

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 No. CP03-1-000

ORDER ISSUING CERTIFICATE

(Issued June 4, 2003)

1. On October 3, 2002, El Paso Natural Gas Company (El Paso) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) and section 157 of the Commission's regulations, for a certificate of public convenience and necessity authorizing it to construct, own, and operate its Power-Up Project consisting of compression facilities on its existing Line 2000 interstate pipeline.¹ Approving El Paso's request is in the public interest because the capacity created by the additional compression on Line 2000 will contribute to the resolution of the capacity allocation issues on El Paso's system and the restoration of reliable transportation service to that system.

I. Background

2. El Paso is a natural gas company that operates an interstate pipeline system for the transportation of natural gas from areas in the southwestern United States through the states of Texas, New Mexico, Colorado, and Arizona, to two points of termination at the boundary between the states of California and Arizona, near Ehrenberg and Topock, Arizona. El Paso also delivers gas to numerous on-system delivery points and to off-system eastern markets. El Paso's system consists of its South System and North System mainlines and can deliver gas from three production basins, San Juan, Permian, and Anadarko, to various delivery points on its system.

¹See *El Paso Natural Gas Co.*, 95 FERC ¶ 61,176 (2001)(order authorizing El Paso to acquire and convert to natural gas use by its interstate system 785 miles of a crude oil pipeline between Ehrenberg, Arizona and McCamey, Texas, to add 230 MMcf per day of capacity to its system. El Paso placed its Line 2000 into service on November 13, 2002).

3. Historically, El Paso has served its firm customers under two types of contracts, contract demand (CD) and full requirements (FR) contracts. While CD shippers can only nominate and receive delivery of quantities up to their contract levels at specified delivery points, FR shippers can nominate and receive delivery of any quantity per day up to their actual full requirements. The CD customers ship natural gas primarily to California delivery points; FR customers are located mainly east of California (EOC). Most CD and all FR shippers have system-wide primary receipt points and so are free to nominate from any basin to satisfy their needs. El Paso's customers prefer gas from the San Juan basin because it is less expensive than gas from the Permian and Anadarko basins. If El Paso has insufficient capacity to serve all transportation requests at a nominated receipt pool, the firm shippers are subject to pro rata cuts based on available capacity.

4. Recently, various parties have raised capacity allocation issues regarding El Paso's system in Docket Nos. RP00-336-000, RP01-484-000, RP01-486-000, and RP00-139-000 (collectively, Capacity Allocation Proceeding).² At an April 16, 2002 public conference held by the Commission in the Capacity Allocation Proceeding, El Paso proposed to expand the capacity of its interstate transmission pipeline system by up to 320 MMcf per day (MMcf/d) by installing additional mainline compression facilities on its Line 2000. El Paso conditioned its proposal on an overall settlement with its shippers in the Capacity Allocation Proceeding and on the Commission's allowing El Paso to recover the costs of the facilities in its next general rate case.³

5. In an order issued on May 31, 2002, in the Capacity Allocation Proceeding (the May 31 order), the Commission found that El Paso does not have sufficient firm capacity to meet growing demand for firm service and that firm service has been curtailed through pro rata allocations of service nominations on a routine basis.⁴ The Commission established a set of procedures and deadlines to effectuate two principal changes in service on El Paso's system: the conversion of FR service to CD service with specified volumetric entitlements; and the conversion of system-wide receipt point rights to quantified rights and specific receipt points or supply pools. On September 20, 2002, the

²El Paso Natural Gas Co., et al., 99 FERC ¶ 61,244 (2002); Order on Clarification and Adopting Capacity Allocation Methodology, 100 FERC ¶ 61,285 (2002), reh'g pending.

³In its application, El Paso states that, although there has been no overall settlement, it is willing to construct the proposed compression facilities outside of the settlement subject to the Commission's issuance of a certificate acceptable to El Paso.

⁴El Paso, 99 FERC ¶ 61,244 at 62,001.

Commission issued an order (September 20 order) on clarification of the May 31 order and adopted a capacity allocation methodology for El Paso's system.⁵ The order states that El Paso had indicated it would file an application to construct the Power-Up Project by October 1, 2002, and that the project could be in service by May 1, 2003. The Commission directed El Paso to include the capacity from the Power-Up Project in its initial allocation of capacity to converting FR shippers.

6. El Paso states that it filed its application in this proceeding in response to the September 20 order in the Capacity Allocation Proceeding in which the Commission encouraged it to construct the proposed Power-Up facilities.

II. Proposal

7. El Paso proposes to construct, own and operate nine compressor facilities, with appurtenant equipment, to be constructed at new and existing compressor station sites on its transmission system to add a total transportation capacity of 320 MMcf of natural gas per day. Specifically, El Paso proposes to install compression facilities with a total of 151,600 horsepower on its existing Line 2000 at its existing Casa Grande, Lordsburg, Florida, El Paso, and Cornudas Compressor Stations, and new facilities near milepost (MP) 609 in Cochise County, Arizona (the Cimarron Station), at the former Tom Mix Oil Pump Station located near MP 530 in Pinal County, Arizona, at the former Black River Oil Pump Station located near MP 946 in Culberson County, Texas, and at a new site at approximately MP 1101 in Winkler County, Texas (the Wink Compressor Station). El Paso states that the additional capacity would enable it to transport gas from the eastern portion of its system – the Keystone and Waha Pools – to the southern and western portions and would enhance system flexibility.

8. However, El Paso states, it will take approximately 24 months to bring the Line 2000 Power-Up Project into service. El Paso states that, since the in-service date for the facilities is dependent upon the timing of certificate approvals, the receipt of air quality permits, and the delivery of the compression equipment, it proposes to construct the project in three phases. El Paso proposes to add 120 MMcf/d by February 2004, 100 MMcf/d by April 2004, and 100 MMcf/d by April 2005.

9. El Paso specifically requests a certificate order from the Commission which provides that (1) these facilities are needed and in the public interest in light of the changed circumstances on El Paso's system, (2) the Power-Up Project expansion is prudent, and (3) El Paso will be allowed to include the costs associated with the proposed

⁵El Paso, 100 FERC ¶ 61,285.

facilities in the rates resulting from the next rate case in which El Paso's costs and revenues are reviewed. El Paso also requests confirmation that the provision of the 1996 Settlement establishing rate caps for existing firm contracts beyond the term of the Settlement⁶ cannot, in light of changed circumstances on the system, be interpreted to preclude El Paso from recovering the costs of this expansion from its shippers in any future rate case.

10. El Paso states that it will not assess the FR shippers the reservation charges attributable directly to the Power-Up facilities until the next rate case examining its costs and revenues. El Paso asserts that it will assess usage and fuel charges based on the location of the receipts and deliveries for service provided through these facilities prior to that time, pursuant to the provisions of El Paso's FERC Gas Tariff, Second Revised Volume No. 1-A.

11. El Paso states that the project meets the criteria of the Commission's 1999 Policy Statement for construction of new facilities, with benefits outweighing any adverse effects. El Paso estimates the total capital cost for the project to be \$173,287,900.

III. Interventions

12. Notice of El Paso's application in this proceeding was published in the Federal Register on October 17, 2002 (67 Fed. Reg 64,108). The Arizona Corporation Commission and the Public Utilities Commission of the State of California (CPUC) filed timely notices of intervention. Twenty-six parties filed timely motions to intervene.⁷ Burlington Resources Trading, Inc., Coral Energy Resources LP, Occidental Energy Marketing, Inc., Southern California Gas Company, and Texaco Exploration & Production, Inc. filed motions to intervene out-of-time.⁸ Their untimely motions have demonstrated an interest in this proceeding and have shown good cause for seeking to intervene out of time. Further, the untimely motions will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant the late motions to intervene.

13. Southwest Gas Corporation (Southwest) and Southern California Edison Company (SCE) filed comments on El Paso's application. The Full Requirements Shippers (FR

⁶See Article 11.2 of the Stipulation and Agreement in Docket No. RP95-363.

⁷Timely notices of intervention and motions to intervene are granted by operation of Rule 214 of the Commission regulations. (18 C.F.R. §385.214 (2002)).

⁸All of the intervenors are listed in Appendix A.

Shippers),⁹ Indicated Shippers,¹⁰ Kern River Gas Transmission Company (Kern River), and Southern California Gas Company (SoCal) filed protests to the application. Generally, the parties question the need for additional capacity on El Paso's system and express concerns with respect to El Paso's proposed rate treatment for the proposed facilities.

14. We will address the comments and protests more fully in the appropriate sections of the order.

IV. Discussion

15. Since the proposed facilities will be used for the transportation of natural gas in interstate commerce, the construction and operation of the facilities are subject to the jurisdiction of the Commission and to the requirements of NGA subsections 7(c) and (e).

A. Project Need and the Certificate Policy Statement

16. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.¹¹ The 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 Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances 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

⁹The FR Shippers are: ASARCO Inc., Arizona Electric Power Cooperative, Inc., Arizona Gas Division of Citizens Communications Co., Arizona Public Service Co. and Pinnacle West Energy Corp., BHP Copper Inc., El Paso Electric Co., El Paso Municipal Customer Group, Phelps Dodge Corp., Public Service Co. of New Mexico, Salt River Project, and Southern Union Gas Co.

¹⁰The Indicated Shippers are: BP America Production Co, BP Energy Co., Burlington Resources Trading, Inc., Conoco Inc., Coral Energy Resources LP, Occidental Energy Marketing, Inc., and Texaco Exploration & Production, Inc.

¹¹Certification of New Interstate Natural Gas Pipeline Facilities (Policy Statement), 88 FERC ¶ 61,227 (1999); order clarifying statement of policy, 90 FERC ¶ 61,128 (2000); order further clarifying statement of policy, 92 FERC ¶ 61,094 (2000).

of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

17. 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 the existing customers. In other words, existing customers should bear none of the costs of a project that does not benefit them. 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.

18. The Commission also considers potential impacts of the proposed project on other pipelines in the market and those existing pipelines' 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, the Commission 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 the Commission then proceed to complete the environmental analysis where other interests are considered.

19. As discussed below, the Commission finds that El Paso's proposal satisfies the "no-subsidy" requirement and that the benefits of the project outweigh any potential adverse impacts. Accordingly, the Commission finds that the construction and operation of El Paso's proposed expansion project are required by the public convenience and necessity.

1. Subsidization

20. The Commission's Policy Statement directs that 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 existing customers.

21. Indicated Shippers, SCE, and SoCal state that under no circumstances should existing CD shippers be required to pay for any of the costs of the Power-Up Project that, they contend, benefits only the converting FR customers. Kern River maintains that the Commission should condition any certificate to prevent subsidization of the proposed project by El Paso's existing shippers.

22. The Policy Statement notes that projects designed to improve service for existing customers, by replacing existing capacity, improving reliability, or providing flexibility,

are for the benefit of existing customers.¹² The Commission has found that increasing the rates of the existing customers to pay for these kinds of improvements is not a subsidy and the costs of such projects are permitted to be rolled-in.¹³

23. Since the purpose of the proposed project is to improve service for existing customers by providing additional capacity on El Paso's system to allow it to meet its current obligations to its existing shippers, El Paso has met the "no subsidization" threshold requirement. The proposed facilities will provide no new or additional service. Rather, the project will increase capacity on El Paso's South System thus increasing flexibility and adding useable westflow capacity to meet El Paso's existing firm contractual obligations. The Power-Up capacity will alleviate constraints elsewhere on the system by increasing total system capacity. The additional capacity, together with the revised services and the allocation of receipt point capacity as required in the Capacity Allocation Proceeding in Docket No. RP00-336-000, et al., will eliminate the pro rata cuts that have become routine on El Paso's system. Thus, the project is necessary to restore reliable firm service to all customers on El Paso's system.

24. We disagree that the project will benefit only the FR shippers. The Capacity Allocation Proceeding has placed all of El Paso's firm customers on equal footing as contract demand customers, and the benefits of the Power-Up Project will inure to all firm customers, regardless of their location on the system or their initial contractual status. Current CD shippers, as well as the converting FR shippers, will share in the project's benefits.

25. Kern River contends that El Paso's proposal does not address the subsidy issue since it seeks to defer the question of rolled-in versus incremental pricing of the proposed Power-Up capacity until its next rate case. While El Paso does not specifically seek an upfront determination that rolled-in pricing is appropriate for its proposal, it does request that it be allowed to include the costs of the proposed project in its rates in its next rate case. Because the project is specifically designed to enhance existing system operations, flexibility, and service, we are making a determination in this proceeding that the project costs should be rolled-in to El Paso's rates in its next rate case.

¹²Certification of New Interstate Natural Gas Pipeline Facilities, Order Clarifying Statement of Policy, 90 FERC ¶ 61,128 (2000).

¹³See, e.g., Texas Eastern Transmission Corp., 95 FERC ¶ 62,031 (2000), Columbia Gulf Transmission Co., 93 FERC ¶ 62,156 (2000); Texas Gas Transmission Corp., 90 FERC ¶ 62,190 (2000).

26. For all the reasons discussed above, we find that the Power-Up Project will improve service to El Paso's existing firm customers, that rolled-in rates are appropriate, and that rolled-in rates will not constitute a subsidy under the Policy Statement.

2. Effect on Existing Pipelines and their Customers

27. Kern River argues that the September 20 order in the Capacity Allocation Proceeding undercuts pipeline-to-pipeline competition by making the Power-Up capacity available to converting FR shippers at no additional fixed cost responsibility. Kern River argues that the Commission should condition El Paso's certificate to permit other pipelines to compete to serve any demand on El Paso's system in excess of its existing capacity.

28. Kern River mischaracterizes the nature of the Power-Up Project. As discussed above, the Power-Up proposal is not an expansion to meet new requirements, but is designed to provide the capacity necessary to ensure reliability and flexibility in meeting firm customers' existing contractual needs. Pipeline-to-pipeline competition is an issue only where a pipeline proposes a project to serve new customers in another pipeline's market area. It is not an issue where a pipeline constructs facilities to create additional capacity to meet its existing obligations to its current customers. Therefore, we find that there will be no adverse impact on competing pipelines and their shippers.

3. Impact on Landowners and the Environment

29. El Paso states that there are a total of 208 affected landowners within a 0.5 mile radius of all of the nine proposed facilities. None of the affected landowners commented on the proposal. Seven of the nine proposed compressor facilities will be sited on previously disturbed property already owned by El Paso. With respect to the remaining two facilities, El Paso has completed the purchase of the land for the Cimarron Compressor Station and has a finalized settlement agreement with the landowner for the purchase of an easement for the Wink Compressor Station. Therefore, since there will be no necessity for condemnation proceedings to acquire the necessary land, and since no affected landowners objected to the proposal, we find that adverse economic impacts on landowners along the proposed right of way should be outweighed by the benefits the project is expected to provide.

4. Project Need

30. Several parties question the need for the Power-Up Project. The FR Shippers and Indicated Shippers argue that, before the Commission can determine whether the

additional capacity on El Paso's system is needed, it must resolve the issue of how much capacity is currently available on El Paso's system. Indicated Shippers and SoCal note that no FR shippers bid for turnback capacity in El Paso's recent open season on October 31, 2002, and that only one FR shipper bid for turnback capacity in the earlier open season on August 14, 2002,¹⁴ despite the fact that the capacity had all basin receipt points, Ehrenburg as the delivery point, and was for discounted transportation. They contend that this demonstrates the absence of any need for the Power-Up Project.

31. Indicated Shippers also note that El Paso has made no determination of whether existing capacity, including the already certificated 230 MMcf/d on Line 2000, is sufficient to serve existing market need. It states that El Paso provides no precedent agreements, no demand projections, no comparison of alternatives that might be cheaper, and no analysis of the impact of Kern River's 2003 expansion project that will add additional firm capacity to California.¹⁵ Several parties allege that the Commission should consider various less expensive alternatives to the Power-Up Project such as turnback capacity, capacity from expiring contracts, backhaul service, different facility configurations on El Paso's system, and offsystem capacity.

32. Kern River submits that the Commission should condition any certificate to preclude construction until El Paso has executed contracts for Power-Up capacity at incremental rates and fuel charges and to limit construction to the total capacity for which El Paso obtains such contracts. Southwest generally supports El Paso's application upon the condition that the proposed facilities will be downsized if resolution of related issues in pending proceedings provides feasible alternatives to the proposed Power-Up capacity.

33. Because El Paso's shippers have experienced mainline and producing area cuts to their nominations, the Commission has found that El Paso's existing capacity is insufficient to meet the needs of its existing shippers and their entitlements under their current contracts. In the September 20, 2002 Capacity Allocation order in Docket No. RP00-336-000, et al., the Commission found that El Paso needs both the Line 2000 capacity and the Power-Up capacity proposed to be constructed in this proceeding to meet its current obligations. The order notes that El Paso has stated it could deliver 5,400 MMcf/d with the 320 MMcf/d of capacity from the Power-Up Project on a peak day.

¹⁴MGI Supply, Ltd. bid for and was awarded 14,663 Mcf/d.

¹⁵Indicated Shippers request that the Commission defer action on the application until after the capacity allocation process relating to capacity turnback and the Line 2000 capacity occurs. Since El Paso has completed the capacity allocation process, Indicated Shippers' request is moot.

This project is intended solely to allow El Paso to meet the needs of its existing firm customers under their existing and reformed contracts, which will restore reliable firm service on El Paso. It is not an expansion designed to provide new service. Under these circumstances there is no need for El Paso to provide contracts or demand projections to support its proposal.

34. None of the alternatives suggested by the parties are practical alternatives to the proposed project. Certain capacity from expiring contracts and turnback capacity is not attractive to El Paso's shippers, since the capacity is subject to either recall rights or limitations on receipt point rights that were imposed as part of the 1996 Settlement.¹⁶ In the Capacity Allocation Proceeding, the Commission is preserving, in large part, the 1996 settlement, including these limitations. Thus, neither turnback capacity nor expiring contract capacity is a practical alternative to the Power-Up Project. However, more to the point, as noted in the September 20 order, turnback capacity would not resolve El Paso's need for the additional 320 MMcf/d of Power-Up capacity to meet its peak day needs.

35. On December 26, 2002, the Commission accepted, subject to various modifications, El Paso's compliance filing¹⁷ providing for firm and interruptible backhaul service using El Paso's California delivery points as receipt points. However, no party requested backhaul service in the capacity allocation process.

36. As to construction of other facility configurations on El Paso's system or the use of offsystem capacity in lieu of the Power-Up Project, we note that, to date, we have only one proposal before us, the Power-Up Project. No pipeline has filed an alternative proposal to provide the required capacity. Therefore, we find that the Power-Up Project is the only feasible means for El Paso to provide the capacity necessary to alleviate the pro rata allocations and meet its existing contractual obligations. Since we find that there are no reasonable alternatives to the Power-Up Project, we will not condition the certificate as Southwest requests.

¹⁶The 1996 Settlement, among other things, divided the capacity that was turned back to El Paso into three blocks. As relevant here, Block I and Block II capacity is subject to certain limitations. Block I capacity has alternate receipt point rights unless the capacity is sold for maximum tariff rates and, in that event, it has primary receipt point rights only to the Permian and Anadarko Basins, but not to the San Juan Basin. Block II capacity has primary access to all system receipt points, including the San Juan Basin, and has primary delivery rights to Topock-PG&E. However, Block II capacity has recall rights associated with it as well as restricted delivery points.

¹⁷101 FERC ¶ 61,379 (2002).

37. We disagree with Indicated Shippers and SoCal that the lack of interest in turnback capacity indicates that there is no need for the Power-Up Project. The project is not a typical proposal to expand a pipeline system, since the capacity is necessary to meet existing customer demand, not newly proposed service.

38. It is clear from the record in the Capacity Allocation Proceeding and from the routine pro rata cuts in the nominations of El Paso's firm customers, that El Paso does not have sufficient capacity at present to meet its existing customers' service requirements. In fact, in the recently completed allocation process, the Power-Up capacity was needed to ensure that the converting FR shippers would receive enough capacity to satisfy their requirements. Thus, it is largely irrelevant whether there was any interest shown for the Power-Up capacity during El Paso's open season. Likewise, as discussed above, turnback capacity does not appear to be an answer to the problems on the system. All of the system capacity, including both the Line 2000 capacity and the Power-Up capacity, has been made available in the September 20 order in the Capacity Allocation Proceeding to El Paso's firm customers in order to meet the demonstrated need on the system. It is clear that the capacity at issue here is necessary to meet the needs of El Paso's current customers, eliminate the pro rata cuts in nominations, and restore reliable firm service on El Paso.

39. As noted, this is not an expansion project for new shippers; it is a system integrity/reliability project benefitting existing shippers. Thus, the usual requirements for a showing that existing shippers are not subsidizing facilities for new shippers, such as contracts for the new capacity, do not apply. Typically, when a pipeline files an application to construct facilities to meet existing requirements, improve reliability, or provide flexibility, it identifies the problem it intends to solve and the facilities necessary to implement the solution. However, the history and complexity of the issues involved in these related proceedings are unique. In the context of these proceedings, specifically in the Capacity Allocation Proceeding, El Paso has sought capacity turnback. Therefore, the fact that El Paso held an open season in this certificate proceeding but did not specifically solicit capacity turnback at that time is irrelevant. The Power-Up Project is an integral component of the plan to fix a dysfunctional system that needs additional capacity and turnback capacity will not meet that need.

40. El Paso intends to place its Power-Up Project into service in phases, with Phase I scheduled to be completed by February 2004 (120 MMcf/d), Phase II by April 2004 (100 MMcf/d), and Phase III by April 2005 (100 MMcf/d). In accordance with El Paso's proposed schedule, we are requiring the facilities to be constructed and made available for service by April 1, 2005. The timing between Phases II and III will afford El Paso an opportunity to reassess the capacity requirements on its system after it has implemented

the reallocation scheme. Before the proposed April 2005 in-service date for Phase III, El Paso will have had actual summer and winter operating experience under the new capacity allocation scheme using the Power-Up Phases I and II capacity. At that time it can determine whether contract demand still requires the Phase III capacity, as proposed, or if El Paso needs to amend the certificate authority we are issuing in this order to modify, reduce, or eliminate the Phase III facilities.

C. Rates

41. Southwest states that the Power-Up facilities should be priced on a rolled-in basis. Kern River argues that they should be priced incrementally. As we state above, when a pipeline project is intended to benefit its existing shippers as in this proceeding, the Commission's policy is to allow the project's costs to be rolled-in. Therefore, we will allow El Paso to roll-in the costs of the Power-Up Project in its next general rate case absent changed circumstances.

42. Indicated Shippers, Kern River, and SCE object to El Paso's request that the Commission determine in this proceeding that the proposed project is used and useful, the project's costs are prudently incurred, and that El Paso will be guaranteed recovery of the costs in its next rate case. They argue that these issues should be determined in El Paso's next rate case since there is no evidence in this proceeding upon which the Commission could conclude that the estimated \$173.3 million cost is justified or prudent.

43. As stated, we are finding that the construction of the proposed facilities is justified because they are needed to meet existing customers' current needs. On that basis, we are finding that roll-in of the costs of the facilities is justified absent changed circumstances. As with any rate determination made by the Commission in a pipeline certificate proceeding, parties may raise issues such as whether the facilities are used and useful or prudent in the rate proceeding in which El Paso files to roll-in the Power-Up Project's costs.

44. Kern River notes that El Paso did not propose an incremental fuel charge despite its statement that the proposed facilities would increase fuel consumption by approximately 23,200 Mcf/d, which is 7.25 percent of the proposed Power-Up capacity. Kern River states that Commission precedent requires incremental fuel charges to prevent subsidization of a project by existing shippers.¹⁸

¹⁸Citing Kern River Gas Transmission Co., 96 FERC ¶ 61,137 (2001); Iroquois Gas Transmission System, L.P., 95 FERC ¶ 61,335 (2001); PG&E Transmission Corp.,
(continued...)

45. Since the cost of the compression facilities at issue will be rolled into El Paso's rates in its next section 4 rate case, all customers will pay for the capacity, as well as the related fuel charges.

D. Capacity Allocation Proceeding

46. Kern River contends that the September 20 order in the Capacity Allocation Proceeding improperly prejudices the merits of El Paso's certificate application in this proceeding and denies parties the opportunity to be heard on the merits of the application or to demonstrate that the proposal is inconsistent with the Certificate Policy Statement. We disagree. The Commission fully anticipated that any approval of El Paso's application in this proceeding would be subject to the same analysis we apply in any certificate proceeding with respect to subsidization and need and to the environmental assessment required by NEPA. The September 20 order stated the obvious, El Paso needed additional capacity on its system to fix the problem of routine pro rata allocations of firm services. The Commission's acceptance of El Paso's offer to construct the Power-Up Project to address the capacity shortfall on the system did not prejudice the Section 7 analysis, it merely provided the mechanism to meet that capacity shortfall.

47. We also disagree that the parties were denied the opportunity to be heard on the merits of the application in this proceeding as evidenced by the parties' protests to and comments on the proposal and our responses to them.

48. Several parties raise issues with respect to the timing of the allocation of the Power-Up capacity and accompanying receipt point rights. These issues are more appropriately addressed in the Capacity Allocation Proceeding.

V. Environmental Assessment

¹⁸(...continued)
96 FERC ¶ 61,194 (2001).

49. On October 16, 2002, Commission staff issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Power-Up Project and Request for Comment on Environmental Issues (NOI). We received no responses to the NOI.

50. Commission staff prepared an environmental assessment (EA) for El Paso's proposal. The EA addresses vegetation, wildlife, threatened and endangered species, land use, cultural resources, air quality, noise, reliability and safety, cumulative impacts, and alternatives.

51. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with El Paso's application and supplements filed November 18, 2002 and January 14, 2003, approval of the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

52. As recommended in the EA, this authorization includes environmental conditions which are located in Appendix B to this order.

53. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages 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, replacement, or operation of facilities approved by this Commission.¹⁹ 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 within 24 hours.

54. At a hearing held on June 4, 2003, the Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in this proceeding, and upon consideration of the record,

The Commission orders:

¹⁹See, 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).

(A) A certificate of public convenience and necessity is issued to El Paso pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct and operate facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate issued in ordering paragraph (A) is conditioned on the following:

1. construction of the authorized facilities shall be completed and the facilities shall be made available for service, as provided in section 157.20(b) of the Commission's regulations, by April 1, 2005.
2. compliance with all Commission regulations under the NGA, including, but not limited to Parts 154, section 157.20(a), (c), (e), and (f), and Part 284 of the Commission's regulations.
3. compliance with the environmental conditions listed in Appendix B to this order

(C) The late motions to intervene are granted.

(D) El Paso shall notify the Commission's environmental staff by telephone and/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 within 24 hours.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A

Intervenors

Arizona Corporation Commission
Arizona Gas Division of Citizens Communications
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Co./Pinnacle West Energy Corp.
BHP Copper Inc.
BP America Production Co. and BP Energy Co.
Burlington Resources Trading, Inc. (one day late)
Conoco Inc.
Coral Energy Resources LP (one day late)
Duke Energy Field Services, LP
Duke Energy Trading and Marketing, L.L.C.
El Paso Electric Co.
El Paso Municipal Customer Group²⁰
Kern River Gas Transmission Co. (protest)
MGI Supply Ltd.
Occidental Energy Marketing, Inc. (one day late)
Oneok Energy Marketing and Trading Co., L.P.
Pacific Gas and Electric Co.
Panda Gila River L.P.
Phelps Dodge Corp. and Asarco, Inc.
Pimalco
Public Service Co. of New Mexico
Public Utilities Commission of the State of California
Questar Southern Trails Pipeline Co.
Salt River Project Agricultural Improvement and Power District
Sid Richardson Energy Services Co., Sid Richardson Pipeline, Ltd. and Richardson
Energy Marketing, Ltd.
Southern California Edison Co. (comments)
Southern California Gas Co. (out of time & protest)
Southern California Generation Coalition²¹

²⁰ The El Paso Municipals members are the Cities of Mesa, Safford, Benson, and Willcox, Arizona; the Cities of Las Cruces, Socorro, and Deming, New Mexico; the Town of Ignacio, Colorado; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; Duncan Rural Service Corp.; and Black Mountain Gas Co.

²¹ The SCGC members are the Imperial Irrigation District, Reliant Energy Power Generation, Inc., Southern California Utility Power Pool (Los Angeles Dept. of Water and Power and the Cities of Burbank, Glendale, and Pasadena, California), and Williams
(continued...)

Southern Union Gas Co.
Southwest Gas Corp. (comments)
Texaco Exploration & Production, Inc. (one day late)
Transwestern Pipeline Co.

APPENDIX B**Environmental Conditions**

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. El Paso shall follow the construction procedures and mitigation measures described in its application and supplements and as identified in the 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 of the Commission (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 projects. 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 affirmative statements with the Secretary, certified by senior company officials, 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. El Paso **may not begin construction**-related activities at the El Paso, Cornudas, Lordsburg, Casa Grande, and Florida Compressor Stations **until** El Paso files the requested information regarding the historical significance assessment of those

locations and the Director of OEP has notified El Paso in writing that it may proceed.

5. El Paso shall conduct a noise survey to verify that the noise from each new or modified compressor station operated at full load does not exceed an L_{dn} of 55 dBA at any noise sensitive areas (NSAs), and file the results of the noise survey with the Secretary no later than 60 days after placing the new or modified compressor station in service. If the noise attributable to the operation of the new or modified compressor station at full load exceeds an L_{dn} of 55 dBA at any nearby NSAs, El Paso shall file a report on what changes are needed and install additional noise controls to meet that level within 1 year of the in-service date. El Paso shall confirm compliance with the L_{dn} of 55 dBA requirement by filing a second noise survey with the Secretary no later than 60 days after it installs the additional noise controls.