

111 FERC ¶ 61,407
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

June 16, 2005

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP05-346-000

El Paso Natural Gas Company
Post Office Box 1087
Colorado, CO 80944

Attention: Richard L. Derryberry
Director, Regulatory Affairs

Reference: Transportation Service Agreement

Dear Mr. Derryberry:

1. On May 16, 2005, El Paso Natural Gas Company (El Paso) filed a transportation service agreement (TSA) between El Paso and San Diego Gas and Electric Company (SDG&E) and an accompanying tariff sheet listing the TSA as a potential nonconforming agreement for the Commission's information and review. As discussed below, the Commission will reject the tariff sheet and accept the TSA for informational purposes only. This order benefits the public because it is consistent with Commission precedent and El Paso's tariff.

2. El Paso states that it is submitting the SDG&E TSA for the Commission's review, out of an abundance of caution, because Paragraph 3.1(a) of the TSA contains a rate provision providing that the contract discount is subject to the applicable maximum tariff rates. El Paso further explains that, if the maximum tariff rates for deliveries to California drop below these discounted rates in the future, SDG&E will pay the applicable maximum tariff rates; however, if the maximum tariff rates do not drop below the level of the contract discounts, the discount rates will apply and are not subject to change under the TSA's Paragraph 3.2, El Paso's Memphis Clause. Section 3.1(a) of the TSA provides that the rate to be charged SDG&E is inclusive of all El Paso-specific surcharges, including an El Paso Integrity Surcharge Program.

3. Notice of El Paso's filing was published in the *Federal Register*, 70 Fed. Reg. 30,094 (2005), with comments, interventions and protests due as provided by section 154.210 of the Commission's regulations. Protests were filed by El Paso Municipal

Customer Group (EPMCG)¹ and Southwest Gas Corporation (Southwest), collectively (Protestors). Joint comments in support were filed by SDG&E and Southern California Gas Company (SoCal Gas). A late motion to intervene was filed by the Public Utilities Commission of the State of California. All timely motions to intervene filed before the issuance of this order are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. In addition, granting the late motion for intervention will not delay, disrupt, or otherwise prejudice this proceeding or place undue additional burden on existing parties.

4. El Paso and SDG&E filed answers to the protests. Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. In its answer, El Paso has provided further explanation of the TSA that has assisted the Commission in the decision-making process. We therefore will accept El Paso's answer. SDG&E's answer, on the other hand, has not provided any additional information beyond what was provided by El Paso and the Commission, therefore, will reject the answer.

5. Protesters argue that the proposed TSA is a negotiated rate agreement because it provides for a volumetric rate, which represents a change in El Paso's rate design. In addition, EPMCG argues that the Commission should order references to a Pipeline Integrity Program removed, and Southwest asks the Commission to clarify that the TSA does not prejudice any Pipeline Integrity Program cost allocation issues in a future rate case. Alternatively, Protesters seek clarification that the Commission's approval of the TSA does not represent a determination that El Paso may recover the discounts granted to SDG&E in a future rate proceeding.

6. Section 154.1(d) and 154.112(b) of the Commission's regulations require that pipelines file any contracts which "deviate in any material aspect from the form of service agreement" in the pipeline's tariff. Section 154.112(b) also requires that "such nonconforming agreements must be referenced in FERC Volume 1" of the pipeline's tariff. As explained below, in applying these regulations to El Paso's filing, the Commission finds that the agreement filed in the instant proceeding is permitted by the

¹ EPMCG is composed of the following distributor-customers of El Paso: City of Mesa, Arizona; City of Safford, Arizona; City of Benson, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Socorro, New Mexico; City of Deming, New Mexico; Town of Ignacio, Colorado; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; Duncan Rural Service Corporation; and Black Mountain Gas Company.

provisions of section 35.1,² of the General Terms and Conditions (GT&C) of El Paso's tariff, and, therefore, does not constitute a material deviation from El Paso's Form of Service Agreement.

7. The Commission rejects the Protestors' argument that the TSA reflects a different rate design than that stated in El Paso's FT-1 tariff rate and is therefore a negotiated rate agreement. As El Paso explains in its answer to the protests, the TSA provides for a discounted rate using the existing reservation and usage components set forth in El Paso's Rate Schedule FT-1 and it limits those rate components to the effective maximum applicable California reservation and usage rates. Thus, the existing rate design is preserved. Further, El Paso's Form of Service Agreement contains a blank where the applicable rate may be filled in for each TSA and this provision merely fills in the blank. As such, it is not a material deviation from the Form of Service Agreement and does not need Commission approval before it can be implemented.

8. The Commission finds that the provision in the TSA that provides that the discounted rate includes El Paso-specific surcharges is appropriate, and that the explanation that these surcharges would include an El Paso Pipeline Integrity Charge does not change the meaning of this phrase. The Commission grants Southwest's request for clarification that the inclusion of the reference to this surcharge does not prejudice any Pipeline Integrity Program cost allocation issues in a future rate case.

9. Commission acceptance of the subject agreement does not represent a determination that the Commission will allow El Paso to recover this discount in any future rate proceeding. Section 154.301(c) of the Commission's regulations requires that "a natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable."³ Accordingly, in any future rate case that El Paso may file, it must justify its case for any recovery of discounts, and the Commission will make its determination in that proceeding.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

² Section 35.1 lists the specific discounts that El Paso may provide.

³ 18 C.F.R. § 301(c) (2004).

