

123 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

El Paso Natural Gas Company

Docket No. CP08-14-000

ORDER ISSUING CERTIFICATE AND AUTHORIZING ABANDONMENT

(Issued April 30, 2008)

1. On November 1, 2007, El Paso Natural Gas Company (El Paso) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ for a certificate of public convenience and necessity authorizing it to construct and operate a new delivery lateral and compression facilities near the Town of Hobbs in Lea County, New Mexico (Hobbs Expansion Project or Project) to provide service to Southwestern Public Service Company (SPS). Additionally, El Paso requests permission and approval pursuant to section 7(b) of the NGA² to abandon in place 1,700 feet of pipeline. Lastly, El Paso requests a predetermination of rolled-in rate treatment for the expansion and related fuel costs.

2. The Commission grants the requested certificate and abandonment authorizations and predetermination supporting rolled-in rate treatment, subject to the conditions set forth in this order.

I. Background and Proposal

3. El Paso is a natural gas company as defined by the NGA³ and is subject to the jurisdiction of the Commission. It is a corporation duly organized and existing under the laws of the State of Delaware, having its principal place of business in Colorado Springs, Colorado. El Paso is authorized to conduct business in the states of Arizona, California, Colorado, Idaho, Kansas, Louisiana, Nevada, New Mexico, New York, Oklahoma, Texas, Utah, and in the District of Columbia. El Paso's interstate natural gas pipeline

¹ 15 U.S.C. § 717f(c) (2000).

² *Id.* § 717f(b).

³ *See id.* § 717a(6).

system extends through the states of Texas, New Mexico, Colorado, Arizona, and California.

4. El Paso proposes to construct and operate the Hobbs Expansion Project to provide firm transportation service to SPS which provides electric service to the Texas Panhandle and eastern New Mexico regions.⁴ SPS owns two existing electric generation power plants (the Cunningham and the Maddox Plants) and is currently constructing a third gas-fired generation plant,⁵ all of which are located near Hobbs, New Mexico in Lea County. El Paso will deliver SPS's gas to the MarkWest New Mexico, L.P. (MarkWest) header system for delivery to the power plants.⁶ El Paso intends to place the project facilities in service by December 1, 2008.

5. El Paso states that, in addition to providing service to SPS, the project will enhance flexibility on its system by improving its ability to receive natural gas from different production fields in the Permian Basin area, deliver the gas to various major pipeline interconnections and other delivery points, and transport natural gas to the Texas Panhandle or between El Paso's north and south mainline systems.

6. El Paso states further that its system in the Permian Basin is configured so that 65,000 dekatherms of natural gas per day (Dth/day) from the Gulf-Eunice Receipt Point must be compressed at two locations (the Monument Compressor Station and the Eunice Compressor Station); thus, natural gas must travel a circuitous 14-mile route before it can be delivered into El Paso's mainline system. El Paso states that the Hobbs Expansion

⁴ El Paso intends to construct the Hobbs Expansion Project concurrently with the construction of its proposed Eunice "C" Compressor Station which will replace the existing Eunice Mainline Compressor Station (Eunice Replacement Project). See El Paso's pending application in Docket No. CP08-2-000 for a certificate of public convenience and necessity to construct and operate the new Eunice "C" Compressor Station and to abandon in place its existing Eunice Mainline Compressor Station in Lea County, New Mexico.

⁵ The new power plant will consist of a 550-megawatt (MW) combined cycle generating facility.

⁶ See MarkWest's prior notice application in Docket No. CP08-1-000 for authorization to construct, own, operate, and maintain a 3.16-mile pipeline in Lea County, New Mexico to provide additional firm transportation service to SPS. MarkWest began construction of the pipeline in December 2007. Capacity on its pipeline will increase from 166,000 to 276,000 Dth/day.

Project will reconfigure the operation, as described below, resulting in compressor fuel savings of approximately 350 Dth/day.

A. Facilities

7. The Hobbs Expansion Project consists of three components. First, El Paso intends to install a new 3,550-horsepower Caterpillar G3612 gas-driven reciprocating jumper compressor unit at the suction side of the proposed Eunice “C” Compressor station. The jumper unit will compress the low pressure gas it receives from Line Nos. 3020 and 3060 and discharge the gas directly into the Eunice “C” Station. At the Eunice “C” Station, the gas will be compressed and can be delivered into both El Paso’s Line No. 1100 to Pecos River and Line No. 30131 to the SPS power plants.

8. Second, El Paso intends to connect its Line No. 30131, which is an approximate 5.62-mile long 16-inch diameter lateral near the Monument Station, with the MarkWest facilities by installing approximately 7.3 miles of 20-inch diameter lateral (Hobbs Lateral).⁷ El Paso will also uprate Line No. 30131 to a maximum allowable operating pressure (MAOP) of 837 psig to match the MAOP of the Hobbs Lateral, which would require El Paso to replace approximately 80-feet of Line No. 30131. El Paso will construct a meter station with appurtenances at the terminus of the Hobbs Lateral. El Paso states that the new lateral and refunctionalizing of Line No. 30131 will give it the physical capability to deliver gas for the three SPS power plants. El Paso also states that the jumper compressor and the new lateral will eliminate the current need to route gas delivered into El Paso’s systems near the Eunice compressor facilities to the Monument compressor facilities and then back to Eunice, thereby resulting in fuel savings.

9. Last, El Paso intends to modify the Eunice “B” Compressor Station in Lea County, New Mexico and the Keystone Compressor Station in Winkler County, Texas. At the Eunice “B” Station, El Paso will remove a check valve and tie-in of discharge piping into the proposed Eunice “C” Station discharge piping, which will allow gas to move north on Line No. 30131 for delivery to the SPS Hobbs Power Plant. At the Keystone Station, El Paso will add discharge piping into its Line No. 3026 to provide northerly flow from the Keystone Station to the Eunice “B” Station for delivery either west on El Paso’s southern system or into the Hobbs Lateral and the Hobbs Delivery Meter Station. The Eunice “B” Station will also retain its existing ability to flow gas south to Keystone Station. These piping modifications will enable El Paso to flow natural gas bi-directionally along Line Nos. 30125/3026, independently compress gas for

⁷ Proposed Line No. 30148.

delivery to Hobbs Lateral, and reduce El Paso's current reliance on displacement gas from the Plains Station.

B. Abandonment of Pipeline Segment

10. El Paso requests authorization to abandon in place a 1,700-foot segment of 16-inch diameter Line No. 30131 located between the tie-in to the Hobbs Lateral and the Monument Compressor Station. The new Hobbs Lateral would make this segment obsolete. El Paso asserts that since it is abandoning the segment in place, there would be no significant ground disturbance.⁸

C. Open Seasons and Precedent Agreements

11. El Paso held two open seasons on August 31, 2007: one for 150,000 Dth/day of unsubscribed Permian Basin capacity⁹ and one for expansion capacity. The unsubscribed capacity open season closed on September 7, 2007 and the expansion open season closed on September 17, 2007. Since no shipper requested firm service using unsubscribed Permian Basin capacity during the open season, El Paso reserved 150,000 Dth/day of this unsubscribed capacity to support the Hobbs Expansion Project.

12. Pursuant to the expansion open season, El Paso entered into a precedent agreement with SPS on September 4, 2007 for firm transportation service of 100,000 Dth/day from October 1 through March 31 each year and 150,000 Dth/day from April 1 through September 30 each year for a term of fifteen years beginning from the first day of the month following the date the Hobbs Expansion Project is ready for service. The parties structured their agreement to meet the operational needs of the power plants. SPS agreed to pay El Paso's maximum Production Area tariff recourse rate and the applicable

⁸ El Paso does not intend to abandon the Monument Compressor Station or the station's seven compressor units totaling 10,500 horsepower. The station will remain connected to the interstate pipeline system via El Paso's 20-inch diameter Line No. 3070 and continue to provide compression for other gas received in the vicinity of the station. The station will compress only 38,000 Dth/day as opposed to the pre-abandonment quantities of 103,000 Dth/day. The 65,000 Dth/day difference will be redirected into the Eunice "C" Station.

⁹ El Paso states that it held the unsubscribed Permian Basin capacity in accordance with section 3.4 of its tariff which details the steps for the reservation of unsubscribed capacity to be used for future expansion projects.

maximum fuel charge for Rate Schedule FT-1 service for the entire fifteen-year term. No other shipper requested expansion capacity.

D. Rates

13. El Paso requests a predetermination of roll-in for the costs associated with the Hobbs Expansion Project and the related fuel costs from the proposed facilities. El Paso's application indicates that revenues will exceed the projected cost of service in each of the first ten years of operation at the agreed rate with SPS. This will result in a rate reduction for existing customers. Finally, El Paso estimates the project cost to be approximately \$16,900,000, which it intends to finance through internally generated funds.

II. Notice, Interventions and Protests

14. Notice of El Paso's application was published in the *Federal Register* on November 23, 2007 (72 Fed. Reg. 65,712).

15. Salt River Project Agricultural Improvement and Power District, El Paso Municipal Customer Group (Municipals),¹⁰ MarkWest, UNS Gas, Inc. and Tucson Electric Power Company (jointly known as Unisource), Chevron Natural Gas, a division of Chevron U.S.A. Inc, Occidental Energy Marketing, Inc., Phelps Dodge Corporation (Phelps Dodge), Golden Spread Electric Cooperative, Inc. and GS Electric Generating Cooperative, Inc., New Harquahala Generating Company, LLC, Public Service Company of New Mexico, Southern California Gas Company and San Diego Gas & Electric Company, and Southwest Gas Corporation filed timely, unopposed motions to intervene in the proceeding.¹¹

16. Versado Gas Processors, L.L.C. (Versado), an operator of natural gas gathering and processing facilities in New Mexico and Texas, filed a late motion to intervene on January 30, 2008, which the Commission grants for good cause shown.¹² Versado

¹⁰ El Paso Municipal Customer Group is composed of the following distributor-customers: the cities of Mesa, Safford, Benson, and Willcox in Arizona; the cities of Las Cruces, Socorro and Deming in New Mexico; the Navajo Tribal Utility Authority; Graham County Utilities, Inc.; and Duncan Rural Service Corporation.

¹¹ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedures. 18 C.F.R. § 385.214 (2007).

¹² See *id.* § 385.213(b)(3).

demonstrated an interest in this proceeding that is not adequately represented by other parties in the proceeding and granting its late intervention would not delay, disrupt or otherwise prejudice this proceeding or the parties hereto.¹³

17. Phelps Dodge and the Municipals filed a joint protest to the application. El Paso filed an answer in response to the protest on December 21, 2007. While answers to protests are generally prohibited by our Rules of Practice and Procedure, the Commission finds good cause to waive Rule 213(a)¹⁴ to allow El Paso's answer because it provides information that has assisted us in our decision-making.¹⁵ We will address the protest below.

18. SPS filed a comment about the precedent agreement on December 16, 2007, as further described below.

III. Discussion

19. Since El Paso's proposed new facilities and proposed abandoned pipelines involve the transportation of natural gas in interstate commerce, the construction, ownership, operation, and abandonment of the facilities are subject to the jurisdiction of the Commission and the requirements of NGA sections 7(b), (c) and (e).

A. Application of the Certificate Policy Statement

20. On September 15, 1999, the Commission issued a Policy Statement to provide guidance as to how the Commission evaluates proposals for certificating major new construction.¹⁶ The Policy Statement establishes 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

¹³ See *id.* § 385.214(d).

¹⁴ *Id.* § 385.213(a)(2).

¹⁵ See, e.g., *Pan Gas Storage, LLC*, 120 FERC ¶ 61,223, at P 10 (2007), *Northern Natural Gas Co.*, 119 FERC ¶ 61,111, at P 13 (2007), *Texas Gas Transmission, LLC*, 117 FERC ¶ 61,261, at P 9 (2006).

¹⁶ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Policy Statement), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000).

construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to appropriately consider the enhancement of competitive transportation alternatives, possibility of overbuilding, subsidization by existing customers, applicant's responsibility for unsubscribed capacity, avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.¹⁷

21. Under this policy, the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing expansion projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers.¹⁸ The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effect 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.¹⁹ 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 proceed to complete the environmental analysis where other interests are considered.

1. The Threshold Requirement – No Financial Subsidies

22. El Paso's proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed herein, review of El Paso's proposal demonstrates that projected revenues will exceed projected costs, thus ensuring the project will not be subsidized by existing customers. Rolled-in rate treatment for the project's cost should have a positive impact on rates for existing customers.

2. Public Convenience and Necessity Determination

23. Under the Commission's Policy Statement, applicants are encouraged to minimize adverse effects on their existing shippers, existing pipelines and their captive customers,

¹⁷ See Policy Statement at 61,736.

¹⁸ See *id.* at 61,745.

¹⁹ See *id.*

and affected landowners and communities.²⁰ As we have stated, existing shippers' rates will not increase since SPS's rates will fully cover the project costs. In addition, existing shippers would experience fuel cost savings because of the increased flexibility resulting from the project. Existing pipelines in the Permian Basin area and their captive customers will not be impacted since El Paso will be providing incremental service that will not shift load from existing pipelines in its market area.

24. Regarding landowners' considerations and the environment, the project will not significantly impact affected landowners. The jumper compressor unit will not require acquisition of land from private landowners because it will be located at an existing El Paso compressor station. As for the right-of-way required for the proposed 7.3-mile Hobbs Lateral, El Paso has entered into negotiations with affected landowners. Although to date, no agreements have been reached with affected landowners, we note that no landowners have filed comments or motions to intervene regarding the project.²¹

25. With respect to El Paso's abandonment of 1,700 feet of pipeline, it would not adversely affect stability or continuity of service. The natural gas displaced from the Monument Station would be redirected to the proposed Eunice "C" Plant, which would eliminate circuitous routing of gas, resulting in fuel consumption savings.

26. Based on the benefits that the Hobbs Expansion Project will provide and the minimal adverse effects on existing customers, other pipelines and their captive customers, and landowners and surrounding communities, the Commission finds that the public benefits from the project outweigh any adverse effects and approval of the project is required by the public convenience and necessity.

B. Rates and Fuel Charge

1. Protest

27. Phelps Dodge and the Municipals filed their joint protest on December 6, 2007. Although they do not oppose the proposed project, they object to El Paso's request for a Commission predetermination of rolled-in treatment for the rates and fuel charges for the Hobbs Expansion Project. They argue that the precedent agreement lacks language that

²⁰ *See id.*

²¹ Although Versado is an affected landowner in this proposal, it intervened due to its interest in the interconnection with El Paso's system at Versado's Eunice Gas Processing Plant. Versado's customers ship gas into El Paso's system at this point.

would obligate SPS to pay the maximum FT-1 Production Area rate and that the Commission should accordingly deny El Paso's request for a predetermination that the project's costs may be rolled-in to El Paso's existing rates. Protestors point to Note 1 of the precedent agreement which states that "El Paso will propose to charge the maximum FT-1 Production Area rate for [firm] service on these facilities" and Note 2 which allows the two parties to reconfigure the rates in good faith so as to be commercially beneficial to both parties in the event that the Commission rejects the proposed rate in the certificate order or the El Paso rate case to be effective on January 1, 2009. Protestors construe this language to state that there is no enforceable promise by SPS to pay the maximum FT-1 Production Area rate. Furthermore, they argue that the language demonstrates El Paso and SPS anticipate that the Commission would choose to defer consideration of the rolled-in request to the next rate case.

28. Protestors also argue that the existing fuel rate for deliveries to MarkWest is not stated and the fuel rate is unclear. They maintain that uncertainty exists as to whether the fuel rate is subject to renegotiation that would allow SPS to pay below the maximum Rate Schedule FT-1 fuel rate. They point to El Paso's application, which states that SPS will pay "the applicable fuel charge for Rate Schedule FT-1 (as amended from time to time)" and Exhibit A to the precedent agreement states that "for deliveries to MarkWest or any Alternate Points of Delivery, the fuel rate shall be assessed in accordance with the prevailing FERC fuel rate for MarkWest or the Alternative Delivery Point."

2. El Paso's Answer

29. El Paso responds that the protestors misinterpret the terms of the precedent agreement. El Paso states that Notes 1 and 2 of the precedent agreement clearly reflect that SPS will pay the applicable maximum Production Area rate and the applicable fuel charge for Rate Schedule FT-1 for the full 15-year term. El Paso further clarifies that it will charge the applicable FERC-approved fuel rate as specified under its tariff and that the precedent agreement does not grant any future right to SPS to obtain a fuel charge that is less than the applicable maximum fuel charge.

30. El Paso argues that since SPS will pay the applicable maximum fuel charge and the revenues from the Hobbs Expansion Project will exceed its costs for all years, there would be no subsidy from existing base rate shippers. Accordingly, El Paso maintains that the Commission should make a predetermination that roll-in is appropriate.

3. SPS's Comment

31. In a letter dated December 16, 2007, SPS confirms that the precedent agreement obligates SPS to pay the maximum FT-1 Production Area rate for the entire 15-year term. SPS also comments that the precedent agreement grants the right to terminate the

precedent agreement and related Firm Transportation Service Agreement if the service would only be available at a rate above the maximum FT-1 Production Area rate.

4. Commission Determination

32. As stated, El Paso and SPS executed a precedent agreement in which SPS agreed to pay El Paso's maximum Production Area tariff recourse rate and the applicable fuel charge for Rate Schedule FT-1 service for a 15-year contract term. The Commission finds that El Paso's answer along with SPS's corroborating comments sufficiently shows that SPS is obligated to pay the applicable maximum Production Area Reservation rate if the Commission approves rolled-in treatment and the applicable maximum tariff fuel charge for deliveries to the MarkWest primary delivery point. SPS has the right under the agreement to terminate the precedent agreement if the service is only available above the maximum FT-1 Production Area rate. As discussed below, the Commission is approving the proposed rate and the roll-in of the facility costs and the fuel charges after a finding that the rates will fully recover these costs. Since the protestors' concerns are unfounded, the Commission denies their protest on this issue.

33. El Paso requests that the Commission determine that it may roll the costs of the new compression facilities into existing rates in its next general rate proceeding.²² Exhibit N of El Paso's application indicates that, at the agreed rate, project revenues will exceed project cost of service in each of the first ten years of operation, resulting in a rate reduction for existing customers if the rates are rolled-in to existing rates. Total project revenues are estimated to be \$40.7 million for the first ten years and the total cost of service is estimated to be \$28.8 million for the same period. According to El Paso's assessment, revenues from the contractual volumes will exceed expenses by a total of \$17.3 million during the first ten years of the 15-year term of the precedent agreement. Additionally, SPS has indicated to El Paso that it will subscribe for Rate Schedule IHSW-1 (Interruptible Hourly Swing) service, which could potentially increase the project's estimated revenue if used.²³ Based on El Paso's representation and SPS's concurrence that SPS will pay the maximum rate for the service agreement's terms, the Commission agrees with the assessment that revenues will exceed the cost of service of the expansion project and finds that rolling-in the cost of the expansion should result in a rate decrease

²² El Paso is required to file a new rate proceeding in June 2008 in accordance with the recently approved Stipulation and Agreement. *See El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007).

²³ El Paso notes that it opted to leave out IHSW-1 service revenues from Exhibit N to its application (*Expansion Revenue Compared to Cost of Service by Year*) because of the difficulty predicting how much of the service SPS will utilize.

for El Paso's customers. Therefore, the Commission finds that, absent a significant change in circumstance, the costs associated with the project will qualify for rolled-in rate treatment in a future general section 4 rate filing.

34. El Paso also requests that the Commission grant a predetermination that the fuel charges related to the facilities may be rolled-in. As stated above, SPS will pay El Paso's Production Area tariff recourse rate and the applicable fuel charge for Rate Schedule FT-1 service. El Paso's workpapers show that there will be no subsidization by other shippers on El Paso's system and that rolling-in fuel charges will result in downward pressure on fuel costs on El Paso's system and/or the Permian Basin.²⁴ The Commission agrees with El Paso's assessment and finds that no subsidy of the Hobbs Expansion Project by El Paso's existing customers will occur. Therefore, absent a significant change in circumstances, the Commission grants El Paso a predetermination that the fuel costs associated with the project will qualify for rolled-in treatment in a future general section 4 rate filing.

C. Existing or New Capacity

1. Protest

35. Concerning the issue of capacity, Phelps Dodge and the Municipals assert that El Paso's characterization of the capacity used for firm service is incorrect. Protestors contend that the characterization of this capacity (new versus existing) is pertinent to the ongoing requirements of Article 11.2 of the Settlement in Docket No. RP95-363-000. In the next El Paso rate case, to be filed by June 30, 2008, El Paso must make a showing under Article 11.2(b) that the rates charged by El Paso to certain eligible shippers do not include any costs related to unsubscribed capacity that was part of El Paso's system on December 31, 1995 or any such capacity to the extent it is sold at a level less than a rate cap established by Article 11.2(a).²⁵ Protestors argue that the project creates new system capacity and does not rely upon unsubscribed system capacity. Protestors add that the project is constructed to make the SPS service possible.

²⁴ El Paso states that, if the fuel costs were not rolled-in, a fuel rate attributable to the Caterpillar reciprocating compressor unit at maximum utilization would be 0.61 percent (or less if used less than 100 percent of the time as expected), which is anticipated to be less than its currently effective Within-Basin Fuel-Permian Basin fuel charge rate of 1.07 percent.

²⁵ See *El Paso Natural Gas Co.*, 114 FERC ¶ 61,290, at P 2 (2006).

36. Furthermore, the protestors argue that new capacity will be used because, contrary to El Paso's capacity open season posting, the Monument Compressor Station was never a delivery point and no existing capacity could be taken at the Monument Station. Protestors also point to the language in El Paso's open season posting notes, which state "[b]ecause the project mainly involves the construction of a separate delivery lateral, El Paso believes it is unlikely that re-acquiring any existing firm capacity currently under contract would allow El Paso to avoid constructing any new facilities." Protestors maintain this language indicates new capacity.

2. El Paso's Answer

37. In response, El Paso asserts that the firm service to be provided to SPS will use existing capacity as well as new capacity and that the Commission should state as such in its order. El Paso faults the protestors for their inaccurate interpretation of the open season posting and states that the open season posting does not support the protestors' position that the project will use only new capacity. El Paso states that its reference to the Monument Compressor as a delivery point was simply a way of describing the capacity between two points. Additionally, El Paso argues that its statement in the open season posting about the unlikelihood of avoiding construction of new facilities through turn-back of existing capacity was merely recognition that turn-back capacity could not replace the construction of the new lateral or the new compressor unit. Protestors incorrectly interpreted the statement to mean that existing capacity would not be used in providing service to SPS. Moreover, El Paso argues that the protestors ignored other sections that were clearly adverse to their position. For instance, El Paso argues that it is unclear how the protestors envisioned that El Paso would not use its existing facilities for the proposed service when the precedent agreement requires El Paso to transport gas from Keystone Pool, which is located 57 miles away from the ultimate delivery point while El Paso's proposal includes construction of only 7.3 miles of new pipeline.

3. Commission Determination

38. The Commission denies the protest and agrees with El Paso that the service provided under SPS's contract will use both existing and new capacity. Any issue relating to or affecting the Settlement should be discussed in El Paso's next section 4 rate case which is to be filed by June 30, 2008. As El Paso points out, because a portion of its existing system will be utilized, both new and existing capacity will be needed to provide service under SPS's contract. Specifically, El Paso proposes to build only seven miles of new pipeline and yet will transport gas a total of 57 miles from the receipt point to the ultimate delivery point, making it apparent that El Paso's currently existing system will be utilized.

D. Environmental Analysis

39. On December 11, 2007, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Hobbs Expansion Project and Request for Comments on Environmental Issues* (NOI) and received no comments in response to the NOI. The Commission's staff prepared an environmental assessment (EA) for Hobbs Expansion Project and issued it on March 7, 2008. The EA addresses potential impacts to geology and soils, water resources, vegetation, wildlife, threatened and endangered species, cultural resources, land use, air and noise quality, reliability and safety, cumulative impacts, and alternatives. The project facilities would require a total of about 164 acres during construction. Disturbance associated with the new compression facilities would comprise about 0.1 acre of permanently affected land while new permanent right-of-way would account for 43.9 acres.

40. Based on the discussion in the EA, the Commission concludes that if constructed and operated in accordance with El Paso's application and supplements filed January 2 and January 22, 2008, approval of this project would not constitute a major federal action significantly affecting the quality of the human environment.

41. 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 or operation of facilities approved by this Commission.²⁶

IV. Conclusion

42. For the reasons discussed above, the Commission finds El Paso's construction and operation of the proposed Hobbs Expansion Project will outweigh any potential adverse effects, that the proposed project is consistent with the Commission's Certificate Policy Statement, and that the proposed project including the proposed abandonment is required and permitted by public convenience and necessity. Furthermore, the Commission finds that, absent a significant change in circumstance, the costs associated with the project

²⁶ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Nat'l Fuel Gas Supply v. Pub. Serv. Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission Sys., L.P.* 59 FERC ¶ 61,094 (1992); *Iroquois Gas Transmission Sys., L.P.*, 52 FERC ¶ 61,091 (1990).

will qualify for rolled-in rate treatment when El Paso makes a future NGA section 4 rate filing to recover these costs.

43. The Commission, on its own motion, received and made a part of the record all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein. Upon consideration of the record,

The Commission orders:

(A) In Docket No. CP08-14-000, a certificate of convenience and necessity is issued to El Paso under NGA section 7(c) authorizing the construction, ownership and operation the Hobbs Expansion Project as conditioned herein and subject to the environmental conditions set forth in the Appendix to this order.

(B) Permission for and approval of El Paso's abandonment of 1,700 feet of pipeline, as more fully described in this order and in the application, is granted. El Paso shall notify the Commission of any abandonment of facilities within 10 days thereof.

(C) The certificate authority granted in Ordering Paragraph (A) is conditioned on:

(1) El Paso's completion of the authorized construction of the proposed facilities and making them available for service within twelve months of issuance of this order pursuant to section 157.20(b) of the Commission's regulations;

(2) El Paso's compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 285 and subsections (a), (c), (e), and (f) of section 157.20 of the regulations;

(3) El Paso's compliance with the environmental conditions listed in the Appendix.

(D) El Paso shall notify the Commission's environmental staff by telephone, e-mail, 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.

(E) El Paso is granted a predetermination of rolled-in rate treatment for the costs of the construction, operation, modification, and abandonment of certain facilities

authorized by this order in a future NGA section 4 rate proceeding, provided there are no significant changes in the relevant facts and circumstances forming the basis for this predetermination.

(F) The protest is denied for the reasons discussed above.

(G) The motion to intervene out-of-time is granted.

By the Commission. Commissioner Wellinghoff concurring with separate statement.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

APPENDIX

As recommended in the EA, this authorization includes the following conditions:

1. El Paso Natural Gas Company (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 environmental assessment (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, operation and abandonment 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, operation and abandonment.
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 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 Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. El Paso's right of eminent domain granted under NGA section 7(h) 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 shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
7. El Paso shall file updated status reports prepared by the 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 the project, 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.
8. El Paso shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation

problems/concerns during construction of the project and restoration of the right-of-way. **Prior to construction**, El Paso shall mail the complaint procedures to each landowner whose property would be crossed by the project.

- a. In its letter to affected landowners, El Paso shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they should call El Paso's Hotline; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that, if they are still not satisfied with the response from El Paso's Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
 - b. In addition, El Paso shall include in its biweekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property;
 - (3) the description of the problem/concern; and
 - (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. **Prior to the start of construction**, El Paso shall file with the Secretary of the Commission its final Revegetation Plan and any correspondence received from the Natural Resources Conservation Service regarding the adequacy of this plan.
 10. **Prior to the start of construction**, El Paso shall file with the Secretary of the Commission for review and written approval of the Director of OEP its final Hydrostatic Test Plan.
 11. El Paso shall make all reasonable efforts to assure its predicted noise levels from the Eunice "C" Compressor Station facilities are not exceeded at nearby Noise Sensitive Areas (NSAs) and file noise surveys showing this with the Secretary **no later than 60 days after placing the Eunice "C" Compressor Station in service**. However, if the noise attributable to the operation of the Eunice "C" Compressor Station facilities at full load exceeds a day-night sound level (L_{dn}) of

55 decibels on the A-weighted scale (dBA) at any nearby NSAs, El Paso shall file a report on what changes are needed and shall install additional noise controls to meet the level within one year of the in-service date. El Paso shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls.**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

El Paso Natural Gas Company

Docket No. CP08-14-000

(Issued April 30, 2008)

WELLINGHOFF, Commissioner, concurring:

As the Commission has previously recognized, pipelines consume tremendous energy to compress gas in order to move it through the interstate system.¹ Therefore, it is important that we wring every ounce of efficiency out of the gas delivery systems. Toward that end, we must look for ways to improve the efficiency of pipeline operations, while maintaining reliability of service. For example, it has been estimated that there are between 10 and 15 gigawatts of energy that could be recovered from waste heat recovery at compressor stations and pressure recovery at pressure let down points.

In its application, El Paso states that the operations of its system in the Permian Basin will be reconfigured as part of the Hobbs Expansion Project, resulting in compressor fuel savings of 350 dt per day. El Paso also informs the Commission that they have reviewed the commercial and technical viability of installing and operating waste heat electric cogeneration (WHEC) facilities in conjunction with the Hobbs Expansion Project. Based on discussions with WHEC equipment manufacturers, El Paso concludes that waste heat recovery is not well suited for this project. El Paso explains that the project calls for the deployment of a 3,550 horsepower jumper compressor with a reciprocating gas-fired engine. El Paso states that this type and amount of compression does not qualify as a viable candidate for WHEC.

It appears that El Paso devoted significant attention to exploring the potential for waste heat recovery as part of the Hobbs Expansion Project. I commend El Paso for its efforts. I encourage El Paso, and all pipelines, to work with its customers to explore ways to economically gain efficiencies, reduce costs and become more competitive and profitable in the design and operation of proposed pipeline projects.

For these reasons, I respectfully concur with today's order.

Jon Wellinghoff
Commissioner

¹ Fuel Retention Practices of Natural Gas Companies, Notice of Inquiry, 72 Fed. Reg. 55762 (October 1, 2007), FERC Stats. & Regs. ¶ 35,556 (2007).