

125 FERC ¶ 61,374
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

El Paso Natural Gas Company

Docket No. CP08-14-001

ORDER GRANTING CLARIFICATION

(December 30, 2008)

1. Freeport-McMoRan Corporation¹ and El Paso Municipal Customer Group (collectively Freeport and the Municipals) jointly request clarification or, in the alternative, rehearing of the Commission's April 30, 2008 order² granting El Paso Natural Gas Company's (El Paso) request for certificate and abandonment authorization, as well as granting a predetermination supporting rolled-in rate treatment for the expansion and related fuel costs. The Commission grants the request for clarification and dismisses the request for rehearing as moot, as discussed below.

I. The April 30 Order

2. The April 30 Order authorized El Paso to construct and operate a new delivery lateral and compression facilities near the Town of Hobbs in Lea County, New Mexico (Hobbs Expansion Project) to provide service to Southwestern Public Service (SPS) of 100,000 dekatherms per day (Dth/day) from October 1 through March 31 each year and 150,000 Dth/day from April 1 through September 30 each year at El Paso's maximum recourse rate and fuel charge for a fifteen-year term. The order also made a predetermination that the costs associated with the Hobbs Expansion Project and the related fuel costs would qualify for rolled-in rate treatment in El Paso's next section 4 rate case.³

¹ This request was originally jointly filed by Phelps Dodge Corporation and El Paso Municipal Customer Group. Phelps Dodge Corporation changed its name to Freeport-McMoRan Copper & Gold Inc. on April 15, 2008 and was substituted by Freeport-McMoRan Corporation as intervenor on November 7, 2008.

² *El Paso Natural Gas Company*, 123 FERC ¶ 61,101 (2008) (April 30 Order).

³ El Paso filed the rate case on June 30, 2008 in Docket No. RP08-426-000.

3. The April 30 Order also denied the joint protest filed by Freeport and the Municipals opposing El Paso's request for predetermination favoring rolled-in rate treatment for the costs associated with the Hobbs Expansion Project. The protestors requested that the Commission determine that the new contract between SPS and El Paso would not use any existing El Paso capacity for purposes of Article 11.2(b) of the settlement between El Paso and its shippers (1996 Settlement).⁴ The Commission found that firm service provided under SPS's contract will use both existing and new capacity, stating:

The Commission denies the protest and agrees with El Paso that the service provided under SPS's contract will use both existing and new capacity. Any issue relating to or affecting the [1996] Settlement should be discussed in El Paso's next section 4 rate case which is to be filed by June 30, 2008. As El Paso points out, because a portion of [El Paso's] existing system will be utilized, both new and existing capacity will be needed to provide service under SPS's contract. Specifically, El Paso proposes to build only seven miles of new pipeline and yet will transport gas a total of 57 miles from the receipt point to the ultimate delivery point, making it apparent that El Paso's currently existing system will be utilized.⁵

II. Request for Clarification or Rehearing

4. On May 30, 2008, Freeport and the Municipals jointly filed a request for clarification that the April 30 Order did not establish a criterion that compares new and existing pipeline mileage to determine whether a newly-executed contract utilizes 1995 vintage unsubscribed capacity for purposes of compliance with Article 11.2(b) of the 1996 Settlement. Alternatively, Freeport and the Municipals seek rehearing of the April 30 Order.

⁴ El Paso entered into a settlement in 1996 with its shippers that established the rates and terms and conditions for service that would apply on El Paso's system for a ten-year period. See *El Paso Natural Gas Co.*, 78 FERC ¶ 63,006 (1997); *El Paso Natural Gas Co.*, 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997). Article 11.2 of the 1996 Settlement limits the rates that El Paso can charge certain eligible shippers in future rate cases. Specifically, Article 11.2(b) provides that the rates for firm service to certain eligible shippers will not include any charges related to the existing capacity on El Paso's system on December 31, 1995 that becomes unsubscribed or discounted below the rate cap in the future. See *El Paso Natural Gas Co.*, 124 FERC ¶ 61,227, at P 17-18 (2008).

⁵ April 30 Order, 123 FERC ¶ 61,101 at P 38.

5. El Paso filed an answer to the joint clarification request on June 17, 2008, contending that Freeport and the Municipals misconstrued the April 30 Order because the Commission clearly deferred all Article 11.2(b) related issues to El Paso's then upcoming rate case.

III. Discussion

6. The Commission clarifies that the April 30 Order did not create a new criterion concerning compliance with Article 11.2(b) of the 1996 Settlement. While making a factual statement that the expansion project would use capacity on both new and existing facilities, the April 30 Order deferred all issues raised in this proceeding regarding Article 11.2(b) to El Paso's June 30, 2008 rate case. The Commission issued an order in the rate case on September 5, 2008, which explained the applicability of Article 11.2(b) to expansion capacity on El Paso's system, stating:

[W]hen El Paso markets capacity today, it is marketing undifferentiated capacity which cannot be physically attributed to pre-1995 or post-1995 capacity . . . because it operates its system as an integrated whole and uses all its capacity to serve the demands of all its customers. In these circumstances, [the Commission] believe[s] it reasonable, for purposes of Article 11.2(b), to attribute the first 4,000 [million cubic feet per day (MMcf/d)] of firm maximum rate subscribed capacity to 1995 capacity.⁶

7. The Commission stated that this presumption simplifies compliance with Article 11.2(b) and ensures that El Paso must have subscribed capacity at maximum rates that is equivalent to the capacity that existed on its system in 1995 (4,000 MMcf/d) before it can propose to include the cost of unsubscribed or discounted capacity in the rates of eligible shippers.⁷

⁶ *El Paso Natural Gas Co.*, 124 FERC ¶ 61,227, at P 98 (2008) (reaffirming the decision in *El Paso Natural Gas Co.*, 114 FERC ¶ 61,290 (2006), which stated that the parties to the 1996 Settlement agreed that El Paso's system capacity was approximately 4,000 MMcf/d and therefore the Commission will presume the first 4,000 MMcf/d of firm subscribed capacity on El Paso's system is 1995 capacity at the rate cap level or above).

⁷ *See id.*

8. Accordingly, Freeport and the Municipals' request for clarification is granted and the joint request for rehearing is dismissed as moot.

The Commission orders:

(A) The request for clarification is granted.

(B) The request for rehearing is dismissed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.