

UNITED STATES OF AMERICA 106 FERC ¶ 61, 061
FEDERAL ENERGY REGULATORY COMMISSION

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

East of California Shippers

Docket No. RP04-33-000

v.

El Paso Natural Gas Company

ORDER REFERRING COMPLAINT TO SETTLEMENT JUDGE

(Issued January 28, 2004)

1. On October 29, 2003, the East of California Shippers (EOC Shippers) filed a complaint against El Paso Natural Gas Company (El Paso) alleging that El Paso has (1) failed to properly implement a California Receipt Service¹ as required by prior Commission orders² and by El Paso's tariff,³ (2) imposed an unwritten condition on the availability of the California Receipt Service, and (3) implemented the California Receipt Service in an unduly discriminatory manner. To remedy this situation, the EOC Shippers ask the Commission to direct El Paso to immediately implement a functional California Receipt Service. Upon due consideration, this matter will be referred to a settlement judge to help the parties implement the California Receipt Service in the shortest amount of time.

¹ EOC Shippers state that 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.

² El Paso Natural Gas Co., 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 Co., 101 FERC ¶ 61,379 at P 15 (2002) (December 26 Order), order on reh'g, 105 FERC ¶ 61,130 (2003) (October 27 Order).

³ Substitute Original Sheet No. 219E to FERC Gas Tariff, Second Revised Volume No. 1A.

I. Background

2. In the May 31 Order, in the Capacity Allocation Proceeding, the Commission directed that all full requirements (FR) contracts be converted to contract demand (CD) contracts. In order to insure that the former FR shippers would have sufficient capacity to meet their needs, the Commission, among other things, directed El Paso to allow the use of its California delivery points as receipt points in order to promote exchanges from off-system deliveries. In the September 20 Order in the Capacity Allocation Proceeding, the Commission clarified that El Paso should initiate the backhaul or displacement service without delay, and directed El Paso to file tariff sheets to allow the use of its California delivery points as receipt points. In the December 26 Order, the Commission accepted, subject to conditions, El Paso's tariff filing to implement the California Receipt Service. That order, and the October 27 Order, clarified certain details of the California Receipt Service.

II. Notices, Interventions, Answers, and Comments

3. Public notice of the EOC Shippers' complaint was issued on October 30, 2003, with interventions, comments, or protests due on or before November 13, 2003. On December 12, 2003, the Arizona Corporation Commission filed a late motion to intervene. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

4. On November 7, 2003, ONEOK Energy Marketing and Trading Company filed a motion to intervene. On November 13, 2003, Blythe Energy, LLC, Occidental Energy Marketing, Inc., Burlington Resources Oil & Gas Company LP, and the Public Utilities Commission of the State of California (CPUC) filed motions to intervene.

5. On November 13, 2003, Coral Energy Resources, LP, BP America Production Company and BP Energy Company filed motions to intervene and comments in support of the complaint. On November 13, 2003, Duke Energy Trading and Marketing LLC filed a motion to intervene and an answer in support of the complaint asking the Commission to order El Paso to begin self-implementing and scheduling all operationally-feasible firm backhaul nominations from Ehrenberg (a receipt/delivery point at the California border).

6. On November 15, 2003, El Paso Electric filed comments supporting the complaint and urging expeditious action by the Commission. On November 12, 2003, MGI Supply Ltd. filed comments supporting any action that will facilitate availability of the California Receipt Service and stating that if such service can be self-confirmed by El Paso, it

should do so. On November 13, 2003, Southern California Gas Co. (SoCalGas) filed comments stating that it currently does not have CPUC tariff authority to provide services in connection with El Paso's California Receipt Service.

7. On November 26, 2003, EOC Shippers filed an answer to El Paso's answer to the complaint. On December 8, 2003, El Paso filed an answer to EOC Shippers' November 26, 2003 answer.

8. Pursuant to Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), no answer may be made to an answer unless otherwise ordered by the Commission. We are not persuaded that good cause has been shown that would justify accepting EOC Shippers' November 26, 2003 answer or El Paso's December 8, 2003 answer. We will therefore reject these responses.

III. EOC Shippers' Complaint

9. In its complaint, the EOC Shippers argue that El Paso has refused to provide California Receipt Service from the SoCalGas Ehrenberg point. They assert that El Paso has imposed an unwritten condition on this service and has made the service contingent on either (1) the interconnecting party performing a nomination confirmation, or (2) El Paso performing a self-confirmation. The EOC Shippers state that SoCalGas has refused to confirm nominations of backhaul service from its interconnection with El Paso at Ehrenberg. The EOC Shippers assert that neither of these conditions is permitted by the Commission's orders or El Paso's tariff.

10. The EOC Shippers state that El Paso has only performed the 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 backhaul service. Further, the EOC Shippers state that El Paso has advised shippers that its refusal to perform the service is not due to an operational problem, but is due to SoCalGas's unwillingness to confirm the backhaul at the Ehrenberg point. They also allege that because El Paso was aware that SoCalGas was unable to confirm nominations for the California Receipt Service under its existing tariff, El Paso falsely led the Commission to believe that the service was available and would be provided.

11. The EOC Shippers assert that El Paso is capable of self-confirming nominations for backhaul service, but is unwilling to implement such a service even though other pipelines (e.g., Tennessee Gas Pipeline Co.) have done so. The EOC Shippers state that when El Paso learned that SoCalGas would not perform the confirmation of backhaul volumes, El Paso should have redesigned its California Receipt Service so as not to rely on third-party confirmation. Further, the EOC Shippers state that El Paso informed its customers that it had programmed codes to perform self-confirming nominations for

backhaul service, but was waiting to upgrade its computer system until the FR service converted to CD service.

12. The EOC Shippers also argue that El Paso has implemented the California Receipt Service in a discriminatory manner because that service is available only to certain shippers with delivery rights at PG&E's and Mojave's interconnects at Topock.

13. Accordingly, EOC Shippers request that El Paso immediately implement a functional California Receipt Service as required by the Commission's orders and El Paso's tariff.

IV. El Paso's Answer

14. On November 13, 2003, El Paso filed an answer to the complaint. El Paso responds that the EOC Shippers' complaint should be dismissed on procedural grounds as a collateral attack on the Commission's capacity allocation orders. El Paso states that it raised the confirmation issue twice in its pleadings after the May 31 Order, and advised shippers that they should contact SoCalGas, PG&E and Mojave to determine how much capacity those downstream operators can and will make available to the interested shippers. El Paso states that its pleadings make clear that the California Receipt Service is subject to confirmations by the California interconnect operators.

15. El Paso states that the complaint is an improper attack on its Commission-approved scheduling procedures. El Paso states that the scheduling of transportation using California receipts is subject to the procedures set forth in Section 4.1 of the tariff. El Paso states that Section 4.1 specifically provides that El Paso will receive confirmation of the volumes nominated by shippers at all upstream and downstream interconnects during each scheduling cycle. El Paso states that to the extent that either the upstream or downstream interconnected party confirms fewer volumes than the volumes nominated by a shipper, El Paso will schedule the lesser, confirmed volume. If a shipper's volumes are not confirmed on its behalf, then El Paso does not schedule the transaction.

16. Moreover, El Paso states that it does not have tariff authority to self-confirm and the Commission has never required El Paso to provide for such self-confirmation. El Paso further states that, contrary to the suggestion of the EOC Shippers, it has not pre-programmed its systems for such self-confirmations.

17. El Paso further states that it has in fact implemented the backhaul service, and that fifty-five such transactions have been nominated and approximately 200 MMcf was confirmed and scheduled. El Paso states that it believes that one of the companies filing an affidavit in support of the complaint, Blythe Energy, has no intention of using the service as it was intended to be used by the Commission, but, instead, intends to use the service to deliver gas obtained from a southwestern basin to Ehrenberg, and then

“bounce” that gas from the Ehrenberg point to the interconnect with its generating facility near the California border. El Paso states that in these circumstances, SoCalGas would be serving solely as an accounting intermediary, which it may not wish to do.

18. Finally, El Paso states that despite the EOC Shippers’ inability to obtain confirmations from certain interconnect operators from time-to-time, El Paso has treated all nominations by shippers on the same basis under its tariff, and all shippers are asked to confirm the shipper’s nominated volumes in the same manner.

V. Discussion

19. While the Commission recognizes that El Paso has implemented backhaul at the Topock delivery point and does have some confirmation issues at the Ehrenberg delivery point with SoCalGas at the California border, we are concerned that the full intention of our earlier orders has not been implemented. It was the Commission’s intention that El Paso provide a new backhaul service that provides EOC Shippers the ability to add storage or other supply choices for their market area. These requirements were established in order to supplement available mainline capacity to the EOC market and offset the loss of full requirements service. The Commission concludes that the parties have raised a number of issues that may be resolved through settlement, *i.e.*, how El Paso with SoCalGas’ cooperation can implement a functional California Receipt Service at the Ehrenberg point, as required by prior Commission orders and El Paso’s tariff; and whether El Paso is capable of self-confirming nominations for backhaul service, and how it could do so. Therefore, the Commission will refer these matters to a settlement judge to help implement California Receipt Service at Ehrenberg.

20. The Commission in its May 31 Order did not intend to require bounce-at-the-border transactions. Such transactions do not supplement available capacity on El Paso’s mainline. Rather, the Commission required El Paso to permit backhaul/displacement transactions from interconnections at or near the California border “to increase the capacity utilization of the El Paso system and gain access to gas storage facilities in California.”⁴ However, the bounce-at-the-border transactions may be explored at the settlement meeting to determine if the transactions can be accomplished without disadvantaging other shippers.

21. The Commission has consistently encouraged parties to resolve disputes of this nature through settlement. Although the parties have been unable to resolve their issues through informal methods, we believe that more formal settlement procedures may lead to such a resolution. Therefore, to aid the parties in their settlement efforts, a settlement judge shall be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and

⁴ May 31 Order at 62,012.

Procedure.⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in this proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with the order, the designated settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(B) Within forty-five (45) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. The settlement judge shall issue a report at least every forty-five (45) days thereafter, apprising the Commission and the Chief Judge of the parties' progress toward settlement.

By the Commission. Commissioner Brownell dissenting with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary.

⁵ 18 C.F.R. § 385.603 (2003).

⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience. (www.ferc.gov – click on “Legal Matters” and then on “Office of Administrative Law Judges”).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

El Paso Natural Gas Company

Docket No. RP04-33-000

(Issued January 28, 2004)

BROWNELL, Commissioner, dissenting:

1. The EOC Shippers filed a complaint alleging that El Paso has failed to properly implement the California Receipt Service as required by prior Commission orders. The EOC Shippers ask that we direct El Paso to self-confirm their nominations on the interconnecting pipelines, specifically SoCalGas.
2. I have consistently stated I believe that, if there are violations of our rules, regulations or policies, I am willing to punish and correct. If there are no violations, I just as strongly believe that we must exonerate in a public manner. The majority finds no violation of our rules, regulations or our orders approving the California Receipt Service. Therefore, I would have dismissed the complaint.
3. The majority does not dispute that El Paso is providing the California Receipt Service. The EOC Shippers, themselves, acknowledge that El Paso has implemented the California Receipt Service at the PG&E and Mojave interconnects. (See complaint at 13). Since implementing the California Receipt Service, El Paso states that fifty-five transactions have been nominated and confirmed at the PG&E interconnect. El Paso further states that Mojave and North Baja are willing to confirm, but shippers have not yet requested California Receipt Service at their interconnects. However, El Paso has refused to schedule California Receipt Service volumes at the SoCalGas interconnect at Ehrenberg because SoCalGas has refused to confirm the EOC Shippers nominations.
4. El Paso is implementing the California Receipt Service pursuant to the terms and conditions of its tariff that we approved. The scheduling procedures in El Paso's tariff (section 4.1 of the General Terms and Conditions) are the procedures developed by NAESB (Standard 1.3.2), and approved by the Commission, for use by all pipelines. These scheduling procedures provide that a shipper's nomination is to be confirmed by the upstream and downstream interconnecting party before such nominations are

scheduled on El Paso. These scheduling procedures are applicable to all El Paso's rate schedules, including the California Receipt Service.

5. El Paso has stated that it can not self-confirm on the SoCalGas system. Pipelines need the necessary information, i.e., supply source, market, capacity rights on an interconnecting pipeline to confirm a shipper's nomination. Therefore, it would be impractical to require El Paso to provide a self-confirmation service to the EOC Shippers. Furthermore, requiring El Paso to provide a self-confirmation service to only EOC Shippers raises several other issues. Is a self-confirmation service such a valuable right that it must be made available to all shippers on the system and, if so, is the operationally feasible? Does such a deviation from the standard terms and condition for conducting transaction on interstate pipelines give the EOC Shippers a competitive advantage? Do we need to revisit the NAESB standards? Would such a service detrimentally affect the quality of service provided other shippers on the system? I believe it is preferable to seek a solution on the interconnecting pipeline rather than create an exemption to the standardized procedures developed by the industry.

6. Finally, SoCalGas states that it does not have CPUC tariff authority to provide services in connection with the California Receipt Service. However, there are two proposals pending before the CPUC that would seem to give SoCalGas the ability to confirm EOC nominations. Unlike PG&E, SoCalGas does not offer firm service to its non-core customers. However, SoCalGas has a settlement pending before the CPUC that would allow SoCalGas to provide firm transportation service to non-core customers and operate in a manner similar to PG&E. Most recently, SoCalGas has filed with the CPUC a proposed confirmation service, with a charge of up to 31 cents per dt, to be effective January 31, 2004.

7. For these reasons, I respectfully dissent.

Nora Mead Brownell