100 FERC ¶ 61, 285
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

El Paso Natural Gas Co. Docket No. RP00-336-005

Aera Energy, LLC, et al., Docket No. RP01-484-001
Complainants
v.
El Paso Natural Gas Co.,
Respondent

Texas, New Mexico and Arizona Shippers,
Complainants Docket No. RP01-486-001
v.
El Paso Natural Gas Co.,
Respondent

KN Marketing, L.P., Docket No. RP00-139-003
Complainant
v.
El Paso Natural Gas Co.,
Respondent

ORDER ON CLARIFICATION AND
ADOPTING CAPACITY ALLOCATION METHODOLOGY

(Issued September 20, 2002)

1. On May 31, 2002, the Commission issued its Order on Capacity Allocation and Complaints (May 31 order) in this proceeding.[1] In that order, the Commission found that the quality of firm service on the El Paso Natural Gas Pipeline Co. (El Paso) system had deteriorated and would continue to do so without Commission action. Accordingly, the Commission required that the full requirements (FR) contracts on El Paso must be converted to contract demand (CD) contracts. The order provided the parties with time to reach an agreement as to the FR customers' entitlements under their new CD contracts. The order stated that if the FR customers were unable to reach an agreement by July 31, 2002, the Commission would determine the appropriate CD entitlements for the FR shippers.

2. On August 1, 2002, El Paso notified the Commission that the FR customers were unable to agree to their CD entitlements. Therefore, this order establishes the methodology to be used by El Paso to convert the FR contracts to CD contracts. In setting forth the methodology to be used by El Paso in allocating capacity under the new CD contracts, the Commission will clarify certain aspects of the process, as requested by some of the parties.[2] Specifically, this order clarifies the implementation date of the conversion, the amount of capacity to be allocated to FR shippers, procedures for capacity turnback, the appropriate treatment of the 1996 Settlement limitations on Block I and Block II capacity, the establishment of specific receipt point rights for all shippers, use of California delivery points as receipt points, and the establishment of contract paths on the El Paso system.[3] This order is in the public interest because it establishes the capacity allocation and rationalization methodology and resolves the problems of unreliability of firm service on the El Paso system.

---

[1]99 FERC ¶ 61,244 (2002).

[2]E.g., El Paso, the Full Requirements Shippers, Southwest Gas Corporation (Southwest Gas), BP Energy Company and Burlington Resources Oil & Gas LP (BP Energy), and the Navajo Tribal Utility Authority (Navajo). El Paso filed a response to the Full Requirements Shippers' request for clarification. Pacific Gas and Electric Company (PG&E) filed an answer in opposition to Southwest Gas's request for clarification and an answer in support of the Full Requirements Shippers' request for clarification.

[3]Remaining issues raised by the parties will be addressed in a subsequent order on rehearing and clarification.

3. For the reasons explained below, the Commission will defer implementation of the conversion until May 1, 2003. We direct El Paso to use as its system capacity for allocation purposes in this proceeding, the 5,400,000 Mcf/d that El Paso has stated is available with the addition of the Power-Up Project. Since the Line 2000 capacity[4] will be available to shippers this fall and the Power-Up Project[5] should be available before summer 2003, the capacity from those projects should be included in the capacity to be allocated. Each FR shipper's share of the available capacity shall be determined based on each individual shipper's use of the system over the latest twelve months. El Paso is directed to apportion the available capacity among the FR shippers using the individual shipper's monthly demand over the twelve months ending August 31, 2002 to determine each shipper's monthly pro rata share of the available capacity.

4. The parties should proceed with the capacity allocation and rationalization processes set forth in the May 31 order, as modified and clarified in this order, following the timetable described herein.

I. Background

5. In the May 31 order, the Commission found that the application of El Paso's current capacity allocation methodology is unjust and unreasonable and adversely affects the public interest. The Commission directed El Paso to modify its allocation methodology to assure greater predictability for firm shippers. The Commission directed the parties to convert the current FR contracts to CD contracts by, first, allocating among the FR shippers all of the system capacity that is not under contract to CD shippers (or is not needed to serve the FT-2 FR shippers).[6] The Commission explained that this initial allocation will be the FR customers' CD entitlements under the new CD contracts. However, the Commission also explained that the new CD entitlements are only the starting point for providing capacity to FR shippers, and that the initial allocation will be followed by a capacity rationalization process, including turnback capacity, adjustments

---

[4]The Line 2000 Project expected to be in service by November 1, 2002, will provide an additional 230,000 Mcf/d of capacity on El Paso's system. 95 FERC ¶ 61,176 (2001).

[5]El Paso has stated that it expects to file an application by October 2002 to add compression to its Line 2000 which would increase its capacity by 320,000 Mcf/d.

[6]99 FERC ¶ 61,244 (Slip op. at 26).

for seasonal usage and capacity release, which will provide additional capacity to meet FR demand.

6. The Commission directed El Paso to file a report by August 1, 2002 if the FR shippers were unable to agree to their entitlement levels under their new CD contracts. The Commission also directed El Paso to file a report by September 3, 2002 to detail the results of the capacity allocation and rationalization processes. If the FR shippers did not reach an agreement, the Commission would determine the appropriate CD levels for the FR shippers under their new CD contracts.

7. On July 30, 2002, the Commission issued an order directing El Paso to extend the deadline for FR customers to bid for turnback capacity until August 9, 2002, in order to provide them additional time after the July 31 deadline for informing El Paso of their agreement to CD levels.[7] The July 30 order stated that the extension would give FR customers time after the initial allocation of capacity to determine the amount of turnback capacity they need.

8. On August 1, 2002, El Paso notified the Commission that the FR customers were unable to agree to their CD entitlements. El Paso reported that 14 of the 15 FR shippers had agreed to an allocation, but that the allocation was unworkable because it did not represent a unanimous agreement and it allocated more capacity than El Paso can provide.

9. Despite the lack of a unanimous agreement among all the FR Shippers, El Paso filed a report on September 3, 2002 allocating capacity and receipt points based on what El Paso considered to be the most reasonable assumptions that it could make under the circumstances. It was the Commission's intent that if the FR shippers were unable to agree to CD entitlements, the Commission would establish appropriate entitlements for the converted contracts and would issue an order detailing how entitlements should be established.[8] While El Paso's study may be a helpful starting point, El Paso must recalculate CD entitlements based on the findings of the Commission in this order.

II. Discussion

A. Implementation Date

---

[7] 100 FERC ¶ 61,123 (2002).

[8] 99 FERC at 62,010.

10. The May 31 order required implementation of the new CDs on November 1, 2002. Southwest Gas, the FR Shippers, and Arizona Electric Power request that the Commission defer the effectiveness of the full requirements conversion from November 1, 2002 to April 1, 2003. Southwest Gas argues that it has been forced to place its gas portfolio planning for this winter on hold because of the uncertainty surrounding the amount of entitlements it will be allocated in the conversion and the receipt point location of its entitlements. Southwest Gas asserts that it takes several months to acquire sufficient winter supply at competitive prices and that failure to defer the conversion date will likely cost customers millions of dollars of additional gas costs and/or could cause service disruptions this winter. Similarly, Arizona Electric Power states that deferring conversion will minimize the disruption of FR shippers' gas purchases caused by the present uncertainties and will also afford the parties and the Commission a more realistic opportunity to resolve these uncertainties. Indicated Shippers responded to Southwest's request, stating that implementation of the conversion process will not harm Southwest's ability to arrange for gas supplies this winter. Indicated Shippers further state that they have shown that they have suffered actual harm over the past few years as a result of the pro rata reductions in service.

11. In the May 31 order, the Commission recognized the conflicting time concerns of the CD and the FR shippers. The CD shippers favor immediate action to end pro rata reductions in service, while the FR shippers want sufficient time to prepare for the conversion of FR to CD service. In the May 31 order, the Commission adopted the November 1, 2002 conversion date in order to restore certainty and reliability to firm service on El Paso by this winter heating season.

12. Given the failure of the parties to reach agreement on FR conversions and the logistics necessary for a smooth transition, upon further consideration of this schedule, the Commission has decided to defer the effectiveness of the FR conversion until May 1, 2003. This short postponement from this winter until next spring will give all the parties sufficient time to implement the changes set forth in the May 31 order and will afford the FR shippers additional time to prepare for the shift to contract demand service. Deferring the conversion date will provide time to complete the capacity allocation process, including the ordered turnback and recontracting procedures. Finally, deferring the date will simplify the conversion and allocation process because the conversion date will occur close to the time when El Paso's Power Up Project capacity is expected to be available. As is discussed below, this will enable El Paso to allocate the full 5,400,000 Mcf/d of capacity in the initial conversion.

13. We recognize that, even with the additional capacity that will be provided by Line 2000 in November 2002, the postponement of the conversion date of the FR contracts could result in some pro rata reductions in firm service to CD shippers this winter season. As explained more fully below, in order to alleviate some of the hardship this may cause to the CD shippers, the Commission will impose partial demand charge credits to be paid to the CD customers during this interim period. The Commission concludes that the postponement of the conversion date together with partial demand charge credits for the CD shippers during the interim period appropriately balances the interests of all the parties to this proceeding.

B. Demand Charge Credits

14. The pro rata reductions in service necessitated by the current allocation methodology on El Paso are not caused either by El Paso or the CD shippers. Instead, as explained in the May 31 order, these allocations stem from the terms and conditions of the 1996 Settlement which the Commission has determined are no longer just and reasonable under the current circumstances on the system. At the present time, the CD shippers bear all of the risk of these pro rata allocations because they are paying demand charges for service they do not receive. Because these allocation reductions are no-fault occurrences, it is not just and reasonable to require one party to bear all the adverse consequences associated with them. The Commission finds that it is appropriate during this interim period for El Paso and its CD shippers to share the risk of service interruptions associated with the pro rata allocations.

15. During the interim period, from November 1, 2002 until May 1, 2003, the Commission will require that El Paso pay to a CD shipper a partial demand charge credit whenever El Paso is unable to deliver at least 95 percent of the CD shipper's nominated quantity out of any basin for reasons other than force majeure.[9] For example, if a CD shipper makes its nomination out of the San Juan Basin and there is insufficient capacity in the San Juan Basin to schedule the amount nominated, but the nominated quantity could be scheduled out of the Permian or Anadarko Basins, El Paso would not be obligated to pay a demand charge credit. Therefore, if the CD customer chooses for economic reasons not to take delivery from the Permian or Anadarko Basins, El Paso will have no demand charge credit obligation. However, if El Paso is unable to deliver a shipper's nominated quantity out of any basin, the amount of the partial demand charge

[9]Whether the 95 percent threshold is met is to be determined by El Paso's cumulative performance under the shipper's contract for a service month.

credit to be paid by El Paso during the interim period, from November 1, 2002 to May 1, 2003, shall be equal to the amount of its equity return and the income tax associated with it that is included in the demand charge.

16. The partial demand charge credit that the Commission will require during this interim period will appropriately balance the risk of non-delivery between El Paso and its CD shippers. Because the demand charge credit will consist of only the return on equity and income tax portion of the demand charge, El Paso will collect its cost of service associated with providing the service, but the CD shippers will not be required to provide El Paso with a profit for service it does not provide.[10] The Commission concludes that this appropriately balances the interests of the parties during the interim period before the conversion of the FR contracts becomes effective.

17. As explained in the May 31 order, if after the date of the implementation of the conversion of FR contracts to CD contracts, El Paso is unable to transport nominated firm volumes for reasons other than force majeure, it must provide demand charge credits to its firm customers. El Paso requests clarification that the demand charge credits would be owed when a firm shipper nominates service from a primary receipt point to a primary delivery point and has its nomination confirmed, but El Paso is unable to schedule the confirmed volumes for reasons other than force majeure.

18. Demand charge credits would reimburse firm shippers in the event they experience pro rata cuts in the scheduling process for reasons other than force majeure, as defined in El Paso's tariff. The Commission agrees that El Paso's interpretation is reasonable and will apply demand charge credits when El Paso is unable to schedule all firm, primary volumes that are nominated and confirmed each day.

19. El Paso requests further clarification as to how demand charge credits would be applied in the scheduling process. El Paso requests that demand charge credits be attached to scheduling activities in Cycle 2 only, for Cycle 2 determines the volumes of gas that will actually begin flowing at the start of the next gas day. El Paso explains that gas does not flow as a result of the outcome of Cycle 1 since it occurs on the morning of the day before flow day, although Cycle 1 receives the most nominations. Cycle 3, or Intraday 1, is the first cycle in which primary firm shippers cannot bump volumes previously scheduled on a secondary, or alternate, firm basis. Cycle 4, or Intraday 2, is

---

[10] See, Opinion No. 406, Tennessee Gas Pipeline Company, 76 FERC ¶ 61,022 (1996), reh'g, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997).

the first cycle in which no firm shipper can bump a scheduled shipper, even if the scheduled shipper is moving interruptible volumes. El Paso asserts that it is appropriate to grant demand charge credits only on primary firm transactions and only when those transactions cannot be scheduled in Cycle 2.

20. For purposes of both partial demand charge credits during the interim period and for purposes of demand charge credits after May 1, 2003, the Commission agrees in part with El Paso's request for clarification. It is appropriate to apply demand charge credits for Cycle 2, for pro rata allocations of primary firm shippers' confirmed nominations during Cycle 2 would be due to El Paso's inability to serve all its CD shippers on a primary basis. It is not appropriate to apply demand charge credits for Cycle 1 because firm shippers have the opportunity to renominate in Cycle 2 and can bump secondary firm volumes and scheduled interruptible shippers. Also, it is not appropriate to apply demand charge credits in Cycle 4 when firm shippers cannot bump scheduled volumes, including interruptible volumes. The Commission finds, however, that it is appropriate to apply demand charge credits for pro rata allocations that occur in Cycle 3. Demand charge credits should apply when El Paso is unable to schedule primary or alternate firm volumes. Therefore, demand charge credits will be payable, except in cases of force majeure, for pro rata allocations that occur in the scheduling of primary or alternate firm nominations in Cycles 2 or 3.

C. Amount of Capacity To Be Allocated to the FR Shippers

21. In the May 31 order, the Commission directed El Paso and its customers to take the available capacity remaining that is not contracted for by the CD shippers or needed to serve FT-2 demand, and allocate that capacity among the FT-1 FR shippers as their new CDs. The Commission also noted that at the public conference held on April 16, 2002, El Paso stated that it would be able to deliver 5,400,000 Mcf/d with the capacity to be provided by the proposed Power-Up Project on a peak day.[11] El Paso and the Full Requirements Shippers have asked for clarification of these issues.

1. Quantification of System Capacity for Allocation Purposes

22. The Full Requirements Shippers ask the Commission to clarify the amount of available westward flow capacity on El Paso, determine whether the available west-flow capacity includes all El Paso unsubscribed capacity, including recent firm capacity

[11] 99 FERC ¶ 61,244 (slip op. at 27).

contracts entered into after May 1, 2002, and whether the capacity to be added by El Paso's Power-Up Project shall be allocated to shippers in the initial conversion process. The Full Requirements Shippers state that this clarification is necessary because, they assert, El Paso has taken inconsistent positions on its available capacity.

23. At issue is whether El Paso's statements in an April 16, 2002 public conference that it could provide deliveries of 5,400,000 Mcf/d with the Power-Up Project[12] are consistent with its statement in its request for clarification that there is 4,300,000 Mcf/d of available sustainable west-flow capacity. A review of the data provided by El Paso indicates that the amount of westward flow capacity provided by El Paso in its Request for Clarification and its response to the Full Requirements Shippers' request for clarification is consistent with the data in the record.[13] El Paso has indicated that it could deliver 5,400,000 Mcf/d with the Power-Up Project (which would provide 320,000 Mcf/d). El Paso has also indicated that it will file an application to construct the Power-Up Project by October 1, 2002 and that it expects the capacity to be in service by Summer 2003 with prompt Commission action. Because the capacity additions associated with the Power-Up Project could be in service by May 1, 2003, the Commission clarifies that the starting point in the initial allocation process should be the 5,400,000 Mcf/d that El Paso has stated would be available as total system capacity.

2. Quantification of Capacity Under CD Contracts

24. As stated above, in determining the amount of capacity available for allocation to the FR shippers, the May 31 order directed El Paso to deduct from the total available capacity, capacity that is under contract to CD shippers. El Paso states that if there were CD contracts in effect on May 31, 2002, that capacity was deducted from the amount of capacity available for allocation among the converting FR shippers. El Paso further

---

[12]See Transcript of April 16, 2002 Public Conference at 13, 14, 17, 25, 36.

[13]El Paso indicates that the full existing westward flow capacity is approximately 4,300,000 Mcf/d with net west-flow capacity available for FT-1 FR CDs equal to about 930,000 Mcf/d during the winter. In response to the Full Requirements Shippers' request for clarification, El Paso provided a reconciliation to show how the 4,300,000 Mcf/d of sustainable west-flow capacity is consistent with the 5,400,000 Mcf/d total capacity. El Paso indicates that there is 800,000 Mcf/d of non-west-flow capacity. That, plus the addition of the Line 2000 and Power-Up capacity, minus west-flow fuel, brings total capacity to 5,526,000 Mcf/d, which is consistent with El Paso's statement that it could provide 5,400,000 Mcf/d with the Power-Up capacity.

states that there was no capacity under contract on May 31, 2002 that was not also under contract, although perhaps to different shippers, during the month of June 2002 when El Paso provided the FR shippers with the total amount of capacity to be divided among themselves.[14] In addition, El Paso states that if it entered into binding contracts with shippers prior to May 31 that do not take deliveries until sometime later this year, it deducted the capacity from the amount available to FR shippers because El Paso is obligated to provide service under those contracts.

25. El Paso further states that if any capacity comes back to El Paso during the months of July or August 2002, it will handle that capacity the same way it will handle offers of capacity turnback during the rationalization process and make that capacity available to FR shippers on a preferential basis.

26. The Commission clarifies that El Paso shall include in the capacity available for the initial conversion all capacity from contracts expiring between May 31, 2002 and May 1, 2003. Consistent with the Commission's May 31 order, El Paso cannot resell capacity if that capacity is needed to serve the current requirements of its firm customers.

3. Quantification of Capacity Reserved for FT-2 FR Service

27. The May 31 order also directed El Paso to reserve a reasonable amount of capacity for FT-2 FR shippers. El Paso explains that in determining a reasonable amount to reserve for this purpose, it determined, by month, the non-coincidental peak (NCP) of all FT-2 shippers for the period from January 1, 1998 through December 31, 2001, and increased those totals by 20 percent to allow for load growth during the remaining term of the Settlement. El Paso states that it also added a monthly allowance, determined in the same manner, for three shippers that El Paso expects will convert to FT-2 service during the allocation process. El Paso asks the Commission to clarify that its methodology is consistent with the Commission's directives.

28. The Commission did not specify a method to determine a reasonable amount of capacity to reserve for FT-2 FR shippers. While El Paso's proposal appears generally reasonable, the Commission finds that the 20 percent growth factor is unsupported. Based on the historical growth rate of the FT-2 shippers as shown in the studies provided by El Paso in this proceeding, it appears that load growth through the end of the

---

[14]El Paso states that the sale of capacity to the shippers holding it in June took place prior to the issuance of the May 31 order directing El Paso not to enter into new contracts.

Settlement would be closer to 10 percent. El Paso is thus directed to use a 10 percent growth factor and can increase its capacity in the future if additional capacity is necessary to serve these customers.

D. Capacity Allocation Methodology

29. As explained in the May 31 order, the Commission has considered a number of different proposals for establishing the CD entitlements of the FR shippers during the course of these proceedings. For example, El Paso initially proposed to allocate capacity to FR customers based on billing determinants. The Commission concluded in the May 31 order that it would not be appropriate to base FR customers' entitlements on billing determinants because, while billing determinants reflect the current cost allocation to the FR shippers, they do not reflect the current use of the system. In addition, the Commission concluded that the proposals of Salt River Project (Salt River) and Southwest Gas to convert the FR contracts to CD contracts based on each shipper's historical non-coincident peak is not reasonable because this would result in entitlements that exceed the capacity of El Paso's system. The May 31 order also discussed the Commission staff's proposed allocation methodology, presented at the March 13, 2002 Commission meeting, that would convert FR service to CD service with entitlements reflecting the latest practice and the Commission's traditional system peak allocation approach, using December 12, 2001 as the most recent system peak day.

30. While the May 31 order did not adopt a methodology to be used in the conversion of FR contracts to CD contracts, that order did set forth certain guidelines as to what a reasonable methodology would be. Specifically, the Commission stated that a reasonable method of capacity allocation on El Paso should reflect current use of the system within the current capacity and should not allocate less capacity to any shipper than it is paying for. Therefore, the Commission explained, a reasonable methodology does not reduce CD shippers' entitlements and does not reduce FR shippers' entitlements below their 1996 Settlement billing determinants.

31. The May 31 order also discussed the FR customers' concerns with Staff's proposal to use December 12, 2001 as the system peak day for allocation purposes. The FR customers were concerned that the Staff's proposal did not provide for seasonal variations in entitlements, that their individual peak demands (i.e., their non-coincidental peak) did not occur on December 12, 2001, and that use of coincidental peak would not reflect their demands.

32. Consistent with the guidelines stated in the May 31 order, and taking into consideration the FR customers' concerns about the Staff's proposal, the Commission directs El Paso to establish CDs for the former FR shippers in the following manner: El Paso is directed to use as its system capacity for allocation purposes in this proceeding the 5,400,000 Mcf/d that El Paso has stated is or will be available[15] and subtract from that the total CD contract levels and FT-2 usage consistent with the discussion above. Since the Line 2000 capacity will be available to shippers this fall,[16] the 230,000 Mcf to be provided by that project must be included in the initial allocation. Similarly, because the Line 2000 Power-Up Project should be available before summer 2003, the 320,000 Mcf/d that will be provided by this project should be included in the initial allocation.[17]

33. Each FR shipper's share of the available capacity shall be determined based on each individual shippers' use of the system over the latest twelve months (i.e., September 1, 2001 through August 31, 2002). El Paso is directed to apportion the available capacity among the FR shippers using the individual shippers' monthly demand over the twelve months ending August 31, 2002 to determine each shipper's monthly pro rata share of the available capacity. If any shipper's monthly allocation is less than its 1996 Settlement billing determinant, the billing determinant should be used as its monthly allocation. Once the allocation is made, the Commission directs El Paso to reallocate the current aggregate FR revenue responsibility among the FR shippers pro rata based on the new CD levels. In this way, the revenue responsibility for the new FR CDs will be equitably distributed among the FR shippers. Each shipper will pay for the service it receives. This reallocation of costs will not, however, affect the system rates. El Paso will remain revenue neutral.

34. Allocating capacity to the FR shippers based upon each shipper's latest monthly demands will reflect the current use of the system by these customers and accommodate

---

[15]El Paso stated at the April 16, 2002 conference that it could provide deliveries of 5,400,000 Mcf/d with the Power-Up Project. See Transcript of April 16, 2002 Public Conference at 13, 14, 17, 25, 36. See also 99 FERC ¶ 61,244 (slip op. at 27).

[16]El Paso states that the Line 2000 project will be in service by November 1, 2002 (See July 29, 2002 Answer of El Paso Natural Gas Company to Emergency Request of Southwest Gas Corporation for Postponement of Capacity Turnback Schedule, Clarification, and Extension of Conversion Date for Full Requirements Customers, at 5).

[17]El Paso has committed to adding 320,000 Mcf/d of new capacity through its Power-Up Project, and forgo cost recovery for this project until its next rate case.

each shipper's seasonal needs as discussed at the public conference. From that starting point, El Paso will complete the capacity rationalization (including turnback) and receipt point allocation processes described above and further modified herein. The Commission will require El Paso to implement the following schedule: El Paso must complete the initial allocation by October 15, 2002, FR shippers must submit bids to acquire turnback capacity by October 31, 2002, and El Paso must file a report with the Commission by December 2, 2002 detailing the results of the capacity allocation and receipt point allocation processes. The effectiveness of the new CDs and the receipt point allocations will be May 1, 2003, as described above. This schedule will allow the allocation processes to proceed in a timely fashion while providing sufficient time for all parties, including El Paso, to prepare for implementation.

E. 1996 Settlement Limitations on Block I and Block II Capacity

35. Southwest Gas requests clarification that turnback capacity that will be made available during the capacity rationalization process prescribed by the Commission's order will be free from any Block I or Block II limitations. The 1996 Settlement divides turned back capacity into three blocks: Block I capacity has alternate receipt point rights unless the capacity is sold for maximum tariff rates and, in that event, it has primary receipt point rights only to the Permian and Anadarko Basins, but not to the San Juan Basin. Block II turned back capacity has primary access to all system receipt points including the San Juan Basin, but can be recalled by northern California shippers.[18] Southwest Gas asserts that the Commission's finding that turned back capacity will be able to meet current service needs of east-of-California markets cannot be valid unless the Block I and Block II capacity limitations will not apply to turned back capacity purchased by full requirements customers during the capacity rationalization process. PG&E filed an answer in opposition to Southwest Gas's request for clarification and El Paso states that it intends to honor the Settlement's provisions.

36. Southwest Gas states that Block II capacity acquired by a full requirements shipper during the capacity rationalization process would not have the same reliability as firm capacity not subject to recall, and would suffer from the same infirmities the Commission found with capacity subject to pro rata allocation. El Paso, on the other hand, states that it intends to honor the 1996 Settlement's Block II recall provision.

---

[18]See Public Utilities Commission of California v. El Paso Natural Gas Co., (Initial Decision), 97 FERC ¶ 61,004 at 65,014 (2001).

37. In addition, Southwest Gas argues that the Block I receipt point limitation would unfairly restrict receipt point rights of full requirements customers purchasing turned back Block I capacity going into the receipt point allocation process outlined in the Commission's order. El Paso, on the other hand, states that it will honor the Block I restrictions and that all shippers with contracts covering Block I capacity will be limited to nominating receipt points in the Anadarko and Permian Basins.

38. The Commission clarifies that nothing in the May 31, 2002 order changes the 1996 Settlement provisions with regard to any limitations on Block I and Block II capacity. The Block I and Block II capacity is currently held by the CD shippers, and therefore none of that capacity will be allocated in the initial step of the allocation process. After the initial allocation of new CD entitlements to the current FR shippers, additional capacity will be made available to the current FR shippers in the capacity rationalization process, and this additional capacity could include turnback capacity. If current FR shippers are not interested in purchasing turnback capacity with recall rights or with limited receipt basin rights, there is no requirement that they do so.

F. Existing Contracts with Specified Receipt Points

39. El Paso states that it proposes to honor basin-specific contracts in the allocation process. BP Energy also asks the Commission to clarify that it does not intend to abrogate contract demand contracts that have limited receipt point rights. BP Energy states that these contracts include 1) contracts that specify receipt points in the San Juan Basin only, 2) contracts that specify receipt points in the Permian Basin only, 3) and Block I contracts that have primary receipt point rights to the Permian and Anadarko Basins only. BP Energy states that contracts that specify certain receipt points in the San Juan Basin, or in the Anadarko Basin, or in the Permian Basin should not have receipt points allocated from other basins under the receipt point allocation process, unlike contracts that specify all basins as receipt points. BP Energy states that the May 31 order is ambiguous on this point, and asks the Commission to clarify that basin-specific contracts will not be allocated to basins other than those specified in the agreements.

40. In allocating receipt point capacity consistent with the methodology set forth in this order, El Paso shall honor its basin-specific contracts. Where a contract provides for system-wide receipt point rights, El Paso will use the iterative process described in the May 31 order to assign receipt point rights to the shipper in the various pools nominated by the shipper. However, if the contract provides for receipt point rights in a specific

basin, the shipper will be assigned receipt point capacity only in the basin specified in the agreement, and will not be included in the iterative receipt point allocation process.

41. Honoring basin-specific contracts is consistent with the approach taken by the Commission in Amoco Energy Trading Co. v. El Paso Natural Gas Co. (Topock).[19] In Topock, shippers with aggregate rights to the Topock delivery points were required to make an election as to how their delivery point rights should be distributed among the Topock delivery points. On the other hand, shippers with rights to specific Topock delivery points were assigned rights to that point only. This approach is consistent with the Commission's policy of preserving shippers' contracts unless abrogation of those contracts is necessary in the public interest. The Commission explained in the May 31 order why abrogation of the FR contracts is required by the public interest. There are no similar concerns here that require abrogation of the basin-specific contracts, and El Paso should honor those contracts in the allocation process.

G. Receipt Point Rights for Customers with Delivery Point Rights in a Production Area

42. The Navajo Tribal Utility Authority (Navajo) asks the Commission to clarify that delivery point rights in one production area should not be allocated receipt points in a different production area. Navajo asserts that it makes no sense to allocate receipt point rights to production area shippers to production areas hundreds of miles away. The Commission grants this request for clarification.

H. FT-2 FR Service

43. El Paso has requested clarification of several issues with regard to FT-2 FR service.

1. Eligibility for FT-2 FR Service

44. In the May 31 order, the Commission held that small shippers will be able to retain their full requirements service under El Paso's Rate Schedule FT-2 as long as their requirements remain less than 10,000 dth/d. El Paso states that traditionally on its system, FT-2 service has been limited to shippers whose loads, in the aggregate, do not

---

[19] 93 FERC ¶ 61,060 (2000), order on clarification, 93 FERC ¶ 61,222 (2000), order on reh'g, 94 FERC ¶ 61,225 (2001).

exceed the eligibility limit, regardless of the number of delivery points under their contracts or the fact that they hold more than one contract. El Paso states that several shippers have asked whether they can convert one contract or one delivery point to FT-2 service, while leaving the remainder of their contracts under FT-1 service. El Paso states that it has taken the position that FT-2 service is defined by the aggregate load the shipper transports on the system, and asks the Commission to confirm this interpretation.

45. The Commission clarifies that El Paso's interpretation of the Commission's May 31 order is correct. The Commission intended that full requirements service continue to be available for small shippers whose total demands are less than 10,000 dth/d, and did not intend to expand FT-2 service or permit shippers to convert individual delivery points or one of several contracts to FT-2 service.

2. Allocation of Receipt Point Rights to FT-2 FR Shippers

46. El Paso states that it understands the Commission's order to allow FT-2 shippers to retain systemwide receipt rights and to require El Paso to appropriately reserve capacity for them to be able to schedule their requirements. El Paso states that based on past history, it expects that the vast majority of gas transported by the FT-2 shippers will be sourced from the San Juan Basin and therefore intends to reserve all the capacity to serve FT-2 shippers in the San Juan Basin only. El Paso states that it therefore will assume the risk of being able to transport Permian or Anadarko gas for these shippers. El Paso states that this approach eliminates the need to reserve duplicate amounts of capacity in multiple basins. The Commission finds that the FT-2 contracts are de minimus in their impact on the system.[20] Some of the FT-2 customers use as little as 35 Mcf/d. It would be administratively burdensome to allocate these contracts among the supply basins. In view of the historical context and the small amount of capacity used for this service, El Paso's approach is reasonable.

I. The Capacity Rationalization Process

1. Seasonalization of Capacity Rights

47. El Paso states that it will provide an opportunity for shippers to adjust their capacity entitlements to meet seasonal needs. El Paso states that seasonalization should be a significant feature of the initial allocation of capacity among the converting FR

[20]The total FT-2 billing determinants are 23,937 Mcf/d.

shippers and in the one-time trading of rights that will occur once that process is completed. However, El Paso opposes allowing FR shippers to contract for only a seasonal portion of the turnback capacity. El Paso states that it has concluded that it is appropriate to accept offers of turnback that are definite as to yearly quantity and that are permanent, and asks the Commission to confirm that this is a reasonable approach.

48. In the May 31 order, the Commission stated that a capacity rationalization process, including adjustments for seasonal usage, would provide additional capacity to meet FR demands, and stated that the FR shippers could decide whether to use seasonal demands. The Commission did not mandate any particular method for making adjustments for seasonality. El Paso's proposal appears to be one reasonable way to adjust for seasonality and it may be used in the capacity allocation and rationalization processes. Further, the Commission clarifies that El Paso is not obligated to accept contracts for less than one year in the turnback process.

2. Contract Path Rights

49. El Paso states that it will ultimately contract path rights on its system, but that there is not sufficient time for it to do so in this phase of the allocation process. El Paso states that it will address contract path rights in the second phase of its Order No. 637 proceeding. El Paso seeks clarification that the May 31 order does not require it to establish contract path rights at this time, and asks the Commission to confirm that this interpretation is correct. The Commission clarifies that it is appropriate to address pathing issues in the next phase of El Paso's Order No. 637 proceeding.

J. Use of California Delivery Points as Receipt Points

50. In the May 31 order, the Commission required El Paso to immediately allow for receipts of gas at the California delivery points on a secondary basis.[21] In its answer in support of The Full Requirements Shippers' request for clarification, PG&E states that El Paso has not filed the required tariff changes to implement this requirement and has

[21] 99 FERC 61,244 (slip op.at 42).

stated at customer meetings that it will not do so until later this year. PG&E asks the Commission to require El Paso to make the required tariff changes.

51. The Commission clarifies that the May 31 order intended that El Paso initiate backhaul or displacement service without delay. The Commission directs El Paso to file tariff sheets within 15 days of the date of the issuance of this order to allow the use of its California delivery points as receipt points.

The Commission orders:

(A) The requests for clarification are granted in part as discussed in this order.

(B) El Paso is directed to allocate capacity among the FR shippers as discussed in the body of this order.

(C) El Paso's full requirements contracts are converted to contract demand contracts, effective May 1, 2003.

(D) El Paso is required to file a report by December 2, 2002 detailing the results of the capacity allocation and receipt point allocation processes.

(E) El Paso is directed to file tariff sheets within 15 days of the date of this order to provide for the use of its California delivery points as receipt points.

By the Commission. Chairman Wood concurred with separate statement attached.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

El Paso Natural Gas Company Docket No. RP00-336-005, et al.

(Issued September 20, 2002)

WOOD, Chairman, concurring:

In this order, we take steps necessary to get the parties back on track in completing the capacity allocation and rationalization process we ordered in May. I would have preferred to remain as surgical in approach as possible and not have directed El Paso to reallocate the aggregate FR revenue responsibility among the FR shippers at this time, but to instead maintain the individual FR customer cost responsibilities established in the original settlement.

_____

Pat Wood, III
Chairman