

121 FERC ¶ 61,266  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Philip D. Moeller,  
and Jon Wellingshoff.

El Paso Natural Gas Company

Docket Nos. RP05-422-009  
RP05-422-014  
RP05-422-015  
RP05-422-017

ORDER DISMISSING REQUESTS FOR REHEARING  
AND CLARIFYING MDO PROCEDURES

(Issued December 20, 2007)

1. Rehearing was sought of the March 20, 2006<sup>1</sup> and March 23, 2006 orders<sup>2</sup> in the captioned proceedings relating to El Paso Natural Gas Company's (El Paso) general rate case. Because of the parties' settlement, this order finds that the issues raised in the requests for rehearing are largely moot and dismisses them, with the exception of those concerning maximum delivery obligations (MDOs),<sup>3</sup> which this order addresses on the merits. With regard to MDOs, this order reaffirms the Commission's finding that El Paso's MDO proposal is reasonable, subject to certain modifications. Further, the

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<sup>1</sup> *El Paso Natural Gas Co.*, 114 FERC 61,290 (2006) (March 20 Order). The March 20 Order addressed issues relating to Article 11 of the 1996 Settlement which provides that rates for certain shippers would be subject to vintage or discounted rate levels in subsequent El Paso rate cases. Issues related to the interpretation of Article 11.2 of the 1996 Settlement will be decided in a separate order.

<sup>2</sup> *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (March 23 Order).

<sup>3</sup> An MDO is the maximum amount of gas that a shipper would be entitled to receive from El Paso at a specific meter within a D-Code (see definition below) on a primary firm basis at the minimum delivery pressure defined in the shipper's transportation service agreement (TSA). An MHO is the maximum hourly obligation, derived from the MDO.

Commission clarifies that the March 23 Order rejected El Paso's proposed daily scheduling and variance charges.

## **I. Background**

2. On June 30, 2005, El Paso filed a general system-wide rate case (June 30 filing), which increased rates for existing services, proposed a number of new hourly and daily services, and changed certain terms and conditions of service. On July 29, 2005, the Commission issued an order<sup>4</sup> accepting El Paso's primary tariff sheets<sup>5</sup> and suspending their effectiveness until January 1, 2006,<sup>6</sup> subject to conditions and to the outcome of a hearing and technical conference. The Commission established a hearing to address issues including cost of service, cost allocation, and rate design for the existing and new services, and established a technical conference to address other issues related to the new services.

3. On March 23, 2006, the Commission issued its order addressing the issues raised at the technical conferences. In that order, the Commission found that El Paso's proposed new services, penalty provisions, and other tariff changes were generally just and reasonable, and accepted those provisions, subject to conditions. Among other things, the Commission rejected El Paso's proposal for daily scheduling penalties.

4. Timely requests for rehearing of the March 23 Order were filed by Arizona Corporation Commission (Arizona Commission); Arizona Public Service Company (APS); Blythe Energy, LLC (Blythe); El Paso Electric Company (El Paso Electric); El

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<sup>4</sup> *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 (2005) (July 29 Order).

<sup>5</sup> In its June 30, 2005 filing, El Paso proposed three sets of tariff sheets: primary tariff sheets that reflected the termination of the applicability of Article 11 of the 1996 Settlement, first alternate tariff sheets that reflected the continued applicability of Article 11 for the eligible former full requirements shippers, and second alternate tariff sheets that reflected the continued applicability of Article 11 for all eligible shippers. In the July 29 Order, the Commission accepted and suspended the primary tariff sheets, subject to further Commission order. On March 20, 2006, the Commission issued an order addressing the continued applicability of Article 11 that concluded that the Commission's action in El Paso's Capacity Allocation Proceeding did not abrogate Article 11.2 of the 1996 Settlement. The Commission directed El Paso to refile tariff sheets consistent with this finding.

<sup>6</sup> The implementation date was subsequently postponed to April 1, 2006 and ultimately to June 1, 2006. See delegated letter order dated December 12, 2005, and *El Paso Natural Gas Co.*, 114 FERC ¶ 61,338 (2006). The new services are currently in effect on El Paso's system.

Paso Municipal Customer Group (Customer Group); El Paso; Electric Generation Coalition (Electric Coalition); Enstor Operating Co., LLC (Enstor); Gila River Power, L.P. (Gila); Indicated Shippers; Mirant Americas Energy Marketing, LP (Mirant); Pacific Gas and Electric Company (PG&E); Phelps Dodge Corporation and Apache Nitrogen Products, Inc. (Phelps Dodge); Salt River Project Agriculture Improvement and Power District (Salt River); Southern California Gas Company and San Diego Gas and Electric Company (SoCalGas); Southwest Gas Corporation (Southwest Gas); Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas Service); and UNS Gas, Inc. (UNS).

5. In addition, American Public Gas Association (APGA) filed a motion to intervene out of time in this proceeding and a request for rehearing. Because the Commission is dismissing the requests for rehearing as moot, we deny intervention and will not address APGA's pleading.

6. On May 31, 2006, the Commission issued an order rejecting a filing El Paso made in compliance with the March 23 Order.<sup>7</sup> Requests for rehearing of the May 31 Order were filed by El Paso and El Paso Electric in Docket No. RP05-422-015. On June 26, 2006, El Paso submitted a filing in Docket No. RP05-422-014 in compliance with the May 31 Order. Protests to the June 26 filing were submitted by Texas Gas Service and Southwest Gas.

7. On December 6, 2006, El Paso filed its Rate Case Settlement which, with certain exceptions, resolved all the issues set for hearing and technical conference in this proceeding. The settling parties were not able to reach agreement with regard to resolution of issues relating to the applicability of Article 11.2 of the 1996 Settlement to the rates in this proceeding, the determination of Southwest's billing determinants subject to Article 11.2 and, with limited exceptions, the MDO/MHO issues. The Rate Case Settlement further leaves pending before the Commission the requests for rehearing of the March 23 Order on Technical Conference and the March 20 Order on Post-Settlement Issues, as well as compliance filing protests related to the orders.<sup>8</sup> The Rate Case Settlement provides that any Commission ruling on the merits of these filings will be effective prospectively at the end of the term of the Settlement. Among other things, the Settlement also eliminates the daily variance charge and requires El Paso to file status

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<sup>7</sup> *El Paso Natural Gas Co.*, 115 FERC ¶ 61,280 (2006) (May 31 Order).

<sup>8</sup> Filings include protests in Docket No. RP05-422-014 (filing in compliance with the May 31, 2006 Order Rejecting Compliance Filing) and requests for rehearing of the May 31 Order in Docket No. RP05-422-015.

reports with the Commission regarding the pending unresolved MDO/MHO issues until these issues are resolved.<sup>9</sup>

## **II. Request to Act on Pending Requests for Rehearing**

8. On November 13, 2007, the Omnibus Shipper Group<sup>10</sup> filed a request that the Commission act on the pending requests for rehearing of the March 20 and March 23 Orders. The Omnibus Shipper Group states that Commission action on the pending legal issues would go a long way to adding stability and would “clear the deck” so that the new rate filing El Paso is obligated to file June 30, 2008, can be submitted and reviewed by the parties with a clear understanding of the “rules of the road” on El Paso’s system. The Omnibus Shipper Group states that it has no interest to disturb or modify any provisions in the Rate Case Settlement.

9. Southwest filed an answer, supporting the requested action on all rehearing issues as long as that action does not delay resolution of the issues, such as MDOs/MHOs, expressly reserved by the Rate Case Settlement for further Commission decision.

10. El Paso answers that all of the relevant disputed issues have been resolved for the term of the Settlement and that there are no longer any relevant issues in dispute in the docket. El Paso concludes that the requests for rehearing are thus moot and should be dismissed. El Paso argues that the issues pending rehearing are no longer live issues since the Rate Case Settlement fully resolved all relevant rate and service issues. El Paso further asserts that the issues will not become joined again until it files its new rate case on June 30, 2008. El Paso contends that the Omnibus Shipper Group is incorrect that the issues on rehearing will necessarily be identical to the issues in the next rate case, and therefore El Paso asserts that its future rate case is the appropriate venue for determining future rate issues.

11. *Commission Determination.* The Commission will dismiss the pending requests for rehearing of the March 23 Order, with the exceptions discussed below. The Commission agrees that the majority of the pending issues are rate and service issues that are resolved by the Rate Case Settlement for the term of the Settlement. Because it cannot be known at this time what rate or tariff modifications El Paso will propose in the forthcoming general rate case filing in June 2008, and whether these pending rehearing

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<sup>9</sup> In addition to requests for rehearing and comments filed in the above-referenced dockets, a series of protests, comments, answers, and answers to answers was filed by various parties addressing the MDO/MHO issues.

<sup>10</sup> For purposes of this filing, the Omnibus Shipper Group consists of Apache Nitrogen Products, Inc.; Blythe; El Paso Electric; Enstor; Indicated Shippers; Mirant; Phelps Dodge; PNM; Texas Gas Service; UNS; and Tucson Electric Power Co.

issues will arise in that filing, it would not be an efficient use of the resources of the Commission and the parties to address issues that may not be relevant in the future rate case. The Commission will, however, address herein the pending requests for rehearing relating to MDO/MHO issues, for those issues have not been resolved by the Rate Case Settlement. In addition, given El Paso's filing to propose a daily scheduling penalty in Docket No. RP07-511-000, the Commission will affirm its rejection of the daily scheduling penalty and clarify herein its rejection of the similar daily variance charge in the March 23 Order.

12. Furthermore, the Commission will address the pending requests for rehearing of the March 20 Order relating to Article 11.2 issues in a separate order because those issues involve the Commission's interpretation of Article 11.2 of the 1996 Settlement as it relates to El Paso's current and future rates and services. While any Commission rulings on the merits of the Article 11.2 issues will be effective prospectively at the end of the term of the Rate Case Settlement, resolution of these issues will provide clarity to the parties in advance of the next rate case filing.

### **III. Discussion**

13. The Rate Case Settlement resolved all the issues set for hearing and technical conference in this proceeding, with the exception of the Article 11.2 and MDO/MHO issues. The Commission will address the Article 11.2 issues in a separate order. The MDO/MHO and daily variance charge issues will be clarified and addressed below.

#### **A. Daily Variance Charge**

14. Prior to its filing in this proceeding, El Paso had several penalties in place on its system. It had a daily overrun penalty that applied to quantities above the contract level. In addition, pursuant to the terms of a settlement in El Paso's Order No. 637 proceeding,<sup>11</sup> El Paso had a daily imbalance penalty that applies during Strained Operating Conditions (SOC) and Critical Operating Conditions (COC). Also pursuant to the Order No. 637 Settlement, El Paso's tariff contains procedures for treating monthly imbalances, and includes mechanisms for shippers to resolve monthly imbalances before they are cashed-out, including netting and trading, and make-up or pay back.

15. In its June 2005 rate filing, as amended by its November 4, 2005 filing, El Paso proposed to add to these existing penalty provisions the following new penalties: daily and hourly unauthorized and authorized overrun charges for takes in excess of scheduled

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<sup>11</sup> *El Paso Natural Gas Co.*, 109 FERC ¶ 61,292 (2004).

quantities, a daily scheduling<sup>12</sup> penalty, and an hourly scheduling penalty that would apply in both critical and non-critical periods.<sup>13</sup> El Paso also proposed a daily (but not hourly) variance penalty that would apply in both critical and non-critical situations. The March 23 Order found that El Paso had incorrectly labeled its overrun charges, because the industry commonly refers to overruns as takes in excess of a contractual limit, while takes in excess of scheduled amounts, but within contractual limits, have historically been viewed as scheduling variances “that may be subjected to scheduling penalties.”<sup>14</sup> The March 23 Order rejected the newly-defined daily scheduling penalties, stating that El Paso already has sufficient deterrents in place through its other daily and hourly penalties.<sup>15</sup>

16. El Paso sought rehearing of the Commission’s rejection of the daily scheduling penalty and clarification that the Commission did not reject its daily variance charge. El Paso Electric sought clarification that the order required El Paso to remove the daily variance charge.

17. *Commission Determination.* The Commission affirms its finding in the March 23 Order that El Paso’s existing and newly-authorized penalties (e.g., critical daily scheduling penalties, daily and hourly overrun penalties, MDO and MHO penalties) appear to be sufficient to ensure proper scheduling. Also, El Paso’s current service and penalty structure, recently agreed to in the Rate Case Settlement, creates a situation where non-critical daily penalties would be difficult to minimize or avoid. The Commission clarifies that the March 23 Order intended to reject the daily variance charge and scheduling penalty, and denies El Paso’s request for rehearing of the rejection of the daily scheduling penalty. The Commission clarifies that in the March 23 Order, the daily variance charge was rejected for the same reason that the daily scheduling penalty was rejected. As discussed more fully in the concurrent Order Following Technical Conference in Docket No. RP07-511-000, El Paso already has in place a daily imbalance penalty that applies in critical conditions as well as new hourly penalties and

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<sup>12</sup> El Paso initially proposed an overrun rate for quantities exceeding scheduled quantities. The March 23 Order required El Paso to revise its definition of “overrun” to properly reflect within contract “overruns” as scheduling penalties.

<sup>13</sup> The variance charge would apply in situations where a shipper took quantities that were less than scheduled quantities. The scheduling penalty would apply in situations where a shipper took quantities that exceeded scheduled amounts.

<sup>14</sup> See March 23 Order at P 91.

<sup>15</sup> *Id.*, at P 118.

unauthorized overrun penalties, which the March 23 Order found provided sufficient incentives for El Paso's shippers to use the system responsibly.<sup>16</sup>

## **B. MDOs/MHOs**

### **1. Background**

18. The March 23 Order accepted El Paso's proposal to modify certain of its existing delivery codes (D-Codes),<sup>17</sup> to establish prerequisites to the use of D-Codes, and to define the maximum delivery obligation (MDO) and maximum hourly obligation (MHO) at physical delivery meters within D-Codes.<sup>18</sup> Under El Paso's proposal, transportation service is contracted and administered at the meter level unless a delivery point operator (DP Operator) has a Rate Schedule Operator Point Aggregation Service (OPAS) agreement. An OPAS agreement allows meter level business transactions to be aggregated to a D-Code level in the TSA. Thus, shippers can utilize D-Codes for contracting and scheduling gas, and the shipper has flexibility to shift deliveries among its meter points covered by any one D-Code.

19. To allocate shippers' D-Code rights to the meters behind the D-Code, El Paso used a pro rata allocation method similar to that used at certain California delivery points (particularly Topock) in *Amoco*.<sup>19</sup> As a result, the maximum delivery quantity (MDQ) contract rights held at the D-Code equaled the meter level entitlements assigned to meters behind the D-Code. Thus, if a shipper elected not to use D-Codes, the initial allocation would be used to establish those meter level MDQs. Subsequent to this initial allocation,

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<sup>16</sup> The Rate Case Settlement removed the Daily Variance Charge from El Paso's tariff. In addition, the Settlement provided that El Paso could file to propose again a daily scheduling penalty, which El Paso filed in Docket No. RP07-511-000. There it proposed a daily scheduling penalty that would apply to takes that are less than scheduled amounts as well as takes that are greater than scheduled amounts.

<sup>17</sup> A D-Code is an identifier used to describe an area on El Paso's system where gas is to be delivered. D-Codes were created to allow the aggregation of multiple physical delivery meters serving small loads within a specific geographic area.

<sup>18</sup> El Paso states that an MDO would define the maximum amount of gas that a shipper would be entitled to receive from El Paso at a specific meter within a D-Code on a primary firm basis at the minimum delivery pressure defined in the shipper's TSA. An MHO is the maximum hourly obligation, derived from the MDO.

<sup>19</sup> *Amoco Energy Trading Co. v. El Paso Natural Gas Co.*, 93 FERC ¶ 61,060 (2000), *order on clarification*, 93 FERC ¶ 61,222 (2000), *order on reh'g*, 94 FERC ¶ 61,225 (2001) (*Amoco*).

shippers indicated a desire to shift MDQ distribution among meters within certain D-Codes. In December 2005, El Paso conducted an open season that culminated in a February 16, 2006 MDQ Adjustment Report that reflected shippers' full contract rights at a meter level that were equal to those same rights at a D-Code level.

20. El Paso filed a series of MDO Reports chronicling the status of the MDO allocation process. As part of the implementation of OPAS agreements in April 2006, El Paso established an open season process for shippers to request MDOs and MHOs greater than those defined in their OPAS agreements. El Paso also adjusted MDO levels where possible to at least 110 percent of the greater of the non-coincidental peak volumes for the location reported in El Paso's FERC Form 567 for 2004 or 2005. El Paso states in its July 24 MDO Report that, in general, and where possible, the new MDOs are at least the greater of 10 percent above the previous meter MDO or the demonstrated (nameplate) maximum burn capability of the meter location. The new MDO levels were reflected in amended OPAS agreements effective August 1, 2006. El Paso continued to entertain requests for increased MDO levels and stated that it would approve such requests on a not unduly discriminatory basis if the Delivery Point Operator demonstrates an adequate need and if El Paso determines that it can accommodate the additional MDO quantities without adversely affecting its ability to provide service to other similarly situated shippers.

21. In addition to certain requests for rehearing and/or clarification, a series of comments, protests, and answers have been filed by a variety of shippers and El Paso regarding the issue of MDOs/MHOs. Those issues are discussed below.

## **2. Defining Delivery Point Capacity Rights**

22. UNS asserts that the Commission erred in its statement that shippers do not have firm rights at each delivery meter within a D-Code. UNS argues that it has firm rights (though not unfettered) at each delivery meter within its D-Codes pursuant to the Critical Meter Level Agreement between UNS and El Paso. UNS requests that the Commission grant rehearing and find that UNS has firm rights (although not unfettered) at each delivery meter within its D-Codes.

23. Southwest argues that the March 23 Order required El Paso to define shippers' firm lateral and delivery point rights to the meter point and that El Paso has failed to do so. Southwest asserts that the Commission acknowledged in the March 23 Order that defining metered delivery point and lateral capacity rights is necessary to restore service reliability, promote competition, preserve economic value, and prevent undue discrimination. Southwest asserts that El Paso's proposal effectively forces it to use OPAS because of the infeasibility of scheduling to multiple meters. Southwest concludes that tying OPAS scheduling flexibility to a shipper's forced relinquishment of its defined MDQs is unreasonable and inconsistent with the March 23 Order.

24. El Paso states that a shipper may choose to hold capacity under its TSA at the physical meters and forgo the use of D-Codes or it may choose to hold and schedule capacity at the D-Code level so long as the operator of the meters within the D-Code has signed an OPAS agreement with MDOs/MHOs to ensure firm service. El Paso states that a shipper is thus free to choose not to contract to the D-Code and schedule to its meters, with each meter having a defined contract amount, an MDQ. El Paso explains that a shipper can then separately release capacity at all meters and schedule secondary and interruptible capacity at those meters when operationally available. El Paso concludes that the Commission unconditionally approved its MDO proposal. El Paso states that Southwest's proposal to define contract rights at the meters would require the complete elimination of D-Codes (and the related flexibility to deliver to multiple points within a D-Code and to hold MDOs that exceed MDQ) and would require all shippers to contract and schedule to the meter.

25. *Commission Determination.* The Commission agrees with UNS that, pursuant to its Critical Meter Level Agreement (which is similar to an OPAS agreement), it has firm rights at each delivery meter within its D-Codes. UNS misreads the March 23 Order, however. Paragraph 164 states that "under the current D-Code structure" shippers do not have firm rights at each delivery meter within the D-Code. This refers to El Paso's system before El Paso's D-Code/MDO proposal was accepted by the March 23 Order. In addition, paragraph 171 describes the situation where a shipper does not have an OPAS agreement. OPAS agreements allow shippers to aggregate meters within a D-Code and to establish firm maximum delivery obligations at each meter that may exceed their MDQ. Thus, the Commission will deny rehearing, but clarify that, as discussed below, shippers have firm rights to meters within D-Codes.

26. Further, the Commission agrees with Southwest that the March 23 Order required El Paso to define shippers' firm lateral and delivery point rights to the meter point. However, the flexibility offered by El Paso's OPAS service to use multiple meters within a D-Code is not a contract right, but offers flexibility above a shipper's contract. As discussed more fully below, the Commission clarifies that shippers have certain firm rights to meters within D-Codes, but not to exceed shippers' MDQs. Southwest's assertion that El Paso's proposal forces it to use OPAS is therefore misplaced.

### **3. Listing MDOs in TSAs**

27. Southwest argues that the Commission should require El Paso to include each shipper's delivery point MDQs in the shipper's TSA without regard to a shipper's decision to execute an OPAS agreement. Southwest asserts that definition of capacity rights at metered points is essential to facilitate the competitive market that the Commission has sought to promote. Southwest states that only by reflecting these rights in TSAs are they releasable and tradable. Southwest contends that there is no precedential, policy, or logical reason to condition the definition of contract rights at the metered delivery points upon the shipper's foregoing OPAS flexibility. Southwest argues

that TSA MDQs would be distinct from any additional MDO flexibility under OPAS. Southwest, supported by APS, states that it will accept the “compromise” discussed with El Paso at the technical conference that the initial allocation of MDOs, as adjusted, should be included in the TSAs.

28. El Paso replies that the “compromise” Southwest refers to is not what El Paso proposed or continues to propose. El Paso states, however, that under any such approach, the MDO quantities set forth in the MDQ adjustment report filed in February 2006 would be what are reflected in the TSAs. El Paso clarifies that, once a new shipper contracts for capacity, El Paso may reduce existing shippers’ MDOs but to levels no lower than the February 2006 adjustment report; El Paso would continue to provide service to affected shippers at their full contracted MDQs. El Paso contends that listing MDOs in TSAs confuses the roles of a shipper delivering to a D-Code and the operator of the points within the D-Code with the effect being to convert MDO quantities from a meter delivery limitation to a contractual delivery entitlement. El Paso asserts that incorporating a no-fee operator service into a shipper’s TSA could result in the hoarding of MDO quantities by existing shippers. El Paso argues that, if a shipper can tie up flexibility within a D-Code without paying for it, a shipper will have an incentive to stockpile as much flexibility as possible, even if it has no current need for such flexibility.

29. PNM takes issue with El Paso’s attempt to characterize the position of certain LDCs as seeking to “hoard” MDO quantities. PNM states that, as El Paso has explained, MDO quantities do not afford shippers any ability to take gas in excess of their contractual MDQs, and extensive sanctions are in place to police such contractual overruns.

30. *Commission Determination.* The Commission will require El Paso to include in the TSAs, the MDQs for individual meters within the D-Codes, but only to the extent that the sum of the MDQs does not exceed the MDQ for the D-Code. As El Paso stated, it will not reduce MDOs below the level of each shipper’s fully contracted MDQ. If, however, El Paso is able to provide higher levels of MDOs at certain meters, such that the aggregate MDOs exceed the D-Code MDQ, those higher levels are appropriately contained in the OPAS agreement and do not reflect an additional contract right. The TSAs need only contain the contract rights at each meter delivery point.

#### **4. MDOs and Pathing Rights**

31. El Paso states that the Commission correctly approved its proposal to change its D-Code system, but should clarify the March 23 Order in several respects. First, El Paso requests that the Commission clarify that the establishment of Rate Schedule OPAS agreements with MDOs will not result in extending firm paths to delivery point meters. El Paso asserts that, in paragraph 159 of the March 23 Order, the Commission stated that El Paso’s proposal would extend firm paths to meter delivery points. El Paso contends that this statement is not accurate if a customer continues to contract to a D-Code. El

Paso states that its MDO proposal was intended to place a defined limit on the amount of volumes that an operator can take at each meter station behind a D-Code, but did not contemplate pathing down to the meter. El Paso explains that, in order to maximize the flexibility to deliver to multiple meters within a D-Code, it did not define paths to each point, but instead assumed the most hydraulically-demanding scenario. El Paso states that, to maximize D-Code flexibility, El Paso delivers gas over the most desirable path within the D-Code in light of prevailing flow patterns and current operational conditions. El Paso explains, in order to path to the meters, it would need to limit the aggregate MDO volumes within a shipper's D-Code to the shipper's contracted volumes at the D-Code, thus reducing flexibility within the D-Code. For these reasons, El Paso requests that the Commission clarify that it did not intend to extend pathing to individual meters within each D-Code. El Paso concludes that the Commission unconditionally approved its MDO proposal which did not propose the pathing of MDOs/MHOs.

32. APS argues that El Paso's allocation of contract rights to the D-Codes is consistent with the tariff sheets accepted by the March 23 Order. Those tariff sheets do not require El Paso to define contract paths on laterals between the D-Code and each delivery meter. Southwest states that defined meter level MDQs and defined lateral capacity contract rights do not require physical pathing of El Paso's laterals. Southwest asserts that contract paths must be extended from the D-Code point to the physical delivery meters.

33. *Commission Determination.* The Commission will grant El Paso's request for clarification, in part. We clarify that El Paso's MDO proposal does not require El Paso to provide physical pathing rights to the meter delivery points. While the MDO proposal does provide firm rights for delivery at the meter delivery points behind the D-Codes that shippers formerly did not have, defining physical paths to each delivery point would decrease El Paso's ability to maximize D-Code scheduling flexibility. This is consistent with our finding that shippers have defined contract rights at meters within D-Codes; however, we find that shippers also have contract paths to those meters.

## **5. Termination of OPAS Agreements**

34. El Paso also requests clarification relating to the termination of Rate Schedule OPAS agreements. The March 23 Order approved section 2.5(f) of Rate Schedule OPAS, which allows El Paso to terminate an OPAS agreement if a shipper refuses to reform a D-Code that could degrade the firm rights of other shippers or firm service reliability, but the Commission required that El Paso modify its tariff to provide an affected shipper/operator with operational reasons prior to terminating an OPAS agreement.<sup>20</sup> El Paso does not object to making this change, but requests two clarifications. El Paso states that, because an OPAS agreement is dependent on the underlying TSA, there are other reasons that an OPAS agreement could be terminated or

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<sup>20</sup> March 23 Order at P 188.

amended, such as when a shipper terminates the TSA or steps down or reduces its MDQ under its TSA. El Paso seeks clarification that nothing in the March 23 Order was intended to limit El Paso's ability to terminate or amend OPAS agreements under these circumstances. In addition, El Paso states that an OPAS agreement could terminate by its own terms. El Paso requests clarification that it is only required to provide an affected shipper/operator with operational reasons for terminating an OPAS agreement with respect to terminations that occur within the term of the OPAS agreement and that El Paso is not required to provide such notice upon the expiration of the one-year term of the OPAS agreement.

35. *Commission Determination.* The Commission clarifies that El Paso is not required to provide notice of the operational reasons for terminating an OPAS agreement when it terminates by its own terms. Notice of operational reasons for termination is only necessary when El Paso seeks to terminate an OPAS agreement before the end of the agreement, pursuant to section 2.5(f). We further clarify that the March 23 Order did not modify El Paso's tariff provisions governing its ability to terminate or amend OPAS agreements. The March 23 Order stated that we "will not modify the termination provisions but require the tariff in section 2.5 to be modified to provide the affected shipper with the operational reasons for such termination prior to the termination."<sup>21</sup> Thus, to the extent a change in a shipper's underlying TSA results in changes in system operations, as described in section 2.5(f), El Paso would be required to provide notice of operational reasons for termination if El Paso and the shipper fail to agree to El Paso's proposed revisions to the OPAS agreement.

## **6. OPAS procedures in tariff**

36. Several protestors requested that El Paso clarify ambiguities regarding reduction or termination of OPAS agreements and MDOs and include the termination/reduction criteria in its tariff. Southwest states that El Paso's tariff must clearly reflect any reduction or termination provisions and all parties' rights and obligations. Texas Gas Service contends that El Paso is determining important contractual rights and terms and conditions of jurisdictional service via its Electronic Bulletin Board (EBB) postings in violation of the filed rate doctrine. Municipal Group and UNS assert that El Paso should be required to include the MDO allocation process procedures and guidelines in its tariff for the Commission's review prior to implementation. APS states that El Paso should include in its tariff its standards for awarding increased MDO rights, for requesting construction of lateral capacity, and for cost responsibility of construction. El Paso replies that it makes no sense to include each step of the MDO allocation in its tariff, just as the Commission did not require El Paso to file the steps of the capacity allocation in the Capacity Allocation Proceeding. Texas Gas Service counters that the Capacity

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<sup>21</sup> *Id.*

Allocation Proceeding involved a one-time allocation while new allocations of MDOs will occur as new contracts are signed.

37. *Commission Determination.* The Commission agrees that El Paso need not include each step of its MDO allocation process in its tariff. However, it is not clear from the existing OPAS provisions what circumstances would result in a reduction of MDOs. Section 2.5(d) states that if El Paso determines that “changes in system operations” would result in a D-Code that may potentially impact the firm rights of other shippers, it may revise that D-Code. El Paso should modify those provisions to clarify the general circumstances when it would reduce a shipper’s MDOs (e.g., when new contracts require a reallocation of MDOs) and the parameters for such a reduction (e.g., the level below which MDOs would not be reduced). We will not require El Paso to include provisions in its OPAS Rate Schedule relating to requests for construction of lateral capacity, for such provisions pertaining to construction requests are contained in El Paso’s general terms and conditions.

## **7. MDO and MHO Allocations**

### **a. General**

38. Texas Gas Service contends that the Commission erred in approving El Paso’s MDO proposal without any evidence that the specific MDO/MHO allocations are just and reasonable and adequate to allow shippers to meet their public utility obligations. Texas Gas Service states that, given the inadequate record as to the actual MDO and MHO allocations first identified in El Paso’s October 4, 2005 filing, the Commission should hold the implementation of those limitations in abeyance pending resolution via a full evidentiary hearing of the specific issues of material fact raised by Texas Gas Service and others as to the adequacy of specific MDO allocations.

39. Several shippers contend that El Paso’s allocation is not consistent with the March 23 Order. UNS states that, although the Commission approved the overall MDO concept, it did not have an opportunity to evaluate or approve how El Paso has implemented the MDOs, since El Paso used its EBB to issue MDO implementation notices. UNS further states that it is incorrect to imply that the Commission approved El Paso’s use of its EBB to post its MDO standards. Southwest adds that, while the MDO allocation was filed with the Commission, El Paso did not explain its plan to discriminate among firm shippers in its MDO allocation.

40. Southwest further argues that El Paso’s allocation does not give Southwest sufficient quantities to meet existing service needs. Southwest states that it incurred \$200,000 in MDO penalties in November 2006 and \$1 million in January 2007 even though its takes were within Contract Demand (CD), MDQ, and total MDO/MHO limits and no other shippers were harmed. Southwest alleges that it has adequate CD but is being penalized for using the capacity for which it pays because of inadequate delivery

point flexibility. El Paso replies that Southwest received sufficient MDO quantities but may need to redistribute MDOs to avoid penalties.

41. *Commission Determination.* The Commission will not hold the issue of specific MDO/MHO allocations in abeyance pending the outcome of a hearing. The Commission found that El Paso's MDO/MHO allocation methodology was reasonable. The Commission understands that El Paso's initial MDO and MHO allocation was based on historical experience and that El Paso has since worked with its shippers to adjust MDOs and MHOs to levels that meet their service needs. The Commission found that MDO flexibility is needed and suggested in the March 23 Order that El Paso work with its shippers to allow for re-designations and trades when operationally feasible.<sup>22</sup> The Commission notes that El Paso has since held several open seasons with its shippers pertaining to MDO/MHO allocations and has filed the results in Docket No. RP06-368-000. As indicated in the MDO Reports filed by El Paso and the comments filed by the parties, it appears that many of the individual shipper issues raised in earlier comments have since been resolved. The Commission encourages El Paso to continue to work with its shippers to resolve any remaining MDO/MHO issues. In instances where capacity is insufficient to provide MDO/MHO allocations at the levels requested by shippers, the parties may decide that additional construction is needed.

**b. El Paso's Allocation Methodology**

42. Southwest disagrees with El Paso's MDO allocation process and asserts that it is inconsistent with the March 23 Order. Southwest, Texas Gas Service, and Municipal Group contend that El Paso is unduly discriminating by granting vastly different limits to maximum MDOs/MHOs between electric generators (the maximum is the demonstrated "name plate" maximum burn capability of a location) and other shippers, primarily LDCs (the maximum is 10 percent above the current MDO or 110 percent of MDQ). Texas Gas Service argues that generators are allocated additional MDOs without regard to whether the allocation corresponds to capacity held under contract. Texas Gas Service adds that it is not enough for El Paso to allow shippers to adjust their MDOs when the allocation itself is unfair.

43. El Paso states that LDCs and generators are not similarly situated because of their varying traditional takes at individual delivery meters. Generators tend to have higher takes at more individual meters than LDCs who tend not to shift deliveries among meters as much. El Paso states that its allocation merely gives generators and LDCs the same operationally available flexibility that they enjoyed in the past. El Paso's allocation defined each customer's specific delivery rights based on its traditional takes at individual delivery meters, consistent with the March 23 Order.

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<sup>22</sup> March 23 Order at P 172-173 (2006).

44. APS further notes that El Paso's allocation to generators at installed generation capacity is only if there is no impact on other firm customers. APS asserts that the two generators that share lateral capacity with Southwest (West Phoenix and Ocotillo) were allocated only 59 percent of their maximum burn rates for the winter months because a full allocation would have had an adverse impact on Southwest. APS states that it agreed to work with El Paso and reduce its MDO during the winter months for those plants so that El Paso could satisfy Southwest's requested MDOs.

45. El Paso states that, once the two step allocation is complete, El Paso will consider additional requests for higher MDOs on an individual basis where capacity is available and there is a demonstrated need. MDOs/MHOs should reflect actual need for flexibility along with some limited growth for LDCs who can experience small levels of unexpected increased demand as population or units usage changes.

46. Southwest offers an alternate allocation methodology. Southwest contends that, if El Paso is permitted to impose penalties on take away quantities at D-Code delivery points, then the allocation of this flexibility should be based on cost responsibility as a function of relative service rights. Southwest asserts that such an allocation is consistent with the Commission's "firm is firm" policy and prior Commission orders allocating capacity on El Paso's system at delivery and receipt points. Southwest states that there is no policy justification for favoring electric generators connected with El Paso's system over those indirectly served by an LDC.

47. APS counters that El Paso has allocated delivery point capacity consistent with the March 23 Order. APS states that the first phase of the allocation (allocating MDOs pro rata based on shippers' historical takes) is consistent with the allocation process approved by the Commission in *Amoco*; the MDO allocation is distinguishable from *Amoco* in the subsequent phase (allocating excess lateral capacity) because there was no excess capacity in *Amoco*. APS further states that the March 23 Order (at P 167) refers to equal treatment between mainline and lateral allocation, not for appropriate caps to use for allocation factors. APS asserts that it is not unduly discriminatory to use different caps on the amount of excess delivery capacity allocated to generators and LDCs; capping LDCs at 110 percent allows for significant growth above existing demands while capping generators to the facility's burn rate simply provides sufficient capacity to run all of the generator's capacity at an existing facility.

48. APS argues that, consistent with Southwest's principle of cost responsibility, the shipper's demonstrated willingness to pay for lateral capacity should be factored into the allocation process. APS contends that the capacity attributable to direct funding by shippers should be removed from the system-wide lateral capacity to be allocated among shippers. The remaining capacity should be allocated among all shippers.

49. If the Commission finds El Paso's allocation methodology to be unjust and unreasonable, Salt River proposes an alternate method. Salt River proposes that El Paso

first develop MHOs from hourly contract rights and then use MHOs to calculate MDOs. In this way, the allocation would provide more lateral capacity to a shipper with hourly service than to a shipper who contracts for the same daily volume of FT-1. Salt River asserts that this would be an allocation based on who pays the most, consistent with Southwest's position. Salt River states that allocating delivery point capacity pro rata by MDQ was appropriate for allocation capacity at Topock in *Amoco*, when the affected shippers were paying FT-1 rates, but with hourly services, more capacity is needed for less MDQ.

50. El Paso argues that MDO quantities are not contract rights, as implied by Southwest, and therefore allocative efficiency principles are inapplicable. In El Paso's view, allocation of MDOs is based on the need for flexibility and on historical usage patterns at individual delivery points.

51. Texas Gas Service claims that the arbitrary limits to MDOs set in El Paso's postings are at odds with its assertions to the Commission that "so long as the MDOs requested are within the operator's take-away capacity at each delivery point and such rights do not compromise system integrity or the rights of other shippers, El Paso is willing to establish MDOs independently."<sup>23</sup>

52. Southwest also contends that El Paso's allocation process is discriminatory and prejudices Southwest's future service needs by locking up MDOs above shippers' cost responsibility. Southwest states that, as a consequence, it or new shippers would then be required to pay for lateral upgrades.

53. Texas Gas Service, Municipal Group, and UNS object to El Paso's decision to base MDOs on 2004 or 2005 non-coincidental peak usage. Texas Gas Service asserts that there has been no demonstration that basing allocations on these non-weather normalized flows will allow shippers to meet human needs obligations. Texas Gas Service and UNS further state that it is unreasonable to base MDOs on two recent warm winters instead of historical peak usage. Municipal Group adds that, since LDCs contract for expected growth, basing MDOs on historic takes penalizes them for growing into their CDs. In addition, Municipal Group alleges that El Paso has denied requests even though there were no competing claims; Municipal Group concludes that El Paso appears to be reserving MDOs for itself. Municipal Group requests that the Commission require El Paso to grant requested MDOs unless El Paso is unable to provide requested service.

54. PNM claims that the MDO allocation, as it has been implemented, is unnecessarily punitive and contrary to the twin Commission goals of maximizing throughput and allowing penalties only to the extent necessary to prevent the impairment of reliable

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<sup>23</sup> Texas Gas Service cites El Paso's April 24, 2006 compliance filing, Attachment D at 2.

service. Southwest adds that El Paso is required to post all available capacity, including capacity at delivery points. Southwest asserts that El Paso's posted capacity information is insufficient to determine whether El Paso has fully allocated available delivery flexibility in the open season MDO process. Southwest states that it appears that El Paso has withheld some of its MDO flexibility. El Paso replies that the majority of LDCs across the country contract for service at the meter level. El Paso contends that it has already provided significantly more flexibility than most LDCs receive on other pipelines.

55. *Commission Determination.* The Commission finds that El Paso's allocation methodology is reasonable. First, El Paso's proposal to establish MDOs and allocate excess capacity to shippers to enhance flexibility among proximate delivery points provides a significant benefit to shippers beyond a simple point to point right. Therefore, we find an allocation that provides shippers with these extended rights offers positive benefits for shippers. Here we find that El Paso utilized a methodology similar to that used in *Amoco* and in the Capacity Allocation Proceeding for its initial allocation of MDOs equal to D-Code MDQs for each shipper.<sup>24</sup> MDOs were allocated among a shipper's meter points based on recent historical takes, similar to the Capacity Allocation Proceeding approach. El Paso then allowed shippers to adjust those MDO levels among their meters in the MDQ Adjustment process. We find that the allocation represents a reasonable distribution of capacity amounts based on customer historical deliveries to the grouping of delivery points. Further, the fact that El Paso entertained participation by shippers, in the form of requests for increased MDO levels above the initial allocation, further demonstrates flexibility by El Paso in allocating remaining capacity. While there may be more than one reasonable allocation method, the commenters have not shown that El Paso's allocation methodology is unjust and unreasonable. For these reasons, the Commission therefore finds that El Paso's MDO allocation methodology is just and reasonable.

## **8. MDOs and Contributions in Aid of Construction**

56. APS, supported by the ACC, argues that the Commission erred in the March 23 Order by failing to address APS's argument that contributions in aid of construction should be considered as a factor in allocating MDO rights. APS requests, on rehearing, that the Commission address this issue and be mindful that APS is not, as asserted by El Paso, claiming that such contributions entitle APS to a minimum pressure guarantee.

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<sup>24</sup> *El Paso Natural Gas Co.*, 99 FERC ¶ 61,244 (2002), 100 FERC ¶ 61,285 (2002), *order on reh'g*, 104 FERC ¶ 61,045 (2003), 104 FERC ¶ 61,044 (2003), *order on reh'g*, 106 FERC ¶ 61,233 (2004), *aff'd*, *Arizona Corporation Commission v. FERC*, 397 F.3d 952 (2005), 115 FERC ¶ 61,259 (2006) (Capacity Allocation Proceeding).

57. APS asserts that its expenditures should be given weight in determining whether El Paso's allocation equal to burn rates is unduly discriminatory in favor of Southwest, particularly given that El Paso reduced APS's MDO at West Phoenix in order to protect its ability to serve Southwest, when APS paid \$8.8 million to upgrade the West Phoenix lateral. Southwest replies that there is no support for a preferential allocation that is disproportionate to APS's relative transportation contract cost responsibility.

58. *Commission Determination.* In the March 23 Order, the Commission accepted El Paso's MDO proposal as reasonable. El Paso's MDO allocation is based on historical takes and shippers' requests for modifications to meet current needs. The Commission finds that a shipper's contribution in aid of construction relates to the financing of facilities and is therefore separate from the MDO allocation process. Whether a shipper provided contributions in aid of lateral upgrade construction does not give that shipper any preference in the MDO allocation process. The Commission therefore denies APS's request for rehearing.

## **9. FT-2 Service**

59. The Municipal Group contends that MDOs are appropriate for Rate Schedule FT-2 (full requirements) service only when a lateral is full, which currently applies in only one instance. The Municipal Group states that most FT-2 shippers are adjacent to the mainline and that MDOs for these shippers serve no purpose. The Municipal Group further states that there is less justification for MHOs. FT-2 shippers have hourly rates of 150 percent of the 1/24 ratable flow, but MHOs are set at 1/24 of 110 percent of MDQ. Since FT-2 shippers are full requirements shippers, they have no CD and no ability to increase a CD to increase MDOs/MHOs. The Municipal Group concludes that the Commission should reject MDOs for FT-2 service or award MDOs that accommodate the full requested service.

60. El Paso replies that there is no conflict between MDOs and FT-2 service. El Paso states that it could require FT-2 shippers to schedule at the meter level because D-Codes are not required by Commission policy and FT-2 shippers are required to schedule their full requirements on a daily basis. El Paso states that FT-2 shippers must agree to MDOs so that, for reliability reasons, El Paso can know their maximum take-away quantity at individual delivery meters. El Paso concludes that, if FT-2 shippers do not have MDOs, they could take an unlimited quantity at an individual meter up to 10,000 Dth (the maximum service allowed for FT-2 service) without incurring an MDO penalty, potentially jeopardizing service to other shippers.

61. *Commission Determination.* The Commission finds that, while it is reasonable for El Paso to set maximum take-away quantities at each delivery meter, the unique qualities of the FT-2 service argue against a rigid application of the MDO and MHO requirements for these shippers. Rate Schedule FT-2 service is full requirements service that is available to small shippers who require less than 10,000 Dth per day. Under full

requirements service, El Paso is required to provide the full requirements of a FT-2 shipper each day, and a FT-2 shipper is required to contract for all of its gas requirements from El Paso. As a result, FT-2 shippers have no MDQs in their TSAs; El Paso must reserve capacity for these small FT-2 shippers based on projected needs, not on contracted quantities. El Paso argues that, without MDOs, FT-2 shippers could take unlimited quantities at an individual meter, potentially jeopardizing service to other shippers. El Paso has provided no support for this allegation. Given that most of these shippers are very small and are located adjacent to the mainline, it is unreasonable to apply restrictive MDOs to FT-2 shippers unless necessary to ensure firm service to other shippers. The Commission finds here that El Paso should continue to develop MDO/MHO levels for the FT-2 service that provide sufficient enough flexibility for the FT-2 shippers within necessary restrictions to ensure firm service for other shippers.

#### **10. Meters Lacking Measuring Equipment**

62. Texas Gas Service states that the Commission erred in failing to find unjust and unreasonable El Paso's proposal to apply the hourly usage profile of metered points to unmetered points within a D-Code, to determine whether a shipper is taking gas in excess of its hourly rights. Texas Gas Service states that, on rehearing, the Commission should acknowledge that there has been no showing that the metered and unmetered points will have similar load profiles; for example, one may be a residential load while the other is an irrigation load with a very different load profile. Texas Gas Service therefore requests that the Commission reject El Paso's proposal to allocate volumes to unmetered points based on the load profile of metered points.

63. PNM states that it is unjust and unreasonable for El Paso to apply a profiling approach in cases where there is no safe harbor and where the penalty applies to meters behind D-Codes. PNM contends that El Paso's profiling proposal violates the Commission's general policy that a pipeline may not assess a daily penalty at a point that lacks electronic measurement.<sup>25</sup> PNM further asserts that the proposal violates the Commission's Order No. 637 penalty policy that pipelines must afford shippers greater information regarding their imbalance status; if a delivery point lacks daily or hourly measurement, then the customer has no way to know in real time if its takes are in excess of tariffed limits and cannot alter its behavior to prevent such results. PNM concludes that this presents an unavoidable penalty risk. PNM further asserts that the points with no measurement equipment are small points at which measurement has been determined to be unnecessary; there is thus no system reliability interest in assessing MDO penalties at those points. PNM requests that the Commission prohibit El Paso from assessing either daily or hourly penalties or charges at delivery points that lack electronic measurement equipment.

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<sup>25</sup> PNM cites *Williams*, 65 FERC ¶ 61,221 at 62,025, n.38 (1993).

64. El Paso replies that it agrees, upon making an appropriate tariff filing and obtaining Commission authorization, not to impose MHO penalties under an OPAS agreement at the meters that have no hourly measurement equipment, subject to the restriction that El Paso is free to add hourly measurement equipment at any time, after which MHO penalties will apply. El Paso states that it has daily measurement at virtually all its meters so MDO penalties will apply.

65. PNM disagrees with El Paso that is not required to eliminate MDO or MHO penalty responsibility for non-measured points until such time as it files, and the Commission accepts, new tariff sheets. PNM contends that, as El Paso itself has asserted, it has a refund obligation with respect to any penalties at issue in this proceeding.<sup>26</sup> PNM requests that El Paso be required to make this tariff filing at the earliest possible time. PNM further disagrees with El Paso's statement that "virtually all" its meters have daily measurement. PNM provided a list of its meters that lack telemetry or other daily or hourly measurement. PNM explains that many of these points are not individual meters but aggregations of multiple individual PNM meters at small customer points of delivery, including schools and farm taps. PNM states that these meters are read by PNM on site on a monthly basis; PNM then transmits the data to El Paso. PNM, UNS, and Tucson Electric request that the Commission prohibit El Paso from assessing daily or hourly charges and penalties for takes at small volume delivery points that lack hourly and daily measurement equipment.

66. *Commission Determination.* The Commission will grant Texas Gas Service's request for rehearing. It is unjust and unreasonable for a pipeline to assess daily or hourly charges at delivery points that lack equipment to measure on a daily or hourly basis. El Paso has agreed to modify its tariff to not impose MHO penalties under an OPAS agreement at meters that lack hourly measurement equipment. While El Paso asserts that "virtually all" meters have daily measurement, that statement acknowledges that not all meters have daily measurement. The Commission will require El Paso to file to modify its tariff to exempt from MHO and MDO penalties under OPAS agreements any meters that have no hourly and/or daily measurement equipment. If El Paso adds such equipment in the future, the exemption would no longer apply. As El Paso acknowledges, it has a refund obligation for any MHO or MDO penalties improperly assessed prior to this order.

## **11. MDOs and future facility construction**

67. PNM states that, if El Paso's failure to assign sufficient MDOs to shippers to meet their historical, demonstrated firm needs is due to insufficient facilities to support this service, El Paso should remedy this problem of service unreliability immediately by identifying all points where it lacks sufficient facilities and developing a plan to construct

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<sup>26</sup> PNM cites 116 FERC ¶ 61,114 at P 4.

the necessary facilities. PNM requests that El Paso waive any MDO penalties at these points and defer the issue of cost responsibility for the facilities to the next rate case. El Paso replies that it has no obligation to construct facilities at its own expense. El Paso states that the Commission confirmed that shippers have no firm rights beyond the D-Code and that service beyond the D-Code is only provided on an operationally-available basis.

68. *Commission Determination.* The Commission will not require El Paso to construct facilities at its own expense. El Paso may only sell service for which it has sufficient capacity. An MDO in excess of a shipper's D-Code MDQ is not a contract right, as discussed above, but provides flexibility free of charge pursuant to an OPAS agreement. El Paso's inability to provide MDOs in excess of contract MDQs for its shippers is not an indication that El Paso has insufficient capacity to provide contracted service levels. El Paso's MDO provisions have been implemented to increase the operational reliability of its system while maintaining a level of flexibility that does not impact service to other firm shippers. Increasing reliability on certain lateral facilities may result in reduced flexibility. Whether to construct additional lateral capacity, and who should pay for those facilities, is a decision made between El Paso and the shippers requesting additional MDO flexibility.

## **12. MDOs and IT/Third party and Flexible Points**

69. Texas Gas Service states that the Commission erred in the March 23 Order by failing to require El Paso to revise its proposed OPAS Rate Schedule to be consistent with the Commission's flexible point policies given that the proposed OPAS language would penalize any secondary firm or interruptible volumes at a delivery point. Texas Gas Service states that penalizing all gas in excess of a shipper's MDO or MHO that is limited to an allocation of primary firm rights is contrary to the Commission's flexible point policies and is patently unjust and unreasonable. Texas Gas Service asserts that in *Gulfstream Natural Gas System, L.L.C.*,<sup>27</sup> the Commission rejected limitations on hourly flows at secondary points as inconsistent with the Commission's flexible point policy.

70. El Paso responds that in the great majority of cases, shippers will have flexibility to use interruptible and alternate firm service above their primary firm contract rights up to the point operator's stated MDO.<sup>28</sup> El Paso notes that MDOs do not restrict shippers' rights to use alternate or interruptible services and that these services are available to shippers up to the capacity of the system.

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<sup>27</sup> Texas Gas cites *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,018 at P 36 (2002)(*Gulfstream*).

<sup>28</sup> See p. 3 of Attachment C to El Paso's June 12, 2006 compliance filing in Docket No. RP05-422-014.

71. Texas Gas Service states that El Paso's response is inadequate and inconsistent with the Commission's direction to El Paso in the March 23 Order (at P 190) to address the concerns with consistency between MDOs and flexible point policies. Texas Gas Service notes that at the technical conference, El Paso suggested that shippers who seek to use interruptible transportation or have a third party gas flow at a point should remove that point from the D-Code in order to schedule the point on an individual basis. Texas Gas Service states that El Paso's suggestion is infeasible. Texas Gas Service asserts that it is difficult to understand how expanding the number of points needing individual scheduling will help matters.

72. UNS further contends that the Commission erred in the March 23 Order by denying its requested clarification that IT volumes should be included within an MDO since it is a point aggregation service for which penalties can be assessed and not a firm service. In the March 23 Order, the Commission ruled that, regarding UNS's requested clarification of section 2.5(a), no further clarification was necessary. Section 2.5(a) provides that:

The MDO and the MHO for a delivery point meter shall not exceed the meter capacity at that delivery point or the upstream capacity available *on a firm basis* to service that delivery point meter (emphasis added).

73. UNS argues that it should be able to establish the MDO and the MHO for a delivery point meter at a level that will cover not only UNS's firm contract service needs but also the firm and interruptible needs of other shippers behind UNS's system.

74. Southwest alleges that El Paso's allocation creates different rules and costs for direct shippers versus indirect shippers with the result that one class of customers (direct generators) is allowed undue preference with additional MDO flexibility and larger D-Codes. El Paso replies that its allocation gives LDCs and generators materially the same operationally available flexibility they enjoyed in the past.

75. PNM contends that El Paso's requirement that the MDO for a delivery point cannot exceed the MDQ for the D-Code unnecessarily limits flexibility to use interruptible or have third-party deliveries. UNS adds that El Paso has not included sufficient capacity for those meters where third-party on-system customers take delivery behind LDCs. UNS concludes that it is unreasonable for these normal day-to-day gas transactions, which are scheduled and confirmed by El Paso, to result in penalties to the LDC. PNM asserts that El Paso's remedy, to remove the delivery point from the D-Code, deprives the shipper of the administrative convenience and flexibility of the D-Code system. Southwest adds that El Paso's allocation is anti-competitive because it hinders releases to end users on its system. Southwest alleges that, if the generation behind Southwest contracted directly with El Paso, it would increase the MDO at the point.

76. *Commission Determination.* The Commission finds that El Paso's proposal is consistent with the Commission's flexible point policy. The MDO and MHO at each meter delivery point are not limits to service within an individual rate schedule but represent the maximum volume that El Paso is obligated to deliver at that meter under any rate schedule(s). Thus, on any given day, the total volumes of gas taken by a shipper, whether firm, interruptible, primary and/or alternate, must not exceed its MDO at a given meter delivery point. Under the Commission's flexible point policy, a firm shipper must be allowed secondary point rights up to its contract demand level at any point in the zone for which it pays a reservation charge to the extent capacity is available. In *Gulfstream*, the Commission found that Gulfstream's proposal to impose an across-the-board limitation on hourly flows at secondary points violated the flexible point policy.<sup>29</sup> Here, El Paso makes no such limitations on secondary point rights. Shippers are free to move to alternate points as long as their total takes at those points are within the MDOs and MHOs of those points. The Commission therefore will deny Texas Gas Service's request for rehearing.

77. The Commission will also deny UNS's request for rehearing. MDO and MHO levels are similar to capacity limits. As stated in section 2.5(a), the MDO and MHO levels at a delivery point cannot exceed the available firm capacity to serve that delivery point. They are the maximum delivery levels that El Paso is obligated to provide without the potential for adverse impact to other firm service. The MDO and MHO levels represent the total amount of service (firm and/or interruptible) that can be provided at a specific delivery meter. Any service above the MDO or MHO levels, whether firm or interruptible, is subject to a penalty because it threatens the firm service of other shippers. In addition, sections 2.7 and 2.8 address alternate firm and interruptible transportation at meter delivery points. These sections provide for the Delivery Point Operator to designate meters at which alternate firm or interruptible service will be taken, and give the Delivery Point Operator the option of electing an alternative set of MDOs/MHOs to apply depending on the level of confirmed alternate firm and/or interruptible service on a given day. The Commission clarifies that section 2.5(a) does not preclude a shipper from including IT volumes in its MDO or MHO. As a result, it is expected that MDO allocations will take into account expected levels of alternate firm and/or interruptible transportation at meter points, where operationally feasible.

The Commission orders:

(A) The requests for rehearing in the captioned proceedings are generally dismissed as moot, as discussed in the body of this order.

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<sup>29</sup> *Gulfstream* at P 36.

(B) The revised tariff sheets proposed in Docket No. RP05-422-014, and listed in the Appendix, are superseded by the Rate Case Settlement and are therefore dismissed as moot.

(C) With respect to MDO issues, rehearing is granted in part and denied in part, as discussed in the body of this order.

(D) El Paso is directed to file revised tariff sheets, within 15 days of the issuance of this order, consistent with the discussion in this order on MDO issues.

By the Commission. Commissioner Spitzer not participating

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Appendix  
El Paso Natural Gas Company  
Docket No. RP05-422-014  
Compliance Tariff Sheets Dismissed as Moot  
Second Revised Volume No. 1-A

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First Revised Sheet No. 28B  
Second Revised Sheet No. 28C  
First Revised Sheet No. 28D  
First Revised Sheet No. 28E  
First Revised Sheet No. 28F  
First Revised Sheet No. 28G  
Sixth Revised Sheet No. 103  
Fifth Revised Sheet No. 104  
First Revised Sheet No. 106  
First Revised Sheet No. 106A  
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Substitute Original Sheet No. 128A  
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Substitute Original Sheet No. 145F.01  
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Appendix  
El Paso Natural Gas Company  
Docket No. RP05-422-014  
Compliance Tariff Sheets Dismissed as Moot  
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First Revised Sheet No. 145K  
Substitute Original Sheet No. 145K.01  
First Revised Sheet No. 145L  
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Substitute Original Sheet No. 147C.01  
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Substitute Original Sheet No. 147D.01  
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Substitute Original Sheet No. 147F.01  
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Appendix  
El Paso Natural Gas Company  
Docket No. RP05-422-014  
Compliance Tariff Sheets Dismissed as Moot  
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Appendix  
El Paso Natural Gas Company  
Docket No. RP05-422-014  
Compliance Tariff Sheets Dismissed as Moot  
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