

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

El Paso Natural Gas Company

Docket No. RP05-422-010

ORDER ACCEPTING COMPLIANCE FILING SUBJECT TO CONDITIONS

(Issued June 30, 2006)

1. On April 4, 2006, El Paso Natural Gas Company (El Paso) filed revised tariff sheets<sup>1</sup> in Docket No. RP05-422-010 to comply with the Commission's March 20, 2006 Order on Post-Settlement Issues (March 20 Order)<sup>2</sup> in this proceeding. As explained more fully below, upon review of the tariff sheets, the Commission finds that El Paso's filing generally complies with the March 20 Order, with one exception. Specifically, as explained below, the Commission finds that El Paso's proposed adjustment to its reservation charge to add to that charge the difference between the filed usage rates and the weighted average usage rates established in a 1996 Settlement<sup>3</sup> is not consistent with the March 20 Order. Therefore, the Commission will accept El Paso's filing effective January 1, 2006, subject to El Paso filing, within 10 days of the date of the issuance of this order, revised tariff sheets to comply with this order and the March 20 Order. El Paso's filing is accepted, as conditioned, subject to refund, as provided in the prior orders, and subject to the outcome of the hearing in this proceeding.

**Background**

2. On June 30, 2005, El Paso filed a section 4 rate case in this proceeding, as required by Article 12 of the 1996 Settlement between El Paso and its customers. In its section 4 filing, El Paso proposed a number of new services, a rate increase for existing services, and changes in certain terms and conditions of service. El Paso proposed three

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<sup>1</sup> See Appendix.

<sup>2</sup> 114 FERC ¶ 61,290 (2006)(March 20 order).

<sup>3</sup> See *El Paso Natural Gas Co.*, 79 FERC ¶ FERC 61,028, *reh'g. denied*, 80 FERC ¶ 61,084 (1997).

sets of tariff sheets, *i.e.*, primary tariff sheets and first and second alternate tariff sheets. The three sets of tariff sheets proposed different treatments of Article 11.2 of the 1996 Settlement.<sup>4</sup> El Paso submitted testimony and exhibits with its filing to support its position that, because of actions taken by the Commission in El Paso's Capacity Allocation Proceeding,<sup>5</sup> Article 11 of the 1996 Settlement should no longer apply.

3. On July 29, 2005, the Commission issued an order accepting and suspending the proposed primary tariff sheets, subject to refund and conditions, and establishing hearing procedures and a technical conference.<sup>6</sup> The primary tariff sheets, accepted by the Commission, reflected the termination of Article 11.2. The July 29 Order stated that issues related to the continued applicability of Article 11 would be addressed after the technical conference. Following review of the briefs submitted by the parties on the issue of the continued applicability of Article 11, the Commission issued its March 20 Order on Post-Settlement Issues.

4. The March 20 Order found that the Commission's action in El Paso's Capacity Allocation Proceeding did not abrogate Article 11.2 of the 1996 Settlement. Therefore, the Commission further found that, in accordance with Article 11.2, the rates El Paso charges to its shippers with Transportation Service Agreements (TSAs) that were in effect on December 31, 1995, and that remained in effect on January 1, 2006, may not exceed the base rates established under section 3.2(a) of that Settlement applicable to service under that TSA, as adjusted for inflation under section 3.2(b), through the remainder of the term of the TSA. The Commission stated that this rate cap applies to former full requirements shippers as well as contract demand (CD) shippers and that, because Article 11.2(a) applies only to TSAs in effect on December 31, 1995, the rate cap does not apply to newly executed contracts for new services. In addition, the Commission found that the rate cap does not apply to expansion capacity. Further, the Commission found that, with respect to the historical CD shippers, the rate cap applies to the CDs under their 1995 TSAs, and, for the former full requirements shippers, to their current CDs minus the portion of those CDs made possible by the Line 2000 and Power Up capacity. The Commission also found that pursuant to Article 11.2(b), the rates

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<sup>4</sup> As explained more fully below, Article 11.2 of the 1996 Settlement places certain limitations on the rates that El Paso can charge to shippers that were parties to that Settlement. El Paso's primary tariff sheets reflected the termination of Article 11.2, the first alternate tariff sheets reflected the continued application of Article 11.2 for the eligible contract demand shippers, and the second alternate sheets reflected the continued application of Article 11.2 for all eligible shippers.

<sup>5</sup> *El Paso Natural Gas Co.*, 99 FERC ¶ 61,244 (2002), 100 FERC ¶ 61,285 (2002), *reh'g*, 104 FERC ¶ 61,045 (2003), *reh'g*, 106 FERC ¶ 61,233 (2004), *aff'd*, *Arizona Corporation Commission v. FERC*, 397 F.3d 952 (2005).

<sup>6</sup> 112 FERC ¶ 61,150 (2005) (July 29 Suspension Order).

charged to eligible shippers for any service may not include any costs related to  
(1) unsubscribed capacity that was part of El Paso's system on December 31, 1995 or  
(2) any such capacity sold at a rate less than the rate cap.

5. The Commission further explained that while the March 20 Order established general guidelines for application of Article 11.2, the parties would address certain details of implementation at the hearing. Specifically, the Commission stated that the application of Article 11.2(a) to the rates of eligible shippers, as well as the calculation of such rates, were matters to be addressed at the hearing.<sup>7</sup> Further, the Commission stated that the reasonableness of El Paso's rates will be addressed at the hearing, and although El Paso will have the burden of establishing the justness and reasonableness of its rates, the Settlement does not preclude El Paso from proposing rates that recover its cost of service.<sup>8</sup> The Commission required El Paso to refile tariff sheets within 15 days of the issuance of the March 20 Order.

### **El Paso's Filing**

6. In its April 4 filing, El Paso submitted revised tariff sheets in response to the March 20 Order. El Paso states that the filing revises the Statement of Rates for all services to reflect the reallocation of costs resulting from the March 20 Order. El Paso states that it has removed the "one-third management adjustment" used to reduce the level of Rate Schedule FT-1 rates that El Paso moved into effect January 1, 2006.<sup>9</sup> El Paso explains that the June 2005 filing also included primary tariff sheets reflecting the full Rate Schedule FT-1 rate increase without the management adjustment. El Paso states that the March 20 Order changed El Paso's risk and reward levels and created multiple rate levels. Therefore, El Paso asserts, continuation of the management adjustment would create an unacceptable risk.

7. El Paso further states that, in addition to adjusting the Article 11.2 rates each year for inflation, pursuant to the 1996 Settlement, El Paso must make additional adjustments to account for changes proposed in its current rate case. El Paso included a "reservation charge adjustment" to the Article 11.2(a) rates. El Paso explains that, because it has proposed in its rate case a usage rate decrease in general and a reservation rate increase in general, a 100 percent load factor rate must be used for comparison instead of rate components. El Paso proposes to charge all customers (Article 11.2(a) and non-Article

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<sup>7</sup> March 20 Order at P 20, 94.

<sup>8</sup> *Id.* at P 92.

<sup>9</sup> On December 29, 2005, in Docket No. RP05-422-006, El Paso filed tariff sheets to comply with the Commission's July 29 Order to place suspended tariff sheets and rates into effect on January 1, 2006. In a February 6, 2006 Order, the Commission accepted the tariff sheets effective January 1, 2006 (114 FERC ¶ 61,113 (2006)).

11.2(a)) the filed usage rates. El Paso therefore calculated the difference between the filed usage rates and the 1996 Settlement weighted average usage rates and added the resulting variance to the Article 11.2(a) reservation charge. El Paso states that this reservation charge adjustment has the effect of applying the Article 11.2(a) rates on a 100 percent load factor basis.

8. El Paso states that it is adjusting the Article 11.2(a) rates further to include a “btu adjustment” to account for the difference between the 1996 Settlement btu factor (1.023) and the system average btu factor (1.010) filed in the rate case.

9. In addition, El Paso included increased rates for non-Article 11.2 services in its compliance filing. El Paso states that a comparison of the 1996 Settlement Article 11.2 rates and the January Motion rates results in a revenue shortfall of \$24.6 million. El Paso states that it developed revenue charge adjustments to reallocate the revenue shortfall to Rate Schedules FT-1, FT-2, FT-H3, FT-H12, FT-H16, and FT-H8. El Paso also derived a Rate Schedule PAL reservation charge increase resulting from the cost reallocation, allocating the revenue shortfall on a system-wide basis to create a one-part usage rate increase.

10. Finally, El Paso adds a new section 37, “Article 11.2 Provisions,” to its General Terms and Conditions which incorporates the inflation adjustment mechanism from the 1996 Settlement that was previously located in section 25.2. El Paso states that the section was removed by El Paso’s June filing and is returned in compliance with the March 20 Order. El Paso states that section 37 also specifies certain rights and obligations as to service under the Article 11.2 provisions.

### **Public Notice**

11. Public notice of El Paso’s filing was issued on April 12, 2006, with comments protests or interventions to be filed in accordance with section 154.210 of the Commission’s regulations. All timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure. Protests were filed by Arizona Electric Power Cooperative, Inc.; El Paso Electric Company; El Paso Municipal Customer Group; the Indicated Shippers; New Harquahala Generating Company, LLC; Phelps Dodge Corporation and Apache Nitrogen Products, Inc. (Phelps Dodge/Apache); Public Service Company of New Mexico and Texas Gas Service Company (PNM/Texas Gas Service); Southern California Gas Company and San Diego Gas & Electric Company (SoCal/San Diego); Southwest Gas Corporation (Southwest Gas); and UNS Gas, Inc. The protestors generally request that the Commission reject the filing, arguing that El Paso’s filing fails to comply with the Commission’s March 20 Order and includes rate increases and other changes not directed by the Commission which are therefore beyond the scope of a compliance filing. El Paso filed a response to the protests.

## **Discussion**

12. Section 154.203(b) of the Commission's regulations<sup>10</sup> provides that filings to comply with Commission orders must include only those changes required to comply with the order. The regulation further provides that compliance filings may not be combined with other rate or tariff changes, and that compliance filings that include other changes or that do not comply with the applicable order in every respect may be rejected.

13. Thus, the purpose of a compliance filing is limited, *i.e.*, it must implement the specific directives of the Commission's order. The Commission's focus in reviewing a compliance filing is similarly limited to whether the filing complies with the Commission's previously stated directives.<sup>11</sup> A compliance filing may not include new proposed tariff provisions not addressed in the Commission's order, and the Commission will reject a compliance filing that goes beyond the scope of the directives in the Commission's order.<sup>12</sup>

14. The Commission's March 20 Order directed El Paso to file revised tariff sheets to comply with the Commission's finding that, in accordance with Article 11.2 of the 1996 Settlement, the rates El Paso charges to its shippers with TSAs that were in effect on December 31, 1995 and that remained in effect on January 1, 2006, may not exceed the base rates established under section 3.2(a) of that Settlement applicable to service under that TSA, as adjusted for inflation under section 3.2(b), through the remainder of the term of the TSA. The protestors argue that El Paso's filing fails to comply on a number of issues. As is discussed more fully below, the Commission finds that El Paso's filing generally complies with the March 20 Order, with the exception of certain proposed changes. The Commission will thus require El Paso to refile tariff sheets within 10 days of the date of issuance of this order, as described below.

### **Adjustments to Article 11.2 Rates**

15. Article 11.2(a) of the 1996 Settlement provides that El Paso agrees to continue the 1996 Settlement rates, as escalated for inflation in accordance with Paragraph 3.2(b), for contracts that were in effect at the time of the Settlement and that remained in effect on January 1, 2006, unless and until the Shipper terminates its transportation service agreement (TSA). In addition, Article 11.2(b) of the Settlement provides that the rates for any services to these shippers will not include any charges related to the capacity on

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<sup>10</sup> 18 C.F.R. § 154.203(b).

<sup>11</sup> *North-Western Corp.*, 113 FERC ¶ 61,215 at P 9 (2005).

<sup>12</sup> See, *e.g.*, *Maritimes & Northeast Pipeline, LLC*, 105 FERC ¶ 61,356 at P 11 (2003); *Transcontinental Gas Pipe Line Corp.*, 101 FERC ¶ 61,154 (2002).

El Paso's system on December 31, 1995 that becomes unsubscribed or discounted below the rate cap in the future.

16. The March 20 Order did not direct El Paso to make any adjustments to the Article 11.2 rates beyond the inflation adjustment provided for in the 1996 Settlement. El Paso has included two adjustments in addition to the inflation adjustment. The Commission will accept the btu adjustment, which accounts for the difference in the 1996 Settlement btu factor and the system average btu factor filed in this case, but will reject the reservation charge adjustment, as discussed below.

17. Effective January 1, 2006, El Paso replaced its prior basin-specific usage rates with a system-wide usage rate. The new system-wide usage rate represents an increase in the usage rate for San Juan Basin receipts and a decrease in the usage rate for Permian Basin receipts. El Paso proposes a reservation charge adjustment to the Article 11.2 rates to add to them the difference between the filed usage rates and the 1996 Settlement weighted average usage rates. El Paso states that the shift of costs from the usage charge to the reservation charge will have the effect of applying the Article 11.2 rates on a 100 percent load factor basis. SoCal/San Diego and Phelps Dodge argue that the proposed shift goes beyond the scope of the compliance filing and that El Paso is prohibited by contract from making the additional adjustment because the 1996 Settlement provides that the Article 11.2 rates may be escalated only for inflation.

18. The Commission finds that the proposed reservation charge adjustment goes beyond the scope of a compliance filing, for it proposes a rate change not directed by the March 20 Order. In that order, the Commission required El Paso to cap the 1996 Settlement rates for eligible shippers, and this required El Paso to apply the rate cap to the basin-specific rates that were in effect pursuant to the 1996 Settlement. There is no reason to shift charges between the reservation and the usage rate as a result of the March 20 Order. Rather, the order rejected system-wide usage rates for eligible shippers' contracts relating to service in effect as defined in the March 20 Order subject to Article 11.2. The Commission therefore will reject the reservation charge adjustment and will require El Paso to file revised tariff sheets, to be effective March 20, 2006, that reflect the rates consistent with the Commission's findings in the March 20 Order.

### **Adjustments to Other Rate Schedules**

19. In its filing, El Paso has proposed to remove what it terms the "voluntary one-third management adjustment" and to add a revenue shortfall adjustment to its other services as a result of the Commission's findings in the March 20 Order. The protestors oppose these increases to El Paso's other services, arguing that they are beyond the scope of the compliance filing and should be rejected. The Commission disagrees and will accept the proposed increases to the rates for El Paso's other services, subject to refund and to the outcome of the hearing.

20. In the July 29 Suspension Order, the Commission accepted and suspended El Paso's proposed primary tariff sheets, subject to conditions and to the outcome of a hearing and technical conference. The Commission's acceptance of the primary tariff sheets, which eliminated Article 11.2, was subject to further order of the Commission that would address the issue of the applicability of Article 11.2. The Commission's March 20 Order found that Article 11.2 continued to apply and that nothing in the Settlement prevents El Paso from proposing to price its services so that it recovers its costs from shippers not eligible for the Article 11.2 rates to the extent that the Article 11.2 rates would not recover its cost of service.<sup>13</sup> Thus, while the March 20 Order did not direct El Paso to reallocate costs to its other services, the Commission contemplated that El Paso would propose rates to reallocate costs in light of the Commission's findings in the March 20 Order. The reallocation of costs is not therefore beyond the scope of the compliance filing.

21. PNM/Texas Gas Service assert that El Paso cannot now propose new higher rates without initiating a new section 4 proceeding. PNM concludes that El Paso, by combining a rate increase with its compliance filing, has violated section 4 of the NGA and section 154.203(b) of the Commission's regulations. The Commission disagrees. The rates submitted by El Paso in this filing are not higher than the alternate rates filed by El Paso in its June 30 filing and thus do not constitute an unlawful rate increase. As El Paso explains in its answer, the rates submitted in this filing are higher than the primary sheet rates, which assumed that the Article 11.2 rates were no longer in effect, but are lower than the Second Alternate rates, which were based on the continued applicability of Article 11.2 for all eligible shippers. Neither the primary nor the Second Alternate rates included the management adjustment. In addition, the Second Alternate rates included a reallocation of costs to non-Article 11.2 services. While El Paso moved into effect rates that were lower than its proposed primary rates, El Paso states that there is no rule prohibiting a pipeline from withdrawing, due to changed circumstances, a reduction that it previously and voluntarily proposed.

22. The Commission finds that the proposed increases to remove the "one-third management adjustment" and to reallocate the revenue shortfall to the rates for El Paso's other services are within the scope of the compliance filing. The findings in the Commission's March 20 Order were a major change from the assumptions underlying El Paso's primary rates and the rates that El Paso moved into effect. It is within El Paso's authority to revise its rates for its other services as a result of the Commission's finding regarding Article 11.2 rates, as long as the new rates are not higher than rates initially proposed in the June 30 filing. As stated above, these rates are subject to refund and to the outcome of the hearing.

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<sup>13</sup> 114 FERC ¶ 61,290 at P 92.

### **Tariff Changes**

23. In its compliance filing, El Paso has proposed a new section 37 entitled “Article 11.2 Provisions” that specifies certain rights and obligations for Article 11.2 service and also incorporates the inflation adjustment mechanism from the 1996 Settlement that was previously located in section 25.2. El Paso states that section 25.2 was removed from El Paso’s tariff in El Paso’s June filing and is returned here in compliance with the March 20 Order.

24. A number of protestors object to El Paso’s proposed tariff changes, particularly section 37.2(f). The protestors claim that Article 11.2 of the Settlement provides that the Article 11.2 rights terminate when a shipper terminates its TSA but not when the TSA is terminated by El Paso. They argue that El Paso’s proposed section 37.2(f), however, states that “[w]hen section 37 TSAs expire or are terminated, the rights listed in this section 37 shall no longer apply to such TSAs.” The protestors conclude that this language represents a change that was not directed by the March 20 Order. Southwest Gas further argues that El Paso has not provided any justification for its decision to insert a new section 37 rather than reinserting the previous section 25.2. Southwest Gas argues that El Paso has provided no basis for submitting an entirely new section extending over four tariff sheets that deals with topics not addressed by the March 20 Order. Southwest Gas further argues that the 1996 Settlement references and incorporates section 25.2; El Paso’s decision not to reinstate section 25.2 thus creates an unnecessary ambiguity between the tariff and the 1996 Settlement.

25. The Commission finds that, while it is appropriate for El Paso to reinsert Article 11.2 provisions in its tariff, El Paso cannot incorporate changes not directed by the March 20 Order. The Commission further finds that El Paso’s proposal to create a new section 37 will benefit parties in that all Article 11.2 provisions will be consolidated in one section of the tariff. However, the Commission agrees with Southwest Gas that El Paso may not propose new tariff language in section 37 that was not contemplated by the March 20 Order. The Commission therefore directs El Paso to remove from section 37 any language that was not already found in another part of El Paso’s tariff or in the 1996 Settlement. Further, in its answer, El Paso states that it will clarify section 37(f) to provide that only a termination of the service agreement by the shipper will terminate application of Article 11, and the Commission directs El Paso to make this change.

### **Effective Date**

26. El Paso’s rates have been suspended effective January 1, 2006, subject to refund. El Paso now proposes an effective date of April 4, 2006 for the tariff sheets in its compliance filing. The protestors generally object to this effective date, arguing that the revised tariff sheets should be effective January 1, 2006, consistent with the 1996 Settlement and with the July 29 Suspension Order which suspended the rates for five

months, effective January 1, 2006, subject to refund. The protestors argue that the Article 11.2 rates must therefore be effective January 1, 2006, subject to appropriate refunds. SoCal/San Diego further requests that the Commission direct El Paso to refund any overcollections immediately, independently of the outcome of the pending rate case, because the only lawful rates that El Paso was authorized to collect as of January 1, 2006 were the base settlement rates as escalated for inflation.

27. El Paso states in its answer that it agrees that the Article 11.2 rates would ultimately apply as of January 1, 2006, but that the adjusted non-Article 11.2 rates would also be effective January 1, 2006. El Paso argues that, rather than providing for interim refunds for some shippers and billing other shippers, the rates should be implemented prospectively and any over- or under-collections should be reconciled after just and reasonable rates are determined at the end of the rate case.

28. The Commission finds that the filed rates have been accepted effective January 1, 2006, subject to refund and to further order. El Paso's proposal to implement its compliance tariff sheets effective April 4, 2006 does not relieve El Paso of its refund obligation beginning on January 1, 2006 once just and reasonable rates are determined at the conclusion of the rate proceeding. The Commission therefore clarifies that, while these rates will be implemented on El Paso's system prospectively from the date of this order, the rates are effective on El Paso on January 1, 2006, and the amount of any refunds will be determined from that date when just and reasonable rates are established after the hearing. However, El Paso's filing to implement the Commission's finding in this order that El Paso must eliminate the proposed shift of costs to its reservation charge will become effective March 20, 2006.

The Commission orders:

(A) El Paso's compliance filing tariff sheets, listed in the Appendix, are accepted, effective January 1, 2006, subject to modification as discussed in the body of this order.

(B) El Paso is directed to file, within 10 days of the date of this order, revised tariff sheets as discussed in the body of this order, to be effective March 20, 2006.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

**Appendix**

El Paso Natural Gas Company  
Docket No. RP05-422-010  
Accepted Tariff Sheets, Subject to Modification  
Second Revised Volume No. 1-A

Thirty-Second Revised Sheet No. 20  
Substitute Eighth Revised Sheet No. 21  
Thirty-First Revised Sheet No. 23  
Substitute Eighth Revised Sheet No. 25  
Second Substitute Original Sheet No. 25A  
Second Substitute Original Sheet No. 25B  
Second Substitute Original Sheet No. 25C  
Second Substitute Original Sheet No. 25E  
Second Substitute Original Sheet No. 25F  
Second Substitute Original Sheet No. 25G  
Second Substitute Original Sheet No. 25H  
Sub Thirty-Second Revised Sheet No. 26  
Third Revised Sheet No. 27A  
First Revised Sheet No. 200A  
First Revised Sheet No. 374  
Substitute Original Sheet No. 375  
Substitute Original Sheet No. 376