

141 FERC ¶ 61,066
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 26, 2012

In Reply Refer To:
Midwestern Gas Transmission Company
Docket No. RP12-1070-000

Midwestern Gas Transmission Company
ONEOK Partners GP, L.L.C.
100 West 5th Street
Tulsa, Oklahoma 74103

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

Reference: Non-Confirming Discount Agreement with Sequent

Ladies and Gentlemen:

1. On September 26, 2012, Midwestern Gas Transmission Company (Midwestern) filed revised tariff records¹ to report a discounted rate agreement with Sequent Energy Management, L.P. (Sequent), that Midwestern states also includes a non-conforming provision. Midwestern requests waiver of the Commission's 30-day notice period to effectuate the tariff records on October 1, 2012. For the reasons discussed below, we reject the revised tariff records and direct Midwestern to comply with the Commission directives set forth in the discussion of this order, within 21 days of the date this order issues.

2. Under the instant agreement, Midwestern would provide firm transportation service to Sequent under Rate Schedule FT-A. The primary term of the agreement is

¹ Midwestern Gas Transmission Company, FERC NGA Gas Tariff, Midwestern - FERC Gas Tariff, [Part 8.32, Non-Conforming Agreements, 10.0.0](#), [Part 10, Non-conforming and Negotiated Rate Agreements, 10.0.0](#), and [Part 10.9, Sequent Energy Management, L.P. FA0954, 0.0.0](#).

through October 31, 2013, with extensions available as set forth in Midwestern's tariff.² Under the terms of the agreement, Sequent would pay Midwestern a discounted demand and commodity rate for service. Exhibit A of the agreement sets forth a discounted monthly demand rate of \$0.3050 per Dt, and a discounted daily commodity rate of \$0.0009 per Dt.

3. Under the terms of the agreement, in addition to the discounted rates specified above, Sequent would also pay additional daily amounts to Midwestern based on the value of the transportation service on that particular day. The Attachment to Exhibit A sets forth the definitions and formulas used to calculate these additional amounts that Sequent would pay each day under the agreement. In general, the additional amounts would be based on the difference between the total purchase cost of the gas and the actual total revenue received for the sale of the gas being transported on that day. On days in which the shipper does not transport gas, the additional amounts to be paid by Sequent under the agreement would be based on certain published prices of gas as specified in the agreement.

4. Under the agreement, Midwestern would collect the discounted reservation and commodity charges, as well as the additional amounts calculated. On page 2 of its transmittal, Midwestern states that "if the amount Midwestern would receive in total for any month exceeds what it would be entitled to collect at the maximum tariff rate, the excess will be recovered through a demand charge adjustment to subsequent months." The demand charge adjustment mechanism is set forth in section 3.1 of the Attachment to Exhibit A of the agreement.

5. Midwestern states that the agreement also contains a non-conforming provision. Under section 3.6(d) of the Attachment to Exhibit A of the agreement, if a positive demand charge adjustment remains upon termination of the agreement, the shipper will agree to extend the agreement to allow Midwestern to recover, on a net present value basis, any remaining demand charge adjustment amounts. Section 3.6(d) sets forth how the term of the extension will be calculated.

6. Public notice of the filing was issued on September 27, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations

² Midwestern explains in its transmittal that it is currently operating under an interim service agreement with Sequent that runs through October 31, 2012, which is a conforming agreement. It states that service under the instant agreement will not commence until the Commission approves the agreement, but once approved, the service may be retroactive to October 1, 2012.

(18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2012)), 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 the proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments.

7. Midwestern designated the instant agreement with Sequent as a discounted rate agreement. The rate terms of the agreement, however, appear to provide for the "banking" of revenue, whereby Midwestern would be allowed to defer the billing of amounts in excess of the maximum applicable rate components until some later time period whenever the discount rate calculated pursuant to the agreed-upon terms falls below the maximum applicable tariff rate.

8. The Commission addressed the "banking" of revenue in discount rate agreements in *CenterPoint*.³ In that order, the Commission stated:

When the Commission changed its selective discounting policy in *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 (2003), to permit formula-based discounted rates, the Commission first distinguished between its discounted rate program adopted in Order No. 436 and the subsequent negotiated rate program adopted after Order No. 636.⁴ Both programs permit pipelines to negotiate individualized rates with particular customers so as to give the pipeline the flexibility to meet competition so as to retain existing customers and attract new customers. However, the Commission found that the regulatory requirements underlying each of these alternative ratemaking mechanisms differ. Section 284.10(c)(5) of the Commission's regulations requires that discounted rates always remain within the range established by the pipeline's maximum and minimum tariff rates for both firm and interruptible service, with the minimum reflecting only variable costs. By contrast, under the negotiated rate option, the pipeline and

³ *CenterPoint Energy Gas Transmission Co.*, 114 FERC ¶ 61,081 (2006).

⁴ The Commission's negotiated rate policies were originally established in *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order on clarification*, 74 FERC ¶ 61,194, *order on reh'g*, 75 FERC ¶ 61,024 (1996).

shipper may negotiate rates that vary from the pipeline's otherwise applicable tariff rates and may exceed the pipeline's maximum rates or fall below its minimum rates. The Commission concluded that, "Given this distinction between discounted and negotiated rates . . . formulas that produce varying rates during the term of an agreement are permissible as discounted rates, so long as the rate remains within the range established by the maximum and minimum rates set forth in the pipeline's tariff."⁵

9. In the *CenterPoint* case, the pipeline sought to revise its tariff to allow it to enter into discounted rate agreements using basis differentials and, during months when the basis differential exceeds the maximum rate, "bank" the excess amount for collection during a subsequent month when the basis differential is less than the maximum rate. The Commission held that whether this causes the discounted rate to exceed the pipeline's maximum tariff rate in violation of section 284.10(c)(5) of the Commission's regulations turns on whether the banked amount is viewed as a charge for service during the month when the basis differential exceeded the maximum rate or a charge for service during the subsequent month when the basis differential was less than the maximum rate. The Commission determined that the banked amount must be viewed as a charge for service during the month when the basis differential exceeded the maximum rate. It asserted that just because "banked" amounts are deferred for collection until a later point in time when the formula rates are less than the maximum tariff rates does not change the fact that the charges were generated as a result of service performed during the prior month when the formula rates were above the tariff maximum.

10. The Commission stated that the level of the banked amount is a function of the amount of service performed during that prior month, and thus, it is the performance of transportation service during a month when the discount rate formula yields a rate above the maximum rate that triggers the excessive charge and the deferral – or "banking" – of the amount by which the rate exceeds the maximum rate does nothing to cure the violation. The Commission determined that *CenterPoint*'s proposal to "bank" revenues until a subsequent month was impermissible in the context of a discount rate agreement, but permissible in the context of a negotiated rate agreement, where rates are allowed to exceed the maximum tariff rate.⁶

11. In the instant case, it appears that *Midwestern*'s proposed rate treatment for its Rate Schedule FT-A discount agreement with *Sequent*, as set forth in the Attachment to

⁵ *Northern Natural Gas Co.*, 105 FERC ¶ 61,299 (2003).

⁶ In the *CenterPoint* order, the Commission stated its finding was consistent with prior Commission action in *ANR Pipeline Co.*, 108 FERC ¶ 61,028 (2004).

Appendix A, would permit Midwestern to “bank” the collection of revenue earned during one month until a subsequent month. As Midwestern states in its transmittal regarding the agreement, “if the amount Midwestern would receive in total for any month exceeds what it would be entitled to collect at the maximum tariff rate, the excess will be recovered through a demand charge adjustment to subsequent months.” Consistent with its findings in *CenterPoint*, the Commission finds that this “banked” amount operates as a charge for service during the month when the service was rendered and the rates charged exceeded the maximum tariff rate. Just because the “banked” amounts are deferred for collection until a later point in time when the formula rates are less than the maximum tariff rates does not change the fact that the charges were generated as a result of service performed during the prior month when the formula rates were above the tariff maximum.

12. Therefore, consistent with both *CenterPoint* and *ANR*, the “banking” provisions of the instant agreement with Sequent are impermissible in the context of a discounted rate agreement, but may be permissible in the context of a negotiated rate agreement. Accordingly, we direct Midwestern, within 21 days of the date this order issues, to either: (1) re-file the instant agreement with Sequent as a non-conforming negotiated rate agreement, designating it as such in Exhibit A of the agreement (and filing the appropriate tariff records); or, (2) re-file the agreement as a discount rate agreement, but remove the rate treatment that would provide for the “banking” of revenue. Although removing the impermissible rate treatment from the agreement would likely result in a conforming discount rate agreement which does not have to be filed with the Commission, in the circumstances, we direct Midwestern, if it chooses option 2, to file the agreement with the Commission for review, though no tariff records would have to be filed. As a third alternative, Midwestern may, within 21 days of the date this order issues, (3) file additional information and an explanation with the Commission to show why the subject agreement is not impermissible as a discount arrangement, in light of the Commission’s disallowance of such “banking” provisions in discounted rate agreements in *CenterPoint* and *ANR*.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

