

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Discovery Gas Transmission LLC

Docket Nos. RP03-219-003
MG03-2-000
(Not consolidated)

ORDER GRANTING REHEARING
AND DISMISSING STATEMENT OF STANDARDS OF CONDUCT

(Issued June 6, 2003)

1. In this proceeding, Discovery Gas Transmission LLC (Discovery) seeks rehearing of a Letter Order issued January 30, 2003 under delegated authority in Docket No. RP03-219-000.¹ Among other things, that order instructed Discovery to file a statement of its Standards of Conduct pursuant to Part 161 of the Commission's regulations.² In a separate docket (Docket No. MG03-2-000), simultaneous with its rehearing request, Discovery filed a statement of its Standards of Conduct in compliance with the January 30, 2003 Letter Order. Because the Commission agrees with Discovery's explanation on rehearing that it is exempt from the requirements of the Commission's marketing affiliate rules, the Commission is granting rehearing and dismissing Discovery's statement of its Standards of Conduct. This order furthers the public interest by ensuring that companies which are exempt from the Commission's marketing affiliate rules are not burdened with the requirement of filing statements regarding their Standards of Conduct.

¹Unpublished Letter Order issued in Discovery Gas Transmission LLC, Docket No. RP03-219-000, on January 30, 2003.

²18 C.F.R. Part 161 (2003).

Background

2. On January 30, 2003, pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - South (Director), the Director issued a Letter Order conditionally accepting miscellaneous tariff sheets filed by Discovery to clarify and update certain tariff provisions. The Letter Order also noted that the Commission's records indicated that Discovery had not filed a statement of its Standards of Conduct. Citing Section 161.3(i) of the Commission's regulations,³ the Letter Order instructed Discovery to file a statement of its Standards of Conduct.

3. On February 28, 2003, Discovery filed in Docket No. RP03-219-003 a request for rehearing of the January 30, 2003 Letter Order on the limited issue relating to the requirement that it file a statement of its Standards of Conduct, and in Docket No. MG03-2-000, Discovery filed a statement of its Standards of Conduct to comply with the Letter Order.

Discussion

4. Section 161.1 of the Commission's regulations provides that, to be subject to the marketing affiliate rules of Part 161, the pipeline, *inter alia*, must conduct "transportation transactions with its marketing or brokering affiliate." Discovery states that it is a relatively small offshore gathering and pipeline system with a limited number of shippers. Discovery contends that it is not subject to the marketing affiliate rules because it does not transport, nor does it contemplate transporting, any gas for its marketing affiliates.⁴ Since, it asserts, it is not subject to the marketing affiliate rules, it contends that it is not required to file a statement of its Standards of Conduct.

5. Discovery acknowledges that one of its marketing affiliates, Duke Energy Trading and Marketing, LLC (Duke ET&M), makes transportation nominations for one of Discovery's shippers, Spinnaker Exploration Company (Spinnaker). However, Discovery argues that Duke ET&M's activity does not constitute a "transportation transaction" within the meaning of Section 161.1 of our regulations. Discovery states that Duke ET&M's activity is ministerial. Discovery states that Duke ET&M merely sends nominations to Discovery, as required by Discovery's tariff, for Spinnaker to receive firm transportation service. It states that Duke ET&M has no payment or other contractual obligation to

³18 C.F.R. § 161.3(i) (2002). That section provides that the pipeline "must file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the standards of this section."

⁴Discovery cites *Nornew Energy Supply, Inc., et al.*, 99 FERC ¶ 61,123 (2003).

Discovery and merely acts for Spinnaker for the purpose of transportation nominations on Discovery. In addition, it states that Duke ET&M shares no personnel or facilities with Discovery. Duke ET&M and Discovery function separately and independently. Because of the limited nature of Duke ET&M's role and because it does not involve the kind of activity that could lend itself to affiliate abuse, Discovery argues that Duke ET&M's role is not the kind of role that the Commission had in mind when it developed the marketing affiliate rules.

6. As clarified in Order No. 497-A,⁵ pipelines that do not transport on behalf of an affiliate are not subject to the marketing affiliate rules. As such, those pipelines are not required to file a statement of their Standards of Conduct. When the January 30, 2003 order was issued under delegated authority, it was not clear from the record whether or not Discovery was engaged in transporting gas for its affiliates. However, the Commission is now persuaded to grant rehearing because the facts, as represented by Discovery in its request for rehearing, indicate that Discovery is not engaged in the type of activity which would make it subject to the Commission's marketing affiliate rules. Since Discovery now states that it does not provide transportation services for its marketing or brokering affiliates, and there is nothing in the record to refute that statement, the Commission agrees that Discovery is exempt from the marketing affiliate rules. As such, there is no need for Discovery to file a statement of its Standards of Conduct.⁶ Accordingly, the Commission is granting rehearing and dismissing Discovery's statement of its Standards of Conduct.

The Commission orders:

- (A) Discovery's request for rehearing in Docket No. RP03-219-003 is granted.

⁵Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497-A, 54 Fed. Reg. 52781 (December 22, 1989); FERC Statutes and Regulations, Regulations Preambles 1986-1990 ¶ 30,868 at 31,591.

⁶Of course, if Discovery does transport for its affiliates in the future, Discovery would then become subject to the requirements of Part 161.

(B) Discovery's statement of its Standards of Conduct filed in Docket No. MG03-2-000 is dismissed.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.