UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Discovery Producer Services LLC — Docket No. CP06-425-000

Discovery Gas Transmission LLC — Docket No. CP06-426-000

ORDER ISSUING CERTIFICATES

(Issued November 29, 2006)

1. On July 20, 2006, Discovery Producer Services LLC (Discovery Producer) and Discovery Gas Transmission LLC (Discovery) jointly filed an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations. They seek certificates of public convenience and necessity authorizing Discovery to lease capacity on Discovery Producer's non-jurisdictional gathering facilities for the transportation of natural gas received from Texas Eastern Transmission, LP (Texas Eastern) for delivery to Discovery Producer's Larose Louisiana processing plant in Lafourche Parish, Louisiana. Discovery Producer also requests a limited jurisdiction certificate to permit Discovery's use of Discovery Producer's non-jurisdictional facilities so that its non-jurisdictional gas gathering and processing facilities and operations will not become subject to the Commission's jurisdiction. We find that approval of the proposals is in the public interest and will grant the requested certificate authorizations, as modified and conditioned in this order.

Background And Proposals

2. Discovery Producer is the sole owner of Discovery and operates gathering, processing, fractionation, treating, and compression facilities in Louisiana. Discovery Producer also owns and operates the Larose processing plant straddling Discovery's main line and its non-jurisdictional 20-inch, 5.51-mile gathering line which originates from a point in a production field near Texas Eastern's mainline. Before reaching the processing plant, the 20-inch line connects with a 0.8-mile, 6-inch line at Discovery Producer's Carizzo junction.

3. Discovery is a natural gas company that operates an approximately 105-mile, 30-inch diameter natural gas transmission system originating from offshore Gulf of Mexico to the onshore Larose processing plant. From there, Discovery's system consists of approximately 4.4 miles of 20-inch diameter pipeline running to an interconnection point with Texas Eastern and approximately 0.5 mile of 30-inch diameter pipeline running to an interconnection point with Bridgeline Gas Distribution LLC (Bridgeline).

4. On October 11, 2005, as a result of the damage caused by hurricanes Katrina and Rita to certain processing plants, the Commission approved emergency exemption and waivers (October 11 Order) which provided emergency authorization for Discovery Producer and Discovery to reroute gas supplies in need of processing from Texas Eastern's system to the Discovery Producer's Larose processing plant for eventual delivery back into the interstate pipeline grid.[1] Discovery was authorized to construct a new 20-inch "jumper" line connecting Carizzo junction to Discovery's mainline system. The emergency authorization was for a limited term ending on November 30, 2006.

5. The estimated cost of construction associated with the emergency authorization was approximately $3,000,000 which Discovery indicated it would recover from shippers through a facilities reimbursement charge. Discovery charged its current Rate Schedule FT-2 volumetric rates for the portion of the proposed new service performed on its existing transmission facilities. The rate charged for the portion of the service performed over Discovery Producer's existing gathering line, or for processing at the Larose Plant, was not stated. The emergency authorization approved in the October 11 Order was premised on the proposed service having no impact on the rates or services of either Discovery's or Discovery Producer's existing customers, as required by Commission regulations.[2] Further, in the October 11 Order, the Commission stated that "…if any entities believe themselves to be adversely affected by our grant of emergency authorization, we urge them to make prompt filings with us, so that we can address their concerns." No such filings have been made and there were no comments, adverse or otherwise, filed in this docket.

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[1] *Discovery Gas Transmission LLC and Discovery Producer Services LLC,* 113 FERC ¶ 61,025 (2005).

[2] *See* 18 C.F.R. § 284.264(a)(3) (2005).

6. Discovery Producer and Discovery state that the need for such service and the access to optional processing plant capacity is enduring as evident from market inquiries to Discovery. In addition, the threat of potential supply disruptions as a result of storms in the Gulf Coast region remains an ongoing concern. Having access to the Larose processing plant will provide shippers an alternative when such conditions arise and will result in greater overall reliability of the gas infrastructure. As a result of the emergency authorization, Discovery states that it can receive up to 300,000 Dth per day of gas from Texas Eastern into Discovery Producer's 20-inch, 5.51-mile gathering line.

7. Discovery states that although the new interconnection facilities between Texas Eastern and Discovery Producer have been used under the emergency, these facilities can be used indefinitely. Discovery Producer proposes to make available capacity on its 20-inch, 5.51-mile non-jurisdictional gathering line to Discovery, allowing receipt and transportation of up to 300,000 Dth per day of natural gas from Texas Eastern to Discovery's mainline on an interruptible basis. Discovery Producer states that it will provide such capacity to Discovery through a capacity lease arrangement. The capacity lease is structured as an operating lease with a fixed fee of $75,000 per month. Although Discovery will use its leased capacity on Discovery Producer's non-jurisdictional facilities like its own, Discovery Producer will remain the owner and operator of the facilities. Discovery Producer states that the service offered to Discovery through the lease will be strictly ancillary to Discovery Producer's primary business of providing gathering, processing, treating, and compression services in Louisiana.

8. Discovery states that it will record the expenses associated with the lease payment in Account 858, Transmission and Compression of Gas by Others. Further, Discovery states that it will be at risk for the recovery of the capacity lease costs and Discovery's existing customers will not subsidize any of the costs associated with the proposed services. Discovery also requests the Commission approve the proposed revision to section 20 of the General Terms and Conditions (GT&C) of its Gas Tariff to permit transportation service for a shipper that has title to the gas or the right to process the gas.

<u>Interventions</u>

9. Notice of Discovery's and Discovery Producer's application was published in the *Federal Register* on August 3, 2006 (71 Fed. Reg. 44,022). No protests or comments to the application were filed.

Discussion

10. Since the application pertains to facilities used for the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, Discovery's and Discovery Producer's proposals are subject to the requirements of section 7 of the NGA.

11. On September 15, 1999, the Commission issued a statement of policy on the certification of new interstate natural gas pipeline facilities to provide guidance as to how we will evaluate proposals for certificating new construction.[3] In this Policy Statement, we established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances public benefits against potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions to the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step it to determine whether the applicant has made efforts to eliminate any adverse effects the project might have on the applicant's existing customers.

13. The Commission also considers potential impacts of the proposed project on other pipelines in the market, those existing pipeline's captive customers, and landowners and communities affected by the route of the new pipeline. If residual adverse effects on those interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits of the proposal outweigh the adverse effects on other economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

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[3] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128 (2000), *order on clarification*, 92 FERC ¶ 61,094 (2000) (Policy Statement).

14. Discovery will use the existing pipeline facilities at modest cost and is at risk for the costs associated with the capacity lease. Thus, the project will not rely on subsidies from existing customers. The proposed lease will not result in adverse impacts on other pipelines in the market or on Discovery's existing shippers. Further, Discovery has structured the project to eliminate environmental impacts by relying on existing facilities in lieu of new construction to provide the proposed expanded services. Discovery's proposed lease of capacity from Discovery Producer's existing pipeline avoids duplicative facilities and eliminates the need to acquire right-of-way and construction sites and thus avoids adverse impacts on affected landowners and communities. Therefore, we find that Discovery Producer's and Discovery's proposed project, including the proposed lease of capacity, is consistent with the Commission's Policy Statement and required by the public convenience and necessity.

Discovery's Rates

15. Discovery indicates that transportation to its Mainline Facilities, which will be achieved through use of Discovery Producer's line on an interruptible basis, will be provided pursuant to Discovery's currently effective Rate Schedules and all applicable General Terms and Conditions under its Commission-approved FERC Gas Tariff as required by Commission policy. We find, however, that Discovery should be more specific in clarifying the nature of transportation service it intends to provide subject to capacity lease arrangement with Discovery Producer. Therefore, while we will authorize the transactions proposed here, we will require Discovery to include new tariff language which clarifies that such transportation service will be provided pursuant to its currently effective interruptible rate schedule and that it will comport with all applicable General Terms and Conditions under its Commission-approved FERC Gas Tariff. Further, Discovery is directed to include new tariff language clarifying that, in the event it provides such transportation service under its negotiated rate authority, it will adhere to all associated requirements.

16. In regard to the capacity lease arrangement, Discovery proposes to record the lease payments in Account 858, Transmission and Compression of Gas by Others. We find that the proposed accounting treatment for the lease agreement is appropriate.[4]

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[4] *See Trunkline Gas Co. and Koch Gateway Pipeline Co.*, 80 FERC P 61,356 (1997).

17. Discovery proposes to revise its tariff to include a new provision, section 20.6 of the GT&C, which permits a shipper who has rights to process gas to receive transportation service in the event such shipper may not have title to the gas:

> 20.6 PROCESSING RIGHTS - Where the Shipper has rights to process the Gas requested to be received, transported and delivered by Transporter, the "Shipper-Must-Have-Title" requirement is waived.

18. Particularly, Discovery asserts that this proposed tariff revision is necessary as it pertains to occasional circumstances in which: (1) an interstate or an intrastate pipeline may require primary or secondary processing and (2) other processing operators may want to schedule transportation service to provide standby or backup processing activity. Essentially, Discovery asserts that this proposed tariff revision results in expanded availability of transportation service to Discovery Producer's Larose processing plant to the greatest number of potential customers and, thereby, strengthens the reliability of the interstate gas infrastructure.

19. The Commission finds that consistent with the circumstances underlying this lease agreement and limited-jurisdiction certificate, and the currently effective Shipper Must Have Title waiver provision in section 28.1 of the GT&C, which pertains to leasing or acquisition of off-system capacity, waiver of the Shipper Must Have Title requirement is also appropriate for those shippers who have rights to process gas. Accordingly, the new provision in section 20.6 of the GT&C is accepted as proposed.

20. Additionally, Discovery proposes to move the currently effective provision contained in section 28 of its GT&C, in its entirety, to section 20 of the GT&C. Discovery maintains this will consolidate all language dealing with warranties and title into one section of the tariff. This administrative change as reflected on *Pro Forma*, First Revised Sheet No. 188, is acceptable. However, when Discovery files such sheet to become effective as part of its tariff, Discovery is advised to correct what appears to be an inadvertent error in the last sentence of proposed section 20.5, which references "…this section <u>28.1</u>…", rather than "…this section <u>20.5</u>…".

21. Finally, Discovery clarifies that it reserves all rights, in the event it files an NGA section 4 rate case in the future, as to its position on the proper rate treatment in future rates of the capacity lease payments.

Discovery Producer's Proposal

22. Discovery Producer proposes to offer Discovery use of up to 300,000 Dth per day of unused pipeline capacity on an interruptible basis on Discovery Producer's non-jurisdictional gathering facilities through a capacity lease arrangement which is structured as an operating lease with a fixed fee of $75,000 per month. As proposed, the provision of the lease is conditioned upon the Commission's issuing Discovery Producer a limited jurisdiction certificate ensuring that Commission jurisdiction will be asserted only over the lease agreement and that all Commission jurisdictional filing and reporting requirements that might otherwise apply to Discovery Producer are waived.

23. We will authorize the limited-jurisdiction certificate requested by Discovery Producer.[5] The service for Discovery will be strictly ancillary to Discovery Producer's primary business of operating gathering, processing, treating, and compression services in the state of Louisiana. The proposed service will permit it to achieve greater and more efficient utilization of its existing facilities.

24. In other orders granting limited jurisdiction certificates to otherwise non-jurisdictional companies engaged in comparatively minor jurisdictional activities, the Commission did not subject the company to all the regulatory requirements applicable to conventional natural gas companies.[6] The public interest would not be served by subjecting Discovery Producer to all the filing and accounting requirements applicable to interstate pipeline companies. Accordingly, those requirements are waived.

25. This action qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations.

26. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

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[5] The Commission previously authorized a similar transaction between Discovery and Discovery Producer. *See Discovery Gas Transmission LLC, Discovery Producer Services LLC, and Texas Eastern Transmission, LP*, 107 FERC ¶ 61,124 (2004).

[6] *See, e.g., Columbia Gas Transmission Corp.*, 90 FERC ¶ 61,211 (2000); *Continental Natural Gas Co.*, 83 FERC ¶ 61,065 (1998) *and Lawrenceburg Gas Co.*, 74 FERC ¶ 61, 306 (1996).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Discovery authorizing it to lease gas facilities and services, as described and conditioned herein, and as more fully described in the application.

(B) Discovery shall comply with paragraphs (a) and (e) of section 157.20 of the Commission's regulations.

(C) A limited jurisdiction certificate of public convenience and necessity is issued to Discovery Producer authorizing it to provide Discovery the use of up to 300,000 Dth per day of unused pipeline capacity on an interruptible basis on its non-jurisdictional gathering facilities. This authorization will not affect the non-jurisdictional status of any other operation in which Discovery Producer is currently engaged.

(D) Discovery Producer's request for waiver of the Commission's filing and accounting requirements is granted.

(E) Discovery Producer and Discovery are required to advise the Commission of the date of commencement of the lease.

(F) Discovery shall file tariff sheets as discussed herein within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.