

134 FERC ¶ 61,137  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 25, 2011

In Reply Refer To:  
Midwestern Gas Transmission Company  
Docket No. RP11-1728-000

Midwestern Gas Transmission Company  
100 West Fifth Street  
Tulsa, Oklahoma 74103

Attention: Ron M. Mucci, Vice President  
Rates and Regulatory Affairs

Reference: Amendment to a Non-Conforming Rate Agreement

Ladies and Gentlemen:

1. On January 27, 2011, Midwestern Gas Transmission Company (Midwestern) filed revised tariff records<sup>1</sup> to reflect an amended non-conforming service agreement (Contract No. FA0885) between Midwestern and Chevron U.S.A. (Chevron) for service pursuant to Rate Schedule FT-A. The amended agreement contains language that materially deviates from Midwestern's FT-A/FT-GS *pro forma* service agreement.<sup>2</sup> We accept the revised tariff records, effective February 1, 2011, subject to the conditions discussed below in this order.

2. Midwestern states that on October 29, 2010 it filed the original non-conforming agreement (Contract No. FA0885) with Chevron (2010 Agreement) and a revised Section 8.32 of the General Terms and Conditions of its FERC gas tariff to include the agreement

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<sup>1</sup>Part 10, Non-conforming and Negotiated Rate Agreements, 1.0.0; and Part 10.1.1, Chevron NCA 1-26-11, 0.0.0 to Midwestern - FERC Gas Tariff, FERC NGA Gas Tariff.

<sup>2</sup>Part 9.10, Firm Transportation Agreement (FT-A/FT-GS), 0.0.0 to Midwestern – FERC Gas tariff, FERC NGA Gas Tariff.

on its list of non-conforming agreements. Specifically, the 2010 Agreement contained a discounted rate revenue sharing mechanism which provided that Chevron would pay a fixed monthly base reservation rate subject to a Demand Charge Adjustment. The term of service for the 2010 Agreement was November 1, 2010 through January 31, 2011. The filing was accepted by an unpublished delegated letter order dated November 24, 2010, in Docket No. RP11-1459-000.

3. On January 27, 2011, Midwestern filed an amendment to extend the term of the 2010 Agreement (2011 Agreement). Midwestern states that in order to allow Chevron to retain its contract number for nominations and invoicing the 2011 Agreement was structured as an amendment to prior executed agreements. Midwestern explains that there are two differences between the 2011 Agreement and the 2010 Agreement: (1) a renewal clause was included in the 2011 Agreement; and (2) an additional reference to the term was included in Article 16 of the body of the 2011 Agreement. Midwestern explains that the renewal clause provides that the 2011 Agreement shall remain in full force and effect until March 31, 2011, and on a month-to-month basis thereafter. Midwestern states that either party may elect to terminate the agreement at the end of the term or at the end of any extended period.

4. Public notice of the filing was issued on January 28, 2011. Interventions and protests were due by February 1, 2011, as provided in section 154.210 of the Commission's regulations.<sup>3</sup> Pursuant to Rule 214 of the Commission's rules,<sup>4</sup> all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

5. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's Forms of Service Agreements, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>5</sup> In *Columbia Gas Transmission Corporation*,<sup>6</sup> the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (b) affects the substantive rights of the parties. However, not all material deviations are impermissible. If the Commission finds that a deviation does not constitute a substantial risk of undue

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<sup>3</sup> 18 C.F.R. § 154.210 (2010).

<sup>4</sup> 18 C.F.R. § 385.214 (2010).

<sup>5</sup> 18 C.F.R. § 154.1(d) (2010).

<sup>6</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).

discrimination, the Commission may permit the deviation.<sup>7</sup> Therefore, there are two general categories of material deviations: (a) provisions the Commission must prohibit because they present a significant potential for undue discrimination among shippers, and (b) provisions the Commission can permit without a substantial risk of undue discrimination. Moreover, if the Commission determines the contract contains a material deviation that is permissible, the Commission's regulations require the pipeline to file, as tariff records, (1) the service agreements that materially deviate from the form of service agreement,<sup>8</sup> and (2) a list of those non-conforming service agreements.<sup>9</sup>

6. Deviations in the terms under which agreements may be renewed are material.<sup>10</sup> As the Commission held in Order No. 637<sup>11</sup> and clarified in subsequent orders, pipelines may agree to a specific rollover provision with a given shipper but must offer such contract extension provisions on a non-discriminatory basis. While the term of service for the 2010 Agreement was November 1, 2010 through January 31, 2011, the added renewal clause provides that the 2011 Agreement shall remain in full force and effect until March 31, 2011, and month-to-month thereafter; however, Section 8.16 of the General Terms and Conditions of Midwestern's tariff, does not provide for such an evergreen extension for agreements with a term of one-year or less. Allowing certain customers to have customized term extensions is unduly discriminatory towards other similarly situated customers.

7. Accordingly, we accept Midwestern's revised tariff records effective February 1, 2011, subject to the following condition. Within 30 days of this order, Midwestern must either offer this month-to-month "evergreen" extension provision to all of its similarly

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<sup>7</sup> *Id.* at 62,004.

<sup>8</sup> 18 C.F.R. § 154.4(a) and (c) 2010.

<sup>9</sup> 18 C.F.R. § 154.112(b) (2010).

<sup>10</sup> *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 12 (2010).

<sup>11</sup> *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,091, at 31,341 (2000); *clarified*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099; *order denying reh'g*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

situated shippers by revising its tariff to include this option as part of the FTA/FT-GS *pro forma* service agreement, or Midwestern and Chevron must renegotiate an agreement without the impermissible non-conforming language.<sup>12</sup>

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>12</sup> See *Questar Southern Trails Pipeline Co.*, 130 FERC ¶ 61,234, at P 7 (2010); *Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 12 (2010); *Saltville Gas Storage Co. L.L.C.*, 110 FERC ¶ 61,324, at P 16 (2005); *Kinder Morgan Interstate Gas Transmission*, 107 FERC ¶ 61,096, at P 5 (2004).