

168 FERC ¶ 61,050
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Mississippi River Transmission, LLC

Docket No. RP18-1197-002

ORDER DENYING REHEARING

(Issued July 24, 2019)

1. On December 27, 2018, Enable Mississippi River Transmission, LLC (MRT) filed revised tariff records¹ purporting to comply with the October 4, 2018 delegated letter order that accepted MRT's uncontested annual fuel tracker cost update filing.² Because the October 2018 Delegated Order did not direct MRT to take any subsequent action, MRT's filing was rejected by the Commission in a January 25, 2019 order.³ In response, MRT filed a request for rehearing on February 22, 2019, claiming, *inter alia*, that the Commission's rejection of MRT's fuel tracker cost update filing was "inequitable."⁴ As discussed below, we deny rehearing.

¹ Enable Mississippi River Transmission, LLC, FERC NGA Gas Tariff, Tariff Database, [Sheet No. 8, Firm Transportation Service Rates, 11.0.0](#); [Sheet No. 9, Small Customer Transportation Service Rates, 11.0.0](#); and [Sheet No. 10, Interruptible Transportation Service Rates, 11.0.0](#).

² 18 C.F.R. § 154.203 (2018); *Enable Mississippi River Transmission, LLC*, Docket No. RP18-1197-000 (Oct. 4, 2018) (delegated order) (October 2018 Delegated Order).

³ *Enable Mississippi River Transmission, LLC*, 166 FERC ¶ 61,048 (2019) (January 2019 Order).

⁴ MRT Request for Rehearing at 2.

I. Background

2. On June 29, 2018, MRT filed revised tariff records under section 4 of the Natural Gas Act (NGA)⁵ proposing a major rate increase in Docket No. RP18-923-000. As part of its rate case, MRT proposed, *inter alia*, changing the boundary between its Field Zone and Market Zone from the Arkansas-Missouri border to the Glendale Compressor Station. In an order issued on July 31, 2018, the Commission accepted and suspended MRT's tariff records and established hearing and settlement judge procedures and a technical conference.⁶ The rate zone boundary was an issue set for hearing.

3. On September 20, 2018, MRT filed revised tariff records in Docket No. RP18-1197-000 pursuant to section 22 of the General Terms and Conditions (GT&C) of its tariff to update its Fuel Use and Lost and Unaccounted-For Gas percentages based on actual data for the twelve-month period ending June 30, 2018. The September 20, 2018 Annual Fuel Adjustment Filing also included *pro forma* tariff records reflecting MRT's calculation of Fuel Use percentages based upon MRT's new zone boundary proposed in Docket No. RP18-923-000.⁷ No party contested the update and the revised tariff records were accepted by delegated authority in the October 2018 Delegated Order.⁸ However, the October 2018 Delegated Order did not discuss the *pro forma* tariff records and the proposal to revise the fuel use percentages based on a new zone boundary, nor did the order direct any subsequent action.

4. On December 27, 2018, MRT filed revised tariff records purporting to comply with the October 2018 Delegated Order. MRT sought to adjust its Fuel Use and Lost and Unaccounted-for gas percentages to reflect changes in zone boundaries, effective January 1, 2019, the date the rates in Docket No. RP18-923-000 go into effect.⁹ MRT claimed that the changes to fuel use percentages are necessary "to reflect the different proposed boundaries (pre-January 1, 2019 and post December 31, 2018) in calculating its

⁵ 15 U.S.C. § 717c (2012).

⁶ *Enable Mississippi River Transmission, LLC*, 164 FERC ¶ 61,075 (2018) (Tariff Filing Order).

⁷ MRT Annual Fuel Adjustment Filing, Docket No. RP18-1197-000 at 2.

⁸ *See* 18 C.F.R. § 375.307 (2018).

⁹ As noted above, the rate zone boundary is an issue set for hearing in MRT's general rate case proceeding in Docket No. RP18-923-000. *See* Tariff Filing Order, 164 FERC ¶ 61,075 at P 23.

Fuel Use percentages.”¹⁰ The December 27, 2018 tariff filing requested a waiver of sections 154.205(d) and (e) of the Commission’s regulations, and “any other waiver” or authorization that may be necessary to implement the proposed tariff changes.¹¹

5. In the January 2019 Order, the Commission rejected MRT’s December 27, 2018 tariff records as deficient and inconsistent with the Commission’s regulations and filing requirements.¹² MRT characterized its tariff filing as a compliance filing under the Commission’s regulations, 18 C.F.R. § 154.203, made in fulfillment of the Commission’s directives in the October 2018 Delegated Order. However, the Commission determined that MRT violated Commission regulations providing that such a filing must include only those changes required to comply with the tariff order.¹³

II. MRT Request for Rehearing

6. MRT claims that the Commission erred in rejecting its December 27, 2018 fuel tracker cost update rate filing based on a purported procedural defect, which MRT describes as its use of an incorrect compliance eTariff code.¹⁴ MRT claims that it did not solely rely on the use of a compliance eTariff code as the legal basis for its fuel tracker cost update filing. Instead, MRT states that it also submitted its fuel tracker update filing pursuant to section 4 of the NGA to reflect MRT’s zone boundary change.¹⁵ Therefore, MRT asserts that even if it used an incorrect eTariff compliance code in its filing, such error is not dispositive because the eTariff filing was also made pursuant to NGA section 4.¹⁶

7. MRT argues that the Commission’s rejection of its rate filing because it was proffered as a compliance item using the eTariff code for compliance filings “places form over substance in violation of the Commission’s obligations under the NGA and prior

¹⁰ MRT Tariff Filing December 27, 2018 at 2.

¹¹ *Id.* (citing 18 C.F.R. §§ 154.205(d), (e) (2018)).

¹² January 2019 Order, 166 FERC ¶ 61,048 at P 12.

¹³ *Id.* P 13 (citing 18 C.F.R. § 154.203(b) (2018)).

¹⁴ MRT Request for Rehearing at 2-3.

¹⁵ *Id.*

¹⁶ *Id.*

precedent.”¹⁷ MRT also argues that the Commission has treated MRT differently from others in substantially similar circumstances, which produces an “inequitable result.”¹⁸ In support, MRT relies, *inter alia*, on *Cameron Interstate Pipeline, LLC*, where a pipeline made its tariff filing with incorrect compliance eTariff codes and the Commission did not reject the filed rates.¹⁹

III. Commission Determinations

8. Commission regulations provide that “filings made to comply with Commission orders must include only those changes required to comply with the order.”²⁰ Moreover, “a compliance filing that includes other changes or that does not comply with the applicable order in every respect may be rejected.”²¹ MRT has violated these requirements by including in its December 27, 2018 tariff filing changes that were not directed by the Commission in the October 2018 Delegated Order. Therefore, the Commission properly rejected the December 27, 2018 MRT filing.

9. On rehearing, MRT contends that the January 2019 Order errs by relying on MRT’s failure to adhere to the Commission’s compliance filing requirements, which it views as “a purported procedural defect” that “elevates form over substance” and thus should be waived.²² We disagree. The Commission’s rejection of MRT’s December 27, 2018 filing is the product of straightforward application of Commission rules regarding the scope and content of a tariff compliance filing to the facts in this proceeding.²³ We reiterate the determination in the January 2019 Order that the referenced tariff records were deficient and inconsistent with the Commission’s regulations and filing

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ *Id.* at 2 (citing *Cameron Interstate Pipeline, LLC*, 134 FERC ¶ 61,270, at PP 1, 6, 18, 20-21 & n.9 (2011) (*Cameron*); *National Grid Generation LLC*, 148 FERC ¶ 61,075, at PP 1, 4, 11 & n.20 (2014) (*National Grid*); *Paiute Pipeline Co.*, 146 FERC ¶ 61,239, at PP 1, 13 & n.3 (2014) (*Paiute*)); *see also id.* at 3-6.

²⁰ 18 C.F.R. § 154.203(b).

²¹ *Id.*

²² MRT Request for Rehearing at 3.

²³ 18 C.F.R. § 154.203(b).

requirements as discussed above. Accordingly, the purported “compliance” filing made by MRT was properly rejected.²⁴

10. MRT argues that because it made reference in its December 27, 2018 filing to section 4 of the NGA, the filing should not have been rejected simply because MRT made the filing as if it were complying with a Commission order.²⁵ We disagree. MRT did not ask for approval of the revised fuel percentages stated on its *pro forma* tariff records in its September 20, 2018 annual fuel filing, nor did the Commission address those percentages in the October 2018 Delegated Order.

11. We also note that GT&C section 22 of MRT’s tariff requires the effective date of each fuel filing to be November 1 of each year and does not provide for an out-of-cycle fuel filing.²⁶ MRT’s December 27, 2018 filing did not describe it as such or ask for waiver of its tariff to implement an out-of-cycle filing. Thus, whether taken as an improperly offered compliance filing, or a filing not permitted by MRT’s tariff, summary rejection was appropriate.

12. MRT also contends that, by rejecting MRT’s filing, the Commission impermissibly treated similarly situated pipelines differently.²⁷ Specifically, MRT argues that the circumstances here are similar to *Cameron*, where the pipeline incorrectly filed its annual fuel retainage percentage adjustment using an eTariff compliance code, rather than in a new root docket.²⁸ Unlike this case, however, in *Cameron* there was no

²⁴ January 2019 Order, 166 FERC ¶ 61,048 at P 12.

²⁵ *See, e.g.*, MRT Request for Rehearing at 4.

²⁶ MRT Tariff, Annual Fuel Adjustment Filing, Sept. 10, 2018, effective 11/1/2018, pursuant to section 22.4 (a) General Terms and Conditions.

²⁷ MRT Request for Rehearing at 4.

²⁸ *Id.* at 3-4 (citing *Cameron*, 134 FERC ¶ 61,270 at PP 1, 6, 18, 20-21 & n.9). MRT also claims that the Commission improperly treated MRT differently than the filing entities in *National Grid*, 148 FERC ¶ 61,075 at PP 4, 11 & n.20, and *Paiute*, 146 FERC ¶ 61,239 at P 13 & n.3. But in *National Grid*, the compliance filing was offered pursuant to the terms of a contract, and the Commission did not find that the utility selected an improper filing code. *See National Grid*, 148 FERC ¶ 61,075 at PP 4, 11. In *Paiute*, the misfiled alternate tariff records were rejected as moot. *See Paiute*, 146 FERC ¶ 61,239 at P 3.

question regarding the timeliness of the filing under the relevant tariff provision.²⁹ Consequently, the Commission's decision in *Cameron* does not require it to accept MRT's filing here, where it was submitted incorrectly as a compliance filing and is not otherwise allowed by MRT's tariff.³⁰ We further note, as the Commission explained in the January 2019 Order, that MRT's filing raises issues with respect to the provision of adequate support for the proposed change, the effect on MRT's customers of the rate change, and the coordination of any changes with the resolution of MRT's ongoing general NGA section 4 rate proceeding, where the underlying rate boundary change will ultimately be decided. These issues are beyond the scope of a fuel adjustment proceeding.³¹ Therefore, the Commission denies MRT's requested rehearing of the January 2019 Order.

The Commission orders:

MRT's request for rehearing of the January 2019 Order is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁹ We note that in *Cameron*, the Commission did not explain why the filing was accepted notwithstanding the pipeline's error. In that case, which took place during the early implementation of the eTariff system, the pipeline submitted multiple incorrect filings through eTariff.

³⁰ MRT Request for Rehearing at 1-2.

³¹ January 2019 Order, 166 FERC ¶ 61,048 at P 14.