

110 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company

Docket Nos. RP00-336-030,
RP04-110-003, RP04-251-002

ORDER GRANTING CLARIFICATION

(Issued March 7, 2005)

1. On December 22, 2004, the Commission issued an Order on Compliance Filing and Requests for Rehearing and Clarification (December 22 Order)¹ in this proceeding. A timely request for clarification, or in the alternative, rehearing, was filed by the Arizona Public Service Company and Pinnacle West Energy Company and Salt River Project Agricultural Improvement and Power District (Arizona Electrics). As discussed below, the request for clarification is granted. This order benefits customers by making clear that the Commission has not prejudged issues in El Paso Natural Gas Company's (El Paso's) next rate case.

Background

2. On February 5, 2004, the Commission issued an order in Docket No. RP04-110-000 accepting, subject to condition, El Paso's proposed procedures for re-designating primary rights under a transportation service agreement (TSA).² In the December 22 Order, the Commission addressed El Paso's filing to comply with the February 5 Order as well as requests for rehearing of that order. Also, in the December 22 Order, the Commission addressed a motion filed by Arizona Electrics

¹ 109 FERC ¶ 61,359 (2004).

² 106 FERC ¶ 61,103 (2004).

asking for clarification of the effect of the rate cap provision of El Paso's 1996 Settlement (Settlement)³ in El Paso's next rate case.⁴ Arizona Electric's stated that it was their understanding that under the rate cap provision, the 1996 Base Settlement Rates would constitute the cap on rates for the duration of the East of California (EOC) Shippers' contracts, which in most cases extend beyond the Settlement's 10-year rate moratorium that ends December 31, 2005. Therefore, they asserted, the Settlement provides each customer the assurance that the Settlement rates, as adjusted for inflation, will serve as a cap on future rates.

3. The Commission found that a ruling on how the rate cap would apply in El Paso's next general rate case would be premature and beyond the scope of this proceeding. The Commission stated that it would not address or prejudge any rate case issues. However, the Commission noted that the prior orders in the *Capacity Allocation Case* and the

³ Article 11 of the 1996 Settlement applies to "all periods subsequent to the term of this" Settlement. Section 11.2 provides:

This paragraph 11.2 applies to any firm Shipper with a TSA that was in effect on December 31, 1995, and that remains in effect in its present form or amended, on January 1, 2006, but only for the period that such shipper has not terminated such TSA. El Paso agrees with respect to such shippers that, in all rate proceedings following the term of this Stipulation and Agreement:

(a) Base Settlement Rate Escalated. El Paso will not propose to charge a rate applicable to service under such TSA during the remainder of the term thereof that exceeds the base settlement rate established under paragraph 3.2(a) applicable to such Shipper, as adjusted pursuant to paragraph 3.2(b) [annual inflation adjustment] and 3.5 [adjustment for certain cost changes beyond El Paso's control and exceeding \$10 million] through the term of this Stipulation and Agreement, as escalated annually thereafter through the remainder of the term of such TSA using the procedure specified by paragraph 3.2(b) unless and until such TSA is terminated by the Shipper.

⁴ Under the terms of the 1996 Settlement, El Paso is required to file a new rate case effective January 1, 2006.

Power-Up Project certificate proceeding may be relevant to the issue of future pricing of certain expansion capacity, and stated that future rulings on the issue of cost recovery for this capacity must be consistent with these prior decisions.⁵

Discussion

4. In its request for clarification, Arizona Electric ask the Commission to clarify that it did not intend to prejudge any of the arguments presented by Arizona Electric in support of the continued application of the rate cap to capacity covered by the Arizona Electric's newly converted contract demand transportation service agreements. Arizona Electric state that granting this request for clarification will permit it to place its arguments before the Commission for consideration solely in the context of El Paso's next rate case unencumbered by the Commission's statements in the December 22 order regarding the expansion capacity. If clarification is not granted, Arizona Electric request rehearing of the December 22 order.

5. The Commission clarifies that, as it stated in the December 22 order, it has not prejudged any issue in El Paso's next rate case. The Commission has not prejudged any of Arizona Electric's arguments regarding the continued application of the rate cap. Our prior order simply indicated that this issue must be resolved in the upcoming rate case proceeding consistent with our prior decisions in the relevant *Capacity Allocation* and certificate proceedings.

The Commission orders:

The request for clarification is granted, as stated above.

By the Commission. Commissioner Kelly not participating.

⁵In the *Capacity Allocation Case* and the *Power-Up Project* certificate proceeding, El Paso agreed to make an additional 230,000 Mcf/d of capacity available through its Line 2000 Project and another 320,000 Mcf/d available from its Line 2000 Power Up Project and forgo cost recovery for these projects until its next rate case. See *El Paso Natural Gas Co.*, 99 FERC ¶ 61,244 at 62,011-12 (2002), *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045 at P 5 (2003), and *El Paso Natural Gas Co.*, 103 FERC ¶ 61,280 at P 41-45 (2002), *reh'g denied*, 105 FERC ¶ 61,202 at P 14 (2003).

(S E A L)

Magalie R. Salas,
Secretary.