

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 No. RP04-328-001

ORDER ON REHEARING

(Issued May 10, 2005)

1. On August 9, 2004, the Indicated Shippers<sup>1</sup> filed a request for rehearing of the Commission's July 8, 2004 Order Rejecting Tariff Sheet (July 8 Order)<sup>2</sup> in this proceeding. The Indicated Shippers request that the Commission find that El Paso Natural Gas Company (El Paso) may not assume displacement capacity when it calculates how much firm capacity is available for future sales. For the reasons discussed below, we will deny the request for rehearing. This order is in the public interest because it allows flexibility to meet the needs of customers and the pipeline, while at the same time ensures that flexibility occurs without undue discrimination.

**Background**

2. The Commission issued an order on May 31, 2002, in Docket No. RP00-336-002, *et al.*, establishing the conversion of full requirements shippers to contract demand service and the conversion of system-wide receipt point rights to specific receipt point rights.<sup>3</sup> In that order, the Commission told El Paso that it may not enter into new firm service contracts unless it can demonstrate that it has capacity available to provide that service without degrading service to its existing firm customers.<sup>4</sup> On June 9, 2004, El Paso filed a revised tariff sheet establishing procedures El Paso will use when

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<sup>1</sup> For purposes of this filing, the Indicated Shippers are Aera Energy, LLC; BP America Production Company and BP Energy Company; Burlington Resources Trading Inc.; ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.; Conoco Phillips Company; Coral Energy Resources, L.P.; and Occidental Energy Marketing, Inc.

<sup>2</sup> 108 FERC ¶ 61,024 (2004).

<sup>3</sup> 99 FERC ¶ 61,244 (2002).

<sup>4</sup> 99 FERC at 62,012 (2002).

demonstrating that firm capacity is available for re-sale. The July 8 Order rejected the tariff sheet, stating that the proposed tariff revision is unnecessary in light of the reporting requirements in section 284.13(d) of the Commission's regulations. The July 8 Order reiterated that El Paso may not enter into new firm service agreements unless it has capacity available to provide that new service without degrading service to its existing customers.

### **Request for Rehearing**

3. The Indicated Shippers argue that the Commission erred in failing to address their arguments regarding whether El Paso should assume displacement capacity when it determines whether it has firm capacity available for sale. The Indicated Shippers request the Commission to grant rehearing of the July 8 Order and find that El Paso may not assume displacement capacity when it calculates how much firm capacity is available for future sales.

4. The Indicated Shippers argue that capacity that is available through displacement cannot meet the Commission's definition of firm service and is, therefore, not actually "firm" service. They state that displacement capacity may or may not occur, depending on whether gas flows in the opposite direction of the main flow of gas. If nominations for gas flowing in one direction are insufficient, they argue, displacement capacity will not be available for gas to flow in the opposite direction. The Indicated Shippers conclude that allowing El Paso to assume displacement would be unjust and unreasonable and a violation of the Commission's regulations. The Indicated Shippers request that El Paso not be permitted to sell firm capacity in the future, unless it can satisfy 100 percent of its existing firm load reliably without displacement gas flow.

5. The Indicated Shippers further point to El Paso's Order No. 637 pathing and scheduling priority as evidence that reliance on displacement has detrimentally impacted shippers. The Indicated Shippers explain that shippers who rely on displacement capacity (or "virtual capacity") are subject to a lower scheduling priority when using alternate points. The Indicated Shippers argue that El Paso is attempting to shift risk to firm shippers by altering the priority scheme so that capacity based upon displacement assumptions will have a lower priority than other capacity.

6. The Indicated Shippers refer to the Commission's decision in its July 8 Order directing El Paso not to enter into any new firm service contracts unless it can demonstrate that it has firm capacity available for resale and that new firm service would not degrade existing firm service. The Indicated Shippers argue that it is inconsistent for the Commission to rely solely on its directive that existing shippers not be harmed, without also eliminating the displacement assumption, which does harm existing firm shippers.

7. The Indicated Shippers state that the Commission appears to believe that reservation charge credits are a complete remedy for El Paso's firm service customers. The Indicated Shippers conclude that while reservation charge credits are appropriate and ensure that firm shippers are kept whole in terms of their firm transportation contracts with El Paso, shippers are not kept whole with regard to their related commercial transactions.

8. El Paso filed an answer to the Indicated Shippers' request for rehearing. Answers to requests for rehearing are not permitted by the Commission's Rules of Practice<sup>5</sup> and the Commission will not address El Paso's answer.

### **Discussion**

9. The Indicated Shippers argue that the Commission erred in the July 8 Order by failing to address the argument raised in their protest concerning displacement capacity. In that protest, the Indicated Shippers asked the Commission to reject El Paso's proposed tariff filing. In the July 8 Order, the Commission rejected El Paso's filing. Therefore, the Indicated Shippers received the relief they requested, and it was not necessary for the Commission to address each of the Indicated Shippers' objections to the proposed tariff in granting their request.

10. In any event, the Indicated Shippers' assertion that displacement capacity may not be used to provide firm service is not consistent with Commission policy or precedent. The Commission has rejected the Indicated Shippers' argument on this issue in two other El Paso proceedings. First, in El Paso's *Capacity Allocation Proceeding*, the Commission rejected the Indicated Shippers' arguments and approved the use of displacement capacity when it accepted El Paso's allocation report.<sup>6</sup> Second, in its July 14, 2004 Order in El Paso's Docket No. RP04-330-000,<sup>7</sup> the Commission addressed the Indicated Shippers' argument that El Paso should not assume displacement capacity when it calculates the amount of capacity that is available for future use. In rejecting the Indicated Shippers' argument, the Commission stated that "Section 284.7(3) of the Commission's regulations defines firm service as service that is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class for firm service. *This regulation does not preclude pipelines from assuming specified levels of backhaul capacity which can increase the pipeline's ability*

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<sup>5</sup> 18 C.F.R. § 385.213(a)(2) (2204).

<sup>6</sup> *El Paso Natural Gas Co.*, 106 FERC ¶ 61, 083 at P 29-30 (2004).

<sup>7</sup> *El Paso Natural Gas Co.*, 108 FERC ¶ 61,062 (2004).

to provide firm service.”<sup>8</sup> In addition, the Indicated Shippers’ argument is inconsistent with section 284.1(a) of the Commission’s regulations,<sup>9</sup> which provides that transportation includes storage, backhaul, *displacement*, or other methods of transportation.

11. It is reasonable to acknowledge that some displacement will occur on a reticulated pipeline system such as El Paso because, by their nature, reticulated systems have complex and interacting flow patterns, using both forward haul and backhaul to meet their shippers’ requirements. Thus, reticulated systems inherently rely on displacement.

12. Moreover, El Paso historically has assumed a certain level of displacement in determining its available capacity, and in the *Capacity Allocation Proceeding*, the Commission approved El Paso’s use of displacement capacity. Since the implementation of El Paso’s capacity reallocation plan in the *Capacity Allocation Proceeding*, firm service on El Paso has been reliable. Indicated Shippers have not alleged that there have been any disruptions to firm service on El Paso since the reallocation as a result of use of displacement capacity. Further, El Paso is increasing its available capacity by means of its Line 1903 project, Docket No. CP05-2-000, which is converting a crude oil pipeline to a natural gas pipeline.

13. El Paso’s use of displacement capacity to provide firm service does not harm its shippers. In the *Capacity Allocation Proceeding*, the Commission took action to protect the reliability of service to El Paso’s shippers. The Commission held that El Paso may not enter into new firm service contracts unless it can demonstrate that it has capacity available to provide new service without degrading service to existing customers.<sup>10</sup> The Commission also stated that when new capacity becomes available on its system, El Paso must first offer that capacity to its existing firm shippers before it offers it to a new shipper.<sup>11</sup> These requirements remain in place. El Paso must comply with these requirements.

14. The Indicated Shippers also raises a concern regarding pathing and scheduling priorities. These issues were addressed in El Paso’s Order No. 637 proceeding and will not be revisited here.

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<sup>8</sup> *Id.* at P 18 n.11 (emphasis added).

<sup>9</sup> 18 C.F.R. § 284.1(a) (2004) (emphasis added).

<sup>10</sup> 99 FERC ¶ 61,244 at 62,012 (2002).

<sup>11</sup> 104 FERC ¶ 61,045 at P 96 (2003).

15. Therefore, the Indicated Shippers' request for rehearing is denied. There is no basis in Commission policy or precedent to preclude El Paso from considering displacement capacity in determining how much firm capacity is available for future sales.

The Commission orders:

The Indicated Shippers' request for rehearing of the Commission's July 8 Order in this proceeding is denied for the reasons discussed herein.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.