

129 FERC ¶ 61,280
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company

Docket Nos. RP09-762-000
RP09-762-001

ORDER ON COMPLIANCE FILING

(Issued December 29, 2009)

1. On June 9, 2009, El Paso Natural Gas Company (El Paso) filed revised tariff sheets¹ identifying the pipeline segments where no fuel is used to provide transportation service and no fuel charge will be assessed.² On July 29, 2009, the Commission accepted and suspended El Paso's tariff sheets to be effective August 1, 2009, subject to El Paso providing additional information supporting its filing and further order of the Commission.³ On August 12, 2009, El Paso submitted additional information in compliance with the July 29 Order. The Commission will accept the tariff sheets listed in footnote one, effective August 1, 2009, subject to conditions, as discussed below.

Background

2. On November 26, 2008, El Paso filed in Docket No. RP09-117-000 its annual recalculation of Fuel and Lost and Unaccounted For (FL&U) gas retention percentages. On February 29, 2009, the Commission held a technical conference in that proceeding where several parties raised questions about El Paso's elimination of certain no-fuel transactions from the billing determinants utilized to derive fuel percentages. El Paso

¹ Fourth Revised Sheet No. 322 and Original Sheet No. 322A to its FERC Gas Tariff, Second Revised Volume No. 1A.

² On June 16, 2009, El Paso submitted a supplement to its filing to provide additional information.

³ *El Paso Natural Gas Co.*, 128 FERC ¶ 61,097 (2009) (July 29 Order).

explained that it excluded these transactions from the billing determinants because the El Paso tariff permits it to not charge for fuel when no fuel is consumed. El Paso discussed the possibility of identifying certain no-fuel transactions on its Electronic Bulletin Board (EBB) and committed to submitting a tariff filing to identify certain other no-fuel transactions in its tariff.

3. On June 9, 2009, El Paso submitted a filing in Docket No. RP09-762-000 to identify in its tariff certain pipeline segments where a fuel charge will not be assessed and is not expected to be assessed in the foreseeable future (long-term fuel exempt routes). El Paso stated that it is able to identify the long-term fuel exempt routes in its tariff because the direction of gas flow along these segments has not changed for some time and is not expected to change anytime soon. El Paso asserted that these routes are routinely in the opposite direction of the physical gas flow, or are characterized as high-pressure receipts that do not require mainline compression. El Paso explained that shippers nominating transportation service using these routes will not be subject to a fuel charge, but will be assessed the applicable lost and unaccounted (L&U) charge for the route.

4. El Paso further proposed to identify on its EBB certain other pipeline segments where fuel will not be assessed for short periods of time based on current operating conditions (short-term fuel exempt routes). El Paso explains that conditions and flows on El Paso are dynamic and a shipper could lose its opportunity to serve a gas market need if it was required to wait for El Paso and the Commission to complete the process of revising the tariff to designate these no-fuel routes. El Paso asserted that posting short-term fuel exempt routes on the EBB will provide shippers timely access to this information, which will be updated as demand and operating conditions change the flow direction on the system, and create differing opportunities for no-fuel service. El Paso stated that its proposal is consistent with other pipeline proposals where the Commission has approved EBB postings of transportation routes that are subject to change on a short-term basis.

5. El Paso stated that its shippers may, at any time, request El Paso to evaluate the fuel status of an individual route by contacting their marketing representative. If El Paso determines, based on the requested evaluation, that the gas flows on that route will continue for at least one month and a temporary fuel charge exemption is warranted, El Paso will notify its customers by an EBB posting. El Paso stated that it will also identify and describe all designated short-term fuel exempt routes in its annual fuel tracker filings.

6. El Paso argued that its proposal to include long-term fuel exempt routes in its tariff and post short-term fuel exempt routes on its EBB will ensure that El Paso's shippers have advance notice of the fuel status of their routes. El Paso asserted that the fuel exemptions will not harm other shippers on the system because El Paso will continue to assess fuel reimbursement on those transactions where fuel is used.

7. Several parties filed protests. The Indicated Shippers⁴ asserted that El Paso has not adequately demonstrated the impact of its fuel exemption filing on its shippers and offers no explanation to support its statement that shippers will not be adversely affected. The Indicated Shippers requested that the Commission require El Paso to provide additional information before determining whether the filing is just and reasonable. Salt River Agricultural Improvement and Power District (Salt River) stated that El Paso failed to provide the Commission with the data necessary to evaluate the filing, and particularly, El Paso's decision to include or exclude certain pathways from the no-fuel route list. In particular, Salt River raised concerns about El Paso's unsupported decision to begin assessing fuel charges on the Wenden-to-Casa Grande path. Salt River further stated that the proposed tariff revisions will likely lead to excessive fuel charges because El Paso only proposes to exempt transactions from fuel charges when the entire transportation service is provided using no-fuel segments. Salt River additionally asserted that El Paso should follow the fuel procedures established by its affiliate, CIG, for those routes that have not historically consumed fuel.⁵ Texas Gas Service Company, a division of ONEOK, Inc. (Texas Gas Service), protested that El Paso's proposal to use its EBB to identify short-term no-fuel transactions may allow El Paso to evade the requirement that pipelines provide operational data to support the specific transactions they seek to exempt from fuel assessments. Texas Gas Service requested that the Commission reject El Paso's proposal to post short-term fuel exemptions on the EBB and instead require that those transactions be listed in El Paso's tariff after operational data is provided to justify exempting the specific transaction from fuel.

8. The July 29 Order found that El Paso's filing did not include sufficient detail to determine whether it is just and reasonable. The Commission accepted and suspended El Paso's filing, subject to El Paso submitting a compliance filing to address the concerns raised by each of the protestors. In particular, the Commission directed El Paso to provide the calculations and assumptions underlying its determination that each identified route is a no-fuel route, and also to respond to assertions that other routes should have

⁴ The Indicated Shippers are BP America Production Company and BP Energy Company; Chevron Natural Gas, a Division of Chevron U.S.A. Inc.; ConocoPhillips Company; and Occidental Energy Marketing, Inc.

⁵ *Colorado Interstate Gas Co.*, 113 FERC ¶ 61,225 (2005) (*CIG II*). In *CIG II*, the pipeline proposed to change the historical fuel exemption of one route (the Western Segment) because CIG believed that changes in facility configuration and shifting market demand might cause compression (and thus fuel) to be used on the segment. In response to shipper protests, CIG revised its position and proposed to post the Western Segment on its EBB as a short-term fuel exempt route until operational changes necessitated fuel consumption on that route, and the Commission accepted this proposal.

been included as no-fuel routes, and whether short-term exempt fuel paths should be posted on the EBB.

August 12 Compliance Filing

9. On August 12, 2009, El Paso filed additional information in compliance with the July 29 Order. El Paso states that it uses its Nominations and Scheduling System via a receipt-to-delivery no-fuel matrix to identify whether or not a transaction consumes fuel. El Paso states that, as it did not propose a change to existing fuel retention practices, it used this matrix as a starting point for its current evaluation. El Paso states that it ran certain operating scenarios through the SynerGEE® modeling software to verify these segments were no-fuel segments based on assumed operating conditions and to determine the net change in fuel.⁶ El Paso states that to perform the studies in this filing, El Paso used a representative model of its system with all compression running near, but not necessarily at, full load in January. From this base model, El Paso noted the “before” fuel requirements of each compressor along the particular no-fuel route and then introduced a representative backhaul transaction, where the flow path was counter to the predominant direction of gas flow, to calculate the net fuel difference. In its initial studies, El Paso intentionally inflated the size of the no-fuel transaction to clearly demonstrate the result. El Paso states that the test results indicated that the backhaul transactions reduced the amount of fuel required to support the forward haul transactions in the test scenarios. When El Paso ran the model using historic transactions, the net effect on fuel was barely noticeable due to the small size of the typical reverse flow transaction.

10. El Paso submitted diagrams with the results of the software modeling that include the assumptions made for the backhaul amounts included in the modeling software system, the analysis of the baseline fuel results, the fuel results after the backhaul transaction, and the fuel reduction resulting from the backhaul transaction. For each of the no-fuel routes identified in the proposed tariff sheets, El Paso provided a diagram of the route and an evaluation of the fuel use at design capacity for the historical flow direction.

11. El Paso states that, with one exception, its studies validated its receipt-delivery matrix and confirmed that the routes in question do not consume fuel. The exception is the Wenden-to-Casa Grande route, which historically has been classified as a no-fuel

⁶ El Paso states that the SynerGEE® software is a mathematical representation of El Paso’s pipeline transmission system and is used to calculate hydraulic results based on varying conditions in the system. El Paso uses the software in various filings to support system facility modifications and to determine the capacity of its system for contracting transportation services.

route, although service has been requested on that route only on a few occasions. El Paso states that its analysis revealed that fuel is used when gas physically moves west-to-east from Wenden to Casa Grande. El Paso states that, while gas historically flows from east-to-west on that segment, certain operational conditions may result in a west-to-east flow. El Paso states that gas occasionally flows west-to-east on the Wenden-to-Casa Grande route when scheduled quantities are high enough to cause gas transported down the Havasu Crossover to turn east toward Phoenix, rather than turning west toward Ehrenberg. In addition, El Paso states that Line 1903 has altered the flow dynamics around the Ehrenberg area, such that the Havasu Line is not always required to serve gas flow requirements into southern California. El Paso further states that the eastward-flow of gas out of Wenden generally occurs when deliveries to Southern California Gas Company and North Baja Pipeline, LLC at Ehrenberg are reasonably low. El Paso states that this occurred during the summer of 2009 due to unprecedented high levels of storage inventory, which resulted in decreased demand for transported gas on El Paso to fulfill southern California's daily gas needs. El Paso states that this drop in demand in southern California resulted in more days during which gas flowed east out of Wenden. El Paso states that gas has flowed east out of Wenden 70 days in 2009, and that in May, June, and July of 2009, gas flowed east out of Wenden more than it has flowed west.

12. In response to Salt River's assertion that El Paso should continue to list the Wenden-to-Casa Grande route as a no-fuel route, El Paso states that the Commission requires that to exempt any portion of the entire transaction from fuel, the entire transaction must not use fuel.⁷ El Paso states that due to system dynamics and operation conditions that change in response to customer demands, fuel is now used to provide service along the Wenden-to-Casa Grande route when flowing east. Thus, El Paso concludes that it is unable to reasonably determine on a forward-looking basis that this route predictably will not consume fuel on a long term (or currently on a short term) basis. Instead, El Paso states that this route is a prime candidate for the use of El Paso's proposed short-term procedures when El Paso can reasonably predict that gas will consistently flow west from Wenden.

13. El Paso states that its proposal to post short-term transactions to the EBB is consistent with Commission precedent, primarily the *CIG II* case, where the Commission accepted a similar proposal to post short-term fuel exemptions on the EBB.⁸ El Paso further states that the Commission has approved several proposals to allow a pipeline to post fuel retention percentages on its EBB (and not in its tariff), thereby permitting the

⁷ Citing *Williams Natural Gas Co.*, 75 FERC ¶ 61,023, at 61,075 (1996); *Gulf South Pipeline Co., LP*, 111 FERC ¶ 61,463, at P 14 (2005).

⁸ *CIG II*, 113 FERC ¶ 61,225 (2005).

pipeline to more promptly respond to changing pipeline conditions.⁹ In addition, El Paso states that the Commission and shippers will be able to review El Paso's designations of routes as short-term exemptions from fuel charges in its annual fuel retention filing where El Paso will list and describe the short-term fuel exemptions it has posted.

14. El Paso also responded to the questions posed by the Indicated Shippers. El Paso explained the methodology used in its analysis, as described above, including the assumptions made and conclusions reached. El Paso states that fuel consumption generally decreases as throughput is reduced which is the effect of a backhaul. Thus, backhaul transactions not only consume no incremental fuel but also reduce overall fuel consumption, although the reduction may be insignificant when backhaul quantities are small. El Paso states that shippers using transportation transactions that consume fuel will not be adversely affected because they will not pay for any fuel consumed on behalf of the shippers being exempted. El Paso further states that its proposal to list in the tariff the no-fuel transactions does not change El Paso's current practice of exempting transportation segments that do not require fuel. El Paso states that its filing in this proceeding does include a few no-fuel segments that were not identified in the annual fuel filing in Docket No. RP09-117-000 because no shipper had used those segments during the relevant time period. El Paso asserts that it is not proposing to change fuel-exempt volumes or fuel retention policies, but to implement procedures to ensure that shippers are notified of no-fuel routes. Regarding postings of short-term fuel-exempt routes, El Paso states that it currently has no such routes posted on its EBB, but expects, for example, the Wenden-to-Casa Grande route to be listed at some future date, when El Paso determines that operating conditions are reasonably certain that gas will not flow from west-to-east (and not require fuel) for a predictable time period.

15. Finally, El Paso replies to the Indicated Shippers' suggestion that El Paso's tariff be clarified to correct an ambiguity regarding the applicability of L&U for no-fuel transactions. El Paso states that, consistent with Commission policy, it intends that all transactions will be charged L&U. Therefore, El Paso states it is willing to add the following sentence to the end of proposed section 26.4(d): "However, shippers using these segments will be subject to Transporter's applicable L&U charges."

16. El Paso concludes that it has provided sufficient evidence to establish its proposed fuel-exempt routes do not consume fuel. El Paso states that it has explained its operations and that the designated segments or routes are backhauls, which by their nature do not consume fuel. In addition, El Paso states that fuel studies were conducted

⁹ Citing *Gulf South Pipeline Co., LP*, 111 FERC ¶ 61,463, at P 14 (2005); *Questar Overthrust Pipeline Co.*, 121 FERC ¶ 61,256 (2007); *Kern River Gas Transmission Co.*, 87 FERC ¶ 61,228, at 61,923 (1999).

to assure shippers that backhauls reduce the amount of fuel burned to transport the same total amount of gas.

Comments

17. Comments on El Paso's August 12 Filing were submitted by Salt River and Texas Gas Service. El Paso filed an answer to Salt River's comments on September 22, 2009. On October 6, 2009, Salt River filed an answer to El Paso's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁰ prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by El Paso and Salt River because they provided information that has assisted us in our decision-making process.

18. Texas Gas Service requests that the Commission reject El Paso's proposal to post short-term fuel exemptions on its EBB, and instead require that those transactions be listed in El Paso's tariff after operational data is provided to justify the specific transaction being exempted from fuel. Texas Gas Service asserts that, without such a filing, shippers will not have any process by which they can challenge El Paso's no-fuel route determinations to ensure that they are made in a not unduly discriminatory manner. Texas Gas Service states that the proposed tariff language does not require that the annual filing include a demonstration that the transactions in fact do not require the use of fuel, but instead provides that El Paso will "identify and describe" the short-term no-fuel designations in its annual fuel tracker filings. Texas Gas Service asserts that El Paso seeks authority to violate the filed rate doctrine and evade its obligation under the Natural Gas Act (NGA) to support changes in rates, terms, and conditions with substantial evidence prior to those changes going into effect.

19. Salt River contends that El Paso has not complied with the July 29 Order because it did not provide the data necessary to accurately assess fuel use on the Wenden-to-Casa Grande segment. Salt River states that the information El Paso provided is incomplete, misleading, and potentially inaccurate. Salt River states that El Paso only discusses flows on the segment for the short period of May 4, 2009 through August 8, 2009, and fails to acknowledge any other eastward activity during the rest of the year. Salt River further states that El Paso has not provided enough information to determine whether the anomalous storage levels are a sufficient basis on which to determine that the route should lose its historical no-fuel exemption. Salt River concludes that data showing actual flows through each point on all lines on the Wenden-to-Casa Grande segment, for at least a 12-month time frame, are necessary to evaluate the justness and reasonableness of El Paso's proposal. In addition, Salt River states that El Paso failed to indicate whether compression was actually required to create the eastward flows. Salt River

¹⁰ 18 C.F.R. § 385.213(a)(2) (2009).

concludes that El Paso should have produced the actual study data from which actual operational practices can be evaluated.

20. Salt River further states that El Paso provides no support for its “operational judgment” that the segment does not qualify for a short-term, no-fuel designation. While El Paso states that it is unable to reasonably determine that the Wenden-to-Casa Grande segment will not consume fuel on a long-term or short-term basis, Salt River asserts that it is equally impossible to predict that this route will consume fuel on a long-term basis. Salt River concludes that, until El Paso can justify its speculative assessment of long-term fuel use on this route, it should be required to follow the procedures established by its affiliate, CIG, for those routes that have not historically consumed fuel.¹¹

21. El Paso replies that under Commission policy, there is no right or presumption for a shipper to be exempt from fuel and that the Commission presumes that all shippers must be assessed fuel. The only exception is if there is a demonstration that fuel is not consumed.¹² Thus, El Paso states that because neither El Paso nor Salt River has made any showing that fuel is not currently being consumed on the Wenden-to-Casa Grande route, that route must be assessed fuel under current circumstances. El Paso asserts that, in light of applicable Commission policy and precedent, the information provided by El Paso complied with the July 29 Order and was not incomplete or misleading. El Paso states that while Salt River claims fuel was not used for a majority of days during the period of data provided by El Paso, the relevant fact is that fuel was consumed over that period. El Paso concludes that Salt River has failed to cite any precedent that would allow it to be exempted from fuel for this route.

22. Salt River replies that it has not asked for an absolute exemption from fuel charges on backhauls using the Wenden-to-Casa Grande route, but requests that fuel only be charged when El Paso reasonably predicts fuel will be consumed, which Salt River states is the same treatment afforded to shippers on CIG’s system. Salt River asserts that, at a minimum, the Wenden-to-Casa Grande segment should be placed on the EBB as a no-fuel route, and removed when El Paso can determine that fuel will be used.

Discussion

23. The Commission finds that El Paso has provided sufficient information to determine that its June 9 Filing is just and reasonable and will, therefore, accept El Paso’s proposed tariff sheets, subject to conditions, as discussed below.

¹¹ *Citing CIG II*, 113 FERC ¶ 61,225 (2005).

¹² *Citing Williams Natural Gas Co.*, 75 FERC ¶ 61,023, at 61,075 (1996); *Gulf South Pipeline Co., LP*, 111 FERC ¶ 61,463, at P 14 (2005).

L&U Charges for No-Fuel Transactions

24. The Indicated Shippers request that El Paso's tariff be clarified to correct an ambiguity regarding the applicability of L&U charges for no-fuel transactions. In its August 12 Filing, El Paso offered to add the following sentence to the end of proposed section 26.4(d) to address the Indicated Shippers' concern: "However, shippers using these segments will be subject to Transporter's applicable L&U charges." The Commission agrees that the addition of this sentence will clarify that no-fuel transactions are not exempt from L&U charges. Therefore, the Commission directs El Paso to file revised tariff sheets to include the clarifying language in section 26.4(d) within 15 days of the date this order issues.

No-Fuel Routes

25. El Paso proposes to include in its tariff a list of the transportation routes that do not consume fuel. In compliance with the July 29 Order, El Paso provided the calculations and assumptions underlying its determination that the no-fuel routes listed on the proposed tariff sheet do not consume fuel. We find that El Paso has complied with Commission policy that permits pipelines to provide fuel exemptions after the pipeline has identified those no-fuel routes in its tariff and provided a demonstration that those transactions do not require the use of fuel.¹³

Wenden-to-Casa Grande Route

26. In its initial comments, Salt River questioned El Paso's proposal to exclude the Wenden-to-Casa Grande route from its proposed list of no-fuel routes, despite that route's historical status as a no-fuel route. In compliance with the July 29 Order, El Paso provided additional information explaining its decision to no longer classify the Wenden-to-Casa Grande route as a no-fuel route. Salt River argues that this information is incomplete or misleading. We disagree. The Commission prohibits pipelines from discounting fuel charges because fuel is a variable cost, and the Commission's regulations do not permit discounts below the variable cost.¹⁴ The Commission only

¹³ See *Ozark Gas Transmission, L.L.C.*, 124 FERC ¶ 61,290, at P 15 (2008); *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199, at P 19 (2005); *Northern Natural Gas Co.*, 82 FERC ¶ 61,270, at 62,062 (1998).

¹⁴ In Order No. 436, the Commission determined that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service. This policy is now codified in section 284.10(c)(4) of the Commission's regulations, which states that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies." See 18 C.F.R. § 284.10(c)(4) (2009).

permits a pipeline to provide fuel exemptions if the pipeline makes a filing with the Commission to identify in its tariff the proposed fuel-exempt transactions and demonstrates that those transactions do not require the use of fuel. These requirements assure that there will be non-discriminatory selection of exempted transactions and avoid unwarranted cost shifts to other customers.¹⁵ Thus, all transportation service transactions should be assessed a fuel charge unless the pipeline can demonstrate that a specific transaction does not consume fuel. Because the presumption is that all transactions consume fuel, pipelines are not required to demonstrate that specific transactions consume fuel.

27. Here, El Paso has not proposed to list the Wenden-to-Casa Grande route as a non-fuel route because it cannot at this time demonstrate that this route does not consume fuel. El Paso demonstrated in its filing that gas has flowed from west-to-east along the Wenden-to-Casa Grande route this year, and that transactions along that route have consumed fuel. Furthermore, El Paso states that it is currently unable to determine that the Wenden-to-Casa Grande segment predictably will not consume fuel on a long-term or short-term basis. El Paso has thus shown that the Wenden-to-Casa Grande route is not eligible at this time for fuel exemption. No further information is required.

28. Our decision here is consistent with *CIG II*.¹⁶ In *CIG II*, the pipeline agreed to post the historical fuel-exempt route at issue (the Western Segment) on its EBB as a short-term no-fuel route until such time as operational changes resulted in fuel consumption on that route. Here, while the Wenden-to-Casa Grande route has historically been a fuel exempt route, El Paso has demonstrated that fuel has recently been consumed on that route. Thus, El Paso states that it cannot reasonably project that this route will not consume fuel in the near future. We note, however, that El Paso has stated that if, at some future date, it determines with reasonable certainty that gas on the Wenden-to-Casa route will not flow from west to east (and not require fuel) for a predictable time period, it will include the route as a no-fuel route. We therefore conclude that El Paso's proposal to exclude the Wenden-to-Casa Grande route from its list of no-fuel routes, and to not post this route on its EBB as a short-term no-fuel route at this time, is reasonable.

Posting of Short-Term No-Fuel Routes

29. The Commission will also accept El Paso's proposal to post short-term fuel exemptions on its EBB, subject to conditions. Permitting El Paso to post certain short-term fuel exempt routes on its EBB will enable El Paso to more promptly respond to

¹⁵ *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199, at P 19 (2005).

¹⁶ *CIG II*, 113 FERC ¶ 61,225 (2005).

changing pipeline conditions. Because short-term fuel exempt routes are only designated as such for brief periods of time (depending on demand and operating conditions), it would be impractical for El Paso to make filings with the Commission to list such routes in its tariff.

30. However, the Commission finds that as proposed, El Paso's proposal is too broad. In *CIG II*, the case that El Paso cites in support of its proposal, the Commission permitted CIG to post certain short-term fuel routes on its EBB.¹⁷ Yet a close examination of CIG's proposal demonstrates that it is different from the proposal El Paso submitted here. On the CIG pipeline system, certain areas are highly reticulated, resulting in a number of displacement transactions.¹⁸ As a result, CIG proposed to exempt the fuel charge on both long-term and short-term displacement transactions. CIG stated that because the shorter-term paths are subject to seasonal changes, those paths will only be identified on its EBB, while the longer-term routes are listed in the tariff.¹⁹ In its transmittal sheet, CIG provided a list of the short-term paths that receive displacement service from time to time. By limiting its EBB exemptions to short-term displacement transactions and providing a list of routes that often receive displacement service, CIG's proposal was narrower than the one submitted here. For these reasons, the Commission did not require CIG to list the potential short-term no-fuel routes in its tariff.

31. However, here, El Paso's proposal allows it to post on the EBB any route it determines to be a short-term no-fuel route, without any limitation. The Commission finds that this approach gives El Paso too much discretion in determining which routes are suitable for posting on its EBB. Therefore, the Commission directs El Paso to revise its tariff to list, based on historical data, the routes that are likely to be short-term no-fuel routes eligible for posting on the EBB. El Paso must submit this revision for Commission review within 15 days of the issuance of this order.

¹⁷ *Id.*

¹⁸ Displacement transactions occur when transportation service is provided in the opposite direction of the forward haul service. These transactions do not consume fuel because deliveries are made by using gas received upstream of the delivery point while supplies to replace those deliveries are received farther downstream. In effect, displacement gas serves to reduce the amount of gas that would need to be compressed to support forward haul service for other shippers. Because no compression is used to provide displacement service, it is not appropriate to assess fuel charges on these transactions.

¹⁹ The Commission notes that CIG's proposal to post short-term displacement transactions on its EBB was not protested.

32. Requiring El Paso to list the possible short-term no-fuel routes in its tariff addresses Texas Gas Service's concerns that shippers will not have any process by which they can challenge El Paso's no-fuel route determinations and ensure that they are made in a not unduly discriminatory manner. A proposal to add a short-term route to the list of possible no-fuel routes eligible for posting on the EBB would be subject to Commission review and comment by the parties. Moreover, posting such routes on the EBB will give all parties notice of the fuel exemptions, and because shippers can challenge any exemptions they believe are unjustified, this will ensure that El Paso exempts routes from fuel on a non-discriminatory basis. The proposed tariff provision also requires El Paso to identify and describe the short-term exemptions that it has posted on its EBB in its annual fuel tracker filings, which will give parties another opportunity to review and challenge El Paso's determinations. The Commission expects El Paso to provide the same level of support to demonstrate that the short-term routes do not consume fuel as it provides for the long-term routes listed in its tariff.

33. The Commission also finds unpersuasive Texas Gas Service's assertion that El Paso's proposal violates the filed rate doctrine. As El Paso explained in its filing, shippers using the routes designated as short-term no-fuel routes by El Paso on its EBB will be charged the rate permitted by El Paso's tariff for no-fuel routes, which is a zero fuel charge. Moreover, the Commission grants waiver of any Commission regulations necessary to allow El Paso to post its short-term no-fuel routes on its EBB.

The Commission orders:

The tariff sheets listed in footnote one are accepted, to be effective August 1, 2009, subject to El Paso's filing revised tariff sheets within 15 days of the date this order issues, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.