accept a rate stated in footnote 59 of the Rehearing Order is rejected, and the protests are granted on this issue. MoGas is directed to revise its tariff to state an initial recourse rate for Zone 1, as calculated and established herein, and to file the revisions at least 30 days before it intends to go into service. Inasmuch as we have explained the basis of the rate calculation in this order, MoGas need not file the workpapers normally required by our regulations. As stated previously, the Commission will entertain a waiver request of the 30-day filing requirement, provided there is full compliance with this order.

The Commission orders:

(A) The motion and requests in the protests to reject the compliance filing and the status report on customer negotiations are denied.

(B) The protests are granted, in part, and denied, in part, as discussed herein.

(C) AmerenUE's motion to intervene out-of-time and its motions for leave to file answers are granted, and MoGas' motions for leave to file answers are granted.

(D) The tariff sheets listed in the Appendix hereto are accepted to be effective when MoGas commences service.

(E) MoGas is directed to file revised initial rates for Zone 1, as more particularly explained herein, and safe harbor agreements for customers that do not have new contracts, at least 30 days before it intends to commence service.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

The following tariff sheets are accepted pursuant to this order:³²

First Revised Original Sheet No. 1
First Revised Original Sheet No. 6
First Revised Original Sheet No. 7
Original Sheet No. 8*
Original Sheet No. 9*
Original Sheet No. 11**
Original Sheet No. 58**
Revised Original Sheet No. 81
Original Sheet No. 82**

*No Original Sheet Nos. 8 and 9 were previously filed; however, they are blank and reserved for future use as stated on First Revised Original Sheet No. 7.

**Original Sheet Nos. 11, 58, and 82 contain the same provisions and language as originally filed in the pro forma tariff in the July 5, 2007 compliance filing.

³² Substitute Original Sheet No. 5, containing the rate schedule for firm service is rejected; the revised sheet should be labeled First Revised Original Sheet No. 5 when it is refiled.