

171 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Panhandle Eastern Pipe Line Co., LP	Docket Nos. RP19-1523-003 RP19-1523-000
Southwest Gas Storage Company	RP19-78-005 RP19-78-001 RP19-78-000 RP19-257-007 RP19-257-005

ORDER ON REHEARING, CLARIFICATION, AND MOTION TO TERMINATE

(Issued June 18, 2020)

1. On September 30, 2019, the Commission accepted and suspended, subject to refund, a proposed tariff record filed by Panhandle Eastern Pipe Line Company, LP (Panhandle) pursuant to section 4 of the Natural Gas Act¹ (NGA).² The September 2019 Order also established hearing procedures, a technical conference, and consolidated certain proceedings. The Missouri Public Service Commission (Missouri PSC), and the Michigan Public Service Commission, Consumers Energy Company, and DTE Gas Company (jointly, Michigan Parties) request clarification, or alternatively, rehearing. Ameren Illinois Company and Union Electric Company (jointly, Ameren) seek rehearing. For the reasons discussed below, we grant the requests for clarification and deny the requests for rehearing.

¹ 15 U.S.C. § 717c (2018).

² *Panhandle Eastern Pipe Line Co., LP*, 168 FERC ¶ 61,208 (2019) (September 2019 Order). The Commission also rejected a proposed tariff provision not at issue here.

I. Background

A. Initiation of Section 5 Proceeding

2. On July 18, 2018, the Commission adopted procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act,³ the Commission's Revised Policy Statement,⁴ and Opinion No. 511-C⁵ concerning income tax allowances following the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.⁶ The Commission required that all interstate natural gas companies with cost-based stated rates that file a 2017 FERC Form No. 2 or 2-A, submit a FERC Form No. 501-G informational filing for purposes of evaluating the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements.⁷ Following review of Panhandle's FERC Form No. 501-G and other evidence, the Commission initiated an NGA section 5⁸ rate investigation into Panhandle's existing rates on January 16, 2019, in Docket No. RP19-78-000, finding that Panhandle may be substantially over-recovering its cost of service, causing Panhandle's existing rates to be unjust and unreasonable (Section 5 Proceeding).⁹ The Commission set the matter for hearing and directed an

³ An Act to provide for reconciliation pursuant to titles II and v of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act). Among other things, the Tax Cuts and Jobs Act reduces the federal corporate income tax rate from 35% to 21%, effective January 1, 2018.

⁴ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁵ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁶ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016). For purposes of this order, the Revised Policy Statement, *United Airlines*, and Opinion No. 511-C will collectively be referred to as "*United Airlines* Issuances."

⁷ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031, at P 2 (2019).

⁸ 15 U.S.C. § 717d (2018).

⁹ *See Panhandle Eastern Pipe Line Co., LP*, 166 FERC ¶ 61,032, at P 1 (2019).

expedited hearing schedule, following a Track II procedural schedule.¹⁰ On February 19, 2019, the Commission also instituted an NGA section 5 investigation of Panhandle's affiliate, Southwest Gas Storage Company (Southwest) in Docket No. RP19-257-000 (Southwest Section 5 Proceeding).¹¹

3. On July 22, 2019, the Chief Administrative Law Judge (Chief Judge) consolidated the Panhandle and Southwest NGA section 5 rate investigations in Docket No. RP19-78-000.¹²

B. Initiation of Section 4 Proceeding

4. On August 30, 2019, Panhandle filed in Docket No. RP19-1523-000 revised tariff records pursuant to section 4 of the NGA and Part 154 of the Commission's regulations. Panhandle's proposed revisions include an increase to its rates, the elimination of certain rate schedules, and various changes to the General Terms and Conditions (GT&C) of its tariff, effective October 1, 2019 (Section 4 Proceeding). As further described below, the Commission accepted and suspended certain tariff records to be effective March 1, 2020, subject to refund and the outcome of a hearing and technical conference, and rejected one tariff proposal.¹³

C. September 4, 2019 Motion to Terminate the Section 5 Proceeding

5. On September 4, 2019, in Docket Nos. RP19-78-000, et al. and RP19-257-005, Panhandle filed a motion to terminate the NGA Section 5 Proceeding in light of Panhandle's NGA section 4 filing in Docket No. RP19-1523-000. In its motion to terminate, Panhandle argued that the Commission should terminate the Section 5 Proceeding claiming that, given the current procedural schedules for the Section 4 Proceeding and Section 5 Proceeding, the Section 4 Proceeding will conclude before the Section 5 Proceeding.¹⁴ Panhandle explained that the Section 5 Proceeding would become moot if its new Section 4 Proceeding rates become effective prior to the initial decision in the Section 5 Proceeding, because any prospective rates that could be

¹⁰ *Id.* PP 17, ordering para. C.

¹¹ *Sw. Gas Storage Co.*, 166 FERC ¶ 61,117, *reh'g denied*, 167 FERC ¶ 61,182 (2019).

¹² Order of Chief Judge Severing and Consolidating Issue for Hearing and Extending Track Deadlines, Docket No. RP19-78-000, et al. (July 22, 2019).

¹³ September 2019 Order, 168 FERC ¶ 61,208.

¹⁴ Panhandle September 4, 2019 Motion to Terminate at 3-4.

established in the Section 5 Proceeding would be superseded by the rates established in the Section 4 Proceeding.¹⁵

6. Panhandle argued that the cost and revenue data used in the Section 5 Proceeding would be superseded by the more recent cost and revenue data in the Section 4 Proceeding and that the Commission cannot establish just and reasonable NGA section 5 rates using outdated data that has been superseded by data provided in a new NGA section 4 rate case.¹⁶ Panhandle contended that the Commission cannot rely on the data from the Section 5 Proceeding to support rates because there are new costs that are included in the Section 4 Proceeding that are not being investigated under the Section 5 Proceeding.¹⁷ Panhandle also stated that entirely new issues with highly significant dollar impacts are covered by the test period in the Section 4 Proceeding, but are not covered by the earlier test period in the Section 5 Proceeding.¹⁸ Panhandle stated that, if the Section 4 Proceeding concluded before the Section 5 Proceeding, using outdated Section 5 Proceeding data that was superseded in the Section 4 Proceeding would disregard its NGA section 4 right to make effective new rates based on more recent data and would violate the filed rate doctrine.¹⁹

7. Panhandle argued this matter is similar to *Phillips Petroleum Co.*,²⁰ where the Commission terminated an NGA section 5 investigation.²¹ In *Phillips Petroleum Co.*, the Commission found that termination would not substantially injure customers because the pipeline's "rate filings have been subject to our continuing surveillance" and "the increases filed by it have been suspended under Section 4(e) of the NGA and are currently the subject of proceedings before us."²² Panhandle argued that similarly here,

¹⁵ *Id.* at 4 (citing *Wyoming Interstate Co., Ltd.*, 89 FERC ¶ 61,028, at 61,088 (1999) (*WIC*), *aff'd*, *Amoco Production Co. v. FERC*, 271 F.3d 1119 (D.C. Cir. 2001) (*Amoco*)).

¹⁶ Panhandle Motion to Terminate at 12-13.

¹⁷ *Id.* at 12-15.

¹⁸ *Id.* at 15-16.

¹⁹ *Id.* at 14.

²⁰ 24 FPC 537, at 40 (1960), *aff'd*, *Wisconsin v. FPC*, 373 U.S. 294 (1963) (*Wisconsin*).

²¹ Panhandle Motion to Terminate at 17-18.

²² *Id.* (citing *Phillips Petroleum Co.*, 24 FPC 537 at 40).

the proposed rates will be suspended for five months subject to refund and all the elements of the rates will be the subject of a hearing before the Commission.²³

8. Panhandle claimed this circumstance differs from *Northern Natural Gas Co.*,²⁴ where the Commission declined to terminate an NGA section 5 investigation.²⁵ In *Northern Natural II*, the pipeline argued that an NGA section 5 investigation was improperly initiated on the basis of inaccurate calculations.²⁶ Panhandle stated that, there, the Commission found that notwithstanding the inaccurate calculation, the initiation of the NGA section 5 rate investigation was appropriate, and termination was not warranted.²⁷ Panhandle stated that unlike *Northern Natural II*, here, the Section 4 Proceeding and Section 5 Proceeding overlap less significantly, and that the Section 4 Proceeding includes new proposals for the recovery of pipeline costs and the impact of a recent change in corporate structure.²⁸ Panhandle argued that termination of the Section 5 Proceeding is required under the provisions of the NGA and *WIC*.²⁹ Therefore, Panhandle argued it is opposed to consolidation of the Section 4 Proceeding and the Section 5 Proceeding because the Section 5 Proceeding should be terminated instead.³⁰

D. September 2019 Order

9. In the September 2019 Order, the Commission denied Panhandle's motion to terminate the NGA Section 5 Proceeding and expressly left to the discretion of the Chief Judge the determination whether to consolidate the Section 5 Proceeding with the Section 4 Proceeding.³¹ The Commission found that although Panhandle suggests that the Section 4 Proceeding will conclude prior to the Section 5 Proceeding, it is

²³ *Id.* at 18.

²⁴ 168 FERC ¶ 61,069 (2019) (*Northern Natural II*).

²⁵ Panhandle Motion to Terminate at 16 (citing *Northern Natural II*, 168 FERC ¶ 61,069).

²⁶ *Id.* at 16-17 (citing *Northern Natural II*, 168 FERC ¶ 61,069 at P 31).

²⁷ *Id.* at 17.

²⁸ *Id.*

²⁹ *WIC*, 89 FERC at 61,088.

³⁰ Panhandle Motion to Terminate at 17.

³¹ September 2019 Order, 168 FERC ¶ 61,208 at P 36.

conceivable that the Section 5 Proceeding will conclude before the Section 4 Proceeding rates can become effective, because the rates do not automatically go into effect. Moreover, the Commission found that because the test period for the Section 5 Proceeding overlaps with the Section 4 Proceeding, the record in the Section 5 Proceeding may be applicable to the Section 4 Proceeding. The Commission accepted and suspended Panhandle's proposed section 4 rates, effective March 1, 2020, subject to refund. Additionally, the Commission directed staff to convene a technical conference and hearing to explore several issues raised by the proposed tariff changes. Lastly, the Commission rejected Panhandle's proposed GT&C section 24.5 and required Panhandle to file within 30 days the tariff records reflecting the removal of the out-of-cycle adjustment language for its Fuel Reimbursement Adjustment.³²

E. Subsequent Pleadings and Proceedings

10. On October 1, 2019, the Chief Judge consolidated the Section 4 and the Section 5 Proceedings.³³ Ameren challenged the decision to consolidate and, ultimately, on October 30, 2019, the Chairman, acting as Motions Commissioner allowed the decision to stand, finding that Ameren failed to demonstrate extraordinary circumstances that would prompt Commission review of the contested rulings, and declining to refer Ameren's interlocutory appeal to the full Commission.³⁴

11. Michigan Parties and Missouri PSC each filed a request for clarification, or in the alternative, a request for rehearing of the September 2019 Order. Ameren filed a request for rehearing of the September 2019 Order.

F. April 15, 2020 Motion to Terminate Section 5 Proceeding

12. On April 15, 2020, Panhandle filed a second motion to terminate the Section 5 Proceeding. Panhandle argues that termination of the Section 5 Proceeding is appropriate because the Section 5 Proceeding sought to investigate rates that are *currently charged* by Panhandle.³⁵ Panhandle claims that those rates are no longer charged due to the fact that

³² September 2019 Order, 168 FERC ¶ 61,208 at Ordering Paragraph (B).

³³ Order of Chief Judge Consolidating Proceedings, Docket No. RP19-78-000, et al. (Oct. 1, 2019) (Consolidation Order).

³⁴ Notice of Determination by the Chairman, RP19-78-000 (Oct. 30, 2019) (Interlocutory Order).

³⁵ Panhandle April 15, 2020 Motion to Terminate at 2.

the NGA section 4 rates went into effect March 1, 2020.³⁶ Panhandle argues that in the September 2019 Order, the Commission held that because there was a possibility that the Section 5 Proceeding would conclude before the Section 4 Proceeding, termination of the Section 5 Proceeding was not appropriate. Panhandle asserts that since the circumstances have changed, the Commission is required to terminate the NGA Section 5 Proceeding.³⁷

13. Panhandle alleges that any data responses, testimony or exhibits in the Section 5 Proceeding are duplicative of materials submitted in the Section 4 Proceeding and irrelevant because they seek to establish rates based on data for the 12 months ending May 31, 2019, whereas the Section 4 Proceeding seeks to establish rates based on data for the 12 months ending January 31, 2020.³⁸

14. Panhandle requests that if the Commission terminates the Section 5 Proceeding, the Commission clarify for the Presiding Judge which proceedings remain.³⁹

15. On April 30, 2020, PCS Nitrogen Fertilizer, L.P., Ameren, Michigan Parties, and Missouri PSC filed answers in opposition to Panhandle's April 15, 2020 Motion to Terminate.

II. Discussion

A. Section 4 and Section 5 Proceedings

1. Rehearing Requests

a. Mootness

16. Ameren, Michigan Parties, and Missouri PSC argue that the Commission erred by adopting Panhandle's position, based on an erroneous determination that under the NGA, a newly filed NGA section 4 rate case can nullify an ongoing NGA section 5

³⁶ *Id.* at 2-3, 8-22 (citing *Wisconsin*, 373 U.S. 294, 311; *Northern Natural Gas Co.*, 133 FERC ¶ 61,111 at P 27 (2010) (*Northern Natural*); *WIC*, 89 FERC at 61,084, *aff'd*, *Amoco*, 271 F.3d 1119; *Phillips Petroleum Co.*, 24 FPC 537 at 40, *aff'd*, *Wisconsin v. FPC*, 373 U.S. 294).

³⁷ *Id.* at 5-6.

³⁸ *Id.* at 7-8.

³⁹ *Id.* at 22.

investigation.⁴⁰ Ameren and Michigan Parties assert that the statutory intent of the NGA was to protect consumers from excessive pipeline rates, while at the same time preserving the right of a pipeline to propose a rate increase, and that interpreting the NGA such that a section 4 rate case can effectively moot an ongoing NGA section 5 investigation would be a violation of the statute's intent.⁴¹ Michigan Parties and Missouri PSC contend that such a result would be contrary to principles of statutory construction requiring that a statute be construed so that effect is given to all its provisions.⁴²

17. Ameren claims that the Commission has never made a merits determination finding that filing an NGA section 4 rate case requires termination of an ongoing NGA section 5 investigation if the NGA section 4 rates are expected to take effect, subject to refund, before the NGA section 5 investigation is completed.⁴³ Ameren states that in the limited circumstances where the Commission has made this conclusion, it was on a case-specific basis and had support of the Trial Staff and virtually all of the pipeline's customers, which is not the case here.⁴⁴

b. Refund Floor

18. Ameren, Michigan Parties, and Missouri PSC claim that a Commission order in the Section 5 Proceeding should reset the refund floor prospectively until the Commission issues a final order in the Section 4 Proceeding.⁴⁵ Ameren and Michigan Parties contend that nothing in the NGA prohibits the Commission from prospectively

⁴⁰ Ameren Rehearing Request at 12-13; Michigan Parties Rehearing Request at 9; Missouri PSC Rehearing Request at 7 (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 779-780).

⁴¹ Ameren Rehearing Request at 12-13 (citing *Atlantic Ref. Co v. Pub. Serv. Comm'n of New York*, 360 U.S. 378, 388 (1959); see *NAACP v. FPC*, 520 F.2d 432, 438 (D.C. Cir. 1975) ("Commission's primary task . . . is to guard the consumer from exploitation . . .")); Michigan Parties Rehearing Request at 8-9.

⁴² Michigan Parties Rehearing Request at 8 (citing *Hibbs v. Winn*, 542 U.S. 88, 101 (2004); *Corley v. United States*, 556 U.S. 303, 314 (2009); *Astoria Federal Savings & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991); *Bailey v. United States*, 516 U.S. 137, 146 (1995)); Missouri PSC Rehearing Request at 6.

⁴³ Ameren Rehearing Request at 15.

⁴⁴ *Id.* at 16.

⁴⁵ *Id.* at 23; Michigan Parties Rehearing Request at 11; Missouri PSC Rehearing Request at 7.

setting a new refund floor in an NGA section 5 investigation after a pipeline moves rates proposed under NGA section 4 into effect.⁴⁶

19. Ameren contends that under NGA section 5, once an existing rate is proven to be unlawful, the new lawful rate the Commission sets becomes the just and reasonable rate for all purposes, including for purposes of calculating refunds.⁴⁷ Ameren contends this position is consistent with the NGA and Commission regulations that require the pipeline to refund “the portion of any increased rates or charges . . . found by the Commission not to be justified.”⁴⁸

20. Ameren claims that if an NGA section 5 investigation could not prospectively set the refund floor rates after suspended NGA section 4 rates become effective, then pipelines could render all NGA section 5 investigations moot by filing a new NGA section 4 rate case, with rates to become effective before the conclusion of an NGA section 5 investigation.⁴⁹ Ameren claims that this construction would improperly allow NGA section 4 to restrict the Commission’s authority under NGA section 5, contrary to the Supreme Court’s finding in *Permian Basin Area Rate Cases*,⁵⁰ where the Supreme Court found that NGA section 4 should not be read to restrict the Commission’s NGA section 5 authority.⁵¹

21. Michigan Parties argue that the Commission should not adopt Panhandle’s argument that the Commission’s refund authority is limited to the “amounts received by reason of such increase,”⁵² because Panhandle’s argument relies on an erroneous construction of this statutory language.⁵³ Michigan Parties claim that this phrase includes the Section 4 Proceeding rates as well as the amount by which the Section 5 Proceeding reduces Panhandle’s existing rates.⁵⁴ Michigan Parties contend that under

⁴⁶ Ameren Rehearing Request at 12; Michigan Parties Rehearing Request at 9.

⁴⁷ Ameren Rehearing Request at 13.

⁴⁸ *Id.* at 13 (citing 18 C.F.R. § 154.501(a)(1) (2019); 15 U.S.C. § 717c(e) (2018)).

⁴⁹ *Id.* at 14.

⁵⁰ 390 U.S. 747, 779-780 (1968).

⁵¹ Ameren Rehearing Request at 14.

⁵² 15 U.S.C. § 717c(e) (2018).

⁵³ Michigan Parties Rehearing Request at 10-11.

⁵⁴ *Id.* at 11.

NGA section 5, the Commission may order a decrease where *existing rates* are unjust and therefore, according to Panhandle, by the time the Commission issues an initial decision in the Section 5 Proceeding, the existing rates would reflect Panhandle's Section 4 Proceeding rate increase.⁵⁵ Michigan Parties state that under NGA section 5, "existing rates" are actually Commission-approved rates, not a proposed rate subject to investigation and refund.⁵⁶ If Panhandle's interpretation of NGA section 5 is adopted, Michigan Parties assert that the Section 5 Proceeding would endlessly chase a moving target.⁵⁷ Missouri PSC contends that the Commission's authority to set a refund floor in the Section 5 Proceeding that is quickly succeeded by the Section 4 Proceeding must be the same as the Commission's authority to set a refund floor in successive NGA section 4 cases.⁵⁸ For example, Missouri PSC claims that when a pipeline files two successive NGA section 4 rate cases, the rate found just and reasonable in the first case may become the refund floor in the second rate case.⁵⁹ If not, Missouri PSC argues that the utility would have authority over the Commission.⁶⁰ Missouri PSC states that permitting a pipeline to temporarily move refundable rates into effect as a limit on the Commission's express authority under NGA section 5 is contrary to the language of the NGA.⁶¹

22. Missouri PSC states that due to the complexity of the Section 5 Proceeding, the Commission cannot conduct a full hearing and render a decision before March 1, 2020, the date that Panhandle can move its proposed NGA section 4 rates into effect.⁶²

⁵⁵ *Id.* at 9-10.

⁵⁶ *Id.* at 10.

⁵⁷ *Id.* Michigan Parties also refute Panhandle's arguments that the Section 5 Proceeding would rely on "stale" data to reset the refund floor after the Section 4 Proceeding rate increase takes effect. Michigan Parties explain that if the rate increase is supported in the Section 4 Proceeding, and concludes after the Section 5 Proceeding, refunds would not be issued, mooted the issue. Michigan Parties Rehearing Request at 13-14.

⁵⁸ Missouri PSC Rehearing Request at 6.

⁵⁹ *Id.* (citing *Amoco*, 271 F.3d at 1122-23, *Panhandle Eastern Pipe Line Co.*, 77 FERC ¶ 61,284 (1996), *So. Natural Gas Co.*, 65 FERC ¶ 61,347, at 62,827 (1993)).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

c. **Comparison to Precedent**

23. Ameren, Michigan Parties, and Missouri PSC contend that the result the Commission reached is not required by the Commission's decision in *WIC*⁶³ and the D.C. Circuit's subsequent opinion affirming the Commission in *Amoco*⁶⁴ because that case involved different circumstances from those presented here, including two rate cases and a contested settlement.⁶⁵ Ameren and Michigan Parties claim that the Commission's limited determination in that case does not stand for the proposition that the filing of an NGA section 4 case moots an ongoing NGA section 5 investigation.⁶⁶

24. Ameren explains that in *Amoco*, the D.C. Circuit relied on the rationales of *Sunray*⁶⁷ and *Distrigas*⁶⁸ in finding that there, the Commission could not, in an NGA section 5 investigation, lower the existing refund floor after a subsequent NGA section 4 rate case's rates took effect.⁶⁹ Ameren claims that the D.C. Circuit erred by extending the rationales of *Sunray* and *Distrigas* too far and that, in subsequent cases, the Commission has appropriately limited *WIC/Amoco* to its facts.⁷⁰ Ameren claims that the rationale of *Sunray* and *Distrigas* does not support the relief requested by Panhandle because those cases involved shippers seeking to retroactively reset the refund floors using a later-established just and reasonable rate.⁷¹ Rather, here, Ameren claims the shippers are requesting prospective relief from the date the Commission issues a final order in the Section 5 Proceeding.

25. Moreover, Ameren claims that *WIC*, *Distrigas*, and *Sunray* did not concern the Commission's investigatory powers under an ongoing NGA section 5 investigation into

⁶³ *WIC*, 89 FERC ¶ 61,028.

⁶⁴ *Amoco*, 271 F.3d 1119.

⁶⁵ Ameren Rehearing Request at 15-16; Michigan Parties Rehearing Request at 13; Missouri PSC Rehearing Request at 7.

⁶⁶ Ameren Rehearing Request at 17; Michigan Parties Rehearing Request at 13.

⁶⁷ *FPC v. Sunray DX Oil Co.*, 391 U.S. 9, 22-25 (1968) (*Sunray*).

⁶⁸ *Distrigas of Mass. Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) (*Distrigas*).

⁶⁹ Ameren Rehearing Request at 18-20.

⁷⁰ *Id.* at 20.

⁷¹ *Id.*

rates that might be unjust and unreasonable. Here, Ameren contends that if the Commission sets new just and reasonable rates in the Section 5 Proceeding before the conclusion of the Section 4 Proceeding, the effect is that the newly established just and reasonable rates will prospectively reset the refund floor rates midway through the suspension period.⁷²

26. Michigan Parties also distinguish the present circumstance from *Distrigas*, arguing that *Distrigas* provides that the pre-existing lawful rate provides a refund floor in an NGA section 4 rate case because otherwise, a natural gas company asking for an increase could end up considerably worse off than if it had not requested one.⁷³ Michigan Parties contend that if the Commission were to find that the refund floor is set prospectively from the date of the Commission's order in the Section 5 Proceeding, Panhandle would be in the same position as if it had not filed an NGA section 4 rate increase.⁷⁴ However, Michigan Parties argue that if the Commission finds that the Section 4 Proceeding moots the Section 5 Proceeding, and Panhandle cannot support even a portion of its Section 4 Proceeding rates, Panhandle would be better off because the Section 5 Proceeding which could reduce the refund floor below the pre-existing rates would be mooted.⁷⁵ Similarly, Ameren claims that Panhandle will not be put in a worse position than if it had not filed its Section 4 Proceeding because at the end of the case, the refund floor rates will be the higher of the Section 5 Proceeding rates or the later-determined Section 4 Proceeding just and reasonable rates.⁷⁶

d. Tax Cuts and Jobs Act

27. Missouri PSC states that inequitable results will ensue if the Commission finds that moving the Section 4 Proceeding rates into effect renders the Section 5 Proceeding moot.⁷⁷ Missouri PSC explains that the Tax Cuts and Jobs Act reduced the federal income tax rate, and the Commission has ruled that pass-through entities are not entitled to recover an income tax allowance.⁷⁸ However, Missouri PSC states that Panhandle has

⁷² Ameren Rehearing Request at 21.

⁷³ Michigan Parties Rehearing Request at 12 (citing *Distrigas*, 737 F.2d at 1224).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Ameren Rehearing Request at 21.

⁷⁷ Missouri PSC Rehearing Request at 7-8.

⁷⁸ *Id.* at 8.

been recovering the higher tax rate for nearly two years (since the Tax Cuts and Jobs Act became effective on January 1, 2018) and under the NGA there is no remedy for consumers.⁷⁹ Ameren contends that allowing Panhandle to keep these amounts is contrary to the Commission's policy goal of expeditiously returning to customers the benefits of the 2018 reduction in the federal income tax rate resulting from the Tax Cuts and Jobs Act.⁸⁰

2. Commission Determination

28. The requests for rehearing raise the issue of how a natural gas pipeline's filing of a new rate case pursuant to NGA section 4 affects an ongoing rate investigation of the pipeline's rates pursuant to NGA section 5. If the Commission issues an order pursuant to NGA section 5 fixing a new just and reasonable rate before the natural gas pipeline moves its newly proposed rates into effect under NGA section 4, then the rate established in the section 5 proceeding will be the refund floor for the section 4 proceeding. However, in this proceeding, the rehearing applicants all recognize that the Commission cannot issue a merits decision in the NGA section 5 investigation of Panhandle's rates before March 1, 2020, when Panhandle will be free to move its proposed NGA section 4 rates into effect.⁸¹ Under the procedural schedule the Commission initially established for the Section 5 Proceeding,⁸² the Presiding Judge would not have issued an initial decision until over two months after the Section 4 Proceeding rates went into effect, and the Commission would then have to address any exceptions the participants may file to the initial decision before issuing a merits decision in the Section 5 Proceeding fixing a new just and reasonable rate.

29. The rehearing applicants nevertheless assert that, after Panhandle moves the proposed NGA section 4 rates into effect on March 1, 2020, the Commission should retain the authority under NGA section 5 to reset the refund floor for the Section 4 Proceeding prospectively from the date the Commission acts in the Section 5 Proceeding. Accordingly, they argue that the September 2019 Order erroneously authorized the Chief Judge to consolidate the NGA Sections 4 and 5 Proceedings, because the consolidation will mean that the Section 5 Proceeding cannot be completed before the Section 4

⁷⁹ *Id.*

⁸⁰ *Id.* at 28 (citing Order No. 849, 164 FERC ¶ 61,031 at P 53).

⁸¹ We note that Panhandle filed a motion to place the suspended rates into effect on February 18, 2020, and the rates went into effect March 1, 2020.

⁸² The procedural schedule for the Section 5 Proceeding was subsequently replaced with a new schedule.

Proceeding and thus the refund floor cannot be reset. We reject these contentions and accordingly deny rehearing.

30. The rehearing applicants' argument is contrary to NGA section 4(e). NGA section 4(e) provides that, after a pipeline moves a proposed rate increase into effect subject to refund, the Commission may require the pipeline "to keep accurate accounts in detail of all amounts received by reason of such increase," and that the Commission may order refunds of "the portion of such increased rates or charges by its decision found not justified."⁸³ The courts have interpreted this provision as limiting the Commission's NGA refund authority to rate increases above the pre-existing lawful rate, holding that "the pre-existing lawful rate provides a refund floor in a section 4 proceeding."⁸⁴ Here, the pre-existing lawful rate is the rate effective before the end of the suspension period on March 1, 2020. Subsequent Commission action in the Section 5 Proceeding after March 1, 2020 cannot reduce the refund floor.

31. In *WIC*,⁸⁵ the Commission addressed similar circumstances, and concluded that, once a pipeline placed a proposed rate increase under NGA section 4 into effect, the Commission could not reset the refund floor under NGA section 5. In that case, the pipeline filed an NGA section 4 rate case in 1997 (1997 rate case), proposing to increase its rates above those approved in its prior 1994 rate case. Subsequently, the pipeline filed a contested settlement. The settlement provided different rates for two periods. For Period I,⁸⁶ the settlement rates were the same as rates approved in the prior 1994 rate case. For Period II,⁸⁷ the settlement rates were lower than the rates approved in the prior 1994 rate case and were to remain in effect until the pipeline's next rate case. The Commission approved the settlement for the consenting parties, but severed the one contesting party, Amoco Production Company (Amoco), so that it could litigate on the merits whether its rates should be lower than those provided in the settlement.⁸⁸

32. While Amoco's request for rehearing of the Commission's order on the 1997 rate case settlement was pending, the pipeline filed another NGA section 4 case (1999 rate

⁸³ 15 U.S.C. § 717c(e) (2018).

⁸⁴ *Distrigas*, 737 F.2d at 1224 (citing *Sunray*, 391 U.S. 9, 22-25 (1968)).

⁸⁵ *WIC*, 89 FERC ¶ 61,028.

⁸⁶ Period I is defined as calendar year 1998.

⁸⁷ Period II is defined as January 1, 1999 until the effective date of a rate change in the pipeline's next rate case.

⁸⁸ *Wyoming Interstate Co., Ltd.*, 87 FERC ¶ 61,339 (1999).

case), with rates to become effective January 1, 2000.⁸⁹ On rehearing of the order on the settlement of the 1997 rate case, the Commission approved the settlement for all parties, including Amoco and terminated the 1997 rate case because the Commission found that Amoco could not receive a lower rate than the settlement rate through continued litigation of the 1997 rate case.⁹⁰ The Commission explained that, because the settlement rates in the 1997 rate case were either the same as, or lower than, the preexisting rates established in the 1994 rate case, Amoco must proceed under NGA section 5 to obtain rates in the 1997 rate case that are lower than the settlement rates. However, the Commission found that the current record in the 1997 rate case was insufficient for the Commission to render a merits decision in that case. Therefore, the Commission would have to conduct a hearing under NGA section 5 to consider the issues contested by Amoco. However, the Commission stated that it could not issue a merits decision in the 1997 rate case on the issues litigated by Amoco until after the rate increase proposed in the 1999 rate case had gone into effect.⁹¹

33. The Commission concluded that, after the proposed rates in the 1999 rate case took effect, further litigation in the 1997 rate case under NGA section 5 could not establish a refund floor for rates proposed in the subsequent 1999 rate case lower than the refund floor provided by the Period II rates under the settlement. The Commission explained that:

[a]ction under NGA section 5 must be prospective only. Such action in this case could not take place until after the rates in the new rate case took effect on January 1, 2000, and therefore could not establish the requisite ‘*pre-existing* lawful rate’ to constitute the refund floor for the new rate case. Rather, the [Period II] Settlement rates, which would be the last approved and lawful rates when the new rates became effective, would be the refund floor.⁹²

34. The rehearing applicants seek to distinguish *WIC* on the ground that it involved two pancaked NGA section 4 rate cases, rather than an NGA section 5 investigation initiated by the Commission followed by an NGA section 4 rate case, as here. However, this contention fails to recognize that, as the D.C. Circuit has held, “[u]nder the NGA, an action may originate as a [section] 4 proceeding only to be transformed later into a

⁸⁹ *WIC*, 89 FERC at 61,083.

⁹⁰ *Id.* at 61,085.

⁹¹ *Id.*

⁹² *Id.* at 61,088.

[section] 5 proceeding.”⁹³ That is what happened in *WIC*. Once the Commission approved the settlement of the 1997 rate case eliminating the rate increase originally proposed and providing for a rate decrease in Period II, the only issue remaining to be litigated by Amoco was whether the pipeline’s rates should be further lowered under NGA section 5. Thus, the 1997 rate case was effectively transformed into an NGA section 5 rate investigation, similar to the NGA section 5 rate investigation the Commission initiated in this case with respect to Panhandle’s rates. Thus, the Commission’s holding in *WIC*, that after a pipeline has moved into effect rates proposed under NGA section 4, Commission action in a pending NGA section 5 rate investigation cannot reduce the refund floor, applies equally in this case.

35. In *Amoco*, the D.C. Circuit affirmed the Commission’s decision in *WIC*. The court rejected Amoco’s contention that a lower rate determined under NGA section 5 in the 1997 rate case could become the refund floor in the 1999 rate case, even if the NGA section 5 finding was made after the rates proposed in the 1999 rate case took effect. *Amoco* relied on the Supreme Court’s interpretation of NGA section 4(e) in *Sunray*⁹⁴ to conclude that a pipeline’s refund obligations “extend[] only to *rate increases* found improper.”⁹⁵ *Amoco* explained that the Supreme Court had held that NGA section 4(e)’s provision requiring the pipeline to keep accurate accounts of “all amounts received by reason of such increase” resolved any ambiguity that the Commission can only require the pipeline to refund its proposed rate increase. *Amoco* also noted that the Supreme Court had gone on “to point out an anomaly that any other interpretation would” mean that a pipeline seeking a rate increase could instead be left with a rate decrease, and consequently be worse off than if it had never proposed an increase.⁹⁶

36. *Amoco* also relied on the U.S. Court of Appeals for the First Circuit’s decision in *Distrigas*.⁹⁷ In *Distrigas*, a pipeline charging a settlement rate filed a subsequent NGA section 4 rate increase. In the NGA section 4 rate case, the Commission found that the just and reasonable rates were lower than the settlement rates charged by the pipeline. However, the Commission refused to direct refunds below the settlement rates, and the court in *Distrigas* upheld the Commission. In *Amoco*, the D.C. Circuit concluded that *Distrigas* supported the Commission’s *WIC* decision. The court explained that *Distrigas* held that, under the Supreme Court’s *Sunray* decision, the Commission “could order

⁹³ *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1579 (D.C. Cir. 1993).

⁹⁴ *Sunray*, 391 U.S. 9.

⁹⁵ *Amoco*, 271 F.3d at 1121-22 (emphasis in original).

⁹⁶ *Id.*

⁹⁷ *Distrigas*, 737 F.2d at 1224.

refunds only for amounts exceeding ‘the pre-existing lawful rate,’” which was the settlement rate in effect prior to the NGA section 4 filing.⁹⁸ *Amoco* further stated that the *Distrigas* court “derived this conclusion from the language of the statute and from the fact that, otherwise, a firm asking for an increase could end up considerably worse off than if it had not requested one.”⁹⁹ *Amoco* concluded that *Distrigas* applied in *Amoco*, and therefore the refund floor for the 1999 rate case could not be lower than the Period II settlement rates in the 1997 rate case. *Amoco* also stated that any refund floor lower than the Period II settlement rate would – in the face of *Sunray* and *Distrigas* – leave the pipeline considerably worse off than if it had not filed the 1997 or 1999 rate cases.

37. The rehearing applicants seek to distinguish the D.C. Circuit’s *Amoco* decision based on the court’s concerns that, if Commission action in an NGA section 5 investigation after proposed NGA section 4 rates have taken effect could lower the refund floor in the NGA section 4 rate case, the pipeline could end up worse off than if it had never filed the NGA section 4 rate case. The rehearing applicants contend that that concern cannot exist in the present case, because they do not seek to retroactively lower the refund floor applicable during periods before the Commission acts under NGA section 5. Rather, they seek only to lower the refund floor prospectively from the date of the Commission’s NGA section 5 action. They contend that in these circumstances Panhandle will be no worse off than if it had not filed its NGA section 4 rate case because any rate reduction that may occur as a result of the NGA section 5 action will take place no earlier than if Panhandle had not filed the section 4 rate case.

38. We recognize that, if the Commission could act under NGA section 5 to reset the refund floor for Panhandle’s NGA Section 4 Proceeding after the proposed section 4 rates have gone into effect, Panhandle’s NGA section 4 filing would not render Panhandle worse off than if it had never filed the rate case. However, this fact does not justify the Commission reaching a different result here than in *WIC*. The primary rationale for the decisions in *Sunray*, *Distrigas*, and *Amoco* is the courts’ interpretation of NGA section 4(e) as only authorizing the Commission to order refunds of that portion of a pipeline’s proposed rate increase found improper. Moreover, the courts have found the relevant rate increase to be the increase from the lawful rate in effect when the pipeline moves its proposed NGA section 4 rates into effect, not an increase from some subsequent refund floor established pursuant to NGA section 5. As stated in *Distrigas*, “[t]he Supreme Court has specifically stated that the *pre-existing* lawful rate provides a refund floor in

⁹⁸ *Amoco*, 271 F.3d at 1122.

⁹⁹ *Id.* (internal quotation and citation omitted).

a section 4 proceeding.”¹⁰⁰ Although Panhandle’s rates in effect at the time of its NGA section 4 filing and subsequent motion to move the proposed rates into effect are subject to an investigation under NGA section 5, they remain Panhandle’s “lawful rates,” because any Commission action under NGA section 5 must be prospective only. Moreover, once Panhandle moves its NGA section 4 proposed rates into effect, it is entitled to charge those rates subject to refund until such time as the Commission makes a ruling on the merits in the NGA section 4 rate case. Therefore, as the rehearing applicants recognize, the Commission could not, based on a record developed separately in Panhandle’s NGA Section 5 Proceeding, “determine the just and reasonable rate . . . to be thereafter observed and in force” pursuant to NGA section 5(a).

39. We reject Ameren, Michigan Parties, and Missouri PSC’s contention that, if the Section 5 Proceeding rates do not reset the refund floor, a pipeline filing an NGA section 4 rate case could effectively nullify any NGA section 5 investigation.¹⁰¹ The Commission has recognized that, by filing a new rate case under NGA section 4 after a section 5 rate investigation has commenced, a pipeline can delay a merits resolution of the investigation into its rates. However, this does not constitute a “nullification” of the NGA section 5 rate investigation. The Commission and the parties continue to have the authority in the NGA section 4 proceeding to seek a rate reduction under NGA section 5, if the record justifies such a rate reduction. The Commission is bound by the NGA’s structure, which includes limiting factors such as: the lack of refund and suspension authority under NGA section 5, a pipeline’s ability to file an NGA section 4 rate case at the pipeline’s chosen time, and the limit of a suspension period for new NGA section 4 rates to a maximum of five months, among other things. We further note that this statutory framework limits the Commission’s redress regarding refunds pursuant to the Tax Cuts and Jobs Act.¹⁰² However, the Commission maintains control over the timing of the issuance of its orders,¹⁰³ particularly the NGA section 4 and 5 proceedings that do

¹⁰⁰ *Distrigas*, 737 F.2d at 1224 (emphasis supplied) (citing *Sunray*, 391 U.S. 9, 22-25 (1968)).

¹⁰¹ We further dismiss Michigan Parties’ responses to Panhandle that the Commission cannot rely on “stale” data to reset the refund floor in the Section 5 Proceeding prior to the Section 4 Proceeding rate increase taking effect. The Commission did not base its determination on this argument in the September 2019 Order, nor do we do so here.

¹⁰² See Order No. 849, 164 FERC ¶ 61,031 at P 228 (finding that the Commission lacks authority under the NGA to require a pipeline to file an NGA section 4 rate case).

¹⁰³ *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at 61,002 & n.3 (1984); see also *Panhandle Eastern Pipe Line Co., LP*, 169 FERC ¶ 63,007, at P 6 (2019).

not have statutory deadlines, and may direct changes to procedural schedules to ensure the timely issuance of such orders.

40. Michigan Parties argue that, assuming the Commission's refund authority under NGA section 4 is bounded by the amount of a pipeline's proposed NGA section 4 rate increase, NGA section 16 provides additional remedial authority to the Commission.¹⁰⁴ Michigan Parties claim that this remedial authority was intended to resolve inequitable situations such as the case here.¹⁰⁵

41. Contrary to Michigan Parties' assertions, NGA section 16 does not offer recourse in these circumstances. NGA section 16 authorizes the Commission to "perform any and all acts, and to prescribe . . . such orders . . . as it may find necessary or appropriate to carry out the provisions of this act."¹⁰⁶ The D.C. Circuit has found that NGA section 16 is "of an implementary rather than substantive character."¹⁰⁷ Such provisions authorize "an agency to use means of regulation not spelled out in detail provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act."¹⁰⁸ In light of the Commission's finding, affirmed here, that the Commission lacks the statutory authority under NGA section 5 to reset the refund floor for the Section 4 Proceeding prospectively from the date the Commission acts in the Section 5 Proceeding, we do not find that the Commission can act pursuant to NGA section 16 to offer additional relief.

42. Similarly, rehearing applicants' reliance upon the *Permian Basin Area Rate Cases*¹⁰⁹ is unavailing.¹¹⁰ There, the Supreme Court explained that the Commission's broad responsibilities demand a generous construction of its statutory authority.¹¹¹

¹⁰⁴ Michigan Parties Rehearing Request at 13 (citing 15 U.S.C. § 717o (2018)).

¹⁰⁵ *Id.* at 13-14.

¹⁰⁶ 15 U.S.C. §717o (2018).

¹⁰⁷ *New England Power Co. v. FPC*, 467 F.2d 425, 430-31 (D.C. Cir. 1972), *aff'd*, 415 U.S. 345 (1974).

¹⁰⁸ *Id.* (footnote omitted).

¹⁰⁹ *Permian Area Rate Cases*, 390 U.S. 747.

¹¹⁰ See Ameren Rehearing Request at 23, 31; Missouri PSC Rehearing Request at 7.

¹¹¹ *Permian Area Rate Cases*, 390 U.S. 747 at 780.

Although the Commission has previously relied on this language to fill in the gaps in the NGA to resolve those matters which Congress intentionally left open,¹¹² here, as explained above, NGA sections 4 and 5 leave no such gap.

B. Consolidation

1. Background

43. Ameren claims on rehearing that in the September 2019 Order, the Commission fails to address why the Section 4 Proceeding would halt the ongoing Section 5 Proceeding investigating Panhandle's rates.¹¹³ Specifically, Ameren claims that the Section 4 Proceeding rates will go into effect by Panhandle's motion on March 1, 2020, but that an initial decision regarding the Section 5 Proceeding's rates is not due until May 18, 2020,¹¹⁴ and thus the Section 5 Proceeding cannot be completed before the Section 4 Proceeding rates are moved into effect.¹¹⁵ Ameren contends that consolidation would preclude the Section 5 Proceeding from being completed in advance of the Section 4 Proceeding rates taking effect.¹¹⁶ Ameren argues that the Commission has only permitted consolidation where both Trial Staff and customers approved of the consolidation, which is not the case here.¹¹⁷

44. Ameren claims that a Commission decision to set a new just and reasonable rate in the Section 5 Proceeding during the Section 4 Proceeding's suspension period has the effect of increasing shipper refunds rather than resetting the rates the shippers are paying.¹¹⁸ Ameren contends that when the Commission authorized consolidation, it precluded the possibility that Panhandle's customers would receive significant refunds

¹¹² *Williams Natural Gas Co.*, 59 FERC ¶ 61,306, at 62,122 (1992).

¹¹³ Ameren Rehearing Request at 10.

¹¹⁴ *Id.* at 10-11.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 11.

¹¹⁷ *Id.* at 16 (citing *Northern Natural II*, 168 FERC ¶ 61,069 at P 33; *Northern Natural Gas Co.*, 131 FERC ¶ 61,178 (2010); *Panhandle Complainants v. Sw. Gas Storage Co.*, 120 FERC ¶ 61,207, at P 21 (2007)).

¹¹⁸ *Id.* at 22.

(assuming the Commission finds that Panhandle's rates are not just and reasonable).¹¹⁹ Ameren claims that if the Section 4 Proceeding and Section 5 Proceeding are consolidated, they will conclude at the same time and shippers would not receive the refunds they otherwise would if the Section 4 Proceeding and Section 5 Proceeding continued independently and the Commission decided the Section 5 Proceeding before it decided the Section 4 Proceeding.¹²⁰ Ameren argues that those refunds cannot be recaptured by the shippers because the Commission cannot order retroactive refunds under NGA section 5.¹²¹ Consequently, Ameren claims that the practical consequence of the September 2019 Order is to deny Panhandle's shippers refunds to which they would otherwise be entitled.¹²²

45. Specifically, Ameren contends Panhandle is recovering approximately \$54 million in excess of its cost of service, and if the refund floor is increased, Panhandle would receive this amount as a windfall.¹²³ Ameren contends that consolidation of the Section 4 Proceeding and the Section 5 Proceeding would not incentivize Panhandle to expeditiously complete its rate case or reach a settlement with its customers.¹²⁴ Moreover, Ameren posits that consolidation of the NGA Section 5 Proceeding with Panhandle's newly filed NGA Section 4 Proceeding would forestall the case for at least another year.¹²⁵

46. Ameren argues that the Section 4 Proceeding and Section 5 Proceeding should proceed on entirely separate paths.¹²⁶

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 27.

¹²⁴ *Id.*

¹²⁵ *Id.* at 28.

¹²⁶ *Id.* at 23.

2. Commission Determination

47. It is well settled that “[t]he Commission, like other agencies, is generally master of its own calendar and procedures.”¹²⁷ The Commission acted within its discretion to direct the Chief Judge to determine whether to consolidate the dockets, and consolidation was well within the Chief Judge’s authority.¹²⁸

48. Consolidation will provide the most efficient and effective forum to handle issues common to both proceedings, while reducing administrative burden for the Commission and the participants. For example, because the test periods for the NGA Section 4 and 5 Proceedings overlap, the record for the Section 5 Proceeding is also applicable to the Section 4 Proceeding.¹²⁹ Consolidation will allow for the orderly development of the record without duplication of prepared testimonies, exhibits, data requests, pleadings, briefs, and other materials. Similarly, consolidation will also result in substantial time and cost savings for the participants, who will no longer have to reproduce the same information for a separate proceeding,¹³⁰ perhaps thereby permitting more time for settlement discussions.

49. Ameren’s argument regarding loss of potential refunds as a result of consolidation is dismissed. Ameren contends that if consolidation occurs, the Section 4 Proceeding would conclude at the same time as the Section 5 Proceeding, thus denying relief it would receive if the Section 5 Proceeding concluded prior to the Section 4 Proceeding. However, Ameren itself has acknowledged that it was unlikely that the Section 5 Proceeding would conclude prior to the effective date of the Section 4 Proceeding.¹³¹ In any event, although the proceedings were consolidated for purposes of hearing, the Commission, as explained above, retains the ability to control the timing of the final decisions in the Section 4 and 5 Proceedings.¹³²

¹²⁷ *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001 (1984) (citations omitted).

¹²⁸ 18 C.F.R. § 385.503 (2019); 18 C.F.R. § 375.304(b)(i) (2019).

¹²⁹ September 2019 Order, 168 FERC ¶ 61,208 at P 36 & n.30.

¹³⁰ *Id.*

¹³¹ Ameren Rehearing Request at 10-11.

¹³² *Supra* P 38.

C. Clarification and Panhandle's April 15, 2020 Motion to Terminate

1. Background

50. Michigan Parties and Missouri PSC request clarification that the Commission did not intend to determine in the September 2019 Order that the Section 5 Proceeding would be rendered moot if the Section 4 Proceeding rates, subject to refund, go into effect prior to the conclusion of the Section 5 Proceeding.¹³³ Alternatively, Michigan Parties and Missouri PSC request rehearing on these grounds.¹³⁴

2. Commission Determination

51. We clarify that, despite our finding that in these circumstances the Commission's action in the Section 5 Proceeding, after March 1, 2020, cannot reset the refund floor in the Section 4 Proceeding, the Section 5 Proceeding is not moot, as indicated by the Commission's decision to deny Panhandle's September 4, 2019 motion to terminate the Section 5 Proceeding.¹³⁵ As discussed above, because there are overlapping test periods in the Section 4 Proceeding and Section 5 Proceeding, some of the data used in the Section 5 Proceeding may be used in the Section 4 Proceeding, and, in addition, consolidation will have administrative benefits.¹³⁶

52. Contrary to Panhandle's contentions in its April 15, 2020 motion to terminate, this circumstance differs from *Phillips Petroleum Co.*,¹³⁷ and *Northern Natural*,¹³⁸ where the Commission terminated an NGA section 5 investigation. In *Phillips Petroleum Co.*,¹³⁹ the Commission recognized that the cost of gas significantly changed in the period following the hearings, citing the fact that the Commission suspended 95 rate changes in the interim.¹⁴⁰ Consequently, the Commission found it would not be appropriate to

¹³³ Michigan Parties Rehearing Request at 3.

¹³⁴ *Id.*; Missouri PSC Rehearing Request at 6.

¹³⁵ September 2019 Order, 168 FERC ¶ 61,208 at P 36.

¹³⁶ *Supra* PP 9, 47.

¹³⁷ 24 FPC 537 at 40.

¹³⁸ 133 FERC ¶ 61,111.

¹³⁹ 24 FPC 537 at 40.

¹⁴⁰ *Id.*

prescribe or require the pipeline to file rates for the future based upon the present record.¹⁴¹ Similarly, in *Northern Natural*¹⁴² the Commission terminated an NGA section 5 proceeding after a pipeline stated it would file an NGA section 4 rate increase. There, the Commission found changed circumstances existed after it initiated an NGA section 5 investigation, including the fact that the pipeline was likely losing, not gaining, excessive revenue. The Commission terminated the NGA section 5 investigation relying on its broad discretion and because certain circumstances had changed and the hearing had not yet commenced.¹⁴³ Here, however, no such changed circumstances exist, and the Section 5 Proceeding is well underway. Accordingly, the clarification is granted and Panhandle's motion to terminate the Section 5 Proceeding is dismissed.

The Commission orders:

(A) The requests for clarification are hereby granted, as discussed in the body of this order.

(B) The requests for rehearing are hereby denied, as discussed in the body of this order.

(C) The motion to terminate is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁴¹ *Id.*

¹⁴² 133 FERC ¶ 61,111.

¹⁴³ *Northern Natural Gas Co.*, 131 FERC ¶ 61,178, at P 14 (2010) (citing *Wisconsin*, 373 U.S. at 308-314).