

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

In the Matter of the Application of Midwest)
Energy, Inc. Requesting Approval of a)
Temporary Waiver of the 900 BTU Standard) Docket No. 08-MDWG-486-MIS
Contained in Its Distribution Transportation)
Terms and Conditions.)

ORDER

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission makes the following findings:

I. Executive Summary

1. The parties in this case are Midwest Energy, Inc. ("Midwest Energy" or "Company"), Commission Staff ("Staff") and intervenors ONEOK Field Services Company ("OFS"), XTO Energy, Inc. ("XTO") and Citizens' Utility Ratepayer Board ("CURB").

2. At its core, this matter involves conflict between entities that use a common or shared transmission facility. Attachment 1 to Staff's July 2009 memorandum is a map that provides a useful aid in understanding the issues.

3. Midwest Energy is a customer-owned Kansas corporation engaged in the business of a natural gas public utility subject to Commission jurisdiction. K.S.A. 66-1,201, 66-1200(a) and 66-104. The Commission regulates service provided by jurisdictional natural gas public utilities under the Kansas Public Utility Act requiring that such service is provided in a reasonably efficient and sufficient manner. K.S.A. 66-101, *et seq.*, K.S.A. 66-1,202.

4. OFS operates natural gas gathering systems and processing plants in Kansas, including its Holcomb gas gathering system, which gathers gas for delivery to its Scott City, Kansas processing plant through the Kinder Morgan Interstate Gas Transportation Company (“KMIGT”) pipeline (“pipeline”).

5. The Commission regulates the conservation and production of natural gas to protect correlative rights and prevent waste. K.S.A. 55-701, *et seq.* XTO is currently licensed with the Commission's Conservation Division to operate oil and gas wells in Kansas. XTO is the owner and operator of gas wells in Finney County, Kansas. Unprocessed gas produced by XTO's Finney County wells is gathered by OFS on its Holcomb gathering system and is delivered to KMIGT's pipeline. (Together, OFS and XTO will be referred to as “producer intervenors”).

6. Midwest Energy receives natural gas from KMIGT's pipeline. This pipeline is the same interstate pipeline used by the producer intervenors to ship unprocessed natural gas to the Scott City processing plant. KMIGT's current tariff sets its minimum heat content specifications at 950 Btu/scf¹ but allows KMIGT to waive its Btu limits as long as the waiver does not cause operational problems for KMIGT. KMIGT is accepting unprocessed gas on this pipeline which lowers the overall heat content of the natural gas within the line.

7. Midwest Energy's current tariff requires Midwest Energy to receive and offer gas to its customers at a minimum heat value of 900 Btu/scf. In order to meet Midwest's 900 Btu/scf specifications, KMIGT will be required to accept less gas with lower Btu/scf values, which in turn will cause OFS to refuse to accept gas with lower Btu/scf values on its gathering system, which will result in approximately 10 million cubic feet of gas per day being shut in at the wellhead.

¹ Btu/scf is defined as British thermal unit per standard cubic foot. It is the standard measurement unit for the amount of energy contained in a standard volume of gas.

8. On November 20, 2007, Midwest Energy filed its Application for a temporary waiver of the 900 Btu standard to allow it to accept and offer natural gas at a heat value of 840 Btu/scf. Producer intervenors argued the Commission should require a heat value standard of 800 Btu/scf to prevent waste. The Commission granted the temporary waiver at 840 Btu/scf. Since the initial waiver, Midwest Energy requested and received numerous extensions temporarily waiving the 900 Btu heat values and requesting heat content ranging upwards from 850 to 870 as a result of quality of service complaints Midwest Energy received at lower Btu levels.² Later, Midwest Energy amended its Application, requesting a permanent waiver of the 900 Btu standard to allow it to accept and offer natural gas at a heat value no lower than 870 Btu/scf.³

9. In this case, the Commission's regulatory obligations overlap, requiring the Commission to strike a balance between setting the heat value of natural gas at a level high enough to protect the quality of service to Midwest Energy's customers, and at the same time, set the heat value level low enough so that large quantities of unprocessed gas are not unnecessarily curtailed. The Commission must rule on whether it will allow Midwest Energy to lower the Btu standard to a minimum of 870 Btu/scf as finally requested by Midwest Energy, require a lower Btu/scf level to assist producers and gathering system operators, or deny Midwest Energy's request altogether. For reasons discussed below, the Commission authorizes Midwest Energy to serve customers with natural gas having a heat content above 800 Btu/scf if that heat content supports Midwest Energy's standards for providing efficient and sufficient service, but recognizes Midwest Energy is responsible to monitor its own quality of service. Because Midwest Energy received customer complaints while serving at a lower heat content, but has

² These requests are identified and discussed with more particularity beginning on page 6.

³ Midwest Energy's application is discussed with more particularity on page 9.

received no customer complaints at service provided at 870 Btu/scf, the Commission approves Midwest Energy's application for a permanent waiver of the 900 Btu standard and approves a Btu standard of no lower than 870 Btu/scf.

II. Factual Background

10. This matter arises from historical practices and piecemeal sale of the interconnected gathering, transmission and distribution systems. Prior to 1997, the Kansas-Nebraska Energy Company, predecessor to KMIGT, owned the gas gathering system now owned and operated by OFS, the distribution system now owned and operated by Midwest, and the transmission line now owned and operated by KMIGT.

11. This docket was opened as a result of discussions between Midwest Energy, KMIGT, OFS, and interested Kansas gas producers to discuss issues related to gas quality.⁴ At issue in these discussions was the minimum heat content of natural gas being delivered on the KMIGT pipeline segment from Holcomb to Scott City in western Kansas, and an earlier decision by KMIGT not to accept lower Btu gas which had the effect of curtailing significant gas production in Finney County.⁵ The parties are aware of the conflict between what is gathered in the OFS system, what KMIGT demands in its tariffs and what Midwest promises in its tariffs. A solution that the parties proposed and that failed was to build a 5-mile pipeline to the Lakin line that would allow OFS to deliver unprocessed gas to the Scott City plant without using the shared Holcomb facility.⁶ Thus, this matter also involves a conflict where the affected parties are unable to reach a mutually acceptable privately-negotiated solution and the parties are asking the

⁴ Staff's Memorandum (Nov. 20, 2007), ¶ 1.

⁵ Id. at Attachment "I", p. 2.

⁶ MIDWEST ENERGY, INC.'S REPLY TO (1) ONEOK FIELD SERVICES COMPANY, L.L.C.'S RESPONSE TO STAFF'S MEMORANDUM; (2) COMMENTS OF XTO ENERGY, INC.; AND (3) COMMENTS OF THE CITIZENS' UTILITY RATEPAYER BOARD (June 15, 2009) at ¶¶ 14 & 32.

Commission to resolve a conflicting use dispute that they cannot (or will not) resolve. In a previous docket, the Commission approved Midwest Energy's application requesting approval to combine its Distribution Transportation Service ("DTS") Schedule and Distribution Transportation General Terms and Conditions ("GT&C") Schedule into a single schedule entitled Distribution Transportation Terms and Conditions ("DTTC"). Pursuant to Section 5(B)(3) of the DTTC, which is listed on Sheet 5 of 28 Sheets (Index No. 206), Midwest Energy is currently required to receive at each Point of Receipt, gas that "the Gross Dry Heating Value of such gas shall not be less than 900 BTUs nor more than 1020 BTUs per cubic feet." Docket No. 05-MDWG-674-TAR, Order issued December 12, 2005.

a. The KMIGT pipeline

12. The KMIGT pipeline is an interstate gas transmission pipeline regulated by the Federal Energy Regulatory Commission ("FERC") and includes a Holcomb to Scott City, Kansas segment. The gas transported on this line is subject to the gas quality specifications proposed by KMIGT and approved by FERC.

13. KMIGT does not differentiate between processed and unprocessed gas with respect to the minimum heat content specifications listed in its tariff, which is set at 950 Btu/scf. However, KMIGT's tariff allows it to waive its Btu limits as long as the waiver does not cause operational problems for KMIGT.

14. Historically, the KMIGT pipeline has been used to provide transportation of unprocessed natural gas from various gas gathering systems to the gas processing plant, located in Scott City, Kansas.⁷ At this time, the sole source of gas supply for this section of pipeline is

⁷ . Staff's Memorandum (Nov. 20, 2007, Attachment "I", p. 2.

the OFS operated gas gathering system.⁸ The KMIGT pipeline also delivers gas to Midwest Energy for services to 224 end use customers utilizing 278 meters.⁹

b. OFS Reconfiguration of its Gas Gathering System

15. In early 2007, OFS reconfigured its gas gathering system and routed additional volumes of gas to the KMIGT pipeline.¹⁰ This additional flow in gas resulted in a decline of heat content of the gas stream on KMIGT's pipeline to approximately 840 Btu/scf for the time period of January 2007 through May 2007.¹¹

16. In the spring of 2007, Midwest received a complaint from an irrigation customer regarding the effect the lower heat value of the fuel had on his irrigation equipment.¹²

17. In May of 2007, Midwest Energy requested that KMIGT provide gas with heat a content of at least 870 Btu/scf. As a result of this request, KMIGT restricted gas deliveries from OFS to 870 Btu/scf.¹³

18. In order to meet the higher specification, OFS refused to accept gas with lower Btu/scf values on its gathering system which resulted in approximately 10 million cubic feet of gas per day being shut in at the wellhead.¹⁴

c. November 21, 2007 Temporary Waiver

19. On November 20, 2007, as a result of conversations with various producers, Midwest Energy filed an Application and an Amended Application for a Temporary Waiver of its 900 Btu Gas Quality Standard Contained in its Distribution Transportation Terms and Conditions ("DTTC") as it applies to gas deliveries from the KMIGT pipeline, pursuant to K.S.A. 66-104,

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id. at pp. 2-3.

66-117, 66-131, and 66-1,200 *et seq.*¹⁵ In its Application and Amended Application, Midwest Energy asked the Commission to temporarily waive the 900 Btu/scf minimum requirement contained in Section 5(B)(3) of its DTTC and to replace it with an 840 Btu/scf minimum.¹⁶

20. On November 20, 2007, Staff filed its Memorandum recommending the Commission approve Midwest Energy's proposed waiver of its tariff to lower the minimum acceptable heat content of gas delivered to Midwest Energy to a value of 840 Btu/scf, effective until May 1, 2008, at which time the minimum heat value would return to 900 Btu/scf.¹⁷ Staff stated approval of the waiver would provide an interim solution to the shut in of gas production and provide OFS and KMIGT the needed time to reconfigure the gas gathering/transportation system in such a manner that only processed gas will be delivered to the Holcomb/Scott City pipeline.¹⁸ On November 21, 2007, the Commission adopted Staff's analysis and recommendation and granted Midwest Energy's request for a temporary waiver specification of 840 Btu/scf content effective until May 1, 2008.¹⁹

d. May 1, 2008 Temporary Waiver

21. In a March 31, 2008, letter from Patrick Parke, Vice President of Customer Service with Midwest Energy, Midwest Energy stated that it had not been a party to any formal discussions or negotiations between KMIGT and OFS, and that Midwest Energy did not intend to unilaterally extend support for the waiver beyond May 1, 2008.

22. In an April 18, 2008, letter from David Scharf, Vice President, Commercial with OFS, OFS stated that negotiations between OFS and KMIGT to build and/or own a line from

¹⁵ Amended Application (Nov. 20, 2007), p. 1. Midwest Energy also requested excursions below the 840 Btu minimum for not more than 8 hours at a time.

¹⁶ *Id.* at p. 4.

¹⁷ Staff's Memorandum (Nov. 20, 2007), Attachment "I", pp. 3-4.

¹⁸ *Id.* at p. 4

¹⁹ Order Granting Temporary Waiver (November 21, 2007), pp. 2-3.

Holcomb to Lakin were unresolved. The letter also stated that because Midwest Energy's tariff waiver expires May 1, 2008, the only immediate way to achieve a Btu/scf minimum heat value of 900, or even 870, was by shutting in a substantial number of low-Btu wells, and it also asked that the Commission extend the waiver or take other action to avoid shut-in of production.

23. In an April 29, 2008, letter from Anne E. Callenbach, attorney for Midwest Energy, Midwest Energy requested the Commission extend the granted waiver of the heat content contained in Midwest Energy's tariff until October 1, 2008, with the following modifications: the heat content be no lower than 850 Btu/scf, and Midwest Energy reserves the right to unilaterally and in its sole discretion refuse to accept natural gas with less than the tariff requirement of 900 Btu/scf if it receives customer complaints of operation issues associated with the lower heat content.

24. On May 1, 2008, Staff filed its Memorandum recommending the Commission approve Midwest Energy's request for extension of the original waiver until October 1, 2008.

25. On May 1, 2008, the Commission issued an Order Granting Midwest Energy's request for extension of the Temporary Waiver with Midwest Energy's two modifications.

e. October 17, 2008, Temporary Waiver

26. In a September 29, 2008, letter from Anne Callenbach, Midwest Energy requested the Commission extend the waiver until April 1, 2009, with the following modifications: the heat content would be no lower than 870 Btu/scf; KMIGT would provide progress reports every 60 days on the development of a plan to permanently alleviate the decline in heat content of gas deliveries from the subject line; and Midwest Energy reserved the right to unilaterally and in its sole discretion refuse to accept natural gas with less than the tariff requirement of 900 Btu/scf.

27. On October 10, 2008, Staff filed its memorandum recommending the Commission approve Midwest Energy's request for extension of the original waiver until April 1, 2009. Staff also recommended the Commission require Midwest Energy to file a progress report on the status of the negotiations in this docket every sixty (60) days.

28. On October 17, 2008, the Commission accepted Staff's recommendations and issued an Order Granting Temporary Waiver.

29. On December 22, 2008, and February 19, 2009, Midwest Energy filed progress reports with the Commission detailing discussions between KMIGT and OFS in which KMIGT informed OFS that it would be unable to accept gas into the pipeline from OFS that would reduce the heat content in the line to between 840 and 850 Btu/scf.

f. April 2, 2009, Temporary Waiver

30. On March 26, 2009, Midwest Energy filed its application for a **permanent** waiver of the 900 Btu/scf standard contained in its Distribution Transportation Terms and Conditions for Gas Delivered from the KMIGT Holcomb to Scott City pipeline to 870 Btu/scf. In support of its application, Midwest Energy stated that there had "been no progress made between OFS and KMIGT developing a more permanent solution to this issue" and that Midwest Energy had not received any customer complaints regarding the heat content at 870 Btu/scf.²⁰ Further, reducing the minimum heat content to 870 Btu/scf would assist OFS and KMIGT in sustaining gas production in the field and would have no long-term detrimental effects on Midwest Energy's customers.²¹

²⁰ Midwest Energy, Inc.'s Application for a Permanent Waiver of the 900 BTU Standard Contained in its Distribution Transportation Terms and Conditions for Gas Delivered from the KMIGT Holcomb to Scott City Pipeline (Mar. 26, 2009), at ¶ 15.

²¹ Id. at ¶ 16.

31. On April 1, 2009, Staff filed a Motion for Extension of Temporary Waiver until May 1, 2009.

32. On April 2, 2009, the Commission issued an Order Granting Extension of Temporary Waiver until May 1, 2009.

g. April 29, 2009 Temporary Waiver

33. On April 22, 2009, Staff filed its Memorandum recommending the Commission approve Midwest Energy's proposed permanent waiver. Staff stated that the waiver was considered the best solution to minimize the amount of shut in natural gas production while protecting the quality of service to the Midwest Energy distribution customers. Attached to Staff's Memorandum was an April 15, 2009, letter from Patrick Parke, Midwest Energy's VP Customer Service, stating that in response to customer surveys Midwest Energy had received two negative responses from residential customers and one from a commercial customer when Midwest Energy was operating under the waiver allowing for 850 Btu/scf and since the Btu/scf content was increased to 870, Midwest Energy had not received any complaints. Staff further recommended that Midwest Energy be required to provide on-going gas quality monitoring and reporting.

34. Thereafter, OFS, XTO and CURB were granted intervention.

35. On April 29, 2009, the Commission issued an order extending the temporary waiver until June 31, 2009, to allow intervening parties to file comments.

36. On June 29, 2009, the Commission issued an order indefinitely extending the temporary waiver at 870 Btu/scf until further notice.

37. Thereafter, all parties filed comments and reply comments.

III. Findings and Conclusions Regarding Midwest Energy's Application

38. The gas gathered in OFS's gathering system comes from the wellhead and, typically has a lower heat content rating because it is unprocessed. KMIGT's tariff specifies that it will provide its customers – which include Midwest – with gas that has a 950 Btu/scf heat content and will transport gas on its pipeline with a minimum heat content of 950 Btu/scf. Midwest Energy's tariffs specify that it will provide its customers with gas with heat content of at least 900 Btu/scf and is requesting a permanent waiver to lower the heat content to 870 Btu/scf. Thus, Midwest has the right to demand gas from KMIGT that has a greater heat content than the minimum it has recently delivered, currently commits in its tariff or proposes to commit to its customers. KMIGT has historically waived the requirement that gas on its pipeline meet the 950 Btu/scf minimum.

a. Position of the Parties

Midwest Energy's Position

39. In this docket, Midwest Energy requested to receive gas from KMIGT and to supply its customers with natural gas having at least 870 Btu/scf heat content. Although Midwest Energy has the right to request gas meeting the KMIGT's specification of 950 Btu/scf, after consulting with its customers, it has chosen to accept gas with a heat content of 870 Btu/scf to allow the producers and gathering companies to transport more unprocessed gas on the KMIGT pipeline.

40. Historically, the Commission has allowed a utility to establish the level of service it wishes to provide its customers as long as it is determined to be "reasonably efficient and sufficient service" per K.S.A. 66-1,202. The record in this docket is devoid of any evidence indicating that gas with a heat content of 870 Btu/scf will impair Midwest Energy's ability to provide efficient and sufficient service to its customers.

Producer, Intervenor's Position

41. The producer intervenors argue that allowing Midwest Energy to exercise its contractual right with KMIGT to supply its customers with 870 Btu/scf gas will require KMIGT to curtail deliveries from the OFS operated Holcomb gas gathering system, which is currently the sole source of supply to this pipeline. Further, such curtailment of produced, unprocessed natural gas constitutes waste in violation of K.S.A. 55-701 *et seq.* The term "waste" is defined to mean "economic waste, underground waste and surface waste." K.S.A 55-702.

42. Further, in 1960, the Commission originally established a standard for the minimum heat content of natural gas to be 800 Btu/scf. Docket 34,856-U. OFS argued moving the Btu standard from 900 Btu/scf to 800 Btu/scf will allow OFS and its producer/customers to avoid shutting in or curtailing over 4,000 Mcf/d and eliminate the 7,500 Mcf/d diverted to lower priced markets, thereby preventing waste.²² OFS also argued that KGS, a division of Oneok, Black Hills and Atmos all have Commission-approved tariffs authorizing a minimum heat content of 800 Btu/scf as evidence Midwest Energy's customers will not be harmed by a minimum of 800 Btu/scf standard.²³

43. XTO and OFS correctly assert the Commission has the obligation to strike a proper balance between its duties to assure utilities provide sufficient and efficient service under provisions of the Kansas Public Utility Act and its duties to prevent waste of natural resources

²² Id. at ¶ 6.

²³ Response to Staff's Memorandum of ONEOK Field Services Company, L.L.C. (June 5, 2009), ¶ 32 and Comments of XTO Energy, Inc. (June 5, 2009), ¶ 12.

under K.S.A. 55-701 et seq.²⁴ Producer intervenors contend that the 800 Btu/scf is efficient based on the 1960 Docket and the Commission should require Midwest Energy to accept 800 Btu/scf as efficient service.²⁵ OFS has offered to assist Midwest Energy's irrigation customers adjust their equipment to accommodate the 800 Btu/scf.²⁶ OFS and XTO are asking this Commission to make a decision requiring Midwest Energy to accept gas for its customers with a minimum Btu/scf content of 800.

IV. Jurisdiction

44. This matter also presents a jurisdictional conflict. The KMIGT pipeline is an interstate gas transmission pipeline regulated by the FERC under the provisions of the KMIGT FERC tariffs. Thus, the Commission has no jurisdiction or control over these interstate tariffs.

45. The Commission regulates service provided by the natural gas public utilities under the Kansas Public Utility Act, requiring that such service is provided in a reasonably efficient and sufficient manner. K.S.A. 66-101, *et seq.*, K.S.A. 66-1,202. Commission authority includes approving tariff changes that effect service. K.S.A. 66-1,202 and 66-1,203. Pursuant to K.S.A. 66-117 and 66-1,203, before a public utility can make effective any changes in practice pertaining to service or rates, it must file with the Commission copies of all schedules of rates and furnish the Commission copies of all rules and regulations. Midwest Energy is asking this Commission to approve a permanent change in the company's tariff that potentially has the impact of affecting service to the company's customers.

²⁴ Comments of XTO Energy, Inc. (June 5, 2009), ¶ 11 and Response to Staff's Memorandum of ONEOK Field Services Company, L.L.C. (June 5, 2009), ¶ 32, respectively.

²⁵ OFS' Response to Staff's Memorandum (June 5, 2009), pp. 7-9 and Comments of XTO Energy, Inc. (June 5, 2009), ¶ 6.

²⁶ Supplemental Comments of ONEOK Field Services Company, L.L.C. (Dec. 8, 2010), ¶ 22.

46. Likewise, the Commission regulates the conservation and production of natural gas to protect correlative rights and prevent waste. K.S.A. 55-701 *et seq.* The term “waste” is defined to mean “economic waste, underground waste and surface waste.” K.S.A 55-702.

47. The Commission has the obligation to strike a proper balance between its duty to ensure utilities provide sufficient and efficient service under provisions of the Kansas Public Utilities Act and its duty to prevent waste of natural resources under K.S.A. 55-701 *et seq.*

V. Finding of Fact and Conclusions of Law

48. This docket involves Midwest Energy’s request for the Commission approval of a permanent waiver of the 900 Btu/scf heat content currently approved in its tariff to provide its customers natural gas with a minimum heat content of 870 Btu/scf. The issue before this Commission is whether Midwest Energy can lower its Btu standard to 870 Btu/scf and still satisfy its statutory duty to provide reasonably efficient and sufficient service. A second issue arises through OFS’ and XTO’s request to turn this docket into an investigation of whether Midwest Energy can provide efficient service at 800 Btu/scf.

49. The Commission will initially address whether to turn this docket into an investigation of whether Midwest Energy can provide efficient service at 800 Btu/scf.

50. In arguing that Midwest Energy’s customers will not be harmed by a minimum of 800 Btu/scf standard, OFS cites the following information: The Commission originally established 800 Btu/scf as the minimum heat content of natural gas over 50 years ago. Docket No. 34,856-U. Likewise, KGS, a division of Oneok, Black Hills and Atmos all have Commission-approved tariffs authorizing 800 Btu/scf as the minimum heat content of natural gas.²⁷

²⁷ Response to Staff’s Memorandum of ONEOK Field Services Company, L.L.C. (June 5, 2009), ¶ 32 and Comments of XTO Energy, Inc. (June 5, 2009), ¶ 12.

51. With regard to Docket No. 34,856-U, the Commission did establish a minimum heat content of natural gas as 800 Btu/scf. However, the Commission's order did not require service to be provided at that heat content if circumstances did not permit safe and efficient service. Likewise, that order did not preclude any natural gas public utility from requesting and offering a higher quality product to its customers if possible.

52. The record does indicate the Commission approved other natural gas public utility tariffs authorizing 800 Btu/scf as the minimum heat content. However, the record contains no evidence such utilities are actually providing natural gas service at 800 Btu/scf. While the Commission makes no finding regarding the safety or efficiency of a natural gas utility providing service at 800 Btu/scf, the Commission acknowledges the fact the 800 Btu/scf minimum standard was established over 50 years ago and today, the reserves in the Hugoton Field are declining. The Commission declines producer intervenors' request to turn this docket into an investigation of whether Midwest Energy can provide efficient service at 800 Btu/scf.

53. Midwest Energy's Application appears to be a self-guided effort to afford OFS, XTO, and natural gas producers the opportunity to produce natural gas which would otherwise be curtailed under its current tariff. A public utility in the exercise of its managerial function may, in the first instance, determine the manner and method of its service to the public within the limits of adequacy and reasonableness set forth in the Kansas Public Utilities Act and Commission regulation. Public utilities have a duty to furnish such public service in such quantities as the public may require. This duty is imposed because the utility is organized to do

business affected with a public interest.²⁸ The Kansas Public Utilities Act requires a natural gas public utility to provide safe, sufficient and efficient service.²⁹

54. Midwest Energy disagrees with OFS' contention that Midwest Energy's customers will not be harmed by a minimum of 800 Btu/scf standard. Midwest Energy indicated it had customer complaints from customers when the minimum heating content dipped below 870 Btu/scf. It received several complaints from an irrigation customer who has 44 irrigation accounts, serving over 75 irrigation wells, on this system. The customer began to have engine problems once the Btu level dropped below 870, and would cease to have the problems when the Btu was above that level. Midwest Energy also received two complaints from customers concerning heating equipment problems (one was equipment that did not heat properly and the other dealt with lighting problems).³⁰

55. While Midwest Energy asserts receiving complaints regarding service when the Btu heat rate was below 870 Btu/scf, no evidence has been presented in this docket suggesting that a heat content above 870 Btu/scf will prevent Midwest Energy from providing efficient and sufficient natural gas service to its customers. The Commission recognizes OFS' offer to assist Midwest Energy customers in adapting equipment to accommodate an 800 Btu/scf standard. However, consequences for failure to provide efficient and sufficient services will fall on Midwest Energy, not OFS.

56. Likewise, determining a lower heat rate for Midwest Energy does not totally prevent the producer intervenors concerns from occurring in the future. As noted by Staff in its July 20, 2009, Memorandum, KMIGT is an interstate pipeline subject to FERC's jurisdiction. Modifying the terms and conditions of the KMIGT tariff lies beyond the Commission's

²⁸ 73B C.J.S. §6.

²⁹ KSA 66-1,202 et. seq

³⁰ Midwest Energy's Reply filed June 15, 2009

jurisdiction. KMIGT's tariff establishes a minimum heat content of 950 Btu/scf, which any shipper with capacity on this segment of the KMIGT system could demand. Thus, even if Midwest Energy agreed to accept gas with a minimum heat content of 800 Btu/scf from its delivery point on the KMIGT system, producers could still face future curtailment of deliveries into the KMIGT pipeline.

57. Because the Commission has previously established the minimum heat content of natural gas at 800 Btu/scf, the Commission will allow, not require, Midwest Energy to establish a Btu standard above that rate if Midwest energy so chooses and makes the proper application. However, because Midwest Energy has established that customer complaints exist with a quality of service below 870 Btu/scf and no customer complaints were received with service above 870 Btu/scf heat content, Midwest Energy's Application for a permanent waiver of the 900 Btu Standard contained in its Distribution Transportation Terms and Conditions for Gas Delivered from the KMIGT Holcomb to Scott City Pipeline and request to permanently permit deliveries of gas with a heat content no lower than 870 Btu/scf is approved.

VI. OFS' and XTO's Hearing Request

58. In their June 5, 2009, Responses to Staff's Memorandum, OFS and XTO requested an evidentiary hearing to allow the opportunity to present witnesses and exhibits in support of their position and to cross-examine the witnesses of any party opposing their position in this case should the Commission not decide to set the minimum heat content at 800 Btu/scf based on the pleadings that have been filed.³¹

59. The issues raised by the intervenors, XTO and ONEOK, are not relevant to Midwest Energy's application filed pursuant to K.S.A. 66-117 and any hearing involving an 800

³¹ Response to Staff's Memorandum of ONEOK Field Services Company, L.L.C. (June 5, 2009), ¶ 32 and Comments of XTO Energy, Inc. (June 5, 2009), ¶ 12.

Btu/scf standard and the provision of efficient service would be administratively burdensome and not conducive to the orderly and prompt conduct of the proceedings. K.A.R. 82-1-225(c)(2).

60. The Commission finds an evidentiary hearing is not warranted in this docket. Producer intervenors' request for a hearing is denied.

VII. CURB's Comments

61. On April 24, 2009, CURB filed Comments expressing its concerns about the possibility that customers served by the pipeline may receive gas containing hydrogen sulfide, liquids or various corrosive impurities, noting that corrosives could create problems with the customers' pipes, irrigation engines and appliances, which may create health or safety hazards. Hydrogen sulfide is a deadly gas that can cause death or serious injury to humans, livestock and wildlife.³² CURB recommended the Commission require all utilities that have customers receiving unprocessed or partially processed gas, to distribute educational materials to customers addressing the dangers of exposure to hydrogen sulfide gas, advise customers to have their natural gas appliances, equipment and pipes inspected for signs of corrosion, and, with the Commission, develop an emergency action plan for disconnection of customers, including emergency heat sources in the heating season, in the event hydrogen sulfide is detected in gas to be delivered to customers and include a proposal for providing an alternate fuel in the event the disconnection becomes permanent.³³

62. The Commission finds CURB's request reasonable and designates the following as precedential for all natural gas utilities serving customers with unprocessed or partially processed natural gas. The Commission notes that 49 CFR Part 192.615(a)(1) as adopted by K.A.R. 82-11-4 requires all operators of natural gas pipelines subject to pipeline safety

³² Comments of CURB (Apr. 24, 2009), ¶ 2.

³³ Id. at ¶ 4.

regulations to establish written procedures to minimize the hazards resulting from a gas pipeline emergency. Such procedures must provide for receiving, identifying, and classifying notices of events that which require immediate response by the operator. The Commission finds that the presence of hydrogen sulfide gas at a concentration above 4 parts per million (ppm) should be considered by Midwest Energy and other utilities to be an “event” that must be addressed in the company’s emergency plans required by pipeline safety regulation. Regarding education of customers that receive unprocessed or partially processed gas, the Commission further notes the requirements of 49 CFR Part 192.616(c) as adopted by K.A.R. 82-11-4. This regulation requires a pipeline operator to follow the general program recommendations of API Recommended Practice 1162 which is incorporated by reference into the pipeline safety regulations. Among other things, Section 6.1 of this document requires the operator to consider supplemental enhancements to its baseline public awareness message when conditions along a pipeline suggest a more intensive outreach effort is needed. The Commission determines that supplying unprocessed or partially processed gas to end use customers is a condition that must be addressed by an operator as a supplemental enhancement to its public awareness message. If hydrogen sulfide is present at levels above 4 ppm, Midwest shall advise its customers of the dangers of exposure to this substance. If the customers are supplied with unprocessed or partially processed gas, Midwest shall advise its customers to inspect their natural gas appliances, equipment, and pipes for signs of corrosion. Compliance with the above requirements will be monitored by Commission Staff during regularly scheduled compliance audits.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. If Midwest Energy can, in the future, provide safe, reliable service based on a heat value between 800 and 870 Btu/scf without receiving customer complaints, Midwest Energy

may request a lower heat content in gas received off the pipeline. Until then, Midwest Energy's Application for a permanent waiver of the 900 Btu standard contained in its Distribution Transportation Terms and Conditions for Gas Delivered from the KMIGT Holcomb to Scott City Pipeline and requests to permanently permit deliveries of gas with a heat content no lower than 870 Btu/scf is approved. Midwest Energy and all other natural gas utilities shall comply with the above Commission directions regarding emergency plans and public awareness plans required by pipeline safety regulations.

B. The parties have fifteen days, plus three days if service is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issues decided herein. K.S.A. 66-118b; K.S.A. 2010 Supp. 77-529(a)(1).

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Com.; Wright, Com.

Dated: MAR 07 2012


ORDER MADE MAR 08 2012
Patrice Petersen-Klein
Executive Director

DAB

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
JAMES G. FLAHERTY, ATTORNEY ANDERSON & BYRD, L.L.P. 216 SOUTH HICKORY PO BOX 17 OTTAWA, KS 66067		
NIKI CHRISTOPHER, ATTORNEY CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		
C. STEVEN RARRICK, ATTORNEY CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		
DAVID SPRINGE, CONSUMER COUNSEL CITIZENS' UTILITY RATEPAYER BOARD 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		
RAY BERGMEIER, LITIGATION COUNSEL KANSAS CORPORATION COMMISSION 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604-4027 ***Hand Delivered***		
PATRICK PARKE, VP CUSTOMER SERVICE MIDWEST ENERGY, INC. 1330 CANTERBURY ROAD PO BOX 898 HAYS, KS 67601-0898		
CLINT GOOS MORRIS LAING EVANS BROCK & KENNEDY CHTD OLD TOWN SQUARE SUITE 200 300 N MEAD STREET WICHITA, KS 67202-2745		

ORDER MAILED **MAR 08 2012**

The Docket Room hereby certified that on this _____ day of _____, 20____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
WILL B. WOHLFORD, ATTORNEY MORRIS LAING EVANS BROCK & KENNEDY CHTD 300 N MEAD SUITE 200 WICHITA, KS 67202-2722		
VICKY HALE, ASSOC. GEN. COUNSEL ONEOK FIELD SERVICES COMPANY P.O. BOX 871 TULSA, OK 74102-0871		
DAVE SCHARF, VICE PRESIDENT COMMERCIAL ONEOK FIELD SERVICES COMPANY P.O. BOX 871 TULSA, OK 74102-0871		
ANNE E. CALLENBACH, ATTORNEY POLSINELLI SHUGHART 6201 COLLEGE BLVD STE 500 OVERLAND PARK, KS 66211-2435		
FRANK A. CARO, JR., ATTORNEY POLSINELLI SHUGHART 6201 COLLEGE BLVD STE 500 OVERLAND PARK, KS 66211-2435		

ORDER MAILED MAR 08 2012

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