

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

Before Commissioners:                    Thomas E. Wright, Chairman  
   Michael C. Moffet  
   Joseph F. Harkins

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

**ORDER GRANTING TEMPORARY WAIVER**

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:

1. This docket concerns the ability of local distribution companies to supply gas with heat content sufficient to meet existing tariffs. Entities that had an active role in November 2007 negotiations in this docket include the applicant, Midwest Energy, Inc. ("Midwest"), Kinder Morgan Interstate Gas Transportation Company's ("KMIGT"), ONEOK Field Services ("OFS"), interested Kansas gas producers, and Commission Staff (at that time collectively referred to as "Indicated Parties").

2. On November 20, 2007, Midwest filed an application requesting a temporary waiver of the minimum natural gas heat content value found in Section 5(B)(3) of its Distribution Transportation Terms and Conditions for gas deliveries supplied from the KMIGT Holcomb to Scott City pipeline. Midwest made this request in order to assist

OFS in delivering unprocessed gas from its gas gathering system to the Scott City gas plant. By lowering the heat content to 840 British thermal units per standard cubic foot, (Btu/scf), OFS claimed it would be able to return approximately 10 million cubic feet of gas/day, (MMCFD) to production.

3. Also on November 20, 2007, Staff recommended approval of the proposed waiver to the Midwest tariff, effective until May 1 of 2008. By that time, the minimum heat value was expected to return to the tariff specification, 900 Btu/scf. Staff concluded the decrease in heating content for a period of five months should not have any significant effect on the appliances of Midwest residential customers. Further, it was expected that the waiver period would provide time for development of an interim solution to gas quality issues that had resulted in shut in gas production in north central Finney County, and would provide OFS and KMIGT the needed time to reconfigure the gas gathering/transportation system in such a manner that only processed gas would be delivered to the Holcomb/Scott City pipeline.

4. On November 21, 2007 the Commission adopted Staff's analysis and caused its order to be entered, allowing the request for a temporary waiver of the tariff specification relating to Midwest's Btu content.

5. On April 29, 2008, Midwest submitted a request for an extension of the temporary waiver that was scheduled to expire on May 1, 2008. Midwest requested an extension of the waiver for five months, until October 1, 2008. Midwest further requested two revisions of the waiver, one to increase the minimum heat content to 850 Btu/scf, the other to allow Midwest, unilaterally and in its sole discretion, to refuse to accept natural

gas with less than the tariff requirement of 900 Btu/scf, if it received customer complaints of operation issues associated with the lower heat content.

6. In its Memo of May 1, 2008, Staff provided background, facts and analysis relating to the extension request. In its Memo, Staff reported that despite continuing efforts, KMIGT and OFS had not achieved their November 2007 goal of agreement for reconfiguration of the gas gathering and transmission system or other solution. Staff further reported, however, that the goal for OFS to return approximately 10 MMCFD to production was met. Staff stated that it supported the extension of the waiver, with the requested two modifications, to allow more time for the affected entities to reach a solution and to avoid disruption of current production. Staff further stated that it would explore whether a Staff-sponsored meeting of the parties would be helpful. Staff recommended immediate approval of the waiver, which affected application of the tariff and thus invoked K.S.A. 66-117. Staff stated that there was sufficient good cause to allow the change in tariffs on less than 30 days notice, as permitted by statute.

7. Also on May 1, 2007, the Commission adopted Staff's analysis and caused its order to be entered, allowing the request for a temporary waiver of the tariff specification relating to Midwest's Btu content.

8. On September 29, 2008, Midwest submitted a request for an extension of the temporary waiver that is scheduled to expire on October 1, 2008. Midwest requests an extension of the waiver for six months, until April 1, 2009. In support of its request Midwest reports the following:

- a. On September 3, 2008, Midwest sent a letter to KMIGT stating that Midwest would consider requesting an extension to the waiver beyond the

October 1, 2008 deadline if an agreement for a permanent solution had been entered into between KMIGT and ONEOK that could not be implemented by the October 1, 2008 expiration date.

b. Midwest and KMIGT participated in a conference call to discuss potential terms for the extension, and as a result of the conference call, Midwest agreed to request an extension to April 1, 2009 provided that the heat content for gas delivered is no lower than 870 Btu. Midwest also indicated that it would be requesting reservation of the right to unilaterally and in its sole discretion refuse to accept natural gas with less than the tariff requirement of 900 Btu/scf, as allowed in the May 1, 2008 Order. In exchange, KMIGT agreed to provide documentation to Midwest every sixty (60) days indicating progress on development of a plan to permanently alleviate the decline in heat content of gas deliveries from this line, including construction of any new line required to serve Midwest's customer with tariff-quality gas.

9. In its Memo of October 2, 2008, Staff again provided background, facts and analysis relating to the extension request. In its Memo, Staff reported that, since the May 1, 2008 waiver extension, it has sponsored three (3) teleconference with the affected parties in an attempt to facilitate the successful conclusion of the negotiations between OFS and KMIGT. Staff further reported that little progress has been made between the two parties, and at this time, 5 MMCFD of production remains shut in at the wellhead in order to allow OFS to meet the 850 Btu/scf standard. Staff stated that it supports the waiver extension but shares Midwest's concern regarding the indefinite extension of this waiver. With that in mind, Staff recommends that Midwest be required to file a progress

report on the status of the negotiations in this docket every sixty (60) days. Staff recommends immediate approval of the waiver, which affects application of the tariff and thus invokes K.S.A. 66-117. Staff states that there is sufficient good cause to allow the change in tariffs on less than thirty (30) days notice, as permitted by statute.

**IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:**

A. Midwest Energy, Inc.'s request for a temporary waiver of the tariff specification relating to Btu content--allowing it to accept, in its discretion, gas having a Btu content as low as 870--is granted, effective until April 1, 2009.

B. Midwest Energy, Inc shall file progress reports on the status of negotiations in this docket every sixty (60) days.

C. The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2006 Supp. 77-529(a)(1).

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


**BY THE COMMISSION IT IS SO ORDERED.**

Wright, Chmn.; Moffet, Comm.; Harkins, Comm.

Dated: **OCT 17 2008**

**ORDERED MAILED**

**OCT 20 2008**

 **EXECUTIVE  
DIRECTOR**

Susan K. Duffy  
Executive Director

TJP