

109 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Panhandle Eastern Pipe Line Co.

Docket No. RP98-40-036

ORDER ON REHEARING

(Issued October 12, 2004)

1. At issue in this case is the amount of Kansas *ad valorem* tax reimbursement refunds that Pioneer Natural Resources USA, Inc. (Pioneer) owes to Panhandle Eastern Pipe Line Company (Panhandle). We generally deny the rehearing requests of the Commission's June 2, 2004 Order ¹ (the June 2 Order) which addressed the Administrative Law Judge's (ALJ) February 18, 2004 Initial Decision (I.D.), 106 FERC ¶ 63,018, but do grant rehearing on the interest rate applicable to a certain portion of the refund that Pioneer never paid.
2. In the I.D. the ALJ found no merit in the defenses asserted by Pioneer except for a minor adjustment for certain deregulated wells, but the ALJ granted a partial waiver of the refunds attributable to payments to royalty interest owners. He also held that Pioneer should pay only the escrow fund rate of interest rather than the FERC interest rate.
3. Pioneer filed exceptions to the ALJ's ruling on all issues except the applicable interest rate. The Missouri Public Service Commission (MoPSC) and Commission Staff filed exceptions as to the adjustment related to the royalty interest owners' portion of the refund liability, and the interest rate applicable to the refunds Pioneer had paid into an escrow account. The June 2 Order affirmed the ALJ on all issues except for his grant of a partial waiver of the refunds attributable to payments to royalty interest owners, and held Pioneer liable for all the royalty interest owner refunds.
4. Pioneer filed a request for rehearing on all the liability rulings, arguing that the Commission erred in finding Pioneer liable in the amount claimed by Panhandle. MoPSC filed for rehearing on the interest rate ruling. We deny the requests for rehearing, but we will grant MoPSC's request as to that portion of the refund liability that Pioneer did not pay Panhandle or pay into an escrow account. We direct Pioneer to make

¹ 107 FERC ¶ 61,239 (2004).

payment of its refund liability within 15 days of this order, in accordance with the order issued on June 28, 2004.² This order benefits customers by requiring a producer to refund consistent with Commission policy the amount it received from sales of natural gas that was in excess of the maximum lawful price.

I. Pioneer's Request for Rehearing

5. Pioneer is also involved in a Commission proceeding with another pipeline, *Southern Star Central Gas Pipeline, Inc.*, Docket No. RP98-52 (*Southern Star*), that also relates to the refunds of the pipeline's payment of the *ad valorem* tax reimbursement. In that proceeding, the ALJ found Pioneer liable for the refund claimed by the pipeline, and required Pioneer to pay interest at the FERC interest rate which was higher than the interest paid by escrow account into which Pioneer had placed the claimed refunds.³ In a March 30, 2004 Order,⁴ the Commission affirmed the ALJ, but held that no additional interest was due because the escrow account interest rate applied. In the instant proceeding, the ALJ also found Pioneer liable for the refund claimed by the pipeline, except that he granted a waiver of a portion of the refund liability relating to payment to the royalty interest owners, and held that the escrow interest rate applied. The June 2 Order in this proceeding affirmed the ALJ on all issues, including the interest rate issue, but reversed the ALJ's grant of waiver of a portion of the refund relating to the royalty interest owners.

6. Pioneer requested rehearing of the Commission's March 20, 2004 *Southern Star* order. Pioneer urged seven grounds for rehearing, but the Commission denied Pioneer's request by order issued August 9, 2004 (the August 9 Order).⁵ Pioneer's request for rehearing here is almost identical to its request for rehearing in *Southern Star*.⁶ We will

² Pioneer moved to stay the June 2 Order until after the conclusion of all review of that order, including judicial review. The Commission denied the motion to stay, but granted Pioneer an extension of the time within which to pay the refund to Panhandle until 15 days after issuance of a final Commission order, 107 FERC ¶ 61,319 (June 28, 2004).

³ 105 FERC ¶ 63,031.

⁴ 106 FERC ¶ 61,316.

⁵ 108 FERC ¶ 61,182 (2004).

⁶ One issue in *Southern Star*, whether a prior settlement with the pipeline relieved Pioneer of the refund obligation, is not an issue in this proceeding.

address each of the arguments raised here by Pioneer but where there is no difference between the argument Pioneer raises here and the argument as to this issue it had raised in the *Southern Star* proceeding, we will merely refer to the discussion in the *Southern Star* August 9 Order, and supplement the discussion where necessary.

A. The Amount of the Refund Obligation

7. At issue in this proceeding are the *ad valorem* tax reimbursement that Panhandle paid to Pioneer⁷ commencing October 4, 1983, relating to gas sales purchases by Panhandle from Pioneer. The gas sales involved production from 66 wells, under a number of contracts, including reimbursement that Panhandle paid after wells were deregulated, and/or the underlying natural gas contracts were terminated. The June 2 Order held that Pioneer must refund all the tax reimbursements Panhandle paid to it, including the reimbursements paid after the wells were deregulated and the contracts terminated. In its rehearing request, Pioneer contends that the June 2 Order erred in finding that the *ad valorem* tax reimbursements paid after deregulation and/or contract termination caused Pioneer to receive in excess of the applicable MLP, and therefore it should not be required to refund these amounts. The facts relevant to resolving this issue are as follows.

8. In April 1985, Panhandle and Pioneer executed an agreement, amending the sales contracts covering production from five wells that were price deregulated under the NGPA effective January 1, 1985. The agreement provided for a renegotiated price retroactive to January 1, 1985, which price was “inclusive of any and all price adjustments, such as taxes...”⁸ As a result of the amendment Panhandle was no longer required to pay an add-on to the price for the *ad valorem* tax reimbursement. The amendment also provided for the release of the gas from Panhandle’s contract effective the date of the agreement. Pioneer was not obligated to sell the gas to Panhandle, and the gas could be sold to any other entity. At the hearing, it was not clear who purchased the production from these wells after the amendment.⁹ In addition to the *ad valorem* tax

⁷ As stated in the June 2 Order, the sales were made by Pioneer’s predecessors, and reference to Pioneer will mean a predecessor where appropriate.

⁸ Exhibit No. PNR-11(KS), Exhibit A.

⁹ Tr. at 144. All transcript references are to testimony by Pioneer’s witness.

reimbursement that Panhandle paid to Pioneer before the April 1985 Agreement, Panhandle made *ad valorem* tax reimbursement payments to Pioneer with respect to these five wells in April 1985 and August 1985.¹⁰

9. In October 1985 Panhandle and Pioneer executed an amendment to the sales contract covering one well, the Cordes # 1 Well, which was deregulated effective October 1, 1985.¹¹ The amendment released the gas from commitment to Panhandle. After October 1, 1985 Panhandle did not purchase any gas from Pioneer from that well.¹² However, in June and August 1986, after the October 1985 termination, Panhandle made *ad valorem* tax reimbursements payments to Pioneer with respect to that well.

10. The remaining 60 wells under different sales contracts were subject to a January 1, 1988 termination agreement between Panhandle and Pioneer.¹³ After that date Panhandle did not purchase the production from these wells. Prior to the termination in January 1988, sales to Panhandle were at the maximum MLP.¹⁴ After January 1, 1988, Panhandle paid *ad valorem* tax reimbursement associated with these wells to Pioneer.¹⁵ Also, after January 1, 1988, Pioneer sold gas from these wells to other purchasers at less than the then the applicable MLP, which had been increased pursuant to Order No. 451.

11. Pioneer is only required to refund the amount of the *ad valorem* tax reimbursement that caused it to receive in excess of the applicable MLP with respect to the sales in question. As in the *Southern Star* proceeding, Pioneer contends that whether a specific Panhandle *ad valorem* tax reimbursement caused Pioneer to receive more than the MLP must be made based on whether Pioneer received in excess of the applicable MLP, if any, in existence at the time Panhandle paid the reimbursement. Accordingly, Pioneer contends that Panhandle's April and August 1985 tax reimbursements with respect to the five wells that were deregulated on January 1, 1985 could not violate any MLP, since those wells were no longer subject to MLPs as of the dates Panhandle made

¹⁰ Tr. at 143.

¹¹ Exhibit No. PNR-13(KS).

¹² Tr. at 150.

¹³ Exhibit No. PNR-15.

¹⁴ Tr. at 151.

¹⁵ Tr. at 151-152.

those payments. Pioneer makes a similar argument with respect to Panhandle's June and August 1986 tax reimbursement payments with respect to the Cordes # 1 well, which was deregulated on October 1, 1985. Finally, Pioneer contends that Panhandle's post-January 1988 *ad valorem* tax reimbursements with respect to the remaining 60 wells could not have caused Pioneer to receive more than the MLP, because the MLP applicable to those wells was substantially above the market price it charged for its sales from those wells after January 1, 1988, leaving "head room" below the MLP for the tax reimbursements to be made without an MLP violation.

12. In support of its position that the appropriate analysis of whether refunds are due must be made based on whether Pioneer received in excess of the applicable MLPs when it received the *ad valorem* tax reimbursements, Pioneer cites to statements in various decisions and orders concerning the implementation of the Court's requirement that producers must refund excess *ad valorem* tax reimbursements that were related to sales made after October 4, 1983. Pioneer refers to the Court's statement in *Anadarko Petroleum Corp. v. FERC*,¹⁶ (*Anadarko*) that, in determining whether particular *ad valorem* tax reimbursements related to the period after October 4, 1983 the Commission must focus in this proceeding on tax reimbursements passed through to customers after October 4, 1983.¹⁷ Pioneer states that on rehearing of its decision in *Anadarko*, the Court stated "[i]f the producers collected tax reimbursements from their customers after that date," then the refunds may be due.¹⁸ Not only the Court, Pioneer argues, but also the Commission itself reiterated that the date the producer received payment is the critical date in determining whether an MLP violation occurred. Pioneer cites to the Commission's statement in *Public Service Comm'n of Colorado (Public Service)*, the Commission's order responding to the Court's *Anadarko* decision, that parties had raised "numerous arguments, many of which seek in effect to reverse the Court's holding in *Anadarko* that the critical element is when the reimbursement was made..."(emphasis supplied)¹⁹ Pioneer argues that these statements show that the relevant analysis for the purposes of determining if refunds are due "is to compare the prices that the producer was receiving at the time it received the tax reimbursements."²⁰ Pioneer contends that

¹⁶ 196 F.3d 1264 (D.C. Cir. 1999), *clarified on reh'g*, 200 F.3d 867 (D.C. Cir. 2000) (*Anadarko*).

¹⁷ 196 F.3d at 1270.

¹⁸ 200 F.3d at 1270.

¹⁹ 93 FERC ¶ 61,264 at 61,389 (2000).

²⁰ Request at 20.

seeking to attribute Panhandle's tax reimbursements to Pioneer's earlier sales to Panhandle is contrary to the Commission's holding that the Kansas *ad valorem* tax is a tax on the producer's property, and not on its sales to customers, and for that reason is not recoverable as an add-on to the NGPA ceiling price.

13. In *Southern Star*, the Commission rejected Pioneer's reliance on these precedents. The Commission explained that *Public Service* considered a situation where the producer was making sales of gas at the MLP to a pipeline under an ongoing contract, so that the producer made all the sales at issue both before and after the October 1983 refund commencement date under the same contract to the same pipeline, and all the sales were at the MLP. In that situation, the Commission held that it did not make sense to seek to attribute the pipeline's lump sum payments to individual sales for purposes of determining whether those payments fell within the post-October 1983 refund period. Rather, the Commission would treat all the pipeline's post-October 1983 lump sum payments as included in the post-October 1983 refund period. The Commission reached this conclusion in *Southern Star* based on how the *ad valorem* tax reimbursement system worked stating:²¹

As a property tax the Kansas *ad valorem* tax would have been assessed on the value of leasehold property as of January 1 of the tax year. Thus, in October or November of a given calendar year, the Kansas taxing authorities would have rendered a bill to a producer for the taxes due for that same calendar year. The tax bill represented that producer's tax liability only for the year for which the tax bill was rendered, and not for prior years. After the producer received a tax bill, it paid it either as a lump-sum or in two installments, and then invoiced the pipeline for a reimbursement of those paid taxes without regard to the sales made during that year. The pipeline would reimburse the producer for those paid taxes in a lump sum, usually at some point during the year following the tax year in which the bill was rendered. Thus, a producer would have recovered its Kansas *ad valorem* taxes through lump-sum, after-the-fact payments with respect to each well, and not with respect to individual sales.²²

²¹ August 9 Order at PP 17-18.

²² Public Service of Colorado, 93 FERC ¶ 61,264 at 61,840 (2000).

However, in the same order the Commission recognized that in some situations it might nevertheless be necessary to attribute *ad valorem* tax reimbursements to particular sales for purposes of determining a producer's refund liability. In particular, this could be necessary to resolve "headroom" contentions, such as Pioneer is raising here. The Commission explained:

[W]here the producer's sales for the period in the tax bill were made at the MLP, then no attribution is required because the tax is on the property and any reimbursement that the producer receives from the buyer would cause the producer to receive amounts in excess of the MLP for the sale of the gas. Where the producer made sales during the period at less than the MLP and received the tax reimbursement, then it would be necessary to calculate what amount of the tax reimbursement was in excess of the MLP. The Commission has always stated that this issue would be determined in individual proceedings with that producer, where all the relevant data would be considered.²³

14. Turning to the specific facts of Pioneer's situation, *Southern Star* held that the issue whether Pioneer had received *ad valorem* tax reimbursements in excess of the MLP was the type of situation where tax reimbursements would have to be attributed to individual sales in order to resolve the "headroom" contention. The August 9 Order stated at P 19:

Here, the Commission finds that resolution of the issue is relatively straight forward. Since the tax reimbursements at issue here were paid to Pioneer by Williams, they clearly relate to Pioneer's sales to Williams pursuant to its contracts with Williams, not to Pioneer's sales pursuant to contracts with other entities. Williams' only contractual obligation with Pioneer was to pay for gas it purchased, not pay for gas others purchased. All of Pioneer's relevant sales to Williams were at the MLP.

²³ *Id.* at 841.

15. Here, the identical reasoning set forth in *Southern Star* applies with respect to Panhandle's post-October 1, 1985 reimbursement payments for the Cordes # 1 Well and its post-January 1, 1988 reimbursement payments for the 60 wells that were subject to a January 1, 1988 termination agreement. After those respective dates Panhandle did not purchase the gas production from those wells. It follows that Panhandle's tax reimbursement payments to Pioneer after those dates must relate to Pioneer's earlier sales to Panhandle. Pioneer does not dispute the finding that all of its sales to Panhandle of gas from these wells were made before the wells were deregulated and the sales were at the applicable MLP. Therefore, Panhandle's tax reimbursements must have caused Pioneer to receive in excess of the MLP with respect to these sales. The fact Pioneer may have made deregulated sales or sales at less than the MLP to other entities contemporaneous with Panhandle's payment of its tax reimbursements is irrelevant to a determination whether Pioneer received in excess of the MLP in its sales to Panhandle.

16. The five wells that were price deregulated effective January 1, 1985 present a somewhat different issue. That is because, while all of Pioneer's pre-January 1, 1985 sales of gas from these wells were at the MLP, it appears that Pioneer may have made some sales to Panhandle after the January 1, 1985 deregulation of those wells. The June 2 Order concluded, as did the ALJ, that the tax reimbursements that Panhandle paid to Pioneer after the April 1985 agreement must have related to regulated sales to Panhandle before January 1, 1985. The June 2 Order pointed out that the renegotiated price applicable after January 1, 1985 was inclusive of *ad valorem* tax reimbursements.²⁴ Thus, there was no requirement for Panhandle to make separate tax reimbursements for the post-January 1, 1985 sales.

17. Pioneer argues that in so reasoning the Commission "interject[ed] itself into interpreting contractual arrangements between Pioneer's predecessors and the pipeline" but had declined to do that with respect to a settlement in the *Southern Star* proceeding, and "the Commission should not then concern itself here with why Panhandle made the Kansas *ad valorem* reimbursements to Pioneer's predecessors after the gas production was deregulated or price renegotiated."²⁵

18. In the *Southern Star* order on which Pioneer relies, the Commission held that a settlement between a producer and a pipeline that includes a release of claims as between the producer and the pipeline could not relieve the producer of its obligation to refund

²⁴ The April 1985 Agreement also provided for release of the gas from Panhandle effective the date of the agreement.

²⁵ Request at 22.

amounts collected in excess of the NGPA statutory MLPs, because that in effect would allow the producer to retain the excess over the MLP in violation of the NGPA. There is nothing in that order that suggests that in determining whether a particular tax reimbursement violated an MLP, the Commission would not examine the relevant contracts between the producer and the pipeline in order to determine to what sale the tax reimbursement related. Pioneer does not contest the fact that its April 1985 agreement with Panhandle provided that the renegotiated price to be paid by Panhandle for its post-January 1, 1985 purchases was inclusive of any *ad valorem* tax reimbursements. It follows that the separate tax reimbursement payments Panhandle made to Pioneer after January 1, 1985 must have related to its pre-January 1, 1985 purchases from Pioneer, which were at the MLP, and under the contract that required Panhandle to make tax reimbursement payments to Pioneer with respect to those gas sales.

19. Accordingly, we find no merit in Pioneer's contentions and adhere to our prior ruling.

B. The Royalty Interest Owner Portion of the Refund

20. In its request here Pioneer, as it did in *Southern Star*, asserts that the Commission erred in denying Pioneer's request for relief from the entire royalty portion of the refunds claimed since the record shows that such refunds are unrecoverable by Pioneer from the royalty interest owners. It also argues that the Commission erred in failing to find that applicable Kansas Statute of Limitations (SOL) precludes Pioneer from seeking recovery of such refunds from royalty interest owners.

21. The *Southern Star* August 9 Order addressed the royalty interest owners' issue at PP 37-53. Although there are some minor differences between the two requests, such as Pioneer's references in the *Southern Star* request to the ALJ's decision in this proceeding that granted a partial waiver, which the Commission reversed in the June 2 Order, these are not material differences. The factual situation in both proceedings is the same since it is Pioneer's conduct that is at issue. In this proceeding, as well as in *Southern Star*, Pioneer's predecessor, Mesa, handled all the tax reimbursements for the refund period,²⁶ and "Pioneer's efforts to 'collect' refunds from royalty owners were limited to reviewing its files for royalty owner information, and 'contacting the Southwest Kansas Royalty Owners Association.'"²⁷ In *Southern Star* the Commission explained why no waiver was

²⁶ PNR-1 (KS).

²⁷ PSC-1(CM) at 48.

warranted. Since there are no relevant factual differences between the two proceedings as far as this issue is concerned, we deny the request here for the same reasons set forth in *Southern Star*, and rely on the discussion in *Southern Star*.

C. Refunds for beyond the period October 4, 1983 through June 28, 1988.

22. In its request here Pioneer asserts that the Commission erred in finding Pioneer liable for tax reimbursements relating to sales preceding October 3 1983, and after June 28, 1988, despite the clear directive in the Commission's orders. Pioneer contends that those orders indicate that the refund period was from October 3, 1983 through June 28, 1988, while here the Commission required refunds that went beyond that period.

23. In its *Southern Star* rehearing request Pioneer raised the same contention. The *Southern Star* rehearing order rejected this contention in PP 37-53. Since Pioneer's two rehearing requests have the same discussion on this contention, we will reject the contention here for the same reasons set forth in *Southern Star* rehearing order.

D. Burden of Proof

24. In its request here, Pioneer asserts that the Commission erred in failing to sustain its burden of proof in this proceeding, including a well-by-well and contract-by-contract analysis and an examination of the potential mismeasurement of Btu content during the time period involved. In its *Southern Star* rehearing request Pioneer made the same argument.

25. The discussion on this issue is the same in the two requests. The *Southern Star* rehearing order rejected the argument in P 25. For the same reasons, we deny the request here. On the issue of the mismeasurement of Btu content, Pioneer asserts that a complaint has been filed in a Kansas state district court alleging that various pipelines, including Panhandle, improperly measured the Btu content of the gas they purchased, and as a result failed to pay the producers for the full amount of gas they purchased. Pioneer suggests that, before requiring Pioneer to refund the *ad valorem* tax reimbursements at issue here, the Commission must bear the burden of showing that Panhandle properly measured the Btu content of the gas it purchased. The litigation referred to by Pioneer is not relevant to the issue whether the tax reimbursements at issue here exceeded the MLP. For the reasons discussed above, we have found that these tax reimbursements relate to sales made to Panhandle during a period when it is undisputed Panhandle was obligated by contract to pay the MLP for all the gas it took, and any *ad valorem* tax reimbursement that Pioneer received with respect to those sales must be refunded because receipt of that payment caused Pioneer to receive more than the MLP in the sale of that gas. In the litigation referred to by Pioneer, it was alleged, in essence, that because of a mismeasurement of the gas taken, Panhandle failed to pay for all the gas taken. Even, if

it were determined in that litigation that Panhandle had failed to pay for the full amount of gas taken during the period at issue here, and Panhandle was ordered to pay the contractual price for the additional amount, i.e., the MLP, it would not change the ruling here that Panhandle's payment of the tax reimbursement as an add-on to the MLP on the smaller amount violated the NGPA, and Pioneer must refund the amount of the tax reimbursement. Moreover, Commission-ordered refunds owing to customers are to be paid promptly, and offsets are allowed only under certain conditions that are not present here.²⁸ In *Interstate Natural Gas Ass'n of America v. FERC*,²⁹ the Court reversed a Commission order that allowed offsets to refunds. The Court stated that the Supreme Court has held that "refunds must be implemented expeditiously," and "the law requires the ordering of refunds at the earliest possible moment."³⁰ Accordingly, we see no reason to delay this already protracted proceeding pending the outcome of this speculative court litigation.

E. Equitable Adjustment Issue

26. In its request here Pioneer asserts it was error for the Commission to refuse to find that at least partial relief from the refund claim was appropriate based on the equities presented. Such relief was appropriate based on the inequity and unfair distribution of burden in imposing the refund on Pioneer given the circumstances presented. In the *Southern Star* rehearing request Pioneer raised the same issue that partial relief from the refund claim was appropriate based on the equities presented.

27. The arguments in both requests are similar, except that in *Southern Star*, Pioneer referred to a prior settlement which settlement it contended had provided substantial benefits to consumers and thus afforded a basis for relief. In this proceeding no prior settlement is involved, so the equity argument based on benefits provided to consumers is not present here.

²⁸ Offsets may be permitted "where the refunds arise from the same rates, the same rate period, and the same rate issues as the liabilities." Panhandle Eastern Pipe Line, 83 FERC ¶ 61,261 at 62,088 (1998). The *ad valorem* tax reimbursement issue is entirely separate from the Btu measurement issue.

²⁹ 756 F.2d 166 (D.C. Cir 1985).

³⁰ *Id.* at 171.

28. The Commission's *Southern Star* rehearing order in PP 54-60 discussed and rejected Pioneer's various contentions why equitable relief was appropriate. For the same reasons we deny the request here.

29. Accordingly, we deny Pioneer's request for rehearing, and will require it to make payment of the refund obligation within 15 days after this order is issued.

II. MOPSC's Rehearing Request

30. At issue here is what interest rate is applicable to the refunds owed by Pioneer. The I.D. states that in March 1998, when Pioneer was required to make payment of the refunds Panhandle claimed that Pioneer owed,³¹ Pioneer paid a portion of the amount directly to Panhandle, and the remainder it paid into an escrow account. The interest rate for funds in the escrow account is less than the interest rate applicable to refunds prescribed by the Commission's regulations (the FERC interest rate). At issue is whether Pioneer is obligated to pay an additional amount if the FERC interest rate was applicable to the funds in the escrow account.

31. The ALJ stated that the Commission has allowed establishment of escrow accounts for Kansas *ad valorem* tax amounts in dispute, and that by the words "in dispute" the Commission "intended to limit the escrow only to an amount that was realistically in dispute, not all that was subject to litigation." (I.D. at P 83). He reasoned that any funds that Pioneer had placed in escrow to assure recovery if Pioneer eventually won on appeal would be subject to the FERC interest rate because those funds were not in dispute under the Commission's standard. However, he found that all the funds Pioneer had paid into the escrow account satisfied the "in dispute" test since:

considering the twists and turns of the litigation in this area, the initial stage of the calculation at the time the escrow account was established, and Pioneer's lack of access to Panhandle's records at that time, it is difficult to conclusively attribute Pioneer's placing the amounts in escrow primarily to concerns other than about the correct calculation of the

³¹ The Commission's September 10, 1997 Order, 80 FERC ¶ 61,264, required pipelines to send producers a statement of the amount of refund the pipeline claimed was owing by the producers, and producers were required to pay the amount claimed as owing within 180 days of the order, namely by March 10, 1998.

amounts of refund. That concern was sufficient to afford it the right to escrow the amounts in issue, rather than refund them outright to Panhandle. I.D at P 86.

Thus, he held that Pioneer would not be required to pay a higher rate of interest than the escrow interest rate.

32. MoPSC and Commission Staff filed exceptions to this ruling. The Commission denied the exceptions. The June 2 Order cited to the Commission's March 30, 2004 *Southern Star Central* Order, 106 FERC ¶ 61,316, where the Commission addressed the very same issue involving Pioneer, and concluded, as did *Southern Star*, that the escrow interest rate should apply. The June 2 Order stated that the reasons advanced why interest is included in calculating the refund are satisfied by applying the account escrow rate of interest. The June 2 Order also considered Pioneer's petition for adjustment in Docket No. SA98-33, which the order noted did seem to refer to only certain amounts of the claimed refund, but concluded that Pioneer would not be limited only to those items as to what was in dispute. The order explained that given that the issue as to the *ad valorem* refund obligation of producers has not been an easy one to resolve, since the customers were assured of recovery of the amount placed in escrow, the Commission agreed with the ALJ's conclusion that the entire amount Pioneer paid into the escrow account could be considered as being "in dispute."

33. MoPSC argues in its request for rehearing that the Commission erred in allowing the escrow interest rate to apply because it allows that rate to apply to matters that Pioneer did not dispute. MoPSC contends that this is contrary to the Commission's own rule that only the amount of refunds that were in dispute could be paid to the pipeline.

34. MoPSC also argues that an additional \$479,706 of *ad valorem* liability for working interest owners was ascribed to Pioneer as of March 9, 1998, and Pioneer never escrowed or paid these amounts. The ALJ had concluded, I.D. at P 86, that Pioneer was entitled to apply its escrow rate to these amounts rate because "the release through settlement of other refund claims ... left sufficient funds to cover" Pioneer's additional refund liability for working interest owners. MoPSC states that the June 2 Order did not discuss the issue of what rate applied to these additional refunds. MoPSC asserts that since Pioneer never escrowed these amounts, the Commission's rationale in the June 2 Order for applying the escrow rate does not apply, and the FERC rate of interest must apply to this amount of refunds.

35. MoPSC also raises the same argument here that it raised in the *Southern Star* proceeding, namely that the authorization of payment into an escrow account was a narrowly-tailored accommodation, that the Commission should not allow Pioneer to rely on subsequently adopted argument why it did not owe the refund claimed, that MoPSC's

position is consistent with the Commission's ruling in *Plains Petroleum Co.*, 84 FERC ¶ 61,140 (1998), and that the Commission's finding did not give adequate weight to the interests of the consumer.

36. All of MoPSC's arguments have been addressed a number of times, except for its contention regarding the amount of the refund for the additional claims involving working interests that Pioneer did not pay Panhandle or pay into the escrow account. As to the latter, we find merit in MoPSC's request that the FERC interest rate should apply to that amount. The fact that there might have been sufficient funds in the escrow account to cover this amount as a result of the release of funds through other settlements did not justify Pioneer's failure to pay this additional refund claim. While we are willing to give some leeway in what can be considered what was in dispute, Pioneer will not be allowed to use funds from other refund liabilities to cover this additional amount, and the FERC interest rate will apply to this amount. However, we adhere to our ruling that the escrow interest rate applies to the amount of the refund obligation that Pioneer paid into the escrow account.

37. As described above, in the *Southern Star* March 30 Order, the Commission reversed the ALJ on this issue and explained why the escrow interest rate should apply. The June 2 Order in this proceeding affirmed the ALJ's ruling that the escrow interest rate applied, and quoted extensively from the *Southern Star* March 30 Order. In addition, the *Southern Star* rehearing order, which denied MoPSC's request for rehearing of the March 30 Order and that request raised many of the issues it has raised here. We see no need to repeat what we have stated in these prior orders, but will briefly answer the issues raised by MoPSC by referring to prior orders, and supplement the response where necessary.

38. The June 2 Order explained why the Commission did not agree with MoPSC and Staff that the ALJ had erred in applying the escrow interest rate because some of the amount paid into the escrow account related to refunds that were not "in dispute," when were paid into the escrow account. The order further stated at P 34 that the Commission was not inclined to narrowly define what was in dispute because "the issue of the *ad valorem* refund obligation of producers has not been an easy one to resolve."

39. In the *Southern Star* rehearing order the Commission also addressed MoPSC's contention that the ruling here is contrary to the Commission's *Plains Petroleum* decision. The Commission explained that in that case, a producer disputed its refund obligation for a certain period when it was a subsidiary of another company (Period I) and also disputed the amount claimed it owed in Period II when it was an independent company. The producer did not pay the refund relating to Period I, but moved for a ruling that it was not liable for the refund. In *Plains Petroleum*, the Commission rejected the producer's argument that it was not liable for the refund in Period I. As to the refund

in Period II, the producer had paid a portion of the refund and requested permission to pay into an escrow account the amount of the refund that it disputed. After the Commission had ruled on certain refund issues, the producer paid an additional amount to the pipeline and sought to defer payment of the amount in the escrow account relating to the royalty owner interest portion. The Commission's entire discussion of the escrow issue was the statement that the producer's action was consistent with the Commission's policy on payment into an escrow account.

40. There was no issue in *Plains Petroleum* as to what interest rate applied to the amount paid into the escrow account. The Commission approval of the producer's conduct in *Plains Petroleum* is not to be considered a ruling that all producers had to follow that procedure. The March 30 Order recognized that when Pioneer paid the claimed refund into an escrow account, it was not disputing the entire amount, but that subsequently it did challenge the refund obligation based upon the Mesa settlement. We do not accept MoPSC's contention that the Commission should impose the FERC interest rate for the period until this defense was raised by Pioneer. The Commission did not intend the escrow procedures to be so complicated.

41. MoPSC also argues again that the Commission's decision did not give adequate weight to the interest of consumers because it denied them the additional amount of refund they would receive under the FERC interest rate. The Commission addressed this argument in the *Southern Star* rehearing order. The order stated at P 73:

MoPSC does not challenge the Commission's reasoning that payment into the escrow account satisfies a number of the reasons why interest is a component of the refund obligation. Rather, it argues that giving consumers the highest possible interest is the only factor to be considered. We do not agree, and for the reasons stated above, believe that using the escrow interest rate is fair to all parties, and deny MoPSC's rehearing request.

42. We also find no merit in MoPSC's argument that by allowing Pioneer to only pay the escrow interest rate it is somehow encouraging jurisdictional companies to disregard Commission orders. We have explained that payment into the escrow account satisfies the reasons why interest is a component of the refund obligation. Moreover, when Pioneer paid the claimed refund into the escrow account, there was no Commission order determining Pioneer's refund obligation. There was only Panhandle's claim. We have concluded that since Pioneer's payment into the escrow account ensured payment to the consumer, we should not impose any further obligation on Pioneer, and we deny rehearing except as noted above.

The Commission orders:

(A) The request by Pioneer for rehearing is denied.

(B) The request by MoPSC for rehearing is denied except that the FERC interest will apply to the additional refund liability for working interest owners.

(C) Pioneer must pay Panhandle the *ad valorem* tax refund required under this order within 15 days of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.