

134 FERC ¶ 61,245  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 29, 2011

In Reply Refer To:  
El Paso Natural Gas Company  
Docket No. RP11-1754-000

El Paso Natural Gas Company  
Post Office Box 1087  
Colorado Springs, CO 80944

Attention: Susan C. Stires  
Director, Regulatory Affairs

Reference: Extension of suspension of MDO/MHO violation penalty

Dear Ms. Stires:

1. On February 2, 2011, El Paso Natural Gas Company (El Paso) filed a report reflecting the maximum delivery obligation (MDO)<sup>1</sup>/maximum hourly obligation (MHO)<sup>2</sup> variance activity to provide the details of MDO/MHO non-critical variance activity on El Paso's system in 2009 and 2010, pursuant to Section 4.6 of Rate Schedule OPAS (Operator Point Aggregation Service). In addition, El Paso filed a tariff record<sup>3</sup> to modify Section 4.6 of Rate Schedule OPAS to extend the non-critical zero-rate MDO/MHO Violation Penalty to March 31, 2012. El Paso's report is accepted for filing.

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<sup>1</sup> An MDO is the maximum daily quantity that a delivery point operator may take from a meter, as specified in Rate Schedule OPAS.

<sup>2</sup> An MHO is the maximum hourly quantity that a delivery point operator may take from a meter. The amount of an MHO must be no less than the MDO divided by 24 hours and no more than the MDO divided by 24 hours times 300 percent.

<sup>3</sup> Part III: Rate Schedules, Section 12 - Rate Schedule OPAS, 2.0.0 to EPNG Tariffs, FERC NGA GAS Tariff.

The tariff record is accepted effective April 1, 2011, subject to the conditions described below.

2. On December 18, 2008, the Commission issued an order which, among other things, accepted El Paso's proposal to (1) suspend MDO/MHO penalties in non-critical periods for a trial period ending March 31, 2010, and (2) file an informational report after the trial period detailing the non-critical variance activity and the effects on El Paso's system.<sup>4</sup>

3. El Paso states that MDO/MHO customer activity is subject to various factors including market need, power-based economics, and operating variables such as maintenance and weather. El Paso states that in both 2009 and 2010, its system experienced relatively mild weather during the summer cooling and winter heating seasons, as compared to that of previous years, and that the state of the economy has continued to influence and thereby limit or delay the expansion projects and upgrades planned by El Paso's customers. El Paso states that in light of these factors it has reviewed the data it collected and has determined that additional time is needed to evaluate if a non-critical MDO/MHO violation penalty is warranted. Therefore El Paso proposes to extend the period of a zero penalty rate for an additional year to determine whether a non-critical MDO/MHO violation penalty is appropriate.

4. Public notice of the filing was issued on February 2, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. On February 14, 2011, The El Paso Municipal Customer Group (EPMCG)<sup>5</sup> filed a protest, which is discussed below.

5. EPMCG objects to El Paso's request for an extension of the non-critical zero-rate MDO/MHO Violation Penalty and requests that both the non-critical and critical period MDO/MHO Violation Penalty provisions be ended or amended. EPMCG argues that violations of the non-critical MDO/MHO limits do not have a negative impact on

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<sup>4</sup> *El Paso Natural Gas Co.*, 125 FERC ¶ 61,309 (2008).

<sup>5</sup> EPMCG is composed of the following eleven distributor-customers of El Paso: City of Mesa, Arizona; City of Benson, Arizona; City of Safford, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Deming, New Mexico; City of Socorro, New Mexico; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

El Paso's system and that the request for another extension is an admission of this fact. In addition, EPMCG argues that the MDO/MHO limitations are burdensome on small customers and do not mesh with the full requirements status of the transportation agreements under Rate Schedule FT-2. EPMCG questions the appropriateness of MDO allocations among small shippers, given that certain shippers are regularly in violation of the limits. EPMCG complains that in the event of a critical operating condition, MDO/MHO violation penalties would be assessed regardless of whether or not those violations caused the critical condition or had an adverse impact on the system. EPMCG requests that El Paso's tariff be changed to assess penalties only when MDO/MHO violations have a negative impact on other customers, or on El Paso's system.

6. EPMCG has raised issues concerning customers under the FT-2 rate schedule, MDO allocations, and the overall appropriateness of a non-critical MDO and MHO penalty. The Commission has previously stated that any service above the MDO or MHO level whether firm or interruptible is subject to a penalty if it threatens the firm service of other shippers.<sup>6</sup> However, the Commission also found that, because of the unique qualities of FT-2 full requirements service, El Paso should develop MDO/MHO levels for FT-2 shippers that provide enough flexibility for the FT-2 shippers within necessary restrictions to ensure firm service for other shippers.<sup>7</sup> The FT-2 shippers should also have MDOs/MHOs high enough to accommodate projected levels of service without penalties.

7. The Commission grants El Paso a one year extension in order to study the need for a non-critical MDO/MHO penalty during a period that would reflect more normal business conditions and weather. Without data that adequately represent the operating conditions of El Paso's system, El Paso does not have the requisite information to determine if violations of the non-critical MDO/MHO limits pose a threat to El Paso's system or to determine whether FT-2 shippers have adequate MDOs/MHOs to avoid penalties. Therefore, the Commission will grant El Paso a one year extension of a zero-rate non-critical MDO/MHO violation penalty in order to obtain additional information to determine the appropriateness of removing non-critical MDO/MHO violation penalties from El Paso's tariff. However, at the end of the one year extension, El Paso must file a report that (1) determines the appropriateness of a non-critical MDO/MHO penalty and fully justifies its position, (2) provides a detailed explanation of the studies it has performed over the previous three years, and (3) addresses the adequacy of FT-2 Rate Schedule MDO/MHO allocations.

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<sup>6</sup> See *El Paso Natural Gas Co.*, 121 FERC ¶ 61,266, at P 77 (2007).

<sup>7</sup> *Id.* P 61.

8. With respect to EPMCG's concerns about the assessment of MDO/MHO penalties during a critical operating condition, this issue is beyond the scope of the non-critical period MDO/MHO penalty that is before the Commission in this tariff filing. Therefore, the Commission will deny EPMCG's request to end or modify MDO/MHO penalties during a critical operating condition.

9. The Commission grants a one year extension of the non-critical zero-rate MDO/MHO Violation Penalty and the above-referenced tariff record is accepted effective April 1, 2011. One year from the issuance of this order El Paso will file its report on non-critical MDO/MHO violation penalties and any related tariff records addressing the issues identified by the Commission, as discussed more fully above.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.