

BRACEWELL

May 11, 2021

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Request for Limited Waiver
El Paso Natural Gas Company, L.L.C.
Docket No. RP21-____-000

Dear Secretary Bose:

El Paso Natural Gas Company, L.L.C. (“EPNG”) is requesting the Federal Energy Regulatory Commission (“Commission”) to grant a limited waiver of certain provisions of EPNG’s General Terms and Conditions (“GT&Cs”) Tariff to eliminate the collection of interest, through the end of calendar year 2021, on late payments associated with critical operating condition penalties incurred during Winter Storm Uri.

Background

During Winter Storm Uri, EPNG experienced a critical operating condition on its system as a result of shippers significantly overpulling gas quantities at delivery points.¹ Using its Tariff authority to address the strained and critical conditions, EPNG posted a series of Operational Flow Order (“OFO”) notices on its electronic bulletin board (“EBB”) during the period February 15 through February 17, 2021. These notices informed shippers that EPNG declared critical operating conditions across the system and further reminded and updated shippers on the critical operating conditions during Winter Storm Uri.² To maintain system reliability, EPNG advised shippers to immediately align their takes with their scheduled quantities and to ensure that their suppliers were performing. As Winter Storm Uri subsided and shipper overpull of the system began to decrease, EPNG lifted its critical operating condition on February 18, 2021.

During Winter Storm Uri, the majority of customers complied with OFO notices, and EPNG had no significant or extended operational issues with its own facilities. It is important to note that

¹ As used herein, an “overpull” refers to a situation where a shipper takes more gas from the pipeline at its delivery points than its gas supplier puts into the pipeline on the shipper’s behalf in production areas.

² EPNG’s EBB notices during the Winter Storm Uri are attached hereto as Appendix A.

widespread noncompliance with OFO notices would have affected EPNG's ability to serve its customers. EPNG also utilized all of its resources to maximize throughput on the system, including line pack and storage supply. EPNG continued to reliably deliver gas in accordance with its contractual obligations for the duration of Winter Storm Uri. Through the timely posting of notices, EPNG kept customers informed of the impending weather impacts and the changing operational circumstances impacting its system.

Nonetheless, EPNG still assessed approximately \$192 million in critical operating condition penalties to shippers in connection with Winter Storm Uri. In accordance with Section 12 of the GT&Cs of EPNG's Tariff, EPNG issued invoices to its customers for February activity by the ninth business day of the following month (i.e., March 11, 2021), with payments due by March 22, 2021. These invoices informed shippers of the critical operating condition penalties they incurred as a result of their activities during Winter Storm Uri.³ After the payment due date, any unpaid balances began to incur interest, in accordance with Section 12.3 of the GT&Cs of EPNG's Tariff.

The Requested Waivers Are Consistent With EPNG's Tariff Authority and Commission Precedent

In response to feedback from its customers⁴ and the far-reaching impacts of Winter Storm Uri, EPNG believes it is appropriate to waive, through the end of calendar year 2021, the Tariff requirement to bill interest on late payments associated with Winter Storm Uri, as well as certain associated tariff provisions.⁵ Doing so allows EPNG to provide its customers with a degree of flexibility in the payment of critical operating condition penalties. Section 18 of the GT&Cs of EPNG's Tariff permits EPNG to "waive all or any part of any penalty which might otherwise apply," when done on a not unduly discriminatory basis.⁶ Consistent with Commission precedent on this

³ Notably, EPNG's tariff utilizes a bifurcated OFO penalty structure, under which penalties for hourly and daily non-compliance are evaluated and assessed separately. El Paso Natural Gas Company, L.L.C., FERC Gas Tariff, General Terms and Conditions § 14.2. Furthermore, the EPNG tariff effectively nets each respective penalty category against the other. This effective netting can reduce or, in some cases, eliminate the penalty that would otherwise be charged to a customer dependent on its activity throughout the calendar year. *Id.* For example, there is at least one shipper that received hourly penalties during Winter Storm Uri. Given that the hourly penalties assessed to this shipper are less than the credits due from daily penalties, this shipper is entitled to a net credit.

⁴ EPNG received numerous dispute letters and requests for waivers from its customers. Customers cited a variety of reasons for overpulling the EPNG system, including human needs, force majeure, unavailability of supply, and no perceived harm to the system.

⁵ El Paso Natural Gas Company, L.L.C., FERC Gas Tariff, General Terms and Conditions § 12.3 (provision concerning the charging of interest on unpaid balances); *id.* at § 12.5(b) (specifically, the provision concerning Payment Security in connection with disputed invoice amounts).

⁶ El Paso Natural Gas Company, L.L.C., FERC Gas Tariff, General Terms and Conditions § 18.

very issue, this provision provides EPNG with the authority to waive the collection of interest on late payments associated with critical operating condition penalties incurred during Winter Storm Uri.⁷ It is noteworthy that EPNG is neither benefitted nor harmed by collecting penalties and interest, and the remuneration of those amounts to non-offending customers.

In the wake of Winter Storm Uri, several Federal, state, and local governmental authorities have initiated investigations into the impacts and consequences of the severe cold weather occurring in February 2021, as well as the attendant natural gas supply issues and electric power shortages. Until these governmental inquiries are concluded, there is no discernable benefit to further penalizing customers by the imposition of interest. Although EPNG's tariff provides adequate authority to waive these provisions, in the interest of transparency and regulatory certainty EPNG respectfully requests the Commission grant a limited waiver of the Tariff requirement to bill interest on late payments associated with Winter Storm Uri, as well as certain associated tariff provisions.⁸ In addition to being consistent with the Tariff and recent Commission precedent, the limited waiver also satisfies the Commission's test for granting limited waivers:⁹

- During Winter Storm Uri, EPNG acted in good faith to maintain deliveries;
- This one-time waiver is limited in scope to only the interest portion of the critical operating condition penalties and provides greater payment flexibility to customers;
- The waiver is in response to the concrete and far-reaching impacts of Winter Storm Uri; and

18.1 Penalty Waiver. Transporter may, in exercise of its reasonable discretion, and on a not unduly discriminatory basis, waive all or a part of any penalty which might otherwise apply. Transporter shall maintain a record of all waivers granted.

⁷ In reviewing a recent waiver provision in connection with a broader request for waiver, the Commission found, "[u]nder its tariff, Southern Star has the authority to waive penalties incurred by shippers as a result of an OFO violation. Specifically, section 8.8 of the GT&Cs provides that Southern Star may waive defaults by shippers of the applicable rate schedules and service agreements." *S. Star Central Gas Pipeline, Inc.*, 175 FERC ¶ 61,015, at P 9 (2021). In contrast to Southern Star's waiver provision, which was found to only cover shippers, EPNG's waiver provision covers all customers. *Compare* Southern Star Central Gas Pipeline, Inc., FERC Gas Tariff, General Terms and Conditions, Sheet No. 225 ("Southern Star shall have the right to waive any one or more specific defaults thereof by any Shipper . . .") with El Paso Natural Gas Company, L.L.C., FERC Gas Tariff, General Terms and Conditions § 18.1 ("Transporter may, in exercise of its reasonable discretion, and on a not unduly discriminatory basis, waive all or a part of any penalty which might otherwise apply. Transporter shall maintain a record of all waivers granted"); see also, *Gulf South Pipeline Company, LLC*, 175 FERC ¶ 61,055 (2021) (granting similar waiver in connection with the same Winter Storm Uri weather event).

⁸ *Supra* nn. 5-6.

⁹ See, e.g., *Citizens Sunrise Transmission LLC*, 171 FERC ¶ 61,106, at P 10 (2020); *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

- The waiver does not have any undesirable consequences because it applies to all applicable shippers equally to ensure consistent enforcement of critical operating condition penalties.

Critical Operating Condition Penalties Must Be Enforced To Deter Non-Compliance and Prevent Uncertainty

As noted above, the requested limited waiver concerns only the Tariff requirement to assess and bill interest charges on unpaid critical operating condition penalties. EPNG believes that waiving only the interest portion of the critical operating condition penalties is an appropriate response to the events that occurred on its system during Winter Storm Uri. The Commission has acknowledged the role of such penalties in “discouraging behavior detrimental to the system” and “detering future abuse.”¹⁰ The structure of critical operating condition penalties ensure that non-compliant customers are held accountable. During these times, compliance with OFOs is most needed to ensure gas is available to all customers. This rationale applies even more forcefully during events, such as Winter Storm Uri and to similar events in the future.

In addition to discouraging non-compliance, compliant shippers are entitled to some remuneration for any issues caused by the non-compliant shipper’s conduct. Many of the customers that complied with OFOs incurred significant costs in doing so. Based on the critical operating condition penalties that EPNG has assessed in connection with Winter Storm Uri, approximately \$192 million in critical operating condition penalties is due to be disbursed to shippers. To deprive these customers of the critical operating condition penalty disbursements due to them would be thoroughly inequitable. The consistent and transparent application of critical operating condition penalties on EPNG’s system avoids uncertainty as to whether or not these penalties will be enforced during similar future events. If such uncertainty reigns, some customers may disregard future OFOs on the expectation that any associated penalties will be waived. As such, OFOs are a critical tool used in maintaining system reliability.

Furthermore, the rationale and purpose behind imposing critical operating condition penalties are separate and distinct from the rationale and purpose behind charging interest. Critical operating condition penalties are intended to incent compliance with OFOs and scheduled volumes in the interest of total system reliability.¹¹ In contrast, interest is charged to incent

¹⁰ See *Noram Gas Transmission Co.*, 79 FERC ¶ 61,126, at 61,544 (1997), *order denying reh'g*, 80 FERC ¶ 61,100 (1997); see also, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services, 91 FERC ¶ 61,169, 61,307-308, Order No. 637-A (2000) (“[T]he fundamental purpose of penalties and OFOs is to protect the reliability of service to all shippers . . . It was precisely this purpose that the Commission recognized in Order No. 636, when it permitted pipelines to develop and utilize OFOs and penalties as system management tools.”).

¹¹ *Id.*

timely payment of bills in the interest of administrative efficiency. Although imposed on the same group of entities, only critical operating condition penalties concern issues that go to the core of system reliability. Therefore, as discussed above, consistent application of the critical operating condition penalty policy ensures the integrity and reliability of the system.

Contact Information

Correspondence and communications concerning this filing should be directed to:

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These persons have been designated for service in accordance with Rule 203 of the Commission's Rules of Practice and Procedure.

Conclusion

For the foregoing reasons, EPNG respectfully requests that the Commission grant this limited tariff waiver to eliminate the collection of interest, through the end of calendar year 2021, on late payments associated with critical operating condition penalties incurred during Winter Storm Uri.

Respectfully Submitted,

/s/ D. Kirk Morgan II

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Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing document to be served upon all shippers on EPNG's pipeline system and interested state regulatory commissions, in accordance with the requirements of Section 385.2010 of the Commission's Rules of Practice and Procedures.

Dated at Colorado Springs, Colorado as of this 11th day of May 2021.

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Appendix A
EPNG's EBB Notices

NOTICE_TEXT

Critical: Y
TSP/TSP Name: 8001703-EL PASO NATURAL GAS CO. L.L.C.
Notice Type Desc (1): OPERATIONAL FLOW ORDER
Notice Type Desc (2): OFO
Post Date: 2/15/2021 11:04:53 AM
Notice Effective Date/Time: 02/15/2021 11:04:53AM
Notice End Date/Time: 12/31/2049 9:00:00AM
Notice ID: 611024
Notice Stat Desc: INITIATE
Prior Notice:
Reqrd Rsp: 1
Subject: COC Declaration - System Wide Draft

Notice Text:

CRITICAL OPERATING CONDITION (COC) Declaration - System
Wide DRAFT

EFFECTIVE DATE: February 15, 2021

EFFECTIVE TIME: 8:00 AM MST

IMBALANCE TOLERANCE: 3%

DURATION: Until Further Notice

AFFECTED AREAS/LOCATIONS: System-wide

OPERATING CONDITION SUMMARY: System linepack has decreased 701 MMcf since the start of the previous Gas Day (February 14) and is continuing to decrease as a result of significant underperformance in the supply basins due to the extreme winter weather in the mid-continent that has extended down into Texas. Linepack is currently at 8,069 MMcf to start Gas Day February 15, 2021, and while this is within an acceptable range EPNG is concerned about the rate of decline due to the loss of supply, particularly in the Permian Basin.

Deliveries in excess of scheduled quantities.

Supply underperformance in both the San Juan and Permian basins as a result of the extremely cold temperatures overnight.

Permian Basin supply is experiencing significant underperformance issues related to the winter weather with actual receipts into the system approximately 870 MMcf below scheduled quantities for Gas Day February 15 (45% of schedule).

San Juan supply basin is experiencing underperformance issues related to the cold weather with actual receipts into the system approximately 139 MMcf below scheduled quantities for Gas Day February 15 (88 % of schedule).

CUSTOMER ACTION REQUIRED: Immediate action is required to insure that system pressure remain at a level capable of meeting scheduled deliveries off the system.

EPNG RESPONSE:

- Washington Ranch is on maximum withdrawal.

- Underperformance caps have been placed and will continue to be placed on underperforming supplies
- IHSW service will be suspended during the duration of the event.
- Payback from the system, such as Payback (Imbalance Payback from TSP), will be denied due to operational concerns related to maintaining adequate linepack.
- Loans and Park withdrawals to will be reduced to EPSQ in the Intraday 1 Cycle, Gas Day February 15. Loans and Park withdrawals will be reduced to zero for the Timely Cycle, Gas Day February 16.

REFERENCE INFORMATION:

For scheduling questions, please call your scheduling representative at (800) 238-3764.

For operational and capacity questions, please call Russ Pyeatt at (719) 520-3729, Dan English at (719) 520-4722, or Tim Fuller at (719) 520-4339.

For media inquiries, please call Lexey Long at 713-420-4644.

NOTICE_TEXT

Critical: Y
TSP/TSP Name: 8001703-EL PASO NATURAL GAS CO. L.L.C.
Notice Type Desc (1): OPERATIONAL FLOW ORDER
Notice Type Desc (2): OFO
Post Date: 2/15/2021 5:54:43 PM
Notice Effective Date/Time: 02/15/2021 5:54:43PM
Notice End Date/Time: 12/31/2049 9:00:00AM
Notice ID: 611032
Notice Stat Desc: SUPERSEDE
Prior Notice: 611024
Reqrd Rsp: 1
Subject: COC UPDATE- System Wide Draft

Notice Text:

CRITICAL OPERATING CONDITION (COC) UPDATE #1 - System
Wide DRAFT

EPNG remains under a COC for Draft condition (Reference Critical Notice No. 611024) which was effective as of 8:00 AM MST for Gas Day February 15, 2021. Linepack is currently at 7,748 MMcf, which is a decrease of 321 MMcf since this morning. EPNG is concerned that overnight recovery will not be sufficient for tomorrow's loads due to the increasing severity of the supply loss in the Permian Basin.

Permian Basin supply underperformance caps and scheduling adjustments made in the Intraday 1 (Cycle 3) for Gas Day February 15 resulted in an overall schedule reduction of 1,436 MMcf as compared to the start of the day schedule (Cycle 2). The Permian basin is currently scheduled at 891 MMcf and is performing at 62% of this reduced scheduled volume.

San Juan Basin supply underperformance caps and scheduling adjustments made in the Intraday 1 (Cycle 3) for Gas Day February 15 resulted in an overall schedule reduction of 135 MMcf as compared to the start of the day schedule (Cycle 2). The San Juan basin is currently is currently scheduled at 1,250 MMcf and is performing at 116% of this reduced scheduled volume.

Washington Ranch is on maximum withdrawal.

Customers are encouraged to review their transport to ensure that their flowing quantities are aligned with their scheduled supplies.

Delivery point operators are encouraged to take gas according to their scheduled quantities.

Supply operators are encouraged to maintain their deliveries into the EPNG system at their scheduled rates.

Underperformance caps were placed on non-performing supplies in Intraday 1 (Cycle 3) for Gas Day February 15 and additional underperformance caps will be placed in Intraday 2 (Cycle 4) as needed. Underperformance caps will be placed for Gas Day February 16 Evening (Cycle 2) as well.

IHSW service remains suspended during the duration of the event.

Payback from the system, such as Payback (Imbalance Payback from TSP), will be denied due to operational concerns related to maintaining adequate linepack.

Loans and Park withdrawals were reduced to EPSQ in the Intraday 1 Cycle (Cycle 3) for Gas Day February 15, and Loans and Park withdrawals will be reduced to zero for the Timely Cycle (Cycle 1) for Gas Day February 16. Day February 16.

NOTICE_TEXT

Critical: Y
TSP/TSP Name: 8001703-EL PASO NATURAL GAS CO. L.L.C.
Notice Type Desc (1): OPERATIONAL FLOW ORDER
Notice Type Desc (2): OFO
Post Date: 2/16/2021 2:48:08 PM
Notice Effective Date/Time: 02/16/2021 2:48:08PM
Notice End Date/Time: 12/31/2049 9:00:00AM
Notice ID: 611043
Notice Stat Desc: SUPERSEDE
Prior Notice: 611032
Reqrd Rsp: 1
Subject: COC Update #2 - System Wide Draft

Notice Text:

CRITICAL OPERATING CONDITION (COC) UPDATE #2 - System Wide DRAFT

EPNG remains under a COC for Draft condition (Reference Critical Notice No. 611024, 611032) which was effective as of 8:00 AM MST for Gas Day February 15, 2021. The EPNG system linepack stabilized overnight to start Gas Day 16 at 7,779 MMcf and linepack is currently at 7,630 MMcf and decreasing. Given the continued underperformance in the Permian Basin supply, continued drafting of the system will impact our ability to maintain adequate linepack for the anticipated loads today and going into tomorrow.

The Permian basin is currently scheduled at 694 MMcf following underperformance caps and scheduling adjustments made in the Intraday 1 Cycle (Cycle 3) for Gas Day February 16, and is currently performing at 91% of this reduced scheduled volume.

The San Juan basin is currently scheduled at 1,425 MMcf for Intraday 1 Cycle (Cycle 3) for Gas Day February 16, and is currently performing at 96% of this reduced scheduled volume.

Washington Ranch is on maximum withdrawal.

Customers are encouraged to review their transport to ensure that their flowing quantities are aligned with their scheduled supplies.

Delivery point operators are encouraged to take gas according to their scheduled quantities.

Supply operators are encouraged to maintain their deliveries into the EPNG system at their scheduled rates.

Underperformance caps were placed on non-performing supplies in Intraday 1 (Cycle 3) for Gas Day February 16 and additional underperformance caps will be placed in Intraday 2 (Cycle 4) as needed. Underperformance caps will be placed for Gas Day February 17 Evening (Cycle 2) as well.

IHSW service remains suspended during the duration of the event.

Payback from the system, such as Payback (Imbalance Payback from TSP), will be denied due to operational concerns related to maintaining adequate linepack.

Loans and Park withdrawals were reduced for all cycles for Gas Day February 16, and Loans and Park withdrawals will be reduced to zero for the Timely Cycle (Cycle 1) for Gas Day February 17.

NOTICE_TEXT

Critical: Y
TSP/TSP Name: 8001703-EL PASO NATURAL GAS CO. L.L.C.
Notice Type Desc (1): OPERATIONAL FLOW ORDER
Notice Type Desc (2): OFO
Post Date: 2/17/2021 4:15:48 PM
Notice Effective Date/Time: 02/17/2021 4:15:48PM
Notice End Date/Time: 12/31/2049 9:00:00AM
Notice ID: 611062
Notice Stat Desc: SUPERSEDE
Prior Notice: 611032
Reqrd Rsp: 1
Subject: COC Update #3 - System Wide Draft

Notice Text:

CRITICAL OPERATING CONDITION (COC) UPDATE #3 - System Wide DRAFT

EPNG remains under a COC for Draft condition (Reference Critical Notice No. 611024, 611032, 611043) which was effective as of 8:00 AM MST for Gas Day February 15, 2021. The EPNG system linepack experienced a moderate recovery to overnight to start Gas Day 17 at 7,787 MMcf and linepack is currently at 7,814 MMcf.

Permian Basin supply is beginning to show signs of recovery; however, the winter weather is expected to continue into Friday. As such, drafting of the system will impact our ability to maintain adequate linepack for the anticipated loads today and going into tomorrow.

Washington Ranch is on maximum withdrawal.

Customers are encouraged to review their transport to ensure that their flowing quantities are aligned with their scheduled supplies.

Delivery point operators are encouraged to take gas according to their scheduled quantities.

Supply operators are encouraged to maintain their deliveries into the EPNG system at their scheduled rates.

Underperformance caps were placed on non-performing supplies in Intraday 1 (Cycle 3) for Gas Day February 17 and additional underperformance caps will be placed in Intraday 2 (Cycle 4) as needed. Underperformance caps will be placed for Gas Day February 18 Evening (Cycle 2) as well.

IHSW service remains suspended during the duration of the event.

Payback from the system, such as Payback (Imbalance Payback from TSP), will be denied due to operational concerns related to maintaining adequate linepack.

Loans and Park withdrawals were reduced for all cycles for Gas Day February 17, and Loans and Park withdrawals will be reduced to zero for the Timely Cycle (Cycle 1) for Gas Day February 18.

NOTICE_TEXT

Critical: Y
TSP/TSP Name: 8001703-EL PASO NATURAL GAS CO. L.L.C.
Notice Type Desc (1): OPERATIONAL FLOW ORDER
Notice Type Desc (2): OFO
Post Date: 2/18/2021 7:32:26 AM
Notice Effective Date/Time: 02/18/2021 7:32:26AM
Notice End Date/Time: 12/31/2049 9:00:00AM
Notice ID: 611068
Notice Stat Desc: TERMINATE
Prior Notice: 611062
Reqrd Rsp: 1
Subject: COC Lifted - System Wide Draft

Notice Text:

COC Lifted – System Wide
DRAFT Condition

The Critical Operating Condition ("COC") for a Draft condition issued on February 15, 2021 (Reference Critical Notice No. 611024, 611032, 611043, 611062), will be lifted effective Gas Day February 18, 2021. As such, the COC was in effect for Gas Days February 15, February 16, and February 17 only.

The Permian Basin production recovered overnight and the system linepack is adequate to meet scheduled deliveries.

For scheduling questions, please call your scheduling representative at (800) 238-3764.

For operational and capacity questions, please call Russ Pyeatt at (719) 520-3729, Dan English at (719) 520-4722, or Tim Fuller at (719) 520-4669.

For media inquiries, please call Lexey Long at 713-420-4644.
