

145 FERC ¶ 61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Discovery Gas Transmission LLC

Docket No. RP14-173-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD SUBJECT TO
REFUND AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued December 30, 2013)

1. On November 15, 2013, Discovery Gas Transmission LLC (Discovery) filed a revised tariff record¹ pursuant to section 4 of the Natural Gas Act (NGA)² and Part 154 of the Commission's regulations. In its filing, Discovery proposes to increase its Hurricane Mitigation and Reliability Enhancement Surcharge (HMRE Surcharge) in accordance with Section 27 of the General Terms and Conditions (GT&C) of its tariff. As discussed below, the Commission accepts and suspends Discovery's proposed tariff record for a nominal period, to be effective January 1, 2014, as requested, subject to refund and the outcome of a technical conference established in this proceeding.

I. Background

2. Section 27.1 of the GT&C of Discovery's tariff provides that Discovery shall have the right to seek recovery, through a limited NGA section 4 filing, of all capital costs and related operation and maintenance expenditures made by Discovery in connection with efforts to mitigate the cost of damage to facilities caused by hurricanes (or other natural disasters), to maintain system reliability during and immediately after hurricanes (or other natural disasters), to repair and remediate facilities damaged by hurricanes (or other natural disasters) and to enhance overall system reliability. The HMRE Surcharge is a volumetric surcharge applicable to all transportation service provided through Discovery's Mainline Facilities.

¹ Discovery Gas Transmission LLC, FERC NGA Gas Tariff, First Revised Volume No. 1, [Section 1, Statement of Rates and Fuel, 9.0.0](#).

² 15 U.S.C. § 717c (2012).

3. Section 27.2 of the GT&C provides that capital expenditures and operation and maintenance expenditures (Qualifying HMRE Expenditures) that qualify for inclusion in the HMRE Surcharge shall include: (1) property damage insurance purchase costs in excess of \$509,575; (2) deductible (uncovered) amounts under such property damage insurance claim; (3) smart pigging operations and related pipeline modifications; (4) construction, modifications and repairs of pipeline shore approaches, levee crossings and other water/land interfaces including pipeline modifications, burials and matting; and (5) post-hurricane (or natural disaster) inspections not covered by insurance.

4. Section 27.3 of the GT&C provides that, no later than November 15 of each year, Discovery shall file to establish a new HMRE Surcharge, effective January 1 of the next calendar year. Section 27.3 also provides that Discovery's filing establishing a new HMRE Surcharge "shall not be suspended beyond the next December 31."

5. Section 27.4 of the GT&C provides that the HMRE Surcharge, to be effective January 1 of each year, shall equal (1) the balance in the HMRE Deferred Cost Account³ (including carrying charges) as of the prior September 30, divided by (2) projected transportation throughput on Discovery's Mainline Facilities for the period January 1 through December 31. Section 27.4 of the GT&C also provides that the HMRE Surcharge shall not exceed \$0.05 per Dth, but the \$0.05 per Dth cap does not limit the recovery of any Qualifying HMRE Expenditures credited to the HMRE Deferred Cost Account.

6. The HMRE Surcharge was established as part of a settlement (Settlement), which the Commission approved.⁴

II. Instant Filing

7. Discovery states that the instant filing reflects an increase from the currently effective HMRE Surcharge of \$0.0092/Dth to \$0.0500/Dth, the maximum allowed under Discovery's tariff. Discovery states that this increase is due to costs incurred for a number of qualifying HMRE activities, as well as the significant decline in actual transportation volumes in recent months due to the sale of all offshore and certain onshore facilities by Tennessee Gas Pipeline, L.L.C. to Kinetica Energy Express, LLC.⁵ Discovery states that as a result of that sale, average daily transportation on the Discovery

³ Section 27.4.1 of the GT&C requires the establishment and maintenance of an HMRE Deferred Cost Account for qualifying HMRE expenditures.

⁴ *Discovery Gas Transmission LLC*, 122 FERC ¶ 61,099 (2008).

⁵ *Tennessee Gas Pipeline Co., L.L.C., et al.*, 143 FERC ¶ 61,196 (2013).

system declined by 178,000 Dth per day from August to September, 2013, which is approximately 30 percent of daily system capacity.

8. Discovery states that its filing reflects costs incurred with respect to the following qualifying activities for the twelve months ended September 30, 2013: (1) combined onshore and offshore property insurance in excess of \$509,575; (2) construction of a helipad at Valve Site 1; (3) new pigging facilities to its onshore 30-inch pipeline in Terrebonne Parish to permit smart and routine pigging; (4) follow-up integrity management investigation and treatment procedures on Discovery's Point Au Chien 18-inch pipeline for an anomaly identified in a smart pig run; (5) inspection of certain offshore facilities that were located in the storm path of Hurricane Isaac; and (6) expenditures as part of the Junction Platform Project.

9. In reference to the Junction Platform Project costs, Discovery asserts it incurred Qualifying HMRE Expenditures as part of the Junction Platform Project certificated by the Commission in Docket No. CP12-516-000.⁶ Discovery states that the Junction Platform Project had two main objectives: (1) the addition of new supplies from the deepwater Gulf of Mexico; and (2) the resolution of Discovery's long-term system pigging issues.⁷ Discovery states that the increment of the Junction Platform Project costs associated with resolving Discovery's pigging issues will be recovered through the HMRE Surcharge and, as explained in Discovery's certificate application, upon approval for recovery through the HMRE Surcharge, it will file to remove such costs from the Junction Platform Project's incremental recourse rate.⁸

10. Discovery states that the Junction Platform Project will provide a long-term solution to Discovery's offshore pigging issues by extending its 30-inch mainline to the new Junction Platform, which will be the new origin of Discovery's offshore pigging operations.⁹ Discovery states that, as explained in the Junction Platform Project application, "[b]ut for the need to address the pigging issue, Discovery could have constructed a much shorter, smaller diameter, and less costly lateral between the Junction Platform and its existing mainline."¹⁰ Discovery states that, given that pigging operations

⁶ Discovery Filing at 3 (citing *Discovery Gas Transmission LLC*, 143 FERC ¶ 61,171 (2013) (*Discovery*)).

⁷ Discovery Filing at 3 (citing *Discovery*, 143 FERC ¶ 61,171 at P 7).

⁸ Discovery Filing at 3 (citing Abbreviated Application For Certificate of Public Convenience and Necessity Under Section 7(c) of the Natural Gas Act, Docket No. CP12-516-000, at 14 (Sept. 7, 2012) (Application)).

⁹ Discovery Filing at 3 (citing *Discovery*, 143 FERC ¶ 61,171 at P 11).

¹⁰ Discovery Filing at 3 (citing Application at 14 & n.14).

are critical for an offshore pipeline system to sweep retrograde liquids to shore (normal pigging) and test system integrity (smart pigging),¹¹ the Commission's certificate order found that the Junction Platform Project "will provide system-wide benefits by providing Discovery and its existing customers a long-term solution for pigging of Discovery's offshore mainline," thereby enhancing both "service to Discovery's existing customers" and "overall system reliability."¹²

11. In accordance with section 27.4.4 of the GT&C, Discovery states that, due to the HMRE Surcharge's maximum rate of \$0.0500, any Qualifying HMRE Expenditures not recovered during this HMRE period will carry forward for determining the applicable HMRE Surcharge for the next period.

12. Discovery states that it incurred Qualifying HMRE Expenditures for the twelve months ended September 30, 2013 totaling \$30,404,394.60, and its HMRE Deferred Cost Account shows a balance of \$30,652,035.64 as of September 30, 2013.

13. Discovery filing includes a motion to place its proposed tariff records into effect on January 1, 2014.

III. Public Notice, Interventions, and Protests

14. Public notice of Discovery's filing was issued on November 19, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2013). Pursuant to Rule 214, 18 CFR § 385.214 (2013), all timely-filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties. Indicated Shippers¹³ and LLOG Exploration Company, L.L.C. (LLOG) each filed protests.

15. On December 9, 2013, Discovery filed an answer to Indicated Shippers' protest and, on December 16, 2013, Indicated Shippers filed an answer to Discovery's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority.¹⁴ We will

¹¹ Discovery Filing at 3 (citing Application at 16, 18-20).

¹² Discovery Filing at 3 (citing *Discovery*, 143 FERC ¶ 61,171 at P 22).

¹³ In this proceeding, Indicated Shippers include Anadarko US Offshore Corporation, Apache Deepwater LLC, Chevron U.S.A. Inc., and ExxonMobil Gas & Power Marketing Company, a Division of Exxon Mobil Corporation.

¹⁴ 18 C.F.R. § 385.213 (a)(2) (2013).

accept the answers of Discovery and Indicated Shippers because they provide information that will assist us in our decision-making process.

16. Indicated Shippers and LLOG object to Discovery's proposed increase in the HMRE Surcharge. Indicated Shippers and LLOG argue that the costs identified by Discovery do not appear to meet the definition of Qualifying HMRE Expenditures. Indicated Shippers state that, for example, Discovery identifies as Qualifying HMRE Expenditures the majority of costs relating to the construction of the Junction Platform Project approved in Docket No. CP12-516-000. Indicated Shippers state that, in addition to approving Discovery's Junction Platform Project,¹⁵ the Commission also approved Discovery's proposed incremental recourse rate that would apply to volumes transported on the new facilities.¹⁶ Indicated Shippers state that the incremental rates requested by Discovery are intended to address the costs of the Junction Platform Project and the instant filing attempts to recover approximately 63 percent of the project costs through the HMRE Surcharge rather than through the incremental rates approved by the Commission. Indicated Shippers stated that Discovery fails to offer any explanation as to why it is more appropriate to recover these costs through the HMRE Surcharge rather than the incremental rates that the Commission has already approved.

17. Indicated Shippers state that the HMRE Surcharge was never meant to be used to recover expansion costs. LLOG states that section 27.1 expressly limits the recoverable costs to those costs that were caused by hurricanes or other Natural Disasters, which is not the case here. LLOG states that Discovery constructed the Junction Platform Project to expand its pipeline system to provide service to potential deepwater gas producers and while there may be an attendant system-wide benefit to the construction of certain of the facilities, by definition the HMRE Surcharge is not the vehicle through which Discovery may recover such costs.

18. Indicated Shippers state that the Junction Platform Project expenses constitute \$25.4 million of the total \$30.4 million in reported expenditures from October 1, 2012 to September 30, 2013 included in the HMRE Surcharge. Thus, the Junction Platform Project expenses represent approximately 84 percent of the total costs, and exceed the aggregate expenses incurred in prior years. Indicated Shippers point out that in

¹⁵ Indicated Shippers Protest at 5 (citing *Discovery*, 143 FERC ¶ 61,171, *reh'g granted*, 145 FERC ¶ 61,145 (2013)). LLOG states that the Junction Platform Project consisted of the construction of a new junction platform on South Timbalier Block 283 and new pipeline facilities to extend Discovery's pipeline system to the new platform, an emergency outage lateral pipeline, and other appurtenant facilities.

¹⁶ Indicated Shippers Protest at 5 (citing *Natural Gas-Discovery Gas Transmission LLC*, 145 FERC ¶ 61,145 (2013)).

Discovery's previous HMRE Surcharge filing, the aggregate Qualifying HMRE Expenditures totaled only \$927,364.¹⁷

19. Indicated Shippers and LLOG also dispute whether other categories of costs identified by Discovery constitute Qualifying HMRE Expenditures under Discovery's tariff. Indicated Shippers state that additional information is required from Discovery on these issues. Indicated Shippers and LLOG also state it is not clear how Discovery calculated the throughput used in its HMRE Surcharge calculations.

20. Therefore, Indicated Shippers and LLOG request that the Commission order a technical conference to address the issues raised in the protests. LLOG also requests that the Commission suspend the instant filing for the full five-month statutory period, subject to refund.

21. In its answer, Discovery states Indicated Shippers' claim is without merit. Citing section 27.1 of the GT&C, Discovery states that the HMRE Surcharge is not limited to costs related to hurricanes and natural disasters, but also explicitly includes costs "to enhance overall system reliability." Moreover, Discovery states, section 27.2 of the GT&C defines the costs and activities that constitute "Qualifying HMRE Expenditures," which specifically include "[s]mart pigging and related pipeline modifications." Thus, Discovery argues, the plain language of the HMRE Surcharge tariff provisions agreed to by all parties to the Settlement (including each of the Indicated Shippers) provides that Discovery is entitled to recover through the HMRE Surcharge costs related to "[s]mart pigging operations and related pipeline modifications" that "enhance overall system reliability." Discovery states it provided a detailed explanation and workpapers showing that the portion of the Junction Platform Project costs included in the HMRE are only the incremental costs incurred to address the long-term pigging and system reliability issues.

22. Discovery states that the incremental pigging and system reliability costs included in the instant HMRE filing constitute only approximately \$25 million of the estimated total Junction Platform Project costs of \$126 million or only approximately 20 percent of the estimated total Junction Platform Project costs. Discovery also states that there is no merit to Indicated Shippers' concern that including these costs in the HMRE Surcharge will lead to duplicative recovery of Junction Platform Project costs because upon approval of the qualifying Junction Platform Project costs for recovery in the HMRE Surcharge, it will remove such costs from the Junction Platform Project's incremental recourse rate. Discovery also states that the incremental recourse rate is not the most appropriate means of collecting pigging and system reliability costs benefitting the entire

¹⁷ Indicated Shippers state that Discovery's workpapers show a calculated HMRE Surcharge increase from \$0.0092/Dth to \$0.3692/Dth, or by approximately 4100 percent.

system because they only apply to shippers accessing the new deepwater supplies attached by the Junction Platform Project.

23. Discovery contends that a technical conference is not needed because the issues raised are resolved by the plain language of Discovery's tariff and the information provided in the instant HMRE Surcharge filing. Discovery also argues that a five-month suspension contravenes the plain language of Discovery's tariff. Discovery states that section 27.3.1 provides that "the effective date of each HMRE Surcharge shall be January 1 of each year" and section 27.3.2 provides that HMRE filings "shall not be suspended beyond the next December 31." In accordance with these provisions, Discovery states that the Commission should allow the HMRE Surcharge to become effective January 1, 2014.

24. In reply, Indicated Shippers contend that Discovery's answer makes it clear that the costs Discovery desires to recover are standard operation and maintenance costs that could and should be addressed as part of a general NGA section 4 rate case, rather than included in a tracker. Indicated Shippers contend that filing a general section 4 rate case likely is unattractive because to obtain the rate treatment Discovery desires, Discovery would have to demonstrate that a roll-in of Junction Platform Project costs was appropriate.

25. Indicated Shippers also state that Discovery's answer makes it clear that the costs now at issue are not driven by a natural catastrophe. Indicated Shippers contend that Discovery's position, if generally adopted, would make Commission oversight of operation and maintenance costs illusory. Indicated Shippers state that there is no justification in this record to take one category of costs out of the normal ratemaking process, to guarantee recovery of those costs alone, and to preclude a review of all other aspects of the pipeline's rate structure.

IV. Commission Determination

26. Discovery's filing raises a number of issues, which are best addressed at a technical conference. Therefore, the Commission directs Commission staff to hold a technical conference to examine the issues raised with regard to the instant filing. A technical conference will provide an appropriate forum to discuss the issues raised by the parties and provide further information on the instant filing.

27. Accordingly, the Commission accepts and suspends Discovery's proposed tariff record for a nominal period, to be effective January 1, 2014, as requested, subject to refund and the outcome of a technical conference established in this proceeding.

V. Suspension

28. Based upon a review of the filing, the Commission finds that the proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff record for filing and suspend its effectiveness for the period set forth below, subject to the conditions set forth in this order.

29. 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.¹⁸ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.¹⁹ Given that this filing concerns a tracking mechanism, we find that such circumstances exist here. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on January 1, 2013, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) Discovery's proposed tariff record is accepted and suspended for a nominal period, to be effective January 1, 2014, subject to refund and the outcome of the technical conference established in this order.

(B) The Commission Staff is directed to convene a technical conference to explore issues set forth above, and to report the results of the conference to the Commission within 120 days of the issuance of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

¹⁹ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).