

129 FERC ¶ 61,286  
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 No. RP10-153-000

ORDER ACCEPTING TARIFF SHEETS

(Issued December 29, 2009)

1. On November 17, 2009, El Paso Natural Gas Company (El Paso) filed revised tariff sheets<sup>1</sup> to escalate El Paso's Article 11.2(a) rates for inflation, pursuant to El Paso's rate case settlement in Docket No. RP95-363-000, *et al.* (1996 Settlement),<sup>2</sup> and Section 37.3 of the General Terms and Conditions (GT&C) of El Paso's Volume No. 1A tariff. El Paso included work papers to set forth the factors and calculations used in determining the adjustments. The referenced tariff sheets are accepted effective January 1, 2010.

**Summary of the Proposal**

2. Section 37.3 of El Paso's GT&C permits annual increases in the Operations and Maintenance (O&M) and Other Taxes portion of the reservation and usage charges for the Article 11.2(a) Rate Schedule FT-1 services and a portion of the base rates for the Article 11.2(a) Rate Schedule FT-2 services that were in effect for the preceding year. The adjustment is limited to 93 percent of the increase in the Implicit Price Deflator to the Gross Domestic Product (GDP-IPD) as published by the Department of Commerce's

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<sup>1</sup> Eighth Revised Sheet No. 374, First Revised Sheet No. 374A to El Paso's FERC Gas Tariff, Second Revised Volume No. 1A.

<sup>2</sup> Article 11.2 of the 1996 Settlement between El Paso and its customers places certain limitations on the rates that El Paso can charge to shippers that were parties to that Settlement. *See El Paso Natural Gas Co.*, 79 FERC ¶ 61,028 (1997), *reh'g denied*, 80 FERC ¶ 61,084 (1997) and 89 FERC ¶ 61,164 (1999).

Bureau of Economic Analysis (BEA).<sup>3</sup> The annual increase in rates may never be more than 4.5 percent or less than one percent of the prior year's total base rates.

3. Pursuant to Section 37.3, the GDP-IPD increase is to be determined by comparing the most recently published final GDP-IPD index to the one used in the previous year's filing or, if the BEA has modified the benchmark index for the GDP-IPD, the restated GDP-IPD for the previous year. El Paso states that the annual change in the GDP-IPD is 1.4963 percent when the final GDP-IPD index for the second quarter of 2009 and the GDP-IPD for the same period of 2008 are compared.<sup>4</sup> This annual change, when adjusted according to the formula specified in the tariff, produces an increase to the O&M and Other Taxes portion of the base rates of 1.3915 percent, which results in an increase to base reservation rates of less than 1.00 percent. However, as provided in Section 37.2 of the GT&C, when the formula produces an increase of less than one percent, the resulting increase to the base reservation rates will be one percent.

4. El Paso notes that the Article 11.2(a) rates are billed on a per dekatherm basis.<sup>5</sup> As such, the rates are adjusted for Btu content prior to the application of the inflation factor. El Paso contends that no Btu adjustment is required at this time.<sup>6</sup> El Paso proposes to use the most recent system-wide Mcf-Dth conversion factor filed in Docket No. RP08-426-000 of 1.017. El Paso notes this factor was also similarly applied in the 2009 Article 11.2(a) inflation filing approved by the Commission.<sup>7</sup>

#### **Notice of Filing, Motions to Intervene, and Responsive Pleadings**

5. Public notice of El Paso's filing was issued on November 20, 2009. Interventions and protests were due November 30, 2009, as provided in section 154.210 of the Commission's regulations.<sup>8</sup> Pursuant to Rule 214,<sup>9</sup> all timely-filed motions to intervene

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<sup>3</sup> See Section 37.3(a) of the GT&C of El Paso's Volume No. 1A tariff.

<sup>4</sup> See El Paso filing at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *El Paso Natural Gas Co.*, Docket No. RP09-119-000 (Unpublished Letter Order) (December 11, 2008 Letter Order).

<sup>8</sup> 18 C.F.R. § 154.210 (2009).

<sup>9</sup> 18 C.F.R. § 385.214 (2009).

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. Freeport-McMoRan Corporation (Freeport) filed a protest. Freeport requests that the Commission reject the filing as incomplete or specify a revised effective date at least 30 days after the filing is deemed complete. Freeport further requests that El Paso be required to use the current system-wide Mcf-Dth conversion factor in calculating its revised Article 11.2(a) rates. El Paso and Freeport filed answers.

### **Discussion**

6. For the reasons discussed below, the Commission finds that El Paso's proposed inflation adjustments are consistent with the terms of the 1996 Settlement. Accordingly, the Commission accepts El Paso's filing, effective January 1, 2010.

#### **A. Conversion Factor**

7. Freeport requests the Commission require El Paso to update the system-wide Mcf-Dth conversion factor.<sup>10</sup> Freeport notes that while El Paso proposes to adjust the Article 11.2(a) rates using the same system-wide conversion factor proposed previously of 1.017,<sup>11</sup> El Paso provided monthly average Btu content per cubic foot data in another proceeding showing that the currently effective system-wide average conversion factor is 1.024.<sup>12</sup> Freeport claims that the Btu per cubic foot data provided was in response to a discovery request in the pending rate case in Docket No. RP08-426-000. Freeport contends that using El Paso's proposed system-wide Mcf-Dth conversion factor results in Article 11.2(a) rates approximately 2.5 to 7 cents per Dth higher than rates derived from the revised system-wide Mcf-Dth conversion factor.<sup>13</sup> Freeport submits that El Paso's

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<sup>10</sup> See Freeport Protest at 3. Freeport explains that El Paso's system-wide Mcf-Dth conversion factor methodology was approved by the Commission in the first rate case after the 1996 settlement. (*See El Paso Natural Gas Company*, 114 FERC ¶ 61,305 (2006)). Freeport notes that El Paso escalates the volumetric Article 11.2(a) Mcf rate and then converts that rate per Mcf, using the current system-wide conversion factor, to a thermal equivalent rate per Dth.

<sup>11</sup> See Docket No. RP09-119-000 (Unpublished Letter Order (2008)).

<sup>12</sup> See Freeport protest at 3.

<sup>13</sup> See Freeport protest at 4. In addition, Freeport provides calculations of the Article 11.2(a) reservation and usage rates using the 1.024 Btu conversion factor in Exhibit C.

failure to adjust the conversion factor is unjust and unreasonable because the pipeline has consistently used the most current data to develop the applicable conversion factor.

8. Further, Freeport requests that the Commission reject El Paso's filing as incomplete.<sup>14</sup> Freeport notes that El Paso previously included the system-wide Mcf-Dth conversion factor calculation work papers in the prior inflation filing,<sup>15</sup> but has not included the documentation in the instant proceeding. In the alternative, Freeport suggests the Commission require El Paso to supplement its filing by providing the methodology and calculations of the proposed system-wide Mcf-Dth conversion factor.<sup>16</sup> In addition, Freeport requests the Commission require that any adjusted 2010 Article 11.2(a) rates not be permitted to take effect earlier than 30 days after the rate filing is complete, in accordance with the requirements of section 154.208 of the Commission's regulations.<sup>17</sup> Freeport requests that if the corrected rates do not take effect on January 1, 2010, and El Paso continues to charge the currently effective 2009 Article 11.2(a) rates, the Commission require all amounts collected after January 1, 2010 be subject to refund.

### Answer

9. El Paso contends that Freeport fails to show either that the current proposal and methodology is unjust and unreasonable or that its alternative proposal is just and reasonable. El Paso states that Freeport's assertions ignore the fact that the Commission has never required an annual system-wide average dekatherms update in any of the previous annual escalation filings.<sup>18</sup> Additionally, El Paso claims that no participant in the ongoing general system-wide rate case proposed a change in the underlying conversion factors in the over 2,000 pages of testimony in Docket No. RP08-426-000.<sup>19</sup>

10. El Paso states that the use of the system-wide Mcf-Dth conversion factor of 1.017 is consistent with the calculation of the subject-to-refund non-Article 11.2(a) rates.<sup>20</sup>

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<sup>14</sup> See Freeport protest at 5.

<sup>15</sup> See El Paso's 2009 inflation filing Tab D, Docket No. RP09-119-000.

<sup>16</sup> See Freeport protest at 5.

<sup>17</sup> *Id.*

<sup>18</sup> See El Paso answer at 4.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

El Paso notes that the system-wide conversion factor is based on the conversion factors stated in section 37.1 of El Paso's GT&C as applied to contract receipt rights. El Paso contends that the tariff conversion factors were developed using weighted averages for each of the supply areas and were consistent with those historically used to convert volumetric contract entitlements into thermal contract entitlements in the capacity allocation proceeding.<sup>21</sup>

11. El Paso argues that Freeport fails to justify its proposed methodology of calculating the revised system-wide Mcf-Dth conversion factor. El Paso states that Freeport does not sufficiently explain why the data provided in Docket No. RP08-426-000 should be used to calculate the Article 11.2(a) rates nor does it explain why the system-wide Mcf-Dth conversion factor should be changed to be different from that used to establish receipt point rights under the other non-Article 11.2 firm rates.<sup>22</sup> El Paso notes that the data provided to Freeport includes various monthly averages for the Btu content of gas at receipt and delivery locations contained in six attachments. El Paso contends that Freeport omitted its calculation of the system-wide Mcf-Btu conversion factor.<sup>23</sup> El Paso indicates that the data sent to Freeport is not "self-authenticating" in terms of the information being used in the manner proposed by Freeport. El Paso indicates that in response to a rate case data request El Paso provided a calculation of the monthly average Btu content of all gas delivered or received system-wide or in a particular region. El Paso contends that the system-wide Mcf-Dth conversion factor is reasonably based on contract receipt rights without regard to actual use while the data shown on the discovery request varies by primary and alternate use. El Paso argues that adopting Freeport's posting would imply that the Article 11.2(a) rates should be changed every year to update them for the then currently system-wide Mcf-Dth conversion factor based on year to year throughput.<sup>24</sup> El Paso states that Freeport's proposal raises the question whether the associated thermal firm contract entitlements should be simultaneously updated.

12. El Paso indicates that the protested cite to "Tab D" is an inadvertent mistake and only included in the instant proceeding because the filing from the previous year was used as a template.<sup>25</sup> El Paso contends that it did not include a "Tab D" in the other

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<sup>21</sup> See El Paso answer at 4.

<sup>22</sup> See El Paso answer at 4 citing Freeport protest at 4.

<sup>23</sup> See El Paso answer at 5.

<sup>24</sup> See El Paso answer at 6.

<sup>25</sup> See El Paso answer at 7 citing the fact that the same system-wide Mcf-Dth conversion factor was used in Docket No. RP09-119-000.

Article 11.2(a) inflation adjustment filings in Docket Nos. RP07-98-000 and RP08-99-00 in which the conversion factor remained unchanged. As such, El Paso claims that “Tab D” is unnecessary.

13. El Paso requests the Commission dismiss Freeport’s request to delay the effective date of the revised rate or to make the currently effective Article 11.2(a) rate subject to refund. El Paso explains that section 37.3 of the GT&C requires that revised Article 11.2(a) rates become effective on January 1, 2010. The requirement is based on Article 11.2(a) of the 1996 Settlement. El Paso contends that to make the revised Article 11.2(a) rates effective after January 1, 2010 would be contrary to the terms of the tariff and the settlement and would not meet the legal and evidentiary requirements to change the tariff or the settlement.

### **Freeport’s Answer**

14. In its answer, Freeport claims that El Paso misstates the legal standard applicable to the Commission’s review of the reasonableness of the methodology used in its annual Article 11.2(a) inflation adjustment filing.<sup>26</sup> Freeport states that under NGA section 4 parties opposing elements of a pipeline’s rate filing that proposes no changes to a Commission-approved methodology bear the burden of first demonstrating that the pipeline’s proposal is unjust and unreasonable. Freeport claims that no such presumption applies to the instant proceeding.

15. Freeport notes that the Article 11.2(a) inflation adjustment filing in Docket No. RP09-119-000 was not approved by the Commission but rather accepted via a letter order.<sup>27</sup> Further, Freeport notes that the 1996 settlement established Article 11.2(a) and the annual inflation adjustment methodology, and a system-wide Mcf-Dth conversion factor of 1.023.<sup>28</sup> Subsequent to the expiration of the 1996 settlement in 2005, Freeport states that the system-wide Mcf-Btu conversion factor used for adjusting the Article 11.2(a) rates for inflation was stipulated as a matter of settlement at 1.017. Freeport contends that pursuant to the settlement agreement the system-wide Mcf-Dth conversion

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<sup>26</sup> See Freeport answer at 2.

<sup>27</sup> See Freeport answer at 2 citing Docket No. RP09-119-000 (Unpublished Letter Order (2008)).

<sup>28</sup> *Id.* Freeport notes that the conversion factor was based on the most recent data then available, the system average delivered heating value of gas across the El Paso system for the period June 1993 through February 1995.

factor has no precedential import.<sup>29</sup> Freeport asserts that prior to the instant proceeding, El Paso cannot point to a Commission order approving the use of the currently effective system-wide Mcf-Dth conversion factor of 1.017. Freeport suggests that El Paso's filing provides no support for the use of its conversion factor in lieu of 1.023. Further, El Paso does not dispute that 1.017 does not reflect the most current data now available. Freeport suggests this discrepancy causes the 2010 Article 11.2(a) rates to be overstated by approximately 2.5 and 7 cents per Dth, and therefore the proposed Article 11.2(a) rates are unjust and unreasonable.

16. In addition Freeport claims El Paso has failed to explain why the conversion factor used for the Article 11.2(a) inflation adjustment must not match the conversion factor used to convert contract entitlements from Mcf to Dth.<sup>30</sup> Freeport claims the El Paso rationale is a red herring. The system-wide Mcf-Dth conversion factor used to define contract entitlements is entirely irrelevant to the inflation adjustment in the instant proceeding. Freeport notes that it is not contesting the conversion factor used by El Paso to define contract entitlements. Freeport questions the appropriate conversion factor that El Paso uses to establish the unit rates the Article 11.2(a) shippers would pay for these contract entitlements.<sup>31</sup>

17. Freeport contends that El Paso has used alternate conversion factors for its Article 11.2(a) rates and its contract entitlements. Freeport notes that the conversion factor used to convert capacity entitlements in the Capacity Allocation Proceeding was 1.010 while the conversion factor for the Article 11.2(a) inflation adjustment remained at 1.023 during the same period.<sup>32</sup> As such, Freeport requests that if the Commission finds a need for a fixed conversion factor the appropriate conversion factor would be the same one used in the Docket No. RP95-363-000 settlement of 1.023. Freeport states that such a finding would provide the stability now desired by El Paso. In the alternative Freeport suggests that El Paso should be required to use the most current data available to develop the conversion factor each year.<sup>33</sup>

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<sup>29</sup> See Freeport at 3 citing Section 18.2 of the Docket No. RP05-422-000 Settlement. Freeport notes that settlement rates were in effect under the Docket No. RP05-422-000 for a three year period from 2006-2008.

<sup>30</sup> See Freeport answer at 4.

<sup>31</sup> *Id.*

<sup>32</sup> See Freeport Answer at 5 citing Docket RP04-73, Tab 3, Sheet 1 of 1; Docket No. RP05-97, Tab 3, Sheet 1 of 1.

<sup>33</sup> See Freeport answer at 5.

### Commission Determination

18. We find El Paso's Article 11.2(a) rate inflation adjustments to be just and reasonable. Pursuant to the terms of the 1996 settlement,<sup>34</sup> as altered by the Settlement in Docket No. RP05-422-000 *et al*,<sup>35</sup> El Paso may adjust the Article 11.2(a) rates for inflation and convert those rates to their thermal equivalent. While Freeport demonstrates how different system-wide Mcf-Dth conversion factors affect El Paso's Article 11.2(a) rates,<sup>36</sup> Freeport has not shown that El Paso's proposed system-wide Mcf-Dth conversion factor is unjust and unreasonable. In the instant proceeding El Paso filed a limited NGA section 4 filing to adjust its Article 11.2(a) rates for inflation. As explained by El Paso, the system-wide conversion factor is based on the conversion factors stated in section 37.1 of El Paso's GT&C as applied to contract receipt rights.<sup>37</sup> We find the conversion factor El Paso has used for this adjustment is reasonable for the purpose of the subject inflation adjustment, which must be made now. We are not persuaded to substitute Freeport's alternate system-wide Mcf-Dth conversion factor produced from data obtained in a discovery request. The fact that alternative approaches may exist does not negate the reasonableness of El Paso's annual inflation adjustment which is being implemented consistently with those made previously. Therefore we deny Freeport's request that El Paso be required to change the calculation of the system-wide Mcf-Dth conversion factor here.

19. In its protest, Freeport notes that El Paso omitted Tab D. El Paso states that it inadvertently included a reference to Tab D in its current filing. El Paso further notes that it did not include Tab D in prior inflation filings where, as in the instant filing, the system-wide Mcf-Dth conversion factor was unchanged. El Paso has not proposed to change the system-wide Mcf-Dth conversion factor or its underlying methodology in the instant proceeding. As noted by El Paso, the work papers of the proposed system-wide conversion factor are contained in the 2009 Article 11.2(a) annual inflation adjustment filing "Tab D". The Commission will not require El Paso to provide duplicative work papers when a substantive change has not been proposed. Thus, we deny Freeport's request to require El Paso to provide Tab D in support of its filing.

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<sup>34</sup> See *El Paso Natural Gas Co.*, 79 FERC ¶ 61,028 (1997), *reh'g denied*, 80 FERC ¶ 61,084 (1997) and 89 FERC ¶ 61,164 (1999).

<sup>35</sup> See *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007).

<sup>36</sup> See Freeport protest at 4. See also Freeport protest at Exhibit C.

<sup>37</sup> See Seventh Revised Sheet No. 374, and Original Sheet 374A, FERC Gas Tariff Second Revised Volume No. 1A.

## **B. Request for Clarification**

20. Freeport requests clarification of the use of the term “Production Area” in Section 37 of the El Paso Tariff and as used in the instant filing.<sup>38</sup> Freeport contends that since the Capacity Allocation Proceeding,<sup>39</sup> the Permian supply area has been subdivided into three supply areas: Waha, Keystone, and Plains. As such, Freeport asserts that the tariff definition is incomplete and inconsistent with the pipeline’s current practice on its system. Freeport notes that in the currently pending El Paso rate case, the pipeline is using the term “Within Basin” to describe transactions in which the receipts and the deliveries are within the same supply pooling area.<sup>40</sup> Freeport requests clarification of El Paso’s practice of identifying and assessing charges associated with Within Basin transactions.

21. Freeport argues that the definition requires immediate clarification in the context of the instant proceeding. Freeport cites Section 37.2(g) of the El Paso Tariff which continues to use the term “Production Area” to determine that when a Section 37 Transportation Service Agreement is subject to an Article 11.2(a) rate that exceeds the maximum non-Article 11.2 tariff rate for such service, “this service shall be billed at the applicable maximum non-Article 11.2 tariff rate.”<sup>41</sup> Freeport requests that the Commission require El Paso to use the same terminology reflected in the pending rate case Docket No. RP08-426-000 as well as define the term “Within Basin.” Further, Freeport claims that the continued use of the term “Production Area” in the tariff is contrary to the public interest because it interferes with the Commission’s and El Paso’s shippers’ ability to verify that El Paso is implementing Section 37’s lesser rate requirement correctly.

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<sup>38</sup> See Third Revised Sheet No. 202 F, FERC Gas Tariff Second Revised Volume No. 1A. Section 1.56 defines Production Area as a “rate delivery area where the receipts and deliveries occur within the same supply area.”

<sup>39</sup> See Freeport protest at 3.

<sup>40</sup> Freeport provides an example in which, under section 37.2(b) of the El Paso tariff, the term “Texas Zone” appears to apply to receipt delivery transactions from one pooling area to another which are not delivered into any recognized market zone. Further, if gas is received by El Paso in the Keystone supply pooling area and is subsequently delivered into another supply pooling area, Freeport contends that the gas should be subject to the rate for the destination delivery zone.

<sup>41</sup> See Freeport protest at 6 citing El Paso’s Fourth Revised Sheet No. 375, FERC Gas Tariff, Second Revised Volume No. 1A (GT&C Section 37.2(g)).

### **Answer**

22. In its answer, El Paso claims Freeport has failed to meet its burden to demonstrate that the currently effective tariff provisions are unjust and unreasonable. El Paso notes that the term “Production Area” is used throughout El Paso’s tariff while the phrase “Within Basin” is used in limited data responses or as a colloquialism for “Production Area” in testimony in the ongoing rate case in Docket No. RP08-426-000.<sup>42</sup> El Paso contends that the Commission must find the use of the term “Production Area” unjust and unreasonable in the currently effective tariff as well as the term “Within Basin” to be just and reasonable to grant Freeport’s request. El Paso notes that under the Natural Gas Act it has the right to use any term or definition that is just and reasonable even if Freeport would prefer a different term that may also be just and reasonable.<sup>43</sup>

### **Freeport’s Answer**

23. Freeport notes that El Paso has not disputed the fact that no definition of “Within Basin” is contained within its tariff. Freeport contends that the term “Within Basin” is used throughout its pending rate case and in many of its discovery responses in that case.<sup>44</sup> Freeport indicates that pipelines are required to have Commission-approved and publicly filed tariffs and rate schedules to insure that pipelines cannot use their monopoly power to act in an unduly discriminatory or preferential manner. Freeport claims that allowing the use of undefined term for establishing shipper rights puts both the Commission and the pipeline’s shippers at a disadvantage because they have no way of knowing whether the pipeline is applying these terms fairly and consistently.<sup>45</sup>

### **Commission Determination**

24. El Paso has explained that the term “Within Basin” is used as a colloquialism for the term “Production Area” and has not proposed a change to its tariff in this proceeding. We will deny Freeport’s request that the term “Within Basin” be defined in El Paso’s

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<sup>42</sup> In addition to GT&C Section 37, El Paso notes that the term “Production Area” is also found on numerous tariff sheets including the Statement of Rates for Transportation of Natural Gas, Rate Schedules IT-1, IHSW, FT-1, PAL, FT-H, NNTD, and NNTH, GT&C Section 5 Quality, GT&C Section 26 Fuel, and GT&C Section 32 Imbalance Management.

<sup>43</sup> *Natural Gas Pipeline Co. of America*, 118 FERC ¶ 61,219, at P 20 (2007).

<sup>44</sup> See Freeport answer at 5.

<sup>45</sup> *Id.*

tariff and applied in Section 37 of El Paso's GT&C. We find Freeport's request is beyond the scope of the instant proceeding. As noted by Freeport the use of the term "Within Basin" is used by El Paso in discovery responses in the pending rate case in Docket No. RP08-426-000,<sup>46</sup> and is not the subject of the instant proceeding. The term "Production Area", as used in Section 37 of El Paso's GT&C, is a defined term within the tariff.<sup>47</sup> Freeport has not demonstrated that the use of term "Production Area" is unjust and unreasonable in the context of the instant proceeding nor has it demonstrated that a change in El Paso's tariff is warranted.

The Commission orders:

The Commission accepts the revised tariff sheets to be effective on January 1, 2010.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>46</sup> *Id.*

<sup>47</sup> *See* Third Revised Sheet No. 202 F, FERC Gas Tariff Second Revised Volume No. 1A.