

126 FERC ¶ 61,201  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Panhandle Eastern Pipe Line Company, LP

Docket No. RP09-256-000

ORDER ACCEPTING REVISED TARIFF SHEETS, SUBJECT TO CONDITIONS

(Issued March 5, 2009)

1. On January 23, 2009, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed revised tariff sheets proposing modifications to its tariff to comply with the capacity release requirements promulgated by Order Nos. 712 and 712-A.<sup>1</sup> The tariff sheets listed in the Appendix are accepted effective February 23, 2009, subject to further modifications as discussed below.

**Summary of the Proposal**

2. Order No. 712 permits market-based pricing for short-term capacity releases and facilitates asset management arrangements (AMAs) by relaxing the Commission's prohibition on tying and its bidding requirements for certain capacity releases. Panhandle proposes several changes to its General Terms and Conditions to provide that capacity releases of one-year or less are not subject to the maximum rate cap. Panhandle also proposes additional modifications to clarify and revise the bidding requirements for capacity release transactions associated with an AMA or a state-approved retail open access program.

**Notice and Comments**

3. Public notice of Panhandle's filing was issued on January 27, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>2</sup>

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<sup>1</sup> *Promotion of a More Efficient Capacity Release Market*, Order No. 712, 73 Fed. Reg. 37,058 (June 30, 2008), FERC Stats. & Regs. ¶ 31,271 (2008), *order on reh'g*, Order No. 712-A, 73 Fed. Reg. 72,692 (December 1, 2008), FERC Stats. & Regs. ¶ 31,284 (2008) (Order No. 712).

<sup>2</sup> 18 C.F.R. § 154.210 (2008).

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>3</sup> all notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Motions to intervene and comments were filed by East Ohio Gas Company d/b/a Dominion East Ohio (Dominion East Ohio), by ProLiance Energy, LLC (ProLiance), and by Atmos Energy Corporation (Atmos).

4. On February 13, 2009, Panhandle filed an answer to the comments filed by Dominion East Ohio, ProLiance, and Atmos. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>4</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Panhandle's answer because it has provided information that assisted us in our decision-making process.

### **Discussion**

5. For the reasons discussed below, the Commission finds that Panhandle's proposed tariff revisions are generally consistent with the Commission's capacity release policies and Order Nos. 712 and 712-A. Accordingly, the Commission accepts Panhandle's filing, subject to conditions.

6. As explained above, Order No. 712 facilitates AMAs by relaxing the Commission's prohibition on tying and its bidding requirements for certain capacity releases. Dominion East Ohio and Atmos state that they generally support Panhandle's proposed changes. However, Dominion East Ohio urges the Commission to condition acceptance of Panhandle's tariff sheets on Panhandle making any required conforming tariff changes that result from the Commission's ruling on the discount pass through issue. Also, ProLiance requests that Panhandle further comment how, and if, it intends to grant usage charge discounts to asset manager/replacement shippers in this proceeding.

7. Atmos asks the Commission to require Panhandle to include provisions allowing the "flow-through" of discounts from releasing shippers to their asset managers. For example, Atmos states that it is unclear whether and to what extent Panhandle will permit a releasing shipper's asset manager to pay the same discounted usage and fuel rates that the pipeline provided to the releasing shipper. Atmos suggests that Panhandle should clarify (or propose) a policy allowing the asset manager/replacement shipper to receive the same discounted usage and fuel rates applicable to the releasing shipper, particularly since a general refusal to allow "pass-through" of such discounts would impede asset management transactions, contrary Order Nos. 712 and 712-A.

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<sup>3</sup> 18 C.F.R. § 385.214 (2008).

<sup>4</sup> 18 C.F.R. § 385.213(a)(2) (2008).

8. In its answer, Panhandle requests that the Commission convene a rulemaking proceeding regarding the flow-through of any discounts or negotiated rates where the entire industry will be able to submit comments. Panhandle states that the Commission should not require Panhandle to flow-through to an asset manager the discounts obtained by the releasing shipper when the gas that the asset manager is transporting is for the account of any entity other than the releasing shipper. Panhandle argues that it should be required only to provide for the discounted commodity and fuel rates on those volumes that are used by the asset manager in satisfying its obligations to the releasing shipper.

9. The issue of whether a pipeline must provide an asset manager/replacement shipper the same discounted or negotiated usage and fuel rates as it has given the releasing shipper only arises to the extent that the pipeline has provided such discounts or negotiated rates to the releasing shipper. The Commission does not permit pipelines to offer discounts below their minimum rates, which are based on the variable costs allocated to the service to which the rate applies.<sup>5</sup> Therefore, a pipeline such as Panhandle using a Straight-Fixed Variable (SFV) rate design cannot discount its usage charges, because those usage charges only contain variable costs. The Commission has also held that pipelines may not discount their fuel retention rates, because fuel and lost and unaccounted for (LAUF) gas are variable costs.<sup>6</sup> Thus, the issue of the “flow-through” of discounted usage and fuel charges to an asset manager/replacement shipper does not arise on Panhandle’s system. However, pipelines with negotiated rate authority may enter into negotiated rate agreements which are not bounded by their tariff maximum and minimum rates. Panhandle has negotiated rate authority, and thus does have authority to enter into negotiated rate agreements providing for fuel retention rates (and usage charges) that vary from those in its tariff.

10. The Commission has held that the usage charge to be paid by the replacement shipper is a matter between the replacement shipper and the pipeline, and the releasing shipper cannot bind the pipeline to accept any particular usage charge from the replacement shipper. Therefore, the pipeline “generally should not be required to give the replacement shipper the same discount” of the usage charge that it gave the releasing shipper.<sup>7</sup> In *El Paso*, the Commission explained that:

the discount in the usage charge negotiated between the releasing shipper and El Paso is related only to the contract between the releasing shipper and the pipeline and to the

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<sup>5</sup> 18 C.F.R. § 284.10(c)(4)(ii) and (5)(ii)(A) (2008).

<sup>6</sup> *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 (2002).

<sup>7</sup> *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at p. 62,309 (1992) (*El Paso*).

transportation services actually performed by El Paso for the releasing shipper under that contract and is not relevant to other contracts and services to other shippers, including replacement shippers.<sup>8</sup>

11. While pipelines are not subject to a blanket requirement that they must give replacement shippers the same usage charge discounts (or negotiated usage and fuel rates) given to the releasing shipper, pipelines are subject to the Commission's general policy that selective discounts must be given on a not unduly discriminatory basis to similarly situated shippers.<sup>9</sup> These same policies apply to negotiated usage and fuel charges.

12. Panhandle is correct that Order No. 712 did not modify the Commission's existing policy concerning the pipeline's offering usage charge discounts to replacement shippers.<sup>10</sup> Nor did Order No. 712 address any issue concerning the offering of negotiated usage and fuel charges to replacement shippers. However, Order No. 712's modification of the Commission's regulations to facilitate AMAs does raise the following issues in this proceeding:

(1) whether it would be unduly discriminatory for Panhandle to deny an asset manager/replacement shipper the same negotiated usage and fuel and LAUF charge that was provided to the releasing shipper, at least during periods when the asset manager is using the released capacity to satisfy the delivery or purchase obligation contained in the release to the asset manager;<sup>11</sup>

(2) if a negotiated rate agreement between Panhandle and the releasing shipper provides that the discount or negotiated rate is only applicable at certain specified receipt or delivery points as permitted by Commission policy,<sup>12</sup> should the asset manager/replacement shipper's use of those points be considered to be within the usage contemplated by Panhandle when it granted the negotiated rate to the releasing shipper?

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<sup>8</sup> *Id.*

<sup>9</sup> See *Williston Basin Interstate Pipeline Co.*, 85 FERC ¶ 61, 247, at p. 62,028-30 (1998), and cases cited, for a discussion of this policy.

<sup>10</sup> *Texas Eastern Transmission, LP*, 125 FERC ¶ 61,396, at P 21 (2008).

<sup>11</sup> See § 284.8(h)(3) of the Commission's regulations, as revised by Order No. 712-A (defining a release to an asset manager).

<sup>12</sup> *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, at P 5 and 22, *reh'g denied*, 112 FERC ¶ 61,038, at P 19 (2005).

For this reason, should Panhandle be required to offer the same negotiated rate to the asset manager/replacement shipper at those points, but not at any other point?

(3) whether Panhandle should be required to include in its tariff a provision concerning the circumstances under which it would provide similar negotiated usage and fuel charges to an asset manager/replacement shipper; or

(4) whether the circumstances of individual releases to asset managers are sufficiently case-specific that pipelines should be allowed to decide whether to grant negotiated usage and fuel and LAUF charges to the asset manager/replacement shipper on a case-by-case basis, subject to a general requirement of no undue discrimination.

13. Before deciding these issues, the Commission requires additional information from Panhandle, and will give the parties an opportunity to provide supplemental comments. In this regard, the Commission directs Panhandle to file the following information in a compliance filing within 30 days of the date of this order: (1) how many of Panhandle's existing shipper contracts include negotiated usage and fuel rates, (2) how many of any such contracts limit the negotiated rate to specific points, (3) a general description of how Panhandle intends to determine whether to grant negotiated usage and fuel charges to asset manager/replacement shippers, and (4) what factors it will consider in determining whether to grant such negotiated rates.

The Commission orders:

(A) The Commission accepts the tariff sheets listed in the Appendix to this order to be effective on February 23, 2009, subject to conditions and a further order by the Commission.

(B) Panhandle is directed to make a compliance filing within 30 days of the date of this order. Parties may file additional comments within 20 days of the date of Panhandle's compliance filing.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

**Appendix**

**Panhandle Eastern Pipe Line Company, LP**

**FERC Gas Tariff, Third Revised Volume No. 1**

*Tariff Sheets to be Effective February 23, 2009, Subject to Conditions:*

Twenty-First Revised Sheet No. 4  
Twenty-First Revised Sheet No. 5  
Seventh Revised Sheet No. 9  
Seventh Revised Sheet No. 11  
Seventh Revised Sheet No. 12  
Seventh Revised Sheet No. 14  
Twenty-First Revised Sheet No. 15  
Twenty-First Revised Sheet No. 17  
First Revised Sheet No. 37  
First Revised Sheet No. 46  
First Revised Sheet No. 68  
First Revised Sheet No. 75  
First Revised Sheet No. 81  
First Revised Sheet No. 98  
First Revised Sheet No. 109  
First Revised Sheet No. 122  
First Revised Sheet No. 289  
First Revised Sheet No. 290  
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First Revised Sheet No. 292  
First Revised Sheet No. 293  
First Revised Sheet No. 296  
First Revised Sheet No. 297  
First Revised Sheet No. 298