141 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

El Paso Natural Gas Company, L.L.C. Docket No. RP13-348-000

ORDER GRANTING WAIVERS AND ACCEPTING TARIFF RECORD, SUBJECT TO CONDITION

(Issued December 27, 2012)

1. On November 30, 2012, El Paso Natural Gas Company, L.L.C. (El Paso) filed a revised tariff record[1] to update the Fuel and Lost and Unaccounted-For (L&U) retention percentages pursuant to Section 13 – Fuel and L&U of the General Terms and Conditions (GT&C) of its FERC Gas Tariff. El Paso also seeks a waiver of certain tariff provisions in order to (1) use forecasted throughput and fuel usage to calculate the mainline fuel percentage and (2) provide a one-time cashout of the over-collected fuel quantities in place of the volumetric true-up required by the tariff.

2. Indicated Shippers[2] filed a protest to El Paso's filing, asking the Commission to deny El Paso's request to base the cash-out index price on the "Monthly System Index Price – Received." Indicated Shippers also ask the Commission to require El Paso to include additional information in its Operational Purchases and Sales Report in compliance with Commission precedent.

3. As discussed below, the Commission grants the requested waivers and accepts the revised tariff record to become effective January 1, 2013, subject to condition.

<u>Description of the Filing</u>

4. El Paso states that Section 13 of the GT&C provides that it will annually restate its Fuel and L&U percentages to be effective January 1 of each year using a 12-month data

[1] El Paso Natural Gas Company, L.L.C., FERC NGA Gas Tariff, EPNG Tariffs, Part II: Stmt. of Rates, Section 3 - Fuel and L&U Rates, 6.0.0.

[2] The Indicated Shippers are BP Energy Company, ConocoPhillips Company, and Shell Energy North America (US), L.P.

collection period ending September 30, and including two true-up computations, as specified by the tariff. El Paso proposes the following retention percentages: Mainline Fuel 1.78 percent, Anadarko Basin Fuel 0.59 percent, Permian Basin Fuel 0.81 percent, Permian-to-Anadarko Fuel 0.15 percent, San Juan Basin Fuel 0.44 percent, Interruptible Storage Service 1.41 percent, and L&U 0.42 percent.

5. El Paso explains that, pursuant to Section 13.3 of the GT&C, it is using a 12-month data collection period of October 1, 2011, through September 30, 2012, to project actual fuel use, actual L&U experienced, and actual throughput for computation of all the Fuel and L&U calculations except for Mainline Fuel. El Paso states that, during the 12-month data collection period, it over-collected fuel by 1,978,515 dekatherms (Dth)[3] on its Mainline as a result of using a more efficient operating configuration on portions of the system to achieve higher fuel efficiency than it had projected. For that reason, El Paso contends that historic data may not be the best indicator of future throughput and fuel use on its Mainline system. Therefore, El Paso requests a waiver of its tariff to allow it to use forecasted throughput and fuel usage to establish the collection period percentage for Mainline Fuel because doing so will result in a lower current fuel percentage than would be calculated using historical data, thereby avoiding potential future over recoveries.

6. El Paso further states that Section 13.6 of the GT&C provides for volumetric true-up adjustments for each fuel retention category and for overall L&U. Again citing the large over-collection of Mainline Fuel quantities described above, El Paso requests a waiver of its volumetric true-up tariff requirement and proposes a one-time cashout of the over-collected quantities of 1,978,515 Dth. El Paso explains that the large volume of over-collected fuel quantities has an adverse effect on its operations and could impact its ability to physically manage its retained storage and linepack assets with shipper imbalance activities. In addition, because of the magnitude of the over-collection, El Paso asserts that it should return the over-collected fuel quantities to the shippers from which it over-collected. In contrast, continues El Paso, under the volumetric true-up arrangement, the over-collected quantities will be returned volumetrically to a prospective set of shippers that could include different shippers or the same shippers transporting different quantities of gas. El Paso maintains that the proposed cashout will ensure that each shipper that incurred fuel charges on the Mainline during the period of the large over-collection will receive an appropriate, fair, and immediate return of the over-collected quantities. Finally, El Paso states that, if not cashed out, the over-collection will unreasonably affect the future calculated Fuel and L&U rates by distorting the true costs of Fuel and L&U and potentially sending improper market signals.

[3] El Paso explains that it over-collected 2,091,855 Dth which, when adjusted by a prior period under-recovery, equals an over-collection of 1,978,515 Dth.

7. Accordingly, El Paso proposes to return the value of the over-collected Mainline Fuel quantity of 1,978,515 Dth to the shippers through a cash payment within 60 days of the Commission's acceptance of its filing. Additionally, El Paso is proposing to return to shippers the value of 135,359 Dth over-collected fuel associated with the Permian Basin Fuel zone and 37,936 Dth over-collected fuel associated with the Permian-to-Anadarko Area through cash payment within 60 days of the Commission's acceptance of this filing. El Paso states that the under-collection values associated with the Anadarko Basin and the San Juan Basin will be collected through its normal volumetric true-up percentage.

Notice, Interventions, and Protest

8. Public notice of El Paso's filing was issued on December 3, 2012, with interventions and protests due as provided in section 154.210 of the Commission's regulations.[4] Pursuant to Rule 214,[5] 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 this proceeding or place additional burdens on existing parties.

9. Indicated Shippers filed a protest, challenging El Paso's proposed basis for the cash-out index price and asking the Commission to require El Paso to include additional information consistent with Commission precedent.

10. On December 19, 2012, El Paso filed an answer to the protest. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[6] prohibits an answer to a protest unless otherwise ordered by the decisional authority. The Commission will accept El Paso's answer because it has provided information that aids the Commission in its decision-making process.

A. Indicated Shippers' Protest

11. Indicated Shippers protest the filing, contending that the Commission should deny El Paso's request for a waiver to use the "Monthly System Index Price – Received" for valuing the over-collections of Mainline Fuel, Permian Basin Fuel, and Permian-to-Anadarko Fuel for the October 2011 through September 2012 period because El Paso's proposal relies on an index price that is not defined and would penalize shippers unfairly.

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[4] 18 C.F.R. § 154.210 (2012).

[5] 18 C.F.R. § 385.214 (2012).

[6] 18 C.F.R. § 385.213(a)(2) (2012).

Indicated Shippers state that El Paso relies on Sections 10.3(c)(i)[7] and 10.3(c)(iv)[8] of its GT&C, and references "EPNG's Informational Postings website under Other/Cashout Prices for the Posting of the 'System Monthly Index Price – Received.'"[9] However, continue Indicated Shippers, neither the Fuel L&U, El Paso's tariff, nor El Paso's Electronic Bulletin Board describes what index prices are used to determine the "System Monthly Index Price – Received." Indicated Shippers contend that this lack of definition and transparency regarding El Paso's proposal renders it unjust and unreasonable.

12. Moreover, state Indicated Shippers, El Paso has not justified why its chosen index price complies with Commission precedent, which requires that fuel tracker mechanisms ensure that all parties are kept whole.[10] According to Indicated Shippers, the use of El Paso's preferred index provides shippers with $122,586.11 less in refunds for the Mainline Fuel collection than is required to make them whole.

13. Indicated Shippers next state that for the Permian Basin Fuel and the Anadarko-to-Permian Fuel over-collections, El Paso proposes to use the System Monthly Index Price – Received, despite the fact that its tariff defines a separate Permian Index Price, and El Paso's website lists a Permian Monthly Index Price (with one column for "Received" and one for "Delivered"). Indicated Shippers assert that shippers would receive $43,115.31 less than if El Paso were to use the System Monthly Index Price – Delivered. Additionally, Indicated Shippers contend that, for the Permian-to-Anadarko Fuel over-

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[7] Indicated Shippers contend that this section states as follows:

> Monthly Permian Basin Cash Out Index Price [is calculated by] using the simple average of the daily mid-point prices reported as delivered to El Paso's System at West Texas, Permian or Waha from the publications identified in Section 10.3(c)(v). The Monthly Permian Basin Cash Out Index Price will be calculated by summing the average daily prices for each day of the production Month and dividing by the number of Days in the Month.

[8] Indicated Shippers state that this section provides as follows:

> The Monthly System Cash Out Index Price is calculated using the weighted average of the Monthly Permian Basin Index Price, the Monthly San Juan Basin Index Price, and the Monthly California Border Cash Out Index Price, with the weighting based on the quantities entering El Paso's system in each Production Area and scheduled as a California receipt.

[9] Indicated Shippers emphasize that El Paso's Information Postings also contains a column with the "System Monthly Index Price – Delivered."

[10] Indicated Shippers cite *ANR Pipeline Co.*, 108 FERC ¶ 61,050, at PP 1, 17 (2004).

collection, shippers would receive $2,440.26 more if El Paso were to use the Permian Monthly Index Price – Delivered instead of the Monthly System Index Price – Received.

14. Indicated Shippers also assert that Commission precedent requires a pipeline to provide, for each operational purchase or sale, "the source of the operational gas purchased or sold, the date of such sale or purchase, the volume, the purchase or sale price, the costs and revenues from such purchase or sale, the disposition of the associated costs and revenues, and an explanation of the purpose of any operational transaction."[11] Further, state Indicated Shippers, the Commission also requires the pipeline to identify all entities, including affiliates, from which the pipeline purchases and/or sells gas.[12] Indicated Shippers add that this information is necessary to ensure that the Commission and interested parties can verify the accuracy of the information given.[13] However, Indicated Shippers maintain that El Paso did not provide the source of the operational gas purchased or sold or an explanation of the purpose of any operational transaction.

B. El Paso's Answer

15. El Paso disagrees with Indicated Shippers' arguments as to the appropriate index price to use for determining cash-out amounts for over-collected fuel volumes. El Paso states that the appropriate price for over-collected fuel is the price at the location where El Paso received the fuel gas, i.e., the Receipt Prices. El Paso argues that that price reasonably represents the price the shipper would have received at that location at that particular time had the volumes been sold rather than been provided to El Paso for fuel. To resolve the issue in this proceeding, El Paso offers to use the applicable cash-out price (System Monthly Index Price Delivered or Permian Monthly Index Price Delivered), as requested by the Indicated Shippers. However, El Paso states that its agreement to use that cash-out price is without prejudice to its seeking authority in the future to cash-out quantities at any price it chooses, including the price it originally proposed in this proceeding.

16. El Paso further states that its filing contains information regarding the source of the operational gas purchased or sold as well as the explanation of the purposes of any operational transaction. El Paso maintains that it has used the same form and format of

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[11] Indicated Shippers cite *Northern Border Pipeline Co*., 128 FERC ¶ 61,230, at P 7 (2009).

[12] Indicated Shippers cite *Ruby Pipeline Co., L.L.C.*, 140 FERC ¶ 61,256, at P 18 (2012).

[13] Indicated Shippers cite *Southern Natural Gas Co., L.L.C.*, 141 FERC ¶ 61,098, at P 14 (2012).

Operational Purchases and Sales Report for several years and that the Commission has accepted those filings.

Commission Analysis

17. The Commission grants the requested waivers and accepts the revised tariff record, to become effective January 1, 2013, subject to condition, as discussed below. Given the magnitude of the recent over-collections of fuel, it is reasonable for El Paso to propose a one-time cashout to return the over-collected quantities to the shippers from which they were over-collected. In addition, it is reasonable for El Paso to use the forecasted throughput to calculate the proposed fuel retention percentages to produce a lower fuel retention percentage than would be derived from a calculation using historical data, and thus avoid future over-recovery.

18. Indicated Shippers protest El Paso's use of a cash-out price based on received quantities and argues that the appropriate cash-out price should be based on delivered quantities. In its answer, El Paso has agreed to use the delivered cash-out prices for this one-time cash out, although it reserves the right to propose a different cash-out price in the future. The Commission will accept El Paso's answer and its amended Appendix G workpapers using the revised cash-out prices.

19. The Commission finds, however, that El Paso has not provided sufficient information regarding its operational purchases and sales. Section 13.3(b) of El Paso's GT&C provides that El Paso will provide the following information related to the purchase and sale of gas for Fuel: "(i) the source of the gas purchased/sold, (ii) the date(s) of such purchase/sale, (iii) the gas quantities, (iv) the purchase/sale price, (v) the costs and revenues from the purchase/sale, and (vi) the disposition of the associated costs and revenues." This tariff provision does not require El Paso to provide an explanation of the purpose of any operational transaction, as some pipeline tariffs do. However, the provision requires information detailing the disposition of the associated costs and revenues related to operational transactions. In its answer, El Paso states that it has used the same form and format of the report for several years. In those fuel filings, El Paso provided the accounting treatment for each operational purchase and sale, which provides information regarding the purpose of each transaction.[14] In the instant filing, however, El Paso failed to provide the accounting treatment for these transactions, as required by its tariff.[15] Therefore, the Commission will require El Paso to make a revised filing to include the accounting treatment in its Operational Purchases and Sales Report –

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[14] *See El Paso Natural Gas Co*., Docket No. RP12-190-000 (December 15, 2011).

[15] *See* Appendix H, Schedule 1, p. 1, which does not include a column for "FERC Accounts" unlike in past filings.

Disposition and Source Summary. El Paso is directed to make the filing within 30 days of the date of issuance of this order.

The Commission orders:

The requested waivers are granted and the revised tariff record is accepted, to become effective January 1, 2013, subject to El Paso filing, within 30 days of the date of this order, a revised Operational Purchases and Sales Report to include the relevant accounting treatment.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.