

110 FERC ¶ 61,401
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 31, 2005

In Reply Refer To:
Discovery Gas Transmission LLC
Docket No. RP05-180-000

Discovery Gas Transmission LLC
2800 Post Oak Blvd.
P.O. Box 1396 (77251)
Houston, TX 77056

Attention: Kevin R. Rehm
Vice President

Reference: Tariff revisions filed February 9, 2005

Dear Mr. Rehm:

1. On February 9, 2005, Discovery Gas Transmission LLC (Discovery) filed tariff sheets¹ to clarify, update and clean up several items in Discovery's tariff. The revised tariff sheets are accepted, effective April 1, 2005, as requested, subject to Discovery filing, within 15 days of the date of this order, to comply with the conditions discussed below. This action benefits the public because it applies Commission policies involving generic waivers and index point liquidity.

2. Discovery states that the referenced tariff sheets include the following updates, changes or clarifications:

- At the request of several Rate Schedule FT-2 shippers, if Discovery and shipper cannot agree on the shipper's committed production amount, a qualified third-party expert shall determine the amount. Currently Discovery, in its sole discretion, would determine the amount.

¹ See Appendix.

- Due to name changes of energy industry publications, Discovery is updating the description of the gas price indices for imbalance cash-out provisions.
- Discovery has updated the description of its gathering facilities to include a recently constructed lateral.
- Discovery is combining its fuel charge and lost and unaccounted-for charges, both of which are currently 0%.
- Discovery is listing the types of rate discounts and waivers it may offer.
- Discovery is updating the tariff to provide that it posts on its Internet Web Site the information required by the Commission's Standards of Conduct.

3. Notice of the referenced filing was issued on February 15, 2005, with comments, protests or interventions due on or before February 22, 2005. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

4. Discovery proposes to include the following underscored language to add a new section 23.1 in section 23 of its tariff allowing Discovery to waive its rights and the shipper's obligations under Discovery's tariff on a not unduly discriminatory basis.²

23.1 - Transporter may waive any of its rights hereunder or any obligations of shipper on a basis that is not unduly discriminatory.

23.2 - Notwithstanding the foregoing, no waiver by either Transporter or Shipper of any one or more defaults by the other in performance of any of the provisions of an Effective Service Agreement shall operate or be construed as a waiver of any other existing or future default or defaults, whether of a like or of a different character.

Discovery states that, under the Standards of Conduct, Discovery will keep a log of all waivers granted and post information about any waiver on its internet web site.³ Discovery states that this language is virtually identical to language approved for the tariff of other pipelines.⁴

² See Proposed Third Revised Sheet No. 101 and First Revised Sheet No. 194.

³ See 18 C.F.R. § 358.5(c)(4) (2004).

⁴ Citing, Colorado Interstate Gas Company, General Terms & Conditions, Art. 36; SCG Pipeline, Inc., General Terms & Conditions, Sec. 32.

5. The Commission finds that this broad waiver provision has the potential for unduly discriminatory application. The Commission previously has held that pipelines should only use such waiver provisions to waive past occurrences such as past defaults, as provided in existing section 23, not to waive a broad range of tariff provisions for mutual benefit in the context of a transportation agreement.⁵ Proposed section 23 could be interpreted as giving Discovery almost unfettered discretion to include non-conforming material terms and conditions into its transportation agreements without seeking Commission approval for those changes or without including language specifically authorizing such provision in its tariff. Therefore, consistent with Commission precedent, Discovery must limit the application of section 23.1 to waiver of defaults that have actually occurred under the provisions of the tariff, and must revise section 23.1 to clarify that it applies only to specific defaults that have already occurred.

6. Discovery also states that, due to changes in the names of energy industry publications, it proposes to update the description of the gas price indices set forth in the imbalance cash-out provisions of its General Terms and Conditions (GT&C).⁶ Specifically, Discovery proposes to revise section 9.4 of its GT&C to establish index prices based on spot prices published by Energy Intelligence Group and to change the name of three index points to use the descriptions published by Energy Intelligence Group. Discovery states that no substantive change is intended by the update of this language.

7. On May 24, 2004, *Natural Gas Week*, published by Energy Intelligence Group, changed its format for reporting index prices. Specifically, *Natural Gas Week* stated that it was displaying additional pricing points, as well as removing some points that had lost market viability. The new points listed on Discovery's proposed First Revised Sheet No. 143 appear to be merely the same points, renamed in the publication, except that the old "Tennessee Gas Pipeline Co. Zone 1 South Louisiana" now appears to be two points, of which Discovery proposes to use one, "Tenn 500 So La Z1."

8. In the Commission's November 19, 2004 Order on the use of Price Indices in Tariffs (November 19, 2004 Order)⁷ the Commission stated that if an index is published or provided by an index developer that has met all or substantially all of the standards of

⁵ See *Northern Border Pipeline Co., LLC*, 110 FERC ¶ 61,203, (2005); and *CenterPoint Energy Gas Transmission Company*, 104 FERC ¶ 61,281, (2003).

⁶ See Proposed First Revised Sheet No. 143 and Third Revised Sheet No. 144.

⁷ *Price Discovery in Natural Gas and Electric Markets, et al.*, 109 FERC ¶ 61,184 (2004) (*Price Discovery*)

the Policy Statement⁸ and the index location is shown to meet the minimum average criteria for liquidity, the Commission will apply a presumption that the use of the index price location will result in just and reasonable charges.⁹ Discovery has met the first requirement by using price indices published by Energy Intelligence Group, an industry publisher that the Commission found to have satisfied the minimum requirements of the November 19, 2004 Order.¹⁰ Discovery, however, has provided no data to support whether the specific proposed index points meet the liquidity standards as outlined in the November 19, 2004 Order.¹¹ Consequently, the Commission accepts the revised tariff sheets, subject to Discovery filing sufficient information within 15 days of this order to demonstrate that the proposed gas price index points meet the liquidity criteria set forth in the November 19, 2004 Order.

9. Although we are conditionally accepting the instant gas price index points filing, we wish to make it clear that we are making a special exception for Discovery in case it was unclear about its filing obligations. From this point forward, to avoid summary rejection of all pipeline filings to establish or change gas price index points, filers must include full supporting information and data that demonstrates that each of the points meet the Commission's liquidity criteria.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

⁸ *Policy Statement on Natural Gas and Electric Price Indices*, 104 FERC ¶ 61,121 (2003) (*Policy Statement*).

⁹ *Price Discovery*, 109 FERC ¶ 61,184 at Ordering Paragraph (E), *see* P 40-42.

¹⁰ *Id.* at P 24-28.

¹¹ *Id.* at P 66.

Docket No. RP05-180-000

APPENDIX

Discovery Gas Transmission LLC
FERC Gas Tariff, Original Volume No. 1

Tariff Sheets effective April 1, 2005

Seventh Revised Sheet No. 20
First Revised Sheet No. 31
Fifth Revised Sheet No. 33
Second Revised Sheet No. 41
Second Revised Sheet No. 42
Fifth Revised Sheet No. 44
First Revised Sheet No. 51
Fifth Revised Sheet No. 53
First Revised Sheet No. 100
Fourth Revised Sheet No. 101
Fourth Revised Sheet No. 105
Fourth Revised Sheet No. 106
Third Revised Sheet No. 134
Second Revised Sheet No. 142
First Revised Sheet No. 143
Third Revised Sheet No. 144
First Revised Sheet No. 185
First Revised Sheet No. 194
First Revised Sheet No. 197
Original Sheet No. 197A
First Revised Sheet No. 201
Second Revised Sheet No. 202
First Revised Sheet No. 207
First Revised Sheet No. 221
Third Revised Sheet No. 222
First Revised Sheet No. 223
First Revised Sheet No. 227
First Revised Sheet No. 241
Second Revised Sheet No. 242
First Revised Sheet No. 246