

133 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
John R. Norris, and Cheryl A. LaFleur.

El Paso Natural Gas Company

Docket No. RP05-422-036

ORDER ON REHEARING

(Issued November 1, 2010)

1. On August 24, 2010, the Commission issued an order on rehearing in this proceeding that addressed the continuing applicability of Article 11.2 of the 1996 Settlement¹ between El Paso Natural Gas Company (El Paso) and its shippers.² On September 23, 2010, Southern California Gas Company (SoCal Gas) and San Diego Gas & Electric Company (SDG&E) filed a joint request for clarification, or in the alternative, rehearing of the August 24 order. As discussed below, the Commission, on rehearing, clarifies the August 24 Order.

I. Request for Clarification, or in the Alternative, Rehearing

2. SoCal Gas and SDG&E argue that the August 24 Order appears to attribute to a prior Commission order a finding that the prior order did not make. The parties explain that in Paragraph 80 of the August 24 Order, the Commission states that the Capacity Allocation Proceeding³ found “that the full requirements (FR) shippers’ load growth was

¹ In 1996, El Paso entered into a settlement with its shippers to resolve an NGA section 4 rate case it had filed in Docket No. RP95-363-000, *et al.* (1996 Settlement). Article 11.2 of the 1996 Settlement placed limitations on the rates that El Paso can charge in future rate cases to certain shippers who were parties to the 1996 Settlement.

² *El Paso Natural Gas Co.*, 132 FERC ¶ 61,155 (2010) (August 24 Order).

³ *El Paso Natural Gas Co.*, 99 FERC ¶ 61,244 (2002), *order on reh’g*, 104 FERC ¶ 61,045 (2003) (July 9 Order), *order on reh’g*, 106 FERC ¶ 61,233 (2004), *aff’d*, *Arizona Corp. Comm. v. FERC*, 397 F.3d 952 (D.C. Cir. 2005) (the Capacity Allocation Proceeding).

not unreasonable.”⁴ SoCal Gas and SDG&E assert that in support of this statement, the August 24 Order relies on the July 9 Order in the Capacity Allocation Proceeding.⁵

3. SoCal Gas and SDG&E state that the July 9 Order makes no such affirmative statement that the FR load growth “was not unreasonable.” Rather, the July 9 Order stated that the Commission’s “decision to convert the FR contracts to CD contracts is *not premised* on a conclusion that growth under those contracts was unreasonable.”⁶ SoCal Gas and SDG&E state that the core justification for the remedies ordered in the Capacity Allocation Proceeding, and affirmed by the D.C. Circuit, was that they were necessary for sound public policy reasons independent of the reasonableness or unreasonableness of shippers’ load growth. SoCal Gas and SDG&E therefore request that the Commission clarify the statement in the August 24 Order.

II. Answers

4. On October 1, 2010, the East of California Shippers⁷ filed a motion for leave to answer and answer to SoCal Gas and SDG&E’s request for clarification, or in the alternative, rehearing. The East of California Shippers argue the language at issue in the clarification request was *dicta* and therefore SoCal Gas and SDG&E cannot have been aggrieved by it. The East of California Shippers also assert that since they believe rehearing does not lie, SoCal Gas and SDG&E improperly styled a request for rehearing as a motion for clarification in order to have it considered.

5. On October 8, 2010, Arizona Public Service Company (APS) filed an answer to SoCal Gas and SDG&E’s request for clarification, or in the alternative, rehearing. APS disagrees with SoCal Gas and SDG&E’s assertion that there is no support for the statement as it appears in the August 24 Order. APS states that any clarification would allow relitigation of whether the historical level of FR shippers’ load growth can be relied upon as an argument for finding that Article 11.2 of El Paso’s 1996 Settlement is not in the “public interest” within the meaning of *Mobile-Sierra*.⁸ APS argues that any

⁴ August 24 Order at P 80 (citing July 9 Order at P 61).

⁵ *Id.*

⁶ July 9 Order at P 61 (emphasis added).

⁷ The East of California Shippers consist of El Paso Municipal Consumer Group, Freeport-McMoRan (formerly known as Phelps Dodge Corporation), Salt River Project Agricultural Improvement and Power District, and Southwest Gas Corporation.

⁸ See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

reopening of this issue of whether FR growth was unreasonable, and therefore a basis for termination of Article 11.2, should be summarily rejected.

III. Discussion

6. The Commission finds it appropriate, on rehearing, to clarify the August 24 Order, notwithstanding East of California Shippers' motion urging that no clarification be given, and APS's arguments that any clarification would collaterally undermine the Commission's determinations in other orders. SoCal Gas and SDG&E object to a sentence in Paragraph 80 of the August 24 Order which provides that "the Commission did state that the FR shippers' load growth was not unreasonable," and in support, cites to Paragraph 61 of the July 9 Order.⁹ While the East of California Shippers accurately argue that SoCal Gas and SDG&E were not aggrieved by the underlying rehearing order, the Commission finds that providing clarification requested by SoCal Gas and SDG&E is necessary to avoid any future confusion in this or other related proceedings. As for APS's concern that a clarification here will unsettle prior Commission determinations that are no longer subject to rehearing, the Commission disagrees, as the purpose of providing the subject clarification is to maintain consistency and congruence with the Commission's prior determinations.

7. SoCal Gas and SDG&E correctly point out that as currently written, the sentence in Paragraph 80 of the August 24 Order does not accurately reflect the findings in the July 9 Order. The Commission clarifies on rehearing that the language quoted above from Paragraph 80 of the August 24 Order should be considered revised to read as follows: "the Commission did not state that the FR shippers' load growth was unreasonable." This corrective clarification properly reflects that the decisions in the Capacity Allocation Proceeding were not premised on the reasonableness or unreasonableness of FR shippers' load growth.

The Commission orders:

The request for clarification is granted, as discussed in the body of this order.

By the Commission. Commissioners Spitzer and Moeller are not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁹ August 24 Order at P 80 n.75.