

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

American Midstream, LLC (Midla))	Docket No. CP14-125-000
American Midstream, LLC (Midla))	Docket No. CP14-126-000
		(unconsolidated)

**MOTION TO INTERVENE AND PROTEST OF
THE AMERICAN PUBLIC GAS ASSOCIATION**

Pursuant to Rules 211 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ the American Public Gas Association (“APGA”) files this motion to intervene and protest in the above captioned proceeding. In support, APGA states the following:

I. COMMUNICATIONS

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¹ 18 C.F. R. §§ 385.211 and .214 (2012).

II. INTERVENTION

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services, usually as captive customers of a single interstate pipeline, at rates and under terms and conditions that are regulated by the Commission.

On March 28, 2014, American Midstream, LLC (Midla), hereafter “Midla,” filed an application in Docket No. CP14-125 to abandon some 355 miles of 16-22 inch diameter pipelines and associated laterals from the Desiard Compressor Station in Ouachita Parish, Louisiana to a point near Scottlandville in East Baton Rouge, Louisiana and related compressor stations, meter stations, and valve sites. Also on March 28, Midla sought authorization in Docket No. CP14-126 to abandon two portions of its pipeline to its affiliate, Mid-Louisiana Gas Transmission, LLC. The effect of these applications, if granted, would be, among other things, to leave numerous municipal local distribution systems without interstate natural gas service, while relieving Midla of its certificated service obligations under the Natural Gas Act.

APGA has a direct and substantial interest in these proceedings because some of the municipal systems in Louisiana that would be left without natural gas service are members of APGA² and because the vast majority of APGA’s members are captive to a single pipeline. Hence, the precedential effect of the Midla applications, if granted, could be far-reaching and

² They include Clayton, East Feliciana Parish Gas Utility District #1, East Feliciana Parish Gas Utility District #2, St. Francisville, Sicily Island Gas Company, Slaughter, and West Feliciana Parish Gas Utility District #1.

harmful to gas-reliant communities throughout the nation. APGA has a direct and substantial interest in this proceeding that cannot be represented by any other party.

III. PROTEST

Midla states that the “driving force” behind its abandonment application is its concern about the “integrity” of its 1920’s vintage mainline and associated facilities (“Midla Mainlines”). Midla March 28 Transmittal Letter at 1. Midla states that while on the one hand its “diligence operating and maintaining the Midla Mainlines has kept the pipelines running decades after their predicted useful life,” on the other hand “age and long-obsolete construction methods have left the Midla Mainlines suffering from chronic leakage throughout their length.” *Id.*

APGA has several observations. First, Midla is one of many pipelines in the United States whose origins date back to the early twentieth century. For example, Southern Star Central Gas Pipeline claims to be “among the oldest natural gas pipelines operating in the United States, with some plant in continuous service going back to 1904,”³ which “coalesced into a regional entity taking the name Cities Service Gas Company in 1926” and “[o]ver the next several decades [...] greatly expanded its capacity and services....”⁴ It now spans over 6,000 miles across Kansas, Oklahoma, Missouri, Wyoming, Colorado, Texas and Nebraska.⁵ In other words, the vintage of a pipeline is not determinative of whether abandonment is appropriate; there are many well-maintained pipelines that pre-date Midla and that are not threatening their customers with the loss of pipeline service via abandonment.

APGA’s second observation is that Midla’s rates are regulated rates under the just and reasonable standard of the Natural Gas Act, which means they are set to recover all prudently

³ *Southern Star Central Gas Pipeline, Inc.*, Docket No. RP13-941, Prepared Direct Testimony of Patrick R. Crowley on Behalf of Southern Star Central Gas Pipeline, Inc. (“Crowley Testimony”) at 56 (May 31, 2013).

⁴ Crowley Testimony at 31.

⁵ *Id.*

incurred costs, including operation and maintenance, as well as a return on capital (rate of return) and return of capital (depreciation).⁶ In other words, the customers of Midla, just like the customers of Southern Star Central and all other FERC-regulated interstate pipelines, are paying rates to their interstate pipeline providers designed to ensure that they maintain their pipelines in good condition and working order. What Midla seems to be saying, while trying not to say it, is that it has failed in its most fundamental obligation to its customers to maintain its pipeline in good condition and working order.⁷ Surely, that is not a basis for granting an abandonment application.

If Midla's contention is that its current rates do not permit it to recover the full cost of adequately maintaining the Midla Mainlines, the appropriate place for the Commission to review such a claim would be a Section 4 rate proceeding and not a Section 7 abandonment proceeding.⁸ But in the absence of a filing to examine Midla's rates under Section 4 of the Natural Gas Act, the assumption is that the FERC-filed Midla rates adequately compensate the pipeline for the costs of the maintenance required to provide reliable service. Thus, for example, in the context of cases involving reservation credits for failure to provide uninterrupted service, the Commission has made crystal clear "that interruptions from planned or scheduled maintenance is

⁶ *E.g. Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

⁷ The Commission certainly must be aware of recent articles pointing out that as to master limited partnerships ("MLPs"), there is a strong financial incentive "to push money out instead of reinvesting in the business." "Pipeline Stocks Charging 50% Fees Borrow To Pay Investors," Isaac Arnsdorf and Alex Nussbaum at 1 (April 16, 2014), available at: <http://www.bloomberg.com/news/2014-04-15/pipeline-stocks-charging-50-fees-borrow-to-pay-investors.html>. The same article noted that "investors complain the money is diverted from maintenance on the pipelines and storage tanks the partnerships own." *Id.* Midla is not an MLP, but rather a limited liability company ("LLC"), which has many similar tax and other characteristics as MLPs.

⁸ *Northern Natural Gas Co., et. al*, 135 FERC ¶ 61,048 at P 43 (2011) (footnotes omitted), *order on reh'g* 137 FERC ¶ 61,091 (2011) ("Contrary to Applicants' assertion that the section 4 process is inadequate to address the rate issues presented by the circumstances, section 4 rate cases are exactly where costs, billing determinants, cost allocations among services and rate designs are best examined. If, after an appropriate rate for service on [the subject facilities] is established, giving full consideration to the costs of operating the facilities and the level of throughput, the [pipeline's] shippers do not value the service sufficiently to take it at that rate, Applicants could present that fact in support of a renewed application for abandonment.")

a non-*force majeure* event that requires the pipeline to provide full credits.”⁹ The Commission went on to observe that “[w]hile we agree that certain planned maintenance ... may be necessary and unavoidable to preserve the safety and integrity of the pipeline facilities, we do not agree that the pipeline has no ‘control’ over how and when it performs such maintenance.”¹⁰ On review, the Court of Appeals agreed fully with the Commission, observing that “[t]here is nothing unreasonable about FERC’s policy that pipelines’ rates should incorporate costs associated with a pipeline ‘operating its system so that it can meet its contractual obligations.’”¹¹ In other words, pipelines are expected to perform maintenance to ensure the integrity of the pipeline and prevent non-*force majeure* interruptions; the notion that Midla’s failure to maintain its pipeline constitutes grounds for abandonment defies both accepted ratemaking principles and established Commission policy on the necessity of performing maintenance to provide uninterrupted service to customers.

APGA’s third observation relates to the changes in Midla ownership. In 2009 Midla was purchased by American Midstream Partners, LP (“AMP”);¹² then in April 2013, ArcLight Capital Partners, LLC (“ArcLight”) acquired a 90% interest in AMP in exchange for cash and High Point Infrastructure Partners, LLC.¹³ According to a complaint recently filed by Atmos Energy Corporation (“Atmos”), a Midla customer, it was shortly after ArcLight’s acquisition of 90% of Midla that Midla personnel informed Atmos of its intention to abandon the vast majority

⁹ *North Baja Pipeline, LLC*, 111 FERC ¶ 61,102 at P 17 (2005).

¹⁰ *Id.* at P 18.

¹¹ *North Baja Pipeline, LLC v. Federal Energy Regulatory Comm’n*, 483 F.3d 819, 823 (D.C. Cir. 2007).

¹² Press Release, Enbridge Energy Partners, L.P., “Enbridge Energy Partners, L.P. Closes Sale of Natural Gas Companies,” Nov. 4, 2009, available at: <http://www.enbridgepartners.com/Media-Center/News/2009/1351206/>.

¹³ Press Release, ArcLight Capital Partners, LLC, “ArcLight Capital Partners Acquires Interest in American Midstream From AIM Midstream Holdings,” Apr. 16, 2013, available at: <http://www.arclightcapital.com/News/Press-Releases-Articles/ARCLIGHT-CAPITAL-PARTNERS-ACQUIRES-INTEREST-IN-AME.aspx>.

of the Midla pipeline system.¹⁴ It does not require an active imagination to surmise that the “flipping” of the Midla pipeline was done by investors more concerned with profit-maximization from monopoly enterprises than operating a well-functioning pipeline and that once it dawned on ArcLight that Midla might no longer be a cash cow, it determined to abandon it.

APGA’s final observation is that Midla has not met the heavy burden on a pipeline seeking abandonment authorization. As the Commission has stated:

The courts have explained that, in considering the criteria for abandonment under *section 7(b)*, two important principles apply: (1) a pipeline which has obtained a certificate of public convenience and necessity to serve a particular market has an obligation, deeply embedded in the law, to continue to serve; and (2) the burden of proof is on the applicant to show that the public convenience or necessity permits abandonment, that is, that the public interest will in no way be disserved by abandonment. [¹⁵]

There are numerous “captive” local distribution systems that rely on Midla for firm service and that have paid firm service rates since the inception of natural gas service. The suggestion that Midla should be relieved of its obligation to continue to serve these customers because, while collecting rates designed to ensure continued safe operation of the pipeline, it has apparently failed to maintain the pipeline’s integrity is to suggest that pipelines may avoid their “deeply embedded” obligation to serve by failing to perform their most fundamental obligation, i.e., maintenance of a safe delivery system.

The Commission has also made it clear in past abandonment proceedings that, given the “presumption in favor of continued certificated service,” “continuity and stability of existing service are the primary considerations in assessing the public convenience or necessity of a

¹⁴ “Complaint of Atmos Energy Corporation, Request for Fast Track Processing and Motion To Establish a Conference,” filed Mar. 24, 2014, in Docket No. RP14-638, at 4.

¹⁵ *Northern Natural Gas Company, et al.*, 137 FERC ¶ 61,091 at P 16 (2011) (footnote omitted).

permanent cessation of service under section 7(b) of the NGA.”¹⁶ Midla effectively concedes that abandonment will mean that the affected local distribution companies will no longer have access to interstate natural gas service under the auspices of the Natural Gas Act; rather, it maintains that Commission approval of its abandonment applications “will simply be the catalyst for customers to enter into arrangements for alternative means of fuel acquisition,” noting that it has “presented propane, propane air and other options to its customers.”¹⁷ In other words, longstanding natural gas customers whose communities depend upon natural gas service and rely on the Commission for protection from monopoly practices (such as unlawful abandonment) are supposed to shop for alternatives that, *even if* available at reasonable rates (an improbable assumption), would virtually guarantee that these communities would likely lose existing commercial and industrial load and be unable to attract new commercial or industrial load in the future to these largely rural areas.

How ironic that at a time when natural gas supplies are more plentiful than ever, natural gas prices are more affordable than ever, and natural gas is being promoted for non-traditional uses, such as transportation, in order to combat climate change, longstanding natural gas customers in Louisiana are being threatened with abandonment of natural gas service. Certainly, the public convenience and necessity argues against such abandonment under the circumstances of this proceeding.

¹⁶ *Northern Natural Gas Company, et al.* 135 FERC ¶ 61,048 at P 35 (2011)(footnotes omitted), order denying reh’g, 137 FERC ¶ 61,091 (2011).

¹⁷ Midla Application, Docket No. CP14-125, at 14.

IV. CONCLUSION

For the foregoing reasons, APGA respectfully requests that the Commission grant its motion to intervene in this proceeding for good cause shown; that it reject Midla's abandonment applications; and that it grant such other relief as it deems appropriate under the circumstances.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

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May 2, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each of the parties in this proceeding in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C., this 2nd day of May 2014.

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