

REPORT AND ORDER

On January 6, 1989, Missouri Pipeline Company (Applicant) filed an application pursuant to Section 393.170, R.S.Mo. 1986, seeking an order and certificate of convenience and necessity to construct, install, own, operate, control, manage and maintain a pipeline originating in Pike County, Missouri and terminating in St. Charles County, Missouri, for the purpose of intrastate transportation of natural gas.

The Commission gave notice of the application. On March 7, 1989, the Commission granted intervention to Williams Natural Gas Company, Anheuser-Busch, Inc., Chrysler Corporation, McDonnell Douglas Corporation, Monsanto Company, Nooter Corporation, Union Electric Company, Laclede Gas Company (Laclede), Mississippi River Transmission Corporation (MRT), Illini Carrier, L.P., and Sun Operating Limited Partnership (later renamed Oryx Energy Company). The Commission granted late intervention to Emerson Electric Company, General Motors Corporation, Ralston Purina Company and Procter & Gamble Manufacturing Company.

The prehearing conference was held as scheduled and hearings were held on June 6 through June 8, 1989. Briefs were filed according to an amended procedural schedule.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Applicant is a Missouri corporation duly organized and existing under the laws of the state of Missouri. Applicant's principal place of business and office is at 11 South Meramec, Suite 1010, St. Louis, Missouri 63105. Applicant is half owned by Omega Pipeline Company and half by Sun Pipeline Company. Omega Pipeline Company operates an intrastate gas pipeline in Kansas through another subsidiary, Kansas Pipeline Company, L.P.

Applicant's proposal is to offer intrastate natural gas transportation service. The pipeline will interconnect with a pipeline operated by Panhandle Eastern Pipe Line Company in Pike County near Curryville, Missouri, and will traverse Lincoln County, Missouri and interconnect with Laclede Gas Company in St. Charles County, Missouri. The sole customer of the pipeline will be Laclede. Applicant does not propose at this time to offer service to end users residential or commercial. There will be no bypass of the local distribution company.

Applicant's pipeline will be approximately 85 miles in length. Approximately 70 miles of the pipeline is already in existence in the form of a crude oil pipeline owned by Amoco Pipeline Company. This portion of the line will be purchased from Amoco. The rest will be constructed by Applicant. The proposed pipeline will have a peak capacity of 85,000 Mcf per day. The total project cost is estimated at \$15 million and annual operating expenses at \$5.1 million.

If a certificate is granted by the Commission, Applicant intends to begin construction immediately. Applicant will also immediately apply to the Federal Energy Regulatory Commission (FERC) for an exemption from FERC regulation so that it can be regulated by this Commission.

In reviewing its first case for intrastate transportation of natural gas, the Commission notes that the issue of the unbundled natural gas services has been considered by FERC and most state commissions. FERC in its Order 436 injected competition into the interstate natural gas industry, which prompted most state commissions to consider natural gas transportation services. In January of 1989, the National Regulatory Research Institute (NRRI) issued a report on state gas transportation policies. The report found that 45 states have considered such service and accordingly have adopted some type of gas transportation policy. In January 1985, this Commission considered gas transportation service. In Case No. GO-85-264, the Commission explored other state policies and developed its own policies in generic proceedings.

Although the Applicant only proposed to provide transportation service as a public utility, the Commission is of the opinion that this case must be treated as any other certificate case and must meet the usual statutory requirements for the authority to be granted: (1) the Applicant must be qualified to provide the provide the proposed service; (2) there must be a need for the service; and (3) the service must promote the public interest.

The Commission finds the evidence presented indicates that Applicant is qualified to provide the proposed service. No questions as to whether the Applicant has the resources to construct and operate the pipeline were raised by other parties. The Staff has raised some safety concerns but the evidence indicated that Applicant has the technical ability to comply with the Commission rules regarding safety. Applicant's witnesses testified as to Applicant's willingness to do so. The Commission also notes that one of Applicant's co-owners, Omega Pipeline Company, presently operates an intrastate gas pipeline in Kansas. Thus, the Commission finds Applicant is qualified to provide the proposed service.

Industrial Intervenors supported the application and indicated they would be potential customers of the proposed service. MRT is currently their sole supplier of natural gas in the proposed service area. The evidence shows that even when MRT becomes an open access pipeline, large industrial customers such as the Industrial Intervenors see a need for two pipeline suppliers. The Commission finds that two suppliers would be a benefit to end users and further finds that the evidence of the Industrial Intervenors shows that there is a public need for the proposed pipeline.

Applicant's witness, Tom Taylor, the president of Missouri Pipeline Company, testified as to how the proposed pipeline promoted the public interest. During his cross-examination, Mr. Taylor testified to basically five potential benefits: (1) accessibility to producers not available to MRT (diversity of gas); (2) provision of open access transportation that is currently unavailable; (3) availability of spot gas; (4) price competition; and (5) security of gas supply which would be provided by

having an alternative pipeline. Mr. Taylor also testified that these benefits would not be at the expense of the public because Applicant and its shareholders would assume all of the costs and risks of the project.

Staff, Public Counsel and the Industrials supported a grant of certificate. Their witnesses testified that the pipeline would be beneficial and noted that its benefits could be enjoyed without financial risk to the public.

Laclede neither supports nor opposes the application. Laclede expressed concern about the possible adverse rate impact upon its customers if MRT's loss of load to Applicant caused MRT to raise its rates. Laclede stated in its brief that it does not know whether it would be advantageous for it to utilize the proposed pipeline, but that if the Commission grants the certificate, it is willing to provide interconnection(s) with the Applicant.

MRT, the sole supplier of natural gas in the St. Louis area, opposed the application. It argued that the benefits described by Applicant and the other parties were illusory and an attempt to obtain them would adversely affect the public. MRT makes basically three arguments in support of its position: (1) if MRT loses load to Applicant, it will raise its rates; (2) if Applicant fails, MRT may not be willing or able to provide backup service; and (3) that the present service is adequate.

MRT's first argument is that if it loses load to Applicant, it will have to raise rates to make up for the lost contribution to its fixed costs. However, the FERC may not allow MRT to raise rates due to loss of load from competition, given FERC's intent on making the natural gas industry competitive. Moreover, MRT's present rates set by FERC are set at a maximum, giving MRT the flexibility to lower its rates to compete for the load. The Commission is of the opinion that it is more likely MRT, upon being granted an open access certificate, will compete for the load or find other markets rather than, in the face of competition, raise its rates, opening itself up for a greater loss of load.

MRT's second argument is that volumes of gas could be lost to the public if it is diverted from MRT to Applicant and Applicant becomes unable to deliver. At that point, MRT argued, it may be unwilling or unable to provide backup service. There is no evidence to suggest that Applicant will be completely unable to transport its gas. Nor is there any evidence that Laclede or Union Electric would be imprudent as to deciding when to utilize Applicant's service. Even if such a scenario were to occur, under its FERC certificate MRT is obligated to provide service and may not refuse to do so without abandonment proceedings. The Commission does not believe that the predictions of MRT are plausible or will come to pass.

Lastly, MRT makes several arguments regarding pricing, accessing and operating efficiencies that are intended to show that the existing service is adequate and that Applicant is unlikely to improve upon it. The Commission is not required to find that there is a deficiency in the present service to grant authority to a proposed entrant. Churchill Truck Lines, 27 Mo. P.S.C. (N.S.) 430 (1985). Thus, the Commission finds MRT's arguments as to the adequacy of its service unpersuasive as to Applicant's ability to promote the public interest.

Regarding Applicant's ability to improve upon MRT's service, because it is a start-up service there is no empirical evidence to demonstrate increased efficiencies in operations and price cannot be obtained by Applicant. There are many indications they can be.

For example, MRT argued that operating efficiencies proposed by Applicant will not occur because Applicant does not have the resources MRT does. MRT has multiple interconnections, storage fields, and multiple compression stations, while Applicant only proposes one interconnection and has no storage fields or compression stations. However, lacking such items, Applicant also lacks their fixed costs and thus will be able to deliver gas for a price that reflects the absence of such costs.

Moreover, the Commission has determined that such increased efficiencies can occur in addition with the other benefits discussed, at minimum risk to the public. Noting the Applicant's willingness and ability to bear all risks and costs, the Commission is of the opinion that even in the worst case scenario, the public will not be put at significant risk and, therefore, it is in the public interest to allow Applicant the opportunity to provide a cheaper alternative source of natural gas. Therefore, for all the foregoing reasons, the Commission has determined the Applicant will be granted a certificate of public convenience and necessity.

In order to evaluate the reasonableness of tariffs proposed by the Applicant, the Commission must review the evidence supporting them. However, because this is a start-up service, there is no historical data by which the Commission can judge the reasonableness of Applicant's proposed tariffs. Moreover, Missouri has no other intrastate natural gas transportation companies by which the Commission can make a comparison. Market performance is the best indicator for rates and other terms of service. Lacking this, the Commission finds that the recommendations of its Staff are reasonable and accepts such recommendations with the following modifications.

Staff proposed a two year timetable for Applicant to file a permanent rate case. The Commission has determined that Applicant should file a rate case within two years from the date the pipeline goes in service. This will allow sufficient time for market penetration data to be collected. Staff also requested that the order granting the certificate clearly indicate the risk of the financial failure of this venture be borne totally by Missouri Pipeline Company and not by its customers. Applicant has based its application on the assumption of this risk. Moreover, the Commission can address any attempts by Applicant to shift the risk in the ratemaking process. Therefore, the Commission finds it unnecessary to grant the certificate based on such a condition.

The Commission finds that the remaining recommendations of Staff are reasonable and should be adopted. Those recommendations are as follows:

1. that the certificate only permit Applicant to install facilities necessary to interconnect with pipeline companies and local distribution companies and not directly with end users;
2. that Applicant will file an adequate metes and bounds description of the location of its facilities;
3. that Applicant revise the wording of its tariffs filed with its application in accordance with the direct testimony filed by Mr. Jones and the revised tariffs he has filed as an exhibit in this proceeding;
4. the successful completion of the required hydrostatic test(s) and provisions for the Commission's pipeline safety Staff to witness these test(s);
5. the completion of the necessary construction in a proper manner by qualified personnel and in conformance with sound engineering principles and applicable regulations;
6. the review, inspection and approval by Staff of the conversion and construction process of the pipeline;
7. the physical separation of the intrastate pipeline from the portion of the Applicant's segment crossing the state boundary into Illinois;
8. the performance of an "IR drop free" cathodic protection survey, the correction of any deficiencies found, and the submittal of results of the survey to the Staff for approval;
9. that Applicant agree to construct and operate the pipeline in conformance with the applicable rules and regulations of this Commission and the federal government;
10. that Applicant successfully obtain exemption from federal regulation to become regulated by this Commission; and
11. that Applicant submit for Staff review and approval the plans required by federal and Commission regulations.

At the hearing, there were objections to the late filing of Exhibit 32. Those objections are overruled. Exhibit 32 is received into the record.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

The Commission has jurisdiction over this application to Sections 393.170.3, and 393.150, R,S,Mo. 1986. Section 393.170 states the Commission has the authority to grant a certificate of public convenience and necessity when it has determined such a grant will be in the public interest. Section 393.150 empowers the Commission to set just and reasonable rates.

The Applicant is qualified and financially able to operate the pipeline as proposed. The Commission has also determined there is a need for the proposed service and that it is in the public interest to grant the authority requested by the Applicant.

Because this type of service is new and the Applicant has no historical costs, the Commission has adopted the recommendations of its Staff with the modifications discussed in the findings section of this order.

It is, therefore,

ORDERED: 1. That Missouri Pipeline Company is hereby granted a certificate of public convenience and necessity to construct, install, own, operate, control, manage and maintain a pipeline originating in Pike County, Missouri and terminating in St. Charles County, Missouri, for the purpose of intrastate transportation of natural gas.

ORDERED: 2. That the conditions set out in the findings section of this Report And Order are the conditions upon which Missouri Pipeline Company is granted the certificate of public convenience and necessity described in Ordered: 1 hereof.

ORDERED: 3. That Missouri Pipeline Company shall file tariffs reflecting the rates and charges as authorized in this order.

ORDERED: 4. That Missouri Pipeline Company is hereby ordered to file a permanent rate case on or before two (2) years after the pipeline goes in service.

ORDERED: 5. That late-filed Exhibit 32 is hereby received into the record.

ORDERED: 6. That this Report And Order shall become effective on the 31st day of August, 1989.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller and Fischer, CC., Concur and certify compliance with the provisions of Section 536.080, R.S.Mo. 1986. Rauch, C., Absent.

Dated at Jefferson City, Missouri, on this 1st day of August, 1989.