140 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

CenterPoint Energy – Mississippi River Transmission Docket No. RP12-901-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITIONS

(Issued August 31, 2012)

1. On July 31, 2012, CenterPoint Energy – Mississippi River Transmission (MRT), filed tariff records[1] to revise section 19 of the General Terms and Conditions (GT&C) of its FERC gas tariff. MRT proposes to expand the circumstances in which MRT may seek a discount-type adjustment to its recourse rates to reflect negotiated rate agreements. The Commission accepts the tariff records to be effective September 1, 2012, subject to the conditions discussed herein.

Description of the Filing

2. MRT explains that section 19 of the General Terms and Conditions (GT&C) of its tariff currently gives MRT the right in a general rate case to seek a discount-type adjustment in the design of its recourse rates when a negotiated rate agreement is converted from a pre-existing discount agreement. MRT states that in the instant filing, it is proposing to expand section 19 of its GT&C to provide for additional circumstances in which MRT may seek to incorporate negotiated agreements into such discount-type adjustments. Specifically, MRT states that the proposed provision requires MRT to demonstrate that any discount-type adjustment "does not have an adverse impact on recourse shippers," and provides the specific factors that MRT must show to demonstrate

[1] CenterPoint Energy - Mississippi River Transmission, LLC, FERC NGA Gas Tariff, MRT Tariffs, Sheet No. 301, MRT's Right to Change Rates and Terms of Service, 1.0.0; Sheet No. 302, MRT's Right to Change Rates and Terms of Service, 0.0.0; Sheet Nos. 303 - 306, Sheet Reserved for Future Use, 0.99.0.

that no such adverse impact will occur.[2] MRT asserts the Commission has approved similar proposals by several pipelines.[3] MRT maintains that, except for minor, non-substantive conforming changes, the proposed tariff provision tracks the language previously submitted by other pipelines and accepted by the Commission.

Notice, Interventions, Protests, and Answer

3. Public notice of MRT's Filing was issued on August 1, 2012, with interventions and protests due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214,[5] all timely-filed motions to intervene and any unopposed motions to intervene out-of-time 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. Protests were filed by United States Steel Corporation (U.S. Steel), Ameren Services Company (Ameren) and Laclede Gas Company (Laclede). On August 15, MRT filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission accepts the answer filed by MRT because it has provided information that assisted our decision-making process.

4. Ameren opposes MRT's tariff revisions as currently proposed. Ameren states that MRT currently has substantial capacity contracted at the maximum recourse rate with its affiliate CenterPoint Energy Gas Transmission (CEGT). Ameren is concerned that MRT and its affiliate CEGT could renegotiate these existing agreements into negotiated rate agreements prior to the end of the primary contract term. Ameren expresses concern that this practice could expose recourse rate shippers to cost-shifting.

---

[2] MRT Transmittal at p. 2 (citing *Wyoming Interstate Company, Ltd*., 117 FERC ¶ 61,150, at P 14 (2006) (*WIC*)).

[3] MRT Transmittal at p. 2 (citing *Gulf South Pipeline Company, L.P., et al*., 136 FERC ¶ 61,029 (2011); *Transwestern Pipeline Company*, 135 FERC ¶ 61,220 (2011); *Rockies Express Pipeline, LLC*, 135 FERC ¶ 61,206 (2011); *Tennessee Gas Pipeline Company* 135 FERC ¶ 61,208 (2011)).

[4] 18 C.F.R. § 154.210 (2012).

[5] 18 C.F.R. § 385.214 (2012).

5. Thus, Ameren proposes that the Commission require MRT to add tariff language preventing MRT from including any discount-type adjustment for negotiated rate agreements that were converted from pre-existing agreements prior to the end of the primary term of the pre-existing agreement or agreements that replaced pre-existing agreements. Ameren asserts that this change is consistent with the Commission's policy requiring the pipeline to demonstrate that any discount-type adjustment does not have an adverse impact on recourse rate shippers.[6]

6. Ameren acknowledges that the Commission has previously accepted tariff language similar to what is currently being proposed. However, Ameren contends that this case is unique because MRT's pipeline affiliate holds more than 30 percent of MRT's total system capacity and currently contributes over $14.5 million per year or 26 percent of MRT's 2002 Settlement cost of service of $56.5 million.

7. Ameren further proposes that the term "fixed costs" be replaced with the term "fixed cost recovery."[7] Ameren asserts that this revision is necessary to clarify that a negotiated rate discount contributes more recovery of fixed costs by spreading the costs over more units of service.

8. Laclede protests that MRT's proposed tariff language does not clearly delineate the showing that Commission precedent requires pipelines to make to demonstrate that a discount in a negotiated rate agreement is required to meet competition. Laclede emphasizes that MRT must follow the Commission's policies related to affiliates and discount adjustments.[8] Similarly, Laclede states that MRT's new section 19.3(i) also requires MRT to demonstrate that any discount-type adjustment in recourse rates for negotiated rate agreements does not have an adverse impact on recourse rate shippers.

---

[6] *Texas Gas Transmission, LLC*, 138 FERC ¶ 61,175, at P 28 (2012). The Commission has stated that, as part of considering whether the pipeline has satisfied that burden of demonstrating that discount adjustments do not have an adverse impact on maximum rate shippers, the parties should evaluate all of the pipeline's cost and revenue data, including revenue from all its negotiated rate transactions.

[7] With the revision, section 19.3(i)(b) would read: "Making another comparable showing that the negotiated rate discount contributes more *fixed cost recovery* to the system than could have been achieved without the discount." (emphasis added).

[8] Laclede Protest at 5 (citing *Trunkline Gas Co*., 90 FERC ¶ 61,017, at 61,096 (2000)).

Laclede asserts that the Commission should clarify here, as it has in other similar cases,[9] how MRT must measure the impact of discount-type adjustments on recourse rate shippers.

9. Laclede contends that the Commission should make it clear that, in its next section 4 base rate proceeding, MRT must comply with Commission policy, including full consideration of any offset to the proposed discount adjustment for any above-maximum rate negotiated transactions.

10. Finally, Laclede is concerned that MRT could enter into a long-term negotiated rate agreement with a steeply discounted rate and, through a discount-type adjustment to base rates in MRT's next rate proceeding, recourse rate shippers may be required to subsidize such a discount over an extended period of time. Laclede asserts that if the locational basis on the MRT system recovers, recourse rate shippers should not be saddled with subsidizing the discounted negotiated rate agreement in base rates.

11. U.S. Steel states it does not oppose MRT's proposal, but U.S. Steel seeks certain clarifications and modifications. First, U.S. Steel states that the Commission should reiterate that MRT bears the burden to demonstrate that the negotiated-rate program is necessary to meet competition. Second, the Commission should reiterate that MRT must make available to shippers details of all negotiated rate transactions and revenues and allow customers to seek reductions in recourse rates to account for the excess revenue received from such agreements. Finally, U.S. Steel contends that the Commission should expressly prohibit MRT from seeking a discount adjustment for negotiated rate agreements entered into prior to the effectiveness of this tariff provision.

12. U.S. Steel also expresses concern that pipelines will be able to game the system. U.S. Steel states that to the extent a pipeline is earning excess revenue from negotiated rate agreements, it need not file a tariff provision that might enable shippers to seek reductions in recourse rates to account for the excess revenue received from such agreements. However U.S. Steel states that if such agreements later become uneconomic, the pipeline could file a tariff provision and seek a discount adjustment for losses incurred during the test period without recognizing gains from prior years.

13. In its answer, MRT states that its proposal is consistent with Commission precedent. MRT states that it has no objection to modifying section 19.3(i)(b) to add the language requested by Ameren.

---

[9] *Texas Gas*, 138 FERC ¶ 61,175 at P 38.

Discussion

14. The Commission accepts MRT's proposed tariff records subject to conditions as described herein. MRT's proposal is consistent with the tariff provisions previously accepted by the Commission.[10] In *Texas Gas*, the Commission addressed its policies regarding discounted adjustments for negotiated rate transactions. There is no need for the Commission to reiterate the policies explained in that order. The Commission will consider any request by MRT for discount rate treatment in any subsequent section 4 general rate case, including any discount adjustment for negotiated rates given to affiliates. Similarly, as the Commission stated in *Texas Gas*, it is premature for the Commission to determine the extent to which MRT may be permitted a discount adjustment in its next section 4 rate case for negotiated rate agreements entered into before the effectiveness of the tariff provision approved in this proceeding.[11] The Commission will also address specific allegations of gaming as they arise in particular circumstances.[12]

15. However, Ameren has requested that the word "recovery" be added to proposed section 19.3(i)(b), so that it reads, "Making another comparable showing that the negotiated rate discount contributes more fixed cost *recovery* to the system than could have been achieved without the discount." (emphasis added). This change provides helpful clarification and MRT in its answer states that it does not object to this modification. Accordingly, the Commission accepts MRT's proposal subject to MRT

---

[10] *Texas Gas*, 138 FERC ¶ 61,175; *Transwestern Pipeline Company*, 135 FERC ¶ 61,220 (2011); *Rockies Express Pipeline, LLC*, 135 FERC ¶ 61,206 (2011); *Tennessee Gas Pipeline Company* 135 FERC ¶ 61,208 (2011)

[11] *Texas Gas*, 138 FERC ¶ 61,175 at P 65.

[12] For instance, U.S. Steel expresses concern that the pipeline will add or delete a tariff provision allowing discount adjustment for negotiated rate shippers depending upon whether the provision will benefit the pipeline in its next rate case. In *Texas Gas*, the Commission explained that it would address such allegations as they arise in individual cases. 138 FERC ¶ 61,175 at P 61. For example, if MRT later proposes to delete the provision it has proposed here, the Commission can consider whether the proposed deletion is just and reasonable and how any such deletion may affect the treatment of overall negotiated rate revenues in the next section 4 rate case. *Id.*

within 30 days of the issuance of this order making a compliance filing to modify proposed section 19.3(i)(b) as specified herein.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.