

134 FERC ¶ 61,170
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

El Paso Natural Gas Company

Docket No. RP08-426-016

ORDER DISMISSING AS MOOT REQUEST FOR CLARIFICATION
OR REHEARING CONCERNING ISSUES TO BE DECIDED UPON REVIEW OF
INITIAL DECISION

(Issued March 4, 2011)

1. On November 10, 2010, the Commission issued an order on rehearing addressing issues arising from El Paso Natural Gas Company's (El Paso) general section 4 rate filing in Docket No. RP08-426-000 (2008 Rate Case). As pertinent here, the order addressed issues concerning whether Article 11.2 of the 1996 settlement resolving El Paso's section 4 rate case in Docket No. RP95-363-000, *et al*, should continue to be effective, and the standard of review for rates established under Article 11.2. Article 11.2 capped the rates for certain shippers' contracts, subject to an annual escalation factor, and established certain cost recovery limitations for El Paso.¹ El Paso and certain parties argued that Article 11.2 is no longer effective and that continuing the effectiveness of that article results in discriminatory rates. Certain other parties have argued that the Article 11.2 rate protections remain in effect.
2. On December 10, 2010, the Joint Parties² filed a request for clarification or, alternatively, rehearing of the November 10, 2010 order. Joint Parties assert that the Commission previously ruled in orders that have become final that it would review challenges to "Article 11.2(a) rates," rates set by negotiated Commission-approved

¹ See, *El Paso Natural Gas Co.*, 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997).

² Joint Parties consist of Southwest Gas Corporation; Apache Nitrogen Products, Inc.; Arizona Public Service Company; ConocoPhillips Company; El Paso Municipal Customer Group; Freeport-McMoRan Corporation; New Mexico Gas Company, Inc.; Texas Gas Service Company, A Division of Oneok, Inc.; Tucson Electric Power Company; and UNS Gas, Inc.

agreement, under the higher Mobile-Sierra public interest standard rather than the usual just and reasonable rate case standard. Joint Parties contend that the November 10 Order, in rejecting requests for rehearing by two parties on other issues, unintentionally used language that El Paso has sought to rely upon to reopen those prior Commission rulings. Joint Parties are concerned that El Paso will attempt to use certain language to re-litigate Article 11.2 issues in the current rate case in Docket No. RP10-1398-000.

3. On January 14, 2011, the Presiding Administrative Law Judge (ALJ) issued an initial decision in Docket No. RP08-426-000 addressing a number of issues including whether Article 11.2 should continue to be effective. Since the initial decision has been issued, the Commission finds that Joint Parties' request for clarification or rehearing is moot. Any issues concerning Article 11.2 of the 1996 settlement, including whether the ALJ applied the correct standard of review in analyzing the validity of Article 11.2 will be reviewed by the Commission when briefs on and opposing exceptions to the initial decision are filed. The Commission will address all arguments on Article 11.2 issues made in those briefs when it issues its opinion and order on the initial decision.

4. Moreover, the Commission reminds the parties that the outcome of the current rate case in Docket No. RP10-1398-000 is also subject to the outcome of the Docket No. RP08-426-000 proceeding. As the Commission stated in its order denying rehearing and granting clarification in Docket No. RP10-1398-001, "[t]he purpose of making this filing subject to the outcome of the Docket No. RP08-426-000 rate case was, in part, to make sure that any determinations made with respect to Article 11.2 would be made based on a fully litigated record and would then apply here."³ The Commission further stated "[b]y accepting the primary tariff records and maintaining the status quo of the Article 11.2 rate protections, the Commission's intent is to prevent re-litigation of identical issues in this rate case prior to a final determination on these Article 11.2 issues in the Docket No. RP08-426-000 rate proceeding."⁴

³ *El Paso Natural Gas Co.*, 133 FERC ¶ 61,253, at P 14 (2010).

⁴ *Id.* P 16.

The Commission orders:

Joint Parties' request for clarification or rehearing is dismissed as moot, as the venue for arguing and deciding the issues raised therein is the opinion and order on the Docket No. RP08-426-000 rate case, as discussed above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.