

131 FERC ¶ 61,077
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 28, 2010

In Reply Refer To:
El Paso Natural Gas Company
Docket Nos. RP08-426-000 and RP08-426-014

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

Attention: Catherine E. Palazzari, Vice President

Reference: Offer of Settlement

Ladies and Gentlemen:

1. On March 11, 2010, El Paso Natural Gas Company (El Paso) filed an Offer of Settlement and Stipulation and Agreement (Settlement) resolving all issues in the above-referenced proceeding, with the exception of four specified issues reserved for hearing.
2. Comments in support of the Settlement were timely filed by El Paso, the Commission Trial Staff, the Arizona Corporation Commission, El Paso Electric Company, GS Electric Generating Cooperative and Golden Spread Electric Cooperative, Inc., the Indicated Shippers,¹ MGI Supply Ltd., Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Gas Company and San Diego Gas & Electric Company, and UNS Gas, Inc. and Tucson Electric Power Company. No reply comments were filed. The Presiding Judge certified the Settlement to the Commission as uncontested on April 13, 2010.²

¹ The Indicated Shippers are BP America Production Company and BP Energy Company; Chevron Natural Gas, a Division of Chevron U.S.A. Inc.; and ConocoPhillips Company.

² *El Paso Natural Gas Co.*, 131 FERC ¶ 63,008 (2010).

3. The main provisions of the Settlement may be summarized as follows.
4. Article I describes the factual and procedural background of this proceeding.
5. Article II describes the Settlement rates which are established on a “black box” basis. Article II also provides for (1) discounts for certain eligible shippers and contracts under Rate Schedule IHSW; (2) a limitation on the amount of fuel charges recoverable by El Paso for certain services; and (3) revenue sharing in excess of specified annual thresholds.
6. Article III describes the resolution of certain cost of service issues, including (1) the resolution of costs and billing determinants on a “black box” basis, and the specification of an overall 15.1 percent pre-tax return on rate base; (2) the specification of depreciation rates; and (3) requiring the roll-in of the costs into rates of several facilities into El Paso’s mainline cost of service (subject to the reserved issue relating to Line No. 1903) for this and any future rate proceeding.
7. Article IV describes the resolution of accounting issues relating to FAS 106 obligations and costs, El Paso’s *South Georgia*/FAS 109 regulatory asset, and future cost recovery related to these regulatory assets.
8. Article V sets forth the issues reserved for hearing and a merits determination by the Commission, specifically: (1) capital structure; (2) Line No. 1903 purchase price; (3) rate design for short-term firm, interruptible transportation, and interruptible parking and lending services; and (4) Article 11.2 of the 1996 Settlement. Article V specifies that the resolution of the capital structure and Line No. 1903 issues will not have an impact on the settlement rates during the term of the Settlement. The resolution of the issues concerning short-term firm and certain interruptible transportation and parking and lending rates will be implemented during the term of the Settlement. Article V also provides for (1) the designation of pre-filed testimony and exhibits relating to the reserved issues, and (2) the filing of limited supplemental testimony and exhibits to reflect the settlement rates and updated and stipulated data.
9. Article VI describes the resolutions, parameters, and limitations agreed to with respect to the continued litigation of issues concerning Article 11.2 of the 1996 Settlement. These issues include (1) whether Article 11.2 should be terminated or modified; (2) whether the Article 11.2 rates are unjust and unreasonable, unduly discriminatory or violative of the public interest; (3) whether El Paso should be permitted to allocate or reallocate costs not otherwise recovered due to the operation of the Article 11.2(a) rate caps; and (4) whether El Paso has met the requirements of Article 11.2(b), and if not, how a rate adjustment should be determined. Article VI also provides for certain stipulations of fact to be introduced into evidence at the hearing for the sole purpose of litigating and resolving the Article 11.2 issues.

10. Article VII describes the agreement reached with respect to the sharing of bankruptcy estate proceeds from Enron Corp. and Enron North America Corp. Article VIII describes the agreement reached as to two tariff issues: (1) the sharing of penalty revenues; and (2) the procedures for the aggregation/disaggregation of contracts for determining overrun charges.
11. Article IX describes three working groups to be formed for the purpose of studying the following issues: (1) the development of an exception to penalties in *force majeure* events; (2) the implications and design of a “Western End” rate and other short-haul rate options; and (3) the possibility of tariff changes relating to the release of premium service capacity and service rights.
12. Article X sets forth El Paso’s refund obligations resulting from the Settlement. Article XI defines Contesting and Settling Parties and governs the rights and obligations of these parties. Article XII defines the Effective Date of the Settlement, and procedures to be followed if the Commission modifies or conditions the Settlement.
13. Article XIII governs the term of the Settlement and rate moratorium and exceptions to such moratorium. El Paso shall be required to file a general rate case for rates to be effective no later than April 1, 2012, but no earlier than April 1, 2011. The Article provides that, to the extent the Commission considers any change to the Settlement to be effective during its term, the review for any such proposed change shall be the “public interest” standard of review with respect to El Paso or the Settling Parties. With respect to any proposal to change the provisions of the Settlement regarding Contesting Parties, Non-Settling Parties to the Settlement, or the Commission acting *sua sponte*, the standard of review shall be the most stringent standard permitted by law.
14. Article XIV provides for the disposition of certain rehearing/clarification requests and appeals of certain orders in this and other proceedings. Article XV contains several miscellaneous provisions concerning (1) interpretation of the tariff and the Settlement; (2) rules of construction; (3) non-severability; (4) effect of Commission approval; (5) no additional remedies; (6) successors; (7) integration of the agreement; and (8) a continuing obligation not to take positions inconsistent with the Settlement.
15. Article XVI contains reservations of rights with respect to (1) Article 11.2 of the 1996 Settlement; (2) nothing in the Settlement constituting a “settled practice;” (3) the privilege under Rule 602; and (4) matters expressly provided for.
16. The Commission finds that the Settlement is fair and reasonable and in the public interest, and it is hereby approved. El Paso is directed to make refunds and to file revised

tariff sheets in accordance with and as prescribed by the Settlement. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.