

133 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

El Paso Natural Gas Company

Docket No. RP11-1562-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORD, SUBJECT TO
REFUND AND CONDITIONS

(Issued December 29, 2010)

1. On November 30, 2010, El Paso Natural Gas Company (El Paso) filed a revised tariff record¹ to escalate El Paso's Article 11.2(a) rates for inflation, pursuant to El Paso's rate case settlement in Docket No. RP95-363-000, *et al.*, (1996 Settlement),² and Section 37.3 of *Part IV: GT&C, Section 37 – Article 11.2 Provisions* of El Paso's FERC NGA Gas Tariff, EPNG Tariffs. El Paso included workpapers to set forth the factors and calculations used in determining the adjustments. The revised tariff record is accepted and suspended, effective January 1, 2011, subject to refund and to the outcome of the proceeding in Docket No. RP10-1398-000.

Background

2. Section 37.3 permits annual increases in the Operations and Maintenance (O&M) and Other Taxes portion of the reservation and usage charges for the Article 11.2(a) Rate Schedule FT-1 service and a portion of the base rates for the Article 11.2(a) Rate Schedule FT-2 service that were in effect for the preceding year. The adjustment is limited to 93 percent of the increase in the Implicit Price Deflator to the Gross Domestic Product (GDP-IPD) as published by the Department of Commerce's Bureau of Economic

¹ Part IV: GT&C, Section 37 – Article 11.2 Provisions, 4.0.0 to EPNG Tariffs, FERC NGA Gas Tariff.

² Article 11.2 of the 1996 Settlement between El Paso and its customers places certain limitations on the rates that El Paso can charge to shippers that were parties to that Settlement. *See El Paso Natural Gas Co.*, 79 FERC ¶ 61,028 (1997), *reh'g denied*, 80 FERC ¶ 61,084 (1997) and 89 FERC ¶ 61,164 (1999).

Analysis. The annual increase in rates may never be more than 4.5 percent or less than one percent of the prior year's total base rates.

3. Pursuant to Section 37.3, El Paso calculated the GDP-IPD increase by comparing the final GDP-IPD index for the second quarter of 2010 and the GDP-IPD for the same period of 2009. El Paso states that the resulting annual change in the GDP-IPD is 0.8489 percent. This annual change, when adjusted according to the formula specified in the tariff, produces an increase to the O&M and Other Taxes portion of the base rates of 0.7894 percent. Because that increase is less than 1.00 percent (the minimum increase as stated in Section 37.3), El Paso states that the resulting increase to base reservation rates is 1.00 percent.

4. El Paso states that, because the Article 11.2(a) rates are billed on a per dekatherm basis, the rates are adjusted for Btu content prior to the application of the inflation factor. El Paso states that the previously utilized system-wide Btu factor for the 2009 and 2010 Article 11.2(a) inflation filings was 1.017. El Paso states that the calculated system-wide Btu factor in its pending rate case should be 1.018.³ Therefore, El Paso has adjusted the rates in the instant case to be consistent with the pending rate case and reflect a Btu adjustment from 1.017 to 1.018 percent.

Notice of Filing, Motions to Intervene, and Responsive Pleadings

5. Public notice of El Paso's filing was issued on December 1, 2010. Interventions and protests were due on or before December 13, 2010. Pursuant to Rule 214, all timely filed motions to intervene and any motion to intervene out-of-time filed before the issuance date of this order are granted.⁴ Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Freeport-McMoRan Corporation (Freeport) filed a protest and motion for consolidation. El Paso filed an answer to Freeport's protest and motion on December 20, 2010. On December 22, 2010, Freeport filed a motion for leave to answer and an answer. Under Rule 213(a)(2), answers to answers, and answers to protests are not permitted.⁵

³ El Paso states that, in its pending rate case in Docket No. RP10-1398-000, it provided a schedule estimating the future annual escalation for Article 11.2(a) rates that included an incorrect Btu factor of 1.017 due to a minor data input error. El Paso states that the estimated Btu factor should have been calculated as 1.018. EL Paso provided its corrected calculation of the 1.018 Btu factor in Tab E of the instant filing.

⁴ 18 C.F.R. § 385.214 (2010).

⁵ 18 C.F.R. § 385.213(a)(2) (2010).

Accordingly those portions of El Paso's answer that respond to the Freeport protest, and Freeport's motion for leave to file an answer are denied.

Freeport's Protest

6. Freeport contends that El Paso has failed to adequately support its proposed system-wide Btu conversion factor by relying on testimony from its rate case filed in Docket No. RP10-1398-000 (Rate Case) and its calculation of its system-wide Btu conversion factor attached to this filing in Tab E. Freeport states that neither the attached calculation in Tab E nor the expert testimony provide sufficient information to support a Commission determination that the proposed conversion factor, 1.018, is just and reasonable.

7. Specifically, Freeport argues that the numbers underlying the expert's calculation are estimates from the test year period of the Rate Case.⁶ Freeport contends that the only actual data provided is the contract data that is included in Tab E and the data for the three-month period from April 1, 2010 through June 30, 2010. Freeport also notes the absence of Btu content data from the calculations. Furthermore, Freeport argues that Tab E's assumption that all shippers will use 100 percent of their contract entitlements is an unrealistic assumption. Freeport concludes that the conversion factor calculation should be based on the Btu content of the gas experienced and measured on a system-wide basis during the base period of the Rate Case or the most recent 12 months of actual data prior to the inflation adjustment filing date.⁷

8. Freeport also contends that the method El Paso uses to calculate the Btu conversion factor is artificial and invented solely for this filing. Freeport argues that the use of a delivered system-wide Btu factor as applied to actual system-wide delivered volumes would result in a reservation charge for Article 11.2(a) rates that would mirror the methodology used for calculating all other El Paso 2011 rates.

9. Freeport also moves to consolidate this inflation adjustment filing with the Rate Case, arguing that the commonality of issues and facts supports such consolidation. In the alternative, Freeport requests that the Commission suspend and condition the rates herein on the outcome of the Rate Case.

⁶ Freeport Protest at 5.

⁷ Freeport Protest at 6.

El Paso's Answer to Motion for Consolidation

10. El Paso filed a pleading styled as an answer to Freeport's motion for consolidation that also responded to the merits of Freeport's protest. Answers to protests are prohibited by the Commission's rules and to that extent El Paso's pleading would be rejected. However, because El Paso also argues that the Commission should deny the motion to consolidate because Freeport has failed to demonstrate that the issues in the two proceedings are sufficiently intertwined to warrant consolidation, the Commission will briefly address that motion. El Paso also contends, on the merits, that Freeport has failed to demonstrate that El Paso's proposal is unjust and unreasonable and that Freeport's proposed methodology is just and reasonable, noting that the Commission rejected Freeport's proposed alternative Btu conversion factors in last year's filing and found that El Paso's method was just and reasonable. El Paso argues that Freeport's methodology is inappropriate since it would apply the Btu conversion factor to usage rates, while El Paso asserts the Btu conversion factor should be calculated based on contract entitlements.

11. Notwithstanding Freeport's assertions to the contrary, El Paso insists that the Btu adjustment in the inflation filing is not based on any facts asserted or that will be developed in the ongoing rate case and therefore consolidation should be denied.

12. El Paso further argues that accepting the subject inflation adjustment subject to the outcome of the Rate Case should also be rejected, as El Paso is confident that no change would thus result to the instant rates as a result of the outcome in Docket No. RP10-1398-000.

Discussion

13. The Commission accepts and suspends the proposed tariff record, effective January 1, 2011, subject to refund and to the outcome of the Rate Case. El Paso appears to have applied the inflation adjustment consistent with its previous inflation adjustment filings, and Freeport has consistently objected to the reasonableness of El Paso's approach. Given that there is no clear tariff-based Btu adjustment method, the Commission is concerned that with the passage of years the El Paso system-wide methodology may no longer be reasonable. The rate case hearing may offer a means to explore that question. The Commission cannot determine from the conflicting pleadings what relevance the Btu data determinations in the rate case may have for the subject inflation adjustment. To the extent there is no relevance, there is no harm in making this proceeding subject to the outcome of the Rate Case. To the extent there may indeed be a relationship between the appropriate Btu methodology decided in the Rate Case and that used here, the Commission finds it prudent to make this proceeding subject to that outcome. Therefore, the Commission accepts the filing subject to refund and the outcome of the Rate Case. This will ensure that the Btu factor here is consistent with the findings on any relevant related issues in the Rate Case.

14. Accordingly, the Commission finds that the proposed tariff record has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Therefore, the Commission will accept the proposed tariff record for filing and suspend its effectiveness, subject to refund and to the outcome of the Rate Case in Docket No. RP10-1398-000.

15. 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. *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). 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. *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980). Such circumstances exist here where El Paso's filing is made pursuant to an existing tariff mechanism to establish an inflation adjustment for the upcoming annual period. Therefore, the Commission shall exercise its discretion to suspend the rates to take effect on January 1, 2011, subject to refund and to the outcome of the Rate Case.

The Commission orders:

The Commission accepts and suspends the revised tariff record to be effective on January 1, 2011, subject to refund and to the outcome of the Rate Case in Docket No. RP10-1398-000.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.