

market area. In Docket No. RP04-110-000, El Paso proposed to modify its tariff to provide procedures by which firm shippers could request to redesignate the existing primary receipt and delivery points identified in their transportation service agreements (TSAs) to new primary receipt and delivery points.

3. By order issued February 5, 2004,⁴ in Docket No. RP04-110-000, the Commission accepted El Paso's filing to establish procedures permitting Rate Schedule FT-1 shippers to redesignate their primary point rights under TSAs. In recognition that the former full requirements shippers have varying monthly entitlements, the February 5 Order required El Paso to modify its tariff sheets to remove the requirement that redesignation requests be made only for equal monthly quantities. The order further required El Paso to allow all shippers, not just capacity release shippers, to make simultaneous requests to return to vacated points within three months of the requests. El Paso's filing to comply with the February 5 Order was accepted by Commission order issued December 22, 2004.⁵ The existing tariff provides that a shipper can redesignate points when capacity is available, the redesignation will not adversely affect service to other firm shippers, and the change is operationally feasible. The tariff also specifies that a shipper may not submit a request to redesignate receipt or delivery points earlier than three months prior to the requested effective date.

Instant Filing

4. In its December 9 Filing, El Paso states that its redesignation procedures have been in effect since February 2004 and that El Paso has received over 160 requests for redesignation and has granted more than 85 percent of those requests. El Paso states that, with this experience, it has become aware of an issue in which its procedures lack specificity and may have resulted in a sub-optimal reservation of future capacity. El Paso states that it has received a number of redesignation requests that have effectively reserved capacity outside the three-month advance limit by including minimal or no quantities in the early months and dramatically increased quantities in the remaining term of the TSA. El Paso concluded that such requests improperly used the redesignation procedures to reserve future capacity outside the three-month advance limit and would deny other shippers equal access to future capacity. El Paso states that it denied several of such redesignation requests, but determined to clarify its tariff provisions for future applicability to ensure that its capacity is equally available to all shippers.

5. El Paso proposes to insert a volumetric control into its redesignation procedures to provide all shippers with equal access to available capacity and to ensure that future capacity is not reserved outside the three-month advance limit. In order to accomplish

⁴ 106 FERC ¶ 61,109 (2004)(February 4 Order).

⁵ 109 FERC ¶ 61,359 (2004).

this, El Paso proposes to offer two options for redesignation of point quantities: a shipper may request to redesignate (1) a fixed percentage of its maximum daily quantity (MDQ) or (2) a fixed and constant daily quantity. El Paso proposes that both requests would apply on an annual basis from the effective date, assuming there are twelve months remaining on the term of the TSA. For example, a shipper could request to redesignate 25 percent of each month's MDQ for the remaining term of the TSA or a fixed quantity (such as 1,000 dth) for each day of the remaining term of the TSA.

6. El Paso states that it is proposing the percentage-based option in recognition of the fact that many of its shippers have varying monthly MDQs. The percentage-based redesignation request will provide shippers the same month-to-month variations in contract quantity that they currently have. El Paso further states that the majority of point redesignation requests received so far have been for equal monthly quantities, so El Paso is proposing to continue to permit requests for redesignations of fixed quantities.

7. El Paso further states that several shippers have indicated that they may request in the future to redesignate varying monthly quantities on a seasonal basis. El Paso states that its proposed tariff changes would generally limit such seasonal requests. El Paso states that, while it has been unable to develop a third quantity option that would provide for such seasonal moves, its proposed tariff revisions permit El Paso to agree to other redesignation options, on a not unduly discriminatory basis. El Paso states that it would grant such requests if its analysis shows that capacity on an annual basis will not be stranded or if, in El Paso's judgment, the economic benefits to the system of granting such requests outweigh the risks. El Paso states that, in such an event, it will post a notice of discretionary tariff waiver on its electronic bulletin board in accordance with Commission regulations.

Interventions and Protests

8. Notice of El Paso's filing was issued on December 14, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by El Paso Electric Company, the Designated East-of-California Shippers (Designated EOC Shippers),⁶ and Texas Gas Service Company, a division of ONEOK, Inc. (Texas Gas Service). El Paso filed an answer to the protests.

⁶ For purposes of this protest, the designated East-of-California Shippers are: Arizona Public Service Company and Pinnacle West Energy Corporation, Phelps Dodge Corporation, Southwest Gas Corporation, and UNS Gas, Inc.

9. The protestors generally argue that the proposed tariff sheets should be rejected because El Paso has not shown that its current tariff provisions are insufficient to address the potential harm. They state that while El Paso refers to an isolated “number” of instances in which shippers have requested zero quantities in the initial months and substantially higher quantities in the remaining months of a TSA, it has not demonstrated how many such requests were made and that its current procedures were inadequate to address such instances. To the contrary, the protestors contend that the redesignation procedures are working, as evidenced by El Paso’s ability to deny those requests that it believed would improperly use the redesignation procedures.

10. The Designated EOC Shippers state that the flexibility of the current redesignation procedures is needed because of the arbitrary point rights they were allocated in the *Capacity Allocation Proceeding*. Texas Gas Service adds that many shippers were allocated points that they cannot use or did not choose. The current procedures allow them to modify those point rights to match their needs. El Paso Electric states that, if the real problem is shippers designating zero quantities, then El Paso should modify its tariff specifically to restrict zero quantities.

11. The protestors argue that the proposal significantly degrades current point redesignation rights and seeks restrictions that the Commission already rejected in the February 5 Order. They contend that El Paso has not demonstrated the need for the Commission to reverse its earlier finding on this issue.

12. The Designated EOC Shippers request, if the Commission accepts El Paso’s filing, that the Commission require El Paso to permit an exemption from the quantity limitations for shippers who submit redesignation requests to points at which they are the operators or ultimate consumers. El Paso Electric makes a similar request. The protestors assert that this exemption would protect shippers who seek to maximize efficient use of their overall capacity.

Discussion

13. In the *Capacity Allocation Proceeding*, the Commission directed El Paso to reallocate capacity to converted full requirements shippers at varying monthly MDQs to reflect their seasonal needs. The former full requirements shippers therefore have MDQs that vary from month to month. In Docket No. RP04-110-000, the Commission found that El Paso’s proposal to restrict point redesignation to equal MDQs is not consistent with the rights of shippers that recently converted from full requirements service. The Commission further found that because El Paso’s tariff would provide that any request for redesignation is subject to the availability of capacity, operational feasibility, and the impact on other firm shippers’ service, the tariff protects other firm shippers from adverse impacts resulting from redesignated primary rights.

14. In this filing, El Paso proposes to limit a shipper's redesignation of points in the first instance to either a fixed and constant daily quantity or a fixed percentage of its MDQ. While El Paso may not, consistent with the Commission's prior order, restrict point redesignation to equal MDQs, El Paso has not done so, but has merely provided that as one option.⁷ El Paso also proposes to permit shippers to request to redesignate a fixed percentage of its MDQ. Because the MDQs vary monthly, redesignation of a fixed percentage of the MDQ will provide shippers with the same month-to-month variations in contract quantity that they already have. This is consistent with the Commission's prior orders and is a reasonable limitation on the shippers' right to redesignate points.

15. In addition, El Paso proposes to give shippers a limited right to other redesignation options, such as varying monthly quantities on a seasonal basis. El Paso states that it will grant these requests on a nondiscriminatory basis if its analysis shows that capacity will not be stranded on an annual basis or if, in El Paso's judgment, the economic benefits to the system of granting the requests outweigh the risks. While El Paso makes reference to an "economic benefits" test in the cover letter to its filing (and did not include any such language in its tariff proposal), the Commission reminds El Paso that pipelines are required to permit changes in primary point rights if the pipeline can accommodate the changes operationally and the changes do not adversely affect service to other firm service customers.⁸ As such, notwithstanding any statements in its cover letter, El Paso cannot withhold capacity based on some unspecified analysis of economic benefits and risks. El Paso may only allocate point capacity by the means specified in its tariff.

16. Ultimately, the benefits to shippers of maximizing flexibility must be balanced with the pipeline's ability to provide reliable service. El Paso's revised procedures enhance El Paso's ability to ensure that shippers have equal access to available capacity by limiting requests to either a fixed daily quantity or a fixed percentage of monthly MDQs. Further, El Paso's revised procedures will assist in optimizing use of all available capacity. Those procedures do not, however, preclude any other request if agreed to by El Paso on a not unduly discriminatory basis. While the protestors argue that El Paso's proposal degrades their redesignation rights, the Commission finds that the proposal adequately preserves flexibility while ensuring El Paso's ability to maintain firm service to all customers. Therefore, we will accept El Paso's revised tariff sheets. The Commission will deny the protestors' request for exemption from limitations on redesignation rights. This request involves day-to-day pipeline operations and, if granted, could impact service to other shippers. As noted above, El Paso has proposed to offer flexibility in granting redesignation rights to the extent operations permit.

⁷ As noted above, El Paso states that the majority of point redesignation requests have been for equal monthly quantities, and El Paso is proposing to retain that option.

⁸ See *Northwest Pipeline Corp.*, 95 FERC ¶ 61,098 (2001).

Docket No. RP05-122-000

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The Commission orders:

The revised tariff sheets are accepted, effective February 1, 2005, as proposed.

By the Commission. Commission Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.