

138 FERC ¶ 61,219
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 28, 2012

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP12-367-000

El Paso Natural Gas Company
P.O. Box 1087
Colorado Springs, Colorado 80903

Attention: Catherine E. Palazzari, Vice President

Reference: MDO/MHO Variance Activity Report and
Revision to the MDO/MHO Non-Critical Penalty Rate

Dear Ms. Palazzari:

1. On February 1, 2012, El Paso Natural Gas Company (El Paso) filed its maximum delivery obligation (MDO)¹/maximum hourly obligation (MHO)² variance activity report to provide the details of MDO/MHO non-critical variance activity on El Paso's system in 2009, 2010 and 2011, pursuant to Section 4.6 of Rate Schedule OPAS (Operator Point Aggregation Service). In addition, El Paso filed two revised tariff records,³ and proposes to reduce the non-critical penalty rate to zero. El Paso's report is accepted for filing, and the tariff records are accepted effective April 1, 2012, as requested.

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

² 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.

³ El Paso Natural Gas Company, FERC NGA Gas Tariff, EPNG Tariffs, [Part II: Stmt. of Rates, Section 2 - Charges/Penalties, 2.0.0](#); and [Part III: Rate Schedules, Section 12 - Rate Schedule OPAS, 3.0.0](#).

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.⁴ The Commission issued orders accepting the informational reports and granting extensions on March 11, 2010⁵ and March 29, 2011⁶ of the trial period of the non-critical MDO/MHO penalty. In the instant filing, El Paso states it believes a trial period is no longer necessary, and instead proposes to reduce the penalty rate to zero.

3. Public notice of the filing was issued on February 2, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), 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. The El Paso Municipal Customer Group (EPMCG)⁷ filed a protest, which is discussed below.

4. EPMCG believes the MDO/MHO non-critical penalty should be removed from El Paso's tariff entirely. EPMCG contends the penalties do not drive customer behavior, and that without question, they cannot affect the contracting behavior of Rate Schedule FT-2 Shippers, who have a single full requirements contract without a separately stated demand charge.

5. The Commission finds that El Paso's proposal is just and reasonable. Further, the tariff change sought in EPMCG's protest is rejected, as the Commission finds an insufficient basis on this record to institute a section 5 proceeding and order rescission of the existing penalty provision. Even though the penalty language may remain in the tariff, if El Paso seeks to increase the penalty rate above zero, it will have to justify such an increase. If EPMCG or any shipper believes that any such penalty increase is unjust

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

⁵ *El Paso Natural Gas Co.*, Docket No. RP10-352-000 (Mar. 11, 2010) unpublished delegated letter order.

⁶ *El Paso Natural Gas Co.*, 134 FERC ¶ 61,245 (2011).

⁷ 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.

or unreasonable, it may at that time protest the new penalty rate, and challenge whatever support El Paso puts forward.

6. Consistent with the foregoing discussion, the Commission accepts El Paso's MDO/MHO Variance Activity Report, and also accepts, effective April 1, 2012, the tariff records listed in n.3 of this letter.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.