124 FERC ¶ 61,124
UNITED STATES OF AMERICA

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

El Paso Natural Gas Company — Docket Nos. RP08-426-000, RP08-426-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND CONDITIONS, ESTABLISHING HEARING PROCEDURES, AND ESTABLISHING A TECHNICAL CONFERENCE

(Issued August 5, 2008)

1. On June 30, 2008, El Paso Natural Gas Company (El Paso) filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations. In its filing, El Paso proposes new services, a rate increase for existing services, and changes in certain terms and conditions of service.[1] El Paso filed primary[2] and alternate[3] tariff sheets and proposes an effective date of January 1, 2009, pursuant to the Commission-approved 2006 Settlement.[4]

2. As discussed below, the Commission will accept El Paso's primary tariff sheets listed in Appendix A and suspends their effectiveness, subject to conditions and the outcome of the hearing and technical conference established in this order. The Commission will reject the alternate and superseded sheets listed in Appendix B, as well as the requests for summary disposition.

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[1] On July 22, 2008, El Paso filed revised tariff sheets in Docket No. RP08-426-001 to correct a typographical error in its original filing.

[2] *See* Appendix A.

[3] *See* Appendix B.

[4] *See El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007) (2006 Settlement). Section 15.3 of the 2006 Settlement states that El Paso will "file a NGA section 4 general rate case on June 30, 2008, and request a five-month suspension period with the tariff changes to be effective on January 1, 2009."

I. **Background**

3. El Paso is a natural gas company that operates an interstate pipeline system for the transportation of natural gas from areas in the southwestern United States through the states of Texas, New Mexico, Colorado, and Arizona, to two points of termination at the boundary between the states of California and Arizona, near Ehrenberg and Topock, Arizona. El Paso also delivers gas to numerous on-system delivery points and to off-system eastern markets. El Paso's system consists of its South System and North System mainlines, and El Paso can deliver gas from three production basins, San Juan, Permian, and Anadarko, to various delivery points on its system.

4. On June 30, 2005, in Docket No. RP05-422-000, El Paso filed a general system-wide rate case, which modified rates, proposed a number of new services and revised a number of terms and conditions of its tariff (2006 Rate Case). The 2006 Rate Case constituted El Paso's first general rate case in ten years. On December 6, 2006, El Paso submitted a settlement agreement, which the Commission subsequently approved on August 31, 2007 (the 2006 Settlement). The current rates for service on El Paso’s system were established by the 2006 Settlement which terminates on December 31, 2008. The 2006 Settlement also required El Paso to file a new general rate case on June 30, 2008, to be effective on January 1, 2009.

II. **El Paso’s Filing**

A. **Cost of Service and Rates**

5. El Paso states that it proposes an increase in base tariff rates in order to offset increasing costs and changes in billing determinants on its system. El Paso asserts that despite the overall rate increase, it proposes to continue to use its existing mainline depreciation rate of 2.2 percent and storage rate of 1.09 percent. El Paso proposes a 13 percent return on equity, which El Paso contends is consistent with the Commission’s recent Policy Statement concerning the composition of proxy groups.[5] El Paso asserts that its total cost of service is $650 million. El Paso also states that its proposed rates reflect a rate base of $1.86 billion, which is a $200 million increase over the 2006 rate base.

6. El Paso also proposes to roll the costs of several expansions into its system-wide rates. These expansion facilities include the Samalayuca Lateral, East Valley Lateral, Picacho Compressor Station, Hobbs Lateral and Compressor Station, Eunice Compressor

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[5] *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

Station, Line 2000 Conversion, Line 2000 Power-up, Line 1903 Project, and Havasu Crossover. El Paso states that while the Samalayuca and Havasu Laterals were previously afforded incremental rate treatment, it is proposing to roll-in the remaining costs of the laterals herein.

7. El Paso states that on average, it is proposing to increase its rates by 25 percent over its currently effective rates. El Paso further states that its overall design revenues will increase by about $83 million, or 15 percent. El Paso states that to moderate the rate impact in this case, it proposes to take a "large at-risk capacity position" by assuming full subscription for rate design purposes and taking the risk that $65 million in short-term contracts and $60 million in long-term contracts will be renewed. El Paso states that its rate design also incorporates the assumption that two discounted firm contracts with Southern California Gas Company (SoCal Gas) will be renewed at maximum rates. El Paso further states that it proposes to moderate the rate increase with a "management adjustment" that reduces the amount of the rate increase below the level justified by the cost of service. El Paso states that it plans to file a motion seeking to move these lower *pro forma* rates into effect at the end of the suspension period; however, El Paso reserves its right to increase its rates during the course of these proceedings up to the non-management adjusted rates.

8. El Paso asserts it continues to experience significant changes in billing determinants due to shippers' use of competitive alternatives. El Paso states that in turn, this has forced El Paso to discount its service to retain load and has resulted in shippers increasingly seeking to contract on a short-term basis. To encourage long-term firm contracting, El Paso proposes to implement short-term value-based services that allow customers who do not wish to speculate in the short-term market and be subject to higher recourse rates for short-term services, to acquire long-term capacity from El Paso at the recourse rate. El Paso thus proposes short-term rates capped at 250 percent of the related long-term recourse rate. El Paso states that long-term rates will apply to contracts for firm service with a term equal to that of a five-month winter contract, a seven-month summer contract, or a contract with a term of one year or more. According to El Paso's proposal, short-term rates will apply to firm service with a term that is not equal to a five-month winter contract, a seven-month summer contract, or a contract with a term or one year or less. El Paso states that its proposal is similar to provisions in effect or set for hearing for other pipelines including Texas Gas Transmission, LLC, Northern Border Pipeline Company, Gas Transmission Northwest Corporation, and Portland Natural Gas Transmission.[6] El Paso further proposes a revenue crediting mechanism under which it

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[6] El Paso cites *Texas Gas Transmission Corp*., 98 FERC ¶ 61,244 (2002); *Northern Border Pipeline Co*., 113 FERC ¶ 61,230 (2005); *Gas Transmission Northwest Corp*., 122 FERC ¶ 61,012 (2008); *Portland Natural Gas Transmission*, 123 FERC ¶ 61,128 (2008).

will credit 75 percent of the portion of the revenue it collects from short-term rates that exceeds the related long-term rates to the extent that its total revenues exceed the annual cost of service established in this rate case.

9. Additionally, El Paso proposes revisions to its mileage-based zone of delivery cost allocation. El Paso proposes to change its "contra-flow" from a "negative mileage" allocation to a "zero mileage" allocation. Under the proposed zero mileage allocation revision, the mileage related to contra-flow will be treated as zero value, which means that it will be neither added nor subtracted from the total system miles, as it is currently. El Paso states that this revised approach is appropriate with the new hourly services and other contract changes because it is no longer safe to assume that transactions that were once contra-flow will continue to be, or that any theoretical benefit of contra-flow will be operationally consistent with an increased portfolio of hourly services, given the need to pack and draft the system to support those services. El Paso also proposes to include the mileage from all discounted long-term rate transactions in the determination of its total system mileage for purposes of mileage cost allocation.

B. New Services and Penalties

10. El Paso also proposes refinements to the non-rate provisions of its existing tariff. According to El Paso, these modifications do not fundamentally change the new service and penalty structure approved in the March 23, 2006 Order in El Paso's Docket No. RP05-422-000.[7] Specifically, El Paso proposes a new limited hourly firm service in its virtual area, certain enhancements to the No Notice Transportation (NNT) service, a reduction in penalty levels, and a suspension of the non-critical Maximum Delivery Obligations (MDO) and Maximum Hourly Obligations (MHO) penalties.

1. New Limited Firm Hourly Virtual Area Service

11. El Paso proposes a new limited Small Shipper Firm Hourly Virtual Area Transportation Service (Rate Schedule FTH-V) that will be available at delivery points within the Permian Basin virtual area. El Paso states that the service will provide small Permian Area shippers greater flexibility by offering them firm non-uniform hourly gas transportation priced similarly to Rate Schedule FTH-3. The service provides for 150 percent hourly flexibility for up to five hours of the gas day, 130 percent hourly flexibility for up to nine hours of the gas day (limited such that no more than six hours may be consecutive) and 120 percent hourly flexibility for up to twelve hours of the gas day.

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[7] *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006).

2. Enhanced No-Notice Transportation Services

12. El Paso also proposes to revise its existing firm service to encourage shippers to request NNT service in the future.[8] Currently, no-notice balances under an NNT contract are held at each delivery point and netting is not permitted across those points on a daily basis. El Paso proposes to revise the service to permit daily netting of NNT balances among all delivery points on a contract. El Paso states that this revision will allow shippers to take advantage of offsetting positive and negative balances among their delivery points, which will provide the shippers increased flexibility to manage their no-notice requirements. El Paso intends to further increase flexibility by allowing for delivery transfers to alternate premium service delivery points located on a shipper's primary receipt-to-delivery flow path.

3. Maximum Delivery Obligation and Maximum Hourly Obligation Penalties

13. El Paso states that in response to shippers' concerns, it has studied whether its system operationally requires the application of MDO/MHO penalties in non-critical conditions. El Paso concludes that enough flexibility may exist in its mainline system to suspend the use of MDO/MHO penalties in non-critical conditions on a trial basis. However, El Paso states that because laterals consist of smaller diameter and lower pressure pipelines, the same flexibility does not exist on its lateral distribution system. El Paso therefore proposes a new critical operating condition (COC) declaration provision that will allow a critical condition to be declared if necessary to protect the operational integrity of a delivery lateral. El Paso states that so long as the new COC provision for laterals is implemented, El Paso will, on a limited trial basis, charge a zero rate for all MDO/MHO penalties that occur during non-critical operating conditions.

4. Modifications to Existing Penalty Structure

14. El Paso also proposes several tariff modifications to address issues with its existing penalty structure. El Paso states that it recognizes the system's existing penalty structure may have higher than necessary penalty rates to provide the appropriate signals for contracting and scheduling. El Paso therefore proposes to lower the critical condition penalty rate applicable to daily unauthorized overruns, hourly scheduling penalties, and Rate Schedule OPAS from ten times the monthly system cash out index price (monthly spot), to two times the higher of monthly spot or the daily mid-point spot price (daily spot) for hourly scheduling penalties and an average of two times the higher of monthly spot or daily spot for daily penalties. El Paso states that for consistency, it also proposes

[8] El Paso states that only one shipper currently holds an NNT contract and has notified El Paso that it will terminate that contract prior to the end of the test period.

to change the SOC/COC penalty rate from two times daily spot to two times the higher of monthly spot or daily spot.[9]

15. Additionally, El Paso proposes a tiered critical condition daily penalty assessment which increases the penalty rate as shippers go increasingly out of balance. The application of critical condition penalty rate for daily penalties will be determined with a tiered structure based on the lower of a shipper's daily delivery variance percentage or the shipper's daily imbalance quantity. El Paso states that this method acknowledges that when smaller shippers are out of balance by a small quantity, this results in a large percentage.

16. El Paso states that pursuant to the 2006 Settlement, overrun charges are determined based on the aggregation of all services provided under all of a shipper's contracts on that day. However, El Paso contends that shippers should pay for overrun service at rates comparable to, and based on, the service provided. El Paso claims that, otherwise, the average causes El Paso to under-collect for the transportation service actually provided. El Paso therefore proposes to revise the daily overrun rate applicable to a shipper that has multiple transportation service agreements (TSAs) under various rate schedules, to reflect that the authorized and unauthorized daily overrun rates for these shippers will be the highest rate for the applicable zone of delivery.

17. Further, El Paso states that the 2006 Settlement provided that until December 31, 2008, only 50 percent of the Hourly Enhanced Entitlement Nominations (HEEN)[10] scheduled quantities would be used in determining daily unauthorized overruns. El Paso notes that its shippers may still require some time to transition to the new service and penalty structure recently implemented. El Paso therefore proposes a gradual increase for the 2009 calendar year consisting of only 75 percent of HEEN scheduled quantities to be applied to daily unauthorized overruns, rather than the 100 percent required by the 2006

[9] El Paso states it is unclear whether the monthly spot or the daily spot is the higher rate. Therefore, El Paso proposes to compare the two prices for determination of the critical condition penalty rate, in order to elect the higher of the two.

[10] HEEN is an enhanced scheduling right under El Paso's Rate Schedules FT-1, FT-H, NNTD, and NNTH, designed to increase the flexibility of these services. HEEN permits a shipper to designate some portion of its otherwise available daily entitlement to be used to support expected non-uniform rates of flow during the gas day. This tariff feature allows shippers to nominate separately peak hour requirements through the use of a HEEN nomination. The restriction using HEEN is that the sum of all hourly entitlements related to HEEN nominations and flowing gas nominations may not exceed, on a primary firm basis in any one hour, the peak hourly entitlement under the shipper's Maximum Daily Quantity (MDQ).

Settlement. El Paso further proposes that 100 percent of HEEN scheduled quantities will be included in the calculation of daily unauthorized overruns starting January 1, 2010.

5. Strained and Critical Operating Condition Procedures

18. El Paso proposes several revisions to its SOC/COC procedures. El Paso states that these revisions support the existing SOC/COC procedures, obligations and requirements, and improve El Paso's ability to manage, mitigate, and resolve critical condition events.

19. El Paso first proposes to switch from a one-hour average reading for its SOC event Probability Notices linepack level review, to a six-hour average. El Paso states that this revision more reasonably represents operating conditions, is a better indicator of trends, and will help to eliminate hourly anomalies that are not affecting the overall condition of linepack levels. Second, to alleviate shippers' confusion caused by posted SOC event Probability Notices during actual SOC events, El Paso proposes to discontinue posting these notices when an SOC event has been declared. Third, as described above, El Paso is proposing a new lateral COC provision that will permit El Paso to immediately declare a critical condition on a delivery lateral. El Paso proposes that change, in conjunction with, and to support, the non-critical MDO/MHO trial period to ensure that El Paso can protect system operations and service to shippers on delivery laterals that are no longer protected by the non-critical MDO/MHO restrictions.

6. Flow Control Equipment

20. El Paso proposes to replace the existing tariff provisions concerning the installation and use of flow control equipment in critical operating conditions, with a more general flow control equipment provision that indicates that El Paso may install and/or operate flow control equipment at any time. El Paso notes that the proposed provision removes the current option requiring the shipper to reimburse El Paso for its installation costs. El Paso states that it already uses flow control equipment in various locations of its system through mutual agreements with some parties for pressure control and to meet contractual obligations. El Paso states that flow control is common industry practice, and that its proposed language will not be unduly discriminatory, is similar to that of other pipelines, and seeks to reasonably respond to pipeline fluctuations that can be detrimental to system operations and/or are inconsistent with a shipper's contractual rights.

21. Additionally, El Paso proposes a new provision that provides that hourly scheduling penalties will not be assessed in any period in which flow control equipment is used to physically restrict the flow of gas. El Paso contends that this will allow shippers the option of requesting the use of flow control in lieu of the application of hourly scheduling penalties.

C. Article 11.2 of the 1996 Settlement

22. El Paso filed primary tariff sheets that assume the continued applicability of Article 11.2 of the 1996 Settlement,[11] consistent with the Commission's March 20, 2006 Order in Docket No. RP05-422-000.[12] However, because El Paso continues to argue on rehearing that Article 11.2 is no longer applicable, it submitted alternate tariff sheets that reflect the elimination of Article 11.2. El Paso states that if the Commission does not allow the alternate tariff sheets to go into effect at the end of the suspension period, but later finds that Article 11.2 should not apply, El Paso requests that such finding be implemented prospectively. El Paso urges the Commission to resolve the Article 11.2 issues as expeditiously as possible, consistent with the Commission's statement that it intended to issue an order on rehearing of the March 20 Order providing guidance to assist the parties in the new June 30, 2008 rate case.

III. Public Notice, Interventions, and Protests

23. Public notice of El Paso's June 30 filing was issued on July 2, 2008. Interventions and protests were due July 15, 2008, as provided in section 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to 18 C.F.R. § 385.214(d), since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests or comments were filed by the Arizona Corporation Commission; Arizona Electric Power Cooperative, Inc.; Arizona Public Service Company; Competitive Power Suppliers;[13] El Paso Electric Company; El

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[11] *See* 79 FERC ¶ 61,028, *reh'g denied*, 80 FERC ¶ 61,084 (1997). Article 11.2 of the 1996 Settlement contains provisions applicable to the rates to be paid by certain shippers in the post-settlement period, i.e., after December 31, 2005.

[12] *El Paso Natural Gas Co.*, 114 FERC ¶ 61,290 (2006) (March 20 Order).

[13] The Competitive Power Suppliers are Blythe Energy, LLC; Gila River Power, L.P.; and New Harquahala Generating Company, LLC.

Paso Municipal Customer Group;[14] Electric Generator Coalition;[15] Freeport McMoRan Copper & Gold Inc. and Apache Nitrogen Products, Inc.; Gila River Power, L.P.; Golden Spread Electric Cooperative, Inc. and GS Electric Generating Cooperative, Inc.; Indicated Shippers;[16] MGI Supply Ltd.; Nexen Marketing U.S.A. Inc.; Pacific Gas and Electric Company; Public Service Company of New Mexico; Public Utilities Commission of the State of California (CPUC); Salt River Project Agricultural Improvement and Power District; Southern California Edison Company; Southern California Gas Company (SoCal Gas) and San Diego Gas & Electric Company (SDG&E); Southwest Gas Corporation (Southwest Gas); Southwestern Public Service Company; Texas Gas Service, a division of ONEOK, Inc. (Texas Gas Service); UNS Gas, Inc. and Tucson Electric Power Company.

24. SoCal Gas, SDG&E, Southwest Gas (jointly), the Competitive Power Suppliers, El Paso, Texas Gas Service, and the Electric Generator Coalition filed answers. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by SoCal Gas, SDG&E, Southwest Gas, the Competitive Power Suppliers, El Paso, Texas Gas Service, and the Electric Generator Coalition and will, therefore, reject them. We note that parties will have a full opportunity to discuss any issues raised by the instant filing during the technical conference or hearing established herein.

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[14] The El Paso Municipal Customer Group is composed of the City of Mesa, Arizona; City of Benson, Arizona; City of Safford, Arizona; City of Willcox, Arizona; City of Las Cruces, New Mexico; City of Deming, New Mexico; City of Socorro, New Mexico; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corp.

[15] The Electric Generator Coalition includes Arizona Electric Power Cooperative, Inc.; Blythe Energy, LLC; Dynegy Arlington Valley, LLC; Gila River Power, L.P.; Golden Spread Electric Cooperative, Inc.; GS Electric Generating Cooperative, Inc.; New Harquahala Generating Company, LLC; and Sempra Global.

[16] The Indicated Shippers include BP America Production Company and BP Energy Company; Chevron Natural Gas, a division of Chevron U.S.A. Inc,; ConocoPhillips Company; Shell Energy North America (US), L.P.; and Occidental Energy Marketing, Inc.

IV. Discussion

A. Summary Disposition

25. A number of parties request that the Commission summarily reject portions of El Paso's filing. The Commission may summarily reject portions of a proposed filing if it determines that there are no material issues of fact in dispute and the filing is in clear violation of an applicable statute, regulation, or Commission policy.[17] The Commission will deny the requests for summary rejection, as discussed below.

26. Several parties argue that El Paso's short-term rate proposal should be summarily rejected because it is contrary to Commission precedent and there are no genuine issues of material fact requiring a hearing. We disagree. El Paso's proposed short-term rates are similar to short-term rates proposed by other pipelines. In those cases, the Commission found that the proposals might not be inconsistent with Order No. 637, which provides that a pipeline may propose a cost-based seasonal rate or term-differentiated rates,[18] and therefore, did not warrant summary rejection. Upon initial review of the proposal, we find that El Paso's proposal may be similar to those proposals and thus may be consistent with Order No. 637. In the *GTN* case, the Commission found that GTN's rate proposal did not raise a rate design issue, but a cost allocation issue, and that the proposal, along with the related revenue-sharing mechanism, warranted a full investigation through the hearing process, along with other cost-of-service issues.[19] Similarly, in the *Northern Border* case, the Commission set Northern Border's short-term rate for hearing.[20] Consistent with these prior cases, the Commission will deny the parties' requests for summary disposition of this issue and will instead set El Paso's short-term rate proposal for hearing, so that the potential costs and benefits of the proposal can be addressed in light of the other cost-of-service issues.

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[17] *E.g., Northern Border Pipeline Co.*, 60 FERC ¶ 61,176, at 61,644 (1992) (*Northern Border*).

[18] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America v. FERC*, 285 F. 3d 18 (D.C. Cir. 2002) *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[19] *See Gas Transmission Northwest Corp.*, 117 FERC ¶ 61,315, at P 75 (2006) (*GTN*).

[20] *See Northern Border*, 60 FERC 61,176 at P 22-23.

27. The parties also request that the Commission summarily reject, among other things, the changes to the force majeure provision, the use of daily spot prices for SOC/COC penalties, the elimination of the April/October MDQ option, the elimination of the Minimum Delivery Pressure Conversion feature, the proposal to apply the highest rate for the applicable zone of delivery to daily overruns, the flow control proposal, the IHSW rate design change, the changes to the daily authorized and unauthorized overrun rate, the proposal to eliminate grandfathered pressure rights, the new small shipper firm hourly service under Rate Schedule FTH-V, the cost shift to non-Article 11.2 shippers, and the proposed discount adjustment. The Commission declines to summarily reject these portions of El Paso's proposal. Upon review, all of these issues involve questions of fact that the Commission cannot summarily resolve based on the information in the pleadings. Therefore, the Commission will set these issues for technical conference or hearing, as discussed below.

B. Hearing and Technical Conference Procedures

28. We believe that El Paso's filing raises many typical rate case issues that warrant further investigation. Accordingly, the Commission will establish a hearing to explore the issues set forth in the protests regarding cost-of-service, cost allocation, and rate design for the existing and new services. The Commission finds that it is appropriate to examine these issues in the context of a hearing where a factual record can be developed by the parties.

29. The Commission will set all other issues related to the proposed services and terms and conditions reflected in El Paso's primary tariff sheets for technical conference. The Commission seeks prompt resolution of these services and terms and conditions prior to the end of the suspension period. The issues to be addressed at technical conference include the Small Shipper Firm Hourly Virtual Area Transportation Service, the enhanced No Notice services, MDO/MHO penalties, other proposed penalty modifications, revised critical operating condition procedures, and flow control provisions.

C. Conditional Acceptance and Suspension of Primary Tariff Sheets

30. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, consistent with the terms of the 2006 Settlement,[21] the Commission will accept and suspend El Paso's revised tariff

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[21] *See* section 15.3 of the 2006 Settlement, which requires El Paso to file a new general rate case on June 30, 2008, to be effective on January 1, 2009.

sheets in Appendix A, to be effective January 1, 2009, subject to refund and conditions and the outcome of the technical conference and hearing procedures ordered herein.[22]

31. El Paso proposed two sets of tariff sheets, each providing for different treatment of Article 11.2 of the 1996 Settlement. The primary tariff sheets assume the continued applicability of Article 11.2, consistent with the March 20 order (see Appendix A). The alternate tariff sheets reflect elimination of Article 11.2 (see Appendix B). As El Paso acknowledges in its filing, the Commission's March 20 Order finds that Article 11.2 continues to apply. While El Paso has filed for rehearing of the finding in the March 20 Order, that request is still pending Commission action. Thus, consistent with the March 20 Order, the Commission accepts and suspends the primary tariff sheets in Appendix A, subject to conditions, including the outcome of El Paso's pending request for rehearing in Docket No. RP05-422-011, and rejects the alternate tariff sheets listed in Appendix B.

32. The Commission's policy regarding suspensions is that tariff filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or inconsistent with other statutory standards.[23] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[24] The Commission finds that, in this circumstance, El Paso proposed the January 1, 2009 effective date provided for in the 2006 Settlement, instead of requesting a five-month suspension of an August 1, 2008 effective date. Therefore, the Commission will accept and suspend the proposed tariff sheets in Appendix A to be effective January 1, 2009, subject to refund, the conditions of this order and the outcome of a hearing or a technical conference in this proceeding, as discussed above.

33. El Paso must adhere to section 154.303(c)(2) of the Commission's regulations which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.

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[22] We note that in order to comply with the Commission's notice requirements, El Paso should have proposed an August 1, 2008 effective date and requested a five-month suspension period, rather than proposing an January 1, 2009 effective date.

[23] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[24] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

<u>The Commission orders:</u>

(A) The proposed tariff sheets listed in Appendix A are accepted and suspended effective January 1, 2009, subject to refund and the outcome of the hearing and technical conference established in this order.

(B) The tariff sheets listed in Appendix B are rejected.

(C) Upon its motion to place suspended rates into effect, El Paso must remove facilities not placed in service before the effective date.

(D) The Commission Staff is directed to convene a technical conference to explore issues, and to report the results of the conference to the Commission within 150 days of the issuance of this order.

(E) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held in Docket No. RP08-426-000 concerning the lawfulness of El Paso’s proposed rates.

(F) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall hold the hearing (and the litigation time track) in abeyance pending the outcome of the issues set for technical conference. Nevertheless, the parties may commence discovery on all issues while technical conference issues are under review. Upon completion of the technical conference and issuance of a Commission order regarding the issues discussed therein, the Administrative Law Judge shall convene a prehearing conference in this proceeding in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

El Paso Natural Gas Company
Docket Nos. RP08-426-000 and RP08-426-001
Accepted Tariff Sheets
Effective January 1, 2009
Subject to further order
Second Revised Volume No. 1-A

Thirty-Sixth Revised Sheet No. 1
Thirtieth Revised Sheet No. 28
Seventh Revised Sheet No. 28A
Fourth Revised Sheet No. 28B
Fifth Revised Sheet No. 28C
Fourth Revised Sheet No. 28D
Fourth Revised Sheet No. 28E
Substitute Fourth Revised Sheet No. 28F
Original Sheet No. 28F.01
Fourth Revised Sheet No. 28G
Original Sheet No. 28H
Fourth Revised Sheet No. 29.01
First Revised Sheet No. 29B
Fourth Revised Sheet No. 101A
Fourth Revised Sheet No. 106
Fourth Revised Sheet No. 110A
Twelfth Revised Sheet No. 111
Tenth Revised Sheet No. 112
Third Revised Sheet No. 112A
Tenth Revised Sheet No. 113
Fourth Revised Sheet No. 114A
Fourth Revised Sheet No. 114B
Fourth Revised Sheet No. 115
Second Revised Sheet No. 125A
Sixth Revised Sheet No. 126
Original Sheet No. 126A
Ninth Revised Sheet No. 128
Eighth Revised Sheet No. 129
First Revised Sheet No. 129A
Original Sheet No. 129B
Original Sheet No. 129C
Original Sheet No. 129D
Original Sheet No. 129E
Original Sheet No. 129F
Original Sheet No. 129G
Original Sheet No. 129H
Original Sheet No. 129I
Third Revised Sheet No. 131
Fourth Revised Sheet No. 145B
Fourth Revised Sheet No. 145C
Fourth Revised Sheet No. 145D
Fourth Revised Sheet No. 145E
Fourth Revised Sheet No. 145F
Third Revised Sheet No. 145F.01
Third Revised Sheet No. 145G
Third Revised Sheet No. 145J.01
Third Revised Sheet No. 145K.01
Third Revised Sheet No. 145K.02
Third Revised Sheet No. 146A
Second Revised Sheet No. 146B
Third Revised Sheet No. 147B
Third Revised Sheet No. 147C
Second Revised Sheet No. 147C.01
Original Sheet No. 147C.02
Third Revised Sheet No. 147D
Second Revised Sheet No. 147D.01
Third Revised Sheet No. 147E
Third Revised Sheet No. 147F.01
Fourth Revised Sheet No. 147G
Fourth Revised Sheet No. 147G.01
Fourth Revised Sheet No. 148B
Fourth Revised Sheet No. 148C
Fourth Revised Sheet No. 148D
Fourth Revised Sheet No. 148E

El Paso Natural Gas Company
Docket Nos. RP08-426-000 and RP08-426-001
Accepted Tariff Sheets
Effective January 1, 2009
Subject to further order
Second Revised Volume No. 1-A

Fourth Revised Sheet No. 148F
Third Revised Sheet No. 148F.01
Original Sheet No. 148F.02
Fourth Revised Sheet No. 148G
Second Revised Sheet No. 148G.01
Third Revised Sheet No. 148H
Third Revised Sheet No. 148K.01
Third Revised Sheet No. 148L.01
Third Revised Sheet No. 148L.02
Fifth Revised Sheet No. 150
Third Revised Sheet No. 150B
Third Revised Sheet No. 150C
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