

141 FERC ¶ 61,181
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 30, 2012

In Reply Refer To:
El Paso Natural Gas Company, L.L.C.
Docket Nos. RP13-169-000
RP13-169-001

El Paso Natural Gas Company, L.L.C.
Post Office Box 1087
Colorado Springs, CO 80944

Attention: Francisco Tarin, Director
Regulatory Affairs

Ladies and Gentlemen:

1. On October 19, 2012, El Paso Natural Gas Company, L.L.C. (El Paso) filed revised tariff records, as amended on November 6, 2012, to reflect a non-conforming firm transportation service agreement between El Paso and Atmos Energy Corporation (Atmos) for service on a new lateral pipeline, the Amarillo Lateral.¹ El Paso requests waiver of the Commission's 30-day notice requirement to permit the tariff records to become effective on October 25, 2012, the anticipated in-service date of the Amarillo Lateral. For the reasons discussed below, we accept the revised tariff records, effective October 25, 2012, subject to the conditions discussed below.

2. Under the instant agreement, El Paso would provide firm transportation service to Atmos at a discounted reservation rate for a ten-year term pursuant to Rate Schedule FT-1. The service would start on the in-service date of the new lateral pipeline and metering facilities constructed by El Paso using its blanket construction certificate authority pursuant to 18 C.F.R. §§ 157.208 and 157.211 of the Commission's regulations. El Paso states that the Atmos agreement contains non-conforming provisions that are not provided for in the Rate Schedule FT-1 *pro forma* service agreement, including

¹ El Paso filed an amended agreement with Atmos, in Docket No. RP13-169-001, that reflects the actual in-service date of October 25, 2012. The revised tariff records are shown in the Appendix.

provisions that address the construction of facilities, certain precedent conditions, creditworthiness, certain data elements found in Exhibit A of the agreement, and a rate provision in Exhibit B of the agreement.

3. Public notice of the filings in Docket Nos. RP13-169-000 and RP13-169-001 was issued on October 22, 2012 and November 8, 2012, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No party filed a protest or adverse comments. Atmos filed comments in support of the filing.

4. The Commission accepts the Atmos agreement as a permissible non-conforming agreement, subject to conditions. Exhibit B to the agreement contains discounted reservation rate language in footnote 1 that provides as follows:

The rate charged under this Agreement shall not be less than the minimum, nor greater than the maximum rate provided in Transporter's Tariff. If the maximum rate provided in Transporter's Tariff ever falls below the discounted rate reflected above, then the parties shall enter into an amended agreement, subject to the minimum and maximum rates set forth in Transporter's Tariff, such that the parties are placed in the same economic position as if Transporter had collected the discounted rate reflected above for the entire term of this Agreement.

5. El Paso states that the Commission has accepted similar provisions which allow parties to update their rates should circumstances change. El Paso cites a Colorado Interstate Gas Company, L.L.C. (CIG) order where the Commission accepted a proposal to keep parties at the same economic level should rates change.² The CIG agreement provided that, should the commodity rate require adjustment through a system-wide rate case during the term of the agreement, the contract reservation rate will be adjusted up or down on a 100 percent load factor basis by a commensurate amount to keep the parties at the same economic level, subject to the discounted reservation rate remaining between the applicable minimum and maximum tariff recourse rates.

6. While the Exhibit B rate language in the instant filing is somewhat similar to the language accepted as permissible in the CIG Filing in Docket No. RP10-919-000, it is not clear whether the two provisions would have identical economic impacts. The El Paso

² *Colorado Interstate Gas Co., L.L.C.*, Docket No. RP10-919-000 (July 28, 2010) (delegated letter order).

language provides that the parties will be placed in the “same economic position as if [El Paso] had collected the discounted rate...for the entire term of this Agreement,” while the CIG language would keep the parties “at the same economic level.” Unlike El Paso’s agreement with Atmos, however, the CIG agreement further spells out how this mechanism would work, by adjusting the reservation rate up or down by an equivalent amount to the commodity rate, keeping the discounted reservation rate between the minimum and maximum tariff recourse rate. Since the El Paso-Atmos agreement contains no such explanation, it is unclear whether the El Paso provision would operate in a manner similar to the CIG provision (adjusting the commodity rate commensurate with the adjusted reservation rate) or in a different manner that may be inconsistent with Commission policy, or unduly discriminatory. For example, the El Paso “similar economic position” language could mean that Atmos will provide additional compensation at a later time to offset a reduced reservation charge or that El Paso will bank revenues from one month to the next.

7. Given the various possible interpretations of the Exhibit B language, and the potential for the subject language to be impermissible under Commission policy, the Commission will accept the tariff records subject to El Paso Filing revised tariff records, within 21 days of the date this order issues, to comply with one of the following two options.

8. Under Option 1, El Paso must remove from its non-conforming agreement with Atmos the language in Exhibit B that has the potential to provide El Paso with the right to impermissibly “bank” revenue under its discount rate agreement. Removal of this language would ensure that, under its discount agreement, the discounted rate always remains within the maximum and minimum recourse rates set forth in El Paso’s tariff, consistent with Commission policy.³ Moreover, under this option, the parties would not be allowed to adjust the commodity rate to correspond to an equivalent adjustment to the reservation rate.

9. Under Option 2, El Paso may keep the existing Exhibit B language in its agreement, subject to El Paso clarifying its operation. Specifically, El Paso must modify Exhibit B to clarify how the discount would function so as to remain within the minimum and maximum recourse rates set forth in El Paso’s tariff without impermissibly “banking” revenues under the agreement from one month to the next. To the extent El Paso intends the language in its agreement with Atmos to operate in a manner similar to the CIG agreement language, El Paso could include more specific language in its agreement to

³ See *Midwestern Gas Transmission Co.*, 141 FERC ¶ 61,066 (2012); *CenterPoint Energy Gas Transmission Co.*, 114 FERC ¶ 61,081 (2006); *ANR Pipeline Co.*, 108 FERC ¶ 61,028 (2004).

clarify how the discount would function.⁴ These clarifications would ensure that the subject provision does not provide for the “banking” of revenue which, as noted above, the Commission has determined is impermissible.

10. Finally, the Exhibit B language contained in the filed tariff record does not match the Exhibit B language contained in the agreement filed as Appendix A to the instant filing. El Paso is directed to modify [Part VII: Non-Conforming, Section 10.2 - Atmos Energy Corporation Exhibit B, 0.1.0](#) to include, unless changed by the refiling requirement described above, the following missing language in footnote 1:

Agreement shall not be less than the minimum, nor greater than the maximum rate provided in Transporter’s Tariff. If the maximum rate

11. The revised tariff records in the Appendix are accepted, effective October 25, 2012, subject to El Paso refiling the agreement within 21 days of the date this order issues, as discussed above.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁴ For example, Exhibit B, footnote 5, to Contract No. 33247000C, filed in CIG’s Docket No. RP10-919-000, states in part that “if the maximum recourse rate decreases below the discounted rate, the discounted rate will be lowered to match the new maximum recourse rate.... In the event Transporter’s maximum commodity recourse rate is increased or decreased through a system-wide rate case during the term of this...Agreement, Shipper’s commodity rate will be adjusted by a corresponding amount. If Shipper’s commodity rate is adjusted in this manner, Shipper’s reservation rate will be adjusted up or down by an equivalent amount to keep Transporter and Shipper at the same economic level (i.e., if the commodity rate is increased by \$0.02, the discounted reservation rate will be decreased by \$0.02, as calculated on a 100 percent load factor basis, or \$0.6083 per month). This adjustment shall continue for the term of this...Agreement as long as the discounted reservation rate is between the minimum and maximum rate.”

Appendix

El Paso Natural Gas Company, L.L.C.
FERC NGA Gas Tariff
EPNG Tariffs
Docket No. RP13-169-000
Accepted Effective October 25, 2012

[Part I: Overview, Section 1 - Table of Contents, 9.0.1](#)

[Part VII: Non-Conforming, , 5.0.0](#)

El Paso Natural Gas Company, L.L.C.
FERC NGA Gas Tariff
EPNG Tariffs
Docket No. RP13-169-001
Accepted Effective October 25, 2012

[Part VII: Non-Conforming, Section 10 - Atmos Energy Corporation, 0.1.0](#)
[Part VII: Non-Conforming, Section 10.1 - Atmos Energy Corporation Exhibit A, 0.1.0](#)
[Part VII: Non-Conforming, Section 10.2 - Atmos Energy Corporation Exhibit B, 0.1.0](#)
[Part VII: Non-Conforming, Section 10.3 - Atmos Energy Corporation Letter Agmt, 0.0.0](#)