

139 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

June 1, 2012

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP12-606-000

El Paso Natural Gas Company
PO Box 1087
Colorado Springs, CO 80903

Attention: Catherine E. Palazzari, Vice President

Reference: Waiver of Filing Date

1. On April 13, 2012, El Paso Natural Gas Company (EPNG) filed a request for waiver of its tariff timing requirements for certain credits until refunds are required by the Commission in EPNG's System-Wide rate case in Docket No. RP10-1398-000 (Rate Case) for final service rates. EPNG requests the waiver of: (1) the time for issuing penalty credits for April through December 2011; (2) the time for issuing cash-out revenue credits for January through December 2011; and (3) a delay in the disbursement of any penalty credits or cash-out revenue credits until the Docket No. RP10-1398-000 refunds are required. For good cause shown, the Commission grants EPNG's waiver request.

2. Section 14.2 of the General Terms and Conditions (GT&C) of EPNG's tariff requires EPNG to file a penalty crediting report annually with the Commission. In general, the annual report is based on activity for the previous calendar year (January through December). EPNG's tariff requires that the credits to its Shippers shall be made on a *pro rata* basis, based on the Shipper's transportation service reservation and usage revenues paid each month.

3. EPNG states that it is currently involved in a section 4 rate case proceeding in Docket No. RP10-1398-000 where the rates in effect for the period April 1, 2011 through December 31, 2011, are subject to refund, pending the outcome of the rate case proceeding. Because the final transportation service rates in which the credits are to be calculated have yet to be determined pending the outcome of the rate case, EPNG has

made the subject waiver request. EPNG contends that absent a waiver of the tariff's timing requirements, the necessary "true-up" process for the issuance of credits would result in an unduly burdensome administrative process for all parties involved.

Moreover, it maintains that if the final Commission decision in the rate case results in lower recourse rates, EPNG would have over-refunded penalty credits and would be placed in a position of trying to recover the over-refunded amounts. EPNG posits that since EPNG will provide interest to shippers, they will not be disadvantaged by the proposed delay in the penalty credits.

4. EPNG further points out that on April 12, 2012, pursuant to section 14.2 of the GT&C, it issued penalty credits to its transportation customers for the calendar period beginning January through March 2011, prior to the time that the rate case rates became effective on April 1, 2011, and therefore, are not at issue in the rate case. EPNG states that it will submit its penalty crediting report for the January to March time period in the near future.

5. EPNG observes that similar to its penalty crediting provisions, its tariff has provisions for crediting cash-out revenues to shippers. EPNG states that the cash-outs are based on the total transportation revenues paid by each shipper on an annual basis. EPNG maintains that given the total transportation revenues are contingent on the outcome of the rate case, it is requesting waiver for the full year rather than from April through December. EPNG states that the interest will continue to accrue for the credit amounts.

6. Public notice of EPNG's Filing was issued on April 17, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹ Pursuant to Rule 214,² all timely motions to intervene and any unopposed motion 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.

7. On April 30, 2012, UNS Gas, Inc. and Tucson Electric Power Company (jointly referred to as UniSource) filed a motion to intervene and comments. UniSource states that because the amount of penalty credits and cash-out revenue credits is relatively small and will accrue interest, it does not object to the Commission granting EPNG a one year waiver with respect to the 2011 penalty credits and cash-out revenue credits. UniSource characterizes EPNG's waiver request as open-ended because it does not have a definitive end date. It maintains that it is unreasonable for EPNG to be granted an open-ended

¹ 18 C.F.R. § 154.210 (2011).

² 18 C.F.R. § 385.214 (2011).

waiver, even if the amounts accrue interest. It argues that if EPNG wants a waiver next year for the 2012 penalty credits and cash-out revenue credits and a continuance of the 2011 credits, EPNG should be required to file another waiver request then to allow shippers to review the latest information and make an informed decision on the reasonableness of an additional one-year waiver.

8. Although EPNG's request for waiver does not request a specific time frame for the waiver, once the Administrative Law Judge has issued an initial decision, the Commission will review that decision and establish final rates. At that time, the requested waiver will end, so in that sense it is not open-ended. On the other hand, we agree with UniSource that the final rates in this case may not be established for some time. Consequently, we find that it is reasonable to grant EPNG's request for waiver for a one-year period, and have EPNG file a request next year for waiver of the 2012 penalty credits and cash-out revenue credits and a continuation of the waiver of the 2011 credits, if necessary. This strikes a reasonable balance between avoiding administratively burdensome refunds and an indeterminate tariff waiver. Waiving the specified timing and filing requirements in EPNG's tariff for one year will not harm EPNG's shippers, because the shippers will be made whole as interest shall accrue on the credit accounts, and EPNG may seek renewal of the waiver if necessary.

Accordingly, for good cause shown, the Commission grants the requested waiver subject to the conditions discussed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.