

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

June 1, 2004

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP04-33-000

El Paso Natural Gas Company
Attn: Craig V. Richardson,
Vice President and General Counsel
2 North Nevada Avenue
Colorado Springs, CO 80903

Re: El Paso Natural Gas Company
Docket No. RP04-33-000

Dear Mr. Richardson:

1. On April 15, 2004, El Paso Natural Gas Pipeline Company (El Paso) filed an uncontested Offer of Settlement, including a Stipulation and Agreement, intended to resolve all issues in the above referenced proceeding. Initial and reply comments were due on or before May 5, 2004 and May 17, 2004 respectively. Comments either supported or did not oppose the Offer of Settlement. On May 6, 2004, the settlement judge certified the uncontested settlement to the Commission. The Commission will accept the settlement. This decision benefits the public because it approves an uncontested settlement that appears to be a fair and reasonable resolution of the issues in this proceeding.
2. The major features of the settlement are as follows. Under Article II, the East of California Shippers (EOC Shippers)¹ will withdraw their complaint in the instant proceeding with prejudice upon certain conditions and in recognition of El Paso's willingness to provide Traditional California Receipt Service and to provide

¹ The EOC Shippers are Arizona Electric Power Cooperative, Inc.; Arizona Public Service Co. and Pinnacle West Energy Corp.; El Paso Municipal Customer Group; Phelps Dodge Corp.; Salt River Project Agricultural Improvement and Power District; Southwest Gas Corp.; Texas Gas Service Co., a division of Oneok Inc., and UNS Gas, Inc.

bounce-at-the-border transactions (Bounce Transactions) as defined by the Stipulation and Agreement.² Article II recognizes that El Paso has implemented its Traditional California Receipt Service in accordance with the Commission's orders and the applicable terms of El Paso's tariff.

3. Article III states several conditions to El Paso's obligation to provide and implement Bounce Transactions. One condition is that the parties to the Joint Settlement Agreement (JSA) approved by the Commission on November 14, 2003, in Docket No. RP00-241-000, et al., formally agree that the provision of such Bounce Transactions does not violate the JSA. Another condition is that the order approving the Offer of Settlement must likewise recognize that the Bounce Transactions do not violate the JSA. A third condition is that El Paso will be allowed sufficient time to reprogram its scheduling systems. The Stipulation and Agreement provides that if the Offer of Settlement is approved without modification by June 1, 2004, the required reprogramming will be completed in time to implement Bounce Transactions on July 1, 2004.

4. Article V states that the Stipulation and Agreement may be amended if all parties agree in writing. Absent such agreement, the Stipulation and Agreement may be modified or amended if it is in the "public interest" as delineated under the Mobile-Sierra Doctrine.

5. Article VI sets forth several reservations applicable to the Stipulation and Agreement. Nothing in the Stipulation and Agreement shall degrade in any way existing rights to recall Block II capacity as provided in the JSA or the 1996 El Paso Settlement filed in Docket No. RP95-363-000, et al., as approved by the Commission. Moreover, nothing in the Stipulation and Agreement is intended to affect any position taken by any party in El Paso's forthcoming rate case or to affect any party's right to file a complaint challenging El Paso's implementation of Bounce Transactions. Upon El Paso's implementation of pathing and segmentation under Order No. 637, the parties agree to revisit the provision of a Bounce Transaction. The Stipulation and Agreement is without prejudice to the right of any participant to take any position regarding El Paso's continuing to provide Bounce Transactions after its implementation of Order No. 637.

² Bounce Transactions will allow firm shippers to tender natural gas to El Paso via delivery points in the Anadarko, Permian or San Juan Basins, nominating it for delivery at points on the California border and then to have the same volumes re-delivered to East-of-California points, using the same or a different transportation agreement. This arrangement will allow shippers to secure the benefits of a backhaul service on the system.

6. The Commission may approve an uncontested offer of settlement upon a finding that the settlement appears to be fair and reasonable and in the public interest.³ The Commission finds that the uncontested settlement agreement filed in this proceeding provides a resolution of the issues between the parties that appears to be fair and reasonable and in the public interest. In addition, the Commission confirms that the Bounce Transactions to be provided under the Stipulation and Agreement and its attached pro forma tariff sheets, do not violate the Joint Settlement Agreement approved by the Commission on November 14, 2003, in Docket No. RP00-241-000. Therefore, the Commission will approve the uncontested settlement, effective July 1, 2004, as proposed. Approval of this settlement does not constitute a precedent regarding any principle or issue in this proceeding.

7. El Paso is directed to file actual tariff sheets consistent with the pro forma tariff sheets and the settlement, to be effective July 1, 2004, within ten business days of the issuance of this order approving the Offer of Settlement as uncontested. This proceeding shall terminate upon the later of the acceptance of the tariff sheets or the withdrawal of the complaint filed in this proceeding.

By direction of the Commission. Commissioner Kelly dissenting in part
with a separate statement attached.

Magalie R. Salas,
Secretary.

³ 18 C.F.R. § 385.602(g)(3) (2003).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

El Paso Natural Gas Company

Docket No. RP04-33-000

(Issued June 1, 2004)

KELLY, Commissioner, dissenting in part:

For the reasons I have previously set forth in Wisconsin Power & Light Co., 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves a settlement that provides, in relevant part, that “[t]he standard of review to modify or amend the Stipulation and Agreement without the agreement of all parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the ‘public interest’ standard as delineated under the *Mobile Sierra Doctrine*.”

Suedeen G. Kelly