FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 9, 2004

In Reply Refer To:
Panhandle Eastern Pipe Line Company, LP
Docket No. RP04-454-000

Panhandle Eastern Pipe Line Company, LP
5444 Westheimer Road
Houston, TX 77056-5306

Attention: William W. Grygar, Vice President
Rates and Regulatory Affairs

Reference: New Provision Establishing Contract Demand Reduction Rights

Ladies and Gentlemen:

1. On August 13, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle), filed revised tariff sheets, listed in the Appendix, to provide shippers with contract demand reduction rights under specified circumstances. The proposed tariff provisions would allow shippers to elect from four types of contract demand reduction options if they meet specified eligibility requirements. We accept Panhandle's tariff sheets effective September 13, 2004, subject to conditions and further review, as discussed below. This order benefits the public by providing customers more flexibility in making contracting decisions.

2. In particular, Panhandle proposes to allow shippers to elect from four types of contract demand reduction options if they meet certain eligibility requirements. Panhandle designed these rights to address specific circumstances where a shipper may need to reduce its contract demand. Three scenarios in which Panhandle proposes to allow contract demand reduction rights are: (1) regulatory unbundling; (2) loss of load; and (3) plant outage. Panhandle states that it patterned these three provisions after provisions previously approved by the Commission in *ANR Pipeline Company* (*ANR*).[1] Panhandle also includes a fourth option that allows a shipper to buy out all or a portion of

[1] ANR Pipeline Co., 99 FERC ¶ 61,310 (2002); ANR Pipeline Co., 101 FERC ¶ 61,246 (2002); ANR Pipeline Co., 106 FERC ¶ 61, 210 (2004).

its service agreement by paying the net present value of the remaining reservation charges. Panhandle states that the Commission approved a similar buy-out provision in *Florida Gas Transmission Company*.[2]

3. Each of the four options contains specific eligibility and notice requirements. For regulatory unbundling, Panhandle limits eligibility to local distribution companies (LDCs) or their agents. The shipper must give Panhandle sixty days prior written notice of the anticipated effective date of the reduction. For loss of load, Panhandle limits eligibility to LDCs or municipalities or their agents. The shipper must give Panhandle written notice no more than thirty days after shipper receives notice from its customers of a loss of load. For plant outage, eligibility is limited to industrial customers of Panhandle. The shipper must give Panhandle written notice no more than thirty days following a public announcement that the shipper will close the plant or will permanently and materially reduce plant production output. Any shipper may elect buy-out rights by paying Panhandle the net present value of the remaining reservation charges. Panhandle limits all of the reduction rights to service agreements with terms of five years or more, and eligible shippers may only exercise the contract demand reduction option during the last two years of the contract, unless otherwise agreed. In addition, the provisions include conditions addressing the level of reduction permitted when another pipeline also provides service to the shipper in addition to Panhandle, or when a shipper has contracted for both storage and related transportation service. In both of these instances, the proposed tariff provision provides for a proportionate reduction in contract quantity.

4. The Commission noticed Panhandle's filing on August 18, 2004, permitting comments, protests, or interventions as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Notices of intervention, unopposed timely filed motions to intervene, and all motions to intervene out of time filed before the issuance of this order are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)). Granting late interventions will not disrupt the proceeding or place additional burdens on existing parties. The East Ohio Gas Company, d/b/a Dominion East Ohio (Dominion) filed a request for conditions and SEMCO Energy Gas Company, LP (SEMCO) filed comments and requests for clarification, as discussed below. No party protests Panhandle's filing.

5. SEMCO questions proposed section 7.6(e), which limits a shipper's ability to reduce its contract demand to those agreements that "have a term of five (5) years or more and a remaining term of two (2) years or less, unless otherwise agreed." SEMCO contends that Panhandle offers no justification for such limitation. SEMCO asserts that natural gas transportation contracts in today's market tend to be for terms less than five years, and the proposed language effectively would prohibit a great number of shippers from being able to take advantage of the proposed contract demand reduction options.

[2] Florida Gas Transmission Co., 101 FERC ¶ 61,401 (2002).

SEMCO further asserts that shippers that have contractual terms of less than five years (or less than two years remaining on their contracts) will still be harmed by a loss of load or regulatory unbundling, and therefore the Commission should permit them to use the same provisions that shippers with longer term contracts can use. SEMCO argues that the Commission should reject proposed section 7.6(e) or, at a minimum, require Panhandle to limit section 7.6(e) to those contracts having a term of one year or greater.

6. Dominion submits that Panhandle's proposed five-year minimum contract term requirement is too long and that a reasonable minimum contract term is one year, certainly no more than the three years approved in *ANR*. Dominion points out that, in *ANR*, the pipeline proposed a three-year minimum contract term and the Commission approved that proposal. Dominion, in recognition of the Commission's decision in *ANR* regarding the voluntary nature of the filing, requests that the Commission condition any approval of minimum contract term language for Panhandle with an explanation that the approved contract term does not reflect Commission policy.

7. Under the Natural Gas Act, pipelines have the initiative under section 4 to propose rates, terms, and conditions for their services. If the pipeline's proposal is just and reasonable, the Commission must accept it, regardless of whether other just and reasonable rates, terms, and conditions may exist.[3] The Commission approves Panhandle's proposed minimum contract term of five years. Panhandle voluntarily offered to provide contract demand reduction rights in contracts of at least five years. As the Commission pointed out in *ANR* and *Columbia Gas Transmission Corp*. (*Columbia*),[4] there is no policy requiring pipelines to permit customers to terminate or reduce their contractual obligations before the end of their contract terms. Accordingly, the Commission previously approved pipeline proposals to offer this right subject to various limitations, so long as the limitations are not unduly discriminatory. While in *ANR* the Commission accepted a proposed three-year minimum contract term, in *Columbia* the Commission accepted a proposed five-year minimum contract term similar to that proposed here. In both cases, the Commission found that shippers entering into shorter term contracts have less need for contract reduction rights because they have a greater ability to protect their needs over the relatively shorter duration of the contract. In addition, the pipeline could reasonably conclude that a five-year requirement is appropriate because it helps encourage longer term contracts and Panhandle could be

[3] Tennessee Gas Pipeline Co., 80 FERC ¶ 61,070 at 61,223 (1997) (Opinion No. 406-A) and cases cited.

[4] 103 FERC ¶ 61,388 (2003), *reh'g denied*, 105 FERC ¶ 61,373 (2003) (the Commission accepted only a regulatory unbundling contract reduction option with a requirement that the service agreement have an initial or remaining term of at least five years).

reasonably concerned about revenue loss and adverse affects on remaining customers. Therefore, the Commission accepts Panhandle's proposed minimum five-year contract term.

8. Dominion also requests that the Commission require Panhandle to post on its website any service agreement that reflects the mutual agreement of Panhandle and its customer to contract reduction rights when the term of the contract is other than five years with a remaining term of two years or less. The Commission finds that any agreement by Panhandle to include a contract demand reduction provision in a contract, regardless of the provision concerning minimum contract term, contains "special details pertaining to a transportation contract" which Panhandle must post on its website pursuant to section 284.13(b)(1)(viii) of the Commission's regulations.[5] Providing such notice will enable all of Panhandle's shippers to monitor Panhandle's contracting practices and guard against any perceived discrimination.

9. In addition, SEMCO requests clarification of Panhandle's proposal to permit an LDC to reduce its contract quantities if the governing state or regulatory body requires the LDC by a final order to unbundle its merchant and transportation functions and such state body does not approve a mechanism to provide the shipper the opportunity to recover costs incurred by the shipper under its service agreement or agreements. SEMCO is concerned because this language does not clearly specify what constitutes such a "final order" requiring unbundling. SEMCO states that its state commission approved a customer choice plan for its service area, which is the functional equivalent of unbundling. SEMCO also contends that the Commission should consider irrelevant SEMCO's ability to have a mechanism to recover costs it incurs as a result of unbundling. SEMCO argues that the Commission should strike the second sentence of proposed section 7.6(a)(1), and Panhandle should clarify that SEMCO is eligible for the Regulatory Unbundling Contract Reduction Rights given its circumstances. SEMCO also argues that for those customers that are eligible for contract demand reduction under the proposed Regulatory Unbundling Contract Reduction Rights provision, the steps necessary to reduce a customer's contract quantity are unnecessarily onerous. SEMCO contends that Panhandle's proposal is problematic and requires changes so that the provision can be meaningful and useful for LDC shippers.

10. SEMCO states that, under Panhandle's proposal, a loss of load occurs when any of shipper's firm customers with daily requirements on facilities owned or operated by shipper exceeding 100 Dth/day either permanently cease gas consuming operations or reduce such operations to plant protection levels, or by-pass shipper by directly connecting to Panhandle. SEMCO asserts that it is unclear what Panhandle intends by the phrase "plant protection levels" and that the Commission should direct Panhandle to clarify this phrase and its intent. SEMCO further asserts that Panhandle should clarify

[5] 18 C.F.R. § 284.13(b)(1)(viii) (2004).

whether the "daily requirements" language in this section refers to the daily consumption profiles of a particular customer or that customer's contractual rights on the LDC's system. SEMCO further argues that the Commission should also require Panhandle to reduce the "exceeding 100 Dth/day" requirement since requiring a daily loss of load of this magnitude prior to an LDC having access to contract demand reduction rights is not particularly useful. Finally, SEMCO contends that Panhandle should clarify that, whatever the final loss of load threshold, the loss of load eligibility requirements can be met if a group of customers, not just a single customer, ceases to take service.

11. The Commission believes that Panhandle should provide further information and explanation with adequate support responding to the issues raised in SEMCO’s comments and requests for clarification (with the exception of the issues related to the Commission’s determination above accepting Panhandle’s proposed five-year contract term requirement). More information regarding these matters is necessary and will allow SEMCO and other parties to more fully understand and thoroughly analyze Panhandle’s filing. Therefore, the Commission directs Panhandle to file, within twenty days of the date this order issues, the information and explanations with adequate support addressing the issues raised in SEMCO’s comments and requests for clarification with the exception of issues related to the Commission’s determination above accepting Panhandle’s proposed five-year contract term with a remaining term of two years or less requirement. Parties are permitted ten days from the filing date of Panhandle’s filing to file reply comments.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

APPENDIX

Panhandle Eastern Pipe Line Company, LP
FERC Gas Tariff, Third Revised Volume No. 1

Tariff Sheets conditionally accepted effective September 13, 2004:

First Revised Sheet No. 230
Original Sheet No. 230A
Original Sheet No. 230B
Original Sheet No. 230C
Original Sheet No. 230D
Original Sheet No. 230E
Original Sheet No. 230F
Original Sheet No. 230G