

121 FERC ¶ 61,219
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. RP08-21-000

ORDER ACCEPTING TARIFF SHEETS

(Issued November 29, 2007)

1. On October 9, 2007, El Paso Natural Gas Company (El Paso) filed revised tariff sheets to modify and clarify its procedures for operating during Strained and Critical Operating Conditions (SOC and COC). As discussed below, the Commission accepts El Paso's revised tariff sheets effective December 1, 2007, as requested.

I. Background

2. On August 31, 2007, the Commission issued an order approving the Rate Case Settlement in Docket No. RP05-422-000, *et al.*¹ Article 6.1(b) of the Rate Case Settlement provides that the settling parties will develop proposed revisions to El Paso's tariff: (1) delineating the circumstances under which El Paso should declare an SOC; and (2) requiring El Paso to explain its actions in any instance where it fails to declare an SOC when those circumstances occurred. El Paso states that it submitted this filing in accordance with Article 6.1(b) of the Rate Case Settlement.

II. Filing

3. El Paso proposes to clarify and expand the procedures for declaring an SOC or COC. Among other revisions, El Paso proposes to notify shippers of the probability of an SOC declaration on its web site and, should an SOC be declared, to issue a notice detailing the specifics of the situation. El Paso also specifies certain triggers for declaring an SOC. These triggers are: (1) when the hourly average in any particular hour of the gas day for total system linepack falls below 7,000 MMcf and the Washington Ranch storage facility is on maximum (operationally) available withdrawal; and (2) when the hourly average in any particular hour of the gas day for total system linepack exceeds 7,900 MMcf and the Washington Ranch storage facility is on maximum (operationally) available injection.

¹ *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007) (Rate Case Settlement).

4. El Paso states that, in the event of an SOC or COC, El Paso will identify the linepack status, i.e., whether it is a pack or a draft issue. El Paso also proposes to change the effective dates of SOC and COC declarations and revise the meaning of the term “imbalance.” El Paso clarifies that the SOC and COC daily imbalance charges will not apply to “opposite direction” imbalances. In addition, under its proposal El Paso will not assess SOC and COC penalties if it determines that an error on its part caused a shipper to be subject to the charge.

5. El Paso proposes to modify the circumstances under which it allows shippers to net delivery and receipt point imbalances. Specifically, El Paso now proposes to permit shipper netting of *receipt* point imbalances occurring during an SOC or COC, so long as the shipper attempted a corrective nomination that is confirmed by El Paso and the netting would not place a greater risk on any other shipper or to the integrity of the system. El Paso’s current tariff already permits the netting of *delivery* point imbalances under similar circumstances. In order to facilitate shipper eligibility for netting of both receipt and delivery point imbalances, El Paso proposes to revise its tariff to permit shippers to submit corrective nominations in all intraday scheduling cycles, not just cycles one and two. Last, El Paso proposes to allow shippers the ability to minimize penalties by netting when the imbalance is caused by a supply failure so long as the shipper is not in an overall supply deficiency in the SOC/COC area and, again, the netting does not pose a risk to either system integrity or other shippers.

III. Notices and Protests

6. Notice of El Paso’s filing was issued on October 16, 2007. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations. 18 C.F.R. § 385.210 (2007). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Electric Generator Coalition (Electric Generators) and Southern California Gas Company (SoCal Gas) and San Diego Gas and Electric (SDG&E) filed comments, and the Indicated Shippers filed a protest. On November 9, 2007, El Paso filed a motion for leave to answer and answer. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept El Paso’s answer because it has provided information that assisted us in our decision-making process.

7. The Indicated Shippers argue that El Paso’s proposal to permit netting when supplying interconnects fail to make scheduled deliveries is insufficient. The Indicated Shippers argue that the failure of suppliers to make scheduled deliveries is a *force majeure* event and that longstanding Commission policy requires pipelines to waive imbalance penalties during all *force majeure* events.

8. The Indicated Shippers also oppose limiting the netting of imbalances to instances where the shipper has made a confirmed corrective nomination and the netting would not place a greater risk on other shippers or to the integrity of the system. The Indicated Shippers contend that netting is an accounting mechanism El Paso performs after the fact, and therefore, no prior conditions should be necessary. The Indicated Shippers further argue that requiring shippers to make corrective nominations is unreasonable because El Paso may not be able to confirm shippers' corrective nominations during SOC or COC. The Indicated Shippers argue El Paso should permit the netting of all imbalances among a shipper's Transportation Service Agreements (TSAs) in the affected SOC or COC area.

9. SoCal Gas and SDG&E state that they support El Paso's tariff revisions because the changes are an improvement over the status quo. However, SoCal Gas and SDG&E state that they are concerned that the triggers El Paso selected for declaring an SOC or COC are too broad and too far away from normal operating procedures, making them of little practical use. SoCal Gas and SDG&E are concerned that the proposed triggers are likely to be met only after El Paso should have already declared that critical conditions exist. Electric Generators state that they do not object to El Paso's filing, but clarify that El Paso's tariff revisions are not intended to increase or decrease incidence of SOC or COC declared by El Paso.

10. In its answer, El Paso points out that the Indicated Shippers' request for waiver of all penalties in *force majeure* events is unrelated to any tariff revision proposed by El Paso, and therefore exceeds the scope of the current proceeding. El Paso contends that, since the Indicated Shippers' request is unrelated to El Paso's instant filing, the Commission must find under section 5 of the Natural Gas Act (NGA) that the current netting provision is unjust and unreasonable and that the Indicated Shippers' requested change is necessary to render the provision just and reasonable. El Paso also notes that the Commission has previously rejected a request to modify El Paso's *force majeure* provision for similar reasons.² El Paso further argues that waiving penalties during an SOC or COC is contrary to public policy because the penalties are needed to maintain operations during strained or critical situations.

11. El Paso argues that the confirmation of corrective nominations is a necessary prerequisite to netting because El Paso must know what actions are being taken on the pipeline in order to alleviate the operational issues underlying an SOC or COC.

² *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305, at P 279 (2006) (March 23, 2006 Order).

IV. Discussion

12. As discussed below, the Commission accepts El Paso's tariff sheets to be effective December 1, 2007, as requested. The Commission finds that El Paso's proposed tariff revisions will allow El Paso to maintain operational control of the system and clarify the procedures governing SOC and COC events, providing more transparency.

13. The Indicated Shippers argue that El Paso should waive all SOC/COC penalties in cases of *force majeure*. They argue that El Paso's instant proposal to permit netting of imbalances when suppliers fail to make scheduled deliveries at receipt points is insufficient. The Commission agrees with El Paso that this request that penalties be waived during *force majeure* events goes beyond the scope of the changes proposed in this proceeding. El Paso's proposal merely implements modifications that clarify the SOC/COC provisions and previously-approved netting provisions; it does not address existing *force majeure* provisions contained in the tariff. Further, the Commission previously stated in the March 23, 2006 Order that requests such as the Indicated Shippers' request relate to their specific use of the system and their contractual relationship with their suppliers, and not to El Paso's actions during an SOC or COC.³

14. The Indicated Shippers argue that shippers should be permitted to net all imbalances among their TSAs in the affected SOC or COC area. El Paso contends that limiting when shippers can net imbalances during an SOC or COC is necessary to ensure proper shipper behavior and efficient remediation of the operational issues underlying an SOC or COC. The Commission has historically provided pipelines with operational deference in establishing emergency operating procedures including the amount of netting they may allow. Here, the Commission agrees that delineating when shippers can and cannot net imbalances during an SOC or SOC will encourage shippers to act appropriately when a pipeline is taking corrective action. We find that the proposed limitations on netting included in El Paso's proposed tariff filing reasonably accomplish these goals. The Commission will deny the Indicated Shippers' request to remove those limitations.

15. SoCal Gas and SDG&E are concerned that the proposed triggers will be of little practical use because the system will already be in a critical state when an SOC is triggered. However, SoCal Gas and SDG&E state that the proposal is an improvement over the status quo and do not request any specific changes to the proposal. While SoCal and SDG&E express concerns, the Commission finds that the proposed modifications provide shippers with valuable planning tools that effectively alert them to pipeline operating conditions. El Paso's tariff revisions not only clarify exactly when an SOC will be declared, the modifications also state that El Paso will ascertain the probability of an

³ *Id.* (stating that El Paso is currently required to provide a partial reservation charge credit in *force majeure* situations so that shippers are not without protections).

SOC declaration and post such probability (i.e. high, moderate, or low) on its website. It is appropriate for El Paso to set standards such as these, that allow it flexibility to maintain operational control of its system, and, consistent with the requirements of Order Nos. 587, *et seq.*, to provide as much advance notice to shippers as possible of service limitations.

The Commission orders:

The tariff sheets submitted by El Paso are accepted effective December 1, 2007, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

El Paso Natural Gas Company
Docket No. RP08-21-000
Accepted Tariff Sheets
Second Revised Volume No. 1A

Sixth Revised Sheet No. 363
Original Sheet No. 363.01
Second Revised Sheet No. 363A
Substitute Original Sheet No. 363A.01
Third Revised Sheet No. 363B
Original Sheet No. 363B.01
Fourth Revised Sheet No. 363C
Original Sheet No. 363D
Fifth Revised Sheet No. 364
Original Sheet No. 364.01
Original Sheet No. 364.02
First Revised Sheet No. 364A
Original Sheet No. 364B
Third Revised Sheet No. 365
Second Revised Sheet No. 366
Substitute Fourth Revised Sheet No. 367