

106 FERC ¶ 61, 229
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

Midwestern Gas Transmission Company

Docket No. RP04-163-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued March 8, 2004)

1. On February 9, 2004, Midwestern Gas Transmission Company (Midwestern) filed revised tariff sheets¹ to add a new section 35 to the General Terms and Conditions (GT&C) of its tariff. That section would permit Midwestern to reserve capacity for future expansion/extension projects. Midwestern also proposes to revise section 16.2 of its GT&C to clarify the contract extension rights of interim shippers using the reserved capacity prior to the in-service date of the expansion/extension. For the reasons set forth below, the revised tariff sheets are accepted subject to conditions to be effective March 10, 2004. This order is in the public interest because it ensures that the subject tariff provisions conform to Commission requirements and policy.

Instant Filing

2. Midwestern contends that its proposed modifications regarding the reservation of capacity for future expansions and limited contract extension rights for interim shippers promote the efficient use and allocation of capacity on its system, while preserving the rights of expansion/extension shippers. Midwestern asserts that, consistent with other Commission orders,² it is adding a provision permitting it to reserve, for future

¹ Sixth Revised Sheet No. 201, Third Revised Sheet No. 247, Original Sheet No. 275, Sheet Nos. 276-399 to its FERC Gas Tariff, Third Revised Volume No. 1.

²Citing Viking Gas Transmission Company, 87 FERC ¶ 61,215 (1999); Tennessee Gas Pipeline Company, 86 FERC ¶ 61,066 (1999); Columbia Gulf Transmission Company, 100 FERC ¶ 61,133 (2002) (Columbia Gulf); Columbia Gas Transmission
(continued)

expansion/extension projects, any unsubscribed capacity or capacity under expiring service agreements where such agreements do not have a right of first refusal or the shipper does not exercise its right of first refusal. Before reserving any capacity, Midwestern will first post for bid on its Informational Postings web site all of its available capacity, in order to ensure that the capacity to be reserved is truly unsubscribed. In addition, Midwestern will hold an open season for the expansion/extension either before reserving existing capacity for the expansion/extension or within one year after reserving the existing capacity.

3. Proposed section 35 provides that Midwestern will only reserve capacity for a future expansion/extension project during a 12-month period prior to Midwestern filing for certificate approval for construction of proposed expansion/extension facilities, and thereafter, until such expansion/extension facilities are placed in service. Midwestern will post a notice on its Informational Postings web site when it is reserving capacity for a future expansion/extension and include in the notice a description of the project for which the capacity will be reserved, quantity of the capacity to be reserved, location of the reserved capacity, and other relevant information. If the amount of unsubscribed capacity that has been posted for bid remains unsubscribed and is insufficient to serve the expansion/extension project, Midwestern will also include in its notice of reservation of capacity posting, or in the open season for the expansion/extension project, a non-binding solicitation for turnback capacity from the existing shippers to serve the expansion/extension project. Midwestern's proposal also specifies that any capacity reserved for a future expansion/extension project that does not go forward will be reposted as generally available capacity within 30 days of the date that the capacity becomes available.

4. Finally, section 35 provides that Midwestern will make available any reserved capacity on a limited-term basis up to the in-service dates of the expansion/extension project. Midwestern reserves the right to limit any contract extension rights in such interim service agreements and in the right of first refusal (ROFR) provision of section 16, so that such contracts cannot be extended beyond the in-service date of the expansion/extension. Midwestern is also revising Subsection 16.2, Right of First Refusal, of its GT&C to set forth that a ROFR will not be applicable to interim Firm

Corporation, 100 FERC ¶ 61,136 (2002) (Columbia Gas); Crossroads Pipeline Company, 100 FERC ¶ 61,131 (2002) (Crossroads); and Northern Border Pipeline Company, 105 FERC ¶ 61,228 (2003).

Transportation Agreements for entitlement associated with expansion/extension projects, consistent with the proposed reservation of capacity provision.

Notice, Interventions, Comments and Protest

5. Public notice of the filing was issued on February 12, 2004. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Process Gas Consumers Group (PGC) filed a protest. PGC states that it is submitting a limited protest concerning changes in Midwestern's proposal that are necessary to ensure that the proposed tariff language is consistent with previous Commission decisions. ProLiance Energy, LLC (ProLiance) filed comments suggesting that a tariff provision allowing reservation of capacity may not be appropriate for Midwestern's system in light of its operational conditions.

Discussion

6. Midwestern's revised tariff sheets are accepted to become effective March 10, 2004, subject to conditions. Midwestern's proposal to reserve capacity for future expansion projects is generally consistent with Commission policy. The Commission has previously found that the reservation of capacity in these circumstances will minimize facility construction and associated environmental impacts, will encourage fuller utilization of capacity, and will minimize the rate impact of allocating costs of unsubscribed capacity to existing customers once the pipeline completes the expansion.

7. In its comments, ProLiance maintains that, because of the unique nature of Midwestern's system, this filing may not be consistent with the Commission policy of allowing flexibility to meet the needs of the customer and the pipeline.³ ProLiance contends that Midwestern transports gas in both northerly and southerly directions and

³ Citing Northern Border Pipeline Co., 103 FERC ¶ 61,390 (2003) (Northern Border); Columbia Gas Transmission Corp., 101 FERC ¶ 61,380 (2002); and Columbia Gas.

because of its utilization in both a southern and northern direction, reservation of capacity in the manner described in Midwestern's filing may not be appropriate. ProLiance asserts that since the possible utilization of Midwestern may occur in either direction, a reservation of available capacity in anticipation of a future project may unnecessarily restrict the flexibility of shippers on the system. ProLiance further asserts that, on a small system like Midwestern, the loss of revenue attributable to the capacity reservation without interim usage could create a subsidization of Midwestern by its customers. ProLiance contends that it is questionable that the proposed reservation of capacity will minimize facility construction, encourage fuller utilization of capacity, or minimize the rate impact of allocating costs of unsubscribed capacity to existing customers once the expansion is completed.

8. The Commission has consistently approved proposals similar to Midwestern's on the ground that use of existing capacity to meet the needs of those interested in an expansion can minimize the need for construction. ProLiance has not presented any basis to conclude that this reasoning is not equally applicable to Midwestern. Moreover, we see no reason to conclude that existing customers would be harmed by the reservation. Midwestern's proposal would require the capacity to be posted for bid before it is reserved for an expansion and makes reserved capacity available for interim usage. Therefore, any existing shippers which want to use the capacity will have the opportunity to acquire it before it is reserved. If a shipper wants the capacity later during the reservation, they can acquire the capacity on an interim basis or participate in the expansion. Accordingly, the benefits of Midwestern's proposal in minimizing facility construction outweigh any potential detriment.

9. The Commission finds that PGC has raised several concerns which require revisions to Midwestern's tariff proposal and that other revisions are required. PGC points out that the proposed language provides that prior to reserving capacity for an expansion/extension project, Midwestern will "first post for bid all of its available capacity on its web site as set forth on its Informational Postings web site." PGC requests that the new tariff language specify that Midwestern will post and award the available capacity as set forth in Midwestern's existing tariff. PGC asserts that, by adding this suggested language, the process of making existing capacity available before it is reserved and awarding that capacity to interested shippers is clarified. PGC further asserts that this suggested tariff language is also consistent with the Commission's previous decision in Columbia Gas where the Commission agreed that the proposed tariff language was "not sufficiently detailed to ensure that shippers will have a reasonable opportunity to bid on available capacity and be awarded such capacity before the pipeline

may reserve it.”⁴ In addition, PGC contends that, although Midwestern’s proposed language references its Informational Postings web site which does include a link to the tariff, Midwestern’s currently effective tariff language governing the capacity award process should be directly referenced in the new GT&C section 35. PGC asserts that this way shippers will be put on notice that Midwestern’s existing tariff provisions regarding the capacity award process govern.

10. In response to PGC’s request, the Commission will require Midwestern to expressly state in its tariff that, before reserving any capacity for an expansion, Midwestern will post and award all of its available capacity as set forth in its existing tariff, consistent with the determination in Northern Natural Gas Company, 105 FERC ¶ 61,057 at P 14 (2003) (Northern). Therefore, Midwestern must file revised tariff language, within 30 days of the date this order issues, expressly stating that before reserving any capacity for an expansion, it will post and award available capacity in accordance with its existing tariff and referencing the related tariff provisions. In addition, as pointed out in Northern, the order on rehearing in Columbia Gulf requires that a pipeline allow shippers a reasonable opportunity to bid on and win available capacity before the pipeline reserves it and that the posting period should be specifically set forth in the pipeline’s tariff. The Commission also found in Northern that language providing that the capacity must be posted for at least five business days before it can be reserved provided the required reasonable opportunity. Therefore, Midwestern is also directed to file revised tariff sheets, within 30 days of the date this order issues, expressly stating that the capacity will be posted for at least five business days before it can be reserved.

11. PGC also contends that Midwestern’s proposed tariff language should clearly state that capacity may be reserved for a 12-month period before the pipeline files for certificate approval and thereafter, until all facilities related to the certificate filing are either placed into service, or until the certificate is rejected or withdrawn. PGC asserts that this requested clarification is consistent with similar tariff language the Commission has approved.⁵ PGC further asserts that such a change will also ensure that reserved

⁴ Citing 101 FERC ¶ 61,380 at P 23 and also Northern Border at P 17.

⁵ Citing Columbia Gas Transmission Corp. Sheet No. 282, GT&C section 4.2(i) (“Any Available Reservation Capacity reserved pursuant to this section 4.2(i) for an expansion project that does not go forward because Transporter does not file any required application with the Commission within one year from such reservation date, or because

(continued)

capacity becomes available once the certificate approval is denied or withdrawn whether the 12-month period has expired or not. However, Midwestern includes proposed tariff language which is similar to language the Commission has approved in other proceedings,⁶ stating that:

Capacity may be reserved for expansion/extension projects for only a 12-month period prior to Company filing for certificate approval for construction of proposed expansion /extension facilities, and thereafter until all expansion/extension facilities related to the certificate filing are placed into service.

. . . .

Any capacity reserved for a project which does not go forward for any reason shall be reposted as generally available within 30 days of the date the capacity becomes available. [Emphasis added]

Therefore, the request by PGC for clarification is denied.

12. Finally, PGC states that Midwestern proposes to post a variety of information regarding the reserved capacity, including “on an ongoing basis, how much of the reserved capacity has been sold on a limited-term basis that would otherwise be eligible for a right of first refusal.” PGC acknowledges that the Commission has approved similar tariff language in this context⁷ but is concerned the tariff language would allow Midwestern to limit the information that it posts about the reserved capacity which would otherwise be available to interested shippers. Accordingly, PGC requests that it be deleted. In the alternative, PGC requests a clarification regarding the intent and the necessity of the language.

13. As PGC recognizes, the Commission has previously approved tariff language similar to the proposed language to which PGC objects. In fact, the Commission has

Transporter ultimately does not receive authorization, shall be posted as generally available. . . “[Emphasis added]).

⁶ See Northern Border and Northern.

⁷ Citing Northern Border Pipeline Company Sheet No. 272A, GT&C section 26.5.

required certain information for the posting of reserved capacity, including the information related to the contested language.⁸ PGC's concern that the tariff language would allow Midwestern to limit the information that it posts about the reserved capacity which would otherwise be available to interested shippers is not supported and is inconsistent with our prior rulings. Accordingly, PGC's request that this proposed language be deleted or clarified is denied.

The Commission orders:

(A) Midwestern's revised tariff sheets listed in footnote no. 1 of this order are accepted to become effective March 10, 2004, subject to the conditions set forth in the body of this order and the ordering paragraph below.

(B) Midwestern is directed, within 30 days of the date this order issues, to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas
Secretary.

⁸ See, e.g., Crossroads at P 6.