

135 FERC ¶ 61,087
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. RP08-426-007

ORDER DISMISSING REQUESTS FOR CLARIFICATION OR REHEARING

(Issued April 28, 2011)

1. On February 10, 2009, the Commission issued an order accepting a motion filed by El Paso Natural Gas Company (El Paso) to place suspended tariff sheets and rates into effect.¹ The February 10 Order determined that a provision in a prior settlement had not been triggered and that therefore there was no basis for rejecting the suspended rates. Requests for rehearing or clarification of that determination are here dismissed as moot, as the issues raised will be decided upon review of the initial decision on the subject rates.

2. As pertinent here, the February 10 Order addressed whether El Paso's rate proposal violated Article 11.2 of the 1996 Settlement resolving El Paso's earlier Natural Gas Act section 4 rate case in Docket No. RP95-363-000, *et al.*² The February 10 Order concluded that Article 11.2(b) of the 1996 Settlement was not applicable to El Paso's motion to move its suspended rates into effect because El Paso had more than 4,000 MMcf/d of 1995 firm capacity subscribed at maximum rates,³ and nothing in the

¹ *El Paso Natural Gas Co.*, 126 FERC ¶ 61,103 (2009) (February 10 Order).

² *See El Paso Natural Gas Co.*, 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997). Article 11.2(b) provides that the rate for any services to eligible shippers will not include any charges related to the capacity on El Paso's system in existence on December 31, 1995, that becomes unsubscribed or discounted below the maximum applicable tariff rate defined in the Settlement.

³ In a March 20, 2006 order in Docket No. RP05-422-000 (*El Paso Natural Gas Co.*, 114 FERC ¶ 61,290, at P 60 (2006)), the Commission held that if El Paso has 4,000 MMcf/d of firm capacity at or above the maximum applicable rate cap there will be a presumption that there is no 1995 stranded or discounted capacity.

Commission's orders or the 1996 Settlement prevented El Paso from proposing rates to recover its cost of service.

3. On March 12, 2009, Arizona Public Service Company (APS) filed a request for rehearing of the February 10 Order. Also on March 12, 2009, Freeport-McMoRan Corporation (Freeport), and Texas Gas Service Company, a division of ONEOK, Inc., and UNS Gas, Inc. (jointly Texas Gas/UNS) each filed a request for clarification or, alternatively, a request for rehearing of the February 10 Order. These parties assert that the Commission erred in holding that El Paso has more than 4,000 MMcf/d of 1995 firm capacity subscribed at maximum rates because that holding was premature, and reflected a finding of fact that was in dispute and not supported by the record. The parties request that the Commission clarify that its holding was not intended to preclude or prejudice the ability of the parties to present evidence in this docket's ongoing rate case regarding this disputed factual issue.

4. Texas Gas/UNS additionally request that the Commission clarify that the issue of whether El Paso's rate filing violates the ban against cost reallocation contained in Article 11.2(b) is properly addressed in the evidentiary hearing in this proceeding.

5. On January 14, 2011, the Presiding Administrative Law Judge issued an initial decision in the subject proceeding in Docket No. RP08-426-000, which addresses, among other things, the amount of 1995 firm capacity subscribed at maximum rates, whether Article 11.2(b) of the 1996 Settlement was triggered, and whether El Paso's proposed cost reallocation was just and reasonable.

6. The initial decision addresses the factual and legal issues raised by the parties on rehearing. Whether the initial decision correctly determined the issues of fact and law set for hearing, including those concerning Article 11.2(b) of the 1996 Settlement that were the subject of the rehearing and clarification requests, will be addressed by the Commission when it reviews the initial decision, the accompanying record, and pre- and post-hearing briefs. As 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, the applications for rehearing or clarification of those issues may be dismissed as moot. Accordingly, the venue for arguing and deciding the issues raised therein is now before the Commission as it reviews the entire record on El Paso's rate case in Docket No. RP08-426-000.

The Commission orders:

The parties' requests for clarification or rehearing of the February 10 Order are dismissed, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.