

128 FERC ¶ 61,283
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

El Paso Natural Gas Company

Docket No. RP09-1004-000

ORDER ACCEPTING TARIFF SHEETS

(Issued September 29, 2009)

1. On August 31, 2009, El Paso Natural Gas Company (El Paso) filed tariff sheets¹ reflecting procedures for allocating imbalance quantities at receipt points when an Operational Balancing Agreement is not in effect. As discussed below, the Commission accepts the tariff sheets listed in footnote one, effective October 1, 2009, as proposed.

I. Instant Filing

2. El Paso states that its current tariff contains provisions addressing the allocation of gas quantities among shippers at delivery points, but does not describe the allocation of receipt quantities at receipt points. As a result, El Paso proposes to include in its tariff a new General Terms and Conditions section 44, Allocation of Receipt Quantities. El Paso states that the proposed receipt point allocation procedures in section 44 are virtually identical to the existing tariff procedures for allocating delivery point quantities.²

3. El Paso explains that historically, it has treated all receipt points on its system as if they were covered by Operational Balancing Agreements with certain operating and accounting procedures. El Paso states that these procedures include the allocation of receipt point quantities when measurement data indicates that operator deliveries into the pipeline do not match scheduled confirmed quantities. El Paso explains that the

¹ Fourth Revised Sheet No. 200A, Third Revised Sheet No. 202F, Second Revised Sheet No. 362L, Original Sheet No. 362L.01, Second Revised Sheet No. 363A.01, First Revised Sheet Nos. 364.02, 378, 393, 394, and Original Sheet No. 395 to FERC Gas Tariff, Second Revised Volume No. 1A.

² See El Paso FERC Gas Tariff, General Terms and Conditions, section 38, Allocation of Delivery Quantities.

allocation of this difference results in a receipt point imbalance³ between El Paso and the interconnect operator.

4. El Paso states that it is in the process of formalizing allocation procedures with receipt point operators through the execution of Operational Balancing Agreements at all receipt points. El Paso states that it hopes to finalize this process and have executed Operational Balancing Agreements at all receipt points in the near future. In the meantime, El Paso states that receipt point allocation tariff procedures are necessary in the event that a new receipt point becomes active prior to the execution of an Operational Balancing Agreement, an existing Operational Balancing Agreement is terminated, or a receipt point operator elects not to enter into an Operational Balancing Agreement.

5. New section 44 sets forth El Paso's receipt point allocation procedures. Under this section, if a receipt point is not covered by an Operational Balancing Agreement, the receipt point operator may choose a pre-determined allocation methodology to instruct El Paso on how to account for imbalances at the receipt point. There are two predetermined allocation methodology options available to receipt point operators – *pro rata* and swing. Under the *pro rata* option, receipt point imbalances are allocated to each agreement scheduled at the receipt point based on the agreement's scheduled quantities. Under the swing option, receipt point imbalances are allocated to one designated transportation service agreement (Swing Agreement). A receipt point operator must obtain authorization from a shipper to designate that shipper's transportation service agreement as the Swing Agreement. If the receipt point operator does not receive such authorization, the receipt point operator's election of the swing predetermined allocation methodology will be denied and the *pro rata* predetermined allocation methodology will apply. The predetermined allocation methodology elected by the receipt point operator will also determine the party to be billed for any critical condition imbalance charges assessed at the receipt point. If the receipt point operator does not elect a predetermined allocation methodology at a particular receipt point, the *pro rata* methodology shall act as the default allocation method for that receipt point operator's point.

6. Section 44 provides that El Paso must receive a receipt point operator's election of a predetermined allocation methodology no later than the last business day of the month preceding the effective month. El Paso explains that this end-of-the-month deadline for predetermined allocation methodology elections is currently applicable for delivery points. In the instant filing, El Paso proposes to permit operators at both delivery and receipt points to change their predetermined allocation methodology elections during the effective month (retroactive to the first day of the month), provided all affected parties

³ El Paso states that for the purposes of the instant filing, "imbalance" shall mean the difference between scheduled quantities and actual gas flows at a receipt point.

consent in writing or via email. El Paso states that this change will give operators at both receipt and delivery points additional flexibility in meeting the predetermined allocation methodology election deadline.

7. Other minor tariff changes proposed in the instant filing include (1) modification of the Table of Contents of the General Terms and Conditions to reflect the new section 44; (2) the addition to section 32 of the General Terms and Conditions of a description of the two predetermined allocation methods available to receipt point operators; (3) an updated reference in section 33 of the General Terms and Conditions to the new receipt point allocation provisions in section 44, and (4) an updated definition of a receipt point operator in the Definitions section of the General Terms and Conditions.

II. Notice and Protests

8. Notice of El Paso's filing was issued on September 2, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2009), 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. Salt River Project Agricultural Improvement and Power District (SRP) filed a protest.

9. SRP argues El Paso's proposal is unjust and unreasonable because it allocates imbalances, and therefore potential penalties,⁴ to shippers who have no control over actual quantities delivered to receipt points. SRP states that El Paso's filing contravenes the Commission's policy that pipelines should provide services to enable shippers to avoid penalties.⁵

⁴ SRP states that shippers on the El Paso system are subject to penalties associated with imbalances on both an hourly and daily basis. SRP states that on an hourly basis at a delivery point, if the point operator receives more gas than the hourly entitlement derived from all the transportation service agreements delivering to that point, El Paso imposes an hourly scheduling penalty. SRP states that this is effectively an hourly "imbalance" penalty because the receipts exceed the hourly entitlement. SRP asserts that under El Paso's proposal, if the receipt point operator does not match the scheduled receipts or deliveries for the gas day, a daily imbalance results which may result in significant penalties or other additional charges.

⁵ *Citing Columbia Gas Transmission Corporation*, 122 FERC ¶ 61,239 (2008) (*Columbia Gas*).

10. SRP states that because shippers deliver and receive gas from points they do not operate, shippers have no control over whether gas is over-delivered or under-delivered at a particular receipt point. SRP states that receipt point imbalances, even more so than delivery point imbalances, are clearly attributable to the operator's actions. SRP states that non-operator parties operating "behind" the delivery point might be the cause of imbalances. SRP further states that imbalances at receipt points are clearly attributable to the operator's actions. SRP asserts that shippers who are not receipt point operators have no means of determining the amount of gas received at a particular point on a daily or hourly basis. SRP states that without this information, a non-operator shipper cannot mitigate or eliminate the risk of penalties due to activity at a receipt point. SRP argues it is unjust and unreasonable for El Paso to subject shippers to penalties that they have no ability to control.

11. SRP acknowledges that non-operator shippers with primary rights at a particular receipt point share the responsibility for managing imbalance activity at that point because they typically submit nominations there on a daily basis. In light of this, SRP argues that shippers with primary rights at a particular point should have the opportunity to negotiate the predetermined allocation methodology with other shippers sharing that point. SRP contends that non-operator shippers who do not have primary rights at that receipt point should not be allocated any part of an imbalance.

12. SRP asserts that a shipper's right to participate in the allocation determination is implicit in the North American Energy Standards Board Wholesale Gas Quadrant's Flowing Gas Related Standards. SRP states that the Flowing Gas Related Standards state that a predetermined allocation methodology should secure the agreement of the allocating party (i.e., the transportation service provider) and the allocated parties (i.e., shippers at a point covered by a predetermined allocation methodology) on the allocation method.⁶

13. SRP asserts that because receipt point operators have physical control over receipt quantities, they should bear a significant part of any imbalances, unless the shippers with primary rights at that point agree to accept the imbalance allocations for the point and reflect that in the selection of the predetermined allocation methodology. SRP states that where a receipt point operator has no primary rights at a receipt point, its proportionate share of the allocation at that point should equal the capacity available at the point to reflect the receipt point operator's greater responsibility for controlling receipts at the point.

⁶ *Citing* North American Energy Standards Board Wholesale Gas Quadrant's Flowing Gas Related Standards, Version 1.8, Business Practices and Processes, at 24 (September 30, 2006).

14. SRP contends that, for the foregoing reasons, the Commission should reject El Paso's filing as unjust and unreasonable. SRP states that any subsequent allocation procedures proposed by El Paso should (1) provide for participation by shippers in determining the allocation methodology, and (2) limit allocations to the receipt point operator and any non-operator shippers with primary rights to that point, unless one shipper agrees to accept all imbalances under the swing allocation methodology.

III. Discussion

15. The Commission accepts the tariff sheets listed in footnote one and finds that El Paso's new section 44 provides a just and reasonable and not unduly discriminatory approach for allocating receipt point imbalance quantities. El Paso's tariff revisions allow the receipt point operator to select from two methods for receipt point imbalances (*pro rata* or swing). By designating the receipt point operator as the party to elect the predetermined allocation methodology, El Paso streamlines the election process and attempts to ensure smooth accounting for all receipt point imbalances. El Paso's proposal also takes into consideration shippers' election preferences by requiring shipper authorization to designate a Swing Agreement under section 44.2(b)(ii). If the receipt point operator does not receive such authorization, the receipt point operator's election of the swing predetermined allocation methodology will be denied and the *pro rata* predetermined allocation methodology will apply as the default methodology. Finally, the new imbalance allocation provisions will only be used as a back-up mechanism in cases where an Operational Balancing Agreement has not been negotiated with a point operator.

16. Additionally, the newly proposed provisions in sections 38.1(a)(i) and section 44.1(a)(i) are just and reasonable and not unduly discriminatory. These provisions permit operators at both delivery and receipt points to change their predetermined allocation methodology elections during the effective month (retroactive to the first day of the month), provided all affected parties consent in writing or via email. These provisions benefit operators at both delivery and receipt points by providing them with additional flexibility in meeting the deadline for predetermined allocation methodology elections.

17. SRP protests and argues the Commission should reject El Paso's proposal because it allocates receipt point imbalance quantities, and the resulting penalties, to shippers who, they assert, have no control over the actual quantities of gas received at those points, especially if it is an alternate receipt point. SRP argues the imbalances at a particular point should be allocated to the receipt point operator and the non-operator shippers with primary rights at that point.

18. We disagree with SRP. The shipper is obligated to actively manage and communicate with its suppliers, including receipt point operators regardless of whether it is a primary or an alternate receipt point. Further, El Paso's proposal is consistent with North American Energy Standards Board Wholesale Gas Quadrant's Flowing Gas

Related Standards 2.3.16 - 2.3.18, Version 1.8, which recognizes the need for all affected parties to participate in allocation determinations at both delivery points, as well as receipt points. Additionally, SRP's recommended solution, to allocate imbalances to the receipt point operators, is unenforceable, because absent an Operational Balancing Agreement, El Paso has no contractual relationship with the point operator.

19. For the foregoing reasons, the Commission accepts El Paso's filing, to be effective October 1, 2009, as proposed.

The Commission orders:

The tariff sheets listed in footnote one are accepted, effective October 1, 2009, as proposed.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.