148 FERC ¶ 61,039
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Midstream (Midla), LLC Docket No. RP14-1049-000

ORDER ACCEPTING TARIFF RECORDS SUBJECT TO CONDITION

(Issued July 16, 2014)

1. On June 16, 2014, American Midstream (Midla), LLC (Midla) filed tariff records[1] to add language to its tariff providing authority for Midla to obtain capacity rights on upstream and downstream pipelines, including intrastate pipelines, consistent with the Commission's policies as articulated in *Texas Eastern*.[2] Midla requests that its proposed tariff records be accepted effective July 16, 2014.

2. As discussed below, the Commission accepts the proposed tariff records to be effective July 17, 2014, subject to condition.[3]

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[1] American Midstream (Midla), LLC, FERC NGA Gas Tariff, FERC Gas Tariff (Volume Nos. 1 and 2), 2-Table of Contents, 1.0.0 and 36-GT&C Section 25 (Off-System Capacity), 1.0.0.

[2] Midla Transmittal Letter at p. 1 (citing *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,056 (2001) (*Texas Eastern*)).

[3] 18 CFR §154.207 (2013) requires in part that all proposed changes in tariffs must be filed with the Commission not less than 30 days prior to the proposed effective date unless a waiver of the time period is granted by the Commission. Midla made the instant filing only 29 days before its proposed effective date. The Commission does not find good cause to waive its regulations in this instance. *See also*, 18 CFR § 385.2007 (2013).

**Details of the Instant Filing**

3. Midla proposes to add a new section 25 to its General Terms and Conditions (GT&C), entitled "Off-System Capacity."[4] Proposed section 25 would authorize Midla either to lease or acquire transportation capacity on other interstate and intrastate pipelines. Midla would use the off-system capacity for operational reasons or to render service to its customers. Any service provided to customers will be provided pursuant to Midla's tariff and subject to Midla's approved rates. Proposed section 25 also includes a provision waiving the shipper-must-have-title rule for purposes of the off-system capacity. Proposed section 25 states that, when Midla is not using the off-system capacity for operational reasons or to meet firm service commitments, it will offer the off-system capacity to customers on a primary firm basis. Finally, proposed section 25 permits Midla to release any capacity it holds on another pipeline.

4. Midla asserts that its proposal is consistent with the Commission's *Texas Eastern* policy concerning the acquisition of upstream capacity by interstate pipelines. Midla points out in *Texas Eastern* the Commission stated that:

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[4] Proposed GT&C section 25 would read as follows:

OFF-SYSTEM CAPACITY

Pipeline may enter into an agreement(s) with other interstate and intrastate pipeline companies for the lease of or to acquire transportation capacity or transportation rights. In the event that Pipeline leases or acquires off-system capacity, Pipeline will use such capacity for operational reasons or to render service for its Customers. In the event that Pipeline uses off-system capacity to render service for its Customers, it will only render service to the Customers on the leased or acquired capacity pursuant to Pipeline's FERC Gas Tariff and subject to Pipeline's approved rates, as such tariff and approved rates may change from time to time. For purposes of transactions entered into subject to this Section 25, the "Shipper-Must-Have-Title" requirement is waived. When off-system capacity is not required for operational reasons or to meet firm service commitments, Pipeline will offer the off-system capacity to Customers on a primary firm basis. This Section 25 does not preclude Pipeline from seeking case specific authorization for the utilization of off-system capacity by Pipeline for other purposes, nor does it preclude Pipeline from releasing any capacity it holds on off-system pipeline companies.

> pipelines can acquire offsystem capacity without preapproval. Under these circumstances, we believe it is prudent to require an affirmative statement from a pipeline that it will only transport gas for others on the acquired capacity pursuant to its open access tariff and subject to its Commission-approved rates. This does not mean, however, that a pipeline must seek such a request on a case-by-case basis. It may make a single filing to amend its tariff to include a general statement that it will only transport for others on offsystem capacity pursuant to its existing tariff and rates. Upon the pipeline's filing an appropriate tariff provision, we will grant a generic waiver of the "shipper must hold title" policy for any such transportation that pipeline subsequently provides.[5]

5. Midla asserts that its proposed tariff records are consistent with this policy and with the tariff record language accepted by the Commission granting other pipelines the authority to acquire off-system capacity.[6]

6. Midla asserts that part of its system is a nearly 90-year old mainline pipeline constructed with over 100,000 Dresser couplings that is deteriorating and experiencing an increasing number of leaks. This part of Midla's system includes approximately 170 miles of pipeline between the Monroe Field and Midla's markets in Louisiana and Mississippi, including, Baton Rouge, Louisiana. Midla states that it has requested abandonment authority for this part of its system from the Commission in Docket No. CP14-125-000 and that its requests are pending before the Commission.

7. Midla states that it would initially use the authority requested in the instant proceeding to acquire off-system capacity rights from its affiliate, Mid Louisiana Gas Transmission, LLC (Mid Louisiana). Midla asserts that upon entering into a firm transportation agreement with Mid Louisiana, it will be able to re-route the transportation of gas to several customers serving the Baton Rouge, Louisiana area. Midla avers that this re-routing of gas will enable Midla to avoid transporting and delivering gas through a portion of its system that is located in several highly-populated High Consequence Areas (HCAs) as defined by the Pipeline and Hazardous Materials Safety Administration (PHMSA). Lastly, Midla states that it does not intend for its proposed tariff records to have any effect on its existing rates.

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[5] *Texas Eastern*, 95 FERC at 61,140.

[6] Midla Transmittal Letter at p. 2 (citing, *e.g.*, Discovery Gas Transmission, FERC Gas Tariff, Section 20.5; Florida Gas Transmission, FERC Gas Tariff, GT&Cs Section 29; and Stingray Gas Pipeline, FERC Gas Tariff, GT&Cs, Section 37).

**Public Notice, Interventions and Protests**

8. Public notice of Midla's filing was issued on June 18, 2014. Interventions and protests were due on June 30, 2014, as provided in section 154.210 (18 C.F.R. § 154.210 (2013)) of the Commission's regulations. 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 issue 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. On June 20, 2014 and June 30, 2014, protests were filed by EV Properties, L.P. (EVP) and Atmos Energy Corporation (Atmos), respectively. On July 2, 2014, Midla filed an answer to these protests. While the Commission's regulations do not generally permit the filing of answers to protests,[7] the Commission will accept the answer because it provides additional information which aids in our decision making process.

9. EVP points out that, in addition to its abandonment application for 170 miles of mainline pipeline in Docket No. CP14-125-000, Midla also made a prior notice application for abandonment, *inter alia,* of its "Baton Rouge System" located in Baton Rouge Parish, Louisiana in Docket no. RP14-126-000. Both these applications are pending before the Commission.

10. EVP asserts that Midla's abandonment applications comprise a restructuring of Midla's operations designed to terminate its interstate natural gas pipeline transportation service by Midla. EVP states that as a part of this restructuring, Midla has identified certain segments of its mainline north of Baton Rouge as traversing areas defined by PHMSA as HCAs. EVP states that Midla has announced its intention to remove the mainline facilities traversing these HCAs from service and to substitute the use of recently constructed interconnects with Midla's affiliated intrastate pipeline Mid Louisiana to provide the necessary service.

11. EVP is concerned that Midla may not wait to receive abandonment authorization or even seek the necessary authority from the Commission before terminating service through the mainline facilities traversing the alleged HCAs. EVP states that the proposed tariff language would enable Midla to acquire firm capacity on Mid Louisiana's upstream transportation facilities and to operate the acquired capacity as part of Midla's system. EVP asserts that the proposed tariff language is unjust and unreasonable because it could be used to effect an unauthorized abandonment of certificated natural gas transportation service.

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[7] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests unless otherwise permitted by the decisional authority. (18 C.F.R. § 385.213(a)(2) (2013)).

12. Atmos states that it echoes many of the concerns raised by EVP. Atmos asserts that Midla's use of the proposed tariff language will effectively abandon the portion of its mainline that allegedly traverses HCAs north of Baton Rouge. Moreover, Atmos states that Midla's filing does not reflect the rates Midla proposes to pay its affiliate for leased capacity. Atmos asserts that Mid Louisiana has market-based rate authority in Louisiana. Atmos argues that because Midla is seeking to cease all pipeline operations, the Commission should scrutinize the proposed rates in order to assure that Midla's instant filing is not a means to improperly adjust Midla's revenues through an affiliate transaction, which could have repercussions in Midla's pending abandonment filings now before the Commission.

13. Both Atmos and EVP request that the Commission reject Midla's filing, or suspend it, to ensure that it cannot become effective before the Commission's ruling on the Midla abandonment proceedings EVP states that should the Commission decline to take such actions, the Commission should caution Midla that the availability of alternative gas supplies through the acquisition of off-system capacity will not constitute a basis for Midla to cease transportation of natural gas without prior abandonment authorization from the Commission.

14. In its answer, Midla asserts that no shipper will be affected by its proposed re-route around the HCAs, that it will be able to continue service to all of its customers, and that it will not terminate or reduce service to any customer under its proposal. Midla also states that its proposal will not affect any service or any rates of Atmos or any other customer. Moreover, Midla states that Mid Louisiana will only charge Midla $0.01/Dth for this service. Midla also states that no abandonment of the facilities will occur until the Commission approves Midla's abandonment application in Docket No. CP14-125-000.

15. Midla also argues that the Commission should deny EVP's motion to intervene in this case because EVP does not have a legally cognizable interest in this proceeding. Midla states that, contrary to its claim, EVP does not supply a substantial portion of the natural gas transported by Midla and that EVP sells its own (and perhaps other producers') gas to Midla's affiliate, American Midstream Marketing, LLC (American). Midla states that American sells the gas purchased from EVP to Enbridge Marketing (U.S.), L.P. (Enbridge). Midla states that both American and Enbridge are the shippers of EVP's gas on Midla and pay significant sums to Midla for transportation service but that EVP currently is not a shipper and has no financial obligation to Midla. Thus, Midla asserts that EVP currently has no rights to transportation on Midla and EVP has indicated it will request only a *de minimis* amount of transportation going forward. Lastly, Midla points out that neither American nor Enbridge oppose Midla's filing in this proceeding.

## **Discussion**

16. The Commission finds that EVP has a sufficient interest in the instant proceeding to warrant its participation. The Commission has found that, even if producers such as EVP do not act as shippers themselves on a system, such producers have an interest in the proceedings of the pipelines over which their gas is shipped to downstream markets, because the pipelines' rates can affect the value of the producer's gas.[8] Therefore, the Commission grants EVP's motion to intervene in the instant proceeding.

17. Further, the Commission finds that Midla's proposed GT&C section 25 is consistent with Commission policy to the extent that it authorizes Midla to acquire off-system capacity by entering into transportation service agreements with other pipelines.

18. In *Texas Eastern*, the Commission found that the natural gas industry and its regulations and policy had evolved to the point where it was no longer necessary for pipelines to require Commission approval before acquiring off-system capacity in this manner.[9] Accordingly, the Commission has permitted interstate pipelines to include in their tariffs provisions authorizing them to acquire off-system capacity by entering into transportation service agreements with other pipelines and providing that the interstate pipeline will provide service to its customers on such capacity under its existing Part 284 tariff and rate schedules, as Midla proposes in GT&C section 25.

19. However, Midla also proposes to include language in proposed section 25 which would authorize it to lease capacity on other pipelines. The Commission views lease arrangements differently from transportation or storage services under rate contracts. The Commission considers a lease of pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline. To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization from the Commission to acquire the capacity.[10] Given that the Commission's *Texas Eastern* policy is predicated upon the fact

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[8] *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,347 (1998), *order on reh'g*, *Trailblazer Pipeline Co.*, 87 FERC ¶ 61,110, at 61,442 (1999).

[9] *Texas Eastern Transmission Corp.*, 74 FERC ¶ 61,074 (1996); *reh'g denied*, 78 FERC ¶ 61,277 (1997), *remanded*, 146 F.3d 889 (D.C. Cir. 1998*)*, *order on remand*, *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273, at P 2 (2000), *order on reh'g*, *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139 (2001), *order on reh'g*, *Texas Eastern Transmission Corp.*, 95 FERC ¶ 61,056 (2001).

[10] *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001), *citing Panhandle Eastern Pipeline Co.*, 73 FERC ¶ 61,137, at 61,390 (1995); s*ee also Texas Gas Transmission LLC, et al.*, 113 FERC ¶ 61,185, at P 10 (2005).

that pipelines no longer need prior Commission approval to obtain off-system capacity, yet leased capacity would require prior approval from the Commission, the language in proposed section 25 authorizing Midla to lease capacity on other pipelines is inconsistent with Commission policy.

20. Therefore, the Commission's acceptance of Midla's proposed tariff records is subject to the condition that Midla remove the references to leased capacity from its proposed language.

21. The Commission finds that the issues raised by Atmos and EVP do not warrant rejection of Midla's proposed tariff records. Midla's proposal, as conditioned above, is consistent with the language afforded to other jurisdictional pipelines and will merely permit Midla to acquire off-system capacity consistent with Commission policy. The proposed language will not permit Midla to abandon service in any part of its system. Service may only be abandoned based upon abandonment authorization granted by the Commission pursuant to section 7(b) of the NGA. All issues related to the effects of the abandonments previously requested by Midla will be examined in Docket Nos. CP14-125-000 and CP14-126-000 in the due course of those proceedings.

22. Accordingly, the Commission accepts Midla's proposed tariff records to be effective July 17, 2014, subject to the condition that Midla file revised tariff records within 30 days of the date of this order removing all references to the leases of capacity on other pipelines.

The Commission orders:

(A) The proposed tariff records are accepted, as conditioned above, to be effective July 17, 2014.

(B) Midla is directed to file revised tariff records consistent with this order within 30 days of the issuance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.