

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Entrega Gas Pipeline LLC

Docket No. RP06-200-003

ORDER ON REHEARING

(Issued August 8, 2006)

1. On March 31, 2006, Entrega Gas Pipeline LLC (Entrega) filed a request for rehearing of the order approving its negotiated rate transportation service agreement with EnCana Marketing (USA) Inc. (EnCana) and the related tariff sheets to its FERC Gas Tariff, Original Volume No. 1, on the condition that Entrega refile a portion of the negotiated rate agreement to remove a provision allowing EnCana to acquire additional available capacity without Entrega's making that capacity available to other shippers. For the reasons stated below, we grant the request for rehearing.

**Background**

2. Entrega is a newly constructed pipeline in Colorado and Wyoming that filed an application with the Commission for a certificate of public convenience and necessity pursuant to section 7(c) of the NGA on September 17, 2004. On August 9, 2005, the Commission issued Entrega's certificate authorizing the construction of the Entrega Pipeline Project.<sup>1</sup> On November 16, 2005, Entrega filed actual tariff sheets in Docket No. CP04-414-002. On December 29, 2005, the Commission issued a rehearing order requiring Entrega to revise its tariff with respect to interruptible revenue sharing with negotiated rate shippers with firm services contracts.<sup>2</sup> Pursuant to the rehearing order, Entrega filed revised tariff sheets on January 19, 2006 in Docket No. CP04-413-002, which were approved on March 1, 2006.<sup>3</sup>

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<sup>1</sup> *Entrega Gas Pipeline LLC*, 112 FERC ¶ 61,177 (2005).

<sup>2</sup> *Entrega Gas Pipeline LLC*, 113 FERC ¶ 61,327 (2005).

<sup>3</sup> *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,226 (2006).

3. In the certificate order, the Commission addressed Entrega's precedent agreement with EnCana providing for a negotiated rate and stated that Entrega was required to file its negotiated rate agreement with the Commission 30 days prior to commencement of service consistent with the Commission policy on negotiated rates.<sup>4</sup> On March 1, 2006, we accepted the filing on the condition that Entrega refile a portion of the negotiated rate agreement to remove a provision allowing EnCana to acquire additional available capacity without Entrega's making that capacity available to other shippers on a nondiscriminatory basis.<sup>5</sup>

4. The subject negotiated rate transportation service agreement (Interim Service TSA) reflects a negotiated rate agreement between Entrega and EnCana that provides for Entrega to transport gas from two receipt points in Colorado to a delivery point in Wamsutter, Wyoming.<sup>6</sup> Entrega's Interim Service TSA provides service to EnCana on the Segment 1 pipeline from Meeker Hub, Colorado to a delivery point at Wamsutter, Wyoming and is projected to be in operation until the segment to Cheyenne Hub is completed, which is expected to be in April 2007, at which time the Interim Service TSA will terminate and service will be performed under a revised contract.

5. Entrega stated that its filing included a non-conforming provision which would allow EnCana the right, after service commences under the interim transportation agreement, to contract for all of the available increase in capacity of the Segment 1 facilities above the stated contract of 500,000 Dth per day.<sup>7</sup> Entrega asserted that this provision, while non-conforming to its tariff, should be permitted because it will be in effect for only the short period that Segment 1 is in sole operation and no party other than EnCana proposed to acquire capacity during Entrega's open season period. Therefore, Entrega asserted this did not present a risk of undue discrimination.

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<sup>4</sup> *Entrega Gas Pipeline LLC*, 112 FERC ¶ 61,177 at P 32 citing *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 74 FERC ¶ 61,076 (1996); *NorAm Gas Transmission Company*, 74 FERC ¶ 61,076 (1996) and *Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003).

<sup>5</sup> *Entrega Gas Pipeline LLC*, 114 FERC ¶ 61,226 at P 8.

<sup>6</sup> Original Sheet Nos. 22-23 and Sheet Nos. 24-29 to FERC Gas Tariff, Original Volume No. 1.

<sup>7</sup> Exhibit A to Amendment No. 1 to the Transportation Service Agreement between Entrega and EnCana, Note No. 4.

### **The March 1, 2006 Order**

6. The March 1, 2006 order found that provision to be unduly discriminatory because proposed contractual provisions that allow a shipper to adjust or redistribute its maximum daily quantities (MDQs) during the term of a contract are a valuable right which must be granted in a not unduly discriminatory manner. Further, the Commission has not allowed pipelines to negotiate such provisions with individual customers, unless they are offered in the pipeline's tariff pursuant to generally applicable conditions.<sup>8</sup> Therefore, the Commission rejected Entrega's proposal to include in its negotiated contract the provision allowing EnCana to acquire additional capacity, as it would be discriminatory unless contained within the pipeline's tariff pursuant to generally applicable conditions and available to all shippers. Entrega's request for rehearing followed.

### **Request for Rehearing**

7. Entrega argues that the March 1 order erred in finding that the non-conforming provision in its negotiated rate agreement with EnCana is unduly discriminatory. Entrega on rehearing explains that the parties were uncertain at the time of execution of the contract as to the precise capacity of the Phase 1, Segment I facilities, and that the provision allowing EnCana to increase its MDQ was merely intended to serve as an engineering true-up and take into account any capacity above the stated 500,000 Dth per day that might be available during the interim period. Entrega explains further that because construction of a processing plant has been delayed, it is extremely unlikely that any capacity above the 500,000 Dth per day will be available and thus, as a result, it is unlikely that the provision in the negotiated rate contract would ever be applicable. Entrega also asserts that the additional capacity, if available, was expected to be *de minimis* and therefore holding an open season would not have been warranted.

### **Discussion**

8. Entrega does not contest our policy that provisions in negotiated rate contracts that allow a shipper to increase its MDQs during the term of a contract are a valuable right which must be granted in a not unduly discriminatory manner.<sup>9</sup> The Commission has not allowed pipelines to negotiate such provisions with individual customers, unless they are offered in the pipeline's tariff pursuant to generally applicable conditions.<sup>10</sup> Entrega on

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<sup>8</sup> See, e.g., *ANR Pipeline Company*, 105 FERC ¶ 61,112 at P 15 (2003).

<sup>9</sup> See, e.g., *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 at P 19 (2005).

<sup>10</sup> See, e.g., *Dominion Transmission, Inc.* 94 FERC ¶ 61,059 at 61,263 (2001).

rehearing further explained why it sought to allow EnCana to increase its MDQ during the interim first phase of the initial segment, without making such capacity available to other shippers. Although the initial agreement might have been drafted differently to avoid the issue that has given rise to this order, it seems clear that the parties intended EnCana to have all the capacity available on the initial segment during the interim first stage of pipeline operations. Only because the exact amount of capacity on that segment depended on engineering variables was the MDQ of 500,000 Dth per day used in conjunction with Note 4, which gave EnCana the option of using additional capacity, if available during the interim initial phase of operations. This amount of added capacity, if it becomes available at all, will be *de minimis*, and would not warrant an open-season bidding program for its non-discriminatory allocation among competitors. Under these unique circumstances, the Commission grants rehearing as it does not impair the policy that capacity must be offered in the pipeline's tariff pursuant to generally applicable conditions. Where this policy may be trenched upon, the Commission is vigilant in defending non-discriminatory access to capacity, and puts the burden on the pipeline to explain why it may not apply in some particular circumstance.<sup>11</sup> We have considered Entrega's explanation here, and grant rehearing.

The Commission orders:

Entrega's request for rehearing of the order issued in this proceeding on March 1, 2006 is hereby granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>11</sup> See, e.g., *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).