

169 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Enable Mississippi River Transmission, LLC

Docket No. RP20-131-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
SUBJECT TO REFUND AND CONDITIONS AND
ESTABLISHING HEARING PROCEDURES

(Issued November 26, 2019)

1. On October 30, 2019, Enable Mississippi River Transmission, LLC (MRT) filed revised tariff records (2019 Rate Case)¹ pursuant to section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations.² MRT proposes rate increases to be effective December 1, 2019. As discussed below, we accept and suspend MRT's tariff records to be effective May 1, 2020, subject to refund, the outcome of hearing procedures established herein, and the outcome of MRT's NGA section 4 rate case proceeding in Docket Nos. RP18-923-000, et al. (2018 Rate Case), including a pending offer of settlement in Docket No. RP18-923-007 (2018 Rate Case Settlement), and the proceeding in Docket No. RP20-212-000 (an offer of settlement that MRT filed on November 6, 2019 to resolve issues in the instant proceeding (2019 Rate Case Settlement)).

Background

2. MRT states that its system is an approximately 760-mile natural gas pipeline system that crosses Texas, Louisiana, Arkansas, Missouri, and Illinois.³ MRT states

¹ See Appendix.

² 18 C.F.R. pt. 154 (2019).

³ *Enable Miss. River Transmission, LLC*, 164 FERC ¶ 61,075, at P 2 (2018) (accepting and suspending tariff records in NGA section 4 rate case) (2018 Suspension Order).

that its system extends from northern Louisiana through Arkansas and into Missouri, terminating in the St. Louis metropolitan area. MRT states that it provides the St. Louis market with access to gas supplies from most major producing basins, including Anadarko, Arkoma, Haynesville, Marcellus/Utica, as well as the Gulf of Mexico.

3. On September 25, 2013, the Commission approved a settlement agreement to resolve all issues in MRT's prior NGA section 4 rate case in Docket No. RP12-955-000.⁴ The terms of the 2013 Settlement required that MRT file a new NGA section 4 rate case on or before July 1, 2018.

4. On June 29, 2018, in Docket No. RP18-923-000, MRT filed revised tariff records pursuant to section 4 of the NGA and the 2013 Settlement. As part of this general NGA section 4 rate case, MRT proposed significant rate increases, modifications to certain rate schedules, and various other changes to the General Terms and Conditions (GT&C) of its tariff. MRT stated that the proposed rate changes were warranted by substantial changes in the markets served by MRT, including the anticipated turn back of capacity by its largest customer, Spire Missouri, which planned to take a significant portion of its service over a new pipeline. On July 31, 2018, the Commission accepted and suspended the tariff records to be effective January 1, 2019, subject to refund, conditions and the outcome of a hearing on rate-related issues and a technical conference on non-rate related issues.⁵ In addition, the Commission made summary determinations addressing MRT's proposed tax allowance and requiring MRT to adjust its billing determinants to reflect the resubscription of service by Spire Missouri.⁶

5. On December 31, 2018, the Commission accepted as just and reasonable certain of MRT's proposals that were examined at the September 19, 2018 technical conference, rejected other proposals as unjust and unreasonable, and set certain proposals for hearing and settlement judge procedures in the ongoing hearing in Docket No. RP18-923-000.⁷

6. MRT states that it notified the presiding administrative law judge and the Chief Judge on September 26, 2019, that it had agreed to "principles of settlement endorsed, or not opposed by (to its knowledge at the time), at least 94 [percent] of its subscribed firm

⁴ *Enable Miss. River Transmission, LLC*, 144 FERC ¶ 61,230 (2013) (2013 Settlement).

⁵ 2018 Suspension Order, 164 FERC ¶ 61,075.

⁶ *Id.* PP 24-40. MRT's compliance filing was addressed in *Enable Miss. River Transmission, LLC*, 165 FERC ¶ 61,215 (2018) (Order on Compliance).

⁷ *Enable Miss. River Transmission, LLC*, 165 FERC ¶ 61,285 (2018).

service.”⁸ MRT states that it reported that it expected to file a settlement no later than November 1, 2019.⁹ MRT states that it subsequently negotiated additional support for the settlement.¹⁰

7. On October 30, 2019, MRT filed the general section 4 rate case in the instant docket (2019 Rate Case). On November 1, 2019, in anticipation of the 2018 Rate Case Settlement, MRT filed negotiated rate agreements to be effective January 1, 2019, with two of its customers, Union Electric Company (Ameren Missouri) in Docket No. RP20-196-000 and CenterPoint Energy Resources Corporation (CenterPoint) in Docket No. RP20-197-000.¹¹ On November 5, 2019, MRT filed the 2018 Rate Case Settlement addressing issues raised in the 2018 Rate Case proceeding. On November 6, 2019, MRT filed an additional negotiated rate agreement with Spire Missouri in Docket No. RP20-201-000¹² and also filed the 2019 Rate Case Settlement to resolve the 2019 Rate Case.

MRT’s Proposal

8. MRT proposes a rate increase based upon costs and throughput levels for the 12-month base period ending June 30, 2019, as adjusted for known and measurable changes effective during the nine-month adjustment period ending March 31, 2020. According to MRT, the proposed increases are primarily due to the reduction in billing determinants associated with Spire Missouri’s turning back capacity and taking service on another pipeline, and secondarily due to an increase in MRT’s overall cost of service, as summarized below.

⁸ MRT Filing Letter at 4.

⁹ *Id.* at 5; *see also Enable Miss. River Transmission, LLC*, Order of Chief Judge Suspending Procedural Schedule, Docket No. RP18-923-004 (Oct. 3, 2019) (suspending procedural schedule until November 22, 2019 to provide time for MRT to file the settlement and for comments).

¹⁰ MRT Filing Letter at 5.

¹¹ *See also* MRT Status Update, Docket No. RP18-923-004 (Nov. 1, 2019).

¹² *Id.* at 1; *see also* MRT Filing Letter at 5 (“The rates established herein will not affect such settling shippers served under agreements setting rates that have become effective during the moratorium period established by the settlement to be filed in this case”).

9. MRT's proposed rates are based on an annual cost of service of \$113,937,057, an increase of approximately \$7 million above the cost of service established in the supplemental rate filing made to comply with the Commission's directive in the 2018 Suspension Order.¹³ According to MRT, this cost of service reflects a net rate base of \$313,703,315 (compared to \$323,086,084 in the supplemental filing) and an overall rate of return of 10.79 percent. Underlying this rate of return, MRT proposes a return on equity (ROE) of 14.70 percent, a return on preferred stock of 10.02 percent, and a cost of debt of 4.25 percent. Additionally, MRT states that the overall rate of return reflects a capital structure of 60.917 percent common equity, 3.095 percent preferred stock, and 35.988 percent debt. MRT proposes several changes to its depreciation and negative salvage rates for multiple plant types.

10. MRT asserts that its filing is consistent with Commission rulings concerning the treatment of income tax allowances and accumulated deferred income tax.¹⁴ MRT proposes to incorporate a discount adjustment in its rates calculated through an iterative process to achieve rates that capture the total cost of service, allowing for the fixed amount of projected revenues to be generated by those discounted shippers.¹⁵

11. MRT states that the rate increase is primarily due to termination of long-term firm transportation contracts. MRT notes that Spire Missouri replaced service on MRT with service on a new 400,000 Dth/day interstate pipeline into the St. Louis market constructed by its affiliate, Spire STL Pipeline LLC (Spire STL).¹⁶ MRT reports that Spire Missouri contracted for 350,000 Dth/day of capacity on Spire STL and terminated 179,550 Dth/day of service on MRT.¹⁷ MRT states that these terminations represented approximately 19 percent of MRT's Market Zone billing determinants and 5 percent of MRT's Field Zone billing determinants, which MRT describes as the largest contract termination in its history.

¹³ MRT Filing Letter at 6. *See also* MRT's August 30, 2018 Compliance Filing in Docket No. RP18-923-000; Order on Compliance, 165 FERC ¶ 61,215.

¹⁴ MRT Filing Letter at 6.

¹⁵ *Id.* at 7 (citing Ex. MRT-0126, Faraca Testimony; Ex. MRT-0096, Seay Testimony).

¹⁶ *Id.* at 2. *See Spire STL Pipeline LLC*, 164 FERC ¶ 61,085 (2018) (order issuing certificates).

¹⁷ 115,000 Dth/day in the Market Zone and an additional 65,000 Dth/day traversing both the Market and Field Zones.

Notice of Filing, Interventions and Responsive Pleadings

12. Public notice of MRT's filing was issued on October 31, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁸ Pursuant to Rule 214,¹⁹ all timely 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 this proceeding or place additional burdens on existing parties.

13. On November 12, 2019, CenterPoint filed a conditional protest and WRB Refining LP (WRB Refining) filed a protest.

14. CenterPoint states that it is a Settling Participant under the 2019 Rate Case Settlement resolving all issues in this proceeding. CenterPoint states that, as the Commission has not approved the settlement, CenterPoint protests solely to protect its rights in this case. CenterPoint describes MRT's 2019 Rate Case filing as a substantial rate increase and states that, in the absence of approval of the 2018 and 2019 Rate Case Settlements, MRT's filing requires full Commission review, including suspension and a hearing.

15. WRB Refining describes itself as a captive customer of MRT and states that it is greatly concerned about the adverse impacts that the large rate increase proposed in the 2019 Rate Case filing will have on its operations and customers.

16. WRB Refining states that MRT's filing raises typical rate case issues, including the proposed overall cost of service and all of its constituent elements (including return on equity, capital structure, depreciation, discount adjustments, tax expense and compliance with the Commission's income tax policy), throughput, billing determinants, cost allocation, and rate design. WRB Refining requests that the Commission suspend MRT's proposed rates and tariff records until May 1, 2020, make the rates subject to refund, and set all aspects of those proposed rates for investigation at a formal evidentiary hearing.

¹⁸ 18 C.F.R. § 154.210 (2019).

¹⁹ 18 C.F.R. § 385.214 (2019).

17. On November 20, 2019, MRT filed a motion requesting that the proceedings in Docket Nos. RP20-131-000 and RP20-212-000 be consolidated and placed on a settlement track. MRT reiterates that the majority of participants involved in the 2018 Rate Case, the 2018 Rate Case Settlement, and the 2019 Rate Case Settlement either support or do not oppose the resolutions reached in the Settlements. MRT contends that by consolidating the aforementioned dockets and establishing settlement procedures, substantial litigation costs can be avoided.

Discussion

18. MRT's filing raises issues that warrant further investigation. We find that there are material issues of fact, including, but not limited to, cost of service, rate of return, throughput, cost allocation, and rate design for service on the pipeline. Accordingly, we will establish a hearing to review MRT's filing and address issues arising from the filing including, but not limited to, those summarized above and set forth in the protests.

19. Furthermore, while we are setting MRT's proposed rates for a trial-type evidentiary hearing, we are mindful of MRT's efforts to resolve issues raised in the 2018 Rate Case and 2019 Rate Case proceedings by way of the offers of settlement that it has successfully negotiated as reflected in the 2018 Rate Case Settlement currently pending before the Presiding Judge in that proceeding, the negotiated rate filings, and the 2019 Rate Case Settlement currently pending before the Commission.²⁰ Therefore, we shall hold the hearing in abeyance pending the outcome of the following proceedings: (i) MRT's 2018 Rate Case filing, and the pending settlement filed therein in Docket No. RP18-923-007 and (ii) MRT's 2019 Rate Case Settlement filing in Docket No. RP20-212-000 addressing issues in the instant 2019 Rate Case proceeding.

20. The Commission will direct any additional action that may be appropriate pursuant to Rules 602 and 603 of the Commission's Rules of Practice and Procedure in a subsequent order, as appropriate.²¹

²⁰ See, e.g., MRT, Filing of Negotiated Rate Agreement with Ameren Missouri, Docket No. RP20-196-000 at 1 (describing comprehensive and interrelated negotiations leading to MRT's proposed 2018 and 2019 Rate Case Settlements and related rate filings).

²¹ 18 C.F.R. §§ 385.602 & 385.603 (2019).

21. MRT must adhere to section 154.303(c)(2) of the Commission's regulations which provides that, at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

Suspension

22. Based upon a review of the filing, we find that the proposed tariff records have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept such tariff records for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

23. The Commission's policy regarding suspension is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.²² It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²³ Such circumstances do not exist here. Therefore, the Commission will suspend for the maximum period of five months the proposed tariff records listed in the appendix, to be effective May 1, 2020, as discussed herein.

The Commission orders:

(A) The tariff records listed in the Appendix are accepted for filing and suspended, to be effective May 1, 2020, subject to refund and the outcome of the hearing procedures established herein, and subject to the outcome of the proceedings in Docket Nos. RP18-923 and RP20-212, as discussed in the body of this order.

(B) Upon its motion to place suspended rates into effect, MRT must remove facilities not placed in service before the effective date.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure

²² See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²³ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of MRT's proposed tariff records, as discussed in the body of this order. However, the hearing shall be held in abeyance pending the outcome of the proceedings in Docket Nos RP1-923 and RP20-212.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Enable Mississippi River Transmission, LLC
FERC NGA Gas Tariff
Tariff Database

*Tariff records accepted for filing and suspended,
effective May 1, 2020, subject to refund, condition and hearing:*

[Sheet No. 8, Firm Transportation Service Rates, 14.0.0](#)

[Sheet No. 9, Small Customer Transportation Service Rates, 14.0.0](#)

[Sheet No. 10, Interruptible Transportation Service Rates, 14.0.0](#)

[Sheet No. 11, Firm and Interruptible Storage Service Rates, 12.0.0](#)

[Sheet No. 12, Pool Transfer Charges, 5.0.0](#)

[Sheet No. 13, Park and Loan Service Rates, 6.0.0](#)

[Sheet No. 20, Currently Effective Rates Footnotes, 8.0.0](#)