

106 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

El Paso Natural Gas Company

Docket Nos. RP00-336-014
RP00-336-019

ORDER ON REHEARING AND TECHNICAL CONFERENCE

(Issued January 29, 2004)

1. On August 29, 2003, the Commission issued an order in this proceeding¹ that accepted and suspended tariff sheets filed by El Paso Natural Gas Company (El Paso) subject to conditions and to the outcome of a technical conference. El Paso filed a timely request for clarification or rehearing of that order. On September 24, 2003, a technical conference was held to discuss issues raised by El Paso's tariff filing. This order addresses issues raised at the technical conference and in the request for clarification or rehearing of the August 29 Order.

2. As discussed below, the Commission finds that El Paso's allocation of Block capacity as proposed in response to the August 29 Order is just and reasonable, and that ordering a new reallocation of capacity to all shippers is not in the public interest. The Commission further finds that Receipt-Delivery Point Combinations as proposed by El Paso are appropriate as an interim measure to assure service reliability. The Commission will reject El Paso's proposed limitations on capacity release and the right of first refusal (ROFR). This order is in the public interest because it promotes reliable firm service on the El Paso system, consistent with the prior orders in this proceeding.

I. Background

3. On May 31, 2002, the Commission issued an Order on Capacity Allocation and Complaints (May 31 Order)² that established a framework for resolving the capacity

¹ 104 FERC ¶ 61,232 (2003) (August 29 Order).

² 99 FERC ¶ 61,244 (2002), reh'g, 104 FERC ¶ 61,045 (2003).

allocation problems that had rendered firm service on El Paso unreliable in recent years. In order to restore reliable firm service on El Paso, the May 31 Order, among other things, directed that service under full requirements (FR) contracts be converted to service under contract demand (CD) contracts.³ On September 20, 2002, the Commission issued an order⁴ that clarified certain of the rulings in the May 31 Order and adopted a capacity allocation methodology for El Paso. On March 31, 2003, El Paso filed tariff sheets to comply with these orders.

4. On July 9, 2003, the Commission issued an order on rehearing (Rehearing Order)⁵ that generally denied requests for rehearing of the May 31 and September 20 Orders. Also on July 9, 2003, the Commission issued an order (Compliance Order) accepting El Paso's allocation report and filing to comply with the May 31 Order, subject to certain modifications.⁶ The July 9 Compliance Order, among other things, rejected El Paso's proposal contained in the March 31 compliance filing to establish Route Quantities for specific combinations of receipt and delivery points.

5. On August 1, 2003, El Paso filed pro forma tariff sheets in compliance with the July 9 Orders. The proposed tariff sheets removed the reference to Route Quantities as directed by the July 9 Compliance Order. However, El Paso stated that it was necessary to couple receipt and delivery points on a volumetric basis to assure reliable firm service, and El Paso proposed use of Receipt-Delivery Point Combinations (R-D Combos) to achieve this purpose. The tariff sheets also set forth procedures for use of the capacity pool established by the Commission in the July 9 Rehearing Order to ensure reliable service to the converting FR shippers, provided for reservation charge credits, removed references to pro rata allocations, provided that shippers shall have separate contracts for different categories of services, and placed certain limitations on shippers' capacity release and ROFR rights pending completion of El Paso's Order No. 637 proceeding.

³ El Paso had historically served its firm customers under two types of contracts, FR contracts and CD contracts. CD contracts provide specific delivery rights up to specified quantity limitations at delivery points designated in the contracts. FR contracts provided that El Paso must deliver and the customer must take from El Paso, the customer's full gas requirements each day; there was no limit on the amount of gas the FR customers could take other than the capacity of their delivery points.

⁴ 100 FERC ¶ 61,285 (2002).

⁵ 104 FERC ¶ 61,045 (2003).

⁶ 104 FERC ¶ 61,044 (2003).

6. Parties⁷ protested the August 1 filing and argued that while El Paso removed references to Route Quantities as directed by the Commission, it essentially retained the concept by using R-D Combos. In addition, the protestors objected to El Paso's proposed procedures for use of the capacity pool,⁸ the requirements for separate contracts for different categories of service, the proposal to restrict capacity release and ROFR rights, and El Paso's proposed scheduling priorities. The parties also sought clarification of other aspects of the proposal.

7. On August 29, 2003, the Commission issued an order accepting and suspending the compliance filing, subject to conditions and to the outcome of a technical conference. The Commission directed El Paso to modify the converting shippers' Transportation Service Agreements (TSAs) and tariff to permit the converting shippers to designate their own primary delivery points, rather than require them to accept delivery at California points as proposed by El Paso. El Paso sought clarification or rehearing of the August 29 Order. The conversion of FR contracts to CD contracts on El Paso's system became effective September 1, 2003.

8. A technical conference was held on September 24, 2003 in accordance with the August 29 Order. Initial comments after the technical conference were filed by El Paso; APS/Pinnacle; Blythe Energy LLC (Blythe);⁹ the California Public Utilities Commission (CPUC); Duke Energy Trading and Marketing, LLC (Duke Energy); the

⁷ The Arizona Corporation Commission and the EOC Shippers, APS/Pinnacle, Indicated Shippers, and SoCalGas filed protests.

⁸ The parties have since reached an agreement regarding procedures for use of the capacity pool, and filed an uncontested settlement with the Commission to implement these procedures. The Commission approved the settlement, effective December 1, 2003. 105 FERC ¶ 61,189 (2003).

⁹ Blythe also filed a petition to intervene out of time. Blythe states that as a new end user on El Paso's system, it has a substantial interest in this proceeding that cannot be represented by any other party. Blythe states that it will accept the record as it stands. The Commission finds that Blythe's late intervention will not place any additional burdens on existing parties and will grant Blythe's petition to intervene out of time pursuant to Rule 214(d) of the Commission's Rules of Practice, 18 C.F.R. § 385.214(d) (2003). Consistent with Rule 214, Blythe must accept the record as it has been developed in this proceeding.

East of California Shippers (EOC Shippers);¹⁰ Indicated Shippers;¹¹ MGI Supply, Ltd. (MGI); Public Service Company of New Mexico (PNM); and jointly by Southern California Gas Company and San Diego Gas & Electric Company (SoCalGas). Reply comments were filed by El Paso, APS/Pinnacle, Duke Energy, the EOC Shippers, Indicated Shippers, Pacific Gas & Electric Co. (PG&E), and SoCalGas. In addition, at Staff's request, El Paso prepared two studies illustrating the allocation of capacity rights if the converted full requirements shippers were allowed to move their California delivery rights to their traditional east of California markets prior to the allocation of the north-south crossovers that connect El Paso's northern and southern systems.¹²

II. Discussion

A. Receipt Points for Block Capacity

1. Background

9. The May 31 and July 9 orders required El Paso to include in the capacity allocated to the converting FR shippers, unsubscribed and turned-back Block

¹⁰ The EOC Shippers are Arizona Electric Power Cooperative, Inc.; El Paso Electric Company; El Paso Municipal Customer Group; Phelps Dodge Corporation; Public Service Company of New Mexico; Salt River Project Agricultural Improvement and Power District; Southwest Gas Corporation; Texas Gas Service Company, a division of ONEOK, Inc., and UNS Gas, Inc. The EOC Shippers state that their comments are also supported by the Arizona Corporation Commission.

¹¹ Indicated Shippers are Aera Energy, LLC; BP America Production Company; Burlington Resources Oil & Gas Company, L.P.; ConocoPhillips Company; Coral Energy Resources, LP; and Occidental Energy Marketing, Inc.

¹² El Paso's system consists of two major legs: the North System and the South System. These two mainline systems are physically connected by three crossovers. The South System connects gas production areas in the Permian and Anadarko Basins with the Erenberg delivery point in California. The North System connects the San Juan Basin to the Topock delivery point.

capacity.¹³ As stated above, in its August 1 filing to comply with these orders, El Paso assigned the Block capacity to the converting FR shippers, and designated the primary delivery points for this capacity at the California border at Topock and Ehrenberg. In the August 29, 2003 Order, the Commission directed El Paso to permit the converting shippers to designate their own primary delivery points, rather than to use the California delivery points, as El Paso had proposed.

2. El Paso's Response to the August 29 Order

10. El Paso states that on September 4, 2003, in response to the August 29 Order, it posted a customer notice informing shippers that they could move all volumes with Permian and Anadarko receipt points to their traditional delivery points and that any capacity with a delivery point at Ehrenberg could be moved upstream, regardless of the associated receipt point. In addition, El Paso states, it told shippers that any Topock rights could be moved upstream on the northern system. However, El Paso explained to its shippers that it would not be possible to move primary firm delivery rights for Block capacity from Topock to the south system if such delivery rights were volumetrically associated with San Juan Basin receipts because all of El Paso's north-to-south capacity had already been fully allocated.¹⁴ El Paso states that the only way to avoid the potential for capacity curtailments through the crossovers while also allowing the converted FR shippers to retain their traditional south system delivery points is for southern system deliveries to be sourced from the Permian Basin rather than the San Juan Basin. In order to facilitate the relocation of the converting FR shippers' Block II capacity with Topock delivery rights that are associated with San Juan Basin receipts, the September 4 notice provides a procedure for these shippers to swap primary receipt point rights with other parties.

¹³ As explained in the prior orders, the 1996 Settlement divides capacity turned back to El Paso by California local distribution companies into three Blocks: Block I capacity has alternate receipt point rights unless the capacity is sold for the maximum tariff rate and, in that event, it has primary point rights only to the Permian and Anadarko Basins, but not to the San Juan Basin. Block II capacity is a block of 614 MMcf/d of turned back capacity designated for primary point deliveries to Topock for PG&E or other shippers serving a market in PG&E's service territory (collectively Block II shippers), and has primary access to all system receipt points; the Block II shippers have recall rights. Block III has primary access to all receipt points.

¹⁴ The capacity allocated to shippers with San Juan receipt rights and Topock delivery rights is the Block II capacity. Block I and Block III capacity have Permian and Anadarko receipt rights. As described above, El Paso can accommodate the redesignation of delivery rights from California to southern system points.

11. El Paso explains that there is significantly less capacity on its north-south crossovers than on the two east-to-west mainlines, and that it had already fully allocated the capacity of its crossovers, as discussed in the Dec. 3 allocation report. Therefore, El Paso states, there is no additional capacity on the three north-south system crossovers to provide reliable, primary firm service for the totality of the delivery rights that the Commission's August 29 Order requires El Paso to move from Topock on the northern system to points on the southern system. El Paso states that in order to avoid curtailments, it maintained the primary rights for Block capacity with Topock delivery points at Topock during the reallocation process rather than moving them to east-of-California locations.¹⁵ El Paso states that reassignment of these delivery rights would oversubscribe the crossovers by more than 15 percent and create the potential for daily allocations in the scheduling process.

12. El Paso suggests several additional complementary actions to accommodate the converting FR Shippers with regard to the Block capacity. First, El Paso states, the allocated Block II capacity that has San Juan Basin receipt rights attached to north system delivery rights can be traded with other shippers who have Permian receipt rights so that the total amount of gas that must be able to flow on a primary point basis from north to south on the system will not be increased. Under this approach, El Paso states, the converted shippers would have the delivery point on a primary firm basis, and other shippers on the system would not be subject to curtailment. Thus, the converting FR shippers have the ability to choose their traditional delivery points for this capacity, thereby ensuring reliable service. If certain converting FR shippers choose to retain the San Juan Basin to Topock capacity, they have the option to do so and the flexibility to swap or release that capacity.

13. Second, El Paso states that its tiered priority scheduling mechanism will allow transactions using primary receipt rights and alternate delivery rights to be scheduled immediately after primary-to-primary transactions and before alternate-to-primary transactions. El Paso states that this would allow the San Juan-Topock capacity to be scheduled to the converting FR shippers' traditional delivery points, on an alternate basis, ahead of all other shippers except those using primary to primary rights.¹⁶

¹⁵ El Paso states that the real concern is moving all delivery points for Block capacity allocated to the converted FR shippers that currently have San Juan Basin-Topock capacity rights. El Paso states that movement of the delivery points for this capacity from the northern system to the southern system would add approximately 243 MMcf/d of gas flow that must utilize the already limited north-to-south capacity on the crossovers.

¹⁶ El Paso proposed such a tiered priority scheduling provision in Docket No. RP04-19-000. The Commission issued an order on November 4, 2003 accepting the
(continued...)

14. El Paso asks for guidance from the Commission on this issue to avoid the need to prorate its north-to-south capacity. Specifically, El Paso asked the Commission to clarify that it did not intend to require El Paso to move any delivery point rights that would result in the likelihood of daily capacity allocation in the scheduling process, i.e., that the August 29 Order does not require El Paso to move Topock delivery point rights to the southern system if the associated receipt rights are in the San Juan Basin.

Commission Determination

15. The Commission clarifies that it was the intent of the August 29 Order to give the converting FR shippers the opportunity to select their delivery points for the Block capacity. As the Commission explained in that order, these shippers should be able to use their allocated capacity to serve their current load requirements and it is unreasonable for El Paso to assign primary delivery points for that capacity that the shipper cannot use or does not choose. However, nothing in the August 29 Order was intended to suggest that any particular receipt point must be associated with the new delivery points.

16. The Commission finds that El Paso's allocation in response to the August 29 filing is just and reasonable and consistent with that order and the prior orders in this proceeding. El Paso has agreed to move the delivery points for the Block capacity to the shipper's traditional delivery points and to retain the current receipt points for all of that capacity except for Block II capacity with San Juan-Topock combination rights. With regard to this Block II San Juan-Topock capacity, the shipper can choose a southern system delivery point, if it agrees to a receipt point in the Permian Basin and swaps its San Juan Basin receipt point for a Permian Basin receipt point. Thus, under El Paso's proposal, the converting FR shippers will be able to receive all the firm service they have been allocated at the delivery point of their choice, as required by the Commission, if they agree to a receipt point in the Permian Basin.

17. Moreover, if any of these shippers choose not to accept a Permian Basin receipt point for their Block II capacity, they will retain their San Juan Basin to Topock rights; these rights have value and can be released by the shipper. Thus, these shippers can choose whether to use their Block II capacity with the delivery point of their choice and a Permian Basin receipt point, or to retain their San Juan Basin receipt point and release their capacity rights for compensation. In addition, El Paso's

proposal as an interim measure (105 FERC ¶ 61,176 (2003)). As discussed below, El Paso filed a revised tiered scheduling proposal in Docket No. RP04-61-000, and the Commission is accepting El Paso's revised proposal in an order issued contemporaneously with this order.

revised tiered scheduling proposals give these shippers a higher tiered priority in the scheduling process if they choose to schedule capacity from the San Juan Basin as a primary receipt point to an alternate delivery point on the southern system; this nomination from a primary receipt point to alternate delivery point is scheduled immediately after scheduling of nominations from a primary receipt point to a primary delivery point. The Commission finds that El Paso's proposal is just and reasonable and consistent with the Commission's orders in this proceeding.

B. Reallocation of Receipt Point Rights

18. At the technical conference and in the comments filed after the conference, the EOC Shippers presented an alternative to El Paso's proposal. These parties proposed a reallocation of receipt point rights to all shippers after the converting FR shippers redesignate primary delivery points for the Block capacity. Generally, the former FR customers favor reallocation of capacity on the system, while the traditional CD customers oppose such a reallocation. El Paso submitted two studies showing the impact of such a reallocation.¹⁷ El Paso takes no position on the reallocation issue, and states that its only interest is in ensuring that it is able to operate its system reliably as a result of any required allocation.

19. In their comments, the EOC Shippers,¹⁸ APS/Pinnacle, PNM, and MGI argue that the Commission should direct El Paso to reallocate receipt point capacity after moving the converting FR shippers' delivery points to their traditional service areas. These parties argue that El Paso's original allocation was not done correctly because it did not use the primary EOC shipper delivery points for Block capacity and that reallocation is necessary to correct the deficiencies in the initial allocation. APS/Pinnacle states that no party challenged the Commission's finding that the allocation of Block capacity to FR shippers without primary delivery points could compromise the ability of FR shippers to serve their current requirements. MGI argues that unless capacity is reallocated, the Block capacity rights that the

¹⁷ The first study reallocated capacity using the same displacement assumptions as the December 3 allocation report, which is currently in place. The second study assumed no displacement and results in a smaller amount of north-south crossover volume.

¹⁸ All EOC Shippers agree that El Paso should reallocate capacity, but not all agree that use of displacement in the reallocation is appropriate. Because, as explained below, the Commission concludes that reallocation of capacity is not appropriate, we do not reach the parties' arguments concerning displacement and other details of a reallocation process.

Commission ordered El Paso to give to converted EOC customers will remain second class. These parties also argue that a reallocation is necessary to give them their fair share of San Juan Basin receipt rights.

20. On the other hand, the CPUC, Duke Energy, and SoCalGas oppose reallocation of receipt point capacity. Duke Energy asserts that a reallocation as advocated by the EOC Shippers threatens to undo the progress that has been made on the system since the conversion of FR contracts to CD contracts. SoCalGas states that it has entered into long term purchase contracts for the 2003-2004 winter season and has released capacity in reliance on its receipt and delivery point rights. Thus, SoCalGas argues, reallocating capacity would be inequitable and discriminatory. The CPUC and Duke Energy point out that converting FR shippers would be able to obtain the amounts of gas turned back by former California customers if there is no reallocation, through swap transactions, just not necessarily from the San Juan Basin. The CPUC supports the allocation performed by El Paso in response to the August 29 Order.

Commission Determination

21. As discussed above, the Commission has concluded that El Paso's redesignation of delivery point rights in response to the August 29 Order is just and reasonable and will provide all parties with delivery rights sufficient to meet their existing needs. Further, in the July 9 Compliance Order, the Commission found that El Paso had conducted its capacity allocation and receipt point allocation processes in accordance with the directives of the May 31 and September 20 Orders. The August 29 Order did not require any reallocation of receipt point rights to correspond to the movement of delivery point rights. The converting FR customers will now be better able to serve their traditional load by redesignating primary delivery points and are able to achieve supply by electing sources such as the Permian Basin to meet their demands.¹⁹ We recognize that some of these shippers may have to revise their source of supply from the San Juan Basin to the Permian Basin for as much as 15 percent, but they would still be able to receive full deliveries at primary delivery points.

22. The Commission's primary goal in this proceeding has been to restore reliable firm service to the El Paso system. To achieve that goal, significant changes were made in the way the system operates, including the conversion of full requirements service to contract demand service and the conversion of system-wide receipt rights to specific receipt rights. The Commission took a number of additional steps to minimize the impact of those changes on the converting FR shippers and to ensure

¹⁹ Some EOC Shippers will lose a portion of their San Juan source availability, but will still be able to source approximately a third of their supply from the San Juan Basin.

that the converting FR shippers were allocated sufficient capacity to meet their needs following the conversion.

23. Thus, the Commission required El Paso to allocate all available capacity not under contract to the CD shippers, including capacity from expiring contracts, to the converting FR shippers, and directed El Paso to refrain from marketing unsubscribed capacity unless it could demonstrate that it did not need the capacity to serve existing shippers. Further, the Commission directed El Paso to allocate to the FR shippers 230,000 Mcf/d of capacity authorized to be added to El Paso's Line 2000. The Commission also required El Paso to allocate to the FR shippers all of the additional 320,000 Mcf/d of capacity that would become available as a result of El Paso's Power-Up Project; El Paso agreed to forego cost recovery for this project until its next rate case. Because it became clear that the Power-Up Project capacity would not be available on the date of conversion, the Commission directed El Paso to hold in reserve in a capacity pool additional replacement capacity to ensure that El Paso can meet its service obligations. Thus, pursuant to the allocation methodology adopted by the Commission, the FR shippers received all of the available capacity on the El Paso system, plus the new capacity provided by Line 2000 and the Power-Up Project at no additional demand charge through the term of the 1996 Settlement.

24. In addition, the Commission required El Paso to give existing shippers priority for any new capacity that El Paso might propose to construct through the term of the 1996 Settlement. El Paso was also required to accept turn back of capacity from existing shippers to meet growth in the needs of its existing shippers through the term of the Settlement. The Commission also required El Paso to determine, at least once a year, whether any existing shippers require additional CD allocations and to solicit turn back of capacity to meet those additional requirements. Thus, the Commission has taken numerous and comprehensive actions to assure that sufficient, reliable capacity is made available for the converting FR shippers while reliable firm service is restored on the El Paso system.²⁰

25. In addition, the Commission has minimized the rate impact for the converting FR shippers. The Commission ordered that no change be made to the reservation charges paid by all El Paso customers for firm service. Thus, converting FR shippers pay the same monthly reservation charge as they did before the September 1, 2003 conversion. The new capacity allocated to the converting FR shippers in the Line 2000 project (230 MMcf/d) and the Power-Up Project (320 MMcf/d) are at no additional reservation cost to the converting FR shippers through the term of the 1996

²⁰ These steps have been successful. El Paso reports that routine pro rata allocations ceased on the September 1, 2003 conversion date.

Settlement. The capacity allocated to the converting FR shippers from expired contracts was also at no additional reservation charge cost to the converting FR shippers. The converting FR shippers have thus benefited from these capacity allocations with no additional reservation charge requirement.

26. While the Commission has ensured that the converting FR shippers will receive reliable firm service on El Paso with minimal rate impact, it did not guarantee any specific level of access to the least expensive sources of supply for any of El Paso's shippers.²¹ The Commission did not direct El Paso to allocate a pro rata share of San Juan Basin receipt rights to all customers for all types of capacity. For example, the Commission found appropriate El Paso's assignment of non-San Juan Basin receipt rights to the Power-Up Project capacity because that capacity would be constructed on the southern system which is served directly by the Permian and Anadarko supply basins and not by the San Juan Basin. Therefore, if the converting FR shippers choose to redesignate primary delivery points from California to southern system points for Block capacity, it is reasonable to require that that capacity have Permian Basin or Anadarko Basin receipt points. The EOC shippers are not then "shortchanged" of San Juan Basin receipt rights nor are they entitled to a reallocation for the purpose of obtaining additional San Juan Basin receipt rights.

27. Moreover, the Commission finds that a complete reallocation of receipt point capacity on El Paso at this time would place undue burdens on the parties. As discussed above, the Commission has found that the current allocation is in accordance with its prior orders in this proceeding. That allocation, with minor subsequent revisions, was first filed with the Commission over a year ago. The Commission accepted the allocation report on July 9 and El Paso implemented the allocation on September 1, 2003. Shippers have relied on that allocation and have made business decisions, including contracting and releasing capacity based on that allocation. Reallocation would require all shippers to recontract for supply and could result in financial harm.

²¹ Moving the Block II receipt point capacity from the San Juan to the Permian Basin would reduce the converting FR shippers' share of San Juan gas. Currently, 46 percent of their allocation is sourced from San Juan, and this could change to approximately 33 percent. This is consistent with prior Commission orders, and the Commission has not guaranteed shippers access to specific supply basins. Thus, during restructuring under Order No. 636, the Commission required that shippers receive their contract entitlements, but did not guarantee a specific source of supply. See Texas Eastern Transmission Corp., 63 FERC ¶ 61,100 at 61,410. (1993).

28. Further, shippers have enjoyed the benefits of certainty of service since the implementation. El Paso has reported that since the conversion of FR contracts and reallocation of capacity effective September 1, 2003, the routine pro rata allocations of capacity on El Paso have been eliminated. The Commission finds that ordering a reallocation would create unnecessary disruption to the system. El Paso's system is fully allocated, and any reallocation of capacity to the EOC shippers would impact other El Paso shippers as well. This reallocation would require time to implement and would reintroduce regulatory and allocation uncertainty into a system that only recently has enjoyed certainty after years of pro rata allocations. For these reasons, the Commission concludes that it would not be in the public interest to direct El Paso to reallocate capacity among its shippers.

29. Indicated Shippers state that regardless of whether the Commission orders El Paso to reallocate capacity rights to allow converting FR customers to redesignate primary delivery points in their service territories on the south system, El Paso should be required to reallocate capacity so that there is no overallocation of north-south capacity and there is no assumed displacement transactions of any type. Indicated Shippers state that the December 3 allocation report, as revised, indicates that El Paso has overallocated north-south capacity.²²

30. El Paso assumed the use of displacement in its December 3 allocation report. The Commission found that that allocation is just and reasonable. If El Paso is unable to deliver shippers' allocated volumes, it will be required to pay reservation charge credits to shippers for volumes that it is unable to deliver. The Commission will not order a reallocation of this capacity at this time.

C. Receipt-Delivery Point Combinations

31. As explained above, in its August 1, 2003 compliance filing, El Paso coupled receipt points with delivery points in allocating capacity. The parties protested El Paso's use of these R-D Combos, and the issue was addressed at the technical conference. In its initial comments following the technical conference, El Paso explains that by using R-D Combos to allocate primary firm rights to all shippers on the system, it was able to ensure that it did not allocate more volumetric rights to

²² Indicated Shippers state that in its September 8, 2003 request for rehearing in Docket No. RP00-336-014, El Paso indicated that it has a total of 1440 MMcf/d of winter north-south crossover capacity, while in the December 3, allocation report, it allocated 1486 MMcf/d of January capacity, and that this overstates the capacity even after considering displacement.

receive gas in the San Juan Basin and deliver it to delivery points on the southern system than it has crossover capacity to make such deliveries.

32. Further, El Paso states, the R-D Combos not only address the north-south capacity issue, but also provide El Paso with a means of ensuring that there are no unnecessary east-west constraints. El Paso states that although it expresses its east-west capacities on the northern and southern systems as single numbers, those numbers actually reflect capacities at the points on the two systems where constraints most frequently occur. El Paso states that the pipelines telescope down as one moves geographically from east to west, reflecting the fact that the system was designed to deliver gas to markets along the way, rather than deliver the entire quantity of gas received in the supply basin at the extreme western end of the pipeline. El Paso asserts that the R-D Combos give it the ability to ensure that shippers on the two east-west mainlines would not be allocated more capacity on the downstream side of a constraint than El Paso could make available on a day-to-day basis.

33. El Paso recognizes that its shippers believe that the R-D Combos limit their flexibility in scheduling daily transactions. El Paso states that, in response to these concerns, it has developed several proposals to provide the flexibility that the shippers seek. Thus, El Paso has proposed to implement Directional Transfer Scheduling and tiered scheduling and to consolidate R-D Combos and D-Codes²³ to provide shippers with additional flexibility.

34. The EOC Shippers and APS/Pinnacle oppose El Paso's use of R-D Combos. The EOC Shippers argue that El Paso has failed to justify its continued use of R-D Combos despite the Commission's rejection of the route quantity concept. They also argue that the use of R-D Combos imposes an overly rigid capacity allocation and scheduling system that unreasonably restricts their ability to effectively use their firm capacity. They assert that the Commission should permit El Paso to use only the least restrictive system necessary to ensure the quality of firm transportation without unnecessary curtailments. The EOC Shippers state that as long as EOC shippers are moving gas to points within the overall north-south and east-west capacity limits, further restrictions on their ability to move gas among their delivery points should be prohibited. They further state that El Paso's own presentation demonstrated Directional Transfer Scheduling with certain modifications can resolve any potential north-south and east-west constraints on the system, rendering the R-D Combos unnecessary.

²³ D-Codes are clusters of delivery points and represent an aggregation of individual meters. El Paso uses D-Codes as delivery points in its TSAs. Therefore, the delivery points in R-D Combos are D-Codes.

35. APS/Pinnacle asserts that the establishment of R-D Combos without the Order No. 637 segmentation rights is premature and may be prejudicial. They ask that the Commission require El Paso to remove all references to R-D Combos until the Order No. 637 compliance filing.

36. Indicated Shippers and PG&E, on the other hand, do not oppose use of the R-D Combos. Indicated Shippers state that they agree with El Paso that R-D Combos are a valid and necessary function at this stage of El Paso's restructuring because they define firm contract receipt/delivery point rights, which will provide greater certainty of gas flow. Indicated Shippers also believe that R-D Combos are necessary to define capacity release rights because if the combinations of receipt and delivery points were unidentified, then capacity could be released in unintended combinations for capacity that may not truly exist. PG&E states that R-D Combos may not provide all the flexibility that should exist in the long term on El Paso's system, but it is a workable temporary solution and a reasonable approach in the circumstances.

37. The Commission finds that the temporary use of R-D Combos, with the additional flexibility provided by the directional transfer scheduling, tiered scheduling priorities,²⁴ and the consolidation of R-D Combos and of D-Codes, as discussed below, is a reasonable interim method of addressing the problem of system constraints. By pairing specific receipt points with specific delivery points, El Paso can assure that it does not allocate more volumetric rights to receive gas in the San Juan Basin and deliver it to the southern system than it has crossover capacity to make the deliveries, and that shippers on the two mainlines will not be allocated more capacity on the downstream side of a constraint than El Paso can make available. It is essential that El Paso have the ability to manage its system to avoid pro rata curtailments of service, and the proposal for R-D Combos is a reasonable interim measure to achieve that goal. Pathing of the system will be addressed in the next stage of El Paso's Order No. 637 proceeding, and a permanent resolution of these system management issues can be considered there.

D. Directional Transfer Scheduling and Tiered Priority Scheduling

38. In its initial comments after the technical conference, El Paso states that in order to address shippers' requests for more flexible use of their contract rights and to make it easier to schedule R-D Combos, it developed the "directional transfer

²⁴ As discussed below, the Commission is accepting in an order in Docket No. RP04-61-000 issued contemporaneously, El Paso's proposal for directional transfer scheduling and tiered scheduling, subject to condition.

scheduling” concept.²⁵ In their comments, the parties generally do not oppose the concept of directional transfer scheduling, but raise issues concerning its implementation.

39. In addition, at the technical conference, El Paso discussed a new priority tiering mechanism that would allow shippers to move among the points contained in their contracts on a “first alternate” basis without having to use the R-D Combos.²⁶ In its initial comments following the technical conference, El Paso stated that it would file revised tariff sheets to implement the proposal presented at the conference at the same time that it filed tariff sheets to implement directional transfer scheduling.

40. On November 17, 2003, El Paso filed tariff sheets in Docket No. RP04-61-000 to implement the directional transfer scheduling proposal and related tiered scheduling priorities, to be effective February 1, 2003. The Commission is accepting El Paso’s proposal, subject to condition, in an order issued contemporaneously with this order. As explained in that order, these proposals will provide shippers with additional scheduling flexibility and will mitigate the impact of the R-D Combos.

E. Consolidation of Receipt-Delivery Combinations

41. At the technical conference, El Paso indicated that it is willing to work with its shippers individually to reduce the number of R-D Combos the shippers have under their contracts. In its initial comments, El Paso states that it has concluded from a general review of the R-D Combos currently in effect, that shippers who are willing to restructure their receipt and delivery rights so that gas is transported on a firm basis to fewer delivery points can substantially reduce the number of R-D Combos. El Paso included on Appendix D an example of how the consolidation would work.

42. In its initial comments, APS/Pinnacle states that it supports this concept and requests that the Commission insure that such consolidation occurs in a non-

²⁵ Pursuant to directional transfer scheduling, El Paso will aggregate shippers’ volumetric entitlements associated with their individual R-D Combos into separate east-west and north-south entitlements. Thus, for scheduling purposes, each contract will have a north-south transfer capacity entitlement and an east-west transfer capacity entitlement derived from the particular R-D Combo Maximum Daily Quantity (MDQ) stated in the shippers’ transportation service agreements.

²⁶ On October 2, 2003, El Paso filed a tiering proposal that was slightly modified from the one presented at the technical conference, and the Commission accepted that proposal as an interim measure, pending further action in this proceeding. 105 FERC ¶ 61,176 (2003).

discriminatory manner and at the shipper's option regardless of the existence of one or multiple contracts.

43. In their initial comments, the EOC Shippers state that the proposal to permit limited consolidation of the R-D Combos is no substitute for their elimination, but merely adds complexity and fails to add any additional flexibility beyond the flexibility created by directional transfer scheduling. However, they state, if the Commission does not reject the concept of R-D Combos, EOC Shippers would want the ability to consolidate the R-D Combos. The EOC Shippers raise a related concern that numerous allocations at receipt points are less than 15 dth. EOC Shippers argue that such small volumes are not commercially viable and thus difficult to trade. Further, Section 4.1(c) of El Paso's General Terms and Conditions establishes a minimum of 15 dth for scheduling.

44. As explained above, the Commission has found that use of the R-D Combos is a reasonable interim measure to address system constraints and assure service reliability. Consolidation of the R-D Combos will provide shippers with additional flexibility, and the Commission encourages El Paso to continue to work with shippers individually to combine R-D Combos where possible, particularly to address the issue of small allocations. This consolidation should be on a non-discriminatory basis and at the discretion of the shipper. In addition, El Paso should work with its shippers to facilitate trades of small volumes.

F. Consolidation of D-Codes

45. At the technical conference, several EOC shippers suggested that El Paso should consolidate shippers' D-Codes into a much smaller number. In its initial comments, El Paso states that elimination of the D-codes is not possible if El Paso is to retain control of its system. El Paso further states that some consolidation of D-codes may be possible subject to three conditions: (1) El Paso will not be required to give reservation charge credits due to delivery lateral constraints if D-Codes on delivery laterals are consolidated, (2) there will be a defined mechanism for allocation of the costs of any needed lateral expansions that would ensure that El Paso would be reimbursed for the expansions, and (3) El Paso will be able, if growth in loads result in renewed allocations or problems in operating the system, to separate the consolidated D-Codes. El Paso also responds to questions concerning specific D-Codes raised at the conference.

46. The EOC Shippers support El Paso's proposed D-Code consolidations without the three conditions which, they assert, are unjustified and unreasonable. They argue that there is no basis to excuse El Paso from its contractual service or related reservation charge credit obligation in order to permit the D-Code consolidations. With regard to the condition related to costs of laterals, the EOC Shippers state that

this is unrelated to any operational concerns, and there are existing tariff provisions that address El Paso's obligation to construct laterals and the shippers' cost responsibility; therefore, the EOC Shippers state, this condition is outside the scope of this case. They argue that El Paso has provided no basis to retain a future right to modify unilaterally whatever just and reasonable result is reached here.

47. The EOC Shippers also assert that El Paso's proposed D-Code consolidations do not go far enough and that further consolidation is necessary to permit increased shipper flexibility. They state that the Commission should permit the D-Code quantities to be consolidated so that they reflect aggregate directional transfer limits, or, alternatively, the Commission should permit the issue of further consolidation of D-Codes to be explored further in this proceeding as other aspects of shipper reliability and scheduling flexibility become known.

48. APS/Pinnacle states that it does not object to the third condition proposed by El Paso, provided that El Paso notifies shippers in a timely manner of any operational concerns and provides a process, where time permits, for resolving these concerns prior to any final action by El Paso. However, APS/Pinnacle states El Paso has failed to demonstrate any nexus between the consolidation of D-Codes and a generic waiver of all revenue credit responsibilities; APS/Pinnacle states that it is willing to consider on a case-by-case basis, a waiver of some portion of the revenue credit obligation. APS/Pinnacle also states that the second condition is unnecessary because El Paso's tariff already provides for allocation of costs associated with construction laterals.

49. The Commission encourages El Paso and its shippers to continue to address this issue and work to consolidate the D-Codes. The Commission will not, however, direct El Paso to consolidate D-Codes, and El Paso should not consolidate any D-Codes if the consolidation will jeopardize firm service. Therefore, there is no basis for waiving reservation charge credits on laterals where the D-Codes have been consolidated. Similarly, the Commission finds there is no basis to modify the current tariff provisions concerning cost responsibility for construction of laterals as a result of D-Code consolidation. This is a matter that is best resolved in the first instances between El Paso and the shippers, and the Commission will not at this time address issues related to any specific D-Codes.

G. Contracts

50. In the July 9 Order, the Commission approved El Paso's proposal to establish separate TSAs for each type of capacity.²⁷ Section 9.1 of El Paso's August 1 tariff

²⁷ 104 FERC ¶ 61,044 at P42.

filing provides that El Paso has “the right to require each converted Full Requirements Shipper to have a separate TSA for each separately sourced package of capacity.”²⁸ APS/Pinnacle protested this provision as giving too much discretion to El Paso to determine which capacity to keep under separate contracts and which capacity to tie together in packages.

51. In its initial comments after the technical conference, El Paso states that prior to conversion, it informed its shippers that each would have six service contracts after conversion, *i.e.*, a base contract for their allocated capacity to its historical delivery points; a Line 2000 contract covering its share of the 230 MMcf/d of initial capacity on that contract; a Line 2000 Power-Up contract; and three contracts covering its Block I, II, and III capacity. Subsequently, El Paso states, it informed the shippers that it would be willing to collapse the base contract and the two Line 2000 contracts into one contract, thereby reducing the total number of contracts to four. El Paso states that APS opposed the reduction and told El Paso that it would like to retain six contracts. El Paso states that it is willing to enter into either six or four contracts, depending on the shipper’s preference. MGI supports permitting converted FR shippers to consolidate the six contracts into a smaller number.

52. El Paso also states that it has not yet received executed service agreements from its shippers for the firm service that began September 1, 2003. El Paso refers to Section 20.5 of the agreement which provides, “If shipper fails to execute the transportation service agreement or any amendment thereto within 30 days of the date tendered, Shipper’s request [for transportation service] shall be deemed null and void.” El Paso asks the Commission to provide guidance as to how the current situation can be reconciled with the terms of El Paso’s tariff and to confirm that shippers may not rely on the waiver of pregranted abandonment to obtain service indefinitely without executed contracts.

53. The EOC Shippers and APS/Pinnacle respond that Section 20.5 of El Paso’s tariff applies to new shippers, while this case involves the more complicated process of converting existing TSAs for FR service to new TSAs for CD service. They also state that they have negotiated in good faith with El Paso, and APS/Pinnacle states that it expects to reach an agreement with El Paso in the near future. APS/Pinnacle states, with regard to El Paso’s concern that shippers may rely on the waiver of pregranted abandonment to obtain services indefinitely without executed contracts, that it is premature for the Commission to impose a solution on a problem anticipated by El Paso.

²⁸ Sixth Revised Sheet No. 117.

54. The Commission encourages the parties to continue to negotiate to resolve expeditiously the issues concerning the terms and conditions of the new contracts. The Commission will not intervene in that process at this time. If and when it appears that the parties cannot agree to all the terms of the new contracts, the Commission can address the situation after reviewing the specific contract provisions in controversy.²⁹ In the interim, the converting shippers will continue to receive service pursuant to El Paso's tariff and the terms and conditions of the existing TSAs, as modified by the Commission's orders in this proceeding.³⁰ El Paso should amend its tariff to reflect its agreement to give shippers the option of entering into either six or four contracts or a different number of contracts if mutually agreeable.

55. On December 22, 2003, El Paso filed 125 service agreements, and parties have had an opportunity to file comments on those agreements. The Commission will address any issues raised with regard to those agreements as appropriate.

H. Limitations on Capacity Release and ROFR Rights

56. El Paso states that shippers exercising their ROFR rights and permanently releasing firm capacity should be required to do so proportionately across all R-D Combos until the issue of geographic stranding can be addressed in its Order No. 637 proceeding. El Paso states that it is "concerned that the implementation of Order No. 637 on its highly reticulated system, with segmentation based on an as-yet undetermined method of pathing will create the additional operational imperative that loads be balanced across the system. If that turns out to be the case, it will be necessary at that time to determine as well how shippers will be able to exercise their ROFRs on a geographic basis and how they will be able to permanently release less than all of their capacity rights." El Paso states that it asks only that in the meantime, there be no stranding of capacity in the ROFR or capacity release processes. The EOC Shippers, APS/Pinnacle, Indicated Shippers, MGI Supply, and SoCalGas oppose El Paso's proposed limitations on ROFR and release rights.

57. The Commission finds that El Paso has not justified the proposed restrictions on the shippers' ROFR and capacity release rights and has not demonstrated that any

²⁹ The EOC Shippers have indicated that one of their objections to the proposed contracts is the inclusion of R-D Combos. Since the Commission has resolved that issue in this order, it should no longer present a problem in contract negotiations.

³⁰ See Tennessee Pipeline Co., 65 FERC ¶ 61,356 at 62,908 (1993).

operational problems will result from El Paso's compliance with the Commission policies regarding capacity release and ROFR rights.³¹ El Paso's stated justification is speculative and related to events that may or may not occur after implementation of Order No. 637. The Commission's policy permits volumetric reductions in capacity when exercising ROFR rights, but a shipper may not exercise a ROFR for a geographic portion of capacity. El Paso has not explained how geographic stranding will occur. The Commission rejects El Paso's proposal to limit capacity release and ROFR rights.

The Commission orders:

El Paso's August 1, 2003 compliance filing is accepted subject to the conditions set forth in the body of this order. El Paso is directed to refile tariff sheets consistent with this order within 15 days of the issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

³¹ See *Northwest Pipeline Corp.*, 94 FERC ¶ 61,206 (2001), reh'g, 104 FERC ¶ 61,161 (2003).