

138 FERC ¶ 61,245  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 30, 2012

In Reply Refer To:  
Panhandle Eastern Pipe Line  
Company, LP  
Docket No. RP12-455-000

Panhandle Eastern Pipe Line Company, LP  
5051 Westheimer Road  
Houston, TX 77056

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

Reference: Revised Tariff

Ladies and Gentlemen:

1. On March 1, 2012, Panhandle Eastern Pipe Line Company, LP (Panhandle) filed revised tariff sheets<sup>1</sup> reflecting its fuel reimbursement adjustment pursuant to section 24 of its General Terms and Conditions (GT&C). Panhandle's filing includes detailed computations showing the projected amount of fuel usage and lost and unaccounted for gas that it will require for the projected transportation and storage volumes under Panhandle's transportation and storage rate schedules effective April 1, 2012. Panhandle requests that the revised tariff records become effective April 1, 2012. For the reasons set forth below, the Commission accepts the revised tariff records, effective April 1, 2012. However, Panhandle must, within 30 days of the date of this letter order, file tariff language to provide reservation charge credits when firm service is curtailed, consistent with the Commission's policy requiring such credits, and also revise its tariff's definition of *force majeure*, or show cause why it should not be required to do so.

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<sup>1</sup> See Appendix.

2. Panhandle's filing revises its Fuel Reimbursement Percentages as follows:
  - (1) No change in the Gathering Fuel Reimbursement Percentage;
  - (2) A 0.28% increase in the Field Zone Fuel Reimbursement Percentage;
  - (3) A 0.08% decrease in the Market Zone Fuel Reimbursement Percentage;
  - (4) No change in the Field Area Storage Injection and Withdrawal Reimbursement Percentages;
  - (5) No change in the Market Area Storage Injection and Withdrawal Reimbursement Percentages.
  
3. Pursuant to section 24.4 of its GT&C, Panhandle states that changes to the fuel reimbursement surcharge to reconcile the deferred reimbursement account are made annually to be effective November 1 of each year. Accordingly, Panhandle states that there are no changes made to the Fuel Reimbursement Surcharge.
  
4. Public notice of the filing was issued on March 2, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2011)). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2011), all timely filed motions to intervene and any unopposed motions 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. On March 14, 2012, ProLiance Energy, LLC (ProLiance) filed a protest. On March 21, 2012, Panhandle filed an answer to the protest asking that the Commission defer action on the protest until an ongoing audit of Panhandle is completed. Answers to protests are prohibited by the Commission's procedural rules, and the Commission declines to delay remedial action on this issue, which has been raised in the protest as the Commission invited parties to do in the *NGSA* order cited below.
  
5. ProLiance asserts that Panhandle's tariff does not provide for reservation charge credits in the event of curtailment. ProLiance requests that the Commission take action requiring Panhandle to file reservation charge credit language in its tariff that complies with the Commission's policy regarding curtailment and reservation charge credits.<sup>2</sup> Over the last few years, ProLiance states that it has experienced several curtailments on Panhandle's system but received no reservation charge credits. ProLiance further states

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<sup>2</sup> See, e.g., *Natural Gas Supply Ass'n*, 135 FERC ¶ 61,055, order on reh'g, 137 FERC ¶ 61,105 (2011) (*NGSA*).

that Panhandle recently informed its shippers of summer maintenance that could result in additional curtailments.

6. In addition, ProLiance requests that the Commission also require Panhandle to modify its tariff definition of *force majeure* so that it is clear that planned and scheduled maintenance is not included as a *force majeure* event. ProLiance states that Panhandle's tariff defines *force majeure* to include "the necessity for making repairs or alterations to wells, machinery, or lines of pipe."<sup>3</sup> On several occasions, ProLiance asserts that Panhandle has relied on this definition to classify scheduled maintenance as a *force majeure* event.<sup>4</sup> ProLiance states that if Panhandle is not required to change the definition, Panhandle could potentially circumvent the Commission's reservation charge crediting policy by continuing to label scheduled maintenance as a *force majeure* event, thus avoiding full reservation charge credits required for non-*force majeure* curtailment. Furthermore, ProLiance proposes the following change to Panhandle's *force majeure* definition: the addition of "but not including planned or scheduled maintenance;" before the clause "or the necessity for making repairs or alterations to wells, machinery, or lines of pipe" ProLiance states that this change will prevent Panhandle from classifying scheduled repairs as a *force majeure* event.

7. The Commission finds that ProLiance has raised reasonable concerns regarding the absence of a reservation charge credit provision in the tariff, and the tariff's *force majeure* provisions.

8. Under the Commission's reservation charge crediting policy, pipelines are required to provide firm shippers with reservation charge credits when they are unable to provide primary firm service. The Commission has discussed and affirmed its reservation charge crediting policy in several recent orders.<sup>5</sup> That policy differentiates between the credits required in *force-majeure* and non- *force majeure* curtailments. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a

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<sup>3</sup> See section 20 of Panhandle's General Terms and Conditions.

<sup>4</sup> See Exhibits A, B, and C in ProLiance's protest.

<sup>5</sup> NGSAs, 135 FERC ¶ 61,055, *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, *order on reh'g*, 137 FERC ¶ 61,050 (2011) (*Southern*); *Northern Natural Gas Co.*, 135 FERC ¶ 61,250, *order on reh'g*, 137 FERC ¶ 61,202 (2011); *Midwestern Gas Transmission Co.*, 137 FERC ¶ 61,257 (2011) (*Midwestern*).

pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver.<sup>6</sup> Commission policy also requires that the pipeline provide partial reservation charge credits during periods when it cannot provide service because of a *force majeure*<sup>7</sup> event in order to share the risk of an event not in the control of the pipeline. In that event, the Commission allows two different methods for the credit, either full reservation credits after a short grace period (i.e., ten days) or partial crediting starting on the first day of a *force majeure* event.<sup>8</sup> In *North Baja Pipeline, LLC v. FERC*,<sup>9</sup> the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) affirmed Commission orders requiring a pipeline to modify its tariff to conform to these policies.

9. Panhandle's failure to provide credits when firm service is curtailed is unjust and unreasonable and contrary to Commission policy. Accordingly, the Commission directs Panhandle to file language in its tariff to provide reservation charge credits consistent with Commission policy when firm service is curtailed or show cause why it should not be required to do so. Commission policy requires that pipelines provide full reservation charge credits for all scheduled gas not delivered due to a non *force majeure* event and partial reservation charge credits during *force majeure* events in order to share the risk of an event for which neither party is responsible.<sup>10</sup> In that event, the Commission allows two different methods for the credit, either full reservation credits after ten days or partial

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<sup>6</sup> See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

<sup>7</sup> *Force majeure* events are "unexpected and uncontrollable events." Opinion No. 406, 76 FERC ¶ 61,022 at 61,088.

<sup>8</sup> *Midwestern*, 137 FERC ¶ 61,257 at P 19-20.

<sup>9</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819 (D.C. Cir. 2007) (*North Baja*), *affg*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

<sup>10</sup> See *Ingleside Energy Center, LLC*, 112 FERC ¶ 61,101, at P 58 (2005); and Opinion No. 406, 76 FERC ¶ 61,022 at 61,086-89.

crediting starting at day one of a *force majeure* event, and the pipeline may choose either method.

10. Moreover, section 20 of Panhandle's GT&C fails to make the distinction between *force majeure* and non-*force majeure* scheduled maintenance events. The Commission's reservation charge crediting policy requires a full reservation charge credit for non-*force majeure* events such as scheduled maintenance, while a partial credit is allowed for *force majeure* events. Therefore, we find that Panhandle's tariff definition of *force majeure* is unjust and unreasonable and must be revised. The Commission requires Panhandle to modify its tariff definition of *force majeure* so that planned and scheduled maintenance is not included as a *force majeure* event. Accordingly, the Commission directs Panhandle to add the following language (shown here in italics) to Panhandle's *force majeure* definition so that the clause at issue will read as follows: "or the necessity for making repairs or alterations to wells, machinery, or lines of pipe *but not including planned or scheduled maintenance.*"

11. The proposed tariff records listed in the Appendix to this order are accepted, effective April 1, 2012, and the Commission, pursuant to NGA section 5, directs Panhandle to file revised tariff records to conform with the Commission's reservation charge crediting policy, and to revise its tariff language related to the definition of *force majeure*, consistent with the discussion in this order, within thirty (30) days of the date of this order, or explain why it should not be required to do so.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

Appendix

Panhandle Eastern Pipe Line Company, LP  
Fourth Revised Volume No. 1  
FERC NGA Tariff

*Tariff Records Accepted Effective April 1, 2012*

[Rate Schedule FT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule EFT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule SCT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule LFT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule HFT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule IT, Currently Effective Rates, 5.0.0](#)  
[Rate Schedule EIT, Currently Effective Rates, 5.0.0](#)