128 FERC ¶ 61,097
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

El Paso Natural Gas Company Docket No. RP09-762-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued July 29, 2009)

1. On June 9, 2009, El Paso Natural Gas Company (El Paso) filed revised tariff sheets[1] identifying the pipeline segments where no fuel is used to provide transportation service and no fuel charge will be assessed. On June 16, 2009, El Paso submitted a supplement to its filing to provide additional information. As discussed below, the Commission accepts and suspends El Paso's tariff sheets to be effective August 1, 2009, subject to conditions and further order by the Commission.

I. **Background**

2. Compression is needed to move gas through a pipeline, and that compression consumes fuel. As a result, like other pipelines, El Paso requires shippers to pay a fuel charge to replace the gas consumed by compression and other operations to support the transportation of gas through the pipeline. El Paso assesses shippers a fuel charge for all transactions that move in a forward haul direction,[2] utilize a delivery lateral in their path,[3] and/or require compression for receipt or delivery.

[1] Fourth Revised Sheet No. 322 and Original Sheet No. 322A to its FERC Gas Tariff, Second Revised Volume No. 1A.

[2] Forward haul transactions move gas in the same direction as the physical flow of gas along the shipper's nominated route. These transactions benefit from the pressure increases and maintenance provided by El Paso's compression.

[3] In this context, a delivery lateral is any line that departs from the mainline and terminates at a delivery point. Generally, mainline compression supports the volumes and pressures for delivery laterals, so that mainline pressure requirements increase in proportion to increases in lateral delivery throughput.

3. Transportation service that schedules gas for movement in the opposite direction of forward haul service does not consume fuel because deliveries are made by using gas received upstream of the delivery point, while supplies to replace those deliveries are received farther downstream (i.e., displacement gas). El Paso does not assess fuel charges for these "no-fuel" transactions because no compression is used to provide the service. In addition, certain routes may consistently and predictably not consume fuel because gas is received at high pressure and delivered later with no intervening compression. These types of deliveries also may constitute no-fuel transactions.

4. On November 26, 2008, El Paso filed in Docket No. RP09-117-000 its annual recalculation of Fuel and Lost and Unaccounted For (F&LU) gas retention percentages. On February 29, 2009, the Commission held a technical conference in that proceeding where several parties raised questions about El Paso's elimination of certain no-fuel transactions from the billing determinants utilized to derive fuel percentages. El Paso explained that it excluded these transactions from the billing determinants because the El Paso tariff permits it not to charge for fuel when no fuel is consumed.[4] El Paso discussed the possibility of identifying certain no-fuel transactions on its Electronic Bulletin Board (EBB) and committed to submitting a tariff filing to identify certain other no-fuel transactions in its tariff.

II. Filing

5. El Paso proposes to identify in its tariff certain pipeline segments where a fuel charge will not be assessed and is not expected to be assessed in the foreseeable future (long-term fuel exempt routes). El Paso states that it is able to identify the long-term fuel exempt routes in its tariff because the direction of gas flow along these segments has not changed for some time and is not expected to change anytime soon. El Paso asserts that these routes are routinely in the opposite direction of the physical gas flow, or are characterized as high-pressure receipts that do not require mainline compression. El Paso explains that shippers nominating transportation service using these routes will not be subject to a fuel charge, but will be assessed the applicable lost and unaccounted (LU) charge for the route.

6. El Paso also proposes to identify on its EBB certain other pipeline segments where fuel will not be assessed for short periods of time based on current operating conditions (short-term fuel exempt routes). El Paso explains that conditions and flows on El Paso are dynamic and a shipper could lose its opportunity to serve a gas market need if it was required to wait for El Paso and the Commission to complete the process of revising the tariff to designate these no-fuel routes. El Paso asserts that posting short-term fuel

[4] El Paso FERC Natural Gas Tariff, Second Revised Volume No. 1A, General Terms and Conditions (GT&C), section 26.2.

exempt routes on the EBB will provide shippers timely access to this information, which will be updated as demand and operating conditions change the flow direction on the system, and create differing opportunities for no-fuel service. El Paso states its proposal is consistent with other pipeline proposals where the Commission has approved EBB postings of transportation routes that are subject to change on a short-term basis.[5]

7. El Paso states that its shippers may, at any time, request El Paso to evaluate the fuel status of an individual route by contacting their marketing representative. If El Paso determines, based on the requested evaluation, that the gas flows on that route will continue for at least one month and a temporary fuel charge exemption is warranted, El Paso will notify its customers by an EBB posting. El Paso states that it will also identify and describe all designated short-term fuel exempt routes in its annual fuel tracker filings.

8. El Paso argues that its proposal to include long-term fuel exempt routes in its tariff and post short-term fuel exempt routes on its EBB will ensure that El Paso's shippers have advance notice of the fuel status of their routes. El Paso asserts that the fuel exemptions will not harm other shippers on the system because El Paso will continue to assess fuel reimbursement on those transactions where fuel is used.

III. Notices and Protests

9. Notice of El Paso's filing was issued on June 14, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[6] Pursuant to Rule 214,[7] 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. Salt River Agricultural Improvement and Power District (Salt River) and Texas Gas Service Company, a division of ONEOK, Inc. (Texas Gas Service) filed

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[5] *See Colorado Interstate Gas Co.*, 113 FERC ¶ 61,225, at P 18 (2005) (approving CIG's request to post on its EBB certain short-term displacement paths); *Questar Overthrust Pipeline Co.*, 121 FERC ¶ 61,256 (2007) (approving Questar's proposal to post on its EBB the receipt-delivery matrix of fuel assessment and update the fuel gas retention percentages on a monthly basis, as appropriate).

[6] 18 C.F.R. § 385.210 (2008).

[7] 18 C.F.R. § 385.214 (2008).

protests. The Indicated Shippers[8] filed a conditional protest and request for additional information.

10. El Paso filed an answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decision authority.[9] Accordingly, El Paso's answer is rejected here, without prejudice to El Paso's incorporating its content into the compliance filing directed by this order.

11. The Indicated Shippers assert that El Paso has not adequately demonstrated the impact of its fuel exemption filing on its shippers and offers no explanation to support its statement that shippers will not be adversely affected by the proposal. The Indicated Shippers contend the Commission should require El Paso to provide additional information before determining whether the filing is just and reasonable. The Indicated Shippers request that El Paso (1) provide the calculations and assumptions underlying the June 16 Supplement; (2) determine the impact of using actual versus assumed backhaul quantities; (3) demonstrate whether the fuel rate would increase, decrease, or remain the same if actual versus projected backhauls were used for the proposed no-fuel segments; (4) quantify the increase in fuel-exempt volumes that would result from this filing compared to those included in the Docket No. RP09-117-000 filing; (5) explain whether it has posted any short-term fuel-exempt segments on its EBB to date; and (6) clarify that the proposed fuel-exempt transactions will be assessed LU charges, consistent with its tariff. The Indicated Shippers request an opportunity to comment on El Paso's responses and further request that the Commission suspend this filing for the maximum five-month period to allow the development of a more complete record.

12. Salt River states that El Paso failed to provide the Commission with the data necessary to evaluate the filing, and particularly, El Paso's decision to include or exclude certain pathways from the no-fuel route list. Salt River asserts that as filed, the proposal will likely result in the over-collection of fuel costs which would not be just and reasonable. In particular, Salt River is concerned about the unsupported decision to begin assessing fuel charges on the Wenden-to-Casa Grande path. Salt River states that historically, El Paso has not assessed fuel use on those displacement transactions using the Wenden-to-Casa Grande segment. Salt River contends that El Paso offers no evidence regarding the frequency of fuel use on this path or the likelihood of future fuel consumption on that path. Salt River states that while El Paso discusses the intermittent

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[8] The Indicated Shippers are BP America Production Company and BP Energy Company; Chevron Natural Gas, a Division of Chevron U.S.A. Inc.; ConocoPhillips Company; Shell Energy North America (US), L.P.; and Occidental Energy Marketing, Inc.

[9] 18 C.F.R. § 385.213(a)(2) (2008).

west-to-east flow on this segment in its pending rate case, El Paso does not reference these exhibits in the instant filing or provide any evidence that these reverse flows required compression. Salt River requests that El Paso provide data supporting the assessment of fuel charges on routes that have historically been exempt from fuel charges.

13. Salt River further asserts that the proposed tariff revisions will likely lead to excessive fuel charges. Salt River states that because El Paso proposes to exempt transactions from fuel charges only "when the entire transportation service is provided using the no-fuel segments identified below," any path that utilizes a segment not listed as a no-fuel route will be assessed a fuel charge regardless of physical flow direction, the length of that segment, or the frequency that fuel is actually consumed on that segment. As an example, Salt River states that for the North Baja-to-Phoenix route, which previously was a no-fuel transaction, Salt River will be assessed a full fuel charge on any displacement transaction from Ehrenburg to Cornudas, regardless of how intermittent or speculative fuel consumption on the Wenden-to-Casa Grande segment may be, and without consideration to the amount of compression necessary to move gas over such a short distance. Salt River notes that the Wenden-to-Casa Grande segment is similar in length to paths in the Permian Basin, which are only assessed a 0.97 percent Production Area fuel charge, compared to the current mainline percentage of 2.56 percent.

14. Salt River states that, while El Paso's proposal to post short-term no-fuel routes on its EBB may be intended to address this problem, El Paso's tariff proposal lacks sufficient detail. Salt River states that El Paso's proposed tariff language does not define the duration of a "short-term" transaction, or provide the standards by which El Paso will make this short-term no-fuel determination.

15. Salt River asserts that, at a minimum, El Paso should follow the fuel procedures established on its affiliate, Colorado Interstate Gas Company (CIG), for those routes that have not historically consumed fuel. Salt River explains that CIG proposed to exclude the Western Segment of its system from the list of no-fuel routes because the route, which historically had been used for displacements that were not assessed fuel, might be used for transactions that used fuel as a result of changes in facility configuration and shifting market demand. Salt River states that in response to protests, CIG agreed to continue the fuel exemption for these transactions by default, posting the segment on the EBB along with other short-term paths. Salt River states that should operations change to require fuel, CIG will remove this segment from the EBB. Salt River states that the Commission approved this alternative.[10] Salt River contends that the circumstances surrounding the Wenden-to-Casa Grande segment on El Paso are similar to those on the Western Segment on CIG. Salt River states that El Paso should exempt the Wenden-to-

[10] *Colorado Interstate Gas Co.*, 113 FERC ¶ 61,225 (2005).

Casa Grande route from fuel charges by default, and list it on the EBB with the short-term no-fuel routes. Salt River states that if El Paso determines that fuel will be used for eastward flows over that segment, El Paso could remove the route from the EBB for the duration of fuel consumption. Salt River states that this alternative would more accurately reflect historic practices and current circumstances.

16. Texas Gas Service protests El Paso's filing, stating that the proposal may allow El Paso to evade the requirement that it provide operational data to support the specific transactions that it seeks to exempt from fuel assessments. While Texas Gas Service states that it generally supports the tariff revisions that identify specific no-fuel transactions, the proposed tariff revisions do not comply with the Commission's policies requiring support for each specific no-fuel transaction determination. Texas Gas Service cites the *Ozark*[11] and *CIG*[12] cases, wherein the Commission stated that pipelines are permitted to exempt certain transactions from fuel charges if (1) they identify the specific transactions they intend to exempt from fuel charges and demonstrate that those transactions do not require the use of fuel; and (2) the transactions are listed in the pipelines' tariffs. Texas Gas Service objects to El Paso's proposal to use its EBB, rather than a filing with the Commission, to identify short-term transactions that will be exempt from fuel charges.

17. Texas Gas Service states that while El Paso argues that waiting for Commission approval to exempt specific transactions will result in lost opportunities for shippers to serve markets, the need for flexibility cannot be used to violate the filed rate doctrine or to evade El Paso's obligation to support changes in rates without substantial evidence or operational support. Texas Gas Service states that, without a Commission filing, shippers will not have any process by which they can challenge El Paso's no-fuel determinations and ensure that such determinations are made in a not unduly discriminatory manner. Texas Gas Service concludes that, only by analyzing specific transactions on a case-by-case basis will the Commission and shippers be assured that El Paso is exempting transactions from fuel charges on a non-discriminatory basis and that the fuel costs are properly borne by all shippers that cause fuel to be used on the system. Texas Gas Service therefore requests that the Commission reject El Paso's proposal to post short-term fuel exemptions on the EBB and instead require that those transactions be listed in El Paso's tariff after operational data is provided to justify exempting the specific transaction from fuel.

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[11] *Ozark Gas Transmission, L.L.C.*, 122 FERC ¶ 61,295, at P 11 (2008) (*Ozark*).

[12] *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199, at P 19 (2005) (*CIG*).

IV. Discussion

18. The Commission agrees with the protestors that El Paso's filing does not include sufficient detail to determine whether it is just and reasonable. Some protesters argue that El Paso should list additional non-fuel-use paths in the tariff, while others argue that certain paths El Paso proposes to list do, in fact, use fuel. Although the Commission may subsequently revise El Paso's proposed tariff listing of non-fuel paths, it is preferable to allow shippers the benefit of an interim listing of non-fuel paths with a nominal suspension, subject to refund and conditions, rather than delay implementation. The Commission will therefore accept and suspend El Paso's proposed tariff revisions, to be effective August 1, 2009, subject to El Paso's submitting a compliance filing within 15 days of the date of this order to address the concerns raised by each of the protestors. In particular, the Commission directs El Paso to provide the calculations and assumptions underlying its determination that each identified route is a no-fuel route, and also to respond to assertions that other routes should have been included, and whether short-term exempt fuel paths should be posted on the EBB. Parties may file comments within 12 days of the date of El Paso's compliance filing.

19. Based upon a review of the filing, the Commission finds that the proposed tariff sheets in footnote one have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept such tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

20. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[13] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.[14] Such circumstances exist here, where El Paso is seeking to conform its tariff to the Commission policy requirement that if a pipeline exempts certain segments from fuel charges, such non-fuel use points be identified in the tariff.[15] Therefore, the Commission shall exercise its discretion to suspend the rates for a nominal period to take effect August 1, 2009, subject to the conditions set forth in the body of this order and in the Ordering Paragraph below.

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[13] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980).

[14] *See Valley Gas Transmission Co.*, 12 FERC ¶ 61,197 (1980).

[15] *See Colorado Interstate Gas Co.*, 113 FERC ¶ 61,199, at P 19 (2005).

The Commission orders:

(A) The tariff sheets referenced in footnote one are accepted and suspended, to be effective August 1, 2009, subject to conditions, as discussed in the body of this order.

(B) El Paso is directed to make a compliance filing within 15 days of the date of this order, and parties may file comments 12 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.