

Mid-America Pipeline Co.
Order Accepting Tariff
93 FERC ¶ 61,306 (2000)

Mid-America Pipeline Company (Mid-America) proposed to implement a volume incentive program for ethane-propane mix movements that required ten-year contractual commitments and annual guaranteed volumes of 7,300,000 barrels from qualifying shippers. Amoco Oil Company (Amoco) filed a Motion to Intervene and Protest, claiming that Mid-America's program violated sections 2 and 3(1) of the Interstate Commerce Act (ICA). Amoco relied upon Mobil Alaska Pipeline Co., 85 FERC ¶ 61,450 (1998), where the Commission deemed it appropriate to investigate volume incentive programs to determine if they are unduly discriminatory.

The Commission found that the volume incentive program was "designed to attract a particular type or group of shipper(s)", *i.e.* high volume shippers for an extended period; however, the Commission did not agree with Amoco's assertion that this type of program was "inherently infelicitous". (Mid-America Pipeline Co., 93 FERC ¶ 61,306, 62,048 (2000)). The Commission was able to distinguish this case from Mobil Alaska in that Amoco's allegations of undue discrimination and preferential treatment were not supported, whereas the protesting party in Mobil Alaska was "able to establish a nexus between Mobil Alaska's proposed change to its volume incentive program and a potentially inordinate benefit being conferred upon a particular refiner." (*Id.* at 62,049). The Commission accepted Mid-America's proposed tariff, as long as the rates remained below the index ceiling and were offered to all similarly situated shippers.

COMM-OPINION-ORDER, 93 FERC ¶61,306, Mid-America Pipeline Company, Docket No. IS01-36-000, (Dec. 22, 2000)

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Mid-America Pipeline Company, Docket No. IS01-36-000

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[¶61,306]

Mid-America Pipeline Company, Docket No. IS01-36-000

Order Accepting Tariff

[62,048]

(Issued December 22, 2000)

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On November 22, 2000, Mid-America Pipeline Company (Mid-America) filed FERC Tariff No. 107, proposing to implement a volume incentive program for ethane-propane mix movements in select areas.¹ Mid-America requests a December 1, 2000 effective date. Amoco Oil company (Amoco) filed a protest on December 7, 2000. As is discussed below, the Commission accepts Mid-America's FERC Tariff No. 107, to be effective December 1, 2000.

I. Instant Filing

In the instant filing, Mid-America proposes to implement a new volume incentive program for ethane-propane mix movements originating from the Conway, KS area with final destinations at Mont Belvieu and Stratton Ridge, TX. Under the proposed program, only shippers that have signed a written commitment with Mid-America on or before December 31, 2000 (Open Season) may qualify for the volume incentive rates, and a commitment term shall consist of a period of 10 consecutive contract years, with a "contract year" being defined as "a consecutive 12-month period." The total guaranteed committed volume for each contract year is 7,300,000 barrels, and the proposed tariff contains a penalty structure for shippers who fail to satisfy their volume requirements for a given contract year.

II. Protest and intervention

On December 7, 2000, Amoco filed a Motion to Intervene and Protest. Mid-America responded by filing an answer on December 12, 2000.

Amoco remonstrates that because the proposed volume incentive program requires a ten year contractual commitment and annual guaranteed volumes of 7,300,000 barrels, it is likely that the program is specifically designed to be attractive only to a specific predetermined shipper or group of shippers, which is in violation of

Sections 2 and 3(1) of the Interstate Commerce Act (ICA). Amoco contends that by limiting the availability of the volume incentive program only to shippers that can meet the substantial terms specified in the proposed tariff, Mid-America ensures that no other shippers could qualify for the incentive rates. Consequently, Amoco requests that the Commission investigate whether Mid-America has already identified the shipper that could qualify for the program, and if Mid-America is using the volume incentive program as a mechanism to give this predetermined shipper (or group of shippers acting in concert) preferential treatment. According to Amoco, in *Mobil Alaska Pipeline Co.*, 85 FERC ¶61,450 (1998) the Commission indicated that it is appropriate to investigate volume incentive programs to determine if such programs are unduly discriminatory.

Mid-America denies that FERC Tariff No. 107 results in undue discrimination against any existing or potential shipper. Mid-America states that its proposed program is indistinguishable from many of the volume incentive programs that have been accepted by the Commission. According to Mid-America, any shipper (including Amoco) may avail themselves of this proposed program.

III. Discussion

The Commission accepts Mid-America's proposed FERC Tariff No. 107, to be effective December 1, 2000, and in so doing, the Commission rejects Amoco's arguments as unsubstantiated. The Commission finds that Mid-America's proposed volume incentive rate is below the index ceiling and no other rates have been changed in this filing.

Although the Commission is rejecting Amoco's arguments, the Commission does agree with Amoco in one regard: Mid-America's proposed volume incentive program is designed to attract a particular type or group of shipper(s)—customers who are amenable to committing substantial volumes to Mid-America for a substantial period of time. However, contrary to Amoco's assertions, this does not mean that Mid-America's proposed program is inherently infelicitous. In fact, by their very nature, volume incentive programs—like other discount rate programs—require certain prerequisites to be met before a shipper can be eligible for the discount, and because shippers meeting these volume requirements are not similarly situated with other shippers tendering lower volumes, no discrimination results from differential pricing in these circumstances.² Mid-America

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is merely allowing shippers who commit substantial volumes for a period of time to derive some benefit, namely, a lower transportation rate, from that commitment.

Notwithstanding Amoco's assertions, *Mobil Alaska Pipeline Co.*, 85 FERC ¶61,450 (1998), is of no moment. The protesting party in Mobil Alaska was able to establish a nexus between Mobil Alaska's proposed change to its volume incentive program and a potentially inordinate benefit being conferred upon a particular refiner. Conversely, in the subject proceeding, Amoco has only leveled specious allegations regarding possible undue discrimination and preferential treatment. Furthermore, the factual predicate associated with the Trans Alaska Pipeline System (TAPS) is incongruous to Mid-America's system.

The Commission orders:

- (A) FERC Tariff No. 107 is accepted, to be effective December 1, 2000.
- (B) Amoco's motion to intervene is granted.

– Footnotes –

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¹ FERC Tariff No. 107 would replace Mid-America's current FERC Tariff No. 98.

² *Sea-Land Service, Inc. v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984). See also *Express Pipeline Partnership*, 76 FERC ¶61,245 (1996) (finding that term volume shippers committing to long contract terms of 10-15 years, which resulted in a lower rate, were not

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similarly situated to uncommitted shippers or shippers with shorter contract terms).

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