IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA; Plaintiff, v. EL PASO NATURAL GAS COMPANY; Defendant.	Civil Action: No. 95 0067 Entered: August 4, 1995 FILED AUG 04 1995 Clerk, U.S. District Court District of Columbia

FINAL JUDGMENT

Plaintiff, United States of America, filed its Complaint on January 12, 1995. Plaintiff and defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED, AND DECREED, as follows:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II.

DEFINITIONS

As used herein, the term:

(A) "agreement" means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons;

(B) "defendant" means El Paso Natural Gas Company;

(C) "document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence;

(D) "gathering" means collecting natural gas from the point of entry into the gathering system and moving the gas to a point where it is introduced into mainline transmission facilities; for gas that is compressed, processed, or treated subsequent to receipt into the gathering system and prior to delivery into mainline transmission facilities, gathering also includes the act of compressing, processing, or treating, as applicable;

(E) "gathering system" means the facilities used by the defendant to perform gathering in the San Juan Basin;

(F) "including" means including but not limited to;

(G) "inspection log" means the log the defendant is required to create and maintain pursuant to Section VI(C) of this Final Judgment, setting forth the information recorded by the defendant pursuant to Section VI(C)(1)-(7);

(H) "meter" means those devices used to measure the volume of

natural gas flowing into or through the gathering system;

(I) "metering facilities" means any of the equipment necessary to connect a meter to the gathering system and to measure the flow of gas from a well or wells into the gathering system, including the meter, the meter house, and the meter run;

(J) "meter installation" means the provision of service necessary to connect a well or wells to the gathering system, including construction and connection of metering facilities and the well-tie line;

(K) "meter installation inspection" means any inspection of metering facilities that is required before gas may enter the gathering system through those facilities;

(L) "person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, or other legal entity;

(M) "San Juan Basin" means that area of northwestern New Mexico and southern Colorado in which defendant owns and operates a gathering system;

(N) "tap" means the interconnection between the well-tie line and the gathering system that requires a breach of the gathering pipeline wall, including the valve connecting the well-tie line with the gathering pipeline wall;

(O) "uniform" means reasonably consistent under the circumstances; but does not require that identical procedures must be applied to every situation. If procedures are not identical, uniformity requires that there exists a reasonable and lawful basis

to explain any differences or changes in the procedures applied, or in the manner in which stated procedures are applied;

(P) "well operator" means any person with whom the defendant contracts, or would contract, for meter installation, or from whom the defendant receives an inquiry regarding connecting a well or wells to the gathering system;

(Q) "well-tie line" means the pipe connecting the metering facilities to the gathering system.

III.

APPLICABILITY

(A) This Final Judgment applies to the defendant and to each of its successors, assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV.

PROHIBITED CONDUCT

The defendant is enjoined and restrained from:

(A) requiring a well operator to purchase metering facilities or meter installation from the defendant, or a third party under contract to the defendant, as a condition of connecting a well to

the gathering system;

(B) requiring a well operator to purchase construction or installation of any pipeline that connects a well to the metering facilities from the defendant, or a third party under contract to the defendant, as a condition of connecting that well to the gathering system, or imposing upon a well operator any requirements for such construction and installation if the operator chooses to purchase such pipeline construction and installation from a person other than the defendant;

(C) requiring a well operator to pay any charge, other than one included in the gathering rate, for metering facilities maintenance provided by the defendant or a third party under contract to the defendant;

(D) entering into an agreement with a well operator to provide meter installation, meter installation inspection, or installation of a tap without first disclosing to the operator that the well operator may have the meter installation provided by a person other than the defendant, or a third party under contract to the defendant. This disclosure shall be made in the following manner:

(1) at the time of each initial contact between the defendant and a well operator concerning the provision of gathering which will require meter installation, the defendant shall expressly inform the well operator that the operator may choose to provide meter installation itself, subject to any specifications and inspections required by defendant consistent with Section V(A)-(D);

(2) at the time of the initiation of any discussion between the defendant and a well operator concerning the terms of any agreement that will require the well operator to bear any cost of meter installation, the defendant shall provide the well operator with the following materials arranged in the following order:

a. a copy of the Notice to El Paso Natural Gas Company Gathering Customers attached as Attachment A to this Final Judgment;

b. a statement that the defendant will, as soon as practicable, provide the well operator with the estimates described in Section V(D)(3);

c. a sample of the contract that the defendant uses when it provides meter installation for a well operator;

d. a sample of the contract that the defendant uses when the well operator provides all or part of the meter installation;

e. a copy of any specifications, standards and procedures that the defendant, consistent with the provisions of Section V(A)-(D), may require the well operator to follow when the operator performs the meter installation;

(3) as soon as practicable after the initiation of any discussion between the defendant and a well operator concerning the terms of any agreement that will require the

well operator to bear any cost of meter installation, the defendant shall provide the well operator with:

a. a statement of the estimated total price that the defendant will charge the well operator if the defendant provides meter installation, and a detailed statement setting forth each of the services or materials, and costs for those services or materials, that comprise that total price;

b. a statement of the estimated total price that the defendant will charge the well operator for construction or inspection if the well operator chooses to provide for meter installation itself, and a detailed statement setting forth the services and materials, and costs for those services and materials, that comprise that total price;

(E) entering into an agreement with a well operator, pursuant to which the well operator will perform meter installation, and which includes any specifications, standards and procedures that the defendant has imposed pursuant to Section V(A)-(D), without including in the document memorializing that agreement:

(1) the following clause regarding access to inspection logs:

"The well operator shall, upon reasonable notice, have access to any inspection logs maintained by El Paso Natural Gas Company that pertain to any meter installation covered by this contract, and, for

comparison purposes, access to any inspection logs maintained by El Paso Natural Gas Company that relate to meter installation provided by El Paso Natural Gas Company."; and

(2) the following clause, unless the well operator waives in writing its right to the inclusion of such clause:

"In the event of a dispute related to the interpretation or performance of this agreement, each party shall designate an authorized agent to investigate, discuss and seek to settle the matter between them. If the two agents are unable to settle the matter within 10 days after notification of the designation, the matter shall be submitted to a senior officer of each party for consideration. If settlement cannot be reached through their efforts within an additional 20 days, or such longer time as they shall agree upon, the parties shall enter into a binding form of arbitration of their dispute, the costs of which shall be apportioned by the arbitrator."

V.

LIMITING CONDITIONS

Nothing in this Final Judgment shall prohibit the defendant from:

(A) specifying the type of metering facilities a well operator must use when connecting a well or wells to the gathering system,

provided that the specifications uniformly apply to all persons, including the defendant;

(B) specifying standards and procedures that must be followed for meter installation, provided that the standards and procedures uniformly apply to all persons performing such installations, including the defendant;

(C) requiring that meter installations provided by a well operator, or third parties under contract to the operator, be subject to inspection by the defendant to ensure compliance with any standards and procedures specified by the defendant, provided that:

(1) if the defendant requires any meter installation inspections, it does so for all meter installations, including those meter installations provided by the defendant;

(2) the inspection process the defendant uses is uniform for all meter installations, including those meter installations provided by the defendant. The defendant shall ensure that the persons conducting the inspections do not unreasonably withhold any necessary approvals, or impose any unreasonable compliance requirements;

(3) the defendant requires persons conducting the inspections to keep a contemporaneously written log for each inspection they conduct, including any inspections of metering facilities installed by the defendant;

(D) requiring a well operator to pay for any inspections the defendant requires, consistent with the provisions of Section V(C), provided that any charge the defendant requires for such inspections

is reasonable, calculated on a uniform basis, and is uniformly applied to all meter installations, including those provided by the defendant;

(E) requiring a well operator to use only those persons designated by the defendant to install a tap, provided that the defendant either:

(1) charge the well operator no more than the actual cost of materials, equipment and labor, which labor charge shall include only wages, benefits and payroll taxes, incurred in installation when the defendant installs the tap, or

(2) include in any such designation at least three persons in the San Juan Basin, other than the defendant or any third party under any contractual relationship with the defendant, whom the operator can select to perform such installation;

(F) specifying to a well operator the location at which a well will be connected to the gathering system;

(G) requiring a well operator to convey to the defendant title to the metering facilities connecting a well to the gathering system that are installed at the operator's expense, as a condition of connecting that well to the system, provided that the defendant agrees at the time of any such required conveyance that title for those facilities will revert back to the operator upon abandonment or plugging of the well, or upon the operator's request that the defendant discontinue gathering gas from the well;

(H) requiring the well operator to agree to indemnify the

defendant against any liability arising from the acts or omissions of the operator, or a third party under contract to the operator, which are related to meter installation performed by that operator or third party;

(I) requiring the well operator to provide defendant with a copy of all permits or other documents issued by, or filings required by, any authority to evidence the operator's compliance with local, state and federal laws and regulations applicable to meter installation;

(J) requiring the well operator to provide the defendant with copies of all right-of-way authorizations and permits;

(K) making reasonable changes to any specification, standard, or policy instituted with regard to meter installation;

(L) providing meter installation pursuant to the provisions of contracts between the defendant and well operators in effect prior to May 18, 1994.

VI.

COMPLIANCE PROGRAM

(A) The defendant is ordered to maintain an antitrust compliance program which shall include designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed

activities of the defendant to ensure that it complies with this Final Judgment.

(B) The Antitrust Compliance Officer shall be responsible for accomplishing the following activities:

(1) distributing, within 60 days from the entry of this Final Judgment, a copy of this Final Judgment to all officers and employees with responsibility for marketing of the defendant's gathering, or for approving and supervising the connection of a well to any of the defendant's gathering systems;

(2) distributing in a timely manner a copy of this Final Judgment to any officer or employee who succeeds to a position described in Section VI(B)(1);

(3) briefing annually those persons designated in Section VI(B)(1) on the meaning and requirements of this Final Judgment and the antitrust laws and advising them that the defendant's legal advisors are available to confer with them regarding compliance with the Final Judgment and the antitrust laws;

(4) obtaining from each officer or employee designated in Section VI(B)(1) an annual written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Final Judgment; and (b) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(5) maintaining a record of recipients to whom the Final Judgment has been distributed and from whom the certification in Section VI(B)(4) has been obtained;

(6) distributing, within 60 days from the entry of this Final Judgment, by first-class mail, postage paid, a copy of the Notice to El Paso Natural Gas Company Gathering Customers that is attached as Attachment A to this Final Judgment to all well operators that on the date of entry of this Final Judgment have contracts with defendant for gathering.

(C) Each time the defendant requires a meter installation inspection, the defendant shall create a written record setting forth at a minimum, the following information:

(1) the name of the well operator for whom the meter installation is being provided;

(2) the name of the person or persons providing the meter installation;

(3) the location of the well or wells associated with the meter installation that is the subject of the inspection;

(4) the date or dates of the inspection and the amount of time spent engaged in the actual inspection;

(5) the total price charged for the inspection and a detailed description of how the defendant arrived at that price;

(6) with respect to any materials or work associated with the installation which the inspector rejects, a detailed explanation of why the inspector made the rejection;

(7) if the inspector rejects any materials used or work performed by the person performing the installation, a detailed description of the steps that the inspector informed that person he or she could take to pass the inspection.

The defendant shall maintain in its Farmington, New Mexico office, a log containing the information recorded pursuant to this subsection for a period of two years, and shall, upon reasonable notice, make available to a well operator those portions of the log pertaining to that well operator and any portions of the log that pertain to meter installations provided by the defendant.

(D) At any time, if the defendant's Antitrust Compliance Officer learns of any past or future violations of Section IV of this Final Judgment, the defendant shall, within 45 days after such knowledge is obtained, take appropriate action to terminate or modify the activity so as to comply with this Final Judgment.

VII.

CERTIFICATION

(A) Within 75 days after the entry of this Final Judgment, the defendant shall certify to the plaintiff whether it has designated an Antitrust Compliance Officer and has distributed the Final Judgment in accordance with Section VI above.

(B) For each year of the term of this Final Judgment, the defendant shall file with the plaintiff, on or before the anniversary date of entry of this Final Judgment, a statement as to the fact and manner of its compliance with the provisions of Section

VI above.

VIII.

PLAINTIFF ACCESS

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) access during the defendant's office hours to inspect and copy, at the plaintiff's expense, all documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees or agents of the defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided

in Section VIII shall be divulged by the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

IX.

FURTHER ELEMENTS OF THE FINAL JUDGMENT

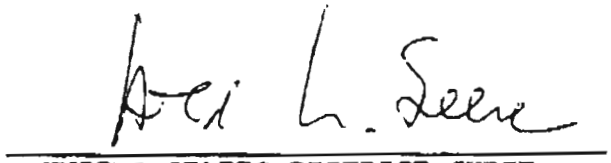
(A) This Final Judgment shall expire ten years from the date of entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final

Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

ENTERED:



UNITED STATES DISTRICT JUDGE