

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

El Paso Natural Gas Company

Docket No. RP06-122-000

ORDER ACCEPTING AND SUSPENDING FILING
SUBJECT TO REFUND AND CONDITIONS

(Issued December 29, 2005)

1. On November 30, 2005, El Paso Natural Gas Company (El Paso) filed revised tariff sheets,¹ six firm transportation service agreements (TSAs), and two letter agreements for the Commission's review and information as non-conforming agreements. These agreements relate to El Paso's Line 1903 Project which was certificated by the Commission in Docket No. CP05-2-000.² As discussed below, the Commission will accept and suspend the effectiveness of the filing until December 31, 2005, subject to refund and to further order.

Background

2. On October 5, 2004, El Paso filed an application for its Line 1903 Project which contained six precedent agreements with five shippers.³ On June 16, 2005, the Commission issued a certificate of public convenience and necessity authorizing El Paso to acquire, convert to natural gas service, construct, own and operate Line 1903. El Paso has subsequently executed TSAs with each of the five shippers memorializing the terms of their respective precedent agreements. El Paso states that, in a few cases, the executed

¹ 1st Rev Twenty-Fifth Revised Sheet No. 1 and First Revised Sixth Revised Sheet No. 2 to FERC Gas Tariff, Second Revised Volume No. 1-A.

² 111 FERC ¶ 61,408 (2005).

³ Those shippers are Arizona Public Service Company and Pinnacle West Energy Corporation (APS/Pinnacle), Salt River Project Agricultural Improvement and Power District (Salt River), Southwest Gas Corporation (Southwest Gas), California Department of Water Resources (CDWR), and Coral Energy Resources, L.P. (Coral).

TSA contains changes from the drafts provided in the certificate application. El Paso anticipates placing Line 1903 into service no later than December 31, 2005.

Instant Filing

3. El Paso states that it is filing the TSAs under the Commission's material deviation policies since the TSAs contain potential non-conforming provisions. El Paso states that the potential non-conforming provisions are unchanged from the provisions identified in the certificate application.⁴ There are four basic potential non-conforming provisions included in the executed TSAs. The first provision, which appears in all of these TSAs, sets forth the parties' responsibilities in the certificate proceeding and in the subsequent rate case for proposing and supporting the applicable rate treatment for the Line 1903 Project. The second provision, which appears in the CDWR TSA, limits payment liability to CDWR and specifies that the State of California and its taxing authority are not obligated to make payments under the TSAs. The third provision, which appears in several TSAs, describes a yearly contract rate adjustment based on an inflation index. The fourth provision, which also appears in several TSAs, preserves the rights of APS, Salt River, and Southwest Gas, within the context of these TSAs, to pursue the restoration of full requirements service at the Commission and in the courts. The final provision, which appears in the APS TSA, repeats the assignment provision contained in Section 15.1 of El Paso's tariff.

4. El Paso states that it is also submitting two related ancillary letter agreements with APS/Pinnacle and Salt River which address issues related to the possible conversion of each shipper's Line 1903 TSA to one or more of the new firm service options that will become available when El Paso implements the provisions of its Docket No. RP05-422-000 rate case proceeding.

Public Notice

5. Public notice of El Paso's filing was issued on December 6, 2005, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on the existing parties. A protest was filed by the El Paso Municipal Customer Group (EPMCG) which raised the issue of whether the TSAs are

⁴ El Paso notes that Paragraph 9.4 in CDWR's TSA has been revised slightly to state that it agrees not to oppose, rather than to file in support of, a predetermination of rolled-in rate treatment of Line 1903 costs in both El Paso's Line 1903 certificate application and rate case proceedings.

negotiated rate agreements, rather than discount agreements, because of the inflation adjustment provision contained in the TSAs. EPMCG questions whether the application of the inflation adjustment over the ten-year term of the TSAs will result in a rate that exceeds the maximum rate. EPMCG states that this distinction is significant to any determination that El Paso is due a discount adjustment. EPMCG notes that the issue of discount adjustments will be addressed in the ongoing El Paso rate proceeding in Docket No. RP05-422-000.

Discussion

6. The Commission will accept and suspend El Paso's filing, subject to refund and further order. As noted by EPMCG, this filing raises issues related to ongoing proceedings. Therefore, the Commission's acceptance of El Paso's filing is subject to further order.

Suspension

7. Based on a review of the filing, the Commission finds that the proposed filing has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept the filing and suspend its effectiveness for the period set forth below, subject to the conditions of this order.

8. It is the Commission's policy generally to suspend rate filings for the maximum period permitted by statute if preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is also recognized, however, that shorter suspensions may be warranted under circumstances in which suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension). Such circumstances exist here. Accordingly, the Commission will exercise its discretion to suspend the rates for a shorter period and permit the rates to take effect on December 31, 2005, subject to the conditions set forth in the body of this order.

The Commission orders:

The Commission accepts and suspends the filing effective December 31, 2005, subject to refund and to further order in this proceeding.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.