

148 FERC ¶ 61,226
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

El Paso Natural Gas Company, L.L.C.

Docket No. CP14-83-000

ORDER APPROVING ABANDONMENT

(Issued September 23, 2014)

1. On February 13, 2014, El Paso Natural Gas Company, L.L.C. (El Paso) filed an application, as supplemented, pursuant to section 7(b) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authority to abandon by sale two 16-inch diameter pipeline segments, each 42.2 miles long, located in El Paso and Hudspeth Counties, Texas. El Paso states that the facilities are functionally obsolete and no longer needed to provide natural gas transportation service.³ For the reasons discussed below, the Commission will approve the requested abandonment, subject to conditions.

I. Background and Proposal

2. El Paso is a natural gas company, as defined by section 2(6) of the NGA,⁴ engaged in the transportation of natural gas in interstate commerce, subject to the Commission's jurisdiction. It is a limited liability corporation organized under the laws of the State of Delaware, with its principal place of business in Colorado Springs, Colorado, and a wholly-owned subsidiary of Kinder Morgan Energy Partners, L.P. El Paso operates an integrated interstate pipeline system extending from production areas in the southwestern United States through Oklahoma, Texas, New Mexico, Colorado and Arizona.

¹ 15 U.S.C. § 7117f (2012).

² 18 C.F.R. § 157 (2014).

³ In response to a data request from the staff of the Commission, El Paso filed additional information regarding environmental matters on April 21, 2014.

⁴ 15 U.S.C. § 717a(6) (2012).

3. El Paso requests authority to abandon by sale to DKM Enterprises, L.L.C. (DKM),⁵ two parallel segments of 16-inch-diameter pipeline and related appurtenances, from approximately Milepost (MP) 144 to approximately MP 186.⁶ These pipeline segments are parts of El Paso's Line 1000 and Line 1001, and they are collectively known as the Jal Lines. Line 1000 is a 16-inch-diameter pipeline constructed in 1929 by El Paso and it extends approximately 207 miles from natural gas production fields near the Town of Jal in Lea County, New Mexico, to El Paso, Texas. In 1937, El Paso constructed Line 1001, which is also 16 inches in diameter, parallel to and as a loop for Line 1000.⁷ These lines were originally constructed to deliver natural gas to the City of El Paso, Texas.

4. El Paso has been decommissioning the Jal Lines in stages since 1991. Between 1991 and 1997, El Paso abandoned in place, by sale to Lea Partners, L.P., approximately 46.4 miles of Line No. 1000 and approximately 55 miles of Line No. 1001.⁸ In 1999, El Paso abandoned by sale to Southern Union Gas Company additional 20.12-mile-long segments of Line No. 1000 and Line No. 1001 between MP 186.5 and MP 206 in El Paso County, Texas.⁹ In 2004, El Paso abandoned a segment of Line No. 1000 between MP 56.6 and MP 144.3, and a segment of Line No. 1001 located between MP 65.2 and MP 144.3.¹⁰

⁵ DKM is a pipe and steel salvage company and is not affiliated with El Paso. After acquisition of the facilities, El Paso states that DKM will remove the pipeline facilities. The pipe will be removed from the trenches along with appurtenant above-ground facilities. At 11 road crossings, the pipe will be cut, capped and abandoned in place.

⁶ Exhibit Z to El Paso's application includes a map showing the location of the facilities proposed to be abandoned.

⁷ The Federal Power Commission issued certificates of public convenience and necessity for these pipelines on January 11, 1944. *See El Paso Natural Gas Company*, 4 FPC 486 (1944).

⁸ *See El Paso Natural Gas Company*, 80 FERC ¶ 62,025 (1997); 71 FERC ¶ 61,346 (1995); 52 FERC ¶ 61,268 (1990).

⁹ *El Paso Natural Gas Company*, 89 FERC ¶ 61,265 (1999).

¹⁰ *El Paso Natural Gas Company*, 110 FERC ¶ 62,061 (2005).

5. The two remaining segments of the Jal Lines currently owned by El Paso are the subject of this proceeding. They begin at the Comudas Compressor Station at MP 144 and end at the Clint Meter Station at MP 186.¹¹ In 2009, El Paso idled these segments of the Jal Lines in order to repair them and allow El Paso the ability to perform inspections. At that time, El Paso determined that it was preferable to idle the two segments of pipeline rather than make significant maintenance investments to repair and upgrade them to meet El Paso's internal inspection device capabilities and standards. El Paso states that it was able to maintain all of its firm contractual commitments during the 2009 maintenance operation. Moreover, El Paso states that since 2009, it has continually evaluated the need for the Jal Lines but they have not proven necessary to allow El Paso to meet its current obligation. Consequently, El Paso has concluded that these remaining segments of the Jal Lines are not needed for current or future transportation service.

6. El Paso contends that abandonment of the remaining segments of the Jal Lines will not adversely affect any shipper's transportation or tariff rights, contracted service commitments, or El Paso's firm transportation obligations. El Paso also contends that abandonment will benefit its customers by permitting it to avoid the costs of any maintenance or improvements to facilities that are no longer needed for service.¹²

II. Notice, Interventions, Comments, Protest and Answer

7. Notice of El Paso's application was issued on February 27, 2014, and was published in the *Federal Register* on March 3, 2014 (79 Fed. Reg. 13,289). Comments, protests, and interventions were due by March 20, 2014. Atmos Energy Corporation, Atmos Energy Marketing LLC, ConocoPhillips Company, El Paso Electric Company, NJR Energy Services Company, Southwest Gas Corporation, and Texas Gas Service Company filed timely, unopposed motions to intervene. Southern California Gas Company and San Diego Gas & Electric Company filed a timely, unopposed, joint motion to intervene.¹³ Jasmine Van filed comments but did not intervene.

8. On March 26, 2014, a representative of the Ysleta del Sur Pueblo Tribe filed comments stating that the Tribe believes that the proposed abandonment will not adversely affect its traditional, religious or culturally significant sites. The Tribe requested consultation in the event that any human remains or artifacts unearthed during the project work fall under the guidelines of the Native American Graves Protection and

¹¹ El Paso states that in 2007 it disconnected the Jal Lines from the Clint Meter Station and tied another existing lateral line into the Clint Meter Station.

¹² El Paso's Application, p. 7.

¹³ Timely, unopposed motions to intervene are granted by operation of Rule 214(c). 18 C.F.R. § 385.214(c) (2014).

Repatriation Act.¹⁴ On April 2, 2014, El Paso filed with the Commission copies of email correspondence between El Paso and the Tribe indicating that the Tribe's concerns had been resolved.

9. ConocoPhillips' intervention included a protest.¹⁵ El Paso filed an answer to ConocoPhillips' protest, El Paso Electric Company's comments in its intervention motion, and Jasmine Van's comments. Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests,¹⁶ the Commission finds good cause to waive the rules and admit El Paso's answer because it provides information that will assist the Commission in its decision-making process. The Commission addresses the protest and answer below.

III. Discussion and Conclusion

10. Since the facilities that El Paso proposes to abandon are used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the proposal is subject to the requirements of section 7(b) of the NGA.¹⁷

11. Section 7(b) of the NGA allows an interstate pipeline to abandon jurisdictional facilities or services only if the abandonment is permitted by the "present or future public convenience or necessity."¹⁸ The Commission examines abandonment applications on a case-by-case basis. In deciding whether abandonment is warranted, the Commission considers all relevant factors, but the criteria will vary as the circumstances of the abandonment proposal vary.

12. When a pipeline proposes to abandon facilities, the continuity and stability of existing services are the primary considerations in assessing whether the public convenience or necessity permit the abandonment.¹⁹ If the Commission finds that a

¹⁴ 25 U.S.C. §§ 3001 *et seq.*

¹⁵ In its protest, ConocoPhillips contends that El Paso's application lacks sufficient information to determine whether and how shippers may be affected by the abandonment.

¹⁶ 18 C.F.R. § 385.214(d) (2014).

¹⁷ 15 U.S.C. § 717f(b) (2012).

¹⁸ *Id.*

¹⁹ *See, e.g., El Paso Natural Gas Co.*, 136 FERC ¶ 61,180, at P 22 (2011).

pipeline's proposed abandonment of particular facilities will not jeopardize continuity of existing gas transportation services, it will defer to the pipeline's business judgment.²⁰

13. As noted, El Paso contends the Jal Lines remnants are not necessary to the current transmission service being provided on El Paso, and El Paso states that they are not needed for future service. In its protest, ConocoPhillips contends that in 2009 when El Paso idled the Jal Lines now proposed for abandonment, the South Mainline²¹ was underutilized, but given the substantial increases in gas supply in recent years, the Jal Lines may be needed in the future.

14. ConocoPhillips offers several arguments in support of its opposition to the proposed abandonment of the Jal Lines. It states that El Paso has recently undertaken several significant construction projects to expand the capacity of the South Mainline, including a reconfiguration and expansion of the Willcox Lateral, which connects to the South Mainline, to serve two new contracts with a combined long-term firm capacity of 185,000 dekatherms (Dth) per day.²² ConocoPhillips further notes that an El Paso affiliate, Sierrita Gas Pipeline LLC, applied for a certificate of public convenience and necessity for a new pipeline with a capacity of approximately 200,800 Dth per day, supported by a long-term contract with a shipper, from the South Mainline to Sasabe, Arizona.²³ ConocoPhillips contends that the South Mainline will carry increased volumes to serve those contracts, and that several shippers on the new capacity have executed agreements for long-term firm service on the South Mainline. ConocoPhillips states that El Paso recently issued an open season notice that suggests that it may expand the South Mainline if there is sufficient shipper interest.²⁴ It also contends that El Paso failed to provide information necessary for full consideration of its proposal, including operating information for the Jal Lines; the incremental capacity that they would add to

²⁰ See, e.g., *Trunkline Gas Co.*, 94 FERC ¶ 61,381, at 62,420 (2001).

²¹ Contrary to the implication of ConocoPhillips' comments, the 16-inch Jal Lines (Line 1000 and Line 1001) proposed for abandonment are not mainline facilities. They were used as laterals that extend from the South Mainline, near the Cornudas Compressor Station, to the City of El Paso.

²² See *El Paso Natural Gas Company*, 141 FERC ¶ 61,026 (2012).

²³ On June 6, 2014, the Commission issued a certificate and a Presidential Permit for this project in Docket Nos. CP13-73-000 and CP13-74-000 (the Sierrita Pipeline Project). See *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 (2014). A request for clarification or rehearing is currently pending before the Commission.

²⁴ ConocoPhillips includes a copy of the open season notice as Attachment A to its Protest.

its system if they were made operational; the extent to which abandonment would reduce El Paso's capacity; and an estimate of the cost of continuing to maintain and operate the Jal Lines.

15. In its motion to intervene, El Paso Electric Company does not oppose the application for abandonment, but "it does seek assurance that no possible degradation in the quality or reliability of [El Paso's] transportation service to shippers with delivery points in the El Paso, Texas, geographical area, including El Paso Electric, would result from these proposed abandonments."²⁵ In her comments, Ms. Van expresses concern that her ranch may become worthless if removal of the pipeline segments is allowed.

16. In its answer to ConocoPhillips' protest and the comments of El Paso Electric Company and Jasmine Van, El Paso states that the Jal Lines remnants are configured to serve as laterals from the South Mainline to the El Paso, Texas area and "have not served as a substantive loop of the South Mainline."²⁶ Thus, the remnants would not be used for a future expansion of the South Mainline. El Paso further contends that it is not "reasonably feasible" to return the Jal Lines to transportation service because it would have to do certain inspection and maintenance activities, including installation of pig launchers and catchers. El Paso notes that the pipes in question were constructed with bell and spigot type joints with oxyacetylene seal fillet welds. El Paso states that disturbance of pipes of this age and condition for inspection or repair, or the installation of pig launchers and catchers, has been known to cause additional leaks from the old wells.²⁷ There are better, more efficient methods of welding pipe now that would not result in additional leaks. El Paso believes that the lines could not be properly upgraded and that it would be necessary to replace the lines with hydraulically similar modern facilities, at a cost of about \$100 million, even after inspection and consideration of repairs.

17. El Paso further contends that even if it were practicable to use the Jal Lines remnants to transport natural gas, such use would not result in any increase in South Mainline capacity. El Paso notes that it has a D-Code²⁸ on the east side of El Paso, Texas, at Clint Junction, as well as delivery meters on the west side of El Paso, Texas. To serve this D-Code, El Paso says that it reserves capacity on its South Mainline for

²⁵ El Paso Electric Company's Motion to Intervene, p. 2.

²⁶ El Paso's Answer at p. 3.

²⁷ El Paso states that the problem with the Jal Lines remnants' integrity is "not unlike" coupled pipe where the age and the method used to originally join the pipe segments make the pipes more susceptible to leaks.

²⁸ A D-Code is a meter or aggregation of meters serving as a delivery point.

deliveries to the west side of El Paso, Texas, up to the maximum delivery quantity for the D-Code. El Paso states that use of the Jal Lines to physically deliver gas to meters on the east side of El Paso, Texas, would not alter the amount of capacity on the South Mainline required by the D-Code. That is, capacity on the South Mainline for delivery to the D-Code will not be altered in any way regardless of whether gas is coming from the east or west side of El Paso, Texas.

18. El Paso notes that ConocoPhillips does not identify any future demand or expansion that would require use of the Jal Lines. None of the instances of additional demand on El Paso's system referenced by ConocoPhillips supports a conclusion that an expansion of South Mainline capacity will be required in the near future,²⁹ much less that the Jal Lines could be used to provide that capacity. Regarding comments filed by El Paso Electric, El Paso states that it currently meets its contractual obligations to El Paso Electric without using the Jal Lines, and that abandonment will not affect service to El Paso Electric.³⁰

19. El Paso states that it has discussed Jasmine Van's concerns with her and that it understands her principal concern is how abandonment might decrease the value of her land because the pipes' continued presence could attract new business to her land, which she appears to desire. El Paso says that it is highly unlikely that the Jal Lines remnants could provide service to any new business. El Paso states that it is also highly unlikely that the lines, if not removed, would be used for the retail service that Ms. Van envisions, because of their age and deteriorated condition.

20. The record of this proceeding, including the gas flow diagrams provided, supports a conclusion that El Paso will be able to continue service at the present levels without using the remaining Jal Lines segments. We note that it has been doing so for some time already. El Paso has demonstrated that the Line 1000 and Line 1001 are not used for looping of the South Mainline and that they would not be instrumental in any future expansion of that facility. We also find that ConocoPhillips has not described any future demand or expansion that would require using the Jal Lines segments.

²⁹ El Paso notes that it held an open season in conjunction with the Sierrita Gas Pipeline project to solicit interest in capacity on the North Mainline to provide additional deliveries off the South Mainline, including to the interconnect with the Sierrita project. As it turned out, the North Mainline will be able to provide all needed capacity for the Sierrita interconnect, and no need for South Mainline capacity was identified.

³⁰ At pages 3-4 of Exhibit V of the Application, El Paso has provided flow diagrams showing that gas flows would remain unchanged with the Jal Lines removed because the lines are not being used to provide service to El Paso Electric.

21. For the reasons discussed above, the Commission finds that the public convenience or necessity permit the abandonment of the vestigial segments of the Jal Lines and that there will be no continuity of service problems concerning any existing customers. Nor would abandonment and removal of the lines result in a reduction in transportation capacity, as the lines are no longer capable of being used and have not been used for some time. Lastly, all current and foreseeable service may be adequately provided without use of these lines.

Environmental Analysis

22. On February 27, 2014, the Commission issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Line 1000 and Line 1001 Abandonment Project and Request for Comment on Environmental Issues (NOI). The NOI was mailed to interested persons including federal, state, and local officials; agency representatives; Native American tribes; and affected property owners. The Commission received one comment in response to the NOI from the Texas Parks and Wildlife Department. The primary issues raised concerned impacts on migratory birds, endangered species, minimizing the clearing of vegetation, and restoration of disturbed areas.

23. To satisfy the requirements of the National Environmental Policy Act of 1969,³¹ the Commission's staff prepared an environmental assessment (EA) for El Paso's proposal. The analysis in the EA addresses water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, cultural resources, and alternatives. The EA was placed into the public record on June 6, 2014. All substantive comments received in response to the NOI were addressed in the EA.

24. The EA describes how DKM would conduct salvage activities and would restore disturbed areas.³² Pursuant to the Purchase and Sale Agreement between El Paso and DKM, DKM is obligated to conduct all salvage activities in a manner consistent with its requirements, which include working within the existing right-of-way, use of best management practices, and compliance with all appropriate environmental permits.

25. El Paso will have an Environmental Inspector (EI) on site during salvage operations to monitor compliance with the Purchase and Sale Agreement.³³ The EI will ensure that DKM stays within the right-of-way and adheres to the environmental requirements, including restoration of the right-of-way. The EA explains that the project

³¹ 42 U.S.C. §§ 4321-4347 (2012).

³² EA, p. 5.

³³ EA, p. 6.

will not adversely affect wetlands or water-bodies, as no activity will be conducted within wetlands or water bodies.³⁴

26. Based on the analysis in the EA, the Commission concludes that if abandonment activities are conducted in accordance with El Paso's application, as supplemented, and in compliance with the environmental conditions in the Appendix to this order, the Commission's approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

27. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) El Paso is granted permission and approval under section 7(b) of the NGA to abandon the facilities described in this order and as more fully described in El Paso's application.

(B) El Paso shall notify the Commission of the abandonment of the facilities within 10 days following such abandonment. El Paso shall complete the authorized abandonment within one year from the date of this order.

(C) El Paso shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies El Paso. El Paso shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(D) El Paso shall comply with the environmental conditions set forth in the Appendix to this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁴ EA, pp. 4, 8, and 10-11.

Appendix

Environmental Conditions for El Paso Natural Gas Company, L.L.C.

1. El Paso shall follow the construction and abandonment procedures and mitigation measures described in its application and as identified in the EA, unless modified by the Order. El Paso must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during activities associated with abandonment of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and abandonment.

3. **Prior to any construction**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with project-related activities.

4. **Within 60 days of the Order and before abandonment by removal begins**, El Paso shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. El Paso must file with the Secretary and revisions to the plan as schedules change. The plan shall identify:
 - a. how El Paso will implement the abandonment procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Commission Order;

- b. how El Paso will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at the project site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the locations and dates of the environmental compliance training and instructions El Paso will give to all personnel involved with abandonment-related activities (initial and refresher training as the project progresses and personnel change);
 - f. the company personnel (if known) and specific portion of El Paso's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) El Paso will follow if noncompliance occurs; and
 - h. a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of project activity; and
 - (4) the start and completion of restoration.
5. **Beginning with the filing of its Implementation Plan**, El Paso shall file updated status reports with the Secretary **on a biweekly basis until all abandonment and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the project work status and work planned for the following reporting period;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented; and
 - e. copies of any correspondence received by El Paso from other federal, state or local permitting agencies concerning instances of noncompliance, and El Paso's response.

6. **Within 30 days after completing the abandonment**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been abandoned in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which certificate conditions El Paso has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for such noncompliance.