

135 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Panhandle Eastern Pipe Line Company, LP Docket No. RP11-1983-000

ORDER GRANTING WAIVER AND ACCEPTING TARIFF RECORDS
SUBJECT TO CONDITIONS

(Issued May 6, 2011)

1. On April 7, 2011, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed revised tariff records¹ to provide a listing of Panhandle's non-conforming service agreements as well as changes to the Table of Contents. Panhandle explains that upon review of its currently effective service agreements, it discovered several firm and interruptible agreements that contain non-conforming provisions that Panhandle explains are non-material and permissible in nature. Panhandle has filed these non-conforming service agreements for review with the Commission. In addition, Panhandle requests any and all necessary waivers of the capacity release regulations to permit the non-conforming multi-part firm transportation service agreements to be permanently released to the same individual parties, now that they are separate entities, as a prearranged release for the same rates, pro-rated quantities, and terms and conditions as the original service agreements. For the reasons discussed below, the Commission grants the requested waiver subject to conditions and accepts the revised tariff records listed in footnote no. 1, effective May 8, 2011.

I. Waiver Request

2. Panhandle states that the multi-party firm service agreements which Panhandle executed in 2007 with a termination date of either March 31, 2012 (Service Agreement No. 23328) or October 31, 2012 (Service Agreement

¹ Part I, Table of Contents, 2.0.0; Part VI, General Terms and Conditions, 2.0.0; GT&C Section 16., Non-Conforming Agreements, 1.0.0 to Fourth Revised Volume No. 1, FERC NGA Gas Tariff.

Nos. 23290, 23291, and 23296) list the following parties as shipper: PCS Nitrogen Ohio, LP; Ineos USA LLC; and Lima Refining Company. Panhandle explains that these three parties are now owners of separate businesses which were, at one time, owned and operated by a single party. Panhandle explains that it competed for this business and won these four contracts on the basis of the parties' ability to maintain their multi-party arrangements. Panhandle states that in order to provide for a switch from firm Service Agreement Nos. 23290, 23296, and 23328 to service agreements with individual parties, Panhandle proposes to utilize the capacity release provisions in its tariff. Panhandle explains that these three parties would have to permanently release the agreed upon capacity as pre-arranged releases to a single party. Therefore, Panhandle requests the Commission grant any and all necessary waivers of the capacity release regulations to allow the three parties to conduct prearranged permanent releases of the capacity of firm Service Agreement Nos. 23290, 23296, and 23328 to the applicable individual party involved so that each of the parties receives its appropriate share of the total capacity covered by each of these three firm service agreements.²

3. Panhandle requests waiver of sections 154.1(d), 154.112(b), and 154.207 of the Commission's regulations to permit the non-conforming agreements to be filed with the Commission no less than thirty days before the proposed effective date of those agreements.

II. Non-Conforming Provisions

4. Panhandle explains that the particular non-conforming provisions that are included in the multi-party firm service agreements and the interruptible Service Agreement (Service Agreement No. 23291) are all non-material. Panhandle states that these service agreements have a minor formatting deviation. Panhandle explains that all other redlined provisions are either permissible fill-in-the-blanks or are consistent with the *pro forma* service agreement that was in effect at the time the agreements were executed in 2007.

III. Public Notice

5. Public notice of the filing was issued on April 8, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)),

² Panhandle notes that its affiliate Trunkline Gas Company, LLC (TGC) is filing contemporaneously a similar waiver request for service agreements between the same three parties and TGC.

all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

IV. Discussion

A. Waiver Request

6. The Commission has reviewed Panhandle's request for waiver and finds that the waiver request is adequately supported and consistent with previous waivers that the Commission has granted under similar circumstances.³ The Commission finds that its actions here are consistent with the recent decisions in *Bear Energy* and *Macquarie*, where the Commission granted waivers of various policies and regulations relating to the transfer of interstate pipeline transportation capacity in order to facilitate the transfer of natural gas supply and transportation contracts and other assets as a result of various types of corporate restructurings, including corporate mergers and sales of entire business units. Accordingly, for good cause shown, the Commission grants waiver of the shipper-must-have-title policy, the prohibitions on buy-sell arrangements and tying arrangements, the restrictions on capacity releases below or above the maximum rate, and the capacity release bidding requirements in section 284.8 of the Commission's regulations and the pipelines' tariffs. Further, consistent with Commission precedent, the Commission will grant a waiver period of 180 days, and require Panhandle to provide the Commission with a status report within 90 days of closing the transactions. The status report should provide an update on the prearranged releases.

7. The waiver granted is granted solely for the purpose of carrying out the transactions described herein. The Commission will continue to evaluate waiver requests on a case-by-case basis and will grant any necessary waivers based on a balancing of the facts and circumstances in each case with the purposes underlying particular regulations and policies.

³ See *Distrigas of Massachusetts LLC*, 135 FERC ¶ 61,028 (2011); *Sempra Energy Trading LLC and J.P. Morgan Ventures Energy Corporation*, 133 FERC ¶ 61,128 (2010); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008) (*Bear Energy*); and *Macquarie Cook Energy, LLC and Constellation Energy Commodities Group, Inc.*, 126 FERC ¶ 61,190 (2009) (*Macquarie*).

8. The Commission will grant waiver of sections 154.1(d), 154.112(b), and 154.207 of the Commission's regulations to permit the non-conforming agreements to be filed with the Commission no less than thirty days before the proposed effective date of those agreements.

B. Non-Conforming Provisions

9. The Commission finds the non-conforming provisions that are included in the multi-party firm service agreements and the interruptible service agreement are non-material. The Commission also finds that all other provisions are permissible and consistent with the *pro forma* service agreements that were in effect at the time the agreements were executed in 2007.

The Commission orders:

(A) The requested waiver is granted on a temporary basis for 180 days from the date this order issues, as discussed above.

(B) A status report is required within 90 days of closing the transactions as discussed above.

(C) The revised tariff records are accepted effective May 8, 2011.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.