

168 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Panhandle Eastern Pipe Line Company, LP

Docket Nos. RP19-1523-000
RP19-78-000
RP19-78-001
RP19-257-005

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO
REFUND, REJECTING TARIFF REVISION, ESTABLISHING HEARING
PROCEDURES AND TECHNICAL CONFERENCE, AND CONSOLIDATING
PROCEEDINGS

(Issued September 30, 2019)

1. On August 30, 2019, in Docket No. RP19-1523-000, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed revised tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations. Panhandle proposes changes to its rates, the elimination of certain rate schedules, and various other changes to the General Terms and Conditions (GT&C) of its tariff, effective October 1, 2019. As discussed below, we accept and suspend certain tariff records to be effective March 1, 2020, subject to refund, the outcome of a hearing and technical conference established herein and reject one tariff proposal. In addition, we deny Panhandle's motion to terminate its NGA section 5 proceeding established by the Commission in Docket No. RP19-78-000² and grant its motion to consolidate the Southwest Gas Storage Company (Southwest) contract issue in Docket No. RP19-257-005 with the instant NGA section 4 proceeding.

¹ See Appendix.

² *Panhandle Eastern Pipe Line Co., LP*, 166 FERC ¶ 61,032 (2019) (Investigation Order).

Background

2. Panhandle states that it provides natural gas transportation and storage services to a variety of shippers in the United States and Canada, principally in the territory traversed by its pipeline system in the states of Texas, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. Panhandle states that its main transmission line extends in a northeasterly direction from its principal sources of supply in the states of Texas, Oklahoma, and Kansas into the state of Michigan up to the international boundary between the United States and Canada. Panhandle also states that it leases extensive underground natural gas storage facilities.³

3. Panhandle states that its current rates were established in a settlement of its last general NGA section 4 rate case in Docket No. RP91-229-000, et al.⁴ On January 16, 2019, the Commission issued an Investigation Order addressing Panhandle's FERC Form No. 501-G filing, instituting a formal inquiry of Panhandle's rates pursuant to NGA section 5 and setting the matter for hearing before an Administrative Law Judge (ALJ).⁵

Proposal

4. Panhandle proposes both increases and decreases to components of its transmission and storage rates to become effective October 1, 2019. Panhandle explains that its proposed rates are based on a cost of service for a 12-month base period ending April 30, 2019, adjusted for known and measurable changes anticipated to occur during the nine-month period ending January 31, 2020. Panhandle proposes to design rates upon an overall annual cost of service of \$407,945,924 and a rate base of \$1,131,344,865.⁶ Panhandle states that its proposed cost of service reflects a return on equity (ROE) of 14.67 percent, a cost of debt of 6.17 percent, and a capital structure of 36.71 percent debt and 63.29 percent equity.⁷ Based on these components, Panhandle states that its overall rate of return would be 11.55 percent.⁸ Panhandle also proposes a depreciation rate for

³ Ex. PE-0002 at 6-7.

⁴ *Panhandle Eastern Pipe Line Co., LP*, 77 FERC ¶ 61,284 (1996).

⁵ Investigation Order, 166 FERC ¶ 61,032.

⁶ Ex. PE-0004 at 4-5.

⁷ Ex. PE-0002 at 13.

⁸ *Id.*

transmission of 2.62 percent, a negative salvage rate of 0.59 percent, and a terminal decommissioning rate of 1.30 percent.⁹

5. Panhandle states that on July 1, 2019, its ownership structure was reorganized. Prior to July 1, 2019, Panhandle explains that its ownership structure included entities that were incorporated as IRS Subchapter C corporations that are subject to federal income taxes.¹⁰ Therefore, according to Panhandle, it was allowed to recover its relevant federal income tax liability and certain Accumulated Deferred Income Taxes (ADIT) through its transmission and storage rates.¹¹ However, Panhandle states that as a result of the reorganization, effective July 1, 2019, Panhandle is no longer owned by an entity subject to federal income taxes and therefore, it did not include a federal income tax allowance in its cost of service in this filing.¹² Furthermore, according to Panhandle, the ADIT balances that were allocated to Panhandle will be paid by another entity and were eliminated from its rate base.¹³

6. Panhandle's filing reflects the continued use of straight-fixed variable rate design, billing determinants adjusted for discounting, and a small customer rate under Rate Schedule SCT based upon a 20 percent load factor.¹⁴ Additionally, Panhandle calculated its rates based upon the roll-in of its Backhaul Project (an expansion project), which, according to Panhandle, was granted a pre-determination of rolled-in rate treatment.¹⁵

7. Panhandle proposes to eliminate Rate Schedules HFT (Hourly Firm Transportation Service), WS (Winter Storage Service), and PS (Peaking Storage Service). Panhandle states that of these schedules, only Rate Schedule WS currently has active contracts. Panhandle states that it intends to convert these contracts to Rate Schedule FS (Flexible Storage) service agreements at the existing contract parameters and rates. Panhandle states that the shippers will not experience a degradation of service; rather, Rate Schedule FS provides more flexibility and also includes similar requirements as

⁹ Ex. PE-0007 at 5-6.

¹⁰ Ex. PE-0002 at 11.

¹¹ *Id.* at 12.

¹² *Id.*

¹³ *Id.*

¹⁴ Statement of the Nature, Reasons and Basis for the Filing at 2.

¹⁵ Ex. PE-0009 at 16-17. *See Rover Pipeline LLC*, 158 FERC ¶ 61,109 (2017).

Rate Schedule WS.¹⁶ Additionally, Panhandle proposes a new interruptible storage service (Rate Schedule IFS) that complements the firm service under Rate Schedule FS due to the cancellation of Rate Schedule IWS.¹⁷

8. Panhandle also proposes several tariff changes to its GT&C, including: (1) changing rate sheets to provide for rates on a daily basis; (2) updating creditworthiness provisions; (3) changing the discount factor utilized in calculating the value of requests for service from the rate of return underlying Panhandle's current rates to the prime interest rate utilized by the Commission; (4) shortening the time period to execute contracts once awarded from 30 days to 15 days; (5) updating fuel reimbursement provisions, including the provision for out-of-cycle adjustments to fuel rates if necessary; (6) providing for the ability to reserve capacity on the system for a future expansion following an open season; (7) adding a minimum daily quantity requirement for new deduct meters used as a delivery point; and (8) eliminating special provisions for a limited class of backhaul service.

9. Additionally, on September 4, 2019, in Docket No. RP19-78-000, et al., Panhandle filed a motion to terminate its NGA section 5 proceeding and consolidate the Southwest contract issue with the instant NGA section 4 proceeding.

Notice of Filing, Interventions, and Protests

10. Public notice of Panhandle's filing was issued on September 3, 2019. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁸ Pursuant to Rule 214,¹⁹ all timely motions to intervene and any unopposed motions to intervene filed out-of-time 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.

11. PCS Nitrogen Fertilizer, L.P. (Nitrogen Fertilizer); Direct Energy Business Marketing, LLC (Direct Energy); Consumers Energy Company (Consumers Energy); Ameren Illinois Company (Ameren Illinois); Union Electric Company d/b/a Ameren Missouri (Ameren Missouri); the Missouri Public Service Commission (Missouri PSC); Sequent Energy Management, L.P. (Sequent); the Michigan Public Service Commission (Michigan PSC); Process Gas Consumer Group (PGC); CenterPoint Energy Resources

¹⁶ Ex. PE-0012 at 5.

¹⁷ *Id.* at 6.

¹⁸ 18 C.F.R. § 154.210 (2019).

¹⁹ *Id.* § 385.214.

Corporation d/b/a Vectren Energy Delivery of Indiana, Inc. and Vectren Energy Delivery of Ohio, Inc. (CenterPoint); and Columbia Gas of Ohio, Inc. (COH) filed protests in response to Panhandle's filing. All of the protesters assert that Panhandle has not shown its proposed rates to be just and reasonable. The protesters state that Panhandle's proposal presents issues of material fact that must be further examined, and thus, request that the Commission suspend the rates for the maximum statutory period of five months, subject to refund and hearing procedures.

12. On September 18, 2019, Panhandle filed an answer to the protests in this filing. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,²⁰ answers to protests are prohibited unless otherwise ordered by the decisional authority. We accept the answer because it provides information that will assist us in our decision-making process. In its answer, Panhandle opposes the below motions by Ameren Illinois and Ameren Missouri to reject Panhandle's NGA section 4 rate filing and Missouri PSC's motion for summary disposition. Panhandle argues that Ameren Illinois and Ameren Missouri did not support their motions to reject the filing.

13. On September 19, 2019, Ameren Illinois and Ameren Missouri (jointly); Consumers Energy, Michigan PSC, DTE Gas Company, and SEMCO Energy Gas Company (jointly, Michigan Parties); Archer Daniels Midland Company (Archer Daniels); PGC; and Nitrogen Fertilizer filed answers opposing Panhandle's motion to terminate the ongoing NGA section 5 proceeding in Docket No. RP19-78-000. Missouri PSC filed an answer partially in opposition to Panhandle's motion to terminate the ongoing section 5 proceeding and an alternative answer not opposing Panhandle's motion to consolidate the Southwest contract issue with the instant NGA section 4 proceeding.

14. Also on September 19, 2019, Panhandle filed a motion in opposition to PGC's motion to intervene. Panhandle asserts that PGC fails to mention in sufficient factual detail which of its members has an interest in the instant proceeding. Accordingly, Panhandle argues that PGC's motion must be denied pursuant to Rule 214. PGC's motion to intervene asserts that members of its organization are firm shippers on Panhandle's system. Therefore, we will permit PGC to support its standing before the Presiding ALJ at the hearing ordered herein.

15. Missouri PSC filed for summary disposition and alternatively requests an evidentiary hearing and maximum suspension of Panhandle's rates. Additionally, both Ameren Illinois and Ameren Missouri filed motions to reject Panhandle's filing.

16. Direct Energy protests Panhandle's cost of service increase of \$115.2 million and its rate base increase of \$632 million. Direct Energy and Michigan PSC note that Panhandle's proposed cost of service is significantly higher than the cost of service

²⁰ 18 C.F.R. § 385.213(a)(2) (2019).

recommended by the Commission's Trial Staff in Panhandle's ongoing NGA section 5 proceeding. Ameren Illinois and Ameren Missouri state that Panhandle's filed cost of service represents a substantial increase over previous cost of service calculations, specifically, Panhandle's cost and revenue study submitted in Panhandle's on-going NGA section 5 proceeding and Panhandle's FERC Form No. 501-G filing. Nitrogen Fertilizer, Michigan PSC, Missouri PSC, Direct Energy, and Consumers Energy protest Panhandle's filed ROE of 14.67 percent. Michigan PSC, Missouri PSC, and Direct Energy also protest Panhandle's proposed capital structure. Missouri PSC further explains that Panhandle's Capital Asset Pricing Model analysis should be disregarded. Direct Energy also protests Panhandle's proxy group analysis and notes that it may have distorted Panhandle's ROE analysis. Furthermore, Nitrogen Fertilizer protests Panhandle's treatment of intercompany transactions and the reasonableness of Panhandle's claimed Pipeline Integrity Expenses.

17. Nitrogen Fertilizer, Michigan PSC, Missouri PSC, and Direct Energy protest Panhandle's calculated depreciation, depletion, and amortization expenses, specifically Panhandle's 35-year economic life, negative salvage rate, and separate terminal decommissioning recovery rate. Ameren Illinois, Ameren Missouri, Direct Energy, PGC, Michigan PSC, and Nitrogen Fertilizer question whether Panhandle's proposed treatment of ADIT and Excess ADIT is just and reasonable and consistent with Commission policy. Missouri PSC also protests Panhandle's proposed treatment of ADIT, and supports retaining the ADIT balance as a credit in the rate base calculation alleging that previous rates approved by the Commission for FERC-regulated assets were deemed to be just and reasonable, and therefore cannot be changed retroactively. Additionally, Direct Energy protests Panhandle's increase in taxes other than income taxes.

18. Nitrogen Fertilizer states that Panhandle's proposed firm transportation recourse rate represents an increase of 53 percent, or \$4.4 million annually. Nitrogen Fertilizer protests Panhandle's proposed functionalization of costs to storage and transmission and questions whether there are cross-subsidization issues with affiliate-owned storage fields. Sequent protests Panhandle's increased rates and expresses concern about the adverse impacts that higher rates will have on customers. PGC, COH, and CenterPoint also protest Panhandle's proposed rates and underlying cost of service. Missouri PSC protests Panhandle's inclusion in the cost of service the charges from Panhandle's negotiated rate agreement with Southwest, asserting the negotiated agreement is not an arm's length transaction because Southwest and Panhandle are affiliates, and that to include the negotiated agreement rates in Panhandle's cost of service would lead to unjust and unreasonable rates being charged to Panhandle's customers.

19. Ameren Illinois and Ameren Missouri protest Panhandle's proposed backhaul and forward haul definitions in its GT&C, stating that given the changing system flow patterns, shippers are unlikely to know whether their requested transportation path is forward haul or backhaul. Both entities also protest Panhandle's proposed elimination of

the special rate for a limited class of backhaul services for customers of Rate Schedules FT, EFT, SCT, LFT, IT, and EIT and argue that Panhandle has provided no justification for this change.

20. Ameren Illinois, Ameren Missouri, and Sequent protest Panhandle's proposed changes to scheduling priorities. Ameren Illinois and Ameren Missouri claim that with the proposed changes, the scheduling priority of a replacement shipper's nominations is based on the capacity release rate and does not carry over the releasing shipper's scheduling priority. Ameren Illinois, Ameren Missouri, Sequent, and Direct Energy protest Panhandle's proposed new language regarding requests for future service. Ameren Illinois and Ameren Missouri argue that the language is unclear and seemingly allows Panhandle to award capacity based on confusing and vaguely explained criteria. Additionally, Ameren Illinois, Ameren Missouri, Sequent, and Direct Energy protest Panhandle's proposed changes to the out-of-cycle fuel adjustment provision. Ameren Illinois and Ameren Missouri state that Panhandle has not justified why the changes are necessary, and note that Panhandle's proposal that such out-of-cycle adjustments would become effective without Commission approval, is contrary to Commission policy.

21. Ameren Missouri protests the minimum requirement of 500 Dth per day for delivery to each new deduct meter added after October 1, 2019. Ameren Missouri states that this unfairly discriminates against its retail customers that use deduct meters but are too small to meet the 500 Dth per day minimum requirement.

22. Finally, Sequent and Direct Energy protest the new creditworthiness provisions, and Sequent raises concerns regarding the restrictions on hourly delivery flexibility under Rate Schedule EIT.

Discussion

23. We accept and suspend for five months, subject to refund, Panhandle's proposed tariff records listed in the Appendix, to be effective March 1, 2020, subject to the outcome of the hearing procedures and a technical conference established below. We reject one tariff revision as discussed below. In addition, we deny Panhandle's motion to terminate the NGA section 5 proceeding in Docket No. RP19-78-000. Panhandle's motion to consolidate the remaining contract issue in Docket No. RP19-257-005 is granted as discussed below.

Hearing and Technical Conference Procedures

24. Panhandle's filing raises many issues that warrant further investigation. We find that there are material issues of fact in dispute concerning, among other things, cost of service, rate of return, depreciation and negative salvage rates, cost allocation, and rate design. Accordingly, we will establish a hearing before an ALJ to examine the issues

arising from the filing, including, but not limited to, those summarized above and set forth in the protests.

25. Panhandle must adhere to section 154.303(c)(2) of the Commission's regulations which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.²¹

26. We also direct staff to convene a technical conference to address issues related to the proposed services and terms and conditions reflected in Panhandle's proposed tariff records. The issues to be addressed at the technical conference include, but are not limited to: (1) Panhandle's proposed elimination of the special rate for a limited class of backhaul service; (2) elimination of certain rate schedules; (3) addition of a new provision to Rate Schedule EIT; (4) addition of definitions for forward haul and backhaul; (5) change to annual discount factor; (6) new provisions for future service requests; (7) revised scheduling priorities; (8) addition of minimum volume requirement for new deduct meters; (9) additional provision for rights and obligations of replacement shipper; (10) update to fuel reimbursement adjustment provisions; and (11) update to the creditworthiness provisions.

Out-of-Cycle Fuel Adjustment Provision

27. Panhandle's currently effective Fuel Reimbursement Percentages are established through its semi-annual Fuel Reimbursement Adjustment filings as provided in section 24 of Panhandle's GT&C. Panhandle proposes to add GT&C section 24.5 allowing it to adjust the fuel reimbursement percentage outside of the two required filings each year. Panhandle states that it will file tariff records reflecting such adjustments at least seven days before the proposed effective date and that they shall become effective without prior Commission approval.²²

28. The Commission's regulations regarding periodic adjustments require pipelines to file to explain their rate adjustments to allow customers and the Commission the opportunity to review and comment on or protest any adjustments that have been charged.²³ Panhandle's proposal to make out-of-cycle fuel adjustments that would become effective without Commission approval may compromise a shipper's rights under the NGA to meaningfully protest the adjustments made thereunder. It may also

²¹ 18 C.F.R. § 154.303(c)(2).

²² Ex. No. PE-0012 at 14.

²³ 18 C.F.R. § 154.403.

narrow the Commission's ability to address and remedy such objections if necessary.²⁴ For these reasons, we reject proposed GT&C section 24.5. Panhandle is directed to file revised tariff records to ensure that the remaining components of Panhandle's Fuel Reimbursement Percentage proposal are consistent with the currently effective periodic NGA section 4 filing requirements.

Suspension

29. Based upon a review of the filing, we find that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept such tariff records for filing and suspend their effectiveness for the period set forth below, subject to the conditions set forth in this order.

30. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.²⁵ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.²⁶ Such circumstances do not exist here. Therefore, we exercise our discretion to suspend the rates to take effect on March 1, 2020, subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

Panhandle's Motions

31. On September 4, 2019, Panhandle filed a motion to terminate its NGA section 5 proceeding in Docket No. RP19-78-000, et al., due to the filing of its instant NGA general section 4 rate case. Panhandle also requests that the Commission consolidate the Southwest contract issues, in Docket No. RP19-257-005, with the instant filing. Ameren Illinois and Ameren Missouri (jointly); Michigan Parties; Archer Daniels; PGC; and Nitrogen Fertilizer filed answers opposing Panhandle's motion to terminate the ongoing NGA section 5 proceeding and consolidate the Southwest negotiated rate agreement issue

²⁴ See *TransColorado Gas Trans. Co.*, 87 FERC ¶ 61,027, at 61,100-01 (1999). See also *Rockies Express Pipeline LLC*, 163 FERC ¶ 61,011, at P 9 (2018); and *Portland Natural Gas Trans. Sys.*, 166 FERC ¶ 61,134, at P 36 (2019).

²⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

with the instant NGA section 4 filing. Missouri PSC filed an answer partially in opposition to Panhandle's motion to terminate the ongoing section 5 proceeding and an alternative answer not opposing Panhandle's motion to consolidate the Southwest contract issue with the instant NGA section 4 proceeding.

Motion to Terminate NGA Section 5 Proceeding

32. Panhandle argues that under the current procedural schedule in its NGA section 5 proceeding, the hearing will commence on December 17, 2019, with an initial decision date of May 18, 2020. However, Panhandle points out that on August 30, 2019, it filed its NGA general section 4 rate case reflecting a general rate increase applicable to its transportation and storage services. Panhandle states that the proposed increased rates in its NGA section 4 proceeding will become effective, assuming a maximum five-month suspension period, on March 1, 2020. Thus, Panhandle argues that the rates filed in this NGA section 4 proceeding will become effective before the issuance of the initial decision in the NGA section 5 proceeding on May 18, 2020, or the date on which the Commission could issue an order on such initial decision. Panhandle argues that in *WIC*, the Commission found that an existing NGA section 5 proceeding was rendered moot as a result of the pipeline's exercise of its NGA section 4 rights to file a new rate case that makes new rates effective prior to the date on which the Commission could issue an order under NGA section 5.²⁷

33. Panhandle explains that under the statutory structure of the NGA, a future order under the NGA section 5 proceeding can be only implemented prospectively. Accordingly, Panhandle explains that any rate established by the ongoing NGA section 5 proceeding is superseded by the effective rates in the new NGA section 4 proceeding. Panhandles further argues that on March 1, 2020, its refund floor for the NGA section 4 proceeding will be the rates established in its last rate proceeding in Docket Nos. RP92-22-000, et al.,²⁸ which are the currently effective rates, as the Commission's NGA section 5 order on the initial decision would not be issued until after March 1, 2020.

34. Panhandle argues, as explained by the Commission in *WIC*, the Commission cannot establish just and reasonable rates by using outdated cost and revenue data from the earlier Panhandle NGA section 5 proceeding. Panhandle states that such cost and revenue data is stale and has been superseded by different and more recent cost and revenue data in the new NGA section 4 proceeding. Panhandle points out the most recent

²⁷ Panhandle Motion at 6-7 (citing *Wyoming Interstate Co., Ltd.*, 89 FERC ¶ 61,028 (1999) (*WIC*), *aff'd Amoco Production Co. v. FERC*, 271 F.3d 1119 (D.C. Cir. 2001)).

²⁸ *Panhandle Eastern Pipe Line Co.*, 77 FERC ¶ 61,284.

12 months of cost and revenue data in the NGA section 4 proceeding will cover eight months of data that is not included in the earlier NGA section 5 proceeding. Panhandle claims fundamental principles of ratemaking under the NGA require the Commission to use the most recent data available in order for the courts to uphold such rates as just and reasonable.

35. Panhandle notes that the Commission did not dismiss the recent NGA section 5 proceeding involving Northern Natural Gas Company (Northern),²⁹ but contends that the *Northern* case involved different circumstances than the instant proceeding. Panhandle states that Northern argued that its NGA section 5 proceeding should be terminated because the Commission initiated such proceeding based on incorrect calculations. Panhandle instead argues that the Commission's NGA section 5 order on the initial decision would not be issued until after its NGA section 4 rates became effective. Moreover, Panhandle asserts that it differs from the *Northern* proceeding in that the test periods in its NGA section 5 proceeding and its NGA section 4 proceeding have significantly less overlap than did the tests periods in the *Northern* proceeding. Furthermore, Panhandle states that its NGA section 4 proceeding includes, among other things, new proposals for the recovery of pipeline costs, which are not under review in the NGA section 5 proceeding.

36. We deny Panhandle's motion to terminate the NGA section 5 proceeding in Docket No. RP19-78-000, et al. Panhandle argues that the rates it filed in its instant NGA section 4 proceeding will become effective before the issuance of the initial decision in the NGA section 5 proceeding. However, the NGA section 5 proceeding may reach a determination before Panhandle's NGA section 4 proceeding rates become effective. Panhandle's rates in its NGA section 4 proceeding do not automatically go into effect on March 1, 2020 as suggested by Panhandle. Panhandle itself controls the effective date of its NGA section 4 proceeding in that only upon Panhandle's motion will the rates in its NGA section 4 proceeding become effective. Therefore, the rates resulting from Panhandle's NGA section 5 proceeding may go into effect before the rates resulting from the instant NGA section 4 proceeding, and thus the NGA section 5 finding may reset the refund floor for the NGA section 4 proceeding. Furthermore, as with Northern, because the test period for the NGA section 4 and 5 proceedings overlap,³⁰ the record in

²⁹ *Northern Natural Gas Co.*, 168 FERC ¶ 61,069 (2019).

³⁰ Panhandle's Docket No. RP19-78-000, et al., base period is twelve months ending November 30, 2018, with a six-month adjustment period used by Trial Staff in its direct testimony extended through May 31, 2019 (Panhandle Motion at 12-13). In Docket No. RP19-1523-000, Panhandle's 12-month base period ends April 30, 2019, and nine-months adjusted for known and measureable changes ending January 31, 2020.

the NGA section 5 proceeding may be applicable to the NGA section 4 proceeding.³¹ For these reasons, we deny Panhandle's motion to terminate and leave it to the discretion of the Chief ALJ (Chief Judge) to determine whether to consolidate Panhandle's NGA section 5 proceeding in Docket No. RP19-78-000, et al. with Panhandle's NGA section 4 proceeding in the instant docket.³²

Motion to Consolidate Southwest Contract Issue

37. On February 19, 2019, the Commission initiated an investigation of Southwest's rates under NGA section 5.³³ On July 10, 2019, Southwest filed an uncontested settlement that provides for the resolution of all issues in such proceeding, except for the issue involving a negotiated rate contract between Southwest and Panhandle. As part of the settlement, the participants also filed: (1) a joint motion requesting the Presiding ALJ (Presiding Judge) in the Southwest proceeding to accept a joint stipulation regarding the negotiated rate contract issue; and (2) a joint motion requesting that the Chief Judge consolidate such issue with the Panhandle section 5 proceeding in Docket No. RP19-78-000, et al. On July 12, 2019, the Presiding Judge accepted the joint stipulation regarding the negotiated rate contract issue.³⁴ On July 22, 2019, the Chief Judge consolidated the Southwest and Panhandle negotiated rate agreement issue in the Southwest proceeding in Docket No. RP19-257-005 with the Panhandle proceeding in Docket No. RP19-78-000, et al.³⁵ On July 26, 2019, the Presiding Judge in that proceeding certified the settlement to the Commission.³⁶

38. Panhandle asserts the same considerations warrant consolidation of the Southwest proceeding in Docket No. RP19-257-005 with its NGA general section 4 rate case in the instant docket. Panhandle states that the sole issue in the Southwest proceeding in Docket No. RP19-257-005 involves Southwest's negotiated rate contract with Panhandle and the same contract issue will arise in this proceeding. Panhandle argues that in light

³¹ *Northern Natural Gas Co.*, 168 FERC ¶ 61,069 at P 33.

³² 18 C.F.R. § 375.304(b) (2019).

³³ *Southwest Gas Storage Co.*, 166 FERC ¶ 61,117, *reh'g denied*, 167 FERC ¶ 61,182 (2019).

³⁴ Order Accepting Joint Stipulation, *Southwest Gas Storage Co.*, Docket No. RP19-257-000 (issued July 12, 2019).

³⁵ *Southwest Gas Storage Co.*, 168 FERC ¶ 63,007 (2019)

³⁶ *Southwest Gas Storage Co.*, 168 FERC ¶ 63,008 (2019).

of such common issues and for purposes of administrative efficiency, consolidation of Docket No. RP19-257-005 and this proceeding is warranted.

39. Missouri PSC protests the inclusion of the charges in Panhandle's cost of service from its negotiated agreement with Southwest. Missouri PSC states that in the resolution of the NGA section 5 proceeding of Southwest in Docket No. RP19-257-005, the uncontested settlement included a reduction in Southwest's maximum recourse rates totaling approximately \$2 million per year. However, Missouri PSC states that Panhandle and Southwest entered into a negotiated agreement that purports to avoid that rate reduction. Missouri PSC asserts that the negotiated agreement is not an arm's-length transaction, because Southwest and Panhandle are affiliates. Missouri PSC asserts that the Commission should not permit Panhandle and its affiliate to use the negotiated agreement to frustrate the result of the Commission's investigation in Docket No. RP19-257-005. Rather, Missouri PSC states the reduced settlement rate agreed to by Southwest should be used to calculate the Southwest charges that Panhandle may collect from Panhandle's customers. Missouri PSC argues that including the negotiated agreement rates in Panhandle's cost of service would lead to unjust and unreasonable rates being charged to its customers.

40. Missouri PSC raised various concerns regarding the inclusion of Southwest's negotiated rates in Panhandle's cost of service. On September 19, 2019, Missouri PSC filed a motion requesting that the Commission grant Panhandle's motion to consolidate Southwest's negotiated rate contract issue with the instant NGA section 4 rate case in the event that the Commission grants Panhandle's motion to terminate the ongoing section 5 proceeding.

41. Because the same contract issue will arise in both proceedings, we find that consolidating the proceedings will be administratively efficient. We also find that Panhandle has provided good cause to consolidate Southwest's negotiated rate contract issue in Docket No. RP19-257-005 with its NGA general section 4 rate case in Docket No. RP19-1523-000. Therefore, we grant Panhandle's motion to consolidate.

The Commission orders:

(A) The tariff records listed in the Appendix are accepted and suspended to be effective March 1, 2020, subject to refund and the conditions described in the body of this order and the ordering paragraphs below.

(B) Proposed GT&C Section 24.5 is rejected, as discussed in the body of this order. Panhandle is required to file within 30 days of the date of this order compliance tariff records reflecting the removal of the out-of-cycle adjustment language for its Fuel Reimbursement Adjustment.

(C) The Commission's staff is directed to convene a technical conference to explore the issues identified in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of Panhandle's filing, as discussed in the body of this order.

(E) A presiding judge, to be designated by the Chief Judge for that purpose, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Panhandle's motion to terminate the investigation proceeding in Docket No. RP19-78-000, et al. is denied.

(G) Panhandle's motion to consolidate Docket Nos. RP19-257-005 and RP19-1523-000 is granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

**Appendix
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Panhandle Eastern Pipe Line Company, LP
FERC NGA Gas Tariff
Panhandle Tariff

Tariff records accepted and suspended, effective March 1, 2020, subject to refund, condition, and the outcome of hearing and technical conference procedures:

[Part I, Table of Contents, 6.0.0](#)

[Rate Schedule FT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule EFT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule SCT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule LFT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule HFT-Cancel, Currently Effective Rates, 24.0.0](#)

[Rate Schedule IOS, Currently Effective Rates, 15.0.0](#)

[Rate Schedule WS-Cancel, Currently Effective Rates, 15.0.0](#)

[Rate Schedule PS-Cancel, Currently Effective Rates, 15.0.0](#)

[Rate Schedule FS, Currently Effective Rates, 15.0.0](#)

[Rate Schedule DVS, Currently Effective Rates, 15.0.0](#)

[Rate Schedule IT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule EIT, Currently Effective Rates, 24.0.0](#)

[Rate Schedule IOS, Currently Effective Rates, 15.0.0](#)

[Rate Schedule IWS-Cancel, Currently Effective Rates, 15.0.0](#)

[Rate Schedule IFS, Currently Effective Rates, 0.0.0](#)

[Rate Schedule GPS, Currently Effective Rates, 1.0.0](#)

[Part V, Rate Schedules, 1.0.0](#)

[Rate Schedule FT, Firm Transportation Service, 1.0.0](#)

[Rate Schedule EFT, Enhanced Firm Transportation Service, 2.0.0](#)

[Rate Schedule SCT, Small Customer Transportation Service, 3.0.0](#)

[Rate Schedule LFT, Limited Firm Transportation Service, 2.0.0](#)

[Rate Schedule HFT-Cancel, Hourly Firm Transportation Service, 2.0.0](#)

[Rate Schedule IOS, In/Out Storage Service, 1.0.0](#)

[Rate Schedule PS-Cancel, Peaking Storage Service, 1.0.0](#)

[Rate Schedule WS-Cancel, Winter Storage Service, 1.0.0](#)

[Rate Schedule FS, Flexible Storage Service, 1.0.0](#)

[Rate Schedule DVS, Delivery Variance Service, 1.0.0](#)

[Rate Schedule EIT, Enhanced Interruptible Transportation Service, 1.0.0](#)

[Rate Schedule IWS-Cancel, Interruptible Winter Storage Service, 1.0.0](#)

[Rate Schedule IFS, Interruptible Flexible Storage Service, 0.0.0](#)

[Rate Schedule GPS, Gas Parking Service, 2.0.0](#)

[Rate Schedule GDS, General Delivery Service, 2.0.0](#)

**Appendix
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Panhandle Eastern Pipe Line Company, LP
FERC NGA Gas Tariff
Panhandle Tariff

Tariff records accepted and suspended, effective March 1, 2020, subject to refund, condition, and the outcome of hearing and technical conference procedures:

[Rate Schedule TBS, Transportation Balancing Service, 1.0.0](#)
[Part VI, General Terms and Conditions, 4.0.0](#)
[GT&C Section 1., Definitions, 3.0.0](#)
[GT&C Section 3., Quality of Gas, 1.0.0](#)
[GT&C Section 6., Procedures for Requesting Service Rights, 1.0.0](#)
[GT&C Section 7., Contracting for Service Rights, 3.0.0](#)
[GT&C Section 8., Nomination and Scheduling of Service, 3.0.0](#)
[GT&C Section 9., Curtailment and Interruption, 2.0.0](#)
[GT&C Section 10., Points of Receipt, 2.0.0](#)
[GT&C Section 11., Points of Delivery, 2.0.0](#)
[GT&C Section 12., Conditions of Receipt and Delivery, 2.0.0](#)
[GT&C Section 14., Pooling and In-Field Transfers of Storage Inventory, 1.0.0](#)
[GT&C Section 15., Procedures for Capacity Release, 7.0.0](#)
[GT&C Section 18., Periodic Rate Adjustments and Surcharges, 3.0.0](#)
[GT&C Section 20., Force Majeure, 2.0.0](#)
[GT&C Section 24., Fuel Reimbursement Adjustment, 1.0.0](#)
[GT&C Section 25., Flow Through of Cash-Out Revenues and Penalties, 1.0.0](#)
[GT&C Section 27., Miscellaneous, 2.0.0](#)
[GT&C Section 28., Reservation Charge Credit, 2.0.0](#)
[GT&C Section 29., Creditworthiness, 0.0.0](#)
[Part VII, Form of Service Agreements, 2.0.0](#)
[Rate Schedule FT, Form of Service Agreement, 1.0.0](#)
[Rate Schedule EFT, Form of Service Agreement, 1.0.0](#)
[Rate Schedule LFT, Form of Service Agreement, 1.0.0](#)
[Rate Schedule HFT-Cancel, Form of Service Agreement, 1.0.0](#)
[Rate Schedule WS-Cancel, Form of Service Agreement, 1.0.0](#)
[Rate Schedule PS-Cancel, Form of Service Agreement, 1.0.0](#)
[Rate Schedule FS, Form of Service Agreement, 1.0.0](#)
[Rate Schedule IWS-Cancel, Form of Service Agreement, 1.0.0](#)
[Rate Schedule IFS, Form of Service Agreement, 0.0.0](#)
[Rate Schedule GDS, Form of Service Agreement, 1.0.0](#)
[Capacity Release, Form of Service Agreement, 1.0.0](#)