

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 10, 2005

In Reply Refer To:
El Paso Natural Gas Company
Docket No. RP05-15-001

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

Attention: Robert T. Tomlinson
Director, Regulatory Affairs Department

Reference: Non-Conforming Provision Compliance Filing

Dear Mr. Tomlinson:

1. On November 17, 2004, El Paso Natural Gas Company (El Paso) filed tariff sheets¹ to list the transportation service agreements (TSAs) that contain the permissible non-conforming provisions identified in the Commission's November 3, 2004 Order (November 3 Order).² The revised tariff sheets comply with the November 3 Order and are accepted, effective November 3, 2004, subject to the condition described below.

Background

2. The November 3 Order accepted the revised tariff sheet listing two TSAs as non-conforming agreements, finding that the non-conforming provisions in those TSAs were permissible deviations from El Paso's form of service agreement. The Commission found that, to the extent there are existing TSAs that contain provisions verbatim to those non-conforming provisions, El Paso is not required to file each of the TSAs. The

¹ Sub 1st Rev Twenty-First Rev Sheet No. 1 and Second Revised Sheet No. 2, Second Revised Volume No. 1-A.

² 109 FERC ¶ 61,146 (2004).

Commission did require El Paso to list the non-conforming agreements on its tariff sheet and indicate that the non-conforming provisions are verbatim to those approved by the November 3 Order.

Instant Filing

3. El Paso's November 17 filing updates the list of non-conforming agreements to add 31 additional non-conforming TSAs that El Paso states contain the same provisions identified in the November 3 Order. El Paso states that the non-conforming provisions are verbatim to the provisions reviewed by the November 3 Order, with two exceptions. El Paso states that two TSAs contain the same reference to the Capacity Allocation Proceeding, but also include two additional sentences. El Paso further states that some of the TSAs with attached addenda have slightly different references to El Paso's on-line competitive bidding procedures than that accepted by the November 3 Order.

Public Notice

4. The filing was noticed on November 19, 2004, with comments, protests or interventions due on or before November 29, 2004. All timely motions to intervene and all motions to intervene out-of-time filed before the issuance of this order are granted pursuant to Rule 214 of the Commission's Rules of Practice and Procedure.³ No protests were filed.

Discussion

5. El Paso states that two of the TSAs⁴ contain the same reference to the Capacity Allocation Proceeding identified in the November 3 Order, but also contain the following two additional sentences:

Moreover, by order issued February 26, 2001 in those Dockets, the FERC directed El Paso, within 30 days, to submit in its Order No. 637 proceeding a proposal addressing system-wide capacity allocation issues. Therefore, the capacity being made available by this posting is subject to the outcome of El Paso's Order No. 637 proceeding.

6. El Paso states that these two sentences merely reference a compliance filing that was pending at the time of the execution of the TSA and provide the parties notice of potential changes to capacity rights. The Commission agrees and finds that the additional

³ 18 C.F.R. § 385.214 (2003).

⁴ The TSAs are with AquilaEnergy Marketing Corp (#9MGB) and PPL Energy Plus, LLC (#9MGD).

two sentences described by El Paso appear to be a non-conforming provision that does not affect the substantive rights of the parties and does not present the potential for significant risk of undue discrimination among customers.

7. Another non-conforming provision accepted by the November 3 Order as a permissible deviation was an addendum to the TSA that set forth procedures for on-line competitive bidding and listed such things as the rate requirements, terms and conditions for bidding, and bid evaluation methodology. El Paso states in the November 17 filing that some of the TSAs with attached addenda have slightly different references to El Paso's on-line competitive bidding procedures; for example, where capacity is offered subject to the right-of-first-refusal of another shipper, the competitive bidding procedures identify this circumstance.

8. Consistent with the November 3 Order, the Commission finds that the addendum described by El Paso relates to competitive bidding procedures for specific capacity and therefore it applies prior to the award of the capacity and execution of the TSA. Because the addendum does not affect any current awards of capacity and does not present a potential for undue discrimination among customers, the Commission finds that the provision appears to be a permissible deviation from the form of service agreement.

9. Even though the Commission finds that these non-conforming provisions appear to be permissible deviations from the form of service agreement, the filing of a description of these provisions does not relieve El Paso from the obligation to file the agreements that contain these non-conforming provisions. Therefore, the Commission will require El Paso to file the agreements that contain the provisions that vary from provisions accepted by the November 3 Order. To the extent that more than one TSA contains the identical provision, El Paso may file a sample TSA, as it did in its initial filing, and indicate which other TSAs include that provision verbatim.

10. The Commission therefore accepts the revised tariff sheets subject to El Paso filing the additional TSAs within 30 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.