

108 FERC ¶ 61,062
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company

Docket No. RP04-330-000

ORDER ACCEPTING TARIFF SHEETS

(Issued July 14, 2004)

1. On June 14, 2004, El Paso Natural Gas Company (El Paso) filed revised tariff sheets¹ to add a new section 34 to the General Terms and Conditions (GT&C) of its tariff to establish procedures that would permit the reservation of capacity for future expansion projects. The new tariff provisions describe the process through which El Paso may reserve capacity for future projects and make interim capacity available on a limited basis up to the in-service date of a project. For the reasons set forth below, the revised tariff sheets are accepted, effective July 15, 2004. This order is in the public interest because it is consistent with the Commission's policy of allowing flexibility to meet the needs of the customer and the pipeline, while at the same time ensuring that flexibility occurs without undue discrimination.

Instant Filing

2. El Paso proposes to reserve, under certain conditions, unsubscribed capacity or capacity under expiring or terminating transportation service agreements for future expansion projects. The capacity to be reserved must not be subject to a right-of-first refusal (ROFR) or is subject to a ROFR that the shipper does not exercise. The capacity may be reserved for a future expansion project for a maximum of one year prior to the time El Paso files for certificate authority for construction of the proposed facilities and thereafter until all expansion facilities related to the certificate filing are placed into service. If El Paso does reserve capacity for a future expansion, the certificate application for the new expansion project will include a demonstration that the reserved capacity was available for sale to new shippers and that firm service to existing shippers will not be adversely affected by the expansion.

¹ See Appendix.

3. El Paso will post a notice on its electronic bulletin board notifying shippers when it intends to reserve capacity for a future expansion project. The reservation notice will include a description of the project, quantity of capacity, location, anticipated date of the open season, projected in-service date of the new facilities, and on an ongoing basis, how much of the reserved capacity has been sold on a limited-term basis. El Paso must first post the available capacity at least five business days prior to reserving it for an expansion project and will award the capacity pursuant to section 28 of the General Terms and Conditions of its Tariff. If the expansion project fails to go forward, any capacity reserved for the future project will be reposted as generally available capacity within 30 days of the date that the capacity becomes available, with the exception of any capacity committed to during the interim limited-term basis. Interim transportation service agreements will remain in effect until the formerly anticipated in-service date of the expansion project for which the capacity was reserved.

4. El Paso has revised its ROFR provisions of section 20.16(c) to state that ROFR provisions will not be applicable to interim capacity sold on a limited term basis, in accordance with the reservation of capacity provisions of section 34. El Paso and the shipper may agree to a conditional contractual ROFR that would take effect upon the cancellation of the proposed project for which the capacity was reserved.

Notice, Interventions, Comments and Protest

5. Public notice of the filing was issued on June 17, 2004. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by the Indicated Shippers,² the East of California Shippers (EOC Shippers),³ and El Paso Electric Company (El Paso Electric). MGI Supply Ltd. (MGI Supply) filed comments. On July 8, 2004, El Paso filed an answer to the protests and comments.

² For purposes of this filing, the Indicated Shippers are Aera Energy, LLC; BP America Production Company and BP Energy Company; Burlington Resources Oil & Gas Company LP; Texaco Natural Gas Inc.; ConocoPhillips Company; Coral Energy Resources, LP; and Occidental Energy Marketing, Inc.

³ For purposes of this filing, the 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.

6. All four commenters request that the Commission reject El Paso's filing as being premature since El Paso and its shippers are currently involved in various pending proceedings before the Commission in which the availability and proper utilization of firm capacity on El Paso's system are central issues. Specifically, the commenters assert that the capacity issues under consideration in Docket Nos. RP04-248-000 (imbalance management) and RP04-251-000 (pathing and segmentation issues in El Paso's Order No. 637 compliance filing), as well as the tariff changes in Docket No. RP04-328-000 (standards for capacity sales), must be resolved before the Commission or El Paso's shippers can make informed decisions regarding the appropriateness of the proposals in El Paso's Capacity Reservation Filing.

7. As an example, the EOC Shippers note that El Paso's ROFR provisions, which are one of the tariff sections to be revised under this proposal, include a reference to receipt-delivery point combinations. The EOC Shippers assert that the tariff sections concerning receipt-delivery point combinations will ultimately be developed in the Docket No. RP04-251-000 proceeding, and thus customers are being asked to evaluate a moving target. Similarly, El Paso Electric points out that the Commission in its July 9, 2003 Order in Docket Nos. RP00-336, *et al.*, stated that El Paso must reserve 210 MMcf/day to manage transients, "such as daily and hourly load swings, to provide reliable service to its firm shippers."⁴ El Paso Electric states the issue of transients is particularly relevant because El Paso has proposed more restrictive tolerances and new penalties, including penalties for failure to comply with daily balancing requirements, in its filing in Docket No. RP04-248-000. El Paso Electric contends that in lieu of such tightened tolerances and new penalties, the Commission may determine that El Paso should reserve more than 210 MMcf/day to manage its load swings. Thus, El Paso Electric asserts, the issue of how much capacity El Paso may have to reserve is very much contingent on the outcome of the proceeding in Docket No. RP04-248-000.

8. The Indicated Shippers request the Commission to: clarify that the proposed capacity reservation procedures are subject to the capacity requirements in Docket No. RP00-336-000, *et al.* The Indicated Shippers contend El Paso has not demonstrated that it has adequate capacity to serve its firm shippers, or that its firm shippers would not be impacted by reserving capacity for expansion projects. The Indicated Shippers request the Commission to require El Paso to demonstrate that it has capacity available to be reserved before it actually reserves the capacity for an expansion project, in accordance with the principles underlying the orders mentioned above.

9. Further, the Indicated Shippers request the Commission to clarify that El Paso will not assume displacement capacity when it calculates how much capacity is available to be reserved for future use. Indicated Shippers assert the Commission should assure that, before reserving capacity for expansion projects, El Paso has retained capacity equal to

⁴ 104 FERC ¶ 61,045 at P 78 (2003).

the displacement capacity requirements that El Paso has identified, so that it can serve existing load reliably.

10. The commenters request that El Paso's filing be rejected without prejudice to El Paso's re-filing the proposed tariff revisions upon the resolution of Docket Nos. RP04-248-000, RP04-251-000 and RP04-328-000. The EOC Shippers suggest that at least the Commission should suspend the effectiveness of the proposed tariff language pending the outcome of the proceedings in the related dockets and provide all parties a further opportunity to comment after these related proceedings are concluded.

11. The EOC Shippers, MGI Supply, and El Paso Electric request that certain tariff language be clarified in the event the Commission accepts El Paso's tariff sheets pending resolution of the issues in Docket Nos. RP04-248-000, RP04-251-000 and RP04-328-000. The EOC Shippers request that section 34.1(d) be clarified. Section 34.1(d) provides the following:

When reserving capacity for future expansion projects, El Paso shall first post for bid all of its available capacity prior to the reservation period. El Paso shall post and award available capacity in accordance with sections 28.8 and 28.10 of the General Terms and Conditions *except for the open season posting period which shall be at least five business days for all capacity posted under this section 34.1(d).*

The EOC Shippers assert that the italicized language is awkward and confusing, and suggest the following language:

When reserving capacity for future expansion projects, El Paso shall first post for bid all of its available capacity at least five days prior to the commencement of the proposed reservation period. El Paso shall post and award such available capacity in accordance with sections 28.8 and 28.10 of the General Terms and Conditions.

12. MGI Supply asks the Commission to clarify that, read together, sections 34.1(a) and (b) of El Paso's proposed tariff language would not enable El Paso to reserve capacity for an expansion project for longer than one year before the filing of the application for that project.

13. El Paso Electric requests that El Paso's tariff be further revised consistent with the Commission's action in *Columbia Gulf Transmission Co.*,⁵ where the Commission required Columbia to revise its tariff to provide that its existing customers will not bear

⁵ 100 FERC ¶ 61,133 (2002).

any of the costs of the reserved capacity to which they did not subscribe.⁶ Further, the Commission found that, notwithstanding Columbia Gulf's proposed tariff changes, shippers retain the right to challenge the validity and reasonableness of a capacity reservation in a complaint proceeding. El Paso Electric asserts the same conditions should be required in El Paso's tariff.

Discussion

14. El Paso's revised tariff sheets are accepted effective July 15, 2004. El Paso's proposal to reserve capacity for future expansion projects is consistent with Commission policy. The Commission has previously found that the reservation of capacity in these circumstances will minimize facility construction and associated environmental impacts, will encourage maximum utilization of capacity, and will minimize the rate impact of allocating costs of unsubscribed capacity to existing customers once the pipeline completes the expansion.⁷

15. The commenters assert that circumstances on El Paso's system are unlike those on other pipelines. They argue that because existing shippers' capacity rights on El Paso are still being defined in the pending proceedings involving El Paso's Order No. 637 compliance filing and its imbalance management proposal, it may be premature for El Paso to establish a procedure for reserving capacity for future expansions.

16. Contrary to the assertion of these commenters, the rights of firm shippers to capacity on the El Paso system are clearly defined. In El Paso's Capacity Allocation Proceeding, the Commission ordered changes to El Paso's system operations and capacity allocation methodology to restore reliable firm service on the El Paso system. Among other things, the Commission directed that full requirements service be converted to contract demand service and that specific entitlements be assigned to shippers under their new CD contracts. In addition, the Commission ordered the conversion of system-wide receipt point rights to specified rights at specific receipt points. These changes took effect on El Paso's system on September 1, 2003. Therefore, mainline and receipt point capacity rights are in place on El Paso's system and the capacity rights of its customers are defined. This provides El Paso a basis for determining how much capacity it needs to serve its existing shippers and whether capacity is available for future expansions. As the commenters point out, El Paso and its shippers are addressing issues related to contract paths in El Paso's Order No. 637 proceeding, but the Commission finds that it is not necessary that the system be pathed before approving El Paso's proposal for reservation

⁶ *Id.* at P 13.

⁷ See e.g., Columbia Gulf Transmission Co., 100 FERC ¶ 61,133 (2002); Northern Natural Gas Co., 105 FERC ¶ 61,057 (2003); and Midwestern Gas Transmission Co., 106 FERC ¶ 61,229 (2004).

of capacity for future expansions because it merely establishes a mechanism or procedures for future capacity reservations.

17. Indicated Shippers ask the Commission to clarify that El Paso may not assume displacement of capacity when it calculates how much capacity is available for future use. In its response, El Paso states that the Commission approved the use of displacement capacity on El Paso's system when it accepted El Paso's allocation report, and that a no displacement rule is impractical on a reticulated pipeline system.

18. As the Commission has explained, El Paso assumed the use of displacement when it filed its December 3, 2002 report in the Capacity Allocation Proceeding and the Commission found that that allocation is just and reasonable.⁸ Reliability of service to existing shippers is protected by prior Commission orders. The Commission has held that El Paso may not enter into new firm service contracts unless it can demonstrate that it has capacity available to provide that service without degrading service to existing customers⁹ and further that when new capacity becomes available on its system, El Paso must first offer that capacity to its existing firm shippers before it offers it to a new shipper.¹⁰ These requirements will not be affected by El Paso's proposal. Moreover, if El Paso fails to provide reliable firm service to its existing shippers, it must pay reservation charge credits. The Commission finds that the clarification requested by Indicated Shippers is not necessary or appropriate to protect the firm service rights of service to El Paso's existing shippers.¹¹

19. Indicated Shippers also ask the Commission to require El Paso to demonstrate that it has capacity available to be reserved before it actually reserves capacity for an expansion project. As explained above, the orders in El Paso's Capacity Allocation Proceeding require El Paso to ensure the quality of its firm service and that its actions do not degrade the quality of that service. Further, on June 9, 2004, in Docket No. RP04-328-000, El Paso filed proposed tariff sheets to establish procedures it will use when demonstrating that firm capacity is available for re-sale. On July 8, 2004, the Commission issued an order stating that El Paso's proposed tariff provision was unnecessary in light of the reporting requirements set forth in section 284.13(d) of the Commission's regulations, and required El Paso to adhere to the requirement that it may

⁸ El Paso Natural Gas Co., 106 FERC ¶ 61,083 at P 30 (2004).

⁹ El Paso Natural Gas Co., 99 FERC ¶ 61,244 at 62,012 (2002).

¹⁰ El Paso Natural Gas Co., 104 FERC ¶ 61,045 at P 96 (2003).

¹¹ Section 284.7(3) of the Commission's regulations defines firm service as service that is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service. This regulation does not preclude pipelines from assuming specified levels of backhaul capacity which can increase the pipeline's ability to provide firm service.

not enter into new firm service agreements unless it has capacity available to provide that new service without degrading service to its existing customers.¹²

20. In the July 8, 2004 Order, the Commission noted that under the Commission's regulations, El Paso must post on its internet website equal and timely access to information relevant to the availability of capacity at receipt and delivery points, on the mainline, and in storage fields.¹³ Further, El Paso must post information with regard to each contract for firm and interruptible service.¹⁴ Also, upon the request of any shipper, El Paso must provide its internal analyses demonstrating that it has capacity available to provide new firm service without degrading service to existing shippers.¹⁵

21. Under the Commission's requirements for reserving capacity for future expansions, a pipeline must first post all of its available capacity so that shippers can bid on such capacity.¹⁶ Further, a pipeline is not permitted to set aside or withhold capacity solely for expansion shippers but must provide all parties with the opportunity to bid on available capacity.¹⁷ We believe that these requirements and the Commission's directives in its order on El Paso's filing in Docket No. RP04-328-000, provide adequate safeguards to permit El Paso to establish a mechanism now to reserve capacity for future expansions. Also, our decision to accept El Paso's proposal is based on El Paso's representation that it will demonstrate in its certificate application for any new expansion project that includes such reserved capacity that: (1) the reserved capacity was available for sale to new shippers, and (2) firm service to existing shippers will not be adversely affected by the expansion.

22. Since we are accepting El Paso's filing, we will address the various requests for clarification of certain tariff language contained in El Paso's proposal. The EOC Shippers assert that the language in section 34.1(d) is awkward and confusing and suggest that El Paso adopt the language they propose. The Commission will not require El Paso to revise its tariff as suggested by the EOC Shippers. Section 34.1(d) clearly sets forth the Commission's requirement that capacity must be posted for a minimum of five business days before it is reserved. No further modification is necessary.

¹² El Paso Natural Gas Company, 108 FERC ¶ 61,024 (2004).

¹³ 18 C.F.R. § 284.13(d) (2004).

¹⁴ 18 C.F.R. 284.13(b) (2004).

¹⁵ El Paso Natural Gas Company, 108 FERC ¶ 61,024 at P 22 (2004).

¹⁶ *See e.g.*, Columbia Gulf Transmission Co., 100 FERC ¶ 61,133 at P 9 (2003).

¹⁷ *Id.*

23. MGI Supply asks the Commission to clarify that, read together, sections 34.1(a) and (b) of El Paso's proposed tariff language would not enable El Paso to reserve capacity for an expansion project for longer than one year before the filing of the application for that project. The pertinent provisions read as follows:

34.1(a) Capacity may be reserved up to one year prior to El Paso filing for certificate authority for construction of proposed expansion facilities, and thereafter until all expansion facilities related to the certificate filing are placed into service.

34.1(b) El Paso may only reserve capacity for a future expansion project for which an open season has been or will be held within one year of the date that El Paso posts such capacity as being reserved. El Paso will not, absent Commission approval, accept advance payments to reserve capacity under this section 34.

24. We grant MGI Supply's request for clarification that El Paso can only reserve capacity for one year prior to filing for a certificate. Sections 34.1(a) and (b) when read together provide that capacity may be reserved for only a 12-month period prior to El Paso filing for certificate approval, and that El Paso may only reserve capacity for which an open season for the expansion has been or will be held within one year of the posting of such capacity as reserved. As the Commission explained in *Northern Natural Transmission Co.*, these requirements are sufficient to assure that the reservation of capacity occurs only as part of a realistic expansion plan, while giving the pipeline some flexibility as to the timing of the open season.¹⁸

25. We deny El Paso Electric's request that the Commission require El Paso to revise its tariff to provide that its existing customers will not bear any of the costs of the reserved capacity to which they did not subscribe, consistent with *Columbia Gulf*. On rehearing in *Columbia Gulf*, the Commission found that it was unnecessary for Columbia Gulf to include in its tariff any language concerning shipper responsibility for the costs of the reserved capacity.¹⁹ For the same reasons enunciated in *Columbia Gulf*, we find there is no need for El Paso to include language in its tariff concerning shipper responsibility for the costs of reserved capacity, since the Commission may decide the issue based upon appropriate rate policies without there being such a provision in El Paso's tariff.²⁰

¹⁸ 105 FERC ¶ 61,057 at PP 17-18 (2003). As a practical matter, a pipeline would need to hold an open season either before or shortly after it reserves capacity to ensure adequate time to negotiate with parties interested in the expansion capacity, complete facility design, and complete the certificate application.

¹⁹ 101 FERC ¶ 61,355 at P 26 (2003).

²⁰ *Id.*

The Commission orders:

El Paso's revised tariff sheets listed in the Appendix are accepted effective July 15, 2004.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

FERC Gas Tariff
Second Revised Volume No. 1-A

1st Revised Third Revised Sheet No. 200

Sixth Revised Sheet No. 289

Original Sheet No. 368

Original Sheet No. 369

Original Sheet No. 370

Sheet Nos. 371-399