

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 18, 2006

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP06-442-000

El Paso Natural Gas Company
Post Office Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari
Vice President

Reference: Modification to Section 37

Dear Ms. Palazzari:

1. On July 21, 2006, El Paso Natural Gas Company (El Paso) filed a revised tariff sheet¹ to modify section 37 (Article 11.2 Provisions) of its General Terms and Conditions. The Commission accepts the proposed tariff sheet, effective July 10, 2006, as proposed.
2. On June 30, 2005, El Paso filed a section 4 rate case in Docket No. RP05-422-000. On March 20, 2006, the Commission issued an order² addressing the issue of whether certain rate provisions under Article 11.2 of a 1996 Settlement³ continued to apply into the new rate case period. On June 30, 2006, the Commission issued an order accepting El Paso's April 4, 2006 filing to comply with the March 20 Order, subject to conditions.⁴ The June 30 Order directed El Paso to file revised tariff sheets to, among other things, remove from section 37 any language proposed in the April 4 filing that was not required

¹ First Revised Sheet No. 375 to FERC Gas Tariff, Second Revised Volume No. 1A.

² *El Paso Natural Gas Co.*, 114 FERC ¶ 61,290 (2006) (March 20 Order).

³ *El Paso Natural Gas Co.*, 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997).

⁴ *El Paso Natural Gas Co.*, 115 FERC ¶ 61,395 (2006) (June 30 Order).

by the March 20 Order. El Paso subsequently submitted a filing on July 10, 2006 to comply with the June 30 Order, in which it removed the previously proposed rights and conditions of service applicable to out-of-zone charges, capacity release, and scheduling priorities applicable to these section 37 shippers. El Paso stated that it would submit a separate section 4 filing proposing new tariff provisions to clarify the applicability of out-of-zone charges, capacity releases, and scheduling priorities.

3. El Paso states that its generally applicable tariff provisions for out-of-zone charges, capacity release, and scheduling priorities do not adequately address how section 37 shippers are affected by their special rate treatment. El Paso thus proposes to revise section 37 to specify how the Article 11.2 rates apply when a section 37 shipper uses one of these provisions. Specifically, El Paso proposes to clarify that a section 37 shipper would pay the applicable Article 11.2 rate when it uses an alternate delivery point or when it re-designates a primary delivery point in a different rate zone. For capacity release, El Paso states that the capacity release section of its tariff provides that a shipper may not release capacity above the applicable recourse rate. El Paso states that it is proposing to clarify that a section 37 shipper may not temporarily release its capacity above the applicable Article 11.2 rate it is actually paying. El Paso further clarifies that, for purposes of determining scheduling priorities for section 37 shippers, the applicable Article 11.2 rates will be considered equivalent to the recourse rate for the primary zone of delivery. El Paso states that it has also added statements that the section 37 provisions do not apply to any other shipper and to clarify that, should the recourse rate for firm service be less than the Article 11.2(a) rate for such service, section 37 shippers will be assessed the recourse rate.

4. Public notice of El Paso's filing was issued on July 26, 2006, with comments, protests or interventions to be filed in accordance with section 154.210 of the Commission's regulations. All timely motions to intervene and all motions to intervene out of time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure. Granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Protests were filed by Phelps Dodge Corporation and Apache Nitrogen Products, Inc. (Phelps Dodge/Apache) and Arizona Public Service Company (APS). UNS, Inc. filed comments.

5. Phelps Dodge/Apache question why El Paso should be permitted to impose restrictions on capacity release for shippers holding section 37 TSAs that are not imposed on other firm shippers. Phelps Dodge/Apache asserts that El Paso is seeking to characterize the Article 11.2 TSA rate caps as either vintaged or discounted (but not negotiated) rates in its pending section 4 rate case and that such a characterization can affect the maximum rate for purposes of capacity release. Phelps Dodge/Apache state that they are concerned that El Paso is trying to unilaterally change the tariff treatment of the Article 11.2 TSAs in this docket in order to enhance its arguments regarding the rate

treatment of these TSAs in the pending rate case proceeding. Phelps Dodge/Apache thus request that the Commission condition its acceptance of this filing on the future resolution of all Article 11.2 issues in the Docket No. RP05-422-000 proceeding and explicitly find that El Paso may not use the Commission's acceptance of this tariff filing as support for its arguments regarding the appropriate rate treatment of Article 11.2(a) capacity.

6. APS also objects to El Paso's proposal to impose a cap on the capacity release price for the Article 11.2 capacity. APS argues that the release of Article 11.2 capacity should be given the same rate treatment as release of all other capacity on the El Paso system since all of this capacity competes with each other for sales in the secondary market. APS thus requests that the Commission reject El Paso's proposed cap on Article 11.2 capacity release.

7. UNS states that the scheduling priorities are unclear in one respect. UNS requests that El Paso confirm its interpretation that a section 37 shipper paying an out-of-zone cap rate to a different zone would be treated the same as a recourse rate shipper in that zone for scheduling purposes. UNS gives as an example a section 37 shipper paying an out-of-zone cap rate to California having an equivalent scheduling priority to that of a shipper paying the recourse rate for California.

8. The Commission will accept El Paso's modifications to section 37. These modifications clarify the rights and conditions for TSAs subject to Article 11.2 of the 1996 Settlement. The Commission disagrees with Phelps Dodge/Apache and APS that El Paso's proposed capacity release provision differs from Commission policy. The Commission's policy for temporary releases is to apply the same maximum rate to the replacement shipper as the tariff applies to the shipper from whom it has received the release.⁵ Section 37.1 sets forth the rates for the Article 11.2 capacity. Thus, the Commission finds that El Paso's proposal, that section 37 shippers may not temporarily release capacity at a rate higher than the Article 11.2 reservation rate, is consistent with Commission policy.

9. The Commission notes that El Paso states in its transmittal letter that the section 37 provisions submitted herein shall be subject to Commission action regarding Article 11.2 rate provisions in Docket No. RP05-422-000, *et al.* The Commission finds that this statement adequately addresses Phelps Dodge/Apache's concern.

10. Finally, the Commission finds that no further clarification of the scheduling priorities provision is needed. Section 37.2(b) provides that the Article 11.2(a) reservation rates for the applicable zone shall be used in lieu of the maximum non-Article

⁵ See *PG&E Gas Transmission, Northwest Corp.*, 82 FERC ¶ 61,289, at 62,129-30 (1998), *aff'd*, *Washington Water and Power v. FERC*, 201 F.3d 497 (D.C. Cir. 2000).

11.2 tariff rates. Section 37.2(e) further provides that, for purposes of determining scheduling priority, the Article 11.2(a) reservation rates will be considered equivalent to the maximum tariff rate. The Commission finds that, read together, these provisions give equivalent scheduling priority to a section 37 shipper paying an out-of-zone cap rate and a shipper paying the recourse rate for the same zone of delivery. The Commission therefore denies UNS's request for clarification.

11. The Commission rejects the protests and request for clarification and accepts the revised tariff sheet effective July 10, 2006, as proposed.

By direction of the Commission. Commissioner Spitzer not participating.

Magalie R. Salas,
Secretary.