122 FERC ¶ 61,095
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 4, 2008

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP07-108-000

El Paso Natural Gas Company
P.O. Box 1087
Colorado Springs, CO 80944

Attention: Catherine E. Palazzari, Vice President

Reference: Request to Waive and Reduce Penalties

Dear Ms. Palazzari:

1. On December 13, 2006, El Paso Natural Gas Company (El Paso) filed to waive its daily variance charge and reduce other charges and penalties pertaining to unauthorized overruns, scheduling and daily imbalances during a four-day Critical Operating Condition (COC) on its system, which lasted from November 30, 2006 through December 3, 2006. El Paso's request to waive its daily variance charge is moot due to the Commission's rejection of the charge in its March 23 Order[1] and the elimination of the charge pursuant to El Paso's Rate Case Settlement.[2] Since the daily variance charge was never effective, there is no daily variance charge to waive.[3] The Commission will grant El Paso's request to reduce the various charges and penalties that were otherwise assessable during the COC occurrence since it provides a benefit to shippers and El Paso will apply the reduction in a non-discriminatory manner.

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[1] *See El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (March 23 Order); *El Paso Natural Gas Co.*, 121 FERC ¶ 61,266 (2007) (December 20 Order) (clarifying that the Commission rejected the daily variance charge in the March 23 Order).

[2] *See El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007).

[3] Based on a misreading of our March 23 Order, El Paso improperly assessed its customers with a daily variance charge. To correct this mistake, El Paso is proposing to refund the daily variance charge, as provided in its refund report filed with the Commission on January 18, 2008.

2. Specifically, El Paso requests permission to bill unauthorized daily and hourly overrun charges, hourly scheduling penalties, and maximum daily obligation (MDO) and maximum hourly obligation (MHO) violation penalties assessed during the four-day COC at the applicable non-critical rate. El Paso explains that the non-critical rate is generally equal to two times the applicable Rate Schedule IT-1 interruptible rate. El Paso compares this with the critical rate, which is equal to ten times the monthly cash out price.

3. El Paso also explains that it will bill strained and critical operating condition (SOC/COC) penalties at full rates. El Paso asserts that its operations were severely threatened during the four-day COC and the application of SOC/COC charges is particularly appropriate in this case.

4. Subsequent to El Paso's waiver request filing, El Paso filed supplemental information wherein El Paso explains that there were a total of 10 COC-offending shippers and 28 contract penalty-offending shippers. El Paso states that pursuant to the requested waiver, it will invoice a total of approximately $5.4 million, the majority of which relates to COC charges. El Paso explains that had it not applied the requested waiver, El Paso would have billed approximately $10 million. This amount is comprised of approximately 65 percent contract penalties and 35 percent COC charges.

5. Notice of El Paso's filing was issued on December 19, 2006. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210 (2007). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any 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 this proceeding or place additional burdens on existing parties. Southwest Gas Corporation (Southwest) filed comments in support of El Paso's filing. Southern California Gas Company and San Diego Gas & Electric Company also filed joint comments supporting El Paso's waiver filing but conditioned their support upon the receipt of further information. Arizona Public Service Company (APS) filed comments requesting additional information and a technical conference. Salt River Project Agricultural Improvement and Power District (SRP) filed comments stating that it does not specifically join in or oppose any of the arguments or questions raised by APS, but does support APS's request for a technical conference. APS and SRP later withdrew their requests for technical conference.

6. APS states that while it does not oppose waiving some portion of the penalties and charges, it is concerned that any waiver should balance the need to compensate customers that incurred additional expenses to provide assistance to El Paso against the level of waiver relief provided to offending shippers. APS explains it complied with El Paso's

request to inject as much gas into the system as possible to remedy the system's low line pack levels. APS contends that these actions cost it approximately $331,932. APS requests that the Commission require El Paso to provide additional information regarding the level of the reductions, details of the penalty revenues, and how those revenues will be distributed.

7. El Paso's tariff includes an array of Commission-approved penalties designed to prevent impairment of reliable service and to encourage proper scheduling and contracting. In critical operating conditions, when system reliability is threatened, those penalties are higher. Here, the SOC/COC penalties were assessed and credited to non-offending shippers. While the revenues APS receives as a non-offending shipper are reduced by the waiver requested here, APS will still receive revenue from the SOC/COC penalties imposed to offset any costs it incurred to comply with the El Paso dispatch instructions. The Commission commends APS's efforts to comply with scheduling instructions during the COC, and reminds all of El Paso's shippers of their obligation to act in accordance with the tariff and dispatch instructions.

8. While the Commission allows the use of penalties to ensure system reliability, it has also granted pipeline requests to waive or reduce penalties for shippers, especially when unique or extraordinary circumstances exist. In this case, the COC event was the first to occur after El Paso implemented its new portfolio of services, and as a result, it was the first experience shippers had in scheduling their new contracts and contract obligations during a COC. El Paso proposes to charge offending shippers the SOC/COC penalties in full, but to reduce the contract penalties in an effort to provide a transition period for the new charges and services. In this circumstance, the Commission finds that El Paso's proposal is reasonable and balances the interest of both offending and non-offending shippers. For these reasons, the Commission grants El Paso's request to reduce its various charges and penalties during the COC occurrence. As noted earlier, the Commission finds that El Paso's request to waive the daily variance charge is moot due to the Commission's rejection of the proposed daily variance charge in the March 23 Order and the elimination of the charge pursuant to Article 6.1(a) of the Rate Case Settlement in Docket No. RP05-422-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.