

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 10, 2005

In Reply Refer To:
Midwestern Gas Transmission Company
Docket No. RP05-341-000

Midwestern Gas Transmission Company
P.O. Box 542500
Omaha, NE 68154-8500

Attention: Raymond D. Nepl, Vice President
Regulatory Affairs and Market Services

Reference: Revisions to Capacity Release Provisions

Ladies and Gentlemen:

1. On May 13, 2005, Midwestern Gas Transmission Company (Midwestern) filed revised tariff sheets¹ to modify the capacity release provisions found in section 21 of its General Terms and Conditions (GT&C). The majority of Midwestern's proposed revisions are administrative (*i.e.*, removing obsolete provisions, reorganizing existing provisions, correcting inconsistent terminology). Midwestern also proposes several additions to its capacity release provisions. In general, Midwestern: (1) describes in section 21.1 the applicability of capacity release; (2) specifies in section 21.2 parameters for capacity release offers; (3) clarifies in section 21.4 posting procedures for rollovers, renewals, or the continuation of capacity release transactions for a term greater than 30 days; (4) clarifies in section 21.5 the terms and conditions of prearranged releases with a term greater than 31 days at rates lower than the maximum rate; (5) clarifies in section 21.6 procedures for posting capacity releases that are not prearranged and subject to competitive bidding and the procedures for withdrawing capacity release offers; (6) incorporates into section 21.8 language stating that no replacement shipper will have the right to change primary receipt and delivery points; (7) clarifies in section 21.10 certain bidding procedures; (8) incorporates into section 21.10 NAESB² standard 5.3.59; and,

¹ See Appendix.

² North American Energy Standards Board.

(9) clarifies in section 21.14 procedures for distributing Commission-ordered refunds. Midwestern proposes these changes to assure that its capacity release provisions reflect current business practices. Midwestern proposes a June 12, 2005, effective date for the tariff sheets.

2. The Commission noticed Midwestern's filing on May 18, 2005, allowing for protests to be filed as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2004), all timely filed motions to intervene and any 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. Process Gas Consumers Group (PGC) and ProLiance Energy, L.L.C., (ProLiance) filed protests. The Peoples Gas Light and Coke Company (People's Gas) filed comments. ProLiance also requests a technical conference. We discuss the parties' concerns below.

3. Midwestern's proposed revisions to its capacity release provisions generally conform to Commission policy. Further, they benefit shippers by clarifying its capacity release provisions and assuring they reflect current business practices in the natural gas industry. Accordingly, we accept Midwestern's revised tariff sheets effective June 12, 2005, as proposed. This acceptance, however, is subject to the following three conditions.

4. First, Midwestern proposes to add the following language to section 21.2 of its capacity release provisions:

All capacity release offers must be either for (1) the entire quantity and/or the entire Transportation Path specified in Exhibit A of the Releasing Shipper's Firm Transportation Agreement; or (2) the entire quantity and a portion of the Transportation specified in Exhibit A of the Releasing Shipper's Firm Transportation Agreement; or (3) a portion of the quantity and the entire Transportation Path specified in Exhibit A of the Releasing Shipper's Firm Transportation Agreement.

PGC, ProLiance, and Peoples Gas assert this provision contravenes Commission policy by not allowing a shipper to release a portion of its capacity over a portion of its transportation path. Section 284.7(d) of the Commission's regulations requires that a pipeline must permit a shipper "to make use of the firm capacity for which it has contracted by segmenting that capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible." This requirement pertains both to releases of all the capacity under a firm agreement and to releases of only a portion of the capacity under a firm agreement. Since Midwestern's proposed revision would prevent a shipper from releasing only a portion of its capacity over a portion of its transportation path, the

provision is inconsistent with Commission policy and regulations. Accordingly, we direct Midwestern to file revised tariff sheets within 15 days of the date this order issues removing this provision from its tariff.

5. Second, section 21.4 of Midwestern's GT&C includes provisions for permissible prearranged releases without competitive bidding. According to the provision, a releasing shipper may not roll over, renew, or otherwise continue the original capacity release for a term greater than 30 days unless:

(a) the Replacement Shipper agrees to pay the applicable Maximum Rates and meet all other terms and conditions of the release; or (b) the Releasing Shipper follows the prior posting and bidding procedures set forth in Subsection 21.5 of these General Terms and Conditions; or (c) the release does not contain the same capacity as, or overlaps the capacity contained in, the original release. However, the Releasing Shipper may use this Subsection 21.4 to release the capacity again to the same Replacement Shipper at less than the applicable Maximum Rate once twenty-eight (28) days after the original release period has expired."

6. We have concerns over subsection (c). According to the provision, a releasing shipper may apparently roll over an original capacity release for a term greater than 30 days if the release includes capacity different from capacity used in the original release. This provision appears confusing and possibly inconsistent with Commission policy on capacity release rollovers. For instance, it appears that under this provision, at least some capacity can be rolled over for periods greater than 30 days at a rate less than the maximum applicable rate without first going through posting and bidding procedures. That is because the provision permits capacity that overlaps the capacity in the original release to be rolled over without bidding. There appears to be no reason for the provision unless capacity in the original release is being rolled over. Because of possible inconsistencies with Commission policy, we direct Midwestern, within 15 days of the date this order issues, to clarify this provision and explain why it is consistent with Commission policy, or remove it from its tariff.

7. Third, Midwestern proposes to add the following language to section 21.8 of its GT&C: "No Replacement Shipper shall have the right to change the Receipt Point or Delivery Point listed on Exhibit A of the original Shipper's Firm Transportation Agreement." Under the Commission's *Texas Eastern/El Paso* policy on flexible point rights,³ pipelines must treat replacement shippers as separate shippers with their own contracts directly with the pipeline. Therefore, a replacement shipper should be able to

³ See FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,091, at 31,304 (2000).

obtain primary point capacity up to its mainline contract demand on any part of the system for which it is paying, either within or outside the released transportation path. Since Midwestern's proposal would restrict a replacement shipper's ability to change primary points, it is inconsistent with the Commission's *Texas Eastern/El Paso* policy. Further, Midwestern's proposal would contradict what the Commission ordered in Midwestern's Order No. 637 proceeding. In that proceeding, Midwestern filed to incorporate certain restrictions on a replacement shipper's ability to change primary points. In *Midwestern*,⁴ the Commission directed Midwestern to remove any such restrictions from its tariff, finding they do not conform to our *Texas Eastern/El Paso* policy on flexible point rights. Here, Midwestern attempts again to reapply restrictions to the flexible point rights of replacement shippers. Accordingly, we direct Midwestern to file revised tariff sheets within 15 days of the date this order issues removing this provision from its tariff.

8. Finally, ProLiance requests the Commission convene a technical conference to further discuss Midwestern's filing. It asserts that due to the size of Midwestern's proposed tariff changes, there may be unanswered questions concerning the impact of the revisions. We deny ProLiance's request for a technical conference. The Commission addresses all of ProLiance's specific concerns here. Further, the Commission finds that Midwestern has generally filed the information needed to determine whether its proposed tariff changes conform to Commission policy. In the instance where we determined Midwestern did not include enough information to make a determination, we directed Midwestern to file the proper information (see paragraph 6).

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁴ *Midwestern Gas Transmission Co.*, 101 FERC ¶ 61,310 at 62,240 (2002).

Appendix

Midwestern Gas Transmission Company
Third Revised Volume No. 1

Tariff Sheets Accepted Effective June 12, 2005

Second Revised Sheet No. 254
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