125 FERC ¶ 61,372
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company Docket No. RP09-117-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEET AND ESTABLISHING TECHNICAL CONFERENCE

(Issued December 30, 2008)

1. On November 26, 2008, El Paso Natural Gas Company (El Paso) filed a revised tariff sheet[1] to revise the Fuel and Lost and Unaccounted-For (L&U) retention percentages applicable to transportation service on El Paso's system. As discussed below, the Commission accepts and suspends El Paso's tariff sheet, to be effective January 1, 2009, subject to refund and to the outcome of a technical conference to address the issues raised in this proceeding.

I. **Background**

2. Article 26 of the General Terms and Conditions of El Paso's tariff provides that El Paso will annually restate its Fuel and L&U percentages using a 12-month data collection period ending September 30 and including true-up computations as specified in the tariff. In accordance with the fuel and L&U mechanism accepted by the Commission in Docket No. RP05-422-000,[2] and implemented in Docket No. RP07-88-000,[3] determination of the Fuel and L&U retention percentages involves three computations. First, the current period Fuel and L&U retention percentage is calculated using the most

[1] Seventeenth Revised Sheet No. 29 to its FERC Gas Tariff, Second Revised Volume No. 1A.

[2] *El Paso Natural Gas Co*., 112 FERC ¶ 61,150 (2005); *El Paso Natural Gas Co*., 114 FERC ¶ 61,305, at P 207-208 (2006).

[3] *El Paso Natural Gas Co*., 117 FERC ¶ 61,361 (2006); *El Paso Natural Gas Co*., 120 FERC ¶ 61,152 (2007).

recent twelve months of available data. Second, a volumetric true-up is computed by comparing the most recent volumetric retention against actual volumetric fuel use and L&U experienced. Third, a cost and revenue true-up is computed on the cost of fuel and L&U and all related linepack and gas balance adjustments.

3. For the current period retention percentages, El Paso first calculates a "base" or "collection period" percentage utilizing unadjusted actual fuel use, actual L&U experienced, and actual throughput during the Current Data Collection Period. The Current Period retention percentages are calculated for each fuel retention category and for overall L&U.

4. For the volumetric true-up, Article 26 provides that El Paso will track the quantities of any over- or under-collection of fuel and L&U for each fuel retention category and for overall L&U. El Paso applies the following adjustments to all current period fuel and L&U retention rates which are derived using the 12-month data collection period. The adjustments are (1) a volumetric true-up between (a) actual fuel and L&U and (b) fuel and L&U volumes retained during the data collection period; and (2) a volumetric true-up comparing the quantity of gas actually retained during the current data collection period to the quantity of gas El Paso designed its retention percentages to retain or return (the previously designed retention percentage, established in Docket No. RP08-106, started October 1, 2006, and ended September 30, 2007 (the Docket No. RP08-106 Vintage Data Adjustment Period)).

5. For the cost and revenue true-up, Article 26 provides for a linepack maintenance adjustment which is a cost and revenue true-up adjustment such that El Paso tracks any over- or under-collection of fuel, L&U, linepack, and related gas balance items as to timing differences relating to the value of gas. To calculate this "value-related" true-up, El Paso assesses the value of the monthly volumetric differences in actual versus retained fuel, L&U, linepack, and all related gas balance activities on its system, using data for the 12-month Data Collection Period. The value of the current collection period retention is compared to the value El Paso was designed to return for the Docket No. RP08-106 Vintage Data Adjustment Period with any differences incorporated into this true-up calculation. This cost and revenue true-up adjustment is applied to the forward haul (mainline) base fuel retention percentage.

II. <u>Details of Filing</u>

6. El Paso states that it is revising its Fuel and L&U retention percentages to be effective January 1, 2009, using a 12-month data collection period ended September 30, 2008, and including the true-up computations specified by its tariff. El Paso states that fuel usage has generally increased on a proportional basis more than throughput has increased.

El Paso's Proposed Fuel and L&U Retention Percentages				
Retention Category	Currently Effective Total (Inclusive of True-ups)	Proposed Total Percentage (Inclusive of True-ups and After Adjustment)	Collection Period Percentage	Combined Volumetric Cost/Revenue True-up Percentage After Adjustment
Mainline Fuel	2.60	2.56	2.67	(0.11)
Anadarko Within Basin	0.47	0.00	0.31	(0.31)
Permian Within Basin	0.90	0.97	0.99	(0.02)
San Juan Within Basin	0.90	0.48	0.66	(0.18)
Permian to Anadarko	0.40[4]	0.00	0.51	(0.51)
Interruptible Storage Service	1.23	1.64	1.64	(0.00)
Lost and Unaccounted for	0.14	0.13	0.10	0.03

7. El Paso states that the sum of the collection period percentage and the combined volumetric and cost/revenue true-up percentage for the Anadarko Within Basin and the Permian to Anadarko retention categories is a negative percentage. El Paso proposes to apply a zero total percentage to transactions occurring in these two areas. El Paso states that it will include these quantities in the volumetric true-up computations presented in its next annual fuel filing.

8. El Paso further states that in its last filing, it cited a change to the flow pattern on the bidirectional line located between the Dumas Station (located in the Anadarko Basin) and the Plains Station (Permian Basin). Although the predominant flow pattern has been south-to-north on this line, last year a small quantity was physically transported from Anadarko to Permian, or north-to-south. El Paso states that, to ensure that Anadarko to Permian volumes pay an appropriate share of fuel and L&U costs, the Commission

[4] El Paso states that it also plans to apply this rate to Anadarko to Permian quantities.

approved El Paso's proposal in Docket No. RP08-106 to apply the Permian to Anadarko fuel retention percentage to transactions identified as Anadarko to Permian.[5] El Paso states that during the Current Data Collection Period, it continued to experience increasing north-to-south flows on this line. El Paso proposes to continue the treatment approved in Docket No. RP08-106.

III. Public Notice, Interventions, and Comments

9. Notice of El Paso's filing was issued on December 1, 2008. 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 (2008), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date 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. The Indicated Shippers,[6] Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas Service); and UNS Gas, Inc. and Tucson Electric Power Company (jointly UNS and Tucson) filed protests. El Paso Electric Company (El Paso Electric) filed comments.

10. The Indicated Shippers assert that the filing does not comply with the requirements of El Paso's tariff and should be denied. The Indicated Shippers state that, pursuant to Section 26.6(a)(ii) of the General Terms and Conditions, in order for linepack adjustments to be included in the fuel recovery mechanism, El Paso must demonstrate (a) that there was an actual purchase or sale of gas to maintain system linepack; (b) that the purchase or sale was due to a fuel recovery shortfall or overage; and (c) that El Paso actually incurred a cost related to its purchase or sale of gas. The Indicated Shippers contend that El Paso has failed to explain or provide evidence for each of these requirements. The Indicated Shippers conclude that these linepack adjustments appear to be merely adjustments, not actual purchases and sales, and should therefore be removed from the mainline fuel rate.

11. The Indicated Shippers further state that, because the tariff does not clearly state that imbalance cash-out costs may be recovered in the mainline fuel rates, imbalance cash-out costs should be excluded from the fuel filing.

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[5] *See* unpublished Director letter order issued December 19, 2007.

[6] The Indicated Shippers include BP America Production Company and BP Energy Company; Chevron Natural Gas, a Division of Chevron U.S.A. Inc.; ConocoPhillips Company; Shell Energy North America (US), L.P.; and Occidental Energy Marketing, Inc.

12. The Indicated Shippers also state that El Paso has not complied with Section 26.3(b) which requires El Paso to provide, for purchases and sales of gas related to fuel, a report with (i) the source of the gas purchased/sold, (ii) the dates(s) of such purchase/sale, (iii) the gas quantities, (iv) the purchase/sale price, (v) the costs and revenues from the purchase/sale, and (vi) the disposition of the associated costs and revenues. The Indicated Shippers assert that this section does not limit El Paso's reporting requirements to only "operational" purchases and sales but to purchases and sales of gas for fuel. Indicated Shippers state that El Paso did not include any information related to purchases and sales labeled as "other Disposition Activity" and "other Source Activity."

13. The Indicated Shippers assert that El Paso's fuel recovery tariff mechanism may not be just and reasonable because it uses the Monthly System Cash-Out Index Price to help determine the value El Paso receives for purchases or sales to maintain linepack due to fuel shortfalls or overages.

14. Finally, the Indicated Shippers request that, if the filing is not rejected, the Commission convene a technical conference to fully explore the issues raised by the filing. In addition to the issues raised elsewhere in their protest, the Indicated Shippers state that the technical conference should examine any fuel costs related to transportation on the Mojave Pipeline Company system that are included in this filing. The Indicated Shippers state that these costs should be segregated from the system-wide fuel rate because El Paso has not shown that these costs are incurred for the benefit of the entire system. The Indicated Shippers also state that pages two and four of Tab 1 in the filing contain inconsistent and unexplained data and that the technical conference should address this apparent inconsistency.

15. In addition, the Indicated Shippers, El Paso Electric, Texas Gas Service, and UNS and Tucson state that El Paso has not explained the 39,684,483 Dth backhaul volumes denoted "Plus No Fuel Transactions Subject to L&U" on page two of Tab 1. Specifically, the parties state that El Paso failed to explain how this number was derived, why it was not assessed fuel, and the impact of this item on the overall fuel rates. Additionally, UNS and Tucson state that El Paso's prior filings did not include any line items for "Plus No Fuel Transactions Subject to L&U," and thus shippers are unable to compare the amount attributed to this item to amounts from past years. El Paso Electric states that total backhaul volumes increased by a multiple of approximately 20 and that El Paso failed to explain this change.

IV. Discussion

16. The Commission finds that El Paso's calculation of proposed fuel and L&U retention percentages raises issues that are best addressed at a technical conference. It is not possible at this juncture to determine whether El Paso's proposed retention percentages are just and reasonable. A technical conference will afford the Commission staff and the parties to the proceeding an opportunity to discuss issues raised by El Paso's

filing, including but not limited to the issues raised in the protests such as, whether El Paso has complied with Section 26.3(b) which requires El Paso to provide details related to its purchases and sales of gas related to fuel.

17. The Commission finds that the proposed tariff sheet has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, the Commission will accept the proposed tariff sheet for filing and suspend its effectiveness, subject to refund and to the outcome of the technical conference established by this order.

18. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980). Such circumstances exist here where El Paso's filing is made pursuant to an existing tariff mechanism to establish new retention percentages for the upcoming annual period. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on January 1, 2009, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

<u>The Commission orders</u>:

(A) The proposed tariff sheet listed in footnote no. 1 is conditionally accepted and suspended, effective January 1, 2009, subject to refund and to the outcome of the technical conference established by this order.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by El Paso's filing and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.