

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 21, 2006

In Reply Refer To:  
El Paso Natural Gas Company  
Docket No. RP06-369-000

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

Attention: Catherine E. Palazzari  
Vice President

Reference: Non-conforming Rate Schedule Operator Point Aggregation Service  
(OPAS) agreement

Dear Ms. Palazzari:

1. On May 26, 2006, El Paso Natural Gas Company (El Paso) filed a revised tariff sheet<sup>1</sup> and a Rate Schedule OPAS agreement with Salt River Project Agricultural Improvement and Power District (Salt River) for the Commission's review and information as a non-conforming agreement. El Paso requests that the Commission accept the agreement and the revised sheet, effective June 26, 2006. The Commission finds that the Agreement does contain provisions that are material deviations from El Paso's form of service agreement but that these deviations are permissible. The Commission therefore accepts the non-conforming agreement and accepts El Paso's proposed tariff sheet effective June 26, 2006, as proposed.

**Background**

2. On June 30, 2005, in Docket No. RP05-422-000, El Paso filed tariff sheets to implement, among other things, a general system-wide rate change as well as various

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<sup>1</sup> Second Revised Sheet No. 2A to FERC Gas Tariff, Second Revised Volume No. 1-A.

new service rate schedules. By order issued July 29, 2005,<sup>2</sup> the Commission accepted and suspended the tariff sheets to become effective January 1, 2006, subject to conditions and the outcome of the hearing and technical conference. On March 23, 2006, the Commission issued an order on technical conference which accepted, among other things, El Paso's new services to become effective April 1, 2006.<sup>3</sup> On March 29, 2006, El Paso submitted an Offer of Partial Settlement that proposed, among other things, to conditionally waive the implementation of new services until June 1, 2006.<sup>4</sup> The Offer of Partial Settlement also addressed the implementation of the OPAS, which permits El Paso and the delivery point operator to aggregate multiple delivery meters serving that operator into a delivery code for scheduling and accounting purposes.

3. El Paso states that Salt River has executed an OPAS agreement with El Paso that contains a potentially material provision that is not included in the applicable form of service agreement in El Paso's tariff. Paragraph 11 in the OPAS pro forma agreement contains the governing law provision which states that the laws of the State of Colorado will govern the validity, construction, interpretation and effect of the OPAS agreement and of the applicable tariff provisions. El Paso states that Salt River, as a political subdivision of the State of Arizona, is governed by the laws of the State of Arizona and is not regulated by the Commission as a public utility. El Paso states that, accordingly, in recognition of this unique organizational status, Salt River requested that El Paso add the following proviso to paragraph 11:

...any question concerning [Salt River's] status as a political subdivision of the State of Arizona, and any privileges and immunities related to such status shall be determined in accordance with the laws of the State of Arizona except that no such privileges or immunities shall create exceptions to tariff conditions and requirements.

4. El Paso states that the Commission has long recognized that Salt River is a political subdivision of the State of Arizona and that, as such, it is governed by Arizona law. El Paso states that this provision merely clarifies the parties' agreement to use Arizona law to determine any questions regarding this unique status and any privileges and immunities related to such status. El Paso states that, except for this limited exception, Colorado law applies to all matters related to Salt River's OPAS agreement and El Paso's tariff.

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<sup>2</sup> 112 FERC ¶ 61,150 (2005).

<sup>3</sup> 114 FERC ¶ 61,305 (2006).

<sup>4</sup> The Commission accepted the Offer of Partial Settlement by a delegated letter order issued May 30, 2006.

5. El Paso states that the Commission should accept this provision as a permissible non-conforming provision since it is not unduly discriminatory and applies only to Salt River because of its unique status. El Paso further states that the provision does not afford Salt River any substantive transportation rights nor does it affect the rights of other similarly situated delivery point operators.

6. El Paso further states that Exhibit A to the Salt River OPAS agreement is slightly different from the Exhibit A contained on Sheet No. 485C in the OPAS pro forma agreement. El Paso states that these differences are due to informational display and do not constitute material changes. El Paso states that it intends to file to update Sheet No. 485C to make the informational display for Exhibit A consistent with the display for Salt River's OPAS agreement.

### **Public Notice**

7. Public notice of El Paso's filing was issued on June 1, 2006, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission's regulations. All timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. Granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

### **Discussion**

8. Under section 4(c) of the Natural Gas Act (NGA), pipelines must file "all contracts which in any manner affect or relate to" the pipeline's rates and services. Section 154.1(b) of the Commission's regulations implements this provision and provides that pipelines must file all contracts related to their services.<sup>5</sup> Section 154.1(d) provides that any contract that conforms to the form of service agreement set forth in the pipeline's tariff need not be filed, but that any contract that deviates in any material aspect from the form of service agreement set forth in the pipeline's tariff must be filed.<sup>6</sup>

9. As the Commission explained in *Columbia Gas Transmission Corp.*, the exemption from the requirement that each customer service agreement must be filed with the Commission is based on a finding that the NGA section 4 filing requirement has already been satisfied by the pipeline's previous filing of the pro forma service

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<sup>5</sup> 18 C.F.R. § 154.1(b) (2005).

<sup>6</sup> 18 C.F.R. § 154.1(d) (2005).

agreement.<sup>7</sup> Where a customer's service agreement conforms to the pro forma service agreement (and the other provisions of the pipeline's tariff), the Commission's prior review and approval of the pro forma service agreement and the tariff have accomplished the purpose of the NGA section 4 filing requirement. Since the Commission and other interested parties have had an opportunity to determine that the form of service agreement provided for in the tariff is just and reasonable and non-discriminatory, there is no need to review subsequent conforming contracts to determine if they comply with the requirements of the NGA.

10. However, for this procedure to satisfy the filing requirements of NGA section 4, the customer's service agreement must truly conform to the form of service agreement. There is such conformity where a service agreement contains only the approved language of the form of service agreement, with blank spaces for filling in such information as the name of customer, etc., completed in a manner consistent with the tariff. However, where the service agreement contains a provision not in the approved language of the form of service agreement and that provision (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff and (2) affects the substantive rights of the parties, the Commission cannot be considered to have already reviewed the service agreement when it reviewed the pro forma service agreement. In such a case, the contract contains a provision affecting the substantive rights of the parties that the Commission has never seen before. Since NGA section 4 requires the filing of all contracts that affect the pipeline's service "in any manner," the statute requires the filing of such a service agreement.

11. The Commission has defined a material deviation as "any provision of a service agreement which goes beyond the filling in of the spaces in the form of service agreement with the appropriate information provided for in the tariff and that affects the substantive rights of the parties." Once a service agreement has been found to deviate materially from the form of service agreement in the tariff, the Commission must then determine whether to approve the non-conforming agreement. The Commission bases this determination upon whether the material deviation presents a significant potential for undue discrimination among customers. The Commission has also held that the pipeline must explain why the non-conforming provisions are specific to a particular shipper and why the provision should not be included in the tariff and made available to all shippers.

12. The Commission finds that the OPAS agreement with Salt River is a permissible material deviation from El Paso's form of service agreement. As El Paso states in its filing, the agreement to use Arizona law to determine any questions regarding Salt River's unique status as a political division of the State of Arizona will not create any exceptions to El Paso's tariff requirements and will not afford Salt River any substantive transportation rights. In addition, this agreement will not affect the rights of other

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<sup>7</sup> 97 FERC ¶ 61,221, at 62,001 (2001).

similarly situated delivery point operators. The Commission further finds that the differences on Sheet No. 485C due to informational display are not material changes and will be consistent with the pro forma agreement once El Paso updates its pro forma agreement in a future filing.

13. The Commission finds that these provisions do not affect the substantive rights of the parties and do not present the potential for a significant risk of undue discrimination among customers. The Commission therefore accepts the non-conforming agreement and El Paso's proposed tariff sheet effective June 26, 2006.

By direction of the Commission.

Magalie R. Salas,  
Secretary.