

UNITED STATES OF AMERICA 111 FERC ¶61,374
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. RP05-160-002

ORDER ON REHEARING AND CLARIFICATION

(Issued June 8, 2005)

1. On February 24, 2005, the Commission issued a letter order¹ in this proceeding accepting subject to conditions, a tariff sheet filed by El Paso Natural Gas Company (El Paso) to provide a timeline for the prospective sale of available firm capacity. Southwest Gas Corporation (Southwest Gas) filed a timely request for clarification or rehearing of the February 24, 2005 letter order.² The Commission will grant clarification and deny rehearing of the February 24 letter order as discussed below. This order benefits the public because it clarifies the circumstances where El Paso will sell capacity for future use.

Background

2. On January 25, 2005, El Paso filed a tariff sheet providing a timeline for the prospective sale of available firm capacity. The proposed tariff contained limits on the time between the date that service is requested and the date service is to commence. These limits are divided into three time periods based on the length of requested transportation service. Under El Paso's proposal, for service with a term of one year or longer, a shipper must request that service begin no later than three months from the date that the service request is granted. For service with a term of greater than three months, but less than one year, the shipper must request that service begin no later than one month from the date that the request is granted. Finally, under El Paso's proposal, for service of

¹ *El Paso Natural Gas Co.*, 110 FERC ¶61,182 (2005).

² El Paso filed an answer to Southwest Gas's request for rehearing. Answers to requests for rehearing are not permitted by the Commission's rules, and the Commission will not consider El Paso's answer.

three months or less, the shipper must request that service begin no later than ten business days from the date the request is granted.

3. El Paso also stated in the January 25, 2005 filing that, given the demands of today's evolving energy markets, it may agree to sell capacity outside this timeline. El Paso therefore proposed exceptions to the timeline that El Paso would consider on a not unduly discriminatory basis, for capacity associated with: (1) an open season, (2) new or incremental supply or markets, (3) capacity from terminating contacts or contracts with capacity reduction or (4) the modification or construction of facilities or the issuance of any necessary certificate authorization.

4. In the February 24, 2005 letter order, the Commission stated, among other things, that El Paso's proposed exceptions regarding capacity associated with either an open season or with new markets are vague and do not deal with the creation of potentially conflicting rights-of-first-refusal (ROFR) between shippers when capacity is sold for more than a year in advance.³ To resolve this concern, the Commission directed El Paso to refile tariff sheets consistent with the Commission's findings in *Gas Transmission Northwest Corporation (GTN)*⁴ and *Northern Natural Gas Company (Northern Natural)*.⁵

5. Further, the Commission found that El Paso's tariff already contains provisions relating to the exemptions for capacity that is available due to contract terminations or reductions and due to construction of facilities, and that, therefore, no further clarification of those exemptions was necessary.

The Request for Clarification or Rehearing

6. On rehearing, Southwest Gas states that the *GTN* and *Northern Natural* decisions cited by the Commission established conditions under which ROFR rights could be waived for interim capacity sales. Southwest Gas argues that under this policy, if a pipeline seeks to waive ROFR rights for interim capacity sales that are made available by the advanced sale of future capacity, such as the prearranged deals in *GTN* or the capacity committed for a future period in *Northern Natural*, then the pipeline must sell both the interim and future capacity through a competitive bidding process that utilizes a net present value (NPV) bid award criterion.

³ The Commission's regulations require pipelines to provide firm maximum rate shippers holding contracts of one year or more a right of first refusal to renew their contracts and continue service. 18 C.F.R. § 284.221(d) (2004).

⁴ 109 FERC ¶ 61,141 (2004).

⁵ 109 FERC ¶ 61,388 (2004).

7. Southwest Gas states that while it seems clear that the February 24 letter order requires competitive bidding for advanced and interim sales using the NPV criterion as the bid award criterion, the letter order also appears to state that El Paso's existing tariff provided sufficient specificity regarding advanced sales associated with contract terminations or volume reductions and facility construction. Southwest Gas states that the existing tariff provisions do not require competitive bidding using NPV, but rather permit several alternative forms of bid award criteria. Therefore, Southwest Gas asserts, the letter order can be read to exclude advanced sales of capacity associated with contract termination or volume reductions and facility construction from those categories of future commitments that must meet the interim capacity ROFR requirements adopted in *GTN* and *Northern Natural*.

Discussion

8. In *GTN*, the Commission approved the pipeline's proposed prearranged deal program and the waiver of the ROFR rights for sales of interim capacity created by those future sales. The Commission required that *GTN* post any prearranged deal for future sales as soon as it was entered into and further required that bids for this capacity be evaluated on an NPV basis, consistent with the valuation method contained in *GTN*'s tariff. Similarly, in *Northern Natural*, the Commission approved a proposal to waive ROFR rights for interim capacity created by future sales and imposed the same posting and bidding requirements on *Northern Natural*'s sale of capacity for future periods similar to those required in *GTN*. Thus, the Commission stated that it would permit *Northern Natural* to sell capacity to interim shippers without a ROFR as long as *Northern Natural* implemented posting and bidding procedures that ensured that the shipper obtaining the capacity for the future period is the shipper that places the highest net present value on the capacity.

9. The Commission explained in both these decisions that the required bidding process seeks to ensure that at the time of the request for the prearranged capacity, there is no other shipper that would place a higher value on the capacity either immediately or in the future. The Commission stated that by ensuring that capacity is awarded to the party willing to pay the highest net present value for it, this approach allows a more efficient allocation of capacity.⁶ The Commission further stated that these conditions ensure that interim shippers will be denied a ROFR only after the future capacity is awarded to the shipper that values it most.

10. Thus, under these rulings, if El Paso sells capacity for future use, it must use a bidding process that evaluates bids on an NPV basis. These decisions, however, do not discuss the method for evaluation of bids for the sale of any interim capacity (for current

⁶ *Northern Natural*, 109 FERC 61,388 at P 29.

use). Thus, contrary to Southwest Gas's assertion, these cases do not require that El Paso sell the interim capacity using a net present value bid evaluation criteria.

11. Southwest Gas has also requested clarification regarding the sale of capacity that becomes available due to terminating contacts or contracts with capacity reduction, and capacity reserved for future construction. Southwest Gas has also raised these issues in its protest to El Paso's compliance filing in this proceeding. The Commission will address Southwest Gas's concerns about these specific tariff provisions in its order on El Paso's compliance filing where it can better evaluate the El Paso's proposal in view of the overall goals of the Commission's policy set forth in *GTN* and *Northern Natural*.

The Commission orders:

The request for clarification is granted and the request for rehearing is denied as discussed above.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.