DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11562–000]

Robert Craig; Notice of Surrender of Preliminary Permit

June 11, 1997.

Take notice that Robert Craig, Permittee for the Icy Gulch Project No. 11562, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11562 was issued March 11, 1996, and would have expired February 28, 1999. The project would have been located on Sheep Creek, near Juneau, Alaska.

The Permittee filed the request on May 16, 1996, and the preliminary permit for Project No. 11562 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15789 Filed 6–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–596–000]

El Paso Natural Gas Company; Order To Show Cause

June 11, 1997.

On June 25, 1996, El Paso Natural Gas Company (El Paso) filed a prior notice request to construct and operate a delivery point on its Santan Line in Maricopa County, Arizona to deliver natural gas to Southwest Gas Corporation (Southwest).

Thereafter, El Paso filed a notice of withdrawal of its prior notice request, citing a 1981 Gas Sales Agreement between El Paso and Salt River Project Agricultural Improvement and Power District (Salt River). The 1981 Gas Sales Agreement provides that the Santan Line will not be used without Salt River's consent for any purpose except the transportation of gas to Salt River.

On August 16, 1996, Southwest filed in opposition to El Paso's notice of withdrawal. Southwest contends that the Santan Line facilities have been incorporated into El Paso's jurisdictional open-access interstate transmission system and that El Paso's decision not to proceed with the construction of the delivery point constitutes discriminatory denial of access.

For the reasons discussed below, the Commission is requiring El Paso to show cause why it should not be required to construct and operate the delivery point for and provide the proposed transportation service to Southwest if capacity is available.

I. Procedural Matters

Notice of El Paso's prior notice request for authorization to construct and operate a delivery point to permit the transportation and delivery of natural gas to Southwest under El Paso's blanket certificate was published in the **Federal Register** on July 8, 1996 (61 FR 35729).[1] Eight parties filed timely, unopposed motions to intervene.[2] Timely, unopposed motions to intervene are granted by operation of rule 214 of the Commission's regulations.

On August 7, 1996, El Paso filed a notice of withdrawal of its prior notice request. Salt River filed in support of El Paso's notice of withdrawal on August 14, 1996; at the same time it filed a conditional protest opposing El Paso's prior notice request should the notice of withdrawal not become effective. On August 16, 1995, Southwest filed a motion opposing El Paso's notice of withdrawal.

Thereafter, Salt River and Southwest filed a series of pleadings in the nature of answers and responses to answers. While our rules do not permit answers to answers,[3] we may, for good cause, waive a rule.[4] We find good cause to do so in this instance. Accordingly, to achieve a complete and accurate record, we will accept and consider all tendered pleadings.

II. Background

On January 11, 1982, the Commission issued an order authorizing El Paso to construct and operate 9.9 miles of 12.75-inch diameter pipeline to extend from El Paso's existing 16-inch Ocotillo Pipeline eastward to Salt River's Santan combined-cycle generating station (Santan Plan) for the transportation and delivery of natural gas for direct salt to Salt River.[5] This order provided that ''[c]osts associated with the construction and operation of the facilities authorized herein shall not be allocated to jurisdictional customers under a Natural Gas Act, Section 4 filing by El Paso.'' [6]

The 1981 Gas Sales Agreement between El Paso and Salt River, under which the direct sales were initiated, states that the Santan Line will not be used without Salt River's consent for any purpose except the transportation of gas to Salt River.

In 1990, El Paso and Salt River entered into a Transportation Service Agreement regarding the use of the Santan Line. Under the Transportation Service Agreement, Salt River, pursuant to Subpart A of Part 284 of the Commission's regulations, converted its full natural gas requirements under the existing Gas Sales Agreement to firm transportation service. The 1990 Agreement provides that El Paso will continue the same quality of service El Paso provided under the existing Gas Sales Agreement, with only those modifications that are necessary to reflect the conversion of service from sales to transportation.

III. The Parties' Position

Southwest, stating that the 1981 Gas Sales Agreement between Salt River and El Paso has been converted to full requirements firm transportation service, contends that the Santan Line has been incorporated into El Paso's jurisdictional open-access interstate transmission system. Southwest states that El Paso has informed it that Salt River has not paid a surcharge for the sole use of the Santan Line for some time; Southwest infers from this that operation and maintenance costs associated with the Santan Line are recovered by El Paso through its systemwide rates. Southwest contends that all open-access transportation customers should have an equal right of access to any part of the pipeline's integrated transmission system on a non-discriminatory, non-preferential basis subject to the pipeline's operating tariff provisions and delivery and receipt point priorities. Accordingly, Southwest concludes that El Paso's failure to construct the delivery point could constitute a discriminatory denial of access to El Paso's open-access transmission system.

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[1] El Paso was granted a Part 157 blanket certificate in El Paso Natural Gas Co., 20 FERC ¶ 62,454 (1982).

[2] They are: Amoco Production Co., Arizona Public Service Co., Citizens Utilities Co., Colorado Interstate Gas Co., Conoco, Inc., El Paso Municipal Customer Group, Southern Union Gas Co., and Southwest Gas Corp.

[3] *See* 18 CFR § 835.213(a) (1) and (2) (1996).

[4] 18 CFR § 385.101(e) 1996).

[5] El Paso Natural Gas Co., 18 FERC ¶ 61,015 (1982).

[6] *Id.* at 61,021 (Ordering Paragraph D).

Salt River responds that El Paso designed and constructed the Santan Line to serve the exclusive needs of Salt River's Santan Plant, and that Salt River reimbursed El Paso for the construction and operational costs of the Santan Line through an incremental surcharge and minimum purchase obligation. It states that as a result of this arrangement, El Paso was prohibited by the terms of the Santan Line certificate from allocating costs associated with the construction and operation of the Line to its jurisdictional customers.

Salt River adds that the 1990 Transportation Service Agreement converting the 1981 Gas Sales Agreement to full requirements transportation service provides for continuation of the same quality of service as provided under the 1981 Gas Sales Agreement, modified only as necessary to reflect the conversion of service from sales to transportation. Thus, Salt River concludes that the Santan Line is not part of El Paso's open-access transmission system, and that the provision that the Santan Line will not be used by El Paso for any purpose other than to serve the Santan Plant is legally enforceable.

Salt River states nonetheless that it is willing to consider a proposal by El Paso to install a new tap for Southwest on the Santan Line assuming adequate capacity exists to ensure that the peak generating capability of the Santan Plant will not be adversely affected. Salt River adds that it has advised Southwest that, because the new tap would be located upstream of the Santan Plant, Salt River, at a minimum, must have written assurance that it will receive adequate notice of and be fully compensated in the event gas intended for Salt River at the Santan Plant is otherwise diverted to Southwest.

IV. Discussion

Under section 5 of the Natural Gas Act (NGA), the Commission has ''broad power to stamp out undue discrimination,'' including the authority to impose ''suitable remedies'' in an appropriate case.[7] That authority includes the power to order an interstate pipeline to add new delivery points.[8]

Under Part 284 of the Commission's regulations, an interstate pipeline with a blanket certificate must provide service without undue discrimination. Although the rules do not require that a pipeline construct facilities,[9] the pipeline cannot discriminate against any shipper in constructing minor facilities to accept or deliver supplies.[10] The Commission consistently interprets this to mean that if a pipeline decides to build facilities for one customer, it must build facilities for other similarly situated shippers on a non-discriminatory basis,[11] unless there is some appropriate justification not to do so.[12]

Here, the dispute focuses on whether El Paso must provide non-discriminatory open-access service to Southwest on the Santan Line pursuant to Part 284 of our regulations, if capacity is available and despite the sole-use provision in Salt River's Agreement.

Since El Paso is presently providing open-access service to Salt River on the Santan Line, the Commission will require that El Paso show cause why it should not be required to provide a delivery point for Southwest. In doing so, El Paso should provide, in particular, all information necessary to make a determination as to: (1) Why the provisions of the 1981 Gas Sales Agreement and the 1990 Transportation Service Agreement should be considered to override the terms and conditions imposed on service rendered under Part 284 of the Commission's regulations; (2) why the Commission should not require the parties to amend their contract to remove the sole use provision; and (3) why El Paso should not be required to construct and operate the delivery point for and provide the proposed transportation service to Southwest if capacity is available.

In its response, El Paso should address the specific concerns raised above by the Commission. As stated, the Commission is accepting considering all previously tendered pleadings. Therefore, the parties should not reiterate any arguments from those pleadings.

The Commission Orders

(A) Within 30 days of the issuance of this order, El Paso is ordered to show cause why it should not be required to provide a delivery point for Southwest, as described above.

(B) Notice of this proceeding will be published in the **Federal Register**. Interested parties will have 20 days from the date of publication of the notice to intervene.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 97–15819 Filed 6–16–97; 8:45 am]

BILLING CODE 6717–01–M

[7] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1001 (D.C. Cir. 1987), *cert. denied sub nom.* Interstate Natural Gas Ass'n of Am., 485 U.S. 1006 (1988).

[8] *City of Gainsville, Fla.* v. *Florida Gas Transmission Co.,* 55 FERC ¶ 61,486, at p. 62,664 (1991).

[9] Order No. 436, at p. 31,550.

[10] *Id.,* Order No. 636–A, at p. 30,585.

[11] *See, e.g.,* Texas Eastern Transmission Corp., 37 FERC ¶ 61,260, at p. 61,683 n. 114 (1986).

[12] *Id.* at p. 61,679.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–562–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

June 11, 1997.

Take notice that on June 6, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP97–562–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon an inactive meter station for Orlando Utilities Commission (OUC) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon the Highlands Meter Station in Orange County, Florida, because OUC no longer has any present or future use for the meter station. The meter station has been inactive since 1984. FGT indicates that the proposed abandonment will not change the certificated levels of service which FGT is currently providing OUC.

Any person or the Commission's staff may, with 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for