UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

East of California Shippers,	)	
	)	
Complainant	)	
	)	
v.	)	**Docket No. RP04-___-000**
	)	
El Paso Natural Gas Company,	)	
	)	
Respondent	)	

COMPLAINT OF EAST OF CALIFORNIA SHIPPERS REQUESTING FAST TRACK PROCESSING

1. Pursuant to Sections 4(b), 5(a), and 16 of the Natural Gas Act ("NGA"),[1] and Rule 206 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure,[2] the East-of-California Shippers ("EOC Shippers"),[3] hereby file this complaint against El Paso Natural Gas Company ("El Paso") for (1) failing to properly implement a "California Receipt Service"[4] as required by Commission orders[5] and by the express terms of El

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[1] 15 U.S.C. §§ 717c(b), 717d(a) and 717o; 18 C.F.R. § 385.206 (2003).

[2] 18 C.F.R. § 385.206 (2003).

[3] EOC Shippers are former full requirements ("FR") shippers on the El Paso system required to convert to contract demand ("CD") transportation service on September 1, 2003. For purposes of this Complaint, these shippers are: Arizona Electric Power Cooperative, Inc.; Arizona Public Service Co. and Pinnacle West Energy Corp.; El Paso Municipal Customer Group; Phelps Dodge Corporation; Salt River Project Agricultural Improvement and Power District ("SRP"); Southwest Gas Corporation; Texas Gas Service Company, a division of ONEOK, Inc.; and UNS Gas, Inc.

[4] El Paso's California Receipt Service is an alternate firm and interruptible transportation service using existing California border receipt points to the extent of El Paso's backhaul displacement capabilities.

[5] The Commission's mandates to establish the California Receipt Service were set forth in *El Paso Natural Gas Company*, 99 FERC ¶ 61,244 (2002) ("May 31 Order"); *El Paso Natural Gas Company,* 100 FERC ¶ 61,285 (2002) ("September 20 Order") *reh'g denied,*104 FERC ¶ 61,045 (2003) ("July 9 Order"), *appeal pending, Arizona Corp. Comm'n, et al. v. El Paso Natural Gas Co.*, CA03-1206 (D.C. Cir); and *El Paso Natural Gas Company*, 101 FERC ¶ 61,379, at P 15 (2002) ("December 26 Order"), *order on reh'g* 105 FERC ¶ 61,130 (2003) ("October 27 Order").

Paso's Tariff,[6] (2) imposing an unwritten service condition on the availability of California Receipt Service in violation of Section 284.7(c) of the Commission's regulations,[7] and (3) implementing the California Receipt Service in an unduly discriminatory manner in violation of Sections 284.7(b) and 284.9(b) of the Commission's regulations,[8] and Section 4(b) of the NGA.

2. To remedy these violations, EOC Shippers request that the Commission order:

A) El Paso immediately to implement a functional California Receipt Service as required by Commission orders and El Paso's FERC Gas Tariff; and

B) Such further relief as the Commission determines is warranted by law as applied to the facts of this case.[9]

I.
EXECUTIVE SUMMARY

3. On May 31, 2002, the Commission issued an Order on Capacity Allocation and Complaints, directing that all full requirements ("FR") transportation contracts be converted to fixed contract demand ("CD") contracts. In order to assure converting FR shippers that their firm capacity needs would be met, the May 31 Order required El Paso "to **immediately** allow the use of its California delivery points as receipt points in order to promote exchanges from off-system deliveries."[10] El Paso did not comply. On September 20, 2002, the Commission again ordered that El Paso must "**without delay**" allow for the use of its California delivery points as

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[6] El Paso FERC Gas Tariff, Substitute Original Sheet No. 219E.

[7] 18 C.F.R. § 284.7(c) (2003).

[8] 18 C.F.R. §§ 284.7(b) and 284.9(b) (2003).

[9] To date, EOC Shippers have limited their requests for backhaul service to the Southern California Gas Company ("SoCalGas") Ehrenberg interconnect. Therefore this complaint is focused on El Paso's failure to offer service at the SoCal Ehrenberg interconnect. However SoCal also holds capacity rights at Topock, along with PG&E, Mojave, and Southwest Gas. To the extent that SoCalGas has been unwilling to confirm backhaul nominations at its Topock interconnect, EOC Shippers request that the Commission order El Paso to implement functional California Receipt Service for shippers utilizing either or both the SoCalGas Ehrenberg and SoCalGas Topock interconnects.

[10] May 31 Order at 62,017 (emphasis added).

receipt points in order to promote exchanges from off-system deliveries.[11] On July 9, 2003, the Commission largely reaffirmed its earlier September 20 Order, emphasizing that firm capacity available to converting FR shippers must include California Receipt Service.

4. On December 26, 2002, the Commission accepted El Paso's filed tariff sheets to implement the California Receipt Service. El Paso's FERC Gas Tariff (General Terms & Conditions Section 4.9) expressly requires El Paso to offer "primary and alternate firm Rate Schedule FT-1 and FT-2 transportation service from all Topock points, excluding SWG Topock, and from all Ehrenberg points using backhaul displacement."

5. Today, more than sixteen months after the Commission's first order, El Paso has refused to provide California Receipt Service from the Southern California Gas Company ("SoCalGas") Ehrenberg point. Although El Paso has revised its tariff to create the California Receipt Service in purported compliance with the Commission's orders,[12] it has imposed an unwritten service condition on this backhaul service. El Paso has indicated that the service is contingent upon either (1) the interconnecting party performing a nomination confirmation, or (2) El Paso performing a self-confirmation, which on information and belief has been coded and programmed into the El Paso computer system but not yet implemented. SoCalGas has refused to confirm nominations of backhaul service from its interconnection with El Paso at Ehrenberg.[13] Neither of these restrictions on the service is permitted by the Commission orders on this issue or by the express language of El Paso's tariff.

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[11] September 20 Order, *supra* note 5.

[12] "Effective November 1, 2002, El Paso will offer alternate firm Rate Schedule FT-1, FT-2 and interruptible Rate Schedule IT-1 transportation service from **all** Topock points, excluding SWG Topock, and from **all** Ehrenberg points using backhaul displacement." Substitute Original Sheet No. 219E (issued January 9, 2003) (emphasis added).

[13] *See* Affidavit of Paul A. Jones on behalf of Salt River Project, attached hereto as Exhibit A, at ¶ ¶ 4-6 ("Jones Affidavit").

6. Thus, despite taking all necessary steps in accordance with El Paso's tariff to utilize such FERC-approved service, EOC Shippers and other shippers seeking service from Ehrenberg have not been able to use the California Receipt Service.[14] Nevertheless, EOC Shippers converted their service from full requirements as directed by the Commission on September 1, 2003. This delay leaves shippers with no access to California-border gas supply sources and directly contravenes numerous orders of the Commission,[15] which required that shippers be given the flexibility to meet their current needs through use of California delivery points as receipt points. Continuous efforts by shippers to utilize the Commission-approved backhaul service have proved futile,[16] even though El Paso, upon information and belief, provides this type of service on its sister pipelines.

7. EOC Shippers request that the Commission find that: (1) El Paso's failure to provide for a functional California Receipt Service is a violation of the Commission's orders; (2) El Paso's refusal to provide a certificated service violates the express terms of its Tariff; and (3) El Paso's failure to provide a functional California Receipt Service at the Ehrenberg interconnect violates Part 284 of the Commission's regulations and Section 4(b) of the NGA, which prohibits undue discrimination among shippers in providing firm and interruptible services. EOC Shippers further request that the Commission require El Paso to immediately comply with the Commission's prior directives to implement a functional California Receipt Service to allow use of its California delivery points as receipt points through implementation of either self-

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[14] *Id.*

[15] El Paso was ordered to implement California Receipt Service five separate times in Docket No. RP00-336, *et al.*, in the May 31 Order, the September 20 Order, the December 26 Order and the July 9 Order.

[16] *See* Jones Affidavit, Exhibit A, at ¶ ¶ 2, 4-6; Affidavit of Ronald Scheirer on behalf of FPL Energy Inc. at ¶ 2 ("Scheirer Affidavit").

confirming nomination computer programming or a temporary manual self-confirming nomination process.

8. These violations are continuing and will result in significant operational and economic impacts on El Paso's shippers and the customers they are obligated to serve, and which harm will be exacerbated by the upcoming peak winter heating season. EOC Shippers therefore request that the Commission process this Complaint on a fast-track basis, in accordance with Section 385.206(h) of the Commission's regulations, 18 C.F.R. § 385.206(h) (2002).

In support of their Complaint, EOC Shippers state as follows:

II. COMPLAINT

A. El Paso's Failure to Make the Necessary Arrangements to Allow for the California Receipt Service Clearly Violates the Commission's Mandate.

1. The Commission Orders and El Paso's Tariff Are Explicit

9. **May 31 Order:** The May 31 Order, among other things, required that the FR contracts on the El Paso system be converted to CD contracts. To provide converting FR shippers with the necessary service flexibility to meet their current demands, the Commission required El Paso "to **immediately** allow the use of its California delivery points as receipt points in order to promote exchanges from off-system deliveries."[17] Despite this clear mandate, the Commission was alerted that El Paso had failed to file the required tariff changes to implement the new service, and that it did not intend to do so until later in the year.[18]

10. **September 20 Order:** In response to El Paso's failure to implement the California Receipt Service, the Commission clarified in the September 20 Order that "the May

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[17] May 31 Order at 62,017 (emphasis added).

[18] "Answer of Pacific Gas and Electric Company in Support of the 'Motion of Full Requirements Shippers Requesting Expeditious Clarification of El Paso's Available Capacity,'" at 6 (filed July 3, 2002).

31 Order intended that El Paso initiate backhaul or displacement service **without delay**."[19] The Commission directed El Paso to file implementing tariff sheets within fifteen days of the date of the issuance of the September 20 Order.

11. **December 26 Order:** Responding to El Paso's filing in purported compliance with the September 20 Order,[20] the Commission reaffirmed that **the backhaul service was necessary to ensure service reliability for converting FR shippers**. The Commission held that the California Receipt service would "make additional capacity available on El Paso's system through backhauls and exchanges,"[21] and reiterated that El Paso had been directed "to provide this service flexibility because El Paso had not been able to provide reliable firm service to its existing shippers."[22] El Paso was again directed to file tariff sheets within fifteen days of the issuance of the order to implement the backhaul service.[23]

12. **July 9 Order:** The Commission reaffirmed its decision to implement conversion of FR contracts on September 1, 2003.[24] In doing so, the Commission emphasized that the steps it was taking would restore reliable firm service to the El Paso system, providing "additional

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[19] September 20 Order at P 51 (emphasis added). The September 20 Order also extended the conversion date for FR contracts to May 1, 2003.

[20] "Capacity Allocation Compliance Filing," filed by El Paso on Oct. 7, 2002 in Docket No. RP00-336-007.

[21] December 26 Order at P 1. In its October 27, 2003 Order on Rehearing, the Commission reaffirmed its intention "that all shippers be able to use the California delivery points at Ehrenberg and Topock as receipt points on an alternate basis in order to provide additional service flexibility to shippers, and to mitigate west flow constraints by promoting exchanges from off-system deliveries." October 27 Order at P 17.

[22] *Id.* at P 15. The Commission also ruled that: (1) El Paso should not charge existing shippers (both CD and FR shippers) a reservation charge for California Receipt Service for the remaining term of the 10-year rate settlement; (2) the proposed reservation rate design and corresponding rates were appropriate for new shippers, providing the service can be provided without affecting service to existing firm shippers; (3) the proposed usage rate was reasonable for the California Receipt Service until El Paso's next rate case, and El Paso can discount this rate down to its actual variable costs; and (4) El Paso should offer the California Receipt Service without confining northern system receipt points in the Topock area to northern system delivery points and southern system receipt points in the Ehrenberg area to southern system delivery points, but only when operationally feasible.

[23] On January 10, 2003, El Paso filed tariff sheets in purported compliance with the December 26 Order.

[24] The conversion date had been extended by the Commission from May 1, 2003 to September 1, 2003 in an order issued on April 14, 2003, 103 FERC ¶ 61,059.

capacity for the FR shippers through the use of California delivery points as receipt points (which promotes shippers' ability to exchange gas with other supply sources not attached to El Paso)."[25] The Commission's order assumed that capacity available to the converting FR shippers on El Paso includes "backhaul capacity that has not been available to FR shippers in the past."[26]

13. **El Paso's Tariff:** GT&C Section 4.9 provides "Effective November 1, 2002, El Paso will offer primary and alternate firm Rate Schedule FT-1 and FT-2 transportation service **from all Topock points, excluding SWG Topock, and from all Ehrenberg points using backhaul displacement.**"[27]

2. El Paso Has Violated the Commission's Repeated Mandate By Failing to Implement a Non-Discriminatory and Functional California Receipt Service

14. Since November 1, 2002, El Paso has received requests to perform California Receipt Service from shippers at both the Topock and Ehrenberg delivery points.[28] However, according to El Paso's statements to its shippers, it has only performed California Receipt Service at the Topock delivery points where Pacific Gas and Electric Company ("PG&E") and Mojave Pipeline Company ("Mojave") have been willing to confirm nominations for the backhaul service. El Paso also advised shippers that its refusal to provide the service is not due to an operational problem with the displacement or exchange, but rather is due to SoCalGas'

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[25] July 9 Order, *supra* note 5, at P 38.

[26] *Id.* at P 39.

[27] Substitute Original Sheet No. 219E (issued January 9, 2003) (emphasis added).

[28] *See, generally,* Jones Affidavit. Topock is located at the western end of El Paso's San Juan Mainline System. El Paso transports gas for Northern California delivery into the systems of SoCalGas, PG&E, and Mojave at the Topock delivery point. Ehrenberg is located at the western end of El Paso's California Mainline System. El Paso transports gas for Southern California delivery into the system of SoCalGas at the Ehrenberg delivery point. The Commission has also clarified that El Paso must provide California Receipt Service at North Baja/Ehrenberg. October 27 Order, at P 33.

unwillingness to confirm the backhaul at the Ehrenberg delivery point.[29] However, there is no tariff exception to El Paso's duty to offer backhaul service other than operational feasibility.[30]

15. Upon information and belief, EOC Shippers understand that El Paso was aware prior to making its October 7, 2002 Compliance Filing that SoCalGas was unable to confirm nominations for the California Receipt Service under its existing tariff.[31] Despite this knowledge, El Paso did not seek a waiver of the requirement to provide the California Receipt Service at the SoCalGas interconnect; nor did El Paso propose to delay the implementation date in order to program its system or implement a temporary manual process to allow for self-confirming nominations for backhaul service at the Ehrenberg interconnect. Thus, the pipeline falsely led the Commission to believe that such service was available and would be provided prior to the conversion of the FR shippers to fixed contract demand service.

16. El Paso has admitted that SoCalGas' involvement in this backhaul transaction is not essential because El Paso is capable of self-confirming nominations for backhaul service. El Paso is simply unwilling to implement the self-confirmation process,[32] even though other pipelines like El Paso's sister company, Tennessee Gas Pipeline Company, have had this capability for years.

17. Even though El Paso's Tariff does not condition California Receipt Service on confirmation from third-party interconnects, El Paso is insisting that SoCalGas provide such confirmation in order to implement the service. When El Paso learned that SoCalGas would not perform the confirmation of backhaul volumes, El Paso should have redesigned its California

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29 Jones Affidavit at ¶ 2; Scheirer Affidavit at ¶ 2.

30 December 26 Order at P 25.

31 Scheirer Affidavit at ¶ 2.

32 Scheirer Affidavit at ¶ 3.

Receipt Service to comply with the Commission's directives, so as not to rely on a third-party confirmation.

18. During an April 16, 2003 customer meeting in Phoenix, Arizona, and in subsequent conversations with at least one other customer,[33] El Paso indicated that it had programmed codes to perform self-confirming nominations for backhaul service at the Ehrenberg delivery points, but was waiting to implement the upgrade to its computer system until the reallocation of FR shippers to CD service.[34] El Paso has also stated that the computer modifications to allow for self-confirming nominations would be the same for both El Paso's existing computer system and the revised system to be used after the conversion of FR contracts.

19. El Paso's unjustified failure to make the necessary operational and computer modifications or to implement a temporary manual process to allow the use of its California delivery points at Ehrenberg as receipt points violates the Commission's express directive. Despite two viable methods of providing a functional backhaul service at Ehrenberg, El Paso continues to stall. [35]

20. In other Commission proceedings in which pipelines were required to implement a new service, the Commission required pipelines to proceed where operationally feasible and did not tolerate significant delays in order to make the necessary computer modifications.[36]

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[33] *Id.* at ¶ 2.

[34] *See* El Paso relevant portion of handout at April 16 Customer Meeting, attached hereto as Exhibit C. El Paso made a presentation at the April 16 customer meeting that it would implement a "Bounce-at-the-Border," or what is commonly referred to as a meter bounce, when the FR conversion became effective.

[35] Indeed, at an August 14, 2003 Customer meeting just two weeks before the conversion implementation date and fourteen months after the Commission first ordered El Paso to immediately implement backhaul service, El Paso representatives brushed off a shipper inquiry as to the status of California Receipt Service by indicating that they "had too much on their plates" to deal with that issue.

[36] *See Columbia Gulf Transmission Co.*, 100 FERC ¶ 61,344, at 62,579 (2002) (Commission rejected Columbia Gulf's proposal to delay implementation of segmentation for twelve months); *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,018 at P 19 (2002) ("Computer programming does not appear to be a necessary prerequisite for segmentation on a pipeline system configured like Gulfstream; manual procedures could be used.

Similarly, there is no reasonable justification for El Paso's ongoing delay, as El Paso should have performed the necessary computer modifications or implemented a temporary manual process sixteen months ago. El Paso should not be allowed to hide behind SoCalGas' inability or unwillingness to perform the confirmation of nominations for California Receipt Service. Although the tariff version of the backhaul service appears to comply with the technical requirements of the Commission's orders, the actual service is not operational.[37] This is a clear instance of non-compliance by design and must be remedied immediately.[38]

21. As a result of El Paso's refusal to expedite and perform the necessary computer modifications to allow for use of the Ehrenberg area delivery points as displacement sources for the California Receipt Service, EOC Shippers on the south system do not have access to California-border gas supplies at market prices. If a functional California Receipt Service were operational today, shippers could move supplies from the Ehrenberg points to delivery points on El Paso's south system (just as shippers are able today to utilize the California Receipt Service at Topock to backhaul supplies to their north system delivery points), and would have access to additional usable firm capacity and diverse supplies from the numerous shippers that move gas through the Ehrenberg meter station as the Commission intended. Absent this service, EOC Shippers lack this additional usable firm capacity and will be unable to fully access the true

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Therefore, the Commission directs Gulfstream to implement segmentation as required by Order No. 637. Gulfstream's request for a waiver to delay the implementation of segmentation on its system … is denied.").

[37] This complaint is not intended in any way to affect EOC Shipper positions in the pending appeals of the May 31 and September 20 orders.

[38] The Commission will act to remedy "continued failure to comply with Commission orders." *Enron Power Marketing, Inc., et al.,* 103 FERC ¶ 61,343, at P 83 (2003). *See also*, *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 99 FERC ¶ 61,272 (2002) (issuing an order to show cause why authority to charge market-based rates should not be revoked as a result of failure to comply with the investigation ordered by the Commission); *Halsted Construction, Inc.*, 100 FERC ¶ 61,069, at P 19 (2002) (revoking exemption from licensing for "repeated failure to comply with, or even respond to, Commission staff … orders, directives, and other communications").

market price of gas. The current situation unduly discriminates against EOC Shippers that utilize the Ehrenberg area delivery points.

B. El Paso's Refusal to Provide a California Receipt Service at Ehrenberg Violates the Express Terms of its Tariff.

22. El Paso's failure to provide California Receipt Service at the SoCalGas Ehrenberg interconnect violates the pipeline's own FERC Gas Tariff. GT&C Section 4.9 provides that "El Paso will offer alternate firm Rate Schedule FT-1, FT-2 and interruptible Rate Schedule IT-1 transportation service from all Topock points, excluding SWG Topock, **and from all Ehrenberg points**, using backhaul displacement."[39] GT&C Section 4.9(e) provides, "California Receipt Service shall be provided only when it is operationally feasible by mainline displacement or exchange."[40] Therefore, pursuant to the Tariff, El Paso must provide California Receipt Service upon request from all Ehrenberg points except when it cannot physically be accommodated by mainline displacement or exchange.[41]

23. It is well established that Commission-approved Tariffs have the force and effect of law, and that a pipeline must adhere to the terms of its Tariff absent a Commission-approved modification or waiver.[42] The Commission specifically directed El Paso to offer California Receipt Service whenever it is operationally feasible, and El Paso did not request a waiver from the Commission for instances where the interconnecting system will not confirm the nomination. Since El Paso knew that SoCalGas was unable to confirm California Receipt Service requests, El

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[39] Substitute Original Sheet No. 219E (emphasis added). *See* Exhibit D hereto.

[40] *Id.* The Commission has held that El Paso's tariff requires it to offer California Receipt Service at every Ehrenberg point. October 27 Order at P 33.

[41] Nor should El Paso's failure to make the necessary computer upgrades in order to implement a required service be permitted to serve as a valid operational restriction on the service. *See Gulfstream Natural Gas System* , *supra* note 36, at P 19.

[42] *East Tennessee Natural Gas Co. v. FERC,* 631 F.2d 794, 796 (D.C. Cir. 1980); *Tennessee Gas Pipeline Co.*, 27 FERC ¶ 61,352 at 61,686 (1984); *Equitable Gas Company*, 28 FERC ¶ 61,235, at 61,444 (1984).

Paso was obligated to institute backhaul service using other measures or, failing that, bring this matter to the Commission's attention. El Paso has instead chosen not to comply fully with either the Commission's express directive or the express terms of its own Tariff. Accordingly, the Commission should find that El Paso is violating its Tariff whenever it rejects a request for operationally available displacement or exchange service and require El Paso immediately to provide California Receipt Service whenever it physically can be accommodated by displacement or exchange.[43]

C. El Paso's Failure to Make the Necessary Arrangements to Allow for the California Receipt Service Violates the Commission's Regulations and the NGA.

1. The Commission's Regulations and the NGA Prohibit El Paso from Unduly Discriminating Among Shippers in Providing Firm and Interruptible Services.

24. Pipelines are precluded by the Commission's regulations from offering firm and interruptible service in an unduly discriminatory manner. Section 284.7(b) of the Commission's regulations, 18 C.F.R. § 284.7(b) (2003), requires that interstate pipelines that offer transportation service on a firm basis "must provide such service without undue discrimination or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind." Pursuant to Section 284.9(b) of the Commission's regulations, 18 C.F.R. § 284.9(b) (2003), the same non-discriminatory access requirements apply to offers of interruptible service.

[43] The failure to offer a functional California Receipt Service is ongoing. As recently as October 9, 2003, El Paso failed to permit a backhaul nomination at Ehrenberg, citing SoCalGas' refusal to confirm such backhaul nominations. Jones Affidavit at ¶ 6.

25. In addition, pipelines are statutorily precluded from applying their tariffs in a manner that would "subject any person to any undue prejudice or disadvantage."[44] Section 4(b) of the NGA requires that "[n]o natural gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service."

26. In purported compliance with the Commission's May 31, September 20, December 26 and July 9 orders, El Paso has implemented a California Receipt Service that is only available to certain shippers with delivery rights at PG&E's and Mojave's interconnects at Topock. This means that only shippers with rights to the Topock interconnect - those with rights to PG&E and Mojave - are able to utilize California Receipt Service, while shippers with primary rights to the Ehrenberg interconnect are precluded from utilizing the very same service. This constitutes discrimination with respect to the quality of service provided to similarly situated shippers and discrimination with respect to maintaining an unreasonable difference in service between localities. El Paso should be required immediately to cease this discrimination and to implement the necessary arrangements so that all shippers accessing capacity at the California border will have equal rights to California Receipt Service.

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[44] 15 U.S.C. § 717c(b).

2. The Commission's Regulations Only Permit Reasonable Operational Conditions, and Those Conditions Must be Filed as Part of the Transportation Tariff.

27. El Paso has neither filed with the Commission nor justified its limitations on providing California Receipt Service. Section 284.7(c) of the Commission's regulations, 18 C.F.R. § 284.7(c) (2003), provides that "a pipeline may impose **reasonable** operational conditions on any service…" but "[s]uch conditions **must be filed** by the pipeline as part of its transportation Tariff." (emphasis added). While El Paso has modified its Tariff in compliance with the FERC directive to offer California Receipt Service, nothing in the certificated service permits El Paso to condition the service on confirmation of the backhaul nomination by a third-party that it knows to be unable or unwilling to perform. Put another way, there is no limitation in the Tariff that the service can be denied based on the upstream or downstream interconnecting party failing to confirm the nomination for California Receipt Service, when as in this case the pipeline is aware of the problem and has indicated that it has the operational capability to meet its certificate obligation by alternative means. Indeed, the only stated conditions on El Paso providing California Receipt Service is that it will be provided "when it is operationally feasible by mainline displacement or exchange." In denying service requests when mainline displacement or exchange in fact is operationally feasible, El Paso is imposing a non-operational condition on the service that has not been filed as part of the transportation Tariff.

28. Moreover, a third-party confirmation condition is not a reasonable obstacle to California Receipt Service for two reasons. First, El Paso has already admitted that self-confirming nominations for backhaul service is possible.[45] Therefore, it is possible to remove SoCalGas from the equation. Second, NAESB standards specifically contemplate the possibility

[45] Scheirer Affidavit at ¶ 2.

of automatic confirmations that would not require a response from the confirming party, in this case, SoCalGas.[46] Thus, the condition of having a third-party confirmation is neither necessary nor reasonable given that it renders the California Receipt Service impossible to implement at certain interconnects.

III.
PROCEDURAL MATTERS

29. 18 C.F.R. § 385.206(b)(6): The specific issues presented by this Complaint concerning El Paso's violation of its Tariff and Commission policy are not pending either before the Commission in an existing proceeding, or in a proceeding in any other forum in which EOC Shippers are involved. Generally, however, the Commission still has pending before it El Paso's compliance filing due within fifteen days of the October 27 Order, but the specific issues raised in this Complaint will not be affected by that filing. Therefore, timely resolution of the specific issues of this Complaint cannot be achieved outside of this proceeding.

30. 18 C.F.R. § 385.206(b)(9): Another end user and potential shipper on the El Paso system, Blythe Energy, LLC, contacted the FERC Enforcement Hotline concerning the identical matters raised in this Complaint. That end user has advised EOC Shippers that Staff has been unable to mediate successfully the dispute.[47] Therefore, EOC Shippers have reluctantly concluded that a negotiated resolution of these matters, whether through bilateral negotiations or some form of Alternative Dispute Resolution, is unlikely.

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[46] NAESB Standard 1.2.11, which has been incorporated into El Paso's tariff (Fifth Revised Sheet No. 202), states:

> Confirmation by Exception ("CBE") means that the Confirming Parties agree that one party deems that all requests at a location are confirmed by the other party (the CBE party) without response communication from that party. The CBE party can take exception to the request by so informing the other party within a mutually agreed upon time frame.

[47] Scheirer Affidavit at ¶ 4.

31. 18 C.F.R. § 385.206(b)(10): A Form of Notice suitable for publication in the *Federal Register* is attached hereto.

32. 18 C.F.R. § 385.206(b)(11): EOC Shippers request that the Commission consider this Complaint pursuant to an expedited, "fast track" procedural schedule pursuant to Commission Procedural Rule 206(h).[48] As newly converted CD shippers, El Paso's discriminatory conduct has harmed and continues to harm EOC Shippers' ability to attract reliable and affordable gas supplies. Moreover, El Paso's failure to implement a key element of the Commission's conversion orders, if not immediately corrected, will deprive the EOC LDCs of needed capacity to meet their impending winter peaking demands.

IV.

CONCLUSION AND REQUEST FOR RELIEF

33. El Paso has knowingly and willfully violated the Commission's regulations, the Natural Gas Act and its Tariff in failing to properly implement its California Receipt Service in accordance with the Commission's directives. El Paso has designed its California Receipt Service so that only those shippers with rights to the Topock interconnect are able to utilize the California Receipt Service, depriving shippers with primary rights to the Ehrenberg interconnects from utilizing the same backhaul service. This constitutes undue discrimination with respect to the quality of service provided to similarly-situated shippers and with respect to maintaining an unreasonable difference in service between localities.

[48] 18 C.F.R. § 385.206(h) (2003).

34. Moreover, as it did with regard to the Commission's order issued on August 29, 2003,[49] El Paso has ignored the Commission's orders here to make this service operational. El Paso's failure to comply with those orders is patent and unexplained; the Commission has not stayed these orders. Indeed, the Commission has relied upon its understanding that the services it ordered El Paso to perform are being performed. As the Commission is well aware, the need for capacity on El Paso is urgent.

35. Accordingly, based on the foregoing, to remedy El Paso's undue discrimination and violation of the regulations, orders and its own tariff, the Commission should expeditiously order:

A) El Paso immediately to implement a functional California Receipt Service as required by Commission orders and El Paso's FERC Gas Tariff: and

B) Such further relief as the Commission determines is warranted by law as applied to the facts of this case.

Respectfully submitted,

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[49] "Order Accepting and Suspending Compliance Filing, Subject to Conditions, and Establishing a Conference," Docket No. RP00-336-014, 104 FERC ¶ 61,232 (2003).

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CERTIFICATE OF SERVICE

Pursuant to the requirements of Rule 206(c), I hereby certify that I have this day served the foregoing document by electronic media, and messenger or Federal Express upon each of the following:

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Dated at Washington, D.C., this 29th day of October, 2003.

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