

147 FERC ¶ 61,081  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

April 30, 2014

In Reply Refer To:  
American Midstream (Midla),  
LLC  
Docket No. RP14-689-000

American Midstream (Midla), LLC  
1614 15<sup>th</sup> Street, Suite 300  
Denver, CO 80202

Attention: William B. Mathews  
Vice President & Secretary

Dear Mr. Mathews:

1. On March 31, 2014, American Midstream (Midla), LLC (Midla) filed a revised tariff record<sup>1</sup> to add two non-conforming service agreements (Service Agreements) to its non-conforming agreements listed in section 30 of the General Terms and Conditions of its tariff.<sup>2</sup> The Service Agreements, dated April 1, 2014, are between Midla and: (i) Entergy Arkansas, Inc. (Contract No. FTS-MID-0034); and (ii) Entergy Gulf States Louisiana, L.L.C. (Contract No. FTS-MID-0034) (collectively, the Entergy Entities). Midla requests waiver of the Commission's notice requirements to permit the tariff record to become effective April 1, 2014. As more fully discussed below, the

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<sup>1</sup> American Midstream (Midla), LLC, FERC NGA Gas Tariff, FERC Gas Tariff (Volume Nos. 1 and 2); [41-GT&C Section 30 \(Non-Conforming Agreements\), 5.0.0.](#)

<sup>2</sup> Midla included a redline version of the Service Agreements with the electronic submission of its filing, but failed to include such non-conforming agreements as part of its tariff record. Consistent with the Commission's findings in *Dominion Transmission, Inc.* (132 FERC ¶ 61,179, at PP 12-13 (2010)) and *Columbia Gas Transmission, LLC* (132 FERC ¶ 61,147, at PP 14 (2010)), all tariffs, rate schedules, and jurisdictional contracts, including service agreements such as those filed here, are required to be filed as "tariff records" so they will be included as part of the electronic database for the company.

Commission grants waiver of the 30-day notice requirement and accepts the Service Agreements, and the associated tariff record listed in footnote No. 1, effective April 1, 2014, subject to the condition discussed below.

2. Article 2, Section 1.2 of Midla's *pro forma* Rate Schedule FTS service agreements provides for roll-overs from year-to-year after the primary term of the contract has ended. Specifically, this language states that:

[t]his Agreement shall become effective as of the date first set forth hereinabove written and shall continue through \_\_\_\_\_ (the "Primary Term"). Thereafter, this Agreement shall continue for successive terms of twelve (12) Months each (the "Renewal Term") unless either party gives ninety (90) Days written notice to the other party prior to the end of the Primary Term or any twelve (12) Month Renewal Term thereafter.

3. The two non-conforming agreements filed in this proceeding by Midla are for firm transportation service for the Entergy Entities at discounted rates under Midla's Rate Schedule FTS. The term of the agreements with the Entergy Entities is for a stated period of time – until March 31, 2017, without the roll-over right set forth in the *pro forma* FTS Service Agreement in Midla's tariff.

4. Public notice of Midla's filing was issued on April 1, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2013)) all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties.

5. On April 14, 2014, Atmos Energy Corporation (Atmos) filed a protest. On April 17, 2014, Midla filed an answer to Atmos' protest. On April 22, 2014, the Entergy Entities filed a reply and request for approval of the non-conforming agreements. While the Commission's regulations do not permit the filing of answers to protests,<sup>3</sup> the Commission will accept Midla's answer and the Entergy Entities reply because they provide additional information which aided in our decision-making process.

6. Atmos, a customer of Midla who subscribes to both FTS and NNS service along the Midla system, filed comments regarding the non-conforming agreements between Midla and the Entergy Entities.<sup>4</sup> Atmos states that, on February 21, 2014, it requested

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<sup>3</sup> 18 C.F.R. § 385.213(a)(2) (2013).

<sup>4</sup> Atmos Protest at 2.

that Midla extend the primary term of its existing transportation contracts from August 31, 2014 to March 31, 2016. Atmos contends that, on February 28, 2014, Midla replied that, due to the planned abandonment of the middle portion of the Midla pipeline, it would deny the request.<sup>5</sup> Atmos subsequently filed a Natural Gas Act, section 5 complaint against Midla in Docket No. RP14-638-000. In that complaint, Atmos contends, among other things, that Midla's refusal to extend Atmos' contracts was unduly discriminatory, because Midla has granted the extension requests of other shippers. Atmos claims that Midla's acceptance of the non-conforming agreements with the Entergy Entities in the present docket is an example of inconsistent treatment and discriminatory behavior. Atmos comments that this behavior violates Commission policy and Midla's Tariff.<sup>6</sup>

7. In its Answer, Midla states that Atmos' comments submitted in the current docket do not request that the Commission reject Midla's non-conforming agreements with the Entergy Entities.<sup>7</sup> In fact, Midla contends that, rather than protesting the non-conforming agreements with the Entergy Entities, Atmos is actually requesting an extension of its own service agreements with Midla.<sup>8</sup>

8. In their reply, the Entergy Entities state that Atmos' arguments should be rejected and the non-conforming agreements should be approved. The Entergy Entities state that rejecting Midla's filing would potentially harm small electric customers in Arkansas, Louisiana, Mississippi and other states. The Entergy Entities contend that the non-conforming agreements are not unduly discriminatory because Atmos is not similarly situated to the Entergy Entities. Finally, the Entergy Entities argue that the Atmos arguments are not germane to this proceeding and that these arguments are merely a repeat of allegations made in the complaint proceeding pending before the Commission in Docket No. RP14-638-000.

9. We find that Atmos' issues concerning whether Midla's refusal to extend the primary term of Atmos' service agreements was unduly discriminatory are more appropriately considered in the Atmos complaint proceeding in Docket No. RP14-638-000. Therefore, we will not rule in this proceeding on the merits of the dispute between Midla and Atmos, but rather leave such determination for the complaint proceeding currently pending in Docket No. RP14-638-000.

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<sup>5</sup> Atmos Protest at 3.

<sup>6</sup> Atmos Protest at 2.

<sup>7</sup> Midla Answer at 6.

<sup>8</sup> Midla Answer at 7.

10. Article 2, Section 1.2 of Midla's *pro forma* Rate Schedule FTS service agreement provides for all service agreements to include a roll-over provision. Therefore, the deletion of that roll-over provision from the service agreements of the Entergy Entities is a material deviation from the *pro forma* service agreement.

11. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline's form of service agreement, the Commission's regulations require the pipeline to file the contract containing the material deviations with the Commission.<sup>9</sup> In *Columbia Gas Transmission Corp.*, 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.<sup>10</sup> However, not all material deviations are impermissible. If the Commission finds that such deviation does not constitute a substantial risk of undue discrimination, the Commission may permit the deviation.<sup>11</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.

12. The Commission finds that the material deviation in Midla's Service Agreements with the Entergy Entities is impermissible. In cases where a pipeline's *pro forma* service agreement does not include any roll-over or evergreen provision, and the pipeline has filed a non-conforming agreement containing such a provision, the Commission has held that the inclusion of a roll-over provision not included in the *pro forma* service agreement is an impermissible material deviation.<sup>12</sup> Accordingly, in those cases, the Commission has directed the pipeline either to remove the roll-over or evergreen provision or "incorporate language into its generally applicable tariff permitting it to negotiate evergreen provision options with all its shippers on a not unduly discriminatory basis."<sup>13</sup>

13. This case presents the reverse situation of a *pro forma* service agreement that provides for roll-over provisions to be included in all service agreements and a material deviation that deletes the roll-over provision. However, the Commission finds that the

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<sup>9</sup> See 18 C.F.R. § 154.1(d) and 18 C.F.R. § 154.112(b) 2013.

<sup>10</sup> *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001) (*Columbia*).

<sup>11</sup> *Columbia*, 97 FERC ¶ 61,221 at 62,004.

<sup>12</sup> See *Saltville Gas Storage Co. L.L.C.*, 110 FERC ¶ 61,324, at P 16 (2005) and *Kinetica Energy Express, LLC*, 145 FERC ¶ 61,124, at P 6 (2013).

<sup>13</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61,032, at P 11 (2005).

same principal applies here, as in the other cases: If Midla wishes to negotiate with individual shippers whether to include a roll-over provision in a service agreement, it should incorporate language into its generally applicable tariff permitting it to negotiate with all shippers whether to include roll-over options on a not unduly discriminatory basis. This language will provide notice to all shippers of the availability of this option and thereby guard against undue discrimination.<sup>14</sup>

14. Accordingly, Midla must either revise its tariff consistent with the above discussion, or include a roll-over provision in the Service Agreements with the Entergy Entities as provided in the *pro forma* service agreement. The proposed tariff records are accepted effective April 1, 2014, subject to Midla filing to satisfy these conditions, within 30 days of the issuance of this order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>14</sup> The Commission recognizes that Midla previously filed contracts with the Entergy Entities that contained the subject deviation, and that those uncontested filings were accepted by a delegated letter order issued in Docket Nos. RP13-608-000 and RP14-578-000. However, such delegated letter orders do not establish binding precedent on the Commission. *See Millennium Pipeline Company, LLC*, 145 FERC ¶ 61,088, at P 10 (2013); *Westar Energy, Inc.*, 124 FERC ¶ 61,057, at P 26 (2008); *Norwalk Power, LLC*, 122 FERC ¶ 61,273, at P 25 (2008) (actions taken by the Commission's staff pursuant to delegated authority do not constitute Commission precedent binding the Commission in future cases and the exercise of delegated authority cannot serve to supplant Commission policies established in its decisions and regulations); *see also Mid-Continent Area Power Pool*, 97 FERC ¶ 61,038, at 61,184 n.10 (2001) (citing *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, 249 U.S. App. D.C. 354, 775 F.2d 1187, 1191 (D.C. Cir. 1985)).