UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company | Docket Nos. RP00-336-010, RP00-336-011 and RP00-336-012

ORDER ACCEPTING ALLOCATION REPORT AND COMPLIANCE FILING

(Issued July 9, 2003)

1. On December 3, 2002, El Paso Natural Gas Company (El Paso) filed its report (December 3 report) detailing the results of the conversion and capacity rationalization processes pursuant to the orders issued May 31, 2002[1] (May 31 order) and September 20, 2002[2] (September 20 order) in this proceeding. El Paso filed modifications to this report on February 21, 2003, March 18, 2003, and April 8, 2003. On March 31, 2003, El Paso filed tariff sheets to implement the conversion of full requirements service and the conversion of system-wide receipt rights, among other things, in response to the May 31 and September 20 orders.

2. As discussed below, the Commission accepts the revised December 3 report as being in satisfactory compliance with the Commission's directives in the May 31 and September 20 orders. The Commission accepts the tariff sheets listed in Appendix A effective September 1, 2003, subject to the modifications discussed below. The Commission rejects the tariff sheets listed in Appendix B and directs El Paso to file revised tariff sheets before August 1, 2003. This order is in the public interest because it appropriately balances the interests of El Paso and all of its customers in restoring reliable firm transportation service to the El Paso system.

I. Background

[1]99 FERC ¶ 61,244 (2002).

[2]100 FERC ¶ 61,285 (2002).

3. The May 31 order established a framework for resolving the complicated capacity allocation problems that have disrupted and degraded firm service on the El Paso pipeline.[3] Specifically, the Commission required that the full requirements (FR) contracts on El Paso be converted to contract demand (CD) contracts, effective November 1, 2002, and gave the parties time to reach agreement as to the FR customers' entitlements under their new CD contracts. The May 31 order stated that if the FR customers were unable to reach an agreement on their new entitlements by July 31, 2002, the Commission would determine the appropriate CD entitlements for the FR shippers. The Commission further ordered the conversion of system-wide receipt point rights to specified rights at specific receipt points. In addition, the order directed El Paso to accept turnbacks of existing CD entitlements for allocation to converting FR shippers, and directed El Paso to pay demand charge credits to its firm shippers if it is unable to schedule firm service for reasons other than force majeure after the conversion of the FR contracts to CD contracts.

4. On August 1, 2002, El Paso notified the Commission that the FR customers were unable to agree to their CD entitlements. Therefore, on September 20, 2002, the Commission issued an order that set forth the method to be used by El Paso to convert the FR contracts to CD contracts and clarified certain aspects of the process. Specifically, the Commission directed El Paso to use 5,400,000 Mcf/d as its system capacity for allocation purposes in this proceeding. The Commission directed El Paso to deduct from this total of available capacity, capacity that is under contract to CD shippers and to reserve a reasonable amount of capacity for FT-2 FR shippers.[4] El Paso was then to apportion the remaining available capacity among the FR shippers using each shipper's monthly demand over the 12 months ending August 31, 2002 to determine its pro rata share of the available capacity. Further, the Commission directed El Paso to reallocate the current FR revenue responsibility among the FR shippers pro rata based on the new CD levels. The Commission postponed the November 1, 2002 effective date to May 1, 2003, and clarified that the Commission has not changed the 1996 Settlement provisions with regard to limitations on Block I and Block II capacity.[5] The Commission further directed that El

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[3]A detailed explanation of the capacity allocation problems on El Paso and the history of these problems is contained in the prior orders. See the May 31 order at 61,997-62,004.

[4]The May 31 order provided that small shippers that are currently served under El Paso's Rate Schedule FT-2 will be permitted to retain full requirements service as long as their requirements remain less than 10,000 Dth/d.

[5]The 1996 Settlement divides capacity turned back at the time of the 1996 Settlement into three blocks: Block I capacity has alternate receipt point rights unless the

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Paso file a report by December 2, 2002 detailing the results of the capacity allocation process. On December 3, 2002, El Paso filed its Allocation Report detailing the results of the capacity allocation process. On April 14, 2003, the Commission issued an order[6] postponing the effective date of the conversion of the FR contracts to CD contracts until September 1, 2003.

5. On March 31, 2003, El Paso filed tariff sheets to, among other things, implement the conversion of FR service to CD service and the conversion of system-wide receipt points to specific receipt points. On April 4, 2003, El Paso filed in Docket No. RP00-336-012 to revise Sheet No. 127 to include the three newly converted FT-2 shippers who had been inadvertently omitted from the list. The new FT-2 shippers are Chemical Lime Company of Arizona; City of Lordsburg, New Mexico; and Southdown, Inc.

6. On April 22, 2003, El Paso filed to withdraw the tariff sheets in the March 31 filing in light of the April 14 order postponing the effective date of conversion to September 1, 2003. El Paso requested that the Commission permit the withdrawal because the filing was no longer ripe for Commission review. El Paso stated that it would submit a revised tariff filing no less than 30 days prior to September 1, 2003.

II. Public Notice, Interventions and Protests

[5](...continued)
capacity is sold for maximum tariff rates and, in that event, it has primary receipt point rights only at the Permian and Anadarko Basins, but not at the San Juan Basin. Block II turned back capacity has primary access at all system receipt points including the San Juan Basin, but can be recalled by northern California shippers; it also has restricted delivery points. Block III capacity has primary rights at all system receipt points.

[6]103 FERC ¶ 61,059 (2003). The Commission explained that the complaint proceeding in Docket No. RP00-241-000 is also pending before the Commission on exceptions to the initial decisions of the Chief Administrative Law Judge, and that parties to that proceeding had requested that the Commission defer ruling in that case in order to provide the parties an opportunity to file a settlement. The Commission found that it was appropriate to grant a short postponement of the effective date of the conversion of the FR contracts in this proceeding to enable the Commission to determine the impact of the settlement on the allocation issues in this case.

7. Public notice of El Paso's March 31 compliance filing was issued on April 3, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2002)). Protests were filed by the Full Requirements Shippers;[7] the Indicated Shippers;[8] Texas Gas Service, a Gas Division of ONEOK, Inc. (Texas Gas Service); ONEOK Energy Marketing & Trading Co. (OEMT); Public Service Company of New Mexico (PNM); MGI Supply Ltd. (MGI); Pacific Gas and Electric Co. (PG&E); and Southern California Gas Co. (SoCalGas). In addition, comments were filed by El Paso Electric Co.[9] In general, the protestors argue that El Paso has proposed numerous tariff changes unrelated to the conversion of FR service to CD service and system-wide receipt rights to specific receipt rights. They conclude that these changes are therefore outside the scope of a compliance filing and should be rejected. Various protestors also object to specific tariff changes.

8. Texas Gas Service and OEMT filed answers to El Paso's request to withdraw the March 31 filing. The Full Requirements Shippers filed a motion conditionally opposing El Paso's withdrawal of the filing.

9. A number of parties filed comments to the December 3 report. A list of the commenters is attached in Appendix C. The comments address El Paso's proposed revenue reallocation as well as issues related to how El Paso allocated capacity.

10. Public notice of El Paso's April 4 filing in Docket No. RP00-336-012 was issued on April 9, 2003. Interventions and protests were due as provided in Section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2003)). No comments or protests were filed.

III. December 3 Allocation Report

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[7]For purposes of this filing, the Full Requirements Shippers are Arizona Electric Power Cooperative, Inc.; Arizona Gas Division of Citizens Communications Company; Arizona Public Service Co. and Pinnacle West Energy Corp.; BHP Copper, Inc.; El Paso Electric Co.; El Paso Municipal Customer Group; Phelps Dodge Corporations; Public Service Company of New Mexico; Salt River Project; and Southwest Gas Corp.

[8]For purposes of this filing, the Indicated Shippers are Aera Energy, LLC; BP America Production Company and BP Energy Company; Burlington Resources Trading Inc.; ConocoPhillips Company; Coral Energy Resources, LP; Occidental Energy Marketing, Inc.; Marathon Oil Co.; and Texaco Natural Gas Inc.

[9]El Paso Electric reiterates its comments regarding the proposed revenue reallocation, discussed below.

11. The December 3 report describes the process El Paso used to allocate mainline transmission capacity and receipt points. El Paso states that, on October 15, 2002 (revised on November 1, 2002), it sent to its shippers an initial allocation of capacity available to FR shippers as required by paragraph 33 of the September 20 order. El Paso attached the initial capacity allocation to its December 3 Report, which includes an explanation of the method used for the allocation of west flow capacity.[10] El Paso included both the 230,000 Mcf/d of Line 2000 capacity and the 320,000 Mcf/d of Power-Up Project capacity.[11] El Paso deducted (1) capacity sold to CD shippers as of May 31, 2002 (as reduced for CD contracts that had expired or will expire between May 31, 2002 and May 1, 2003); (2) capacity reserved for FT-2 shippers; and (3) capacity used for fuel. El Paso allocated available mainline capacity to FR shippers taking into account the higher of each FR shipper's monthly billing determinant (BD) or each FR shipper's actual average monthly use for each month of the September 2001 through August 2002 time period. El Paso summarized the capacity that each shipper will receive by means of Line 2000, the Power-Up Project, and unsubscribed Block I, Block II, and Block III capacity.

12. With respect to receipt point rights, El Paso states that it received receipt point preferences from many of its shippers. FT-2 shippers and single-basin shippers (shippers with receipt rights under current contracts in one basin only) were not required to submit receipt point preferences. For those shippers with system-wide receipt rights, each shipper was provided a default list of receipt point preferences to review. Shippers had the option to designate different preferences or to use the default preferences. El Paso then used the receipt point preferences identified by each shipper or the default list as appropriate in allocating primary firm receipt rights on the system. All capacity held by CD shippers, reserved for FT-2 shippers, and allocated to FR shippers was assigned specific receipt point entitlements.[12] Unsubscribed capacity (made available from

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[10]El Paso states that, because the September 20 order did not explicitly describe the process to be used to allocate capacity to FR shippers who deliver to points that do not consume west-flow capacity, it worked with its east-end FR shippers to establish the appropriate east-end CDs. Therefore, the allocations of east end capacity for Navajo Tribal Utility Authority, PNM and Southern Union are based on shipper elections rather than on throughput during the September 2001 through August 2002 period.

[11]The Line 2000 capacity was in service November 2002. The Commission authorized El Paso's application to construct and operate the Power-up Project in Docket No. CP03-1-000 by order issued June 4, 2003 (103 FERC ¶ 61,280 (2003)).

[12]The allocations for FT-2 shippers were for modeling purposes only, to ensure that adequate capacity was reserved to serve their needs. The FT-2 shippers will be

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contracts that expired prior to May 1, 2003) that was allocated to the FR shippers is identified as Block I, Block II or Block III depending on the capacity rights attributable to the relevant expired contract.

13. On February 21, 2003, El Paso submitted a revised allocation report. El Paso had noted in its December 3 Report that it had inadvertently allocated receipt rights to two contracts that would not be in effect as of May 1, 2003. The contracts, with Oneok Energy Marketing and Trading and Conoco, Inc. for a total maximum daily quantity of 93,876 Mcf/d, were allocated 1.8 percent of the total San Juan Basin receipt rights and 1.696 percent of the total Permian Basin receipt rights. The revised report includes corrected allocations so that all shippers have the benefit of the additional rights.

14. On March 18, 2003, El Paso submitted a revised receipt point allocation summary report. El Paso states that the revised report reflects the primary receipt point rights swaps and the allocation of contract entitlements among the delivery codes (D-Codes) as preferred by PNM, City of Mesa, Arizona, Salt River Project, and El Paso Electric. El Paso states that no other shipper receipt or delivery entitlements were changed as a result of making the corrections for the four shippers.

15. On April 8, 2003, El Paso submitted a revised receipt point allocation summary report to update delivery point redesignations by Arizona Public Service Company, ASARCO Inc., Citizens Communications Company, Phelps Dodge Corp., and Southern Union Gas Company. El Paso states that these redesignations only involve a shift of allocated quantities between each shipper's existing delivery points and do not affect monthly or yearly quantities; no other shipper receipt or delivery entitlements have been changed from the March 17, 2003 report.

16. Finally, El Paso proposed two alternative FR revenue reallocations for the Commission's review. Both alternatives use currently effective November 1, 2002 tariff rates. The two alternatives are (1) a system-wide (postage stamp) allocation in which the total annual revenues for all FR shippers (regardless of zone) are divided by the new total annual CD levels (regardless of zone) and then reassigned pro rata to each customer's individual annual CD or (2) a zonal pro rata alternative in which the cost reallocation continues to reflect the previously existing zone differentials. El Paso believes that the first alternative is the alternative contemplated by the September 20 order because the order did not expressly require a continuation of the previously existing relative zone cost

[12](...continued)
entitled to nominate their daily needs from any receipt location on the system.

responsibility. El Paso further states, however, that it is indifferent as to the option that is selected since El Paso's revenue stream is unchanged.

A. Revenue Reallocation

1. Comments

17. PNM objects to both revenue reallocation alternatives, stating that there is no basis for using the new CD allocations as a basis for reallocating revenues. PNM argues that each alternative would involve massive shifts in revenue responsibility that are unrelated to the conversion of FR service to CD service. PNM further argues that both El Paso reallocation alternatives, postage stamp and zone-based, stem from the erroneous premise that the May 31 and September 20 orders modify the respective entitlements of the FR shippers. PNM further objects to the reallocation of costs to east-end shippers and production area shippers whose service was not part of the problem on El Paso's system.

18. Southwest Gas Corporation (Southwest Gas) filed a response to PNM's comments,[13] asserting that PNM's comments are a collateral attack on the Commission's orders. Southwest Gas argues that the relative zonal impacts from El Paso's proposal are not unreasonable if the cost responsibility is compared with the CD levels. Southwest Gas argues that PNM's claim that the zonal impacts are unreasonable based on changes in growth is misleading and does not reflect the equitable allocation of costs based on the newly-converted CDs. Southwest Gas states that El Paso's zonal proposal would match cost responsibility with service rights, consistent with Commission orders, and would establish uniform rates within zones. Southwest Gas further states that El Paso's zone-based alternative would eliminate the discrimination that would result from non-uniform rates and would eliminate the unfair price advantage that certain shippers would have in the retail energy market and secondary pipeline capacity market. Southwest Gas states that El Paso's zonal alternative would establish uniform, maximum non-discriminatory rates for capacity release.

19. El Paso Electric states that it does not support cost reallocation prior to the termination of the 1996 Settlement, except in the case of a voluntary settlement, but if the Commission orders cost reallocation, El Paso Electric supports the zone-based alternative because it is consistent with the 1996 Settlement and El Paso's historic rate methodology. Further, El Paso Electric states that the Commission did not order changes in the methodology underlying cost allocation and did not invoke its section 5 authority to

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[13]PNM filed a subsequent answer to Southwest Gas's response. Southwest Gas then filed an answer to PNM's answer.

change the cost allocation methodology; the Commission has not shown that the zone methodology is unjust or unreasonable. El Paso Electric argues that the postage-stamp alternative unreasonably shifts costs from Arizona customers to Texas, New Mexico and production area customers. El Paso Electric, however, requests that the zone-based alternative be modified so that El Paso would recover the same aggregate revenues from each zone with no shifting of costs among the zones.

2. Commission Response

20. In a contemporaneous order on rehearing of the May 31 and September 20 orders in Docket No. RP00-336-006, et al., the Commission grants rehearing and directs El Paso not to reallocate costs among the FR shippers. The Commission thus rejects both sets of tariff sheets herein and directs El Paso to refile revised tariff sheets accordingly.

B. Capacity Allocation

1. Comments

21. Commenters raised capacity allocation issues including the adequacy of the proposed allocation to meet peak FR needs, the reliability of Block I and Block II capacity as firm capacity, the inclusion of Power-Up Project capacity in the initial allocation, the total capacity available for allocation, the availability of supplemental supply sources, and whether to delay the implementation date. These issues have been raised on rehearing in Docket No. RP00-336, et al., and will be addressed there. The remaining capacity allocation issues are discussed below.

22. The FR Shippers and PNM object to El Paso's allocation of capacity to D-Codes[14] and El Paso's designation of separate contracts for each D-Code and type of capacity. They argue that multiple contracts make the nomination and scheduling processes burdensome and that allocating to D-Codes should be done in a later phase of the proceeding, consistent with the Commission's statement that the establishment of contract pathing will be addressed at a future date. They cite Phelps Dodge Corporation as an example; Phelps Dodge, an FR shipper, has been assigned more than 150 contracts, each with its own CD, for its average daily amount of 53,379 Mcf/d of aggregate capacity.

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[14]D-Codes are clusters of delivery points. PNM cites its July 16, 2002 comments in this proceeding where it explained that allocation by D-Code unnecessarily complicates the allocation process. PNM explains that it receives gas at 58 delivery points and that for administrative purposes, El Paso has organized these delivery points geographically into 12 separate D-Codes.

23. Finally, the City of Mesa, Arizona (Mesa) and PNM jointly allege that there is another flaw in El Paso's methodology of assigning receipt point quantities on a D-Code basis. Mesa/PNM contend that El Paso assigned a CD volume of zero for certain months to several of the D-Codes of Mesa and PNM that were served by El Paso during the September 2001 to August 2002 period. They explain that the actual measured monthly volumes for these D-Codes ranged from 50,228 MMBtu to 22,228 MMBtu during the months for which El Paso assigned a zero volume. They conclude that this is another indication that El Paso's allocation methodology is deficient. El Paso subsequently determined that it had made an error and filed a revised allocation summary that allocates volumes to the D-Codes in question.[15] PNM subsequently filed a response stating that, while El Paso allocated volumes to all the requested D-Codes, it did not increase the total volumes allocated to PNM.

24. El Paso responds that it allocated volumes to D-Codes based on historical scheduled volumes during the 2001-2002 period. El Paso states that FR shippers have been afforded the opportunity to schedule transportation deliveries to D-Codes which gives them the flexibility to pull gas from one meter or another within the D-Code areas as needs arise within the gas flow day. El Paso argues that the use of D-Codes does not equate to establishing a contract path on the system, since deliveries have been scheduled on the basis of D-Codes for years. El Paso states that it allocated capacity to converting FR shippers based on their receipt point elections and their historical D-Code deliveries because FR shippers have experience with scheduling to D-Codes and because there is historical data from which El Paso could determine each individual FR shipper's demands at its primary D-Codes.

2. Commission Response

25. The Commission has reviewed El Paso's proposed capacity allocation report and finds that El Paso has conducted its capacity allocation and receipt point allocation processes in accordance with the Commission's directives in its May 31 and September 20 orders.[16]

26. The Commission finds acceptable El Paso's allocation of capacity on a D-Code basis. Shippers maintain the flexibility to use alternate delivery points and to request

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[15]El Paso's March 12, 2003 letter to the Commission explaining the error also states that El Paso's response to Mesa/PNM's supplemental comments was in error.

[16]Appendix D shows each converting FR shipper's peak month allocation.

changes in primary delivery points if necessary. Issues regarding the establishment of contract paths will be addressed in the next phase of this proceeding as part of the Commission's Order No. 637 review.

27. Finally, the Commission finds that El Paso has appropriately allocated its currently available capacity, including the Line 2000 capacity, to all receipt basins. The Line 2000 capacity is currently accessible to all existing shippers through use of system-wide receipt point rights, and it is thus reasonable to treat this capacity like other existing capacity. On the other hand, El Paso has not allocated San Juan receipt point rights to the Power-Up Project capacity; that capacity, unlike the Line 2000 capacity, is not currently available. The Commission finds that this receipt point allocation of the Line 2000 and Power-Up Project capacity is consistent with the May 31 and September 20 orders.

IV. March 31 Compliance Tariff Filing

28. El Paso submitted tariff sheets to implement, among other things, two principal changes in service: (1) the conversion of firm FT-1 full requirements service to contract demand service with specified volumetric entitlements; and (2) the conversion of system-wide receipt rights to rights at specific receipt points or at supply pools.

29. As noted above, El Paso subsequently requested permission to withdraw the tariff sheets in light of the postponement of the date of conversion of the FR contracts. The brief postponement of the effective date of the FR conversion does not afford a basis for withdrawal of El Paso's compliance filing. As discussed below, the protests raise numerous issues regarding the compliance filing and those issues must be resolved so that El Paso can refile tariff sheets to govern the conversion process and provide shippers with notice of the procedures that will be in effect on the system after conversion. The changes that will take place on El Paso's system after conversion will be significant and no purpose would be served in delaying the resolution of these issues.

30. Numerous parties filed protests to El Paso's compliance filing. The protestors identified several proposed tariff revisions that allegedly either do not comply with the Commission's orders or are contrary to Commission policy. In addition, the protestors also claim El Paso made proposed tariff changes that go beyond the scope of the Commission's requirements. Many issues raised by the protests to El Paso's compliance filing are similar to those raised in the requests for rehearing of the May 31 and September 20 orders and to those raised with regard to the December 3 report. Those issues are addressed in the accompanying order on rehearing and above, and will not be addressed here. The Commission addresses the protestors' remaining issues below.

31. In the March 31 filing, El Paso has proposed numerous tariff revisions to implement the conversion of FR service to CD service and the conversion of systemwide receipt rights to specific receipt rights. Certain of the proposed revisions were not directly ordered by the Commission in its May 31 or September 20 orders, as noted by the protestors. The Commission understands that the conversions to CD service and specific receipt rights required by the May 31 and September 20 orders will result in major changes in the operation of El Paso's system. While the actual conversion of FR service to CD service requires minimal tariff revisions, the conversion may necessitate further changes to El Paso's tariff to facilitate efficient operation once the conversion is implemented. Certain of El Paso's proposed modifications, while outside the scope of the compliance filing, may be reasonable and necessary for efficient operation of El Paso's system after implementation. The Commission finds that El Paso generally complied with the May 31 and September 20 orders. The Commission accepts the tariff sheets listed on Appendix A, effective September 1, 2003, conditioned upon El Paso filing revised tariff sheets as discussed below.

1. Conversion of FR Service to CD Contracts

32. El Paso states that the capacity allocated to each converting FR shipper originates from various sources, e.g., existing full requirements capacity, Line 2000 capacity, Power-Up Project capacity, and Block 1, Block 2, and Block 3 unsubscribed capacity. In addition, some converting FR shippers acquired turnback capacity. El Paso states that each FR shipper's defined capacity includes capacity with distinct scheduling rights, which requires separate treatment pursuant to the 1996 Settlement. Therefore, El Paso states that it has organized these defined contract rights under separate transportation service agreements (TSAs) in order to insure that each shipper's capacity rights are protected and that capacity allocations are properly supported.

33. El Paso submitted primary and alternate tariff sheets[17] to reflect the revenue reallocation described in the December 3 report. The primary sheets would implement El Paso's system-wide pro-rata allocation option and the alternate sheets would implement the zonal pro-rata alternative.[18]

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[17]Sheet Nos. 117, 118, and 118A.

[18]El Paso states that it has adjusted the illustrative allocation for the January 1, 2003 annual rate escalation accepted by an unpublished Commission letter order issued December 30, 2002 at Docket No. RP03-111-000.

34. El Paso further states that, in order to properly invoice for service under the separate TSAs for converting FR shippers, El Paso has calculated an Effective Unit Rate, which is an adjusted contract rate to recognize the converting FR shippers' higher CDs at the same aggregate level of revenue responsibility. El Paso states that it will use the Effective Unit Rate for invoicing transportation charges and reservation charge crediting. El Paso explains that capacity releases by converting FR shippers will not be capped by the Effective Unit Rate, but will continue to be subject to the maximum reservation rates, as with other firm shippers.

35. El Paso states that it will consider imbalances generated under an individual shipper's separate TSAs as one imbalance, to ease the administrative burden for converting FR shippers. El Paso further states that Sheet No. 288 has been revised to provide that converting FR shippers will not be charged the Out-Of-Zone Daily Reservation Charge for service involving alternate points in the same delivery zone as their historic service territory or an upstream delivery zone. Service to such alternate points will be provided at the Effective Unit Rate. El Paso explains that currently, since the FR shippers are all maximum rate shippers, they do not pay additional reservation charges when they use alternate point rights within the same delivery zone or in an upstream zone.

36. El Paso has modified Sheet No. 119 to reflect that El Paso will bill converting FR shippers the Effective Unit Rate as a constant rate billed each month, regardless of the varying seasonal CDs. In addition, converting FR shippers will have priority for purchasing new capacity constructed by El Paso, and will pay the appropriate reservation charge for that additional capacity.

37. El Paso has modified Sheet No. 120 to remove Section 10.2, which permitted certain shippers to elect to pay a greater share of their annual payments during the winter season. El Paso states that Section 10.2 has been superseded by new Section 9.3 which specifies that the shipper's monthly revenue responsibility will not change from month-to-month. El Paso states that no shipper has used this section to make modified payments; thus, removal will not adversely affect any shipper.

38. El Paso has also modified Sheet No. 214 to add a provision that “firm service shall be scheduled based on confirmed quantities not to exceed the capacity of the facility to receive or deliver gas and not to exceed any shipper’s maximum contract quantities.”

Protests

39. The FR Shippers contend that, instead of simply converting FR service to CD service, El Paso has created a new, inferior firm service by providing different varieties of

non-firm capacity and by compelling converting shippers to enter into multiple contracts for multiple contract paths. The protestors argue that disaggregating TSAs will unnecessarily and unreasonably reduce shipper flexibility to schedule and nominate. The FR Shippers conclude that this approach is unduly discriminatory.

40. The FR Shippers further assert that revised Sheet No. 214 is inconsistent with Commission policy and the May 31 and September 20 orders. The FR Shippers state that Sheet No. 214 limits firm service contract rights by defining firm allocation as based on confirmed quantities not to exceed the capacity of the facility. The FR Shippers argue that firm shippers have the right to nominate and have scheduled all capacity under contract; firm service rights are based on contracts, not capacity sufficiency.

41. Several protestors addressed the revenue reallocation proposals, which are similar to the protests addressed in the discussion of the December 3 report above.

Commission Response

42. The Commission finds that El Paso's proposal to establish separate TSAs for each type of capacity, while not specifically required by the previous orders, is a reasonable approach. This approach is used for all CD shippers, both existing and newly converted, so that it is not unduly discriminatory. While the newly converted shippers have additional categories of capacity that the existing CD shippers do not have (including Line 2000 and Power-Up Project capacity), any shipper receiving new capacity will require a new TSA. To accommodate the multiple contracts, El Paso has stated that it will consider imbalances under a shipper's TSAs as one imbalance, to ease the administrative burden. The Commission expects El Paso to provide similar means of simplifying nominations and scheduling to address the shippers' concerns.

43. El Paso's proposed tariff provision that firm service will be scheduled not to exceed the capacity of the facility is reasonable and the Commission will accept Sheet No. 214. The language does not limit El Paso's obligation to serve the full contract demand of each firm shipper, but merely provides that quantities in excess of the capacity of the facilities will not be scheduled as firm. After the conversion to contract demand service and specific receipt rights, El Paso will be required to serve shipper nominations up to the contract demand rights at each receipt and/or delivery point and will be required to pay reservation charge credits if it is unable to do so, absent force majeure situations.

44. In addition, El Paso submitted two sets of tariff sheets to implement the revenue reallocation. The Commission is directing El Paso not to reallocate costs among the FR shippers, as discussed above; thus, both sets of tariff sheets implementing the revenue

reallocation are rejected, and El Paso is required to refile revised tariff sheets, and any necessary conforming changes, consistent with the body of this order.

2. Rate Schedule FT-2 Provisions

45. El Paso has revised its tariff to establish the service eligibility ceiling for FT-2 shippers of 10,000 Dth per day, as required by the May 31 order. El Paso has also revised Sheet 127 of its tariff to add a new Section 4 to Rate Schedule FT-2 to list the FT-2 shippers. El Paso subsequently filed a substitute tariff sheet in Docket No. RP00-336-012 to reflect the three FR shippers that converted their FT-1 service to FT-2 service: Southdown, Inc.; City of Lordsburg, NM; and Chemical Lime Company of Arizona.

Commission Response

46. El Paso's proposed tariff sheets, as modified by the Docket No. RP00-336-012 filing, satisfactorily comply with the Commission's directive to limit the FT-2 service to 10,000 Dth per day. The Commission rejects Fourth Revised Sheet No. 127 which is superseded by Substitute Fourth Revised Sheet No. 127 to reflect the three FT-2 shippers that were inadvertently left off the list of FT-2 shippers.

3. Route Quantities

47. El Paso states that the establishment of specific receipt rights for each FT-1 shipper requires that the TSA reflect shippers' revised capacity entitlements. El Paso proposes that TSAs will include a maximum daily Route Quantity for each receipt and delivery point combination and that TSAs may contain multiple Route Quantities reflecting the different combinations of receipt and delivery point rights under the contract. El Paso asserts that these combinations of receipt and delivery points do not equate to path rights across a specific segment of El Paso's system. They indicate where the shipper may receive and deliver gas but the path over which the gas travels is not defined at this time. El Paso indicates that it anticipates that it will propose a method for pathing contract rights in its Order No. 637 implementation filing.

48. El Paso states that Route Quantity rights would provide the following scheduling priority: (1) Primary Firm would be firm service using a shipper's primary receipt and delivery points; (2) First Alternate Firm would be firm service using receipt and delivery points specified in the TSA but in a different combination from those provided in the individual Route Quantities or firm service using one receipt or delivery point not specified in the TSA; and (3) Second Alternate Firm would be firm service using receipt and delivery points not specified in the TSA. El Paso asserts that this three-tiered

scheduling priority would give shippers greater flexibility under their TSAs by allowing them more opportunities to use the capacity for which they contracted.

49. El Paso has also proposed to modify its right-of-first refusal (ROFR) provisions to reflect Route Quantities, Sheet Nos. 289 and 290. Similarly, El Paso has revised its capacity release provisions to reflect Route Quantities, Sheet No. 348.

Protests

50. The FR Shippers argue that the use of Route Quantities is equivalent to pathing, which is not permitted by the Commission's orders. They assert that all Order No. 637 changes, including pathing, need to be reviewed together. The FR Shippers conclude that El Paso has not made the case that Route Quantities are reasonable. Protestors also object to the changes to the ROFR procedures and capacity release to reflect Route quantities.

Commission Response

51. The Commission finds that the proposed tariff provisions to establish Route Quantities go beyond what is necessary to convert the FR contracts to CD contracts, and therefore exceed the scope of the Commission's prior orders. These tariff provisions are, therefore, rejected.

4. Reservation Charge Crediting

52. El Paso modified its tariff (Sheet Nos. 113B and 113D) to comply with the May 31 and September 20 orders that directed El Paso to begin crediting the full amount of reservation charges concurrently with the conversion of system-wide receipt rights. El Paso has removed the provision exempting the credit in circumstances where capacity is available in other supply basins as well as the provision exempting discounts below a specified level. El Paso added a provision to specify the treatment of credits for the proposed Power-Up Project capacity to state that the credit will become applicable to the Power-up Project capacity when the capacity is placed into service.

53. Sheet No. 245 revises Section 10 of the GT&C to clarify that any consequential damages resulting from service interruptions shall be limited by the amount of the reservation charge credit.

54. Sheet No. 314 clarifies that reservation charge credits will be deducted from the revenue subject to the risk sharing revenue crediting provision.

Protests

55. Protestors assert that El Paso has not modified the reservation charge credit provision to remove the 95 percent limitation. They argue that, during the interim period between November 1, 2002 and September 1, 2003, the Commission required El Paso to provide limited reservation charge credits for any nomination cuts whenever El Paso is unable to delivery at least 95 percent of the CD shipper's nominated quantity. They contend that, after the implementation date, shippers are entitled to a full reservation charge any time nominations are cut by El Paso. They conclude that El Paso failed to remove that limitation in its filing.

56. The protestors further object to various modifications that limit El Paso's obligation to pay reservation charge credits. In particular, the protestors object to a change in the calculation of the Risk Sharing Revenue Credits set forth in Section 25.3(a) that reduces the Risk Sharing Revenue Credits for any reservation charge credits made. They argue that the proposal unreasonably shifts the risk of El Paso's performance to the shippers. The protestors further object to Section 10.1 of the GT&C that limits consequential damages or expenses to the amount of the reservation charge credit. The protestors argue that, in addition to being unrelated to the Commission's directives, the proposal is unjust and unreasonable because it improperly limits El Paso's liability even in the event of El Paso's breach of contract.

57. In addition, the FR Shippers, OEMT, and Texas Gas Services protest several modifications to the reservation credit charge. They assert that Section 5.3(c) appears to limit the applicability of credits only to offset past due balances and should be clarified to insure that all credits be directly applied to reduce a shipper's monthly transportation charge. They contend that credits should be based on whether El Paso provides all scheduled nominations, not confirmed nominations as proposed by El Paso in Section 5.1(b) of Rate Schedule FT-1. They further object to El Paso's proposal to exclude from its obligation contract demands that are attributable to Power-Up Project capacity until that capacity is placed in service.

Commission Response

58. The Commission finds that El Paso's proposal to limit consequential damages by the amount of the reservation charge credit is unreasonable and unrelated to the conversion of FR service. Similarly, the Commission finds that the proposal to deduct reservation charge credits from the revenue subject to the risk sharing revenue crediting provision would improperly limit El Paso's liability and is also outside the scope of the compliance filing. The Commission further finds that El Paso has failed to revise its reservation charge credit to remove the 95 percent limit, as required by the Commission's September 20 order. The Commission therefore rejects Sheet Nos. 245, 314, and 113B and requires El Paso to file revised tariff sheets before August 1, 2003.

59. The language in Section 5.3(c) regarding the application of reservation charge credits to offset past due balances is existing tariff language that El Paso has not proposed to change herein. Therefore, the Commission will not order a change in this compliance filing. In any event, the language does not provide that the reservation charge credit would be limited by the level of past due balances, and the FR Shippers concern appears to be unfounded.

60. With regard to the protestors' assertion that credits should be based on whether El Paso provides all scheduled nominations, not confirmed nominations as proposed by El Paso in Section 5.1(b) of Rate Schedule FT-1, the Commission finds El Paso's proposal appropriate. Credits should be based on confirmed nominations.

61. The Commission will also accept El Paso's proposal to exclude from its obligation contract demands that are attributable to Power-Up Project capacity until that capacity is placed in service. The Commission finds El Paso's proposal appropriate. El Paso should not be liable for reservation charge credits if the capacity is not fully in service.

5. Other Tariff Changes Related to Specified Primary Point Rights

62. El Paso has revised Sheet Nos. 30 and 31, the Statement of Negotiated Rates sheets, to replace the description of system-wide receipt rights with specific receipt points assigned to each negotiated rate shipper and to delete one expired contract.

63. Sheet No. 219E has been revised to provide primary firm receipt point rights at the California border to facilitate the California Receipt Point Service. El Paso states that this is consistent with its offer to provide primary firm service concurrently with the conversion of FR rights and the conversion of system-wide rights. El Paso states that existing FT-1 and FT-2 shippers may, subject to certain conditions, re-designate existing primary receipt point rights to a primary California receipt point by providing written notification to El Paso.

64. El Paso has revised Sheet No. 288 to permit FT-1 shippers to re-designate primary receipt rights under a TSA if firm capacity is available to and at the requested point and if the change will not harm other firm shippers.

Protest

65. The FR Shippers request that El Paso explicitly provide for the right to re-designate primary delivery points.

Commission Response

66. The Commission accepts El Paso's modifications as necessary to implement the directives of the Commission's orders. The provision to redesignate receipt points is necessary to implement the California Receipt Point Service. The suggested provision to redesignate delivery points is not required to implement the conversion to full requirements service or the conversion to specific receipt rights.

6. Scope of the Compliance Filings

67. In general, the protestors contend that El Paso has proposed a number of tariff modifications in its compliance filing that exceed the scope of the Commission's May 31 and September 20 orders. Among those modifications that the protestors claim are not required are: (1) the proposal to institute Route Quantities; (2) the provisions subdividing capacity on a D-Code basis and by source of capacity; (3) the modifications to the ROFR and capacity release provisions requiring pro rata treatment by Route Quantities; and (4) the revisions limiting El Paso's obligation to pay reservation charge credits. The FR Shippers argue that the only changes required to comply with the May 31 and September 20 orders would be those applicable only to FT-1 full requirements shippers, such as the listings of billing determinants for those shippers, and the addition of the 10,000 Mcf/d eligibility ceiling for FT-2 service. The protestors conclude that those changes outside the scope of the Commission's orders should be rejected. In addition, the protestors request that the Commission convene a technical conference so that El Paso may provide explanations for the proposed tariff changes that are outside the scope of the compliance filing.

Commission Response

68. As is explained above, the Commission is rejecting the provisions that are contrary to Commission policy. The remaining provisions are either explicitly in compliance with the Commission's May 31 and September 20 orders or comprise a reasonable approach to facilitate the efficient operation of El Paso's system after conversion to contract demand service and specific receipt rights. For this reason, a technical conference is not needed at this time.

7. Miscellaneous Tariff Issues

69. The FR Shippers protest El Paso's proposal to limit rights of primary point holders at physical receipt points located behind a pool to only secondary rights. The Commission accepts El Paso's proposal. A shipper must choose between primary rights at the pool or at a physical receipt point behind a pool. Choosing a receipt point behind

the pool preserves the right of a shipper to receive gas through the pool, but does not confer expanded rights at the pool.

70. The FR Shippers protest El Paso's revised definition of "Operator." Under the new definition, Operator is the person or entity that controls the movement of gas through an interconnect point. This definition is changed from the existing definition wherein an Operator controls the "flow" of gas "into El Paso's system." The protestors state that the change appears to be benign, but state that El Paso has provided no explanation for the change nor for the necessity of the change in this compliance filing. The Commission will accept the proposal subject to El Paso providing an explanation for the change.

71. The FR Shippers protest El Paso's proposal to hold converting FR shippers responsible for the reservation charge of released capacity, arguing that it appears to free the releasing shipper from all revenue responsibility. The FR Shippers believe this provision is overly broad and inconsistent with the Commission's capacity release provisions that allow capacity to be released at a discount. The Commission finds that the proposed language is vague and should be modified to be consistent with the Commission's capacity release provisions.

72. The FR Shippers request clarification as to whether the converted FR contracts' termination date should be the later of December 31, 2005 or the effective date of the next systemwide rate change. The Commission agrees and directs El Paso to modify its tariff accordingly.

The Commission orders:

(A) El Paso's December 3 Capacity Allocation Report, as revised on February 21, 2003, March 18, 2003, and April 8, 2003, is accepted.

(B) El Paso is directed to file revised tariff sheets consistent with the discussion in the body of this order before August 1, 2003.

(C) The tariff sheets listed in Appendix A are accepted, effective September 1, 2003, subject to the modifications described in the body of this order.

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

El Paso Natural Gas Company
Docket No. RP00-336-011

Accepted Tariff Sheets
Effective September 1, 2003

First Revised Volume No. 1A

Twentieth Revised Sheet No. 22
Twenty-Fifth Revised Sheet No. 23
Thirty-Third Revised Sheet No. 24
Twentieth Revised Sheet No. 28
Original Sheet No. 28A
Thirty-Seventh Revised Sheet No. 30
Thirty-First Revised Sheet No.31
Second Revised Sheet No. 110
Sixth Revised Sheet No. 111
First Revised Sheet No. 113D
Third Revised Sheet No. 114

Text Moved Here: 1
Second Revised Sheet No.119
Second Revised Sheet No.120
Second Revised Sheet No. 125
Third Revised Sheet No. 128
Second Revised Sheet No. 201
Sixth Revised Sheet No. 214
Third Revised Sheet No. 215A
Second Revised Sheet No. 215B
Third Revised Sheet No. 218
Second Revised Sheet No. 219
First Revised Sheet No. 219A.01
First Revised Sheet No. 219E
First Revised Sheet No. 255
First Revised Sheet No. 278
Third Revised Sheet No. 288
Original Sheet No. 288A
Second Revised Sheet No. 334
Fourth Revised Sheet No. 336
First Revised Sheet No. 348A
Sixth Revised Sheet No. 350
Second Revised Sheet No. 354
Second Revised Sheet No. 414
Second Revised Sheet No. 433
Third Revised Sheet No. 434
Second Revised Sheet No. 439
Second Revised Sheet No. 442

El Paso Natural Gas Company
Docket No. RP00-336-012

Accepted Tariff Sheets
Effective September 1, 2003

First Revised Volume No. 1A

Substitute Fourth Revised Sheet No. 127

APPENDIX B

El Paso Natural Gas Company
Docket No. RP00-336-011

Rejected Tariff Sheets

First Revised Volume No. 1A

Second Revised Sheet No. 113B
Fifth Revised Sheet No. 117
End Of Moved Text
Alternate Fifth Revised Sheet No. 117
Seventh Revised Sheet No. 118
Alternate Seventh Revised Sheet No. 118
Original Sheet No. 118

A

Alternate Original Sheet No. 118A
Ninth Revised Sheet No. 202B
Fifth Revised Sheet No. 215
First Revised Sheet No. 245
Fourth Revised Sheet No. 127
Fourth Revised Sheet No. 287
Fourth Revised Sheet No. 289
Fifth Revised Sheet No. 290
Fourth Revised Sheet No. 314
Third Revised Sheet No. 348

APPENDIX C

December 3 Allocation Report
Commenters

Arizona Public Service Company and Pinnacle West Energy Corporation
BHP Copper, Inc.
City of Mesa, Arizona and Public Service Company of New Mexico
Full Requirements Shippers

> (For purposes of this filing, FR Shippers are Arizona Electric Power Cooperative, Inc.; Arizona Gas Division of Citizens Communications Company; Arizona Public Service Co.; El Paso Electric Company; El Paso Municipal Customer Group; Phelps Dodge Corporations; Pinnacle West Energy Corporation; Public Service Company of New Mexico; and Salt River Project. Southwest Gas Corporation and BHP Copper, Inc support his filing).

Indicated Shippers

> (For purposes of this filing, the Indicated Shippers are Aera Energy, LLC; BP America Production Company and BP Energy Company; Burlington Resources Trading Inc.; ConocoPhillips Company; Coral Energy Resources, LP; Occidental Energy Marketing, Inc.; and Texaco Natural Gas Inc.)

Public Service Company of New Mexico
Southern California Gas Company
Southwest Gas Corporation

APPENDIX D

Comparison of FR Shipper Billing Determinants, 2001 NCP and Initial Allocation by Shipper's Peak Month (Mcf/d)

FT-1 FR Shippers *	Billing Determinants	2001 NCP	NCP Allocation***	12/3/02 report Shipper's peak month
Arizona Electric Power	17,478	47,996	48,516	September
Arizona Public Service	64,557	294,097	375,888	August
ASARCO	2,926	8,747	9,404	November
ASARCO	5,828	5,557	5,828	BD
BHP Copper	12,910	387	12,910	BD
Citizens Utilities	36,765	120,354	157,429	April
City of Las Cruces, NM	12,395	25,504	34,257	January
City of Mesa, AZ	13,927	32,711	43,269	January
El Paso Electric	36,479	139,148	171,004	October
MGI Supply	22,483	67,265	212,776	November
Navajo Tribal Utility **	12,140	24,860	19,462	January
Phelps Dodge Corp.	23,908	66,347	95,851	Sep/Oct/Nov
PNM Gas Services	32,469	128,075	172,046	January
Salt River Project	47,254	372,722	405,703	May
Southern Union Gas	76,919	164,494	222,625	February
Southwest Gas	329,754	625,975	727,950	January
Total	748,192	2,124,239	2,714,918	

* Several of the original FT-1 FR shippers converted to FT-2 service and are not included, i.e., Chemical Lime, City of Lordsburg, and Southdown

** Navajo has westflow and east end deliveries. The 12/3/02 report shows that Navajo's westflow allocation of 9,661 Mcf/d exceeds its westflow BD of 2,339 Mcf/d. Allocations of east end capacity to Navajo and others are based on shipper elections, not current usage.

*** Each FR shipper's peak month allocation from the 12/3/02 report. Each shipper's peak month is shown in the right column. BD indicates that the shipper's peak month allocation was its billing determinant.