

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company

Docket No. RP07-152-001

ORDER ON CLARIFICATION AND REHEARING

(Issued April 30, 2007)

1. On March 29, 2007, Southwest Gas Corporation (Southwest) filed a request for clarification or, alternatively, rehearing of the Commission's February 27, 2007 Letter Order.<sup>1</sup> The February 27 Order accepted a number of non-conforming agreements between El Paso Natural Gas Company (El Paso) and Salt River Project Agricultural Improvement and Power District (Salt River). This order grants Southwest's request for clarification as described below. Rehearing is denied as moot.

**Background**

2. On January 29, 2007, El Paso submitted Fourteenth Revised Sheet No. 2 to its FERC Gas Tariff, Second Revised Volume No. 1A, a Rate Schedule FT-1 transportation service agreement (TSA), two Rate Schedule FT-H TSAs, and one Rate Schedule OPAS agreement with Salt River, and stated that all four agreements were previously submitted for the Commission's information and review as non-conforming agreements. El Paso stated that the Commission accepted those non-conforming TSAs, and the tariff sheet referencing the TSAs as non-conforming, in orders issued June 21, 2006,<sup>2</sup> and June 30,

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<sup>1</sup> See unpublished letter order in Docket No. RP07-152-000 (February 27 Order.)

<sup>2</sup> See letter order in Docket No. RP06-369-000 (accepting the Rate Schedule OPAS agreement), 115 FERC ¶ 61,357 (June 21 Order).

2006.<sup>3</sup> El Paso further stated that paragraph 9.6 of the Rate Schedule FT-1 TSA has been modified so that it is now identical to a provision contained in the related East Valley Lateral Purchase and Sale Agreement previously filed with the Commission in Docket No. CP06-57-000.<sup>4</sup>

3. El Paso also stated that El Paso and Salt River have recently agreed to consolidate six Rate Schedule FT-H TSAs (three FT-H8 and three FT-H12) into two TSAs (one for each hourly service) effective January 1, 2007, that the new consolidated agreements merely reflect a rearrangement of the fill-in-the-blank information contained in the underlying agreements, and that these agreements do not affect the non-conforming provision that the Commission previously accepted in the June 30 Order. El Paso stated that it submitted the revised OPAS agreement to reflect updated daily and hourly delivery obligation (MDO/MHO) levels, effective December 1, 2006, and that the revisions to the OPAS agreement do not affect the non-conforming provision that the Commission accepted in the June 21 Order.

4. El Paso's filing was noticed on February 1, 2007, and no protests or adverse comments were filed, but Southwest filed a motion to intervene with no comments. The February 27 Order accepted the revised tariff sheet and agreements effective as proposed. The order stated that consistent with the June 30 Order, revised paragraph 9.6 is a permissible material deviation from the form of service agreement.

#### **Southwest's Request, Salt River's Answer, and Southwest's Answer**

5. Southwest requests the Commission clarify that the non-conforming Salt River agreements accepted by the February 27 Order do not establish any undue preference for Salt River, and that Salt River's maximum delivery obligations (MDOs) are subject to the Commission-approved allocation of MDOs in Docket No. RP05-422-000 (the El Paso Rate Case).<sup>5</sup> Southwest states it seeks clarification because both El Paso and Salt River have taken the position in filings in Docket No. RP05-422-000 that Salt River stands on a

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<sup>3</sup> See letter order in Docket No. RP06-374-000 (accepting a Rate Schedule FT-1 TSA and six Rate Schedule FT-H TSAs relating to the East Valley Lateral), 115 FERC ¶ 61,391 (June 30 Order).

<sup>4</sup> See *El Paso Natural Gas Co.*, 115 FERC ¶ 61,074 (2006).

<sup>5</sup> See *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 (2005). Southwest states that the MDO allocation involves the establishment of both meter level MDQs and Rate Schedule OPAS-related MDOs/MHOs.

different, preferential footing for MDO allocation by virtue of non-conforming agreements and/or prior agreements in connection with El Paso's purchase from Salt River of the East Valley Lateral. Accordingly, Southwest states, the Commission must clarify that (1) neither revised paragraph 9.6 of Salt River's Rate Schedule FT-1 TSA, accepted by the February 27 Order, nor Salt River's revised Rate Schedule OPAS Agreement, also accepted by that order, establish any special MDO rights for Salt River, and (2) acceptance of the filed non-conforming Salt River agreements in the February 27 Order does not prejudice the MDO issues that are pending in Docket No. RP05-422-000.

6. Southwest states that although the requested clarification appears to be inherent in the February 27 Order, and in the earlier April 20, 2006 Order granting El Paso certificate authorization to purchase the East Valley Lateral facilities from Salt River,<sup>6</sup> recent statements by El Paso and Salt River in filings in the El Paso Rate Case caused it to file the instant request. Southwest states that these statements make it necessary that the Commission clearly state that with respect to MDO allocation, no different rules apply to Salt River than the rules that apply to other shippers on El Paso's system.

7. Finally, Southwest states that it did not protest El Paso's January 27, 2007 filing here, in reliance on El Paso's representations in the filing, as well as on the Commission's findings in the Certificate Order. However, the recent statements by El Paso and Salt River indicated to Southwest that El Paso's filing here was intended to accomplish more than the filing of non-conforming TSA language.

8. Salt River requested leave to file an answer, and Southwest requested leave to file an answer to Salt River's answer.<sup>7</sup> Salt River asserts that Southwest has misinterpreted the record and mischaracterized statements made by El Paso and Salt River in the El Paso Rate Case. Salt River states that it has never suggested that in the event the Commission ruled that El Paso's existing allocation methodology was not just and reasonable, that Salt River would not be required to comply with whatever allocation methodology the Commission ultimately approved. Thus, Salt River states:

In the event that the Commission issues a final order in the El Paso Rate Case that the method currently used by El Paso to allocate MDO rights is not just and reasonable, [Salt River] will participate in any Commission-

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<sup>6</sup> *El Paso Natural Gas*, 115 FERC ¶ 61,074 (2006) (the Certificate Order).

<sup>7</sup> We will accept the answers under Commission Rule 213 (a)(2) since they provide a better understanding of the issues.

approved MDO reallocation process in the same manner and with the same rights and obligations as every other shipper on the El Paso system.<sup>8</sup>

9. In its answer Southwest asserts that Salt River, in its answer, concedes that Salt River “believes it has a preferential right to future MDO protection.”<sup>9</sup> Southwest further contends that Salt River agrees, in its answer, that its MDO allocations will be subject to the outcome of the El Paso Rate Case. Southwest states that these statements support Southwest’s request for clarification.

### **Discussion**

10. The Commission will grant clarification of the February 27 Order. The Commission’s acceptance of the non-conforming Salt River agreements does not establish any undue preference for Salt River. Paragraph 9.6 is identical to the East Valley Lateral Purchase and Sale Agreement previously filed with the Commission in the Certificate Order proceeding.<sup>10</sup> As we stated in the Certificate Order, El Paso is required to allocate the lateral capacity in a manner that is not unduly discriminatory,<sup>11</sup> and must offer the same terms and conditions of service to all its Phoenix area shippers where operationally feasible on a non-discriminatory basis.<sup>12</sup> Additionally, as Salt River and El Paso acknowledge, the MDO allocation for all El Paso shippers, including Salt River, is an issue in the El Paso Rate Case in Docket No. RP05-422-000 and is subject to the outcome of that proceeding.

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<sup>8</sup> Salt River Answer at 4.

<sup>9</sup> See Southwest Answer at 5, *citing* Salt River Answer at 4.

<sup>10</sup> Paragraph 9.6 states: “El Paso agrees to consolidate Shipper’s D-Codes into a single D-Code for service to Desert Basin, Santan (new and old), Kyrene (new and old) and Agua Fria with the maximum daily obligations and pressure commitments agreed upon between the parties. El Paso agrees to keep all current [Salt River] plants mentioned above in one D-Code on a going forward basis.”

<sup>11</sup> 115 FERC ¶ 61,074 at P 29 (2006).

<sup>12</sup> *Id.*, at Ordering Paragraph (D).

The Commission orders:

Southwest's request for clarification of the February 27 Order is granted, as discussed above, and Southwest's request for rehearing is denied as moot.

By the Commission.

( S E A L )

Philis J. Posey,  
Deputy Secretary.