

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

El Paso Natural Gas Company

Docket No. RP04-34-001

ORDER CLARIFYING PRIOR ORDER

(Issued July 13, 2004)

1. On December 29, 2003, El Paso Natural Gas Company (El Paso) filed a request for clarification and/or rehearing of the Commission's November 28, 2003 Order.¹ In the November 28 Order, the Commission rejected a proposal by El Paso to provide partial reservation charge crediting for scheduled maintenance events. The Commission held that scheduled maintenance events are not considered *force majeure* events eligible for partial reservation charge crediting. A timely request for rehearing or clarification of that order was filed by El Paso. The East of California Shippers² (EOC Shippers) filed an answer to the request for rehearing, and El Paso responded to the EOC Shippers' answer. In the instant order, the Commission clarifies the prior order as discussed below.

Background

2. In its July 9, 2003 Order on rehearing (July 9 Order)³ in El Paso's Capacity Allocation Proceeding, Docket No. RP00-336, *et al.*, the Commission required El Paso to provide for partial reservation charge credits equal to the return on equity and income tax portion of the reservation charge for service interruptions caused by *force majeure*. The Commission held that *force majeure* events are no-fault occurrences and, therefore, all parties, including the pipeline, should share the burdens of a *force majeure* interruption.

¹ 105 FERC ¶ 61,262 (2003).

² EOC Shippers are: Arizona Electric Power Cooperative, Inc.; El Paso Electric Company; El Paso Municipal Customer Group; Phelps Dodge Corporation; Public Service Company of New Mexico; Southwest Gas Corporation; Texas Gas Service Company, a division of ONEOK, Inc.; and UNS Gas, Inc.

³ 104 FERC ¶ 61,045 (2003).

3. On August 1, 2003, El Paso submitted a tariff sheet to comply with the directives of the July 9 Order. The tariff sheet, among other things, provided for partial reservation charge credits during periods of *force majeure* and during scheduled pipeline maintenance. On August 29, 2003, the Commission issued an order⁴ requiring El Paso to remove the tariff language that provided for partial reservation charge credits due to scheduled pipeline maintenance. The Commission found that the July 9 Order did not address the issue of partial reservation charge credits for scheduled maintenance and that El Paso's proposal did not comply with that order.⁵

4. On October 29, 2003, El Paso filed, in this proceeding, Third Revised Sheet No. 113D to its FERC Tariff, Second Revised Volume No. 1-A to permit partial reservation charge crediting for non-delivery of gas due to pipeline maintenance. In an order dated November 28, 2003, the Commission rejected that revised tariff sheet as inconsistent with Commission policy. The Commission found that, consistent with the decision in *Florida Gas Transmission Company*, in non-*force majeure* events, full reservation charge credits must be paid for all scheduled gas not delivered.⁶ The Commission found that since scheduled maintenance is within the control of the pipeline, it cannot be considered a *force majeure* event eligible for partial reservation charge credits. Therefore, the Commission held that full reservation charge credits must be given for service interruptions due to planned maintenance.

5. In reaching this conclusion, the Commission addressed El Paso's argument that the Commission should consider the particular circumstances on the pipeline in determining appropriate reservation charge credits. The Commission explained that its policy on this issue, as set forth in *Florida Gas*, is not dependent on the specific operating conditions of the pipeline. In any event, the Commission stated that its policy on reservation charge credits for scheduled maintenance is consistent with the circumstances on El Paso. As part of that discussion, the Commission noted, in dicta, that capacity on El Paso has been set aside for system management.

⁴ 104 FERC ¶ 61,232 (2003).

⁵ El Paso submitted a revised tariff sheet on October 6, 2003 in Docket No. RP00-336-020 to remove the scheduled maintenance language as required by the August 29 Order. The revised tariff sheet was accepted on February 18, 2004. 106 FERC ¶ 61,167 (2004).

⁶ 105 FERC ¶ 61,262, citing, 105 FERC ¶ 61,171 at P 34 (2003).

Request for Clarification and/or Rehearing

6. El Paso does not seek rehearing of the Commission's decision that full reservation charge credits must be given for service interruptions due to scheduled maintenance. Instead, El Paso contends that the November 28 Order erred in stating that the 210 MMcf/day of capacity reserved by El Paso to manage transient conditions, as discussed in El Paso's Capacity Allocation Proceeding⁷, included capacity not scheduled due to pipeline maintenance. El Paso requests a clarification, or in the alternative, rehearing, that the Commission did not intend to make a finding of fact that capacity reductions caused by scheduled maintenance outages are included in the calculation of the 210 MMcf/day of capacity associated with transient conditions.

7. EOC Shippers filed an Answer in response to El Paso's request for rehearing alleging that El Paso included scheduled maintenance as a factor to determine transient conditions in the Docket No. RP00-241-000 proceeding, yet excluded scheduled maintenance for purposes of the Capacity Allocation Proceeding. El Paso responded that both proceedings relied upon the same factors in determining the necessary allocation for transient conditions, neither of which incorporated scheduled maintenance.

Discussion

8. In the November 28 Order, the Commission ruled that scheduled maintenance events are not considered *force majeure* events eligible for partial reservation charge credits. The Commission held that, unlike uncontrollable service interruptions due to unforeseen occurrences, interruptions due to scheduled maintenance are within El Paso's control and, therefore, full reservation charge credits must be given.

9. The Commission's order was limited to whether interruptions due to scheduled pipeline maintenance fell within the category of *force majeure* interruptions. In reaching its final decision, the Commission considered the amount of control El Paso had over interruptions due to planned maintenance, and its policies regarding the manner in which partial reservation credits should be permitted. As held in the November 28 Order, the determination of whether full or partial reservation charge credits will be required is not dependent upon specific operating conditions of the pipeline.

⁷ See the July 9 Order at P 66, 67, and 80.

10. The Commission's statement concerning the 210 MMcf/day of capacity reserved for system management was not the basis for the ultimate decision imposing full reservation charge credits for non-*force majeure* events and was not necessary to the rationale or conclusions of the order. Regardless of whether El Paso's 210 MMcf/day reserved capacity includes scheduled maintenance, the Commission's requirement that El Paso provide full reservation charge credits for scheduled maintenance interruptions is consistent with the goal of establishing reliable, firm service on El Paso.

11. The Commission does not believe that this proceeding, concerning the Commission's policy on reservation charge credits, is the appropriate forum to resolve the parties' factual arguments concerning the capacity El Paso has reserved for managing transients. The parties to El Paso's Order No. 637 proceeding in Docket No. RP04-251-000 have raised issues concerning the amount of capacity reserved for managing transients, and that proceeding will provide a better forum for addressing any unresolved concerns regarding the composition of the 210 MMcf/day reserved capacity.

12. For these reasons, the Commission reaffirms its decision in the November 28 Order and grants the request for clarification to the extent discussed above.

The Commission orders:

The request for clarification is granted as set forth in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.