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2006 MAR 13 P 4:49
AZ CORP COMMISSION
DOCUMENT CONTROL

Attorneys for El Paso Natural Gas Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR
DETERMINATION OF PRUDENCE
AND APPROVAL OF RATEMAKING
TREATMENT RELATED TO NATURAL
GAS INFRASTRUCTURE

DOCKET NO. E-01345A-05-0895

**EL PASO NATURAL GAS
COMPANY'S EXCEPTIONS AND
PROPOSED AMENDMENTS TO
STAFF'S RECOMMENDED OPINION
AND ORDER (Redacted Version)**

El Paso Natural Gas Company ("EPNG") hereby files these Exceptions and Proposed Amendments to the Recommended Opinion and Order filed by Staff on March 2, 2006, in the above-captioned matter (hereinafter, "Staff ROO"). For the reasons explained below, EPNG urges the Commission to delay this matter and to allow EPNG to complete its analysis of the relief requested by Arizona Public Service Company ("APS"), an analysis that could aid the Commission in ensuring that the numerous assumptions made by its Staff and APS are reasonable. In addition, the requested delay should allow Staff to quantify many of its assumptions about EPNG's rate case currently before the Federal Energy Regulatory Commission ("FERC"). Thus, the public interest as well as due process support the short delay requested by EPNG.

If the Commission nevertheless insists on entering an order granting the extraordinary ratemaking treatment APS seeks, then the public interest falls in favor of adoption of the amendments proposed by EPNG herein. If adopted, these Proposed Amendments will improve the Staff ROO by: 1) making Commission approval of APS's application expressly contingent on Staff's eight proposed conditions; 2) clarifying the

1 Commission's authority to review APS's cost-recovery under the agreement with
2 Transwestern Pipeline Company, LLC ("Transwestern") and disallow such costs if not
3 prudently managed in the future; and 3) requiring specific Commission approval in this
4 docket before APS is allowed to deviate from its representations made in this proceeding,
5 on which Staff has relied in supporting the relief sought by APS. They are also intended
6 to avoid future disagreement regarding the scope and terms of the Commission's order in
7 this matter.

8 **I. BACKGROUND**

9 On December 16, 2005, APS filed its application for pre-approval of costs ("APS
10 Application") related to its Expansion Agreement with Transwestern for pipeline capacity.
11 On January 13, 2006, EPNG filed an Application for Leave to Intervene ("EPNG
12 Application"). Neither APS nor Staff opposed the EPNG Application, and intervention
13 was granted by procedural order dated January 26, 2006.

14 EPNG sent its First Set of Data requests to APS on February 3, 2006, in addition to
15 a proposed form of protective agreement to govern the dissemination of confidential
16 information. In its February 10, 2006 response, APS refused to provide information and
17 documents responsive to EPNG's data requests on the grounds that these items contained
18 confidential information. EPNG's counsel attempted to resolve the impasse by providing
19 a signed protective agreement to APS's counsel on February 17, 2006. On February 21,
20 2006, APS responded and reiterated its original objections to EPNG's data requests.

21 As a result of this discovery dispute, EPNG filed a Motion to Compel Production
22 of Documents on February 22, 2006. In response to the Motion, APS's counsel offered,
23 by letter dated February 27, to provide the requested information and documents to
24 EPNG, conditioned on EPNG entering into a protective agreement drafted by APS and
25 Transwestern. EPNG's counsel submitted a signed protective agreement to APS's
26 counsel, and received a compact disk containing the information after close of business on

1 March 1, 2006. Staff filed its Report and Recommended Order on March 2, 2006, and set
2 the matter for the Commission's March 15 Open Meeting. On March 9, 2006, EPNG
3 filed a letter requesting the Commission to postpone its deliberation of the APS
4 Application for 20 days, to the April 4 and 5, 2006, Open Meeting, to allow time for
5 EPNG to analyze the information and data recently obtained from APS and Staff. To
6 date, the request has not been granted.

7 **II. DISCUSSION**

8 **A. Procedural Exception**

9 EPNG asserts that the review process in this proceeding has to date deprived the
10 Commission and the public interest of a full analysis of the facts. Moreover, EPNG is in
11 danger of being deprived its due process rights as a party to this proceeding. APS is
12 seeking extraordinary relief. It seeks approval to recover from ratepayers the "premium"
13 costs of a 15-year natural gas transportation contract. Staff proposes to consider and
14 adjudicate APS's request a mere 90 days after it was filed by APS without a hearing. This
15 extraordinary situation is exacerbated by the fact that APS's request and Staff's
16 recommendation are based on a number of assumptions concerning EPNG that are not
17 being tested. In fact, some of these assumptions will be addressed by FERC on March 16,
18 2006. *See* FERC March 16, 2006 Agenda, attached hereto as Exhibit 1. The short delay
19 requested by EPNG will not cause harm to APS or Transwestern, and it is simply
20 unreasonable to require EPNG to analyze the facts surrounding a 15-year transportation
21 contract in less than 10 days.

22 APS was reluctant to provide information and documents responsive to EPNG's
23 data request – until the Staff Report was issued and the Staff ROO sent to the
24 Commission. Consequently, EPNG is unable to conduct a meaningful analysis of the
25 facts surrounding the Transwestern contract and the assumptions regarding EPNG made
26 by APS and Staff, given the current time constraint. This Commission, which commonly

1 espouses the need for a full and fair airing of the evidence in every case, should not grant
2 APS's request for expedited approval, at least not without allowing EPNG an opportunity
3 to ensure that assumptions about its operations are accurate. *See Mathews v. Eldridge*,
4 424 U.S. 319, 96 S.Ct. 893 (1976). [REDACTED]
5 [REDACTED]

6 **B. Proposed Amendments**

7 In the event that the Commission somehow determines that EPNG has received due
8 process and that there is a sufficient record to support a finding that pre-approval of a 15-
9 year contract is in the public interest, EPNG submits that certain modifications to the
10 ROO are required in order clarify the terms of such approval.

11 1. The Commission Should Clarify the Staff ROO to Condition Its Approval of
12 the APS Application on Staff's Eight Proposed Conditions.

13 Perhaps merely an oversight, but the Staff ROO does not expressly condition the
14 Commission's approval on the eight conditions proposed by Staff. If approval with
15 conditions is the Commission's intent, then EPNG suggests that the following language be
16 added to the last sentence of paragraph 3 of the Conclusions of Law, and at the end of the
17 first Ordering Paragraph; "subject to Staff's proposed conditions, as modified herein."
18 *See Exhibit 2.* If this is not the Commission's intent, then any order approving the APS
19 Application should address why Staff's proposed conditions were unreasonable in light of
20 the evidence presented in the Staff Report.

21 2. The Commission Should Clarify Its Authority to Review APS's Recovery of
22 Costs under the Expansion Agreement, and Future Disallowance if the
23 Commission Determines Such Costs Were Not Prudently Managed.

24 Staff's proposed Condition No. 1 confirms the Commission's authority to review
25 APS's gas procurement activities in general. However, it does not also confirm the
26 Commission's authority to review cost recovery, in a future proceeding, related to APS's

1 acquisition of capacity on the Transwestern Phoenix Project. EPNG contends that, as
2 currently written, Staff's proposed Condition No. 1 might be interpreted to suggest that
3 APS's EPNG capacity is subject to disallowance, while Transwestern capacity is not.
4 This does not accurately reflect the position set forth in the Staff Report at page 22, which
5 states:

6 However, while pre-approval would provide for the recovery
7 of these costs to ratepayers, it would not in any way reduce
8 the Commission's ability to determine the prudence of the
9 operation and use of APS' pipeline capacity rights, whether
10 on Transwestern pipeline or other pipelines. APS still has a
11 standing obligation to maximize the value of all its pipeline
12 capacity assets for the benefit of APS ratepayers who pay for
the capacity. So if the Commission in the future determined
that APS had not prudently managed its Transwestern or
other pipeline capacity, it could take action to disallow such
costs, just as the Commission can do with APS' present
pipeline capacity. [Emphasis added].

13 To more accurately reflect the Commission's authority, and ensure equal consideration of
14 APS's gas procurement activities regardless of the pipeline company involved, Staff's
15 proposed Condition No. 1 should be amended as follows:

16 The Commission retains full authority to review APS' gas
17 procurement activities, including its management of all
18 pipeline capacity and related activities, recognizing that the
19 Commission is pre-approving the underlying acquisition of
20 the Transwestern capacity during the initial 15-year term of
21 the agreement with Transwestern. If the Commission in the
22 future determines that APS had not prudently managed its
23 Transwestern pipeline capacity, it could take action to
24 disallow such costs. The pre-approval being granted in this
25 proceeding would expire upon completion of the initial 15-
26 year term.

27 With this modification, attached hereto as Exhibit 3, APS's costs under the
28 Expansion Agreement are still pre-approved – to the extent they remain prudent, as
29 determined by the Commission under its regulatory review authority in future

1 proceedings.

2 3. [REDACTED]

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4 [REDACTED]

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6 [REDACTED]

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13 [REDACTED]

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19 On December 18, 2003, the Commission issued its Policy
20 Statement Regarding New Natural Gas Pipeline and Storage Costs ("Policy Statement").
21 To encourage the development of new infrastructure in Arizona, the Commission
22 indicated a willingness to deviate from traditional methods of rate review, and explore
23 alternative methods of cost recovery, such as pre-approval. However, the Policy
24 Statement also recognizes that:

25 Such a mechanism should also be designed so that it will not
26 cause utilities to behave in such a way as to maximize their
benefit to the detriment of their customers through increased
costs or degradation of service.

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ORIGINAL of the foregoing hand-delivered
for filing this 13th day of March, 2006, to:

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 13th day of March, 2006, to:

Chairman Jeff Hatch-Miller
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Commissioner Marc Spitzer
Arizona Corporation Commission
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Commissioner William A. Mundell
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Commissioner Kristin K. Mayes
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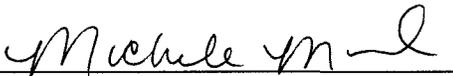
Lyn Farmer, Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission

1 1200 W. Washington Street
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2 Ernest Johnson, Director
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EXHIBIT

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NOTICE

March 9, 2006

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (PUB. L. No. 94-409), 5 U.S.C 552b:

Agency Holding Meeting: FEDERAL ENERGY REGULATORY COMMISSION

Date and Time: March 16, 2006
10:00 AM

Place: Room 2C
888 First Street N.E.
Washington DC 20426

Status: OPEN

Matters to be Considered: Agenda
*Note - Items listed on the agenda may be deleted without further notice

Contact person for more Information: Magalie R. Salas
Secretary
Telephone (202) 502-8400

For a recorded listing item stricken from or added to the meeting, call (202) 502-8627

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

903RD - MEETING

REGULAR MEETING

March 16, 2006
10:00 AM

Item No	Docket No.	Company
ADMINISTRATIVE AGENDA		
A-1	AD02-1-000	Agency Administrative Matters
A-2	AD02-7-000	Customer Matters, Reliability, Security and Market Operations
A-3	AD06-3-000	Energy Market Update
ELECTRIC		
E-1	OMITTED	
E-2	OMITTED	
E-3	EC03-131-003 EC03-131-004	Oklahoma Gas and Electric Company and NRG McClain LLC
E-4	ER96-719-006 EL05-59-000 ER96-719-008 ER99-2156-006	MidAmerican Energy Company Cordova Energy Company LLC
E-5	ER06-451-000	Southwest Power Pool, Inc.
E-6	ER06-356-000 ER06-356-001	Midwest Independent Transmission System Operator, Inc.
E-7	ER06-493-000	Midwest Independent Transmission System Operator, Inc.
E-8	ER06-487-000 ER06-488-000	PJM Interconnection, L.L.C. and the PJM Transmission Owners PJM Interconnection, L.L.C., and Virginia Electric and Power Company (PJM South)

	ER06-489-000	PJM Interconnection, L.L.C., and Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, all doing business as Allegheny Power, American Electric Power Service Corporation on behalf of its Operating Companies: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company; Commonwealth Edison Company, Commonwealth Edison Company of Indiana, and Dayton Power and Light Company (PJM West)
	ER06-490-000	Public Service Electric and Gas Company, PECO Energy Company, PPL Electric Utilities Corporation, Baltimore Gas and Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Potomac Electric Power Company, Atlantic City Electric Company, Delmarva Power & Light Company, UGI Utilities, Inc., Allegheny Electric Cooperative, Inc., CED Rock Springs, LLC, Old Dominion Electric Cooperative, Rockland Electric Company, and Duquesne Light Company
E-9	ER06-506-000 ER06-506-001	New York Independent System Operator, Inc.
E-10	ER06-522-000	Midwest Independent Transmission System Operator, Inc.
E-11	ER97-4345-017 ER98-511-005 EL05-107-000	Oklahoma Gas and Electric Company OGE Energy Resources, Inc.
E-12	ER01-2230-001 ER01-2230-002	New York Independent System Operator, Inc.
E-13	OMITTED	
E-14	OMITTED	
E-15	ER02-2263-003 ER02-2263-004 ER02-2263-005	Southern California Edison Company
E-16	ER03-1079-006 ER02-47-006 ER95-216-026 ER03-725-006 ER02-309-006 ER02-1016-004 EL05-83-000 EL05-83-001	Aquila, Inc. Aquila Long Term, Inc. Aquila Merchant Services, Inc. Aquila Piatt County L.L.C. MEP Clarksdale Power, LLC MEP Flora Power, LLC Aquila, Inc., Aquila Long Term, Inc., Aquila Merchant Services, Inc., Aquila Piatt County L.L.C., MEP Clarksdale Power, LLC, and MEP Flora Power, LLC
E-17	OMITTED	

	ER00-3312-002	Pinnacle West Energy Corporation
	ER00-3312-004	
	ER00-3312-005	
	ER00-3312-006	
	ER00-3312-007	
	ER00-3312-009	
	ER00-3312-011	
	ER00-3312-012	
	ER00-3312-014	
	EL05-12-002	
	EL05-12-004	
	ER99-4122-004	APS Energy Services Company, Inc.
	ER99-4122-006	
	ER99-4122-007	
	ER99-4122-008	
	ER99-4122-009	
	ER99-4122-011	
	ER99-4122-013	
	ER99-4122-014	
	ER99-4122-016	
	EL05-13-002	
	EL05-13-004	
	ER03-352-003	Gen West LLC
E-31	ER06-517-000	California Independent System Operator Corporation
	ER06-524-000	
E-32	ER06-532-000	Midwest Independent Transmission System Operator, Inc., and First Energy Services Company
E-33	OMITTED	

MISCELLANEOUS

M-1	RM05-33-001	Revision of Rules of Practice and Procedure Regarding Issue Identification
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GAS

G-1	RM05-22-0000	Five-Year Review of Oil Pipeline Pricing Index
G-2	RP06-177-000	Iroquois Gas Transmission System, L.P.
G-3	RP05-668-002 RP05-668-001	Southern Star Central Gas Pipeline, Inc.
G-4	OR06-3-000	Enbridge Energy, Limited Partnership
G-5	RP05-422-000	El Paso Natural Gas Company
G-6	OMITTED	

ENERGY PROJECTS - HYDRO

H-1	P-2659-018	PacifiCorp
H-2	P-2738-061	New York State Electric & Gas Corporation
H-3	P-2056-038	Northern States Power Company

ENERGY PROJECTS - CERTIFICATES

C-1	CP06-10-000	Dominion Transmission, Inc.
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Magalie R. Salas
Secretary

A free webcast of this event is available through www.ferc.gov. Anyone with Internet access who desires to view this event can do so by navigating to www.ferc.gov's Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit www.CapitolConnection.org or contact Danelle Perkowski or David Reininger at 703-993-3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in Hearing Room 2. Members of the public may view this briefing in the Commission Meeting overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

EXHIBIT

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THIS AMENDMENT:

Passed Passed as amended by: _____
 Failed Not Offered Withdrawn

EL PASO NATURAL GAS COMPANY'S PROPOSED AMENDMENT # 1

TIME/DATE PREPARED: _____

COMPANY: El Paso Natural Gas Company AGENDA ITEM NO. 5

DOCKET NO. E-01345A-05-0895 OPEN MEETING DATE: March 15, 16, 2006

Page 6, Line 21, after "proceeding" ADD:

“, subject to Staff's proposed conditions, as modified herein.”

Page 6, Line 4, after "cost recovery" ADD:

“, subject to Staff's proposed conditions, as modified herein.”

EXHIBIT

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THIS AMENDMENT:		
<input type="checkbox"/> Passed	<input type="checkbox"/> Passed as amended by: _____	
<input type="checkbox"/> Failed	<input type="checkbox"/> Not Offered	<input type="checkbox"/> Withdrawn

EL PASO NATURAL GAS COMPANY'S PROPOSED AMENDMENT # 2

TIME/DATE PREPARED: _____

COMPANY: El Paso Natural Gas Company AGENDA ITEM NO. 5

DOCKET NO. E-01345A-05-0895 OPEN MEETING DATE: March 15, 16, 2006

Page 5, Line 4, after "agreement with Transwestern." INSERT:

"If the Commission in the future determines that APS had not prudently managed its Transwestern pipeline capacity, it could take action to disallow such costs."

EXHIBIT

4

THIS AMENDMENT:		
<input type="checkbox"/> Passed	<input type="checkbox"/> Passed as amended by: _____	
<input type="checkbox"/> Failed	<input type="checkbox"/> Not Offered	<input type="checkbox"/> Withdrawn

EL PASO NATURAL GAS COMPANY'S PROPOSED AMENDMENT # 3

TIME/DATE PREPARED: _____

COMPANY: El Paso Natural Gas Company AGENDA ITEM NO. 5

DOCKET NO. E-01345A-05-0895 OPEN MEETING DATE: March 15, 16, 2006

Page 5, Line 25, after "such action." ADD:

"As a further protection to APS ratepayers, APS shall be required to obtain Commission approval in this docket, for a period of two years after the commencement of service with Transwestern, prior to changing any specific or unique condition or representation upon which Staff has relied in performing its analysis of the application."