

140 FERC ¶ 61,063
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 20, 2012

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP12-816-000

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

Attention: Catherine E. Palazzari, Vice President

Reference: Reduction to Specified Rates on Interim Basis

Dear Ms. Palazzari:

1. On June 20, 2012, El Paso Natural Gas Company (El Paso) filed revised tariff records (see Appendix) to reduce the short-term firm service rates and interruptible service rates to the corresponding long-term rate levels in consideration of the Commission's recent ruling in the Opinion and Order on Initial Decision in Docket No. RP08-426-000.¹ As discussed below, the Commission will accept the proposed tariff records, effective July 1, 2012, subject to conditions.

2. On March 11, 2010, El Paso submitted a partial settlement of the Docket No. RP08-426-000 rate case proceeding which resolved all issues (Settlement), with the exception of four issues reserved for limited hearing in Article 5: (1) the amount to be included in El Paso's capital account for ratemaking and accounting purposes related to Line 1903; (2) the appropriate capital structure; (3) the appropriate rate design for the maximum recourse rate for interruptible transportation service (IT), interruptible parking and lending service (PAL), and short-term firm transportation rates; and (4) issues related to Article 11.2 of the 1996 Settlement. Article 5.2 of the Settlement reserved for hearing the appropriate capital structure of the settlement (exclusive of return on equity and debt

¹ *El Paso Natural Gas Co.*, 139 FERC ¶ 61,095 (2012) (Opinion No. 517).

cost). However, Article 5.2(2) states that the capital structure established at hearing will not affect rates during the term of the stipulation, expiring the day prior to the effective date of El Paso's subsequent general rate case, which was filed in RP10-1398-000, *et al.*, effective April 1, 2011. Article 5.2(4) states that El Paso's capital structure for rate purposes in subsequent rate case(s) will be subject to the Commission's order on the reserved issue, that is, Opinion No. 517, to the extent that the ruling continues to apply. Article 5.3 similarly provides that the hearing determination on Line 1903 issues will have no effect on the Settlement rates, but that the impact of the hearing determination, again the determination reflected in Opinion No. 517, will be implemented after the term of the stipulation, or beginning April 1, 2011. The Settlement was approved by the Commission on April 28, 2010.²

3. On September 30, 2010, El Paso filed a general system-wide rate change pursuant to section 4 of the Natural Gas Act (NGA) in Docket No. RP10-1398-000. The Commission accepted and suspended the primary tariff records, to become effective April 1, 2011, subject to refund and conditions and the outcome of the hearing established in the order.³ The Commission's acceptance of the proposed tariff records was additionally subject to the outcome of the hearing in Docket No. RP08-426-000 regarding the four reserved issues of capital structure, recovery of certain expansion capacity costs for Line 1903, value-based rates for short-term firm and certain interruptible rates, and certain issues relating to Article 11.2 of the 1996 Settlement.⁴ El Paso moved its proposed primary rates into effect on April 1, 2011.⁵ El Paso states that it has been collecting revenues produced by the subject-to-refund rates since April 1, 2011. The evidentiary hearing was conducted before an Administrative Law Judge from October 25 to December 16, 2011, and an Initial Decision was issued in Docket No. RP10-1398-000 on June 18, 2012.⁶ That Initial Decision is currently pending before the Commission.

4. On May 4, 2012, the Commission issued Opinion No. 517 in El Paso's previous general system-wide rate proceeding in Docket No. RP08-426-000. In Opinion No. 517, the Commission made the following findings: (1) El Paso's depreciable plant account

² *El Paso Natural Gas Co.*, 131 FERC ¶ 61,077 (2010) (letter order).

³ *El Paso Natural Gas Co.*, 133 FERC ¶ 61,104 (2010) (Suspension Order).

⁴ Suspension Order, 133 FERC ¶ 61,104 at P17.

⁵ *El Paso Natural Gas Co.*, Docket No. RP10-1398-002 (May 5, 2011) (delegated letter order).

⁶ *El Paso Natural Gas Co.*, Initial Decision, 139 FERC ¶ 63,020 (2012).

should only include the \$10.5 million associated with El Paso's investment in Line 1903, and El Paso has not shown that it has booked accumulated depreciation and deferred income taxes assessed on the unused California segment that was purchased with Line 1903;⁷ (2) El Paso's proposed capital structure should be adjusted to remove the \$615 million loan to parent and the \$145 million in undistributed subsidiary earnings from equity capitalization for ratemaking purposes;⁸ (3) El Paso's proposed short-term firm and interruptible rates are unjust and unreasonable;⁹ and (4) the Article 11.2(a) rates remain just and reasonable, and El Paso may not reallocate to non-Article 11.2(a) shippers or contracts any shortfall arising as a result of Article 11.2(a) rates being lower than recourse rates.¹⁰ In Ordering Paragraph (C) of Opinion No. 517, the Commission required El Paso to file revised tariff sheets and rates, including proposed accounting and workpapers, reflecting the Commission's rulings within 30 days of the date of the order on initial decision. In Ordering Paragraph (D), the Commission also required that within 30 days of a final order in this case, El Paso must refund amounts recovered in excess of the just and reasonable rates approved by the Commission.

5. El Paso and other parties filed requests for rehearing and/or clarification of Opinion No. 517. On June 8, 2012, El Paso filed, in Docket No. RP12-806-000, compliance tariff records reducing the short-term firm and interruptible rates in accordance with Opinion No. 517 for the period from May 1, 2010 through March 31, 2011.¹¹ The compliance filing in Docket No. RP12-806-000 is pending before the Commission.

6. El Paso states that its compliance filing in Docket No. RP12-806-000 only affects the rates during the locked-in period for the Docket No. RP08-426-000 proceeding and therefore does not reduce the currently-effective short-term firm and interruptible rates which became effective April 1, 2011 in Docket No. RP10-1398-000. In the Docket

⁷ Opinion No. 517, 139 FERC ¶ 61,095 at PP 51-52.

⁸ *Id.* P 86.

⁹ *Id.* P 186.

¹⁰ *Id.* PP 235, 290.

¹¹ El Paso states that the applicable start date for the requested changes was January 1, 2009 (i.e., the implementation date of the relevant Docket No. RP08-426-000 tariff provisions). However, consistent with the Commission's eTariff procedures (i.e., not requesting an effective date prior to the implementation of the baseline tariff), El Paso submitted the tariff records with a May 1, 2010 effective date (El Paso's baseline tariff effective date).

No. RP12-816-000 filing, El Paso acknowledges that shippers are protected by the Commission's refund authority (including the related interest on such refunds), but states that it believes that it is appropriate in these limited circumstances to voluntarily reduce the short-term firm and interruptible service rates, subject to later Commission action. As part of its initial proposal, the currently-effective rate levels for short-term firm services are 250 percent of the reservation component of the long-term rates and the interruptible services are equivalent to the long-term rate levels at 100 percent of the reservation component. Thus, El Paso proposes in Docket No. RP12-816-000 to reduce these rates to be equivalent to the corresponding long-term rates on an interim basis until and unless the Commission modifies or reverses itself on rehearing of Opinion No. 517 or otherwise finds in Docket No. RP10-1398-000 that El Paso's proposed rates and/or rate derivation methodology for short-term firm and interruptible rates are appropriate.

7. El Paso thus proposes to place the proposed tariff records into interim effect, as of July 1, 2012, without further filing by El Paso. El Paso states that it submits this filing reserving its right to reinstate the replaced rate levels prospectively by a separate future filing only if the Commission's determinations in Opinion No. 517 regarding short-term rates are modified or reversed. El Paso requests waiver of the 30-day notice requirement in section 154.207 of the Commission's regulations to effectuate this change to allow customers to take advantage of the service rate reduction it has chosen to propose to implement as soon as possible.

8. Public notice of the filing was issued on June 21, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 154.214 (2012)), all timely filed 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 the proceeding or place additional burdens on existing parties. The Indicated Shippers filed a protest, which is discussed below.¹²

9. The Indicated Shippers request that the Commission require El Paso to comply fully with Opinion No. 517 by revising its Docket No. RP10-1398-000 suspended rates to adjust the capital structure to remove the \$615 million loan to parent and the \$145 million in undistributed subsidiary earnings from equity capitalization, to remove from depreciable plant Line 1903 costs that exceed \$10.5 million, and to remove from non-Article 11.2(a) rates any costs that have been reallocated as a result of a shortfall due to Article 11.2(a) rates being lower than the maximum recourse rate. The Indicated Shippers further request that the Commission deny El Paso's proposal to reduce the

¹² For the purposes of this pleading, the Indicated Shippers are ConocoPhillips Company and Shell Energy North America (US), L.P. Indicated Shippers expressed similar concerns in a protest filed in Docket No. RP12-806-000.

Docket No. RP10-1398-000 suspended short-term service rates to the 100 percent load factor equivalent long-term reservation rate on an “interim,” rather than unconditional, basis because the proposal conflicts with the Natural Gas Act and with Opinion No. 517. The Commission should instead accept the filing, subject to further revisions consistent with actual compliance with the requirements of Opinion No. 517.

10. Article V of the Settlement reserves four rate issues in the 2008 rate case for hearing and specifies that only the rulings in Opinion No. 517 concerning the IT, PAL, and short-term firm transportation rates design issue are to affect Settlement rates for the locked-in period.¹³ Article 5.4 reserved the issues of the appropriate rate design for the maximum recourse rate for IT, PAL and short-term firm transportation rates for hearing in Docket No. RP08-426-000.¹⁴ Thus, that article requires the rulings in Opinion No. 517 on capital structure and Line 1903 to be implemented in the subsequent rate case, being RP10-1398-000. The Suspension Order in Docket No. RP10-1398-000 accepted the revised tariff records subject to the outcome of the hearing in Docket No. RP08-426-000 on the four issues that were set for hearing and the subject of Opinion No. 517.

11. Ordering Paragraph (C) of Opinion No. 517 required El Paso to file, within 30 days of the issuance of the order, revised tariff records and rates, including proposed accounting and workpapers, to reflect the Commission’s rulings in Opinion No. 517. Thus, consistent with the Settlement, the Suspension Order in Docket No. RP10-1398-000, and Opinion No. 517, El Paso must revise its tariff records and rates not only for the locked-in period in Docket No. RP08-426-000 but also for the period covered by the current rate proceeding in Docket No. RP10-1398-000.

12. El Paso has filed revised tariff records in Docket No. RP12-806-000 to comply with Opinion No. 517 for the locked-in period, but not for the period covered by Docket No. RP10-1398-000. Neither its compliance filing in Docket No. RP12-806-000, nor its proposed tariff records which partially reflect the impact of the holdings in Docket No. RP08-426-000 on the rates filed in Docket No. RP10-1398-000, fulfill its obligation to comply fully with Opinion No. 517 to file revised tariff records and rates reflecting the Commission’s rulings, as those rulings also affect the later filed rates.

¹³ Article 5.4 of the Settlement also resolved interruptible hourly swing service (IHSW) rates for the term of the stipulation.

¹⁴ Articles V and VI also anticipate various outcomes for the issues relating to Article 11.2 of a 1996 Settlement and provide the parties’ understanding of appropriate terms to implement the anticipated outcomes. *E.g.*, Article 6.7(a)(1) and Article 6.7(b) providing stipulated terms to address reallocation of revenue shortfalls under the 1996 Settlement for the “retroactive period,” roughly the 2008 Rate Case, and thereafter, *i.e.*, in the 2010 Rate Case in RP10-1398-000.

13. As Indicated Shippers point out, El Paso has failed to adjust the Docket No. RP10-1398-000 tariff records and rates to comply fully with the directives of Opinion No. 517. We will therefore accept El Paso's revised tariff records herein in partial compliance with (a) the Suspension Order statement that El Paso's rates in Docket No. RP10-1398-000 are subject to the outcome of the hearing in Docket No. RP08-426-000 and (b) the Opinion No. 517 directive to file revised tariff records reflecting the Commission's rulings. Such acceptance is subject to the ultimate outcome in Docket Nos. RP08-426-000 and RP10-1398-000.

14. In addition, to provide for full compliance with Ordering Paragraph (C) of Opinion No. 517, the Commission hereby directs El Paso to file revised tariff records in Docket No. RP12-816-000 to adjust the Docket No. RP10-1398-000 rates to reflect all the rulings in Opinion No. 517, within 30 days of this order.¹⁵ In particular, El Paso is to adjust the rates filed in Docket No. RP10-1398-000 to reflect the removal of the excluded items from its capital structure, as well as to exclude from rate base amounts exceeding \$10.5 million for Line 1903, and make adjustments to ensure that Article 11.2 shortfalls are not reallocated to other shippers.¹⁶

15. When the Commission acts on the rates proposed in the compliance filings made in Docket No. RP12-806-000 and in response to this letter order, the Commission will address any remaining issues concerning the implementation of the compliance rate, including the scope and timing of any refunds required in the Docket No. RP10-1398-000 rate case, and whether any subsequent adjustments are needed based on the Commission's review of the initial decision in Docket No. RP10-1398-000 and requests for rehearing in Docket No. RP08-426-000.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ When it makes its compliance filing, El Paso should use a Type of Filing Code 580 and associate the filing with Docket No. RP12-816-000.

¹⁶ The Initial Decision in Docket No. RP10-1398-000 provides that the capital structure and Line 1903 issues are resolved in accordance with Opinion No. 517 and also reflects Participants' agreement as to the value of the capital structure items to be excluded. *El Paso Natural Gas Co.*, Initial Decision, 139 FERC ¶ 63,020 at PP 23, 70.

Appendix

El Paso Natural Gas Company
FERC NGA Gas Tariff
EPNG Tariffs

[Part II: Stmt. of Rates, Section 1.1 - Production Area Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.2 - Texas Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.3 - New Mexico Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.4 - Arizona Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.5 - Nevada Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.6 - California Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.7 - Lateral, System-wide Balancing & Storage Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.8 - Firm Small Shipper Service Rates, 5.0.0](#)

[Part II: Stmt. of Rates, Section 1.9 - Interruptible and PAL Rates, 5.0.0](#)