the point of interconnection with the well-tie pipeline. "Meter installation" as used in the Complaint and this statement, refers to the construction and installation of metering equipment or facilities, as well as the construction and installation of the pipe used to connect the metering equipment to the gathering system. Installation of meters and associated pipe requires adherence to certain safety precautions due to the proximity of the meter installation construction to the existing gas gathering pipeline, as well as the need to minimize hazards associated with future operations involving a pipe which will carry natural gas.

When a well operator is considering whether to drill a well in a production area, it must determine first whether the well will be profitable. In deciding whether to drill, the operator will consider many factors including the gathering charge, transportation fees and the amount of money it will have to pay initially for the construction of the facilities necessary to hook the well to the gathering system. In an older field such as the San Juan Basin where wells do not generally produce at high rates, meter installation costs can make the difference between whether or not a well is drilled, affecting whether additional natural gas sites are made available to meet consumer demand.

The Complaint alleges that El Paso forced customers (or "well operators") who needed to purchase El Paso's gathering service to purchase meter installation services from El Paso as well. The Complaint also alleges that when contacted, El Paso informs a potential gathering customer that El Paso will connect a well after the operator has agreed that El Paso will perform the meter installation associated with connecting that well to El Paso's system and has prepaid a flat fee for the installation. El Paso contracts out almost all of this construction work to other companies in the San Juan Basin and then charges the customer for the materials, El Paso labor, and "overheads". "Overheads" account for as much as one third of the total bill to the customer.

The speed with which a well can be connected to the gathering system is a significant factor in determining the potential profitability of that well. Once a well operator has agreed that El Paso will perform the meter installation, the

well operator must rely on El Paso to schedule that installation. In many instances, El Paso has taken a significantly longer time to complete meter installation than it would have taken if the well operator had been able to use an alternative to El Paso.

Over the past three years, El Paso has permitted only three well operators, and then only reluctantly, to perform meter installation using their own contractors, and El Paso's permission in those three instances extended to only a limited number of well connections. Each of these operators concluded that they could perform the installation for substantially less cost than El Paso, even if they had to follow El Paso's specifications when doing so. These well operators were able to perform meter installation at each well for nearly one-half of the El Paso construction cost estimate, thereby saving from \$5,000 to \$7,000 per well on each of the 121 wells they connected. Since 1991, a total of 453 wells have been connected to El Paso's gathering system. However, El Paso predicts that a significantly larger number of wells, 2200 or more, will be connected to its gathering system over the next five years. If well operators are able to secure like savings, either from third party competitors or from El Paso responding to the new competitive environment, then well operators in the San Juan Basin will likely save from \$11 to \$15 million dollars over the next five year period. Depending upon the number of new wells connected over the ten year life of the proposed Final Judgment, savings could reach the tens of millions of dollars.

## III

## **Explanation of the Proposed Final Judgment**

The proposed Final Judgment is designed to prevent El Paso from tying the service of meter installation to the provision of gathering on its San Juan gathering system. The proposed Final Judgment explicitly prohibits such tying. Section IV(A) provides that El Paso may not condition the provision of gathering upon a well operator agreeing to purchase either the metering equipment or its installation from El Paso.

The proposed Final Judgment does not, however, prohibit El Paso from providing meter installation in the future. The proposed Final Judgment, therefore, contains a number of safeguards to ensure that in the future El Paso makes known to its gathering customers that they have the option of providing their own meter installation and gives its customers sufficient

information to make a reasoned choice. To this end, at the time of any initial inquiry concerning gathering and connection to its gathering system, Section IV(D) of the proposed Final Judgment requires El Paso to fully disclose to the well operator that the operator has the option of having someone other than El Paso provide meter installation. Compliance with this section requires that El Paso provide the well operator with written notice that the customer has the right pursuant to this Final Judgment to choose a construction company other than El Paso; provide an estimate of all charges that El Paso will require from the well operator, both if the operator selects El Paso to do the installation and if it does not; provide the operator with sample copies of the contracts that El Paso will use if the operator chooses to have El Paso do the installation or selects to have someone other than El Paso do the meter installation; and, provide a copy of the specifications, standards, and procedures that El Paso will require the operator to follow if the operator performs the installation. With this information, the well operator will be able to make an informed choice as to whether to use El Paso or another contractor for meter installation.

The proposed Final Judgment recognizes that El Paso has a reasonable need to assure the safety and integrity of its gathering system, and may have some legitimate concerns regarding its liability when well operators perform meter installations for wells connecting to its gathering system. Pipe and equipment that connect to El Paso's gathering pipeline can pose safety hazards if they are constructed in a substandard manner or with faulty materials.

Section V(E) of the proposed Final Judgment permits El Paso to protect its safety and liability concerns consistent with the tying prohibition found in Section IV(A). Connection of the welltie line requires a "tap" into the gathering pipeline—an actual opening into the pipe. Welding and other construction of lines carrying natural gas must be done in a manner that safeguards the workers and the pipe involved. For this reason, Section V(E) allows El Paso to require well operators to use El Paso or El Paso contractors for the tap, but limits the price that El Paso may charge for this service.

In recognition of El Paso's safety and liability concerns, Sections V(A)–(B) permit El Paso to specify to well operators reasonable specifications for the construction and installation of metering facilities. At the same time, these sections also set forth conditions

<sup>&</sup>lt;sup>1</sup> Installation may require compliance with standards developed by the United States Department of Transportation Office of Pipeline Safety Standards, the American National Standards Institute, the American Petroleum Institute, the American Society of Mechanical Engineers and the American Society of Testing and Materials.