



## MAPL Allocation Policy January 5, 2015

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On October 1, 2014, Mid America Pipeline Company (MAPL) filed at the Federal Energy Regulatory Commission (FERC) a number of revisions to its allocation policy. Since that time, a number of questions have been raised regarding the policy's impacts, development, and implementation, as well as NPGA's general review methodology and decision making process regarding pipeline tariff filings. The purpose of this paper is to address the specific questions that have been asked related to the recent MAPL filing, as well as providing additional information and background that we hope will be helpful to all marketers.

### Section I: General Pipeline and System Information

#### 1. What is a pipeline tariff, and how is it developed?

Regulated pipeline carriers (e.g. Oneok North, Nustar, Dixie, TEPPCO, MAPL) must publish, post, and file with FERC tariff publications that contain in clear, complete, and specific form all the rules and regulations governing the rates and charges for services performed in accordance with the tariff. Tariffs must be published in a format that ensures they are readable and that their terms and conditions are easy to understand and apply. Tariffs are normally developed by the carrier and filed with FERC. Shippers and other affected parties can file comments and/or can protest tariffs or tariff changes filed with the FERC. Carriers are not required to coordinate with Shippers in advance of any filing, however, any dialogue, especially for any material change in policies or rates, is preferred by NPGA and Shippers.

#### 2. What are the different kinds of allocation, and what are they used for?

FERC has explained that the purpose of an allocation or apportionment methodology is to: "allocate constrained pipeline capacity among shippers in an equitable manner that is consistent with the common carrier obligation established in the Interstate Commerce Act, including the prohibition of unjust and unreasonable classifications, regulations, and practices, and any undue or unreasonable preference or advantage. A prorating procedure may not be structured for the purpose of protecting a pipeline's competitive position, nor may it be structured to favor certain shippers or types of shippers over others if all have made 'reasonable requests' for transportation on the pipeline."

FERC has recognized that there are two primary forms of prorating or allocation on pipelines. The first is a historically-based methodology that affords a preference to shippers with a history of shipping on the pipeline. FERC has accepted this type of prorating or allocation procedure for a number of pipelines recognizing that it rewards shippers for their loyalty. However, FERC also has required pipelines that implement historically-based prorating or allocation methodologies to allow all shippers, including new shippers, the opportunity to develop a record of transportation on the pipeline so as to attain preferred historical shipper status. Second is a pro-rata methodology that awards a share of the available capacity to each shipper based on the shipper's proportionate share of all

nominations, regardless of a shipper's history of shipments on the pipeline. While these procedures are the most prevalent with carriers, FERC has not limited allocation or prorating methodologies to strict versions of these two procedures.

Operationally speaking, propane marketers and shippers typically face impacts from injection allocation and terminal allocation. A pipeline will invoke injection allocation when more product is nominated for transport on the pipeline than it can physically handle, so the pipeline allocates among shippers a percentage of pipeline capacity. Similarly, a pipeline will invoke terminal allocation in situations when demand is extremely high and shippers or marketers need to draw more product than the terminal can physically handle. In both situations, allocation is designed to organize the marketplace to ensure that shippers are provided equitable, proportionate access to the physical capacity of the pipeline system during periods of high demand.

With specific regard to the MAPL pipeline, it is important to note that these two kinds of allocation are invoked by two separate Enterprise entities: injection allocation comes from the pipeline itself, while terminal allocation comes from Enterprise Terminals and Storage. Furthermore, Enterprise Terminals and Storage is unregulated and not required to file tariffs or provide allocation details to FERC. NPGA and Shippers have requested and prefer the same clarity and understanding of policies as the regulated pipeline considering the fact that it's an integrated system of delivery for shippers and marketers.

3. Does it make any difference if the pipeline is a dedicated propane line or a batch line?

A common misconception about the MAPL system is that it is entirely dedicated to propane shipment. In fact, there are two lines that primarily make up the pipeline system for propane movements; the red line and the blue line as they are commonly referred to. The red line is a batch operation with multiple products, while the blue line is propane only.

Generally a batched line is operated in a different manner from a dedicated propane line in that there will be different scheduling and other considerations. Typically, on a batched line each individual product "earns" its allocated share of total pipeline capacity based on all product movements. However, whether a carrier or section of pipeline is operated in a batched or one-product mode, the operation of the allocation or prorating methodology must be performed in an equitable and non-discriminatory manner consistent with existing law. Except in unique circumstances where a pipeline has sought and obtained priority for a particular service, all products shipped are to be treated equitably and on a non-discriminatory basis under the allocation or prorating policy in place.

Regardless of whether a pipeline is a dedicated line or batched line, if there is limited space with more volume than capacity, any party that reserves space through a nomination and then does not have the product in place to move when the pipeline calls for it is creating system challenges and inefficiencies. Bottom line is that it makes no practical difference whether the pipeline on allocation is a batched line or a dedicated propane line from a marketer standpoint.

4. When there isn't terminal allocation, isn't it common sense that the pipeline keep moving product to the ends, holding it until it is pulled?

A pipeline such as MAPL provides transportation service for its shippers. Based on shipper nominations, if there isn't terminal allocation on MAPL and since it is a fungible system, product would be available at any terminal as long as the shipper is carrying inventory in the pipeline. The pipeline will continue to move product to terminals where the demand is and will fill terminal storage when demand declines. Each terminal has only a set amount of storage, so the system is limited and therefore not capable of being a holding station for inventory for an unreasonable time or beyond what has been nominated per shipper. We would expect the potential for an updated inventory policy for MAPL like the other pipelines at some point in near future.

5. Please elaborate on the logic of supply (injection) allocation on a dedicated pipeline?

As was mentioned before, there are two types of allocation: (1) injection allocation by MAPL and (2) terminal allocation by Enterprise Terminals and Storage (ET&S). MAPL pipelines are regulated by FERC, but ET&S facilities are not. Injection allocation occurs when requests/demand by shippers exceed injection capability of the pipeline itself. If MAPL does not have the physical capacity to accommodate all injection requests by shippers, the capacity must be allocated in a manner that treats all shippers equitably. Terminal allocation occurs when demand at terminals exceeds physical deliveries to the terminal or terminals for a set period of time.

## **Section II: MAPL-specific Information**

6. What does MAPL's new pipeline tariff provide or require?

The new tariff will require each shipper to submit monthly nominations of expected volumes for MAPL's east and west leg. Additionally it will require the shipper to insure that those volumes will be made available to MAPL for shipment and terminal lifting.

7. What exactly are the characteristics of the MAPL pipeline?

The physical characteristics of the pipeline to our understanding are as follows: Mapco East and West has an inlet capacity of 150,000 barrels per day. The truck terminals have a combined truck loading capacity of 634,000 barrels per day. The system has a combined storage capacity of 1,162,000 barrels; two terminals account for 763,000 barrels of that storage (Greenwood, NE and Iowa City, IA). The maximum MAPL capacity of 150,000 barrels per day is attainable only when two high flow caverns in Conway have propane. Our understanding is that system capacity drops when propane has to be pumped from other low-flow caverns and when inventory at the terminals and storage above is low.

8. Will the new policy and associated penalties help bring more barrels into the market? Why is this?

When demand is greater than capacity and allocation is in place, shippers are required to plan appropriately and lift barrels to ensure the pipeline capacity is fully utilized and optimized, including lifting product ratably to include weekends and nights providing the ability of the pipeline to optimize injections around the clock. This then would ensure shippers each work to follow through on their liftings and commitments ratably on the

pipeline versus alternatives during allocation thus in concept increasing the physical injections throughout the month, weekends and nights leading to more product in the market. The policy provides pricing disincentives against a shipper not lifting nominated volumes when others are capped, thereby freeing up loads that may have been pulled by others during that time.

9. What did NPGA know about this tariff filing and when did it know it?

NPGA's Pipeline Task Force actively monitors developments affecting the pipeline infrastructure and various FERC tariffs. We have built a better relationship over time with pipeline officials, and so we knew that a new allocation policy was under development by MAPL. We did not know the specifics of the policy or the take-or-pay provision until October 1, 2014 when the proposal was filed at FERC. On October 3, 2014, the task force held a teleconference to review the proposal and voted not to recommend protesting.

10. How is Enterprise Products, as a shipper, that can nominate enough supply barrels to place the pipeline on supply allocation, penalized for over nominating? They pay \$2 a barrel to their parent company? This is certainly not a fair-for-all situation and a transparency issue.

As referenced earlier, FERC regulations prohibit undue preference or advantage between shippers. Pursuant to MAPL's pending and existing Northern System allocation policy, shippers have a responsibility to provide good faith nominations. Accordingly, shippers are not to submit nominations that include "air barrels" in order to put the system into proration or allocation. MAPL's pending proration policy provides as follows: "It is a Shipper's responsibility to submit good faith Nominations, and Carrier may use whatever reasonable means necessary to determine whether Nominations are made in good faith. Good faith means (a) Shipper has a reasonable expectation and is ready, willing, and able to provide Products at origins and to receive Products at destinations available on Carrier's System, and (b) Shipper's Nominations are understood to be binding commitments by Shipper and may result in the payment of a penalty for failure to receive Shipper's Binding Allocated Volume as determined by Carrier in accordance with Section 6. If requested by Carrier, Shipper shall provide additional documentation reasonably substantiating that such Shipper's nomination complies with clauses (a) and (b), above." MAPL is required by law to apply this policy in a non-discriminatory manner. While some may speculate otherwise, Enterprise as a shipper is a separate entity from MAPL and must comply with the same policy as other shippers.

At present, there is no monetary penalty for over-nominating on MAPL's Northern System. Rather, the monetary penalty referred to is for a shipper's failure to receive its binding allocated volume once prorationing has been noticed on the system. In particular, Item 100 (Allocation) of MAPL's FERC Tariff No. 80.26.0 states: "When there is offered to Carrier product quantities greater than can be transported between origins and destinations, Carrier shall allocate transportation capacity pursuant to its then current allocation policy for the Northern System. . . .If a Shipper fails to deliver at the origin(s) or fails to remove at the destination(s), specified by it in its Nomination, products sufficient to fill 95% of its allocated capacity, and such failure was not the result of Carrier's fault, Shipper shall pay the penalty amount equivalent to Carrier's weighted average tariff for the prior year as published in this Item 100 for all unused allocated capacity. The currently effective penalty is 200.20 cents per barrel." Accordingly, if any shipper, whether affiliated with MAPL or not, fails to deliver or remove at least 95% of its allocated capacity and such failure was not the fault of the pipeline, it will be assessed the approximately \$2.00 per barrel penalty.

Notably, MAPL's pending change to its Northern System Proration Policy does provide for the potential waiver of this penalty under certain defined circumstances. Specifically, MAPL's pending Proration Policy provides, in pertinent part: "Penalty fees for Shipper's failure to receive Products specified by it in its Binding Allocated Volume may be waived for such Shipper, in whole or part, if Carrier determines, in its sole but reasonable discretion, that all of the following circumstances applied during the Allocation Period: (a) Despite the Shipper's reasonable efforts to remedy the situation, the Shipper's failure to receive all of its Binding Allocated Volume was due to factors beyond the Shipper's reasonable control, and (b) Other similarly situated Shippers also failed to receive all of their Binding Allocated Volume due to factors beyond such Shippers' reasonable control, and (c) Such failure was not the result of changes in market pricing." It should be noted that this section was introduced by MAPL for review by shippers in November at the request of the NPGA pipeline task force. The initially filed policy in October didn't have language to provide Shippers the potential for waiver of the penalty fee for activity outside of all shipper's control.

If a shipper has knowledge or credible information that a MAPL affiliate is intentionally making nominations or performing other acts in order to force the pipeline into a prorationing situation and, as a result, create penalties for others, a shipper can file a complaint with FERC to rectify the unreasonable conduct and seek damages. Further, to the extent a shipper believes that MAPL (assuming the pending waiver policy is placed into effect) is not applying its penalty waiver policy in a reasonable manner, a shipper can similarly file a complaint requesting that the FERC rectify the situation and seek damages for the unjust and unreasonable application of the Northern System Proration Policy. Short of filing a formal complaint, a shipper can approach FERC Staff and request that they investigate the situation. This approach has, however, met with mixed results in the past. NPGA is not aware of any facts here nor is pursuing any such complaint as it relates to MAPL and its affiliates.

11. It seems we didn't object to the immediacy of implementation of this "new to Iowa marketers" rule. I understand opposing FERC rulings costs money, but asking for a delay, so that in season contracts, routines, preparation time, education time could be exercised does not seem an unreasonable request. Does it really cost \$100,000 to request a delay? Would it have hurt our standing with FERC to request a delay?

Challenging, requesting a delay in the implementation, seeking a clarification, or providing general comments on a proposed tariff change, such as MAPL's binding allocation tariff provision, is not unreasonable. Any person with a substantial economic interest, such as shipper, in the subject tariff filing may challenge or request a change to the newly proposed tariff provision within 15 days after the proposed tariff's filing with FERC. However, it is also important to fully consider the cost/benefit analysis.

For a group such as the NPGA, which needs to coordinate multiple interests and parties, a determination of whether and what to challenge, including the basis therefore, needs to be addressed at the earliest stage of this process in order to coordinate with counsel and meet the 15-day filing requirement. (As previously mentioned, that exact process was closely followed in the MAPL case.) However, as noted, any shipper or interested party, on their own, can file a challenge or seek any type of clarification or qualification regarding a proposed tariff without the involvement of the NPGA. Indeed, on a number of occasions NPGA members have filed individual challenges to proposed tariffs without the involvement of NPGA or other shippers. In such instances, the NPGA, at times, has filed supporting

comments or pleadings at a later time or stage in the proceeding in support of such members.

The cost to challenge or comment on a proposed tariff or rate filing depends on the complexity and depth of the challenge or comments as well as the number of parties. For example, if the challenge or comments involve numerous complex issues, research, and expert witnesses, the filing could result in significant fees. However, if the challenge or comments involve only a few issues and the FERC policy or precedent on the matter is relatively straightforward, the preparation and filing of the challenge or comments would be substantially less. The costs are also a function of whether the challenge is set for hearing, a technical conference, or any further proceedings. In general, however, challenges to rates versus tariff provisions are more involved and costly as they are more likely to be set for hearing. All of these factors must carefully be considered, along with assessing the probability of success, when determining whether to challenge or protest a tariff. From NPGA's previous experience of filing comments and/or protesting tariff changes, the normal minimum expense, once engaged in the adversarial process, can quickly reach \$100,000 and has usually been much higher. Filing comments or registering a protest is only Step 1 in what often becomes a lengthy and expensive process.

Also, since NPGA is not a shipper, it is necessary that specific Shippers file protest and comments as apart of such a process and each of those shippers meet the same deadline and coordination with their respective legal counsels as apart of the process. The cost of burden for each type of filing is typically funded by the impacted shippers and marketers.

Finally, consideration must be given to retaining credibility with FERC. NPGA has worked over a ten-year period to be an important voice for the propane industry at FERC and has established a reputation as a credible, constructive participant in the FERC regulation process. It is therefore imperative that protesting a tariff or rate filing be over legitimate and credible issues (e.g. unjust and unreasonable) in order to avoid damage to standing with the Commission. The FERC has delegated the responsibility to monitor and enforce reasonable tariff terms, conditions, and rates to shippers.

12. What is the status of FERC acting as a policeman vs. a judge? My understanding was we had made a lot of progress educating FERC about the difference between independent propane marketers using a pipeline and regulated natural gas utilities pipeline using a pipeline and that propane marketers could use FERC's help policing new regulations. Are we back to the judge role?

NPGA has, as part of its periodic meetings with FERC commissioners and staff, presented its view that FERC should act like a cop on the beat with regard to products pipelines, as the agency does with natural gas pipelines. NPGA has also advanced this view in filings in formal proceedings with FERC. However, FERC's view of its role with regard to products pipelines is both longstanding and entrenched, and its oversight of products pipelines versus natural gas is far less stringent and detailed. Additionally, regulating products pipelines represents perhaps 1-2% of the agency's work (and less of its staff). NPGA will continue to press this position, but NPGA recognizes that this is a long-term endeavor.

NPGA has pressed this view in Congress as well. NPGA has met with Congressional staff to brief them on the need for reform in products pipeline regulation. Additionally, NPGA inserted into the first drafts of the Franken-Baldwin-Portman propane bill in the Senate a series of reforms to FERC products pipeline regulation, including this issue. Unfortunately,

however, the Association of Oil Pipe Lines insisted that all of these provisions be removed as a condition of dropping its opposition to the bill.

13. There are small shippers on the MAPL line. Although it may not be obvious to larger shippers, all shippers are not equally affected. Does staff know about the smaller shippers? As members, without dedicated staff, are they not to expect assistance when because of their size, they are disparately affected?

To the contrary, all shippers must comply with the same allocation rules and penalties, and therefore neither should favor a large shipper over a smaller shipper. Every shipper, regardless of size, is required to forecast demand and plan for supply and corresponding logistical support, such as lifting at off-peak times and from various terminals. Some of this is addressed in the Propane Supply Planning Guide published in May 2014 by NPGA's Supply and Infrastructure Task Force. A company's decision in how it staffs and how it directly works with its suppliers and logistics providers is not an association responsibility. However, the NPGA certainly strongly encourages marketers that are not shippers to work very closely with their supplier to make sure they understand the impact on their supply and individual business.

14. Finally what is the possibility for backtracking/delaying the ruling based on these issues?

MAPL's binding allocation penalty provision has gone into effect. As such, to change this policy shippers would have to file a complaint or MAPL would need to voluntarily withdraw or change the policy. Notably, while regulated carriers can be permitted to charge penalties as a method of ensuring compliance with rules and regulations and operational integrity, such fees must be justified, reasonable, and have a rational basis. Even an otherwise permissible penalty can become unjust and unreasonable if it diverges significantly from the costs incurred by the carrier as a result of noncompliance. However, in the case of the MAPL filing, the penalties were not considered to be out of line with existing policies of other pipeline systems. However, although NPGA didn't feel there were sufficient grounds to file a protest before FERC, we engaged in discussions with Enterprise/MAPL in an effort to reach a compromise on certain considerations. As a result, favorable changes were made to certain provisions and discussions on other related issues continue. Specifically, an ongoing dialogue continues with Enterprise/MAPL regarding various provisions of the recent filing, including a request for a delay of the effective date for penalties, the ability to adjust the nominated volume within certain parameters, and a reduction of the performance percentage.

### **Section III: Broader Policy Considerations**

15. What is the status of pursuing enactment of Pipeline Affiliate Rules that were raised in the subcommittee testimony?

NPGA's steady position has been to seek clear rules and regulations that provide for the fair and equitable flow of information to ensure confidence in marketplace integrity. NPGA had determined in the spring of 2014 to proceed with a request to FERC to adopt affiliate rules (or codes of conduct) of the type that have existed for a number of years with regard to jurisdictional electricity and natural gas entities. In May 2014, however, Senators Franken and Baldwin began to craft a propane bill to introduce in the Senate. NPGA suggested a number of provisions to reform FERC regulation of products pipelines, including a mandate for affiliate rules. The Senators agreed to include these provisions, and they were in the

initial drafts of the bill. The Association of Oil Pipe Lines vehemently objected to these provisions, and NPGA and AOPL were at odds over these issues throughout the summer of 2014. NPGA determined at the time not to press forward with a request to FERC on affiliate rules, as it would permit AOPL to argue in Congress that legislation on the issue was unnecessary. The Franken-Baldwin-Portman propane bill has had a lengthy path throughout the fall. Now that Congress has adjourned for the year, NPGA will again address the prospects of seeking a FERC rule. (The FERC chairman stepped down in late 2013, and for the first eight months of 2014 a political battle was waged in the Senate over the next FERC chairman. The result has been an interim chairman with a new chairman in the spring of 2015. As a result 2014 was an inopportune time to press a change in longstanding policy.)

16. Since Enterprise has decided to withdraw from NPGA, shouldn't NPGA be challenging every move they make? When you consider the new relationship, how does Enterprise benefit from a retail propane market in the Midwest?

NPGA and interested parties/shippers/members should monitor Enterprise's activities and the other Pipeline Carriers, including its tariff filings, on a regular basis. Challenges should be made to the extent that the changes are unreasonable or unsupported and/or if they are likely to unreasonably affect NPGA and its members. That has always been, and continues to be, the case with the work done by the Pipeline Task Force. Notwithstanding Enterprise's exit from NPGA, the goal should be constant dialogue with Enterprise as well as with FERC. It is always good to keep FERC in the loop on NPGA and member concerns so that if, and when, problematic filings are made by a pipeline, the FERC has some understanding of the issues and concerns that NPGA and its members have. However, indiscriminate protests would damage the credibility of NPGA in the eyes of FERC.

17. How is communication from Legislative Affairs going to improve so Midwest marketers can offer input on regulations affecting them?

NPGA vigorously defends the industry from bad public policies and advocates for policies that will grow the industry and reduce the costs of doing business. We are always looking for input on our priorities and welcome additional involvement and input from marketers no matter where they operate. With specific regard to pipeline activities, the task force has put out a call for volunteers from small Midwest marketers in particular and anyone else at each board meeting who is interested and willing to contribute. The task force currently includes Midwest marketers and as a friendly reminder to all was successful in protesting the MAPL rate increases about 10 years ago that led to approximately \$30 million being refunded to the industry approximately 5 years ago. The task force will also be changing its protocols so that recommendations to protest and also recommendations not to protest will be subject to review and concurrence by the NPGA Litigation Control group (all NPGA officers and Chairman of the Governmental Affairs Committee).