

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. RP00-336-018
RP00-336-025

ORDER REJECTING FILINGS

(Issued April 19, 2004)

1. On August 29, 2003, El Paso Natural Gas Company (El Paso) filed revised tariff sheets¹ and sixteen transportation service agreements (TSAs) to reflect the conversion of El Paso's former full requirements shippers to contract demand shippers (August 29 filing). On December 22, 2003, El Paso filed revised tariff sheets² and 125 TSAs (December 22 filing). El Paso submitted the TSAs in both filings for the Commission's review and information as potential non-conforming agreements. The Commission will reject the filings as premature. This order benefits customers by ensuring that the Commission reviews agreements and provisions of service that have been agreed to by both parties.

Background

2. On July 9, 2003, the Commission issued an Order on Rehearing³ and an Order Accepting Allocation Report and Compliance Filing⁴ in this proceeding (July 9 Orders). The orders addressed issues related to the conversion of full requirements (FR) contracts to contract demand (CD) contracts on the El Paso system and directed El Paso to file revised tariff sheets to implement the conversion, effective September 1, 2003. On

¹ Twentieth Revised Sheet No. 1 and Original Sheet No. 2 to Second Revised Volume No. 1-A, FERC Gas Tariff.

² Twenty-First Revised Sheet No. 1; First Revised Sheet No. 2; Original Sheet Nos. 3, 4, and 5; Sheet Nos. 6 through 9; and Thirty-Eighth Revised Sheet No. 30 to Second Revised Volume No. 1-A, FERC Gas Tariff.

³ 104 FERC ¶ 61,045 (2003).

⁴ 104 FERC ¶ 61,044 (2003).

August 1, 2003, El Paso submitted its compliance filing, which included, among other things, related changes to El Paso's form of service agreement and stated that El Paso would provide the revised TSAs to its shippers incorporating the changes resulting from the conversion of FR service to CD service and the conversion of system-wide receipt point rights to rights at specific receipt points. On August 29, 2003, the Commission issued an order accepting El Paso's August 1 filing in compliance with the July 9 Orders.⁵

Instant Filings

3. In its August 29 filing, El Paso submitted 16 unexecuted TSAs involving 15 former FR shippers. El Paso states that in converting the FR agreements to CD service, it has narrowly modified the FR contracts so as to remove only those provisions that are inextricably tied to FR service. El Paso states that all other shipper-specific provisions were carried over into the converted CD contracts. El Paso states that the provisions that are preserved in the converted contracts reflect rights and obligations that were contained in the original FR sales and full requirements agreements or arose from specific Commission-approved settlements. El Paso submits that the substance of these provisions has thus been previously reviewed by the Commission. Because these provisions do materially deviate from its pro forma service agreement, however, El Paso states that it is submitting the agreements for Commission review out of an abundance of caution.

4. In its December 22 filing, El Paso submitted 125 TSAs, a number of which are unexecuted. El Paso states that it has undertaken an extensive review of its existing CD TSAs and has identified a number of contract provisions that do not appear in its tariff or form of service agreement that may be considered non-conforming provisions. El Paso states that a great majority of these potential non-conforming provisions arise from the structure of its form of service agreement which does not use a "fill-in-the-blank" organization⁶ and that these non-conforming provisions may or may not be deemed substantive in nature. El Paso states that it is submitting all of these provisions for Commission review out of an abundance of caution.

Public Notice and Protests

5. The August 29 filing was noticed on September 10, 2003, with comments, protests or interventions due on or before September 15, 2003. Protests were filed by the East of

⁵ 104 FERC ¶ 61,232 (2003).

⁶ The Commission rejected El Paso's filing to adopt a "fill-in-the-blank" contract form because of then-pending issues in the Capacity Allocation Proceeding. 103 FERC ¶ 61,081 (2003).

California Shippers (EOC Shippers),⁷ El Paso Electric Company, and jointly by Arizona Public Service Company and Pinnacle West Energy Corporation (APS/Pinnacle). The protestors urge the Commission to reject the filing because the TSAs are unexecuted and thus it is premature for the Commission to review them as non-conforming agreements. They argue that the agreements contain provisions that are directly affected by issues, such as receipt-delivery combinations, then pending before the Commission in this proceeding.

6. The December 22 filing was noticed on December 30, 2003, with comments, protests or interventions due on or before January 15, 2004.⁸ Protests were filed by APS/Pinnacle, EOC Shippers, El Paso Electric, Southwest Gas Company (Southwest), and Southern California Gas Company (SoCalGas).

7. The protestors generally urge the Commission to reject the filing as premature because many of the TSAs are unexecuted. APS/Pinnacle argues that the filing raises the same issues to be addressed at a technical conference in this proceeding, including issues concerning separate contracts for different categories of capacity, redesignation of delivery points for Block capacity, use of receipt-delivery combinations, and procedures for use of the reserved capacity pool. Southwest contends that the filing far exceeds the scope of this proceeding by including provisions not related to Order No. 637 compliance, capacity allocation, or the conversion of FR service to CD service. Southwest argues that the TSAs contain contested contract provisions and unlawfully reflect unilateral contract changes which El Paso may not revise through a section 4 filing. The EOC Shippers add that they raised concerns to El Paso about these provisions but that the TSAs subsequently submitted by El Paso did not address any of those concerns. Southwest requests that the Commission reject the filing without prejudice to El Paso refiling the existing non-conforming contracts in another docket and refiling its converted CD contracts after execution by the shippers and after El Paso's Order No. 637 compliance filing is accepted.

⁷ For purposes of this protest, 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; Southwest Gas Corporation; Texas Gas Service Company, a division of ONEOK; and UNS Gas, Inc.

⁸ On January 7, 2004, the Commission issued a notice that an extension of time for the filing of motions to intervene and comments is granted to and including January 15, 2004, thus extending the original date of January 8, 2004.

8. SoCalGas objects to El Paso's replacement of SoCalGas's existing five TSAs with a previously superceded TSA.⁹ SoCalGas argues that El Paso's unilateral attempt to resurrect the prior TSA to replace the existing five TSAs could limit its right of first refusal.

9. 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.¹⁰ Granting late intervention at this early stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

Discussion

10. The Commission supports El Paso's efforts to review existing as well as new TSAs to identify contract provisions that materially deviate from its form of service agreement and to submit those provisions to the Commission for review. The Commission finds, however, that it is premature for El Paso to submit the TSAs contained in its August 29 and December 22 filings for Commission review. El Paso has submitted some 141 TSAs, and the unexecuted contracts do not reflect the final agreement of the parties, as evidenced by the protests. In these circumstances, review and approval or modification of the agreements by the Commission would not be productive. Further, the Commission agrees with Southwest that the December 22 filing exceeds the scope of this proceeding by including the contract provisions that are not related to compliance with Commission directives in this proceeding, *i.e.*, the conversion of FR service to CD service or the conversion of system-wide receipt rights to specific receipt rights. For these reasons, the Commission will reject El Paso's filings.

11. On January 29, 2004, the Commission issued an order¹¹ resolving the issues addressed at the technical conference. The guidance provided by this and prior orders in this proceeding should provide certainty with regard to contested issues that have caused the shippers to be unwilling to execute agreements to reflect the conversion of FR service to CD service and the conversion of system-wide receipt rights to specific receipt rights.

⁹ SoCalGas states that prior to April 1, 2001, it received service from El Paso under TSA No. 97VT. Since April 1, 2001, it has received service under successor TSA Nos. 9M7L, 9M7M, 9M7N, 9M7P, and 9M7Q, following notification from El Paso that TSA No. 97VT was no longer in effect. SoCalGas states that, on September 1, 2003, however, El Paso suspended acceptance of nominations and capacity releases under the successor TSAs and has attempted to aggregate service to SoCalGas under resurrected TSA No. 97VT.

¹⁰ 18 C.F.R. § 385.214 (2003).

¹¹ 106 FERC ¶ 61,083 (2004).

The Commission encourages El Paso and its shippers to negotiate in good faith and to reach agreement on revised TSAs. Once the TSAs are executed, if El Paso identifies any provisions that materially deviate from the form of service agreement, it should file those provisions for Commission review.

12. As for the executed TSAs, El Paso should file any agreements that contain provisions that materially deviate from El Paso's form of service agreement in a new docket. In general, any provisions that were previously reviewed by the Commission, such as those related to Commission-approved settlements, need not be submitted. For any provisions that El Paso submits, it must, in compliance with Commission policy, explain why those provisions are specific to a particular shipper(s) and why the provision should not be included in the tariff and be made available to all shippers.

The Commission orders:

The August 29 and December 22 filings are rejected as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.