154 FERC ¶ 61,085
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company, L.L.C. Docket No. RP16-364-000

ORDER REJECTING TARIFF FILING

(Issued February 5, 2016)

1. On January 6, 2016, El Paso Natural Gas Company, L.L.C. (El Paso) filed revised tariff records to implement an Update to Service Request Procedures (Tariff Filing)[1] in its General Terms and Conditions (GT&C) to clarify that an open season for capacity may be initiated before or after the receipt of a request for firm service submitted pursuant to the capacity sales timeline set forth in its tariff. El Paso proposes to make the modifications to its tariff effective February 8, 2016.

2. The Commission rejects the Tariff Filing, for the reasons discussed below.

Proposal

3. Under El Paso's current tariff, there are two methods for awarding available firm capacity. First, if El Paso receives a request for firm service for posted capacity through its electronic bulletin board (EBB) at the maximum rate, El Paso must award the available capacity on a first-come, first-served basis.[2] Second, if prior notice is given that

[1] El Paso Natural Gas Company, L.L.C./EPNG Tariffs, Part IV: GT&C, Section 4 - Requests for Services, 6.0.0

[2] GT&C Section 4.4(b) ("Transporter shall award such capacity on a first/come-first/served basis; however, Transporter reserves its right to refuse service if the rate offered by Shipper is less than the maximum rate for the service set forth on the Statement of Rates of this Tariff.").

the first-come, first-served method will not be used, El Paso may hold an open season to sell capacity outside the sales timeline.[3]

4. El Paso proposes to modify its tariff to allow it the option to initiate an open season for available capacity either before or after firm service is requested at the maximum rate through its EBB. Specifically, under revised Section 4.4(c)(ii), "Transporter may elect to initiate an open season . . . to solicit bids for capacity described in a submitted service request." Thus, even after a shipper is the first to submit a bid for posted capacity at the maximum rate, El Paso would not be obligated to accept that bid as currently required under its tariff and established Commission precedent. Rather, it could then initiate an open season to solicit other bids for the capacity.

5. El Paso claims that these modifications will ensure that capacity is awarded to shippers who value it most.[4]

Public Notice, Interventions, Protests, and Comments

6. Notice of the filing was issued on January 7, 2016, providing for motions to intervene, comments and protests to be filed on or before January 19, 2016.

7. Pursuant to Rule 214 of the Commission's regulations,[5] all timely filed motions to intervene and any unopposed 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 the proceeding or place additional burdens on existing parties.

8. On January 19, 2016, a joint protest was filed by Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas/SDG&E). On January 19, 2016, a joint protest was also filed by BP Energy Company, ConocoPhillips Company, Cross Timbers Energy Services Inc., Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P. (Indicated Shippers).

9. Both SoCalGas/SDG&E and Indicated Shippers argue that El Paso's proposed modifications to its tariff would create market uncertainty because shippers would never know if firm capacity posted on the EBB would be available as and when needed.[6]

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[3] GT&C Section 4.5(a).

[4] Tariff Filing at 2 - 3.

[5] 18 C.F.R. § 385.214 (2015).

[6] SoCalGas/SDG&E Protest at 3; Indicated Shippers Protest at 3.

Commission Analysis

10. What El Paso characterizes as a tariff clarification is in fact a substantive tariff change. El Paso currently can use either an open season or a first-come, first-served method to award capacity, but not both at the same time.[7] Nothing in El Paso's current tariff suggests it may initiate an open season for firm capacity for which it has received a valid request at the maximum rate on a first-come, first-served basis. Thus, accepting El Paso's "clarification" would change the tariff materially. Assessing El Paso's filing requires the Commission to weigh two concepts the Commission has fostered: that capacity should be awarded to the shipper that values it most, and that shippers can reasonably rely on obtaining posted capacity if they are the first shipper to bid for it at the maximum rate for that capacity.

11. Precedent suggests El Paso's request should be denied. Commission precedent allows a pipeline to choose between holding an open season and allocating firm capacity on a first-come, first-served basis.[8] El Paso cites no precedent permitting a pipeline to hold an open season for capacity already subject to a first-come, first-served maximum rate offer. While El Paso suggests that subsequently holding an open season might enable it to garner more value for the capacity, it does not acknowledge the uncertainty that would arise among shippers about whether posted capacity was indeed available to the first shipper to bid the maximum rate for that capacity.

12. Accepting the Tariff Filing would significantly undermine shippers' ability to rely on receiving posted firm capacity allocated on a first-come, first-served basis. The Commission has a longstanding policy of fostering the ability of gas sellers and purchasers to make informed choices.[9] Allowing the first shipper to bid the maximum

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[7] GT&C Section 4.4(b), Section 4.5(a).

[8] *Encana Marketing (USA) Inc. v. Rockies Express Pipeline LLC*, 146 FERC ¶ 61,161, at P 26 (2014); *see also Pine Prairie Energy Center, LLC*, 137 FERC ¶ 61,060, at P 54 (2011); and *Northern Natural Gas Co.*, 118 FERC ¶ 61,053, at P 51 (2007).

[9] *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. ¶ 30,939 at 30,393, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *order on reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997) *reh'g denied*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

rate for heretofore unused capacity allows its use by the first shipper who values it at the maximum rate. If the Tariff Filing were accepted, a shipper could not be certain that a valid maximum rate offer would allow it to obtain available firm capacity for its commercial transactions, preventing it from efficiently finalizing related transactions.

13. In sum, the Commission finds that the value of any marginal increase in allocative efficiency is outweighed by the need for shippers to be able to rely on the availability of capacity following valid maximum rate service requests. If El Paso has not received a valid request for posted capacity, it still may offer it instead as part of an open season. The Commission finds on balance, however, that pipelines should not be allowed to post capacity, receive a maximum bid therefor, and then refrain from awarding the capacity before holding an open season for the same capacity. The shipper who values the capacity at the maximum rate and bids for it first should be secure in the knowledge that it is thereby entitled to the posted capacity.[10] To allow otherwise would insert unnecessary uncertainty into the currently established practice on all pipelines.

The Commission orders:

The Tariff Filing is rejected as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[10] *TransColorado Gas Transmission Co.*, 67 FERC ¶ 61,301, at 62,067 (1994) (when a potential shipper offers the maximum rate for available capacity, that potential shipper must be awarded the capacity unless operationally the service cannot be provided).