

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. CP06-69-000

ORDER GRANTING EXEMPTION FOR TEMPORARY ACTS AND OPERATIONS

(Issued March 31, 2006)

1. On February 27, 2006, El Paso Natural Gas Company (El Paso) filed a petition pursuant to Rule 207(a) (5) of the Commission's Rules of Practice and Procedure.¹ El Paso requests an exemption, as provided in section 7(c) (1) (B) of the Natural Gas Act (NGA),² from the certificate requirements of NGA section 7(c) to drill a test well and perform other activities to determine the feasibility of developing a natural gas storage facility in Pinal County, Arizona.³

2. We find it is in the public interest to grant El Paso's requested exemption for the proposed activities, subject to the conditions herein, to facilitate the development of storage facilities.

Proposed Activities

3. El Paso seeks an exemption from NGA section 7(c) certificate requirements to explore and assess the technical and economic feasibility of developing an underground natural gas storage facility in Pinal County, Arizona. In 2005, El Paso purchased a 234 acre parcel of land in Pinal County for the purpose of developing a natural gas storage facility. El Paso seeks to drill a stratigraphic well to gather site-specific geologic, stratigraphic and hydrologic data concerning the site. El Paso states that if it finds the development of a storage facility feasible and that a demand for natural gas storage

¹18 C.F.R. § 385.207 (2005).

² 15 U.S.C. § 717(c)(1)(b).

³ Section 7(c)(1)(B) of the NGA permits the Commission to exempt "temporary acts or operations for which the issuance of a certificate will not be required in the public interest."

services exists, it intends to apply to the Commission for a certificate of public convenience and necessity pursuant to section 7 of the NGA.

4. El Paso requests an exemption from NGA section 7(c) certificate requirements in order to drill a single stratigraphic test well to an approximate depth of 7,500 feet through the salt beds and into the rock formations below the salt in order to determine the feasibility of developing one or more natural gas storage caverns.⁴ El Paso will also utilize this well to test the capabilities of the formations underlying the salt beds for brine disposal purposes. El Paso will drill, core, test, and as necessary, plug and abandon the well and completely restore all areas disturbed by the drilling of the well to their pre-existing condition in accordance with all requirements of the Arizona Oil and Gas Conservation Commission and the environmental conditions set forth in section 157.206(b) of the Commission's regulations. El Paso also requests pre-granted abandonment authority to accompany the grant of an exemption, should it be found necessary under the circumstances presented.

Notice and Intervention

5. Notice of El Paso's petition was published in the *Federal Register* on March 10, 2006, 71 *Fed. Reg.* 12346 (2006). Timely notices and motions to intervene, granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure, were filed by El Paso Municipal Customers Group, Pacific Gas and Electric Company, Occidental Energy Marketing Inc. (Occidental), Coral Energy Resources, L.P. (Coral), Conoco Phillips Company (Conoco), Chevron Natural Gas, A Division of Chevron U.S.A. Inc. (Chevron), Burlington Resources Trading Inc. (Burlington), BP America Production Company and BP Energy Company (BP America), El Paso Electric Company, Southwest Gas Corporation, Public Utilities Commission of the State of California, Southern California Gas Company and San Diego Gas & Electric Company, UNS Gas, Inc., and Transwestern Pipeline Company, LLC. Salt River Project Agricultural Improvement and Power District (SRP) filed an untimely motion for leave to intervene. SRP's motion shows that SRP has a direct and substantial interest in this proceeding, and that granting the motion will not delay the proceeding or cause undue prejudice to the other parties. For good cause shown, SRP's motion will be granted.

6. Several of the individual intervenors also filed jointly, as Indicated Shippers, to provide comments concerning El Paso's application.⁵ Indicated Shippers state that they support new storage projects in the southwest, noting the Commission's statement that

⁴ El Paso requests expedited treatment of its petition because of the limited availability of the type of drilling rig needed for the type of drilling involved.

⁵ Indicated Shippers include BP American, Burlington, Chevron, Conoco, Coral, and Occidental.

underground storage development in some areas including the southwest is not keeping up with aggregate storage demands.⁶ Indicated Shippers state also that there has been a steady increase in residential/commercial gas customers and huge growth in gas-fired electric generation in the southwest. Indicated Shippers request the Commission to approve El Paso's petition for waiver, but to require reporting conditions similar to those imposed by the Commission in several other proceedings.⁷ Indicated Shippers state also that the Commission should require that El Paso include in its updated final report a statement of El Paso's conclusions regarding whether or not it will proceed with this storage project and its reasons for those conclusions.

7. On March 20, 2006, El Paso filed a motion for leave to answer and an answer to the comments of Indicated Shippers discussed above, arguing that answers to protests will be allowed when additional facts submitted will assist in the resolution of issues.⁸ The Commission will grant El Paso's motion. El Paso submits that, in accordance with its petition, it has already submitted or will submit the information required in the *Desert Crossing* and *Aquila* decisions. Further, El Paso states that information regarding costs and feasibility, and El Paso's reasons for deciding whether to proceed with the storage facility, constitute commercially sensitive information the premature release of which would impose an unfair competitive disadvantage on El Paso.

Discussion

8. El Paso's proposed activities are a necessary preliminary phase in the development and construction of a natural gas storage facility. Depending on the outcome of tests, salt caverns for the storage of natural gas may or may not be developed. We therefore consider the proposed activities as a necessary phase in the construction of a jurisdictional storage facility, and as such, the proposed activities are subject to the certificate requirements of NGA section 7(c).

9. Pursuant to NGA section 7(c) (1) (B), if we find it in the public interest, we may exempt certain temporary acts or operations from the certificate requirement that would otherwise apply. Previously, we have granted exemptions to allow operations of a

⁶ *Citing Rate Regulation of Certain Underground Storage Facilities, Notice of Proposed Rulemaking*, 113 FERC ¶ 61,306 (2005).

⁷ *Citing Desert Crossing*, 98 FERC ¶ 61,277 (2002); *Aquila Storage and Transportation, LP*, 99 FERC ¶ 61,203 (2002). Indicated Shippers make clear that their support is without prejudice to other positions they may take on issues involved in an NGA section 7 proceeding should El Paso decide to file such an application.

⁸ El Paso cites *Texas Eastern, L.P.*, 104 FERC ¶ 61,180, n.13 (2003), and several other cases in support.

temporary nature that have no effects on the ratepayer, on the quality of service provided by a pipeline, or on the public as a whole.⁹

10. El Paso emphasizes that its proposed exploratory activities are temporary and will be conducted in order to determine the feasibility of developing a salt cavern storage complex. No jurisdictional service will be rendered from the well without Commission authorization. The certificate authorization exemption will be used solely for discrete exploratory activities to obtain geological and engineering data concerning property owned by El Paso.

11. As proposed by El Paso in its application, its authorization will be conditioned on its performing all activities in compliance with the same environmental conditions that apply to natural gas companies' activities under their Part 157 blanket certificates, as set forth in section 157.206(b) of the Commission's regulations. Upon completion of drilling and testing, which El Paso estimates will take approximately three months, El Paso states that it will restore to their pre-existing condition those areas that it does not intend to develop under the certificate it may seek. El Paso states it will follow Arizona state requirements relating to plugging and abandoning the well should that become necessary and appropriate. Any further use of the well, El Paso states, shall follow the receipt of any required Arizona state permits and approvals, as well as any associated Commission certificate or exemption that would be required under section 7 of the NGA.

12. Under the circumstances described in El Paso's petition, we find that the proposed activities constitute temporary acts or operations within the meaning of NGA section 7(c)(1)(B), and we find it in the public interest to exempt the proposed activities from the certificate requirements of NGA section 7(c). Given the limited availability of storage facilities in the vicinity of the potential storage site, we acknowledge the potential benefit a new storage facility could provide. Further, we find that without performing the proposed activities, El Paso cannot make an informed business and engineering decision regarding the feasibility of developing a new storage complex, which would allow El Paso to serve better the growing gas demand needs of its customers.

13. Indicated Shippers have not provided any good reason to require El Paso to expand the content of the reports it has already filed and will file pursuant to its petition. Neither is there good reason supplied for requiring El Paso to report its conclusions regarding whether it will or will not proceed with this storage project and its reasons for those conclusions. The Commission has not required other similarly situated applicants to file this type of information, either in the cases discussed above or in the cases cited by

⁹ See, e.g., *Desert Crossing Gas Storage and Transportation System LLC*, 98 FERC ¶ 61,277 (2002); *Copper Eagle Gas Storage L.L.C.*, 97 FERC ¶ 62,193 (2001); and *Central New York Oil and Gas Company LLC*, 89 FERC ¶ 61,006 (1999).

El Paso in its March 20 Answer,¹⁰ which information appears to be potential project analysis appropriately held private.

14. In view of the above, we will exempt El Paso from NGA section 7's certificate requirements as to the activities specified herein, subject to the conditions set forth below.¹¹ The certificate exemption granted herein is without prejudice to any decision the Commission may make regarding any application El Paso may file for authorization for a storage project at the site or related pipeline construction.

15. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the petition submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) Upon the terms and conditions of this order pursuant to NGA section 7(c)(1)(B), El Paso is granted an exemption from NGA section 7's certificate requirements to undertake the activities specified in this order and in El Paso's petition. This exemption is effective upon issuance of this order. The authorized drilling and testing activities shall be completed within one year of the date of this order.

(B) El Paso shall notify the Commission within 10 days after commencing activities within the exemption granted in Ordering Paragraph (A). El Paso shall allow inspection by Commission staff at any time.

(C) El Paso shall comply with the environmental requirements of section 157.206(b) of the Commission's regulations in implementing the drilling and testing activities.

(D) The exemption granted in Ordering Paragraph (A) may be revoked if the actions are determined to be inconsistent with this order or with state or federal law and regulations. The Commission may halt work authorized under this exemption until any required consistency determination is completed.

¹⁰ See Answer at 5, n.10.

¹¹ We agree with El Paso that pre-granted abandonment is not necessary under the circumstances presented. No jurisdictional facility or service requiring abandonment will be constructed or provided by El Paso pursuant to this order.

(E) El Paso's Motion for Leave to File Answer is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary