

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Discovery Gas Transmission LLC

Docket No. EM06-1-000

Discovery Producer Services LLC

ORDER APPROVING EMERGENCY EXEMPTION
AND GRANTING WAIVERS

(Issued October 11, 2005)

1. Discovery Gas Transmission LLC and Discovery Producer Services LLC have requested the Commission to grant them an emergency exemption from our certification requirements, as permitted by section 284.261 of our regulations,¹ and to grant certain waivers, including of the portion of our regulations that establishes a 120-day maximum period for such exemptions, in order to transport natural gas that could otherwise be shut-in due to the closing of facilities as a result of Hurricane Katrina. In addition, Discovery Gas Transmission requests waivers of its tariff to facilitate the contemplated emergency transportation services. As discussed below, we will approve the emergency exemption and grant waivers of the Commission's regulations and Discovery Gas Transmission's tariff, so that these emergency transactions can go forward expeditiously.

Background

2. On August 29, 2005, Hurricane Katrina swept through the Gulf Coast region of the United States. The storm had direct and devastating effects on the lives of those in its path. It also caused major disruptions to the Nation's energy infrastructure. Energy production has been shut in, pipelines, power lines, and other forms of energy transportation have been seriously damaged, and important parts of the energy chain, such as natural gas processing plants, have been closed.

¹ 18 C.F.R. § 284.261 (2005).

3. One of the processing plants damaged by the hurricane was Dynegy Inc.'s Venice, Louisiana plant, which is located at the mouth of the Mississippi River, near New Orleans. This plant, which delivers processed natural gas to pipelines including Texas Eastern Transmission, LP, Columbia Gulf Transmission Company, and Gulf South Pipeline Company, LP, remains closed, so that supplies which previously passed through the plant must be rerouted or they may remain shut-in.²

4. Discovery Gas Transmission is a Commission-regulated natural gas pipeline whose system extends from the onshore area south of New Orleans approximately 105 miles into the Gulf of Mexico. It transports natural gas produced offshore to the Larose, Louisiana processing plant, from which it delivers pipeline quality gas to Texas Eastern. Discovery Producer Services, the pipeline's unregulated affiliate, owns and operates the Larose Plant, as well as an onshore gathering line which runs from a point near the Texas Eastern mainline to the plant.

5. On October 11, 2005, the two companies filed with the Commission a petition for an emergency exemption and related waivers. They propose to utilize Discovery Producer Service's gathering line to take up to 300,000 Mcf per day of unprocessed gas from Texas Eastern's facilities, and transport the gas to the Larose Plant for processing. Discovery proposes to construct interconnections to hook the gathering line to Texas Eastern on the upstream end and to Discovery on the downstream end.³ The processed gas would then be delivered into Discovery Gas Transmission's pipeline for redelivery into the interstate pipeline grid. The companies estimate that constructing the necessary interconnections will cost approximately \$3,000,000, which Discovery Gas Transmission would recover from shippers through a facilities reimbursement charge. Discovery Gas Transmission would charge its current Rate Schedule FT-2 volumetric rates for the portion of the proposed new service performed on its existing transmission facilities. The petition does not state what rate Discovery Producer Services will charge for the portion of the service performed over its existing gathering line, or for processing at the Larose Plant.

6. The companies request that the Commission issue three waivers in connection with the proposed emergency transactions. First, they ask that the Commission waive the portion of its emergency regulations that restricts emergency transactions to 120 days, so that they can provide the service for up to a year or until the Venice Plant comes back on stream, whichever occurs first. Second, Discovery Gas Transmission asks the Commission to waive portions of its tariff which it believes to be inapplicable to the

² The petitioners assert that it may take as long as a year to rebuild the Venice plant.

³ Discovery proposes to construct the facilities under its Part 157 blanket certificate.

service to be provided. Finally, the companies ask the Commission to confirm that the proposed transactions will not alter the non-jurisdictional status of Discovery Producer Service's facilities, and that the transactions will not be subject to section 7 of the Natural Gas Act.

Discussion

7. Subpart I of the Commission's regulations governs emergency natural gas sale, transportation, and exchange transactions and provides for the exemption of a person who engages in an emergency natural gas transaction from the certificate requirements of section 7 of the Natural Gas Act and from the conditions of section 284.10 of the regulations.⁴ The regulations define emergencies as including four situations:

(1) Any situation in which an actual or expected shortage of gas supply or capacity would require an interstate pipeline company, intrastate pipeline, local distribution company, or Hinshaw pipeline to curtail deliveries of gas or provide less than the projected level of service to any pipeline customer, including any situation in which additional supplies or capacity are necessary to ensure a pipeline's contracted level of service to any customer . . . or

(2) A sudden unanticipated loss of natural gas supply or capacity; or

(3) An anticipated loss of natural gas supply or capacity due to a foreseeable facility outage resulting from a landslide or riverbed erosion or other natural forces beyond the participant's control . . . [or]

(4) A situation in which the participant, in good faith, determines that immediate action is required or is reasonably anticipated to be required for protection of life or health or for maintenance of physical property.[⁵]

8. The extreme disruptions to natural gas production, transportation, and processing caused by Hurricane Katrina fit into all four of these categories. The inability of Gulf-area pipelines to access supplies may result in their not being able to provide customers previously projected levels of service; the hurricane has created a sudden and unanticipated loss of natural gas supply and capacity; this natural force has caused production, transportation, and processing outages beyond anyone's control; and it may well be the case that immediate action, such as that proposed here, is needed to protect

⁴ See 18 C.F.R. § 284.261 (2005). Section 284.10, 18 C.F.R. § 284.10 (2005) establishes requirement regarding rates for transportation services.

⁵ See 18 C.F.R. § 284.262 (2005).

life, health, and property, all of which could be put at risk if adequate energy supplies are not available. Thus, it is beyond doubt that an emergency situation exists on the Gulf Coast.

9. Given this finding, we concur with Discovery Gas Transmission and Discovery Producer Services that the proposed transportation does qualify as an emergency transaction under Subpart I of our regulations,⁶ that the proposed actions do not require a certificate under section 7 of the Natural Gas Act, and that Discovery Producer Service's participation in these activities will not make it or its facilities subject to Commission regulation.⁷

10. Section 284.271 of the regulations provides that the Commission may, by order, waive the requirements of Subpart I in connection with any emergency natural gas transaction to the extent required by the public interest.⁸ Based on the exigencies of the current situation in the Gulf Coast, we will waive the 120-day limit on emergency transactions for one year or until the resumption of processing at Dynegey's Venice, Louisiana processing plant, whichever comes first. Petitioners note that they will take the emergency facilities out of service and resume normal operations upon the conclusion of the emergency, when the Venice Plant resumes operations.

11. As noted above, Discovery Gas Transmission requests waiver of certain portions of the FT-2 rate schedule of its tariff. Specifically, the company asks us to waive sections 1(f) (reserve dedication/life-of-lease) and 2(a) (entitlement determination). Under normal operations, FT-2 service is available to producers willing to dedicate their production for the life of the reserves in exchange for volumetric firm transportation services. Such conditions are not appropriate for a short-lived emergency, and absent a waiver of section 1(f) producers would be unable to contract for service under this rate schedule. Section 2(a) is a provision derivative of the reserve dedication used to determine daily service entitlements in line with reserve dedications which may decline over the life of the field. This provision cannot be applied without the underlying reserves dedication and has no meaning in the context of short-term emergency service. Accordingly, we will grant the requested tariff waivers.

⁶ Because Subpart I is self-implementing, the companies do not need our prior authorization to engage in the emergency transactions. However, we have noted here our concurrence with the company's conclusion that their proposal does properly fall under Subpart I.

⁷ See 18 C.F.R. § 284.263 (2005).

⁸ See 18 C.F.R. § 284.271 (2005).

12. We wish to do everything we can to help alleviate the problems caused by Hurricane Katrina and the subsequent Hurricane Rita, and believe that our actions here are consistent with that goal. At the same time, we do not wish to act precipitously. Therefore, if any entities believe themselves to be adversely affected by our grant of emergency authorization,⁹ we urge them to make prompt filings with us, so that we can address their concerns.¹⁰

The Commission orders:

(A) Pursuant to Part 284, Subpart I of the Commission's regulation's, Discovery Gas Transmission LLC and Discovery Producer Services LLC may perform the emergency services described in this order, without the need to obtain certificate authorization under section 7 of the Natural Gas Act, and without thereby subjecting otherwise non-jurisdictional facilities to the Commission's jurisdiction.

(B) The capacity to be offered by Discovery Gas Transmission LLC and Discovery Producer Services LLC pursuant to the emergency authorization and waivers granted in this order must be allocated in a not unduly discriminatory manner.

(C) The services offered by Discovery Gas Transmission LLC and Discovery Producer Services LLC pursuant to the emergency authorization and waivers granted in this order may not adversely affect service to their existing customers.

(D) Section 284.264(b) of the Commission's regulations is waived to allow Discovery Gas Transmission LLC and Discovery Producer Services LLC to provide the services authorized by this order for one year or until Dynegey Inc.'s Venice, Louisiana processing plant returns to service, whichever comes first.

⁹ The emergency exemption and waivers are premised on the proposed service having no impact on the rates or services of either Discovery Gas Transmission or Discovery Producer Services' existing customers, as required by the regulations. *See* 18 C.F.R. § 284.264(a)(3) (2005).

¹⁰ Because of the need to respond quickly to the emergency situation in the Gulf Coast, we are issuing this order without prior notice, but it will be subject to rehearing.

(E) Waiver is granted with respect to transportation service provided under the emergency authorization granted in this order of Section 1(f) of Dynegy Gas Transmission LLC's Gas Tariff, Rate Schedule FT-2, governing reserve dedication/life-of-lease and section 2(a) of that tariff, dealing with entitlement determinations.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.