111 FERC ¶ 61,408
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company Docket Nos. CP05-2-000
CP05-2-001

ORDER ISSUING CERTIFICATE

(Issued June 16, 2005)

1. On October 5, 2004, El Paso Natural Gas Company (El Paso) filed an application under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to acquire an 87.8-mile segment of crude oil pipeline extending from Ehrenberg, Arizona to Cadiz, California and operate the segment as a natural gas pipeline in interstate commerce. El Paso also proposes to construct and operate 6.4 miles of pipeline and appurtenant facilities that would connect the 87.8-mile segment of pipeline to the facilities of Mojave Pipeline Company (Mojave) near Cadiz.

2. In addition to the proposed acquisition and construction of facilities, El Paso contemplates that it will acquire capacity on Mojave's system and that Mojave will enter into an agreement with Kern River Gas Transmission Company (Kern River), whereby Kern River will modify its compressor station at Daggett, California to allow gas to flow east on Mojave from Daggett to Cadiz and into the segment of oil pipeline proposed to be acquired.[1] Subject to the environmental and other conditions set forth below, we will approve the proposals for which El Paso seeks certificate authority because they will provide a west-end connection between El Paso's north and south systems, will enable El Paso to move gas to Ehrenberg for its customers, and will help alleviate displacement on El Paso's system.[2] We will also approve rolled-in rate treatment as described herein.

[1] El Paso does not need certificate authority to acquire capacity on Mojave's system. Kern River will modify its compressor station under the terms of its blanket certificate.

[2] El Paso's calls its proposals "the Line 1903 project."

I. Background

3. There are several interstate natural gas companies involved in El Paso's proposals, as well as the existing crude oil pipeline. The natural gas companies, their facilities, and the crude oil pipeline are described below.

4. El Paso is a natural gas company that operates an interstate pipeline system extending from production areas in the southwestern United States through Texas, New Mexico, Colorado, and Arizona to two points of termination at the boundary between Arizona and California near Topock and Ehrenberg, Arizona. At Topock, El Paso's northern system interconnects with Mojave and Southwest Gas Corporation (Southwest), interstate pipeline companies, and Southern California Gas Company (SoCalGas) and Pacific Gas and Electric Company (PG&E), Hinshaw pipelines subject to regulation by the California Public Utilities Commission (CPUC). At Ehrenberg, El Paso's southern system interconnects with SoCalGas. El Paso also has an interconnection with North Baja Pipeline, LLC (North Baja) near Ehrenberg.

5. Mojave, an affiliate of El Paso, is a natural gas company that operates an interstate pipeline extending from interconnects with El Paso and Transwestern Pipeline Company near Topock to a point near Bakersfield, California.

6. Kern River is a natural gas company that operates an interstate pipeline extending from various receipt points in Wyoming through Utah and Nevada to the San Joaquin Valley near Bakersfield. Kern River has delivery points located along its system in Utah, Nevada, and California. At its Daggett, California delivery point, Kern River interconnects with Mojave and PG&E.

7. On March 24, 2000, EPNG Pipeline Company, a wholly owned subsidiary of El Paso, purchased a 1,088-mile long, 30-inch diameter crude oil pipeline that extends from McCamey, Texas to a point near Bakersfield. In *El Paso Natural Gas Company*, 95 FERC ¶ 61,176 (2001), we authorized El Paso to acquire and operate a 785-mile long segment of the crude oil pipeline extending from McCamey to a point near Ehrenberg. Here, El Paso, among other things, seeks to acquire and operate an additional 87.8-mile segment of the crude oil pipeline from Ehrenberg to Cadiz.[3]

[3] El Paso states that the final disposition of the remaining 215-mile segment from Cadiz to Bakersfield has not been determined.

II. Proposals

A. Overview

8. El Paso requests authority under section 7(c) of the Natural Gas Act to acquire, convert to natural gas service, and operate a segment of the crude oil pipeline between Ehrenberg and Cadiz, California, known as Line 1903, and to construct and operate an interconnect between Line 1903 and Mojave near Cadiz (the Cadiz Crossover). As part of its Line 1903 project for which it does not request certificate authority, El Paso states that it will acquire firm capacity on Mojave's system and that Mojave will enter into an agreement whereby Kern River will modify plant yard piping at Kern River's existing compressor station at the Daggett delivery point so that gas can flow east from Kern River into Mojave for delivery to El Paso at Cadiz.

9. El Paso contends that its proposals will provide it with a new west-end crossover between its north and south mainlines near Cadiz, similar to the Havasu Crossover in Arizona. Because of its capacity on Mojave, El Paso states that it will be able to transport up to 502,000 Mcf per day through Line 1903 for deliveries to Ehrenberg, North Baja, and east to Phoenix, Arizona markets. El Paso also contends that its proposals will ease its reliance on displacement to provide firm transportation service for north to south capacity.

B. Activities that Require Certificate Authority

10. El Paso proposes to acquire approximately 87.8 miles of 30-inch diameter crude oil pipeline and operate it as a natural gas transmission pipeline. The 87.8-mile segment of Line 1903 extends from an interconnection with El Paso's south system pipeline near Ehrenberg northwest to a point near Cadiz. Line 1903 will have a capacity of up to 502,000 Mcf per day. El Paso also proposes to:

- hydrostatically test the entire length of pipe via the installation of seven hydrostatic test headers;
- remove three vent/pig signals and four mainline valves;
- install six mainline valves;
- construct a pipeline interconnect;
- install a pipeline segment to replace the Cadiz oil pump station;
- remove existing pigging facilities and install new pigging facilities;

- install two metering facilities (including pressure regulation and pipeline overpressure equipment) at the Cadiz Crossover metering facilities;

- recondition, install, or replace pipeline in several small sections where the pipe is believed to have been damaged or where a United States Department of Transportation class upgrade is necessary;

- establish construction staging areas; and

- remove and repair pipeline sleeves.

11. El Paso also proposes to construct and operate 6.4 miles of 30-inch diameter pipeline and associated metering facilities to connect the 87.8-mile segment of Line 1903 to the Mojave system at Cadiz.[4] The Cadiz Crossover will be constructed within an existing right of way for the oil pipeline, where an obsolete pipeline segment will be removed. The Crossover will have a capacity of up to 502,000 Mcf per day.[5]

C. Activities that Do Not Require Certificate Authority

12. On August 6, 2004, Mojave posted a notice on its electronic bulletin board (EBB) notifying its shippers of El Paso's request to acquire capacity on the Mojave system. As a result of its request, El Paso acquired approximately 281,000 Mcf per day of capacity on Mojave from three shippers.[6] In addition to the 281,000 Mcf per day of released capacity, El Paso acquired 7,400 Mcf per day of unsubscribed capacity on Mojave. Finally, El Paso states that it previously acquired 24,000 Mcf per day of capacity on Mojave.[7] Thus, El Paso asserts that it holds 312,400 Mcf per day of capacity on Mojave

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[4] In association with the acquisition and operation of Line 1903 and the construction of the Cadiz Crossover, El Paso will construct auxiliary facilities under section 2.55(a) of the regulations. The facilities are described in Exhibit Z-2 of El Paso's application.

[5] Mojave will construct and operate a delivery point with El Paso near Cadiz under its blanket certificate authorization issued in *Mojave Pipeline Company*, 47 FERC ¶ 61,200 (1989).

[6] Specifically, El Paso acquired 185,000 Mcf per day of capacity from Texaco Natural Gas; 20,000 Mcf per day from Chevron USA Inc.; and 76,000 Mcf per day from Burlington Resources Trading Inc.

[7] El Paso does not need certificate authority to acquire capacity on Mojave's system. *See, e.g.*, *Texas Eastern Transmission Corporation*, 93 FERC ¶ 61,273, *reh'g denied*, 94 FERC ¶ 61,139 (2001).

and will use the capacity to receive gas moving west from Topock to the Cadiz Crossover and to receive gas from Daggett moving east to the Cadiz Crossover.

13. As a result of El Paso's Line 1903 proposals, Mojave and Kern River entered into an agreement to reconfigure the Daggett compressor station to add the capability of bi-directional flow on Mojave. The reconfiguration will involve construction of additional plant yard piping that would permit gas to flow east on Mojave to the Cadiz Crossover. Kern River will install the plant yard piping necessary for the reconfiguration under its Part 157 blanket certificate.[8] Mojave will install the metering facilities needed to receive gas from Kern River under the terms of its blanket certificate.[9]

D. Open Season

14. El Paso conducted an open season from February 4 to March 31, 2004. As a result of the open season, El Paso states that it entered into six precedent agreements with five customers for capacity on its proposed project. Specifically, El Paso entered into 10-year precedent agreements with Arizona Public Service Company and Pinnacle West Energy Corporation (Arizona PSC and Pinnacle) for 65,747 Mcf per day of firm transportation, Salt River Project Agricultural Improvement and Power District (Salt River) for 42,510 Mcf per day of firm transportation, and Southwest for 73,849 Mcf per day of firm transportation. In total, Arizona PSC and Pinnacle, Salt River, and Southwest have entered into precedent agreements for 182,106 Mcf per day of firm transportation. The Arizona PSC and Pinnacle, Salt River, and Southwest are existing Topock customers of El Paso and, according to El Paso, the precedent agreements represent commitments by these shippers to extend their existing contracts because of the Line 1903 proposals.

15. El Paso also entered into agreements with the California Department of Water Resources (California DWR) for 15,000 Mcf per day of firm transportation, Coral Energy Resources, L.P. (Coral Energy) for 150,000 Mcf per day of firm transportation, and Salt River for 24,438 Mcf per day of firm transportation. The California DWR and Coral Energy agreements are for five year terms and the Salt River agreement is for a 10-year term. In total, the California DWR, Coral Energy, and Salt River have entered into precedent agreements for 189,438 Mcf per day of firm transportation from Daggett on the proposed project.[10]

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[8] *Kern River Gas Transmission Company*, 50 FERC ¶ 61,069 (1990).

[9] *Mojave*, 47 FERC ¶ 61,200 (1989).

[10] El Paso states that some of the precedent agreements require it to deliver gas to SoCalGas at Ehrenberg. When combined with existing contractual delivery obligations to SoCalGas at Ehrenberg, El Paso notes that the contractual obligations will exceed the physical take-away capacity of SoCalGas' system.

E. Rates

16. El Paso states that the cost of converting the 87.8-mile long segment of the oil pipeline from Ehrenberg to Bakersfield to interstate service and the construction of the Cadiz Crossover will be approximately $73.6 million. In addition, El Paso states that it will provide a contribution in aid of construction estimated to be $1,668,000 to Mojave for expenditures at Mojave's interconnect with Kern River at Daggett. El Paso also estimates that the annual cost of capacity on the Mojave and Kern River systems will be approximately $17.9 million.

17. El Paso proposes to charge its existing Part 284 rates for the transportation services. El Paso estimates that the first-year cost of service for the project will be $31.1 million and that the first-year revenues will total $31.4 million. Thus, El Paso contends that the Commission should approve a predetermination of rolled-in rate treatment for the costs of the Line 1903 project in its upcoming rate case.[11] El Paso also states that even if revenues were to fall short of the cost of service, other system benefits from the project compel rolled-in rate treatment.

F. Tariff Sheets

18. El Paso submitted pro forma tariff sheets, as amended in Docket No. CP05-2-001, to update its pathing proposal for the additional of Line 1903 path rights. The tariff sheets provide for a Line 1903 path and additional scheduling flexibility when shippers nominate Daggett as a receipt or delivery point.

G. El Paso's Claimed Benefits

19. El Paso stresses numerous benefits from its proposed Line 1903 project. Specifically, El Paso contends that Arizona PSC and Pinnacle, Salt River, and Southwest have, at present, San Juan Basin receipt point rights and Topock delivery rights, but are not able to move their primary delivery point rights to El Paso's south system because El Paso does not have unallocated north to south displacement capability. El Paso asserts that its proposals provide the crossover capacity from north to south that allows these existing customers to relocate their primary delivery points to the south system. Otherwise, El Paso believes these customers will not retain their capacity.

20. Next, El Paso asserts that its proposals allow the California DWR, Coral Energy, and Salt River to access Rocky Mountain gas supplies. At present, El Paso contends that shippers on its system have only indirect access to Rocky Mountain gas supplies. Under

[11] El Paso states that it must file its next general rate case to be effective on January 1, 2006.

its proposals, however, El Paso contends that shippers can move Rocky Mountain gas on Kern River to Daggett and from Daggett east on Mojave and the Cadiz Crossover to Line 1903 and El Paso's south system.

21. El Paso contends that its proposals will allow its north and south systems to be linked on both ends and in the middle, enabling its system to operate more efficiently and enhancing operational reliability. El Paso also asserts that the proposed project provides more flexibility for the shippers extending their contracts to schedule gas on an alternative basis when shippers are not using their full contract entitlement on Line 1903. El Paso claims that the proposals may allow its system to operate more efficiently from a fuel consumption standpoint, since its system has historically operated at a load factor of less than 100 percent.

22. In addition, El Paso points out that the proposed facilities may provide much needed system storage by providing access to relatively abundant California storage. El Paso contends that large storage facilities in California are west of El Paso's northern system, that most of the areas that require storage to manage daily or hourly swings are served by El Paso's south system, and that the Line 1903 project will allow storage gas to move from north to south.

23. Finally, El Paso contends that the Line 1903 project is "virtually free of any of the adverse environmental impacts which would typically be present for new pipeline construction" because Line 1903 has already been constructed. Moreover, El Paso asserts that the construction of the Cadiz Crossover will take place in an existing, previously disturbed right of way and will result in only minor impacts.

III. Procedural Matters

A. Motions to Intervene

24. Notice of El Paso's application in Docket No. CP05-2-000 was published in the *Federal Register* on October 21, 2004 (69 Fed. Reg. 61815). The parties listed in Appendix A filed timely, unopposed motions to intervene.[12] The CPUC filed a notice of intervention.

25. Notice of the amendment to El Paso's application in Docket No. CP05-2-001 was published in the *Federal Register* on December 14, 2004 (69 Fed. Reg. 76460). There were no motions to intervene, notices of intervention, or protests in Docket No. CP05-2-001.

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[12] Timely, unopposed motions to intervene are granted by operation of Rule 214.

26. El Paso Electric Company (El Paso Electric), El Paso Municipal Group (Municipal Group), Phelps Dodge Corporation (Phelps Dodge), the CPUC, Southern California Edison Company (Edison), SoCalGas, and Texas Gas Service Company, a division ONEOK, Inc. (Texas Gas Company) protested El Paso's application in Docket No. CP05-2-000.[13] El Paso, the Designated Shippers,[14] and Southwest filed answers to the protests.[15] Texas Gas Company, El Paso Electric, the Municipal Group, and Phelps Dodge filed a joint answer to El Paso's answer. El Paso Electric filed an answer to Southwest's and the Designated Shippers' answers. Answers to protests and answers to answers are not permitted under our rules.[16] Nevertheless, we will accept these pleadings because they provide information that has assisted us in our decision-making.

27. The issues raised in the protests and responsive pleadings are addressed below.[17]

B. Technical Conference

28. The Municipal Group requests that we convene a technical conference. We find that the record including the application, responses to data requests, and accepted pleadings contain sufficient information and data to make a reasoned decision on the merits. Thus, we find that no purpose would be served by convening a technical conference here.

IV. Discussion

29. Since the proposed acquisition, construction, and operation involve facilities that will be used for the transportation of natural gas in interstate commerce, the proposals are

[13] On May 9, 2005, Texas Gas Company, El Paso Electric, the Municipal Group, and Phelps Dodge filed a joint amended protest to supplement their original protests.

[14] The Designated Shippers include some, but not all, of the Indicated Shippers who filed a motion to intervene and comments.

[15] Southwest filed a limited protest to El Paso's application, contending that there was no capacity on several laterals into the Phoenix, Arizona area on which El Paso proposed to provide firm transportation for Salt River. El Paso and Salt River filed an answer to Southwest's protest and, in turn, Southwest filed an answer to El Paso's and Salt River's answer. Later, Southwest and Salt River withdrew their pleadings on this issue and El Paso withdrew the portion of its answer that addressed this issue.

[16] 18 C.F.R. § 385.213(a)(2) (2004).

[17] In addition to the pleadings described above, numerous comments were filed responding to pleadings submitted by El Paso and other parties.

subject to the Commission's jurisdiction and the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

A. Certificate Policy Statement

30. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.[18] The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

31. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

1. Subsidization

32. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. El Paso estimates that the first year annual cost of service of the project will be $31.1 million, which includes the cost for transportation and compression of gas by others that totals $17.9 million. El Paso estimates that the annual revenues from the expansion and extension contracts will be $31.4 million. Thus, since revenues will exceed costs, we find that El Paso's proposals meet the threshold requirement that

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[18] *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

existing customers not subsidize the project. Further, as discussed below, the cost of service of the Line 1903 project can be reduced, increasing the amount by which the revenues will exceed the cost of service.

a. **Displacement**

33. In its December 3 response to comments, El Paso contends that 130,438 Mcf per day of the 502,000 Mcf per day of average annual capacity will be used to reduce the reliance on north-to-south displacement capacity by physically pathing existing contracts through the Line 1903 facilities. Thus, according to El Paso, the 130,438 Mcf per day of capacity (about 25 percent of the total project cost) does not support the expansion or extension contracts, but provides a direct system benefit. El Paso concludes that a more realistic comparison of the revenues and costs of providing service to the expansion and extension shippers would be to reduce the project cost by a percentage of the cost attributable to the 130,438 Mcf per day of capacity supporting system reliability. The resulting comparison shows that the $31.4 million in revenues exceeds the cost of service of $23.4 million by $8 million.

34. We agree that 130,438 Mcf per day of the proposed capacity will be used to physically path existing contracts through the Line 1903 facilities. This will reduce El Paso's reliance on displacement. Also, the additional pathing provides more opportunities for segmentation and increases system flexibility and system reliability.

35. System reliability has been an issue on El Paso's system for a number of years. In the Capacity Allocation Proceeding,[19] we addressed several complaints by different customer groups that firm service on El Paso's system was not reliable, that El Paso did not have sufficient capacity to serve the growing needs of its customers, and that firm shippers were subject to routine pro rata curtailment of service. El Paso's shippers also requested additional capacity, reduced reliance on displacement capacity, greater path rights, and increased access to San Juan Basin supplies. In the Capacity Allocation Proceeding, we directed El Paso to make a number of major changes to its system operations to restore reliable firm service, including converting system-wide receipt rights to specific receipt rights. In recognition of the need for more capacity, we also authorized El Paso to construct the Line 2000 project and the Power-Up project to

[19] *El Paso Natural Gas Company*, 99 FERC ¶ 61,244, *order on clarification*, 100 FERC ¶ 61,285 (2002), *reh'g denied*, 104 FERC ¶ 61,045 (2003), *aff'd*, *Arizona Corporation Com. v. FERC*, 397 F.3d 952 (D.C. Cir. 2005).

provide additional capacity to serve existing firm requirements.[20] Further, in order to ensure that all existing firm requirements could be served by the capacity-constrained system, we (1) applied the unorthodox approach of directing El Paso to allocate capacity to the former full requirements customers on a monthly basis to take advantage of seasonal differences in demand among shippers and (2) allowed El Paso to allocate capacity based on historic levels of displacement. We concluded that the changes on El Paso's system would provide customers adequate capacity for existing needs and proper price signals to ensure the future construction of needed capacity.

36. Once these significant changes took effect, we required El Paso to comply with Order No. 637 to ensure, among other things, that El Paso's customers could receive segmentation rights.[21] El Paso and the parties ultimately filed a settlement to resolve issues relating to El Paso's Order No. 637 compliance filing and its related imbalance management services filing.[22] In the settlement, El Paso committed to eliminate its reliance upon 80 percent of the annual average north-to-south displacement capacity in providing firm transportation service by February 28, 2007. No party to the settlement objected to this provision. As a result of the settlement, El Paso's customers now have physical path rights over much of the El Paso system. Because of continued reliance on displacement, however, shippers do not have full north-to-south contract path rights. The Line 1903 project is intended, in part, to increase contract path rights.

37. Here, various protestors assert that there is no displacement problem on El Paso's system. Texas Gas Company and El Paso Electric contend that the Commission previously found El Paso's current reliance on displacement to be reasonable and they claim that there is no displacement problem to fix. Texas Gas Company and the Municipal Group also contend that El Paso's agreement in the Order No. 637 settlement to reduce reliance on displacement did not mandate that the costs be rolled in. They contend that shippers wishing to use Topock-to-Phoenix transportation paths should bear the cost of the project. Texas Gas Company and the CPUC contend that the project only benefits shippers on the west end of the system. SoCalGas and El Paso Electric contend that El Paso's representations regarding a reduction in reliance on displacement capacity are ambiguous and indefinite.

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[20] The Line 2000 project was the first phase of El Paso's conversion of the oil pipeline, providing 230,000 Mcf per day of capacity for system use. *El Paso*, 95 FERC ¶ 61,176 (2001). The Power-Up project added compression to the Line 2000 facilities to provide 320,000 Mcf per day of additional capacity. *El Paso*, 100 FERC ¶ 61,280 (2003).

[21] *El Paso Natural Gas Company*, 106 FERC ¶ 61,050 (2004).

[22] *El Paso Natural Gas Company*, 109 FERC ¶ 61,292 (2004).

38. In contrast, the Designated Shippers assert that the Line 1903 project addresses the chronic system-wide issue of insufficient north-to-south capacity on El Paso's system. The Designated Shippers contend that the Commission's actions in the Capacity Allocation Proceeding addressed and mitigated this problem, but did not eliminate it. They conclude that the Line 1903 project is the next logical step in ensuring reliable and firm transportation service on El Paso's system. With regard to allegations that the Line 1903 project will only benefit west end shippers, El Paso maintains that members of the east end group were allocated north-to-south virtual capacity that would be converted to physical transportation capacity as a result of the Line 1903 project.[23] El Paso concludes that these east end group members, like the other El Paso shippers, will directly benefit from the added reliability that will result from the Line 1903 facilities.

39. The protestors should not interpret our acceptance in the Capacity Allocation Proceeding of a capacity allocation plan based on historic levels of displacement to mean that a lower level of reliance on displacement is not reasonable or preferable. To the contrary, a lower reliance on displacement results in more path rights and increased segmentation opportunities, which provide benefits to pipeline customers through increased flexibility and reliability, consistent with our goals in Order No. 637. As is discussed above, the actions we took in the Capacity Allocation Proceeding were intended to resolve a capacity constraint situation on the system. By relying on historic levels of displacement and allocating capacity on a seasonal basis, we were able to ensure that El Paso could meet all of its existing firm service requirements. We believe that the Line 1903 facilities will give El Paso the ability to reduce its reliance on displacement and allow El Paso to physically path existing contracts that had been given virtual path rights. In addition, the Line 1903 capacity will assist El Paso in its attempt to fully path its system and enhance its shippers' ability to segment their capacity. El Paso's shippers, including the east end shippers, will now benefit from the more reliable physical path rights.

40. Based on these facts, we find that the project costs related to reducing reliance on displacement will provide a system benefit to shippers and qualify for rolled-in rate treatment.

b. <u>Crude Oil Pipeline Acquisition Cost</u>

41. The Municipal Group and SoCalGas contend that El Paso overstated project costs by including the full acquisition cost of the Ehrenberg to Bakersfield segment of the crude oil pipeline. They assert that only the costs associated with the 87.8-mile portion of the oil pipeline that El Paso proposes to convert to gas service should be included in the rates for the Line 1903 project, that the remaining 215-mile portion has not been shown to be used or useful, and that the associated costs should be excluded.

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[23] *See* El Paso's May 19, 2005 response to comments at p. 12.

42. In response to these concerns, El Paso agrees that we could limit the applicability of its predetermination finding to the mileage-based percentage of the remaining purchase costs of the crude oil pipeline attributed to the 87.8 miles being placed into service (approximately $10.5 million) and defer the issue of the remaining $25.6 million to the next general section 4 rate filing. We concur and will limit our predetermination of rolled-in treatment to the costs associated with the 87.8-mile portion. We find that reducing the acquisition costs will further reduce the cost of service and increase the amount by which the revenues will exceed the cost of service of the Line 1903 project.

c. Mojave Capacity

43. Various protestors raise issues regarding the cost of the Mojave capacity in light of El Paso's affiliate relationship with Mojave. Specifically, the Municipal Group questions the cost of the block of maximum rate Mojave capacity. El Paso Electric is concerned about whether there was an abuse of the Commission's affiliate regulations and whether a cheaper alternative exists.

44. El Paso contends that it acquired the majority of the Mojave capacity from third parties through separate reverse open seasons to achieve the cheapest cost. After publicly announcing on Mojave's EBB that it was interested in acquiring Mojave capacity for a new project, El Paso asserts that it successfully acquired 281,000 Mcf per day of capacity. In addition, El Paso contends that it acquired 24,000 Mcf per day from an affiliate at maximum rates as part of its continued corporate simplification process and Order No. 2004 compliance implementation. El Paso also contends that it acquired 7,400 Mcf per day of unsubscribed capacity at a similar discount rate.[24] El Paso asserts that the average unit cost of the Mojave capacity is $0.1408 per Dth, which is about 50 percent of Mojave's current maximum rates.

45. No party provided evidence to suggest that the manner in which the Mojave capacity was acquired, or the price paid by El Paso, involved an abuse of our affiliate regulations. In addition, as described below, in its April 25 data response, El Paso provided studies showing that construction alternatives to purchasing Mojave capacity would be far more expensive. Given these facts, we are satisfied that the capacity was acquired in an open and fair manner and that the cost of the Mojave capacity is reasonable and necessary for the project.

46. In response to Phelps Dodge's and the CPUC's comments that El Paso erred in projecting that the cost of the Mojave capacity will remain constant over 10 years, El Paso explains that Mojave's maximum rates will decrease as a result of Mojave's levelized rate structure which incorporates an accelerated depreciation rate. El Paso also

[24] The discount rate was $0.1371 per Dth.

contends that it is willing to accept a Commission order approving rolled-in rates with a condition that limits it to including in a general rate filing only $16.1 million of costs associated with the 312,000 Mcf per day of Mojave capacity for the initial 10-year contract terms. El Paso contends that this equates to an initial average unit cost of $0.1408 per Mcf for the Mojave capacity. We will adopt El Paso's proposed condition.

d. Extension and Expansion Contracts

47. As discussed above, El Paso proposes to use 130,438 Mcf per day of capacity to reduce its reliance on displacement. The remaining capacity from the proposed facilities is needed to provide transportation for the expansion and extension shippers. The annual revenues from these expansion and extension contracts will exceed the cost of the related facilities by $8 million. In addition, limiting the crude oil pipeline acquisition costs to the 87.8 miles that El Paso is acquiring and placing in service reduces the project costs related to the expansion and extension contracts and increases the net revenues that the project will produce.

48. Texas Gas Company, El Paso Electric, the Municipal Group, Phelps Dodge, and SoCalGas question El Paso's calculations of the revenues supporting this project. They assert that El Paso should not rely on contract extensions to justify rolling in the costs of the project, because it is unlikely that the extension shippers, who they allege are captive customers, would terminate service on El Paso. They also maintain that El Paso cannot count the revenues from extension contracts in the rolled-in analysis and at the same time count the revenue in the calculation of existing system costs. In other words, they assert that the extension revenues cannot pay for the new and the old system at the same time. The Municipal Group contends that El Paso ignores this distinction and treats the extension revenues as previously unrecognized income, artificially inflating the income from those extension contracts.

49. El Paso contends that the extension shippers are Phoenix-area electric and gas local distribution companies who were allocated an increment of capacity with a primary delivery point at Topock. These shippers indicated to El Paso that they were no longer interested in holding long-term capacity unless El Paso constructed additional north-to-south capacity to allow them to use their Phoenix city gates as primary delivery points.

50. We find that it is reasonable for El Paso to include revenues from these extension contracts to support a predetermination of rolled-in treatment. In the Capacity Allocation Proceeding, the extension shippers (Arizona PSC and Pinnacle, Southwest, and Salt River) protested the allocation to east-of-California shippers (including the extension shippers) of north system capacity with California delivery points, contending that they were unable to use this capacity to access their east-of-California city gates. At the time, El Paso was unable to honor their requests to change primary delivery points for that capacity because of existing north-to-south capacity constraints. Given this history, we

believe that it is reasonable to project that customers who hold capacity they cannot effectively use to serve their markets will seek alternatives. For these reasons, we find that it is appropriate to use revenues from these extension contracts to support a predetermination that the costs qualify for rolled-in rate treatment.

e. Deferral to the Rate Case

51. Edison, PG&E, El Paso Electric, and Phelps Dodge request that a ruling on whether the Line 1903 project costs qualify for rolled-in treatment be deferred to the next rate case. They assert that it is not possible to determine whether the project revenues will exceed the project costs prior to the outcome of the rate case. In particular, they note that because numerous firm contracts expire this year, it is unclear whether shippers will leave the system or turn back capacity. As an example, they contend that SoCalGas elected not to re-subscribe 550,000 Mcf per day, which represents a sizable portion of El Paso's capacity.

52. We will not defer to the next general rate filing a ruling as to whether the Line 1903 project qualifies for rolled-in rate treatment. As discussed above, at this time, the facts support a predetermination for rolled-in treatment, absent a material change in circumstances. In this case, however, as noted by the protestors, many changes to El Paso's system operations and rates will occur in the near future. El Paso will also file a general rate case effective January 1, 2006, that will be the first general rate filing following a 10-year rate settlement. In addition, contracts totaling at least 2.9 Bcf per day of capacity on El Paso's system will expire by the end of 2007. These facts suggest that there may be a material change in circumstances that affects the predetermination that the Line 1903 project costs qualify for rolled-in treatment. Thus, in El Paso's general rate filing, we find that the parties may argue that a material change in circumstances has occurred.

53. In conclusion, we find that, absent a material change in circumstances, the costs associated with the Line 1903 project, as modified above, will qualify for rolled-in rate treatment when El Paso makes its up coming general section 4 rate filing.

2. Existing Customers, Competing Pipelines, and Landowners

54. El Paso's proposals will not result in the degradation of service to any of its existing customers. In addition, no service on any other pipeline will be displaced, since the proposals satisfy an increased demand for service on El Paso's system. Thus, there will not be any adverse effects on existing pipelines or their customers.

55. The 87.8-mile long oil pipeline segment to be acquired is already in place and located in a sparsely inhabited region in southern California. Only minor construction activities will take place along the route of the oil pipeline. The Cadiz Crossover will be constructed within an existing right of way for the oil pipeline, where an obsolete

pipeline segment will be removed. There is no landowner opposition to the proposals. Thus, we find that any adverse impacts on landowners and communities near the oil pipeline or the Cadiz Crossover will be minimal.

3. Conclusion

56. El Paso's proposed Line 1903 project will provide a west-end connection between its north and south mainlines. The proposals will also enable El Paso to move Rocky Mountain supplies for new customers from Kern River through Mojave and Line 1903 to Ehrenberg, to move San Juan Basin supplies for existing customers from Topock through Mojave and Line 1903 to Ehrenberg, and reduce El Paso's reliance on displacement. In addition, the proposals will enhance the flexibility and reliability of El Paso's system. Finally, we find no identified adverse effect on existing customers, other pipelines, landowners, or communities. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the Natural Gas Act, that the public convenience and necessity requires approval of El Paso's proposals.

B. Delivery Point Capacity

57. In its application, El Paso states that the current certificate capacity of the El Paso/Mojave receipt point is 400,000 Mcf per day. El Paso also states that it has physical meter capacity of 852,000 Mcf per day. El Paso asserts that as a result of this proceeding, it will certificate the interconnection up to the full 852,000 Mcf per day under its blanket certificate. Likewise, El Paso asserts that it will certificate the Ehrenberg delivery point up to the full 1,410,000 Mcf per day under its blanket certificate.

58. The Indicated Shippers[25] contend that El Paso's proposal to increase the certificated delivery point capacity under its blanket certificate at the Topock/Mojave and Ehrenberg delivery points above the physical downstream take-away capacity and sell additional firm capacity up to the newly certificated levels is contrary to the remedy set out in *Amoco Energy Trading Corp. v. El Paso Natural Gas Co.* [26] In *Amoco*, the Indicated Shippers contend that El Paso was required to allocate specific firm delivery point capacity in order to eliminate pro rata curtailments of firm service due to over-nominations at the Topock delivery points. The Indicated Shippers assert that the over-

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[25] The Indicated Shippers consist of Aera Energy, LLC; BP America Production Company; BP Energy Company; Burlington Resources Trading, Inc.; ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.; ConocoPhillips Company; and Occidental Energy Marketing, Inc.

[26] 93 FERC ¶ 61,060, *order on clarification*, 93 FERC ¶ 61,222 (2000), *order on reh'g*, 94 FERC ¶ 61,225, *order on clarification*, 95 FERC ¶ 61,156 (2001).

allocation of delivery point capacity on El Paso could cause chronic curtailments of firm service.

59. El Paso asserts that the situation is more analogous to the *Kern River Gas Transmission Company*[27] case than *Amoco*. El Paso maintains that *Amoco* was not concerned with matching design or contracted capacity with take-away capacity of the downstream pipeline. El Paso asserts that the Commission has never required pipelines to limit the amount of capacity they sell at delivery points to the take-away capacity of the downstream pipeline whether that point is a city-gate or interconnection with an intrastate or interstate pipeline.

60. We agree with the Indicated Shippers that El Paso's intention to increase the certificated capacity of the Topock/Mojave and Ehrenberg/SoCalGas delivery points under its blanket certificate is inconsistent with *Amoco*. In *Amoco*, we intended to avoid routine pro rata allocation of capacity at El Paso's delivery points and required specific contract rights equal to the points' ability to handle the deliveries on a firm basis. Specifically, we stated that:

> For El Paso's delivery point capacity allocation method to comply with the Commission's regulations . . . a firm shipper must be able to schedule its contractual firm entitlements at [a] . . . delivery point where it has primary firm rights . . . without being subject to reductions in its schedule for other than force majeure conditions.[28]

In *Amoco*, El Paso stated that the "firm design capacity" of the Topock/Mojave receipt point was 400,000 Mcf per day. El Paso should not sell any firm capacity it cannot deliver on a firm basis which results in routine pro rata allocations of firm nominations. We remind El Paso that it must pay reservation charge credits for any firm service nominations that it is unable to schedule.

C. <u>Interconnect with PG&E</u>

61. PG&E requests that the Commission condition, under its section 7(h) authority, any order in this proceeding on El Paso's working in good faith to establish a market responsive interconnection between PG&E's system and Line 1903 or, in the alternative, on El Paso's arranging for deliveries from PG&E's system via displacement. At a minimum, PG&E contends that the Commission should require El Paso to acquire sufficient land in the vicinity of Cadiz to accommodate a compressor station to interconnect with PG&E's system.

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[27] 96 FERC ¶ 61,137, *reh'g denied*, 97 FERC ¶ 61,080 (2001).

[28] 93 FERC at p. 61,161.

62. El Paso states that it is not averse to interconnecting with PG&E, but no market has developed to justify the interconnection. El Paso notes that there is no requirement that it construct the interconnection for free, but that it is considering installing a tap to accommodate an interconnection should the market develop.

63. As noted by El Paso, PG&E cites no precedent in support of its request that El Paso be required to construct and pay for an interconnection between its Line 1903 facilities and PG&E's pipeline system. Also, PG&E has not shown that such an interconnection is feasible or indicated that it is willing to pay for the facilities required for the interconnection. Further, while there may be some benefits from an interconnection, no market support has been shown for an interconnection. Thus, we find no reason to compel El Paso to construct and pay for an interconnection with PG&E, nor do we find any justification to require El Paso to acquire additional land at Cadiz to accommodate an interconnection in the future. El Paso states that it has discussed a potential future interconnection with PG&E and is considering installing a tap at minimal cost to accommodate future interconnection facilities with PG&E should a future market develop. El Paso has also indicated a willingness to explore displacement transactions should PG&E be legally and physically able to perform such transactions and should a market exist for such transactions. We encourage El Paso to continue to explore a future interconnection with PG&E, as well as displacement opportunities on PG&E's system, should market support develop.

D. Engineering

64. Phelps Dodge contends that El Paso should be required to perform and provide transient flow analyses to support its design of the Line 1903 project. Phelps Dodge notes that El Paso previously stated that it experiences transient flows on its system.

65. In its April 25, 2005 response to a data request, El Paso provided steady-state models of its pipeline system that supported the design of the Line 1903 project. In response to staff's request for a transient model of its system, El Paso stated that it does not currently have a transient model of its pipeline system, but is in the process of developing one. Nevertheless, we find that the steady-state computer models provided by El Paso are sufficient to determine the validity of the design of the Line 1903 project. These steady-state models are also consistent with the models provided by El Paso in support of the Line 2000 and Power-Up projects, which were approved by the Commission. Thus, while encouraging El Paso to continue to develop a transient model of its system, we will not require El Paso to provide one in this proceeding.

66. Also, we note that several parties have raised concerns about El Paso's interpretation of its tariff in regards to shippers' rights to non-uniform takes. This issue is beyond the scope of this proceeding. Shippers with concerns about this issue are free to

explore it in El Paso's upcoming rate case or in the case involving Southwest's request for a declaratory order in Docket No. RP05-354-000.

67. The proposed project will provide firm transportation for additional San Juan gas supplies to Ehrenberg, which will reduce El Paso's reliance on north-to-south displacement capacity by about 130,000 Mcf per day. This reduction in displacement capacity is made possible by physically connecting El Paso's Topock and Ehrenberg delivery points through the use of Line 1903 and the capacity held by El Paso on the Mojave pipeline system. In comparing possible system alternatives to alleviate the displacement reliance of about 130,000 Mcf per day, El Paso estimated that it would need to construct between 55 miles and 128 miles of pipeline loop on the Havasu Crossover and Permian-San Juan Crossover, respectively.[29] However, El Paso's alternatives do not adequately address the goals of the Line 1903 project which, in addition to reducing north-to-south displacement reliance, will allow El Paso's shippers to access about 189,000 Mcf per day of Rocky Mountain supplies via Kern River and about 182,000 Mcf per day of San Juan supplies. In addition to the increased access to additional supplies, the Line 1903 project will provide another physical link between El Paso's north and south mainlines, which will result in additional operational flexibility and reliability.

68. Our analysis of the flow diagrams and flow information submitted by El Paso shows that after the integration of Line 1903 into its interstate pipeline system, El Paso will be able to accommodate up to 502,000 Mcf per day through Line 1903 for deliveries to Ehrenberg, North Baja, and east to Phoenix markets from Rocky Mountain and San Juan supply sources. With the increased access to these supply sources, we find that El Paso will be able to provide increased operational flexibility and reliability to its existing shippers in the California and east-of-California markets. Based upon the record in this proceeding, we conclude that El Paso's Line 1903 project is properly designed.

E. Environmental Impact Report/Environmental Assessment

69. The Bureau of Land Management (BLM), the lead federal agency under the National Environmental Policy Act of 1969 (NEPA),[30] the California State Lands

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[29] In its April 25 response to staff's April 15 date request, El Paso estimates that it would need to construct 55 miles of 30-inch diameter pipeline on the Havasu Crossover and restage four compressors at the Dutch Flat and Wenden compressor stations at a cost of between $57 and $67 million. El Paso also estimates that the facility modifications on its Permian-San Juan Crossover and pipeline system south of the Plains compressor station would require 54 miles of 30-inch loop and 74 miles of 24-inch loop, respectively, at an approximate cost of $99 million.

[30] The BLM served as the lead federal agency because approximately 75 percent of the land involved with the Line 1903 project is administered by the BLM.

Commission (California SLC), the lead state agency under the California Environmental Quality Act, and the Commission prepared an environmental impact report/ environmental assessment (EIR/EA) which analyzes the environmental impacts of El Paso's proposed Line 1903 project.[31] The EIR/EA addresses biological resources, agricultural resources, geology and soils, hydrology and water quality, hazards and public safety, air quality, traffic and transportation, noise, cultural resources, aesthetic and visual resources, land use and planning, socioeconomics, recreation, and environmental justice.

70. The Commission's staff assisted the BLM and California SLC in the review and analysis of El Paso's proposals. Throughout the environmental review process, staff provided written and oral comments to the BLM and California SLC. The BLM and California SLC sent notices to the landowners along the pipeline route, responsible agencies, and interested parties requesting written comments. They also held public scoping meetings to receive oral comments on the proposed project. The BLM and California SLC noticed the draft EIR/EA on November 23, 2003, initiating a 45-day public comment period. All comments received were addressed in the finalizing addendum to the draft EIR/EA, which was noticed on April 8, 2005. Together, the finalizing addendum and the draft EIR/EA constitute the final EIR/EA.[32]

71. The Commission's staff reviewed the analysis contained in the EIR/EA and agrees with its findings regarding the potential environmental impacts of El Paso's proposed project. Thus, we will adopt the EIR/EA. In addition to the discussion in the EIR/EA, we will require that El Paso, prior to construction, complete cultural resources consultations (environmental condition 10) and that the BLM complete formal consultation with the United States Fish and Wildlife Service (FWS) (environmental condition 11). We will also require El Paso to comply with other environmental conditions contained in Appendix B to the order, which will facilitate El Paso's environmental compliance efforts.

72. Based on the discussion in the EIR/EA and the additional measures referred to above, we conclude that approval of El Paso's proposals would not constitute a major federal action significantly affecting the quality of the human environment, if the

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[31] The Commission participated as a cooperating agency in the preparation of the EIR/EA in accordance with the Council of Environmental Quality's regulations implementing the NEPA.

[32] The EIR/EA addresses potential environmental impacts of conversion of the 304-mile segment of oil pipeline from Ehrenberg to Bakersfield. We note that El Paso requested authorization for a shorter, approximately 87.8-mile long portion, addressed in the EIR/EA as the "Ehrenberg to Cadiz Alternative."

proposals are constructed and operated in accordance with the application and the environmental mitigation measures included in the EIR/EA.

73. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[33]

74. El Paso shall notify the Commission's environmental staff by telephone or facsimile of any noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies El Paso. El Paso shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

F. <u>Evidentiary Hearing</u>

75. The CPUC requests an evidentiary hearing for El Paso's proposals. Section 7 of the Natural Gas Act provides for a hearing when an applicant seeks a certificate of public convenience and necessity, but does not require that all such hearings be formal, trial-type hearings. An evidentiary trial-type hearing is necessary only when there are material issues of fact in dispute that cannot be resolved on the basis of the written record.[34] The CPUC has not raised a material issue of fact that cannot be resolved on the basis of the written record. The written evidentiary record provides a sufficient basis for resolving the issues relevant to this proceeding. We have satisfied the hearing requirement by giving interested parties an opportunity to participate through evidentiary submissions in written form.[35] Thus, we will deny the CPUC's request for an evidentiary hearing.

76. At a hearing held on June 15, 2005, 2005, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

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[33] *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

[34] *See, e.g., Southern Union Gas Co. v. FERC*, 840 F.2d 964, 970 (D.C. Cir. 1988); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124 (D.C. Cir. 1982); *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969).

[35] *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993).

The Commission orders:

(A) A certificate of public convenience and necessity is issued to El Paso authorizing it to acquire, convert to natural gas service, and operate an 87.8-mile segment of 30-inch diameter crude oil pipeline between Ehrenberg, Arizona and Cadiz, California and to construct and operate 6.4 miles of 30-inch diameter pipeline to connect the oil pipeline to Mojave at Cadiz, as more fully described in this order and the application.

(B) The certificate is conditioned on El Paso's compliance with all applicable Commission regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations.

(C) El Paso's request for pre-approval of rolled-in rate treatment is granted, subject to the conditions described in the body of this order.

(D) El Paso shall acquire the 87.8-mile long segment of crude oil pipeline between Ehrenberg and Cadiz and construct and make available for service the proposed facilities herein within one year of the date of the order in this proceeding.

(E) El Paso shall execute firm service agreements equal to the level of service represented in its precedent agreements prior to acquiring or constructing facilities.

(F) The certificate is conditioned on El Paso's compliance with the environmental conditions set forth in Appendix B to this order.

(G) El Paso shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies El Paso. El Paso shall file written confirmation of such notification with the Secretary of the Commission (Secretary) within 24 hours.

(H) The Municipal Group's request for a technical conference is denied.

(I) The CPUC's request for an evidentiary hearing is denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

Appendix A

Motions to Intervene in Docket No. CP05-2-000

Aera Energy LLC
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Company and Pinnacle West Energy Corporation (joint motion)
Blythe Energy, LLC
BP America Production Company and BP Energy Company (joint motion)
Burlington Resources Trading Inc.
Calpine Corporation
ChevronTexaco Natural Gas, a division of Chevron U.S.A. Inc.
ConocoPhillips Company
Coral Energy Resources, L.P.
Duke Energy Trading and Marketing, L.L.C. and Duke Energy Marketing America, L.L.C. (joint motion)
El Paso Electric Company
El Paso Municipal Customer Group
Indicated Shippers
Kern River Gas Transmission Company
MGI Supply Ltd.
North Baja Pipeline, LLC
Occidental Energy Marketing, Inc.
Pacific Gas and Electric Company
Phelps Dodge Corporation
Public Service Company of New Mexico
Questar Southern Trails Pipeline Company
Salt River Project Agricultural Improvement and Power District
San Diego Gas & Electric Company
Southern California Edison Company
Southern California Gas Company
Southern California Generation Coalition
Southwest Gas Corporation
Texas Gas Service Company, a division of ONEOK, Inc.
Transwestern Pipeline Company
UNS Gas, Inc.

Appendix B

Environmental Conditions for El Paso's Project

1. El Paso shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EIR/EA, unless modified by this order. El Paso must:

   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary;

   b. justify each modification relative to site-specific conditions;

   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and

   d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.

2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:

   a. the modification of conditions of this order; and

   b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EIR/EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, El Paso shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all

facilities approved by this order. All requests for modifications of environmental conditions of this order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

El Paso's exercise of eminent domain authority granted under section 7(h) of the Natural Gas Act in any condemnation proceedings related to this order must be consistent with these authorized facilities and locations. El Paso's right of eminent domain does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. El Paso shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the *Upland Erosion Control, Revegetation, and Maintenance Plan*, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

a. implementation of cultural resources mitigation measures;

b. implementation of endangered, threatened, or special concern species mitigation measures;

c. recommendations by state regulatory authorities; and

d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. El Paso must receive written authorization from the Director of OEP before **commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

7. **Within 30 days of placing the certificated facilities in service**, El Paso shall file an affirmative statement with the Secretary, certified by a senior company official:

> a. that the facilities have been constructed and installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
>
> b. identifying which of the certificate conditions El Paso has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.

8. **Within 60 days of the acceptance of this certificate and before construction begins**, El Paso shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how El Paso will implement the mitigation measures required by this Order and the BLM. El Paso must file revisions to the plan as schedules change. The plan shall identify:

> a. how El Paso will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
>
> b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
>
> c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
>
> d. the training and instructions El Paso will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
>
> e. the company personnel (if known) and specific portion of El Paso's organization having responsibility for compliance;

f. the procedures (including use of contract penalties) El Paso will follow if noncompliance occurs; and

g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:

(1) the completion of all required surveys and reports;

(2) the mitigation training of onsite personnel;

(3) the start of construction; and

(4) the start and completion of restoration.

9. El Paso shall file updated status reports prepared by the head environmental inspector with the Secretary on a **biweekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/ permit requirements imposed by other federal, state, or local agencies);

c. corrective actions implemented in response to all instances of noncompliance, and their cost;

d. the effectiveness of all corrective actions implemented;

e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this order, and the measures taken to satisfy their concerns; and

f. copies of any correspondence received by El Paso from other federal, state or local permitting agencies concerning instances of noncompliance, and El Paso's response.

10. El Paso shall defer implementation of any treatment plans/measures (including archaeological data recovery), construction of facilities, and use of all staging, storage or temporary work areas and new or to-be-improved access roads until:

a. El Paso files with the Secretary cultural resources survey and evaluation reports, any necessary treatment plans, and the BLM and state historic preservation office comments; and

b. The Director of OEP reviews all cultural resources survey reports and plans and notifies El Paso in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE".**

11. El Paso shall not begin construction activities **until**:

a. the BLM completes formal consultation with the FWS;

b. El Paso agrees to implement all of the mitigative measures identified in the BLM's Record of Decision, including those identified in the FWS biological opinion; and

c. El Paso receives written notification from the Director of OEP that construction or use of mitigation may begin.