

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company

Docket Nos. RP00-336-024,  
RP00-336-027, and  
RP04-61-002

ORDER ON REHEARING AND CLARIFICATION

(Issued December 21, 2004)

1. This order addresses several unresolved issues in El Paso Natural Gas Company's (El Paso) Capacity Allocation Proceeding. As discussed below, the Commission denies a request for rehearing of the January 29, 2004 Order on Rehearing and Technical Conference<sup>1</sup> filed by the East of California Shippers (EOC Shippers)<sup>2</sup> in Docket No. RP00-336-027. The request for rehearing raises issues concerning El Paso's allocation of capacity to the EOC Shippers in connection with moving the delivery points for Block capacity from California delivery points to delivery points designated by the EOC Shippers. The Commission will grant the EOC Shippers' request for clarification concerning the implementation of El Paso's Receipt-Delivery Combinations (R-D Combos).
2. The Commission also dismisses as moot a request for rehearing of the October 27, 2003 Order<sup>3</sup> filed by El Paso in Docket No. RP00-336-024 concerning demand charge credits on laterals. Finally, the Commission denies a request for rehearing of an April 20, 2004 Letter Order filed by Phelps Dodge Corporation

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<sup>1</sup> 106 FERC ¶ 61,083 (2004).

<sup>2</sup> The EOC Shippers are Arizona Electric Power Cooperative, Inc., El Paso Electric Company, Phelps Dodge Corporation, Texas Gas Service Company, a division of ONEOK, Inc., and Salt River Project Agricultural Improvement and Power District.

<sup>3</sup> 105 FERC ¶ 61,130 (2003).

(Phelps Dodge) in Docket No. RP04-61-002<sup>4</sup> concerning consolidation of D-Codes on the Silver City Lateral. This order benefits customers because it furthers the goal of guaranteeing reliable firm service on El Paso.

### **I. Rehearing in Docket No. RP00-336-027**

3. On January 29, 2004, the Commission issued an Order on Rehearing and Technical Conference<sup>5</sup> addressing, among other things, issues concerning El Paso's allocation of Block capacity and use of R-D Combos.<sup>6</sup> In that order, the Commission found that El Paso's allocation of Block capacity in response to the Commission's August 29, 2003 Order<sup>7</sup> was just and reasonable and that the use of R-D Combos is appropriate as an interim measure to assure service reliability. A timely request for rehearing and clarification of that order was filed by the EOC Shippers.

#### **A. Receipt Points for Block Capacity**

##### **1. Background**

4. On May 31, 2002, the Commission issued an Order on Capacity Allocation and Complaints (May 31 Order)<sup>8</sup> which established a framework for resolving the capacity allocation problems that had rendered firm service on El Paso unreliable in recent years. 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.<sup>9</sup> The Commission

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<sup>4</sup> 107 FERC ¶ 61,068 (2004).

<sup>5</sup> 106 FERC ¶ 61,083 (2004).

<sup>6</sup> The R-D Combos couple receipt points with delivery points in allocating capacity.

<sup>7</sup> 104 FERC ¶ 61,232 (2003).

<sup>8</sup> 99 FERC ¶ 61,244 (2002), *reh'g*, 104 FERC ¶ 61,045 (2003).

<sup>9</sup> 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.

also ordered the conversion of system-wide receipt point rights to specified rights at receipt points. On September 20, 2002, the Commission issued an order<sup>10</sup> clarifying certain of the rulings in the May 31 Order and adopting a capacity allocation methodology for El Paso.

5. On December 3, 2002, El Paso filed its report detailing the results of the conversion and capacity rationalization processes pursuant to the May 31 and September 20 Orders.<sup>11</sup> On March 31, 2003, El Paso filed tariff sheets to implement these orders.

6. On July 9, 2003, the Commission issued an order accepting El Paso's allocation report and filing to comply with the May 31, 2002 Order, subject to certain modifications.<sup>12</sup> This order did not specifically address the issue of receipt points for Block capacity. Also, on July 9, 2003, the Commission issued an order on rehearing<sup>13</sup> that generally denied requests for rehearing of the May 31 and September 20 Orders.

7. In these orders, the Commission took a number of actions to minimize the impact on the former FR shippers of the conversion of their service to CD service and to insure that the converting FR customers would receive sufficient capacity to meet their needs under their new CD contracts. Thus, pursuant to the allocation methodology adopted by the Commission, the FR shippers received all of the available capacity on the El Paso system that was not under contract to the CD shippers. In addition, the FR shippers were allocated the entire 230,000 Mcf/d of new capacity provided by Line 2000 and the 320,000 Mcf/d of capacity to be added by El Paso's Power-Up Project at no additional demand charge through the end of the 1996 Settlement. Until Phase II of the Power-Up Project became operational in April 2004, El Paso was required to hold in reserve additional replacement capacity for the converting FR shippers as a safety net. Further, the Commission directed El Paso to allocate to the FR shippers additional capacity becoming available from contracts expiring after May 31, 2002. The Commission

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<sup>10</sup> 100 FERC ¶ 61,285 (2002).

<sup>11</sup> El Paso filed modifications to this report on February 21, 2003, March 18, 2003, and April 8, 2003.

<sup>12</sup> 104 FERC ¶ 61,044 (2003).

<sup>13</sup> 104 FERC ¶ 61,045 (2003).

also made additional capacity available to the FR shippers by requiring El Paso to allow shippers to use California delivery points as receipt points to provide backhaul or displacement service.

8. In addition, to provide additional capacity to the FR shippers, the Commission directed El Paso to allocate to the former FR shippers turned-back Block capacity. Under the terms of the 1996 Settlement,<sup>14</sup> this Block capacity contains restrictions on its use,<sup>15</sup> and the Commission did not change the Settlement with regard to restrictions on the Block capacity.

## **2. El Paso's Allocation of Receipt Points for Block Capacity**

9. On August 1, 2003, El Paso filed pro forma tariff sheets to comply with the July 9 Orders. In that tariff filing, 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 Ehrenburg.

10. On August 29, 2003, the Commission issued an order<sup>16</sup> accepting and suspending El Paso's August 1 Compliance Filing, subject to conditions and to the outcome of a technical conference. The Commission directed El Paso to permit the converting FR shippers to designate their own primary delivery points for the Block capacity, rather than require them to accept delivery at the California points as proposed by El Paso. The Commission stated that it was unreasonable for El Paso to assign primary delivery points that a shipper cannot use or does not choose.

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<sup>14</sup> The 1996 Settlement establishes the rates and terms and conditions of service on El Paso for a ten-year period ending January 1, 2006. El Paso Natural Gas Co., 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997).

<sup>15</sup> 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.

<sup>16</sup> 104 FERC ¶ 61,232 (2003).

11. In response to the Commission's finding that converted FR shippers should be allowed to move delivery points for allocated Block capacity from California points to their traditional service areas, El Paso posted a customer notice informing its shippers that they could move all volumes with Permian and Anadarko receipt points to their traditional delivery points and that any capacity currently having a delivery point at Ehrenberg could be moved upstream, regardless of the associated receipt point. In addition, El Paso told its shippers that any capacity with Topock delivery point rights could be moved to upstream points on El Paso's northern system. However, El Paso explained to its shippers that it would not be possible to move primary firm delivery rights from Topock to the south system if such delivery rights were volumetrically associated with San Juan Basin receipts. This is due to the fact that all of El Paso's north-to-south capacity had already been fully accounted for in the allocation process.<sup>17</sup> El Paso stated 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 those deliveries to be sourced from the Permian Basin.

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<sup>17</sup> El Paso explained that movement of the Ehrenberg delivery points to upstream delivery points on the southern system will not create any additional constraints on the crossovers because this capacity will retain southern system receipts to southern system deliveries. In addition, El Paso explained, the movement of Anadarko volumes from Topock to the southern system will not create constraints because the volumes are minimal and there is sufficient transportation from the Permian Basin to the Anadarko Basin to alleviate the potential north-to-south constraint associated with moving Anadarko volumes to the southern system. Also, El Paso stated, movement of the Permian-PG&E Topock volumes to deliveries on the southern system will not add to the volumes to be transported north-to-south since the receipt points are on the southern system to begin with; however, deliveries of these volumes on the southern system will have the effect of decreasing the volumes that otherwise might flow as displacement volumes from north to south. El Paso raised concerns, however, with moving all delivery points for Block capacity allocated to the converted FR shippers with regard to the capacity that has San Juan-Topock combination rights. El Paso stated 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.

12. A technical conference was held on September 24, 2003, as directed by the August 29 Order. On January 29, 2004, the Commission issued an order on the technical conference.<sup>18</sup> The January 29, 2004 Order found that El Paso's allocation in response to the August 29 Order is just and reasonable and consistent with that order and the prior orders in this proceeding. The Commission explained that El Paso 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 receipt point for a Permian Basin receipt point. Thus, the Commission stated, 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.

13. Moreover, the Commission explained, 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 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 receipt point and release their capacity rights for compensation. In addition, the Commission stated that El Paso's 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.

14. In addition, in the January 29 Order, the Commission rejected an alternative proposal suggested by the EOC shippers at the technical conference that all capacity on the system be reallocated as part of the redesignation of the receipt points for Block capacity. The EOC shippers favored this approach because it would result in allocation of a greater share of the San Juan capacity to them. In rejecting this alternative, the Commission explained that while its action in this proceeding has ensured that the converting FR shippers will receive reliable firm service from El Paso with minimal rate impact, it did not guarantee any specific

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<sup>18</sup> 106 FERC ¶ 61,083 (2004).

level of service to the least expensive source of supply for any of El Paso's shippers. Further, the Commission found that a complete reallocation of receipt point capacity on El Paso would place undue burdens on all of the parties.

### **C. Discussion**

#### **1. San Juan Capacity**

15. On rehearing, the EOC Shippers argue that the Commission's failure to require a reallocation of receipt point capacity consistent with the correct delivery points for turned-back Block capacity is unjust, unreasonable, and unduly discriminatory because the Commission's action confers a disproportionate share of San Juan receipt point rights upon CD shippers.

16. The Commission's purpose in this proceeding has been to restore reliable firm service on El Paso in a manner that balances the interests of all of the parties. As discussed above, in adopting a reallocation methodology to achieve this result, the Commission took a number of steps to minimize the impact on the former FR shippers of the conversion of their service to CD service and to assure that the converting FR shippers would receive sufficient capacity to meet their needs. In addition to allocating to the FR shippers all system capacity not under contract to the CD shippers, as well as new capacity from El Paso's Line 2000 and Power-Up Projects, the Commission included turned back capacity and capacity under expiring contracts, including the Block capacity, as possible additional sources of capacity for these shippers.<sup>19</sup>

17. However, nothing in the reallocation plan adopted by the Commission entitles any shipper to receive any specific amount of gas from San Juan or any other gas supply basin. As the Commission explained in the January 29 Order, the Commission did not direct El Paso to allocate a pro rata share of San Juan receipt rights to all customers for all types of capacity. For example, the Commission found appropriate El Paso's assignment of non-San Juan 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 and consistent with our prior orders in

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<sup>19</sup> There was no guarantee that turnback capacity would be available at all or that any capacity would be made available from expiring contracts. But for the fact that a portion of Block II capacity became available due to an expiring contract, this capacity would not have been available to the FR Shippers at all.

this case to require that that capacity have Permian or Anadarko receipt points. This is also consistent with the Commission's orders in the Order No. 636 restructuring proceedings, where the Commission required that shippers receive their contract entitlements, but did not guarantee a specific source of supply.<sup>20</sup>

18. Further, nothing in El Paso's tariff, the 1996 Settlement, or the transportation service agreements<sup>21</sup> entitles shippers to a specific share of San Juan capacity. Thus, the EOC Shippers have no right to a specific portion of capacity in any gas supply basin. The movement of the receipt point for the Block capacity that became available due to expiring contracts and was allocated to them with no increase in their Settlement demand charges does not render the allocation unjust and unreasonable. Moreover, as explained in the January 29 Order, the FR shippers have the option of retaining their San Juan receipt points and releasing that capacity for compensation.

## **2. Burden of a Reallocation**

19. The EOC Shippers also argue that the Commission erred in finding that a reallocation would place an undue burden on the parties. They assert that any burden of reallocation would be only on those who benefited from the error, and this burden is outweighed by the economic consequences of not changing a flawed allocation. They assert that the economic impact of this order on the FR shippers must be taken into consideration, and that that impact is substantial.<sup>22</sup> Further, they argue that because the August 29 Order was issued prior to the September 1 effective date of the conversion, all shippers were on notice that El Paso's allocation contained an error that the Commission could be expected to remedy. The EOC Shippers state that the shippers benefiting from an overallocation of more valuable capacity are sophisticated shippers who plan for regulatory risks.

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<sup>20</sup> See Texas Eastern Transmission Corp., 63 FERC ¶ 61,100 at 61,410 (1993).

<sup>21</sup> Except for shippers with basin-specific contracts.

<sup>22</sup> The EOC Shippers state that a comparison of NYMEX's Permian Basis swap and its San Juan Basis swap demonstrates a price differential of \$.20-.40/Dth. Further, the EOC Shippers state, for certain converting FR shippers, such as El Paso Electric and Texas Gas Services, a change from San Juan to Permian means that their fuel rate increases from 0% to 3.2%; the EOC Shippers state that this equates to approximately \$.15/Dth. Thus, they argue, the impact for several converting customers is in the range of \$.35-55/Dth on 15 percent of their annual volumes.

Therefore, the EOC Shippers ask the Commission to grant rehearing and perform a receipt point allocation that accurately reflects the appropriate delivery point designations for the turned-back capacity.

20. The Commission did consider the burdens on all shippers of a reallocation of capacity on the entire system. As the Commission explained, shippers made business decisions, including contracting and capacity release decisions, based on their capacity allocations. A reallocation would require shippers to recontract for supply and could result in financial harm. Further, a reallocation is not necessary to assure reliable firm service on El Paso, and the only purpose of a reallocation at this time would be to provide the EOC shippers with additional access to San Juan capacity. As discussed above, these shippers have no right to additional capacity from any specific basin and have been allocated capacity sufficient to meet their needs at no increase in the Settlement rates.

21. In addition, the EOC Shippers assert that if El Paso had correctly implemented the Commission's May 31 Order from the outset, El Paso's December 2002 allocation would have included redesignated delivery points for all turned-back Block capacity and the problem would not have arisen. They state that they raised this issue in their protest to El Paso's December 3 Allocation Report and that if the Commission had ruled on the matter more promptly, this problem would not have arisen and there would be no burden on the parties or potential harm to shippers.

22. The concerns raised by the EOC Shippers in the comments on El Paso's December 3 filing regarding the receipt points for the Block capacity were that El Paso had not provided assurance that the EOC Shippers would receive firm service at the points where they are located.<sup>23</sup> The Commission has addressed these legitimate concerns and provided a remedy to assure that the EOC Shippers can receive firm service at their traditional delivery points for the Block capacity. In its comments on El Paso's December 3 filing, the EOC Shippers did not seek a reallocation of all capacity to all shippers in order to provide the EOC shippers with additional capacity from San Juan, and there is no reason to assume that the Commission would have ordered one. A reallocation was not necessary to achieve the goal of assuring reliable firm service to the EOC Shippers for the Block capacity.

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<sup>23</sup> EOC Shipper's Request for Clarification at 2 (quoting "Response of Full Requirements Shippers to the December 20, 2002 Report of El Paso Natural Gas Company," filed January 17, 2003 at 6).

## **B. R-D Combos**

23. In the January 29 Order, the Commission found that the temporary use of R-D Combos,<sup>24</sup> with the additional flexibility provided by the directional transfer scheduling, tiered scheduling priorities, and the consolidation of R-D Combos and of D-Codes, is a reasonable interim method of addressing the problem of system constraints. The Commission stated that pathing will be addressed in the next phase of El Paso's Order No. 637 compliance proceeding, and a permanent resolution of system management issues can be considered there.

24. The EOC Shippers ask the Commission to clarify that the decision to permit implementation of R-D Combos in conjunction with other operational changes is not a merits determination finding that the use of R-D Combos is just and reasonable under section 4 of the NGA. Further, the EOC shippers request that the Commission confirm that this is not a final order subject to judicial review. Finally, the EOC Shippers request that the Commission confirm that no party to either this proceeding or the Order No. 637 proceeding will be permitted to rely on the Commission's decision to permit implementation of R-D Combos as precedent for any purpose.

25. The Commission clarifies that R-D Combos were accepted as an interim measure, pending completion of El Paso's Order No. 637 proceeding. The January 29 Order does not find that the R-D Combos are just and reasonable on El Paso's system as a part of its Order No. 637 compliance. Pathing issues will be considered anew in that proceeding, and nothing in these prior orders prejudices these issues.<sup>25</sup>

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<sup>24</sup> The R-D Combos couple receipt points with delivery points in allocating capacity. El Paso stated that it used the R-D Combos to ensure that it did not allocate more volumetric rights to 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. See January 29, 2004 Order, 106 FERC ¶ 61,083 at P 31 (2004).

<sup>25</sup> The Commission is issuing an order contemporaneously in Docket No. RP04-251-000, *et al.* accepting El Paso's uncontested settlement in its Order No. 637 proceeding.

## **II. Rehearing in Docket No. RP00-336-024**

26. On October 27, 2003, the Commission issued an order on rehearing and compliance filing<sup>26</sup> that, among other things, denied El Paso's request to exempt demand charge credits for delivery laterals if the Commission requires El Paso to consolidate D-Codes or if the Commission expands shippers' rights to delivery points on laterals. El Paso filed a request for clarification or, in the alternative, rehearing, of that order asking the Commission to clarify that it has not prejudged the issue of reservation charge credits for delivery laterals if the Commission orders consolidation of D-Codes.<sup>27</sup> El Paso states that this issue should be addressed at the time any such requirement is imposed by the Commission and that it would be premature for the Commission to mandate paying of such credits without knowing the impact that a requirement for consolidation of D-Codes would have.

27. The January 29, 2004 Order on the technical conference renders El Paso's request for clarification moot, and the Commission dismisses the request for rehearing. In the January 29 Order, the Commission stated that while it encouraged El Paso and its shippers to work to address the D-Code issues, it would not require El Paso to consolidate D-Codes. The Commission further stated that El Paso should not consolidate D-Codes if the consolidation would jeopardize firm service, and, therefore, there is no basis for waiving reservation charge credits on laterals where D-Codes have been consolidated.

## **III. Rehearing in Docket No. RP04-61-002**

28. On January 28, 2004, the Commission approved El Paso's proposal to implement Directional Transfer Scheduling (DTS) and, among other things, required El Paso to clarify that shippers could aggregate receipt and delivery rights located in common areas.<sup>28</sup> On February 12, 2004, El Paso submitted a compliance filing in Docket No. RP04-61-001 in which it established eight common areas. Phelps Dodge protested that filing, claiming that its Tyrone Delivery Code (D-Code), on the west leg of the Silver City Lateral, should have been included in the common area with its Hurley and Chino D-Codes, on the east leg of the Silver City Lateral. El Paso filed an answer to Phelps Dodge's protest

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<sup>26</sup> 105 FERC ¶ 61,130 (2003).

<sup>27</sup> D-Codes are clusters of delivery points and represent an aggregation of individual meters.

<sup>28</sup> 106 FERC ¶ 61,050 (2004).

on April 9, 2004, stating that, for part of the year, Phelps Dodge's combined entitlements for the three Silver City Lateral D-Codes would exceed the capacity of the west leg of the Silver City Lateral and could jeopardize firm service for Phelps Dodge and Public Service Company of New Mexico (PNM), which also has delivery points on the west leg. In an order issued April 20, 2004 (April 20 Order),<sup>29</sup> the Commission denied Phelps Dodge's protest, stating that consolidating the three D-Codes could affect service to PNM. The Commission encouraged El Paso's efforts to provide additional flexibility to shippers, "but not at the expense of reliability of firm service."<sup>30</sup> The Commission also noted that DTS was an interim measure and that El Paso and the parties will address DTS and other scheduling issues in El Paso's Order No. 637 proceeding.

29. On April 22, 2004, Phelps Dodge filed a request for rehearing of the Commission's April 20, 2004 Order. In its request for rehearing, Phelps Dodge disputes El Paso's assertion that consolidation of the D-Codes would jeopardize firm service on the lateral. Phelps Dodge states that it does not have the consumption capability to use the full capacity of the three combined D-Codes at Tyrone nor has it historically taken such levels at Tyrone. Phelps Dodge concludes that El Paso's objections are not based on operational realities and requests that the Commission require El Paso to consolidate all three Phelps Dodge D-Codes on the Silver City Lateral, for directional transfer scheduling purposes.<sup>31</sup>

30. On June 16, 2004, El Paso filed an answer to Phelps Dodge's request for rehearing. El Paso states that Phelps Dodge does not dispute El Paso's assertion that the aggregation of its delivery rights at the three D-Codes would give it firm transportation entitlements that exceed the capacity of the west leg of the lateral.<sup>32</sup>

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<sup>29</sup> 107 FERC ¶ 61,068 (2004)

<sup>30</sup> 107 FERC ¶ 61,068 at P 8 (2004).

<sup>31</sup> Phelps Dodge argues that the Commission should not have granted El Paso's April 9, 2004 motion for leave to answer Phelps Dodge's protest without waiting the required 15 days for answers to the motion. The Commission has the discretion to accept answers to protests. In any event, Phelps Dodge attached to its request for rehearing its response to El Paso's answer to the protest. The Commission is addressing the arguments of Phelps Dodge in this order, and, therefore, acceptance of El Paso's answer has not prejudiced Phelps Dodge.

<sup>32</sup> On July 1, 2004, Phelps Dodge filed an answer to El Paso's answer, stating that Phelps Dodge is willing to stipulate that it will not use in excess of 3,000 MCF/d at the Tyrone point, to resolve El Paso's reliability concerns.

El Paso states that Phelps Dodge is presenting the significant issue of whether firm service rights and obligations will be defined by the Commission based on the physical capabilities of the system or based on a shipper's consumption capability. El Paso asserts that defining transportation rights by using consumption capability is unworkable. El Paso argues that neither the Commission nor El Paso has a way of confirming each shipper's operations to determine its consumption capabilities and the limits on its ability to take gas. In addition, it would be unreasonable to assume that a shipper will not exceed its historical takes. El Paso concludes that the Commission, in its April 20 Order, properly decided that El Paso's firm service obligations should be defined by El Paso's physical capabilities.

31. The Commission denies Phelps Dodge's request for rehearing. Phelps Dodge has not disputed the fact that the combined entitlements of its three Silver City Lateral D-Codes exceed the capacity of the west leg of the Silver City Lateral. Regardless of whether Phelps Dodge has the current capability to take the full aggregated entitlements at its Tyrone D-Code, it is well within El Paso's operational judgment to deny consolidation if such consolidation would contractually give Phelps Dodge delivery rights in excess of physical capacity. Given the long history of capacity problems on El Paso's system and the efforts of all parties to ensure that El Paso has sufficient capacity to serve all firm obligations, the Commission will not force El Paso to take an action that could jeopardize firm service on the Silver City Lateral, however unlikely at the present time. The Commission further notes that El Paso has filed a settlement in its Order No. 637 case that provides flexibility for changing delivery points on delivery laterals.<sup>33</sup>

The Commission orders:

(A) Rehearing is denied and clarification granted in Docket No. RP00-336-027.

(B) The request for rehearing in Docket No. RP00-336-024 is dismissed as moot.

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<sup>33</sup> The Commission is issuing an order contemporaneously in Docket No. RP04-251-000, *et al.* accepting El Paso's uncontested settlement in its Order No. 637 proceeding.

(C) The request for rehearing in Docket No. RP04-61-002 is denied.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.