

Background and Proposals

3. Following damage to processing and gas pipeline facilities caused by Hurricanes Katrina and Rita in late summer 2005, the Commission granted emergency authorizations for Discovery and Discovery Producer to reroute gas supplies on the Texas Eastern Transmission, LP (Texas Eastern) system to Discovery Producer's Larose plant in Louisiana for processing.² The rerouting made use of Discovery Producer's 5.51-mile Delta Farms gathering line originating in a production field near Texas Eastern's mainline. The emergency authorization was for a term ending on November 30, 2006.

4. In anticipation of a continued need for the arrangement to move gas from Texas Eastern's system to the Larose processing plant, Discovery Producer and Discovery jointly filed an application seeking certificate authorizations for Discovery to lease capacity in Discovery Producer's gathering facilities. The Commission's November 29, 2006 Order granted the requested authorizations, including a certificate of limited jurisdiction for Discovery Producer so that it could lease capacity to Discovery without causing its non-jurisdictional facilities and services to become otherwise subject to the Commission's NGA jurisdiction.³

5. Under the lease agreement, Discovery Producer provides capacity on its Delta Farms gathering line to Discovery at a fixed fee of \$75,000 per month. The agreement provides that the initial term of the lease is December 1, 2006 through December 31, 2007, and that the agreement shall be automatically renewed for successive twelve-month terms thereafter, unless terminated by either party by giving at least thirty days written notice prior.⁴

6. The certificates granted by the November 29, 2006 Order authorize Discovery Producer to lease Discovery up to 300,000 dekatherms (Dth) of capacity per day on an interruptible basis and Discovery to use the leased capacity to offer its shippers interruptible service from Texas Eastern's system to Discovery Producer's Larose processing plant which straddles Discovery's main line. Because Discovery's and Discovery Producer's certificate application was unclear in certain respects regarding the

² *Discovery Gas Transmission LLC and Discovery Producer Services LLC*, 113 FERC ¶ 61,025 (2005).

³ 117 FERC ¶ 61,243 (2006).

⁴ The Commission notes that Discovery's certificate issued by the November 29, 2006 Order does not include pregranted authority for Discovery to abandon the capacity leased from Discovery Producer.

transportation service that Discovery intended to provide using the leased capacity, the November 29, 2006 Order directed Discovery to file tariff language clarifying (1) that its transportation service using the leased capacity would be provided pursuant to its currently effective interruptible rate schedule and that it will comport with all applicable General Terms and Conditions (GT&C) under its Commission-approved FERC Gas Tariff, and (2) that, in the event it provides such transportation under its negotiated rate authority, it will adhere to all associated tariff requirements.⁵ Ordering Paragraph (F) of the November 29, 2006 Order directed Discovery to file these new tariff provisions within thirty days, along with other tariff provisions accepted by that order.

7. On December 29, 2006, Discovery filed tariff sheets pursuant to Ordering Paragraph (F) of the November 29, 2006 Order. However, in view of the December 14, 2006 application for amended certificate authorizations to authorize Discovery's use of leased capacity on Discovery Producer's gathering facilities for firm service in addition to interruptible service, Discovery filed tariff sheets providing for both firm and interruptible service. In accordance with the November 29 Order, Discovery's tariff sheets clarify that its transportation services will comport with all applicable GT&C under its tariff and that any transportation services rendered under negotiated rate authority will adhere to all tariff requirements.

Interventions

8. Notice of the joint application in Docket Nos. CP06-425-001 and CP06-426-001 for amendment of Discovery's and Discovery Producer's respective certificate authorizations and including tariff sheets filed by Discovery was issued on December 28, 2006 and published in the *Federal Register* on January 8, 2007 (72 Fed. Reg. 765) with a deadline of January 12, 2007 for interventions, protests and comments. No interventions, protests or comments to the application were filed.

9. Notice of Discovery's December 29, 2006 compliance filing in Docket No. CP06-426-002 was issued on January 5, 2007 and published in the *Federal Register* on January 12, 2007 (72 Fed. Reg. 1498). The deadline for comments, protests, and intervention was January 23, 2007. No interventions, protests, or comments to the compliance filing were filed.

⁵ *Id.* at P 15.

Discussion

10. Discovery and Discovery Producer seek authorizations to permit Discovery's use of capacity leased from Discovery Producer for firm transportation service in interstate commerce. Therefore, their application for certificate amendment is subject to the requirements of section 7 of the NGA and the Commission's jurisdiction.

11. The applicants acknowledge that the original July 20, 2006 certificate application to implement the subject capacity lease arrangement was unclear, but state that their intention was for Discovery to be able to offer firm as well as interruptible transportation service using the leased capacity on Discovery Producer's gathering facilities. Further, the applicants have amended their capacity lease agreement to specifically provide that Discovery Producer will make 250,000 Dth per day of the 300,000 Dth per day of leased capacity available to Discovery on a firm basis so that Discovery can offer up to 250,000 Dth per day of firm service to its customers using the leased capacity.⁶ The applicants request amendment of their certificates granted by the November 29, 2006 Order so that Discovery may also provide firm transportation service in accordance with the terms of the amended lease agreement and the terms and conditions of Discovery's FERC tariff, as modified by Discovery's proposed tariff provisions.⁷

12. The Commission finds that approval of Discovery's and Discovery Producer's requested certificate amendments is required by the public convenience and necessity. The amended certificate authorizations will enable Discovery to use its leased capacity on

⁶ The original lease agreement was included in Exhibit K in the certificate application filed on July 20, 2006 in Docket CP06-425-000 *et al.* The amended lease agreement is in Exhibit K to the instant application filed on December 14, 2006 in Docket CP06-425-001 *et al.* requesting certificate amendment.

⁷ When Discovery first sought to use capacity in Discovery Producer's facilities under the emergency regulations following Hurricane Katrina, it requested a waiver of certain of its tariff provisions which limit service under Rate Schedule FT-2 to shippers that agree to service for the life of their gas reserves or production leases. Since such requirements are not appropriate for relatively short-term transportation service arrangements during emergency situations, the Commission's October 11, 2005 Order in Docket No. EM06-1-000 granted Discovery's requested waiver for its services under the emergency regulations. 113 FERC ¶ 61,025 at P 10. Discovery does not request a similar waiver for Rate Schedule FT-2 services in conjunction with its request in this docket for amended certificate authority. However, Discovery notes that it may seek such a waiver in the event emergency situations similar to those following Hurricane Katrina arise in the future.

Discovery Producer's facilities to provide firm service for shippers needing to have their gas transported from Texas Eastern's system to Discovery Producer's Larose processing plant and points beyond on Discovery's system. Further, approval of the proposal will have no environmental impact since all services under the amended certificates will be provided using Discovery Producer's existing Delta Farms gathering line and other minor facilities constructed following Hurricane Katrina in order to reroute gas supplies to that gathering line for transportation to the Larose processing plant.⁸

13. As described above, Discovery has filed tariff sheets pursuant to Ordering Paragraph (F) of the November 29, 2006 Order to clarify the transportation services that it will offer using the leased capacity on Discovery Producer's facilities, that such services will comport with all applicable GT&C under its tariff, and that, in the event it provides any transportation services under its negotiated rate authority, it will adhere to all associated tariff requirements. The Commission is accepting these tariff filings, except First Revised Sheet No. 188 and Substitute First Revised Sheet No. 188 which are both mooted by Discovery's filing of Alternate First Revised Sheet No. 188 in Docket No. CP06-426-002 to reflect the new tariff language in section 20.5 of its GT&C providing that any transportation service provided under negotiated rate authority will adhere to the requirements in Discovery's tariff. Discovery's tariff sheets will be accepted, as proposed, effective December 1, 2006, the date on which Discovery commenced service under its certificate granted by the November 29, 2006 Order.⁹

⁸ 117 FERC ¶ 61,243 at P 4. Since this order is limited to the approval of transportation services requiring no construction of facilities, it qualifies for the categorical exclusion set forth in section 380.4(a)(27) of the regulations, 18 C.F.R. § 380.4(a)(27) (2006), and the Commission's staff therefore has not prepared a case-specific environmental assessment.

⁹ Discovery Producer's certificate is a certificate of limited jurisdiction authorizing it to lease capacity in its non-jurisdictional gathering facilities to Discovery for the latter's use in providing jurisdictional transportation services. As explained in the November 29, 2006 Order, while Discovery Producer's leased capacity is subject to the terms and conditions of the limited jurisdiction certificate, Discovery Producer's acceptance of the certificate does not otherwise subject its facilities or services to the NGA or the Commission's jurisdiction. Further, in recognition that Discovery Producer's lease of capacity is strictly ancillary to its primary non-jurisdictional activities, the Commission's November 29, 2006 Order did not subject it to all the regulatory requirements applicable to conventional natural gas companies. 117 FERC ¶ 61,243 at PP 23 and 24.

14. The Commission on its own motion has received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, and upon consideration of the entire record,

The Commission orders:

(A) Discovery's certificate and Discovery Producer's limited jurisdiction certificate granted by the November 29, 2006 Order in Docket Nos. CP06-425-000 and CP06-426-000 are amended to authorize Discovery's use of capacity leased from Discovery Producer to provide firm transportation services as described herein. In all other respects, the certificates' terms and conditions are unchanged.

(B) Discovery's and Discovery Producer's amended certificates are subject to paragraphs (a) and (e) of 157.20 of the Commission's regulations.

(D) Discovery's revised tariff sheets are accepted, except as described in this order and in the Appendix.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.

APPENDIX

**Discovery Gas Transmission LLC
FERC Gas Tariff, Original Volume No. 1**

Sheets Accepted:

Sixth Revised Sheet No. 101
Alternate First Revised Sheet No. 188
Second Revised Sheet No. 199

Sheets Rejected as Moot:

First Revised Sheet No. 188
Substitute First Revised Sheet No. 188