

133 FERC ¶ 61,264  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Discovery Gas Transmission LLC

Docket No. RP11-1565-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued December 29, 2010)

1. On November 30, 2010, Discovery Gas Transmission LLC (Discovery) filed revised tariff sections<sup>1</sup> to incorporate a standard Reserve Dedication Agreement into its *pro forma* agreement for Rate Schedule FT-2. Discovery also filed proposed tariff sections that would revise the definition of Committed Production and the clause on limitation of liability in its General Terms and Conditions (GT&C). For the reasons discussed below, the Commission will accept the revisions to the *pro forma* agreement, effective January 1, 2011, as requested, and will accept and suspend the GT&C revisions, to be effective June 1, 2011, or an earlier date specified in a further order of the Commission, subject to refund and conditions. The Commission will refer the proceeding to the Commission's Dispute Resolution Service (DRS).

**Proposed Tariff Revisions**

2. Discovery proposes several revisions to its *pro forma* agreement for Rate Schedule FT-2 to integrate the Reserve Dedication Agreement. Discovery notes that it would no longer be required to file its Reserve Dedication Agreements as non-conforming agreements.<sup>2</sup> A new section 1.4 provides, in relevant part, that in consideration for receiving service under Rate Schedule FT-2, "Shipper shall commit and dedicate the Committed Production, as more specifically set forth in Exhibit D, to Transporter for transportation service through its system for the life of each Committed Production

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<sup>1</sup> See Appendix.

<sup>2</sup> See Transmittal Letter at 1 (citing *Discovery Gas Transmission LLC*, 130 FERC ¶ 61,067, at P 8 (2010) ("Because Discovery has no *pro forma* Reserve Dedication Agreement, it should be filing its individual Reserve Dedication Agreements.")).

lease....”<sup>3</sup> Discovery also adds a new section 2.4, clarifying that unless agreed to otherwise, the shipper bears responsibility for delivering Committed Production gas from the wellhead to a Discovery receipt point. Additionally, Discovery revises section 5.2 so that the *pro forma* FT-2 Service Agreement no longer contains a blank to provide the calendar end date for the contract term, but instead sets the term for the life of each Committed Production lease.

3. Discovery also proposes a revised definition of Committed Production. Presently, in section 1.1 of the GT&C, defines Committed Production as “Shipper’s working interest share of all Gas production *that is now or hereafter owned by Shipper, its successors and permitted assigns in the Gas production* from the blocks, lands, and leases described in a Shipper’s Effective FT-2 Service Agreement.” Discovery proposes to delete the italicized phrase. Discovery also proposes to specify that the list of described blocks, lands, and leases is “in Exhibit D” of each FT-2 Service Agreement.

4. Lastly, Discovery proposes a revision to the general clause on limitation of liability. GT&C section 20.2 currently provides a one-sentence limitation of liability: “Neither party to any Effective Agreement entered into under the terms of this FERC Gas Tariff shall be liable to the other party for any indirect, special, consequential, or punitive damages, including lost profits, whether asserted under tort, contract, or other theories of law.” Discovery proposes to add a second sentence: “Transporter shall not be liable to Shipper for any delays in producing oil or gas, damage to properties, or any loss of reserves resulting from the actions or inactions of Transporter under a Service Agreement.”

### **Notice, Interventions and Comments**

5. Public notice of the filing was issued on December 1, 2010. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 385.214 (2010)). Pursuant to Rule 214,<sup>4</sup> all timely motions to intervene and any motions to intervene out-of-time filed before the issuance 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 December 13, 2010, Statoil Natural Gas LLC and Statoil Gulf of Mexico LLC (collectively, Statoil) submitted limited comments.

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<sup>3</sup> The pre-existing tariff already contains an Exhibit D of the FT-2 Service Agreement that provides blanks for listing “Committed Production Lease(s).” Discovery did not propose to revise Exhibit D.

<sup>4</sup> 18 C.F.R. § 154.210 (2010).

6. Statoil does not object to the revisions to the *pro forma* service agreement. However, it raises several issues concerning the GT&C provisions on the definition of Committed Production and the clause on limitation of liability. Regarding Committed Production, “Statoil does not object to the proposed change. However, Statoil is concerned that the existing tariff definition fails to acknowledge the fact that producers often utilize some quantity of gas produced from the lease for the operation and maintenance of their production facilities.”<sup>5</sup>

7. Further, Statoil requests the Commission require Discovery to clarify its limitation of liability provision. First, it requests clarification that the new provision exempting Discovery from liability for any delays in producing oil or gas, damage to properties, or any loss of reserves is inapplicable to gross negligence or willful misconduct. Statoil argues that Commission policy does not allow the pipeline to limit its liability in the case of gross negligence or willful misconduct. Statoil also requests clarification that, in the case of simple negligence, “Discovery’s liability should be limited to direct damages only.”<sup>6</sup>

### **Discussion**

8. We find the revisions to the *pro forma* service agreement for Rate Schedule FT-2 just and reasonable, and accept them effective January 1, 2011, as requested. So long as Discovery enters into future Reserve Dedication Agreements with its shippers by merely filling in the blanks in its revised *pro forma* agreement, it need not file those individual agreements.<sup>7</sup>

9. Statoil has raised issues concerning Discovery’s proposed changes to its GT&C. As the Commission has previously noted, it applies two general principles to the issue of liability: there should be no liability without fault; and a pipeline or shipper should not be able to avoid all liability caused by its own gross negligence or intentional actions.<sup>8</sup> Statoil’s concerns regarding the definition of Committed Production raise material questions about the scope of the tariff and thus require clarification as well.

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<sup>5</sup> Statoil Comments at 3.

<sup>6</sup> Statoil Comments at 4 (citing, *e.g.*, *El Paso Natural Gas Co.*, 130 FERC ¶ 61,096 (2010)).

<sup>7</sup> *Discovery Gas Transmission LLC*, 130 FERC ¶ 61,067 at P 8 (“Because Discovery has no *pro forma* Reserve Dedication Agreement, it should be filing its individual Reserve Dedication Agreements.”)

<sup>8</sup> *White River Hub, LLC*, 129 FERC ¶ 61,035, at P 16 (2009); *Texas Gas Transmission, LLC*, 129 FERC ¶ 61,003, at P 9 (2009); *Arkla Energy Resources Company*, 64 FERC ¶ 61,166, at 62,490 (1993).

The Commission believes, that within those parameters, the issues raised by Statoil would best be resolved through a settlement acceptable to both parties. To that end, the Commission will direct the Director of DRS<sup>9</sup> to convene a meeting of the parties, within 14 days of the date of this order, to arrange a process that may foster negotiation and agreement regarding the proposed revised tariff section. Discovery must report the status of the negotiations to the Commission within 60 days of the date of issuance of this order. The Commission urges the parties to attempt to achieve resolution of these issues in such time as to allow any settlement to be put into effect within the five-month suspension period ordered below. Accordingly, the Commission will accept and suspend the effectiveness of the revised tariff section subject to refund and conditions. The conditional acceptance is subject to further review by the Commission.

10. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.<sup>10</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>11</sup> Such circumstances do not exist here.<sup>12</sup> Therefore, the Commission will accept and suspend Discovery's proposed GT&C revisions, to be effective on June 1, 2011, or an earlier date if specified in a further order of the Commission, subject to refund and conditions set forth in this order. Discovery is directed to report to the Commission on the progress of any negotiations to the Commission within 60 days of the date of issuance of this order.

The Commission orders:

(A) The Commission accepts Discovery's revised tariff section containing its *pro forma* agreement for the FT-2 Rate Schedule, as listed in the Appendix, effective January 1, 2011, as requested.

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<sup>9</sup> The Director of the Commission's Dispute Resolution Service (DRS) is Deborah Osborne, who can be contacted at (202) 502-8831. The DRS helpline may also be reached at (877) FERC-ADR ((877) 337-2237) or at (202) 502-6651.

<sup>10</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>11</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).

<sup>12</sup> See *White River Hub*, 129 FERC ¶ 61,035 at P 17; *Texas Gas Transmission*, 129 FERC ¶ 61,003 at P 10.

(B) The Commission accepts and suspends the revised tariff sections reflecting the amendments to the GT&C, as listed in the Appendix, to be effective on June 1, 2011, subject to refund and the conditions discussed herein.

(C) Discovery is directed to report to the Commission on the progress of any negotiations within 60 days of the date of issuance of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**Appendix**

Discovery Gas Transmission LLC  
First Revised Volume No. 1

***Accepted effective January 1, 2011***

Section 2, Form of Service Agreement: FT-2 Rate Schedule, 1.0.0

***Conditionally accepted and suspended subject to refund, effective June 1, 2011***

Section 1.1, Definitions: A - F, 1.0.0

Section 20, Liability and Warranty, 1.0.0