121 FERC ¶ 61,265
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Paso Natural Gas Company Docket No. RP07-511-000

ORDER FOLLOWING TECHNICAL CONFERENCE AND REJECTING TARIFF REVISION

( Issued December 20, 2007)

1. On June 29, 2007, El Paso Natural Gas Company (El Paso) filed revised tariff sheets,[1] proposed to be effective January 1, 2008, pursuant to the terms of Article 6.1(a) of El Paso's Rate Case Settlement.[2] In its filing, El Paso proposes provisions for a non-critical condition daily scheduling penalty to apply against "packs" and "drafts" of El Paso's system.[3] As discussed below, the Commission will reject El Paso's revised tariff sheets.

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[1] *See* Appendices A and B. El Paso's filing contained two Appendices (A & B), each containing tariff sheets that implement the proposal, but vary depending on whether the Commission issued the order approving the Rate Case Settlement. All of these sheets (including those that are moot because of the issuance of the order approving the Rate Case Settlement) are listed in the Appendices to this order and are rejected on the merits as discussed below.

[2] The settlement was filed on December 6, 2006 in Docket No. RP05-422-000 and approved by the Commission on August 31, 2007. *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007) (Rate Case Settlement). The Rate Case Settlement permits El Paso to file for a non-critical daily scheduling penalty, without any agreement on the disposition of such a filing.

[3] "Packs" refer to scheduling imbalances where a shipper's daily takes of gas at a delivery point are less than the quantities scheduled for that delivery point. "Drafts" refer to scheduling imbalances where a shipper's daily takes of gas at a delivery point are greater than the quantities scheduled for that delivery point.

## I. Background

2. On June 30, 2005 (June 30 Filing), El Paso filed a general system-wide rate case, which increased rates, proposed a number of new hourly and daily services, and changed certain terms and conditions of service. This proceeding constituted El Paso's first general rate case in ten years and set in motion a process involving numerous hearing procedures, technical conferences, Commission orders, and compliance filings.

3. El Paso's new services proposal in the June 30 Filing included daily and hourly penalties. On March 23, 2006, the Commission issued an order addressing the issues raised at the technical conference, including the daily and hourly penalties.[4] In that order, the Commission found that El Paso's proposed new services, penalty provisions, and other tariff changes were generally consistent with Commission policy, and accepted those provisions, subject to conditions. However, the Commission rejected El Paso's proposal for a non-critical condition daily scheduling penalty.

4. The Commission approved the Rate Case Settlement on August 31, 2007.[5] The Rate Case Settlement in large part resolved all the issues set for hearing and technical conference in this proceeding. The Rate Case Settlement increased tolerance levels and eliminated the hourly overrun penalties and the daily variance charge. The Rate Case Settlement is based on a series of compromises by all parties, including an agreement by El Paso to withdraw its proposed daily penalty. The Rate Case Settlement did not prohibit El Paso from proposing a daily scheduling penalty at some point in the future.

## II. Filing

5. El Paso proposes to add a non-critical condition daily scheduling penalty to its tariff applicable to Rate Schedules FT-1, FT-H, NNTD, NNTH, and IT-1 when gas quantities taken by a shipper, or for a shipper's account, at a delivery point differ by more than 10 percent from the scheduled gas quantities at that point. The penalty would only apply in non-critical conditions to pack and draft situations at scheduled delivery points. The daily scheduling penalty charge would be equivalent to the applicable 100 percent load factor IT-1 rate for the zone of delivery.

6. El Paso states that the need for a non-critical condition daily scheduling penalty is evident in light of the continued absence of proper daily scheduling by a significant number of customers. El Paso states that many of its shippers routinely take what constitutes a daily scheduling service for which they are not paying. El Paso asserts that

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[4] *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (March 23 Order).

[5] *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007).

a non-critical condition daily scheduling penalty would encourage shippers to schedule properly and be in daily balance in non-critical conditions or to contract and pay for the daily balancing service they are taking. El Paso provides documentation that scheduling problems continue on its system. El Paso states that the growth of East of California (EOC) loads and local distribution company (LDC) loads and the construction of electric power plants have increased the potential impact of daily imbalances on system operations. El Paso asserts that it must know what services its shippers expect to use and what demands will be placed on its system each day in order to maintain system reliability and plan day-to-day operations. El Paso also argues that lost opportunity costs resulting from improper scheduling have a real cost both at specific delivery points and across the system.

7. El Paso filed its revised tariff sheets on June 29, 2007, and requested an effective date of January 1, 2008.

## III. <u>Notice and Protests</u>

8. Notice of El Paso's filing was issued on July 3, 2007.[6] Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 385.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Arizona Public Service Company (APS); Pacific Gas and Electric Company (PG&E); El Paso Municipal Customer Group (Municipal Group);[7] Southern California Gas Company (SoCal Gas); San Diego Gas and Electric Company (SDG&E); Texas Gas Service, a Division of ONEOK, Inc. (Texas Gas Service); the Arizona Corporation Commission (ACC); Southwest Gas Corporation (Southwest); Golden Spread Electric Cooperative, Inc. (Golden Spread) and GS Electric Generating Cooperative, Inc. (GS Electric); the Electric Generator Coalition (Electric Generators);[8] the Indicated Shippers;[9] Gila River Power,

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[6] 72 Fed. Reg. 37,749-50 (2007).

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

[8] The Electric Generators consists of: Arizona Electric Power Cooperative, Inc. (AEP); Blythe Energy, LLC; Dynegy Arlington Valley, LLC; Gila River Power, L.P.; Golden Spread and GS Electric; New Harquahala Generating Company, LLC; and Sempra Generation.

L.P. (Gila River); El Paso Electric Company (El Paso Electric); Salt River Project Agricultural Improvement & Power District (Salt River); Public Service Company of New Mexico (PNM); UNS Gas, Inc. (UNS); Tucson Electric Power Company (Tucson Electric); and the Captive EOC Shippers Group (CEOCS)[10] filed protests.

9. El Paso, the Indicated Shippers, Electric Generators, ACC, Southwest, PG&E, SoCal Gas and SDG&E filed answers. El Paso also filed a supplemental answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept the answers of El Paso, the Indicated Shippers, Electric Generators, ACC, Southwest, PG&E, SoCal Gas and SDG&E because they have provided information that assisted us in our decision-making process.

10. On September 25, 2007, the Commission issued a Notice of Technical Conference in this matter.[11] The technical conference was held on October 10, 2007. Initial comments on the technical conference were filed on October 22, 2007, with reply comments due on October 29, 2007. El Paso, Southwest, Gila River, El Paso Electric, Salt River, PNM, Indicated Shippers, Golden Spread, GS Electric, Electric Generators, Texas Gas Service, Tucson Electric, UNS, SoCal Gas, SDG&E, APS and PG&E filed initial comments. El Paso, Southwest, Gila River, El Paso Electric, Salt River, PNM, Indicated Shippers, Golden Spread, GS Electric, Electric Generators, Texas Gas Service, Tucson Electric, UNS, SoCal Gas, SDG&E, APS, and the ACC filed reply comments.

11. The protestors generally argue that the Commission should reject El Paso's filing for the following reasons: 1) El Paso has not demonstrated an operational or economic need for the penalty; 2) shippers cannot minimize or avoid incurring the penalty; 3) the penalty is inconsistent with the Rate Case Settlement and would be more appropriately addressed in El Paso's next rate case.

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[9] The Indicated Shippers include: BP America Production Company and BP Energy Company; Chevron Natural Gas, a division of Chevron U.S.A. Inc.; ConocoPhillips Company; Coral Energy Resources, L.P.; and Occidental Energy Marketing, Inc.

[10] The CEOCS consists of Salt River; Phelps Dodge Corporation; El Paso Electric; Municipal Group; PNM; Texas Gas Service; UNS; Tucson Electric; AEP; the ACC; ConocoPhillips Company; and Coral Energy Resources, L.P.

[11] 72 Fed. Reg. 57,332-33 (2007).

### 1. El Paso Has Not Demonstrated an Operational or Economic Need for the Penalty

12. Many protestors contend that the proposed penalty is not necessary to prevent the impairment of reliable service or to encourage proper shipper contracting and scheduling. These protestors assert that El Paso already has enough penalties to adequately preserve system integrity and that the existing array of penalties provides significant incentives for shippers to contract and schedule appropriately. The protestors argue that the Commission already concluded as much in the March 23 Order, which found that in addition to hourly and critical condition daily penalties, a non-critical daily penalty was not necessary to encourage responsible use of El Paso's system. The protestors contend that El Paso has not demonstrated a change in circumstances since the March 23 Order to warrant the acceptance of the daily scheduling penalty.

13. The protestors also argue that El Paso's data reflecting the scheduling variances on its system is misleading and incomplete, and does not support any operational need for a daily scheduling penalty. These parties contend that El Paso's graphical representations distort the true scope and frequency of the daily scheduling variances. They note that the graphs show individual shipper imbalances, not system imbalances, which would show the impact on the system after drafts and packs cancel each other.[12] The parties argue the graphs show percentage imbalances, not volume imbalances, and distort and thus overstate the impact of small volume imbalances. The protestors state that the graphs also include imbalances that are within the safe harbor tolerances, imbalances caused by make-up volumes, and imbalances incurred to assist El Paso. APS notes that, for 90 percent of the time period covered by the graphs, system line pack varied less than two percent and the two major deviations were weather related. APS asserts that much of the data portrayed in the graphs is not relevant because of the many changes to the system during the time covered by the graphs. APS states that, for example, the first six months were prior to the hourly services, D-Code consolidation, and OPAS agreements; and the second six months covered the transition to new services.[13]

14. The protestors also contend that El Paso has failed to demonstrate an economic need for the daily scheduling penalty. The protestors argue that El Paso has not demonstrated that shipper imbalances have resulted in lost opportunity costs. The

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[12] El Paso Electric offers an example: daily variance data for its two delivery points summed to 286,231 Dth at Rio Grande and 339,307 Dth at Newman, but when the two points are netted, the total variance for the 17-month period is only 53,076 Dth.

[13] Many of the protestors recreated El Paso's data to show actual volumes of variance as opposed to only percentage variances, claiming that variances that appear significant on El Paso's graphs represent insignificant quantities for the most part.

Municipal Group states that El Paso has not quantified the loss, and Texas Gas Service notes that El Paso is already compensated for overruns and recovers SOC/COC (strained and critical operating condition) penalties.[14] The Electric Generators argue that El Paso is not fully subscribed, and Golden Spread asserts that El Paso operates at a 60 percent load factor with unsubscribed capacity and load diversity. Golden Spread adds that El Paso's pathing report shows that the secondary market is working and that shippers are using alternate points.

15. The protestors further assert that shipper imbalances are not preventing El Paso from selling interruptible or alternate firm services. The protestors argue that El Paso cannot point to lost revenues as a basis for imposing the daily scheduling penalty because the level of El Paso's interruptible service revenues are tracking the recently approved rate case settlement.

16. In its answer, El Paso reaffirms its position that a daily scheduling penalty is necessary to encourage proper shipper contracting and scheduling and to minimize the lost opportunity costs caused by scheduling variances. El Paso also argues that, pursuant to Commission precedent, a pipeline is not required to show operational or economic need for a non-critical condition penalty.[15] As such, El Paso contends that it need not supply proof of lost opportunity costs or foregone IT revenue to institute a daily scheduling penalty. El Paso explains that in *Columbia*, the Commission recognized that scheduling variances result in lost opportunity costs without requiring data proving such lost opportunities.[16]

17. El Paso explains that the lack of a daily scheduling penalty permits shippers, often through the use of the Hourly Enhanced Entitlement Nominations (HEEN)[17] service

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[14] *El Paso Natural Gas Co.*, 121 FERC ¶ 61,219 (2007).

[15] *Columbia Gas Transmission Corp.*, 119 FERC ¶ 61,267, at P 29 (2007) (*Columbia*).

[16] *Id*.

[17] HEEN is an enhanced scheduling right under El Paso's Rate Schedules FT-1, FT-H, NNTD, and NNTH, designed to increase the flexibility of these services. HEEN permits a shipper to designate some portion of its otherwise available daily entitlement to be used to support expected non-uniform rates of flow during the gas day. This tariff feature allows shippers to nominate separately peak hour requirements through the use of a HEEN nomination. The restriction using HEEN is that the sum of all hourly entitlements related to HEEN nominations and flowing gas nominations may not exceed, on a primary firm basis in any one hour, the peak hourly entitlement under the shipper's MDQ.

feature, to take a quantity of gas that differs from their daily scheduled quantity without paying an extra charge for this daily scheduling difference. El Paso argues that, while HEEN is designed to help shippers avoid hourly penalties, it is not intended to permit shippers to incur large daily scheduling differences without penalties. El Paso contends that the Commission's acceptance of HEEN, in concert with the rejection of the proposed daily draft scheduling penalty, led to the creation of this "HEEN loophole."

18. The protestors argue that there is no HEEN loophole because shippers cannot obtain HEEN service without reserving and paying for firm service first, and therefore, HEEN is always backed up by firm reservation charges. The protestors contend that shippers are using HEEN as it was intended to support expected non-uniform rates of flow during the gas day. The protestors state that El Paso proposed HEEN service as a means for shippers to mitigate hourly penalties, and El Paso should not use HEEN as a justification for imposing a new penalty. The Electric Generators argue that any problems with scheduling variances are not the result of HEEN, but the interrelation of hourly and daily penalties.

### 2. <u>Shippers Cannot Minimize or Avoid Incurring the Penalty</u>

19. Many protestors contend that El Paso's proposed daily scheduling penalty should be rejected because it is unavoidable. These protestors explain that the Commission's regulations[18] and Order No. 637[19] require pipelines to provide shippers with functionally adequate tools at just and reasonable rates to minimize penalties. According to these protestors, under El Paso's proposed penalty, shippers would be placed in a catch-22 situation where they would act to avoid one penalty only to incur another. Texas Gas Service explains that if a shipper reduces its daily nomination to meet actual takes, it will incur an hourly penalty, and if it keeps the scheduled amount to match the hourly entitlement, it will incur daily penalties. CEOCS states that this situation occurs because hourly entitlements are based on end-of-day scheduled amounts. El Paso Electric argues that penalty avoidance would be impossible because shippers cannot nominate hourly and an intraday nomination retroactively changes the hourly entitlement for the entire day.

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[18] 18 C.F.R. § 284.12(b)(2)(v) (2007).

[19] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,091 (Feb. 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099 (May 19, 2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and denied in part*, INGAA v. FERC, 285 F.3d 18 (D.C. Cir. 2002).

20. Protestors further contend that the proposed daily scheduling penalty is unavoidable because El Paso's existing premium services provide inadequate tools for avoiding the penalty. In particular, protestors generally contend that El Paso's no-notice service is inadequate and exorbitantly priced. El Paso Electric estimates that it would have to spend approximately $1.7 million for no-notice service and might only save about $14,000 in penalties, which does not justify the cost. Protestors assert that El Paso's current no-notice service, which is limited to 10 percent of MDQ (maximum delivery quantity), is too limited to be a useful tool for limiting scheduling imbalances.

21. These protestors argue that the Commission has never approved a non-critical penalty where the pipeline does not provide adequate tools to minimize the penalties or where the pipeline already has more than adequate features to encourage proper scheduling. Protestors also point out that no other pipeline has both non-critical hourly *and* daily penalties. These protestors further argue that the pipelines with Commission-approved non-critical daily scheduling penalties have different operating conditions and more lenient penalty provisions. These protestors note that most pipelines with daily scheduling penalties have firm storage and can offer a more extensive no-notice service than El Paso. These protestors cite *Columbia* as an example, explaining that the shippers in that case were not subject to hourly penalties and could utilize meaningful no-notice service in order to avoid the daily scheduling penalty.[20] As such, the protestors conclude that the pipelines with daily scheduling penalties cited by El Paso are distinguishable from El Paso's system because the other pipelines' shippers have the tools to minimize or avoid the penalties.

22. El Paso argues that there is no catch-22 situation because shippers can avoid the penalty by contracting and scheduling properly. El Paso asserts that, far from having no options for avoiding penalties, shippers have a full menu of hourly and daily services available to them. El Paso states that it would be willing to modify HEEN so that any decrease in daily flowing gas nominations would be countered by a corresponding increase in hourly HEEN entitlements, if the Commission orders it to do so. El Paso also states that if shippers feel that the current no-notice service is insufficient, it is willing to work with shippers to design better services.

23. SoCal Gas and SDG&E argue that it is possible to avoid the penalties. These California shippers argue that, in order to ensure their systems are balanced, they incur the costs associated with the storage and transportation capacity necessary to achieve this goal.

24. Protestors counter that they have made significant investments in both premium services on El Paso and other capital improvements, and yet they are still unable to

[20] For example, in *Columbia*, under the no-notice service the pipeline offers, a shipper can take up to 200 percent of its MDQ.

completely eliminate scheduling deviations. El Paso Electric states that it currently subscribes to premium services like FTH-16 and IHSW (Interruptible Hourly Swing Service), and has invested in third-party storage and capital improvements. With all of these investments and services in place, El Paso Electric is generally able to stay within its hourly profiles, but is still not covered 100 percent against penalties.

### 3. The Penalty is Inconsistent with the Rate Case Settlement and Would Be More Appropriately Addressed in El Paso's Next Rate Case

25. Gila River, Southwest, and APS argue that El Paso's proposal should be rejected because it is inconsistent with the Rate Case Settlement. Although these parties acknowledge that the Rate Case Settlement allows El Paso to make a filing to request this additional penalty, they state that the settlement does no more than that. Gila River argues that the proposed penalty if allowed, would effectuate an end-run around the rate moratorium established in the Rate Case Settlement. Southwest also contends that accepting the daily scheduling penalty would improperly alter the cost and risk issues resolved during the settlement. APS further asserts that Commission approval of the daily penalty would eliminate the benefit of the shippers' settlement bargain concerning HEEN service, which granted shippers the ability to use HEEN scheduling without the limitation of a daily scheduling penalty.

26. El Paso Electric, Electric Generators, Gila River, APS, Indicated Shippers, Southwest, and PNM all argue that El Paso's proposed daily scheduling penalty is more appropriately addressed in El Paso's next rate case. These parties contend that El Paso's justifications for the daily scheduling penalty raise issues of cost allocation and recovery, as well as the design of pipeline services, which should be evaluated on a comprehensive basis in El Paso's next Natural Gas Act section 4 rate case filing, which will commence in the summer of 2008.

## IV. Commission Determination

27. El Paso has proposed scheduling penalties previously in its Order No. 637 proceeding and in the Docket No. RP05-422-000 Rate Case proceeding. In both cases, the parties filed settlements in which El Paso agreed to withdraw its proposed daily non-critical condition scheduling penalty. In the instant filing, El Paso is again proposing to implement a non-critical condition daily scheduling penalty. The Commission, consistent with the March 23 Order, finds that the addition of a non-critical daily scheduling penalty would prevent shippers from effectively utilizing HEEN and the premium services established in the Rate Case Settlement, and at the same time, from minimizing or avoiding the incurrence of penalties. Accordingly, the Commission rejects El Paso's proposed tariff revisions, as discussed below.

28. Order No. 637 and section 284.12(b)(2)(v) of the Commission's regulations set forth three requirements pipelines must abide by to implement transportation penalties.[21] In interpreting the first requirement – that penalties be used only if necessary to prevent impairment of reliable service – which is the relevant requirement here, the Commission did clarify in *Columbia* that during non-critical periods, a showing of actual operational harm is not required to implement a nominal scheduling penalty.[22] This is so because penalties should also provide an incentive for shippers to schedule accurately and to compensate the pipeline for lost opportunity costs.[23] Here, however, the Commission agrees with the protestors that El Paso's case is distinguishable from *Columbia* and the other pipeline systems where the Commission has approved daily scheduling penalties.

29. The protestors contend that, unlike other pipelines, El Paso does not provide its shippers with an ability to utilize authorized tariff services and avoid the incurrence of penalties as required by Order No. 637. According to these protestors, under El Paso's proposed penalty, shippers would be placed in a catch-22 situation because if they act to avoid one penalty, they will incur another. Protestors explain that if a shipper reduces its daily nomination to meet actual takes, it will incur an hourly penalty, and if it keeps the scheduled amount to match the hourly entitlement, it will incur daily penalties. CEOCS adds that this situation occurs because hourly entitlements are based on end-of-day scheduled amounts. El Paso Electric argues that the penalty is impossible to avoid because shippers cannot nominate hourly and an intraday nomination retroactively changes the hourly entitlement for the entire day.

30. El Paso has at its disposal services and penalties, including hourly and monthly contract restrictions, to encourage proper scheduling and contracting. The Commission determined as much in the March 23 Order and that reasoning remains applicable here.[24] Nevertheless, pipelines may still seek to implement scheduling penalties to discipline scheduling behavior. In this case, the Commission agrees with protestors that when combined with El Paso's existing services, the new daily scheduling penalty would not

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[21] First, a pipeline may include transportation penalties in its tariff only to the extent necessary to prevent the impairment of reliable service. Second, a pipeline must credit to shippers all revenues from all penalties net of costs. Third, a pipeline must provide to shippers, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system as a whole. *See* Order No. 637 and 18 C.F.R. § 284.12(b)(2)(v) (2007).

[22] *Columbia Gas Transmission Co.*, 119 FERC ¶ 61,267 at P 29 (2007).

[23] *Id.*

[24] *See* March 23 Order at P 118.

provide shippers an opportunity to minimize or avoid penalties as required by Order No. 637. With the addition of a new daily scheduling penalty, if shippers choose to use the scheduling flexibility provided by the recently approved package of services in the Rate Case Settlement, they would be exposed to either an hourly or a daily non-critical scheduling penalty, but no reasonable way to escape both. The Commission finds that implementing a daily non-critical scheduling penalty without adequate opportunities for shippers to minimize or avoid the new penalty would be patently unfair and contrary to long-standing Commission policy.

31. Even El Paso, in its filed comments, suggests that some modification to the recently settled services would be necessary to assist shippers to avoid the incurrence of the proposed daily scheduling penalty.[25] However, the protestors oppose modifying the Rate Case Settlement so soon after it was approved arguing that it includes a moratorium on service changes,[26] and that the next rate case to be filed in 2008 would be the appropriate forum to modify any of the recently implemented services. We agree and find that modifying the tariff provisions agreed to in the existing Rate Case Settlement in order to accommodate the daily scheduling penalty would improperly alter the cost/risk balance established in the Rate Case Settlement and would disrupt the shippers' settlement bargain. The implementation of HEEN service was not without controversy, and once agreed to, shippers reasonably expected that it would operate without the addition of further charges. We disagree with El Paso's assertion here that the package of services, agreed to by the parties in the Rate Case Settlement just months ago, created an unexpected loophole of such proportions that it merits modifying the Rate Case Settlement.

32. The evidence shows there is no harm to service reliability from allowing the status quo from the last Rate Case Settlement to remain until the next rate case is filed in 2008. For these reasons, the Commission finds that, when considered in combination with the existing penalty and service structure in place on El Paso's system, the proposed daily scheduling penalty is unjust and unreasonable. Accordingly, we reject El Paso's request for the addition of a new non-critical condition daily scheduling penalty.

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[25] *See* El Paso's Oct. 22, 2007, Initial Comments in Support of its Proposed Nominal Daily Scheduling Penalty at 9 and 15. El Paso states that it is willing to modify the HEEN and no-notice provisions of its tariff to accommodate shippers' concerns.

[26] *See* Rate Case Settlement at Article 15.2 (stating that each settling party agrees not to take any action, directly or indirectly, to change or seek to change the terms of the Rate Case Settlement).

<u>The Commission orders:</u>

The tariff sheets listed in Appendix A and Appendix B to this order are rejected, as discussed in the body of this order.

By the Commission. Commissioner Spitzer not participating.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

**Appendix A**

**El Paso Natural Gas Company**
**Docket No. RP07-511-000**
**Rejected Tariff Sheets**
**Second Revised Volume No. 1-A**

Sixth Revised Sheet No 104
Fifth Revised Sheet No. 116
Fifth Revised Sheet No. 126
Second Revised Sheet No. 145G
Second Revised Sheet No. 145M
Second Revised Sheet No. 146D
Second Revised Sheet No. 147E
Second Revised Sheet No. 147H
Second Revised Sheet No. 148H
Second Revised Sheet No. 148N
Second Revised Sheet No. 150B
Original Sheet No. 150C
Second Revised Sheet No. 200A
Second Revised Sheet No. 362F
Second Revised Sheet No. 362N
Fourth Revised Sheet No. 367
Seventh Revised Sheet No. 373
First Revised Sheet No. 373A
Original Sheet No. 390
Original Sheet No. 391
Original Sheet No. 392
Original Sheet No. 393
Sheet Nos. 394 -399

**Appendix B**

**El Paso Natural Gas Company**
**Docket No. RP07-511-000**
**Rejected Alternate Tariff Sheets**
**Second Revised Volume No. 1-A**

Original Sheet No. 29A
Alternate Sixth Revised Sheet No. 104
Third Revised Sheet No. 110A
Alternate Fifth Revised Sheet No. 116
Fifth Revised Sheet No. 126
Alternate Second Revised Sheet No. 145G
Alternate Second Revised Sheet No. 145M
Alternate Second Revised Sheet No. 147E
Alternate Second Revised Sheet No. 147H
Alternate Second Revised Sheet No. 148H
Alternate Second Revised Sheet No. 148N
Alternate Original Sheet No. 150C
Alternate Second Revised Sheet No. 200A
First Revised Sheet No. 202F
Alternate Second Revised Sheet No. 362F
Original Sheet No. 373B.01
Original Sheet No. 373C
Original Sheet No. 380.01
Original Sheet No. 380A
Original Sheet No. 380B
Alternate Original Sheet No. 392
Alternate Original Sheet No. 393
Original Sheet No. 394
Sheet Nos. 395 -399