
ORAL ARGUMENT HAS NOT BEEN SCHEDULED

**In the United States Court of Appeals
for the District of Columbia Circuit**

Nos. 20-1419, *et al.* (consolidated)

PANHANDLE EASTERN PIPE LINE COMPANY, LP,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

**FINAL BRIEF OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION**

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FINAL BRIEF: APRIL 6, 2026

CIRCUIT RULE 28(A)(1) CERTIFICATE

A. Parties and Amici

The parties to the underlying agency proceeding and who have appeared before the Court are listed in Petitioner's Rule 28(a)(1) certificate.

B. Rulings Under Review

1. Order on Rehearing, Clarification, and Motion to Terminate, *Panhandle Eastern Pipe Line Co., LP*, 171 FERC ¶ 61,244 (June 18, 2020) (R. 409), JA275-298;
2. Opinion and Order on Initial Decision, *Panhandle Eastern Pipe Line Company, LP*, 181 FERC ¶ 61,211 (Dec. 16, 2022) ("Opinion 885") (R. 575), JA758-933;
3. Order Accepting Compliance, *Panhandle Eastern Pipe Line Company, LP*, 183 FERC ¶ 61,148 (May 26, 2023) (R. 603), JA1189-1196;
4. Order Addressing Argument Raised on Rehearing and Compliance, *Panhandle Eastern Pipe Line Co.*, 184 FERC ¶ 61,181 (Sept. 25, 2023) ("Opinion 885-A") (R. 613), JA1236-1405;
5. Order Addressing Arguments Raised on Rehearing, *Panhandle Eastern Pipe Line Company, LP*, 186 FERC ¶ 61,015 (Jan. 5, 2024) ("Opinion 885-B") (R. 628), JA1486-1495;
6. Order Rejecting Refund Report and Directing Further Compliance, *Panhandle Eastern Pipe Line Company, LP*, 187 FERC ¶ 61,112 (May 28, 2024) ("Refund Order") (R. 637), JA1515-1524;
7. Order Addressing Arguments Raised on Rehearing, *Panhandle Eastern Pipe Line Company, LP*, 188 FERC ¶ 61,162 (Sept. 9, 2024) ("Refund Rehearing Order") (R. 650), JA1620-1630;

8. Order on Revised Refund Report, *Panhandle Eastern Pipe Line Company, LP*, 189 FERC ¶ 61,170 (Dec. 5, 2024) (“Second Refund Order”) (R. 656), JA1657-1666; and

9. Order on Rehearing and Clarification, *Panhandle Eastern Pipe Line Co., LP*, 191 FERC ¶ 61,013 (Apr. 4, 2025) (“Second Refund Rehearing Order”) (R. 667), JA1768-1785.

C. Related Cases

This case has not previously been before this Court or any other court. Counsel is not aware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

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GLOSSARY

1996 Settlement	The settlement establishing Panhandle's most recent rates. It resolved multiple rate proceedings and was approved by the Commission in <i>Panhandle E. Pipe Line Co.</i> , 74 FERC ¶ 61,109 (1996).
ADIT	As used in orders on review, for Accumulated Deferred Income Tax
Br.	Opening Brief of Petitioner Panhandle Eastern Pipe Line Company, LP
Commission or FERC	Federal Energy Regulatory Commission
Construction Allowance	Allowance for Funds Used During Construction, or AFUDC as used in orders on review
EDIT	As used in the orders on review, for Excess Accumulated Deferred Income Tax
Opinion 885	<i>Panhandle E. Pipe Line Co., LP</i> , Opinion No. 885, 181 FERC ¶ 61,211 (2022), JA758
Opinion 885-A	<i>Panhandle E. Pipe Line Co., LP</i> , Opinion No. 885-A, 184 FERC ¶ 61,181 (2023), JA1236
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Refund Order	<i>Panhandle E. Pipe Line Co., LP</i> , 187 FERC ¶ 61,112 (2024), JA1515

Refund Rehearing Order *Panhandle E. Pipe Line Co., LP*,
188 FERC ¶ 61,162 (2024), JA1620

Second Refund Order *Panhandle E. Pipe Line Co., LP*,
189 FERC ¶ 61,170 (2024), JA1657

Second Refund Rehearing
Order *Panhandle E. Pipe Line Co., LP*,
191 FERC ¶ 61,013 (2025), JA1768

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**BRIEF OF RESPONDENT
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STATEMENT OF THE ISSUES

This case concerns the Federal Energy Regulatory Commission's ("FERC" or "Commission") review of Panhandle Eastern Pipe Line Company's ("Panhandle") proposed cost-of-service rates for transportation service on its natural gas pipeline system. Congress vested the Commission with broad powers over ratemaking and entrusted the resolution of such issues to the Commission's technical expertise.

Panhandle's proposed rates were the subject of a lengthy hearing before an administrative law judge. That hearing and subsequent appeals to the Commission resolved numerous of issues, leaving just four at issue in this appeal.

The main question is: What happens to funds collected from ratepayers for future tax liabilities when the pipeline's tax liability is extinguished? In *SFPP, LP v. FERC*, 967 F.3d 788 (D.C. Cir. 2020), the Court addressed this question in the context of a master limited partnership that (a) was allowed to collect tax costs from ratepayers, (b) accumulated some of those costs for future tax liabilities, but later (c) had its tax allowance removed due to a change in Commission policy. There, the Commission did not require the pipeline to repay the Accumulated Deferred Income Taxes to ratepayers. The Commission reached the same result here.

But what about surplus funds arising from a tax cut and set aside in a separate account to return to ratepayers? In this case, the Commission found that those excess monies must remain in that separate account until they are returned to ratepayers and may not simply be absorbed by the pipeline. Accordingly, the Commission also

rejected Panhandle's proposal to treat those monies as retained earnings in the equity component of its capital structure (which is used to calculate the pipeline's rate of return). The Commission likewise directed Panhandle to remove Accumulated Deferred Income Taxes from the equity component of its capital structure. Since the pipeline has no tax liability going forward, it should not reflect accumulated deferred tax balances anywhere in its cost of service.

The Commission also rejected Panhandle's bid to use a hypothetical equity cost rate in calculating its "allowance for funds used during construction." Instead, consistent with its regulations, the Commission directed use of the rate granted during Panhandle's last rate case.

Because Panhandle's proposed rates—which were collected during the rate proceeding—were higher than the rates ultimately found to be "just and reasonable," the Commission directed refunds. Section 4(e) of the Natural Gas Act authorizes refunds of the "portion of ... increased rates ... found not justified." 15 U.S.C. § 717c(e). To capture that figure, the Commission instructed Panhandle to look at each shipment

on its system and compare the revenues generated under its proposed rates to the revenues generated under the approved rates.

The issues presented for review are:

1. Whether the Commission reasonably found that excess deferred tax balances set aside for repayment to ratepayers may not be retained by a pipeline company (Panhandle) after undergoing a voluntary change in corporate form resulting in the removal of an income tax allowance from its future rates.

2. Whether the Commission reasonably found that Panhandle should not be able to earn a rate of return on ratepayer funds that were provided to pay income taxes.

3. The Commission's regulations call for the use of the "last rate granted" when calculating the equity return on a construction allowance. Did the Commission appropriately rely on the 12.13% rate granted in an order issued during the course of Panhandle's last rate case, even though that case was ultimately settled.

4. Whether the Commission's refund methodology appropriately used the total rate paid by shippers for their movements

on Panhandle's system, rather than individual subcomponents of that rate.

STATUTORY AND REGULATORY PROVISIONS

The pertinent statutes and regulations are contained in the Addendum to this brief.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

A. Natural Gas Act

Sections 1(b) and (c) of the Natural Gas Act grant the Commission jurisdiction over the transportation and wholesale sale of natural gas in interstate commerce. 15 U.S.C. § 717(b)-(c). The Act directs the Commission to ensure that “[a]ll rates and charges made, demanded or received by any natural-gas company” in connection with the interstate transportation of natural gas are “just and reasonable.” *Id.* § 717c(a). “[A]ny such rate or charge that is not just and reasonable is declared to be invalid.” *Id.* To effectuate this requirement, pipeline companies are required to file tariffs showing all jurisdictional rates and practices affecting those rates. *Id.* § 717c(c); *see also* 18 C.F.R. § 154.1.

1. Rate setting under section 4 of the Act

If a pipeline wants to change its rates, it must provide advanced notice to the Commission. 15 U.S.C. § 717c(d). Section 4 of the Natural Gas Act authorizes the Commission to hold a hearing concerning the lawfulness of a pipeline's proposal and suspend its effectiveness up to 5 months while the hearing proceeds. *Id.* § 717c(e).

In a section 4 proceeding, the pipeline has the burden of proving that its proposed rates are “just and reasonable.” *See, e.g., Transcon. Gas Pipe Line Corp. v. FERC*, 518 F.3d 916, 918 (D.C. Cir. 2008). The Commission's role is limited to “acceptance (in whole or in part) or rejection of the pipeline's proposed rates.” *W. Res., Inc. v. FERC*, 9 F.3d 1568, 1574 (D.C. Cir. 1993) (quoting *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 183 (D.C. Cir. 1986)).

If the hearing does not conclude by the end of the suspension period, the pipeline can implement its proposed rates. *See* 15 U.S.C. § 717c(e); 18 C.F.R. § 154.206. If the Commission later determines that they are too high, it may order the pipeline to refund its excessive receipts. *Ne. Energy Assocs. v. FERC*, 158 F.3d 150, 152 n.4 (D.C. Cir. 1998). Refunds are limited on the downside by the “floor” established

by the prior effective and lawful rate. *See FPC v. Sunray DX Oil Co.*, 391 U.S. 9, 22-25 (1968); *see also Distringas of Mass. Corp. v. FERC*, 737 F.2d 1208, 1224 (1st Cir. 1984).

The statutory scheme thus allows pipelines “to charge the proposed rate while Commission proceedings on the rate change are in progress, while at the same time providing notice to the pipeline that its rate ultimately may be subject to a refund order.” *Nw. Pipeline Corp. v. FERC*, 61 F.3d 1479, 1488 (10th Cir. 1995). The refund provision is thus a “statutory exception to the rule prohibiting retroactive rate changes.” *E. Tenn. Nat. Gas Co. v. FERC*, 863 F.2d 932, 941-42 (D.C. Cir. 1988).

2. Section 5 investigations

Under section 5 of the Act, the Commission, upon its own initiative or complaint by others, can seek to impose rates that differ from either the pipeline’s current or proposed rates. 15 U.S.C. § 717d. In that circumstance, the Commission or the complaining party must prove both that the pipeline’s rates are unlawful and that the new proposed rates are just and reasonable. *Id.* Relief under section 5 is prospective only. *Sea Robin*, 795 F.2d at 184.

B. Overview Of Natural Gas Transportation

A shipper seeking to transport natural gas on an interstate system executes a service agreement with the pipeline that references or incorporates “rate schedules” of general applicability listing the price and conditions for service. *See, e.g.*, 18 C.F.R. § 154.1. To move its gas, a shipper makes a formal request (called a “nomination”) identifying a specific volume of gas, a “receipt point” (where the gas will be received into the pipeline system), and a “delivery point” (where it is taken out). The rates for that service can be based on zones, miles traveled, a fixed postage stamp rate, or a mix of these methodologies. *See* FERC, ENERGY PRIMER 20-22 (2023), <https://perma.cc/2Q46-DKQW>.

Under a postage stamp design, shippers pay the same rate regardless of how far their natural gas is moved. In zonal pricing, receipt and delivery points are grouped into geographic zones, and the rate is fixed within each zone and across different zones. With mileage-based rates, shippers pay based on the distance between where the gas enters the pipeline and where it is taken out. *Id.* 20-21.

C. Overview of Natural Gas Ratemaking

There are generally two types of natural gas transportation rates: cost-based rates or negotiated rates. A cost-based rate—also referred to

as a “recourse rate”—is set forth in the pipeline’s filed tariff and is derived from the cost of providing service. *See, e.g., Sierra Club v. FERC*, 38 F.4th 220, 229 (D.C. Cir. 2022). A “negotiated rate” varies from the pipeline’s otherwise applicable tariff (to which the customer can always seek “recourse”) and is mutually agreed upon by a pipeline and its customer. *See Fairless Energy, LLC v. FERC*, 77 F.4th 1140, 1143-44 (D.C. Cir. 2023); *see also* FERC, GLOSSARY (Feb. 2026), <https://www.ferc.gov/about/what-ferc/about/glossary>. This case concerns Panhandle’s cost-based, recourse rates.

1. Cost-of-service principles

Cost-based rates are designed to “yield[] sufficient revenue to cover all proper costs.” *El Paso Nat. Gas Co. v. FERC*, 966 F.3d 842, 849 (D.C. Cir. 2020) (quoting *City of Charlottesville v. FERC*, 774 F.2d 1205, 1207 (D.C. Cir. 1985)). This is accomplished by keying rates to the pipeline’s annual revenue requirement, plus a reasonable return on investment. Using cost-of-service terminology, the rate is generally the sum of:

- ***Return on rate base***: “Rate base” is the cost of the facilities used to provide service, less depreciation. *See, e.g.,*

Constellation Mystic Power, LLC v. FERC, 45 F.4th 1028, 1038 (D.C. Cir. 2022). The “return” is the Commission-authorized percentage earned on the rate base to cover the cost of capital—*i.e.*, the compensation investors require for placing their capital at risk. *See, e.g., Sierra Club*, 867 F.3d at 1376

- ***Cost of service:*** The costs incurred by the pipeline to provide service, such as operation and maintenance expenses, general overhead expenses, depreciation costs, and taxes. *See generally N.C. Utils. Comm’n v. FERC*, 42 F.3d 659, 661 (D.C. Cir. 1994); *see also* FERC, COST-OF-SERVICE RATES MANUAL 6-7 (1999) (“RATES MANUAL”), <https://perma.cc/FWH7-PQRT>.

2. Tax allowances

“Taxes, including federal income taxes, are costs” for purposes of cost-of-service ratemaking. *BP West Coast Prods., LLC v. FERC*, 374 F.3d 1263, 1286 (D.C. Cir. 2004). Thus, pipelines that pay income taxes are entitled to include a tax allowance in their revenue requirement to cover the taxes they expect to pay on regulated income. *See* RATES MANUAL 20.

a. Accumulated deferred tax balances

i. The timing problem

Calculation of a pipeline's tax allowance is complicated by differences in the timing of expense recognition for tax and ratemaking purposes. *See Charlottesville*, 774 F.2d at 1207. Take depreciation expenses: they represent a return of capital investments in facilities used to provide jurisdictional service and are deducted from taxable income and rate base. *See, e.g., SFPP*, 967 F.3d at 799 (discussing tax treatment); *Constellation Mystic*, 45 F.4th at 1043 (discussing ratemaking treatment). For ratemaking purposes, the depreciation expense is calculated via a straight-line methodology, which divides the asset's cost by its useful life. *See RATES MANUAL* 19. For tax purposes, however, a pipeline may use "accelerated" depreciation, whereby it "frontload[s] its tax write-offs for the depreciation of an asset." *SFPP*, 967 F.3d at 799-800. As a result, "the company pays *less* tax than it would under straight-line depreciation in the early years of the life of the equipment, and *more* tax than it would under straight-line depreciation in the later years of the life of the equipment." *Town of Norwood v. FERC*, 53 F.3d 377, 382 (D.C. Cir. 1995).

ii. The “tax normalization” solution

The Commission’s regulations address this timing issue by requiring pipelines to “compute the income tax component of its cost-of-service by using tax normalization.” 18 C.F.R. § 154.305. Under normalization, pipelines charge ratepayers the tax they would be responsible for under the straight-line depreciation methodology, even though those tax amounts are not actually paid at the time. *See Norwood*, 53 F.3d at 382. This ensures that, in any given year, a ratepayer will “both bear the burden of depreciation allocable to that year and enjoy whatever tax benefit is associated with that depreciation.” *Pub. Utils. Comm’n v. FERC*, 894 F.2d 1372, 1379 (D.C. Cir .1990); *see also SFPP*, 967 F.3d at 800.

iii. The surplus account

The surplus income tax allowance collected by the pipeline under the tax normalization concept, but not yet needed to pay current taxes, is called “Accumulated Deferred Income Tax,” or “ADIT.” It is recorded in Account 282 (Accumulated Deferred Income Taxes – Other Property) of the Commission’s Uniform System of Accounts.¹ *See Interstate and*

¹ The Commission’s Uniform System of Accounts, 18 C.F.R. pt. 201, sets forth “a comprehensive classification and enumeration of

Intrastate Natural Gas Pipelines; Rate Change Relating To Federal Income Tax Rate, Order No. 849, 164 FERC ¶ 61,031, P 116 (2018) (“Order 849”).

These surplus amounts effectively serve as “cost-free capital” for the pipeline. *Id.* P 132. Accordingly, in ratemaking proceedings, the Commission “requires the pipeline to deduct the sums in the ADIT liability accounts from rate base so the pipeline does not improperly earn a return on amounts funded by cost-free capital.” *Inquiry Regarding the Commission’s Policy for Recovery of Income Tax Costs*, 164 FERC ¶ 61,030, P 12 (2018) (“Revised Policy Statement Rehearing Order”). This lowers the pipeline’s return, which in turn lowers rates. *Id.*

b. Excess deferred tax balances

Tax cuts can lead to deferred tax accounts becoming overfunded. Amounts collected from ratepayers in anticipation of higher tax liabilities later in an asset’s life now exceed future liabilities under the new, lower tax rates. In such circumstances, the Commission requires

revenue and expense items that utilities must use in keeping their books.” *Ala. Power Co. v. FERC*, 160 F.3d 7, 8 (D.C. Cir. 1998).

pipelines to record the excess tax balances (sometimes called “excess ADIT” or “EDIT”) as a “regulatory liability” in Account No. 254, Other Regulatory Liabilities. Order 849, 164 FERC ¶ 61,031, at P 139.² When the pipeline no longer needs such amounts to cover future tax liabilities, the Commission’s long-standing policy has been “to flow back the effects of timing differences between the Commission approved income tax allowance and the [Internal Revenue Service] tax liabilities.” *Id.* P 140.

c. Tax allowances for master limited partnerships

During the rate proceedings below, Panhandle underwent a reorganization. It changed from being a corporate subsidiary to an asset of a “master limited partnership”—*i.e.*, a publicly traded partnership that receives at least 90 percent of its income from gas and oil transportation, or other qualifying sources. *See* 26 U.S.C. § 7704. A master limited partnership operating a FERC-jurisdictional pipeline

² Regulatory liabilities “result from rate actions of regulatory agencies.” 18 C.F.R. pt. 201 (Definition No. 31). They “arise from specific revenues, expenses, gains, or losses that would have been included in net income determination in one period under the general requirements of the Uniform System of Accounts but for it being probable ... that refunds to customers, not provided for in other accounts, will be required.” *Id.*

incurs no income tax liability itself, although the income generated by the pipeline gives rise to partner-level taxes. *See BP West Coast*, 374 F.3d at 1286.

Historically, the Commission had allowed master limited partnerships to recover both an income tax allowance (for the partners' tax costs) and a return on equity (which accounts for the tax liability that investors will face). But in *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016), the Court found that the Commission failed to demonstrate that this policy did not result in the double recovery of income taxes. *Id.* at 136-37.

In response, the Commission revised its income tax policy and held that master limited partnership pipelines would no longer be permitted to recover an income tax allowance in their cost-of-service rates. *See Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (2018) ("Revised Policy Statement").

3. Capital structure and the rate of return

Under cost-of-service ratemaking principles, a pipeline's return is set "at the level which allows the utility to recover the cost of various

types of capital which it has raised and dedicated to public use.”

NEPCO Mun. Rate Comm. v. FERC, 668 F.2d 1327, 1335 (D.C. Cir.

1981). The “types of capital” raised by a pipeline to provide service are

“equity (*i.e.*, investments made by shareholders) and debt.” *Sierra*

Club, 867 F.3d at 1376. The “cost” of that capital is the return required

by debtholders and stockholders. *NEPCO*, 668 F.2d at 1335.

The return on debt is determined by reference to the required interest on bonds. *Id.* The return on equity is an administratively-established percentage that is intended to replicate the returns on investments in other enterprises with similar risks. *See Emera Maine v. FERC*, 854 F.3d 9, 20 (D.C. Cir. 2017) (discussing modeling used to set an appropriate return on equity). “Because equity investment is riskier than debt investment,” the rate of return on equity is usually higher than the return on debt. *Sierra Club*, 38 F.4th at 229.

To determine an overall rate of return to be applied to a pipeline’s rate base, the average of the debt and equity rates is taken, weighted by the relative amounts of each type of capital present. *NEPCO*, 668 F.2d at 1335. And since the returns attributable to debt and equity “differ

markedly, the capital structure used ... can greatly affect the overall return allowed.” *N.C. Utils. Comm’n*, 42 F.3d at 661.

4. Construction Allowance

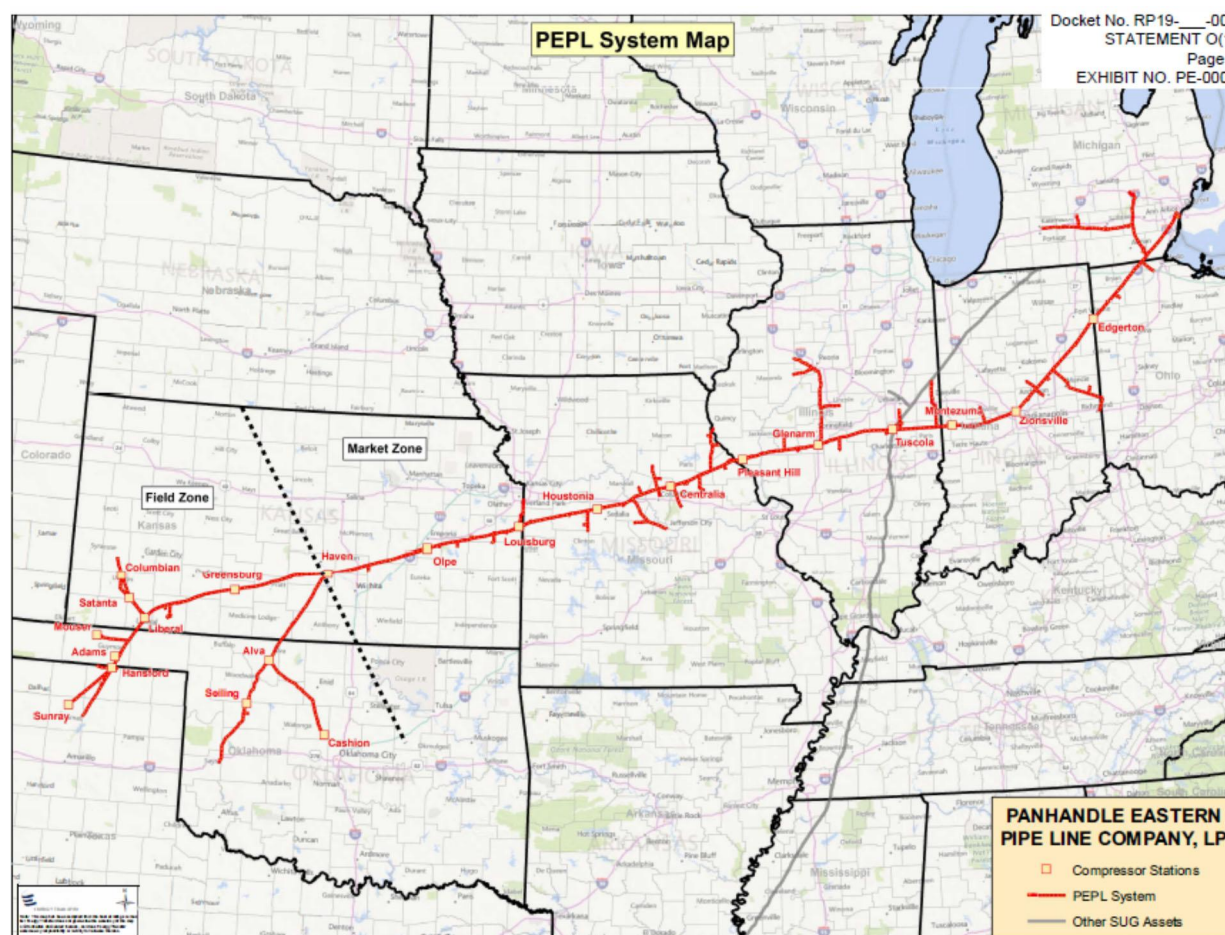
To promote infrastructure development, the Commission permits pipelines to accrue the financing costs of expenditures on new projects in a separate capital account. This Construction Allowance—referred to as Allowance for Funds Used During Construction or AFUDC in the orders below—is included in the pipeline’s rate base once the project is placed in service and a return is recovered from ratepayers. *See, e.g., Mid-Tex Elec. Co-op., Inc. v. FERC*, 822 F.2d 1123, 1125 (D.C. Cir. 1987).

The pertinent financing costs include interest on borrowed funds and the equity return on the pipeline’s own funds used during construction. *See* RATES MANUAL 9. In determining the latter figure, the Commission’s regulations provide that the return on equity shall be: (1) “the rate granted common equity in the last rate proceeding” or, if not available, (2) “the average rate actually earned during the preceding three years.” 18 C.F.R. pt. 201, Gas Plant Instruction 3(17)(b).

II. The Commission Proceedings

A. Panhandle

Panhandle provides natural gas transportation service to shippers in the United States and Canada. It operates a roughly 6,000-mile pipeline system that begins in the supply areas of Texas, Kansas, and Oklahoma, and stretches northeastwardly into Michigan. *See Panhandle E. Pipe Line Co., LP*, Opinion No. 885, 181 FERC ¶ 61,211, P 2 (2022) (“Opinion 885”) (R.575), JA758. As depicted below, the system is divided into two zones: the Field Zone (Texas, Kansas and Oklahoma) and the Market Zone (Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan).



Panhandle Rate Filing, Statement O (System Map) (R.182), JA150.

Panhandle's rates were last reviewed in the early 1990s. That proceeding ultimately led to a settlement approved by the Commission in 1996. *See Panhandle E. Pipe Line Co.*, 77 FERC ¶ 61,284, *on reh'g*, 78 FERC ¶ 61,180 (1997).

B. The Commission's Investigation

The Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017), reduced the federal corporate income tax rate from 35% to 21%,

effective January 1, 2018. Three months later, in response to *United Airlines*, the Commission's revised tax policy statements advised that master limited partnership pipelines would no longer be permitted to recover an income tax allowance in their rates and could eliminate Accumulated Deferred Income Tax amounts. *See* Opinion 885 P 49; JA776.

The Commission subsequently began collecting financial information to evaluate the impact of these tax developments on pipeline revenue requirements. Panhandle's data, filed in October 2018, showed that, as a corporate subsidiary, the pipeline included a tax allowance in its rates. Its books reflected both Accumulated Deferred Income Tax for future taxes and excess Accumulated Deferred Income Tax stemming from the federal corporate tax reduction. *Id.* P 50, JA776.

Based on this information, in January 2019, the Commission launched a Natural Gas Act section 5 investigation into Panhandle's rates. *See Panhandle E. Pipe Line Co., LP*, 166 FERC ¶ 61,032, P 1 (2019) (R.41), JA141.

During that proceeding, on July 1, 2019, Panhandle's corporate parent contributed the pipeline to Energy Transfer Operating, L.P., a master limited partnership. *See* Opinion 885 P 51, JA777.

C. Panhandle's Rate Filing

Eight months later, while the section 5 proceeding was ongoing, Panhandle filed new proposed rates under section 4 of the Natural Gas Act. *See* Opinion 885 P 9, JA763. On September 19, 2019, the Commission accepted and suspended the filing, subject to refund. *See Panhandle E. Pipe Line Co., LP*, 168 FERC ¶ 61,208 (2019) (R.258), JA151. The section 4 and 5 proceedings were ultimately consolidated and heard before an administrative law judge.

The hearing examined numerous issues relating to Panhandle's cost of service, including rate base, tax matters, depreciation, cost of capital, cost allocation and rate design. The administrative law judge issued an Initial Decision on March 26, 2021. *See Panhandle E. Pipe Line Co., LP*, 174 FERC ¶ 63,026 (2021) (R.538) ("Initial Decision"), JA356.

D. The Challenged Orders

1. The Commission's rate determinations

Panhandle, FERC trial staff, and various customers and state regulatory bodies sought Commission review. *See* Opinion 885 P 10, JA764. In Opinion 885, the Commission, with one Commissioner dissenting on certain issues, affirmed the administrative law judge's determinations in part and reversed them in part. The Commission's findings as to the three rate matters at issue in this appeal are discussed below.

a. Income taxes

One month before its section 4 rate filing, Panhandle's restructuring resulted in the pipeline being owned by a master limited partnership. *See supra* p. 21. Accordingly, as required by Commission policy, its proposed rates did not include an income tax allowance. Amounts previously recorded as deferred tax balances were eliminated from Panhandle's books, as was the regulatory liability related to the excess tax balances stemming from the federal tax rate reduction. Opinion 885 P 51, JA777. Panhandle sought to treat both sums as retained earnings and thus an equity component of its capital structure. *Id.* PP 91-93, JA800-801.

i. Accumulated deferred tax balances

The Commission affirmed the administrative law judge's finding that Panhandle appropriately removed its accumulated deferred tax balances from its cost of service. Those amounts had been set aside to meet future tax liabilities under the reduced rates imposed by the Tax Cuts and Jobs Act. But now that Panhandle is an asset of a master limited partnership, it no longer has future tax liabilities nor a tax allowance. The Commission explained that “[w]hen a pipeline ceases to recover an income tax allowance in rates, the matching function for normalization no longer applies and there is no rationale for the pipeline to continue to record ADIT.” *Id.* P 64, JA782-783.

The Commission also agreed that ratepayers had no right to those balances. The amounts reflect payments by Panhandle's prior shippers of their properly allocated costs (including tax costs) for the service they received. And they were collected under previously approved rates. *See id.* P 70, JA788. Requiring Panhandle to return the accumulated deferred tax balances to shippers would violate the rule against retroactive ratemaking. *See id.* PP 72-76, JA789-791. The Commission pointed to this Court's *SFPP* decision, which held that the rule barred

the Commission from ordering a pipeline to return to ratepayers accumulated tax balances which had become stranded due to the elimination of a master limited partnerships' income tax allowance. *See id.* P 73 (citing 967 F.3d at 801-03).

ii. Excess deferred tax balances

The Commission found, however, that the regulatory liability reflecting excess deferred tax balances was different. The Commission explained that an excess tax balance was created on January 1, 2018 when the lower corporate tax rate went into effect. *Id.* P 82, JA794. Consistent with the Commission's regulations, that balance was transferred to Account 254, which was "specifically created to adjust future rates based on regulatory liabilities." *Id.* And "[l]ike any other regulatory liability, the EDIT balance ... should be amortized in Panhandle's rates under the Commission's long-standing policies." *Id.* P 85, JA796.

The Commission explained that *SFPP* did not govern here because it did not address the proper treatment of excess deferred tax balances accrued by tax paying corporations. *Id.* P 86, JA797. Requiring excess balances to be amortized to ratepayers does not rest on a finding that

Panhandle's past rates were unreasonable. *Id.* P 87, JA798. Instead, the Commission is "requiring Panhandle to follow existing Commission policies and regulations in its going-forward rates." *Id.* Excess deferred tax balances are recorded in Account 254 – Other Regulatory Liabilities, which provides that "amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned" 18 C.F.R. § 367.2540(b). Consequently, excess deferred tax amounts are generally returned to ratepayers via an offset to the tax allowance in future rates. *See* Opinion 885 PP 87-88, JA798-799.

b. Capital structure

A regulated entity's capital structure affects its overall return. *See supra* p. 16. Here, the Commission found that the administrative law judge erred by permitting Panhandle to add its accumulated deferred tax (\$346.3 million) and excess deferred tax (\$276.7 million) balances to its capital structure as equity capital. *See* Opinion 885 PP 91, 97, JA800, 803.

The Commission explained that accumulated deferred taxes were contributed by ratepayers. Including them in Panhandle's capital

structure as equity capital would require customers to pay Panhandle a return on their own funds. *Id.* P 98, JA803. Since Panhandle has no tax allowance, nor accumulated deferred tax balances in its rate base, it “should not reflect ADIT anywhere in its cost of service and rates, including capital structure.” *Id.*

The need to eliminate excess Accumulated Deferred Income Tax balances from Panhandle’s capital structure follows from the Commission’s finding that Panhandle must “return EDIT to customers by continuing to amortize [it] in Account No. 254.” *Id.* P 99, JA803.

c. Construction Allowance

As for the appropriate return on equity to be used in determining Panhandle’s Construction Allowance, the Commission reversed the administrative law judge’s finding that 13.25% was appropriate. *Id.* P 34-44, JA772-774.

The administrative law judge held that the preponderance of the evidence established that a 13.25% return on equity was embedded in the 1996 settlement of Panhandle’s last rate case. *See* Initial Decision P 85, JA393. And since the Commission’s regulations direct that the applicable return on equity is the “rate granted ... in the last rate

proceeding,” 18 C.F.R. pt. 201, Gas Plant Instruction 3(17)(b), the administrative law judge reasoned that 13.25% should be used. Initial Decision P 86, JA394.

The Commission explained that its regulations speak to the last rate “granted.” “The Commission did not grant a 13.25% [return on equity] in the 1996 Panhandle Settlement because it was not stated in the settlement.” Opinion 885 P 36, JA772. Instead, the Commission looked to an earlier order issued during Panhandle’s previous section 4 rate case which granted a 12.13% return on equity. *Id.* P 35, JA772. Although that rate component was superseded by a later settlement before it went into effect, “the regulations do not state that a rate of return ... must take effect; only that it is the rate granted.” *Id.* P 39, JA773.

The Commission affirmed each of these findings on rehearing. *See Panhandle E. Pipe Line Co., LP*, Opinion No. 885-A, 184 FERC ¶ 61,181 (2023) (R.613) (“Opinion 885-A”), JA1236.

2. The Commission’s refund determinations

Panhandle’s proposed rates went into effect on March 1, 2020, following expiration of the five-month suspension period. At the

conclusion of the rate case—which found aspects of the proposed rates to be “unjust and unreasonable”—the Commission directed Panhandle to provide refunds and file a report documenting those payments.

Opinion 885-A P 29, JA1246.

Panhandle’s tariff contains various rate schedules listing the price of different levels of transportation service such as firm, enhanced firm, limited firm, interruptible, and enhanced interruptible. The rate schedules identify three subcomponents of the ultimate rate: (1) Field Zone Transmission Charge, (2) Market Zone Access Charge, and (3) Market Zone Mileage Charge, each of which has its own reservation and usage charge.³ *See Panhandle E. Pipe Line Co., LP*, 187 FERC ¶ 61,112, P 4 (2024) (R.637) (“Refund Order”), JA1516-1517.

Panhandle initially calculated its refunds by comparing the subcomponents of its proposed rates with the subcomponents of the rate ultimately approved by the Commission. Where the approved subcomponent charge was lower than that proposed charge (but higher

³ “The reservation, or demand, charge is for reserving firm-transportation capacity; the usage, or commodity, charge is for the actual transportation of gas.” *United Distrib. Cos. v. FERC*, 88 F.3d 1105, 1129 n.24 (D.C. Cir. 1996).

than the subcomponent in the “refund floor” rate—*i.e.*, Panhandle’s pre-existing rates), Panhandle refunded the difference. Refund Order P 16, JA1521-1522.

The Commission agreed that the appropriate refund floor is Panhandle’s pre-existing rates before this rate case began. *See id.* P 14. The Commission found, however, that “Panhandle’s method of separately calculating refunds for each subcomponent of its rates departs from judicial and Commission precedent, which led to miscalculations of the refunds in this case.” *Id.* P 16, JA1521. The Commission directed Panhandle to determine refunds by comparing the revenues generated by each shipper’s movement under the pipeline’s proposed rates—*i.e.*, all subcomponents charged for a particular movement—to the greater of (1) the revenues generated by the same movement under the finally approved rates, or (2) the revenues generated under the pre-existing rates. *Id.* P 17, JA1523.

The Commission affirmed its findings on rehearing. *See Panhandle E. Pipe Line Co., LP*, 188 FERC ¶ 61,162 (2024) (R.650) (“Refund Rehearing Order”), JA1620; *Panhandle E. Pipe Line Co., LP*, 189 FERC ¶ 61,170 (2024) (R.656) (“Second Refund Order”), JA1657;

Panhandle E. Pipe Line Co., LP, 191 FERC ¶ 61,013 (2025) (R.667)

(“Second Refund Rehearing Order”), JA1768.

SUMMARY OF ARGUMENT

This is a traditional cost-of-service ratemaking case of the type that has become increasingly uncommon with the development of competitive markets. Here, the Commission balanced the competing interests and exercised its technical expertise to appropriately resolve the remaining issues before the Court.

1. The Commission’s determination that Panhandle’s excess deferred tax balances were properly recorded as a regulatory liability and should be amortized back to ratepayers in the pipeline’s rates is well-reasoned and consistent with controlling authority.

The amounts are comprised of tax costs paid by ratepayers that were no longer needed for that purpose following the 2018 reduction in Panhandle’s corporate rate tax rate. Longstanding Commission policy requires those excess amounts to be amortized back to ratepayers. Consistent with that policy, Panhandle entered the surplus into Account 254, recognizing that it was now a separate regulatory construct—a regulatory liability—to be flowed back to ratepayers.

The fact that Panhandle subsequently underwent an internal reorganization that resulted in its tax allowance being terminated does not change that result. The regulatory liability arising from the excess deferred tax balances had been created before that event. And consistent with the Commission's policies and regulations, it was to be returned to ratepayers under future rates. None of this was retroactive or inconsistent with precedent.

2. The Commission appropriately directed Panhandle to remove its deferred tax balances (both excess and otherwise) from the equity portion of its capital structure. These amounts are “risk-free capital” contributed by ratepayers. The Commission has long held that ratepayers should not be required to pay a return on their own contributions. Yet that would be the result of including this money in Panhandle's capital structure. Consequently, the Commission held that deferred tax balances—including excess amounts—should be removed entirely from Panhandle's rate base.

3. The Commission's regulations specify that the return on equity rate applicable to a pipeline's Allowance for Funds Used During Construction Allowance is the “rate granted ... in the last rate

proceeding.” Here, the Commission appropriately found that the last rate explicitly “granted” was that approved in a 1996 order issued during Panhandle’s last rate case, rather than one that was reverse-engineered from Panhandle’s black box settlement at the close of that case.

4. Panhandle claims that the ordered refunds were excessive. But in calculating “the portion” of the “increased rate” found unlawful, as Natural Gas Act section 4(e) directs, the Commission appropriately compared the real-world rate actually paid by shippers under Panhandle’s proposed rates to what those same shipments would have cost under the Commission-approved rate. This approach comports with both the language of section 4(e) and its overriding purpose, which is to provide consumers with most complete protection from unlawful rates practicable.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews Commission orders under the Administrative Procedure Act’s arbitrary and capricious standard. *See* 5 U.S.C. § 706(2)(A). That standard is “deferential,” and a court “may not substitute [its] own judgment for that of the Commission.” *FERC v.*

Elec. Power Supply Ass’n, 577 U.S. 260, 292 (2016) (cleaned up). The Commission’s decision “must” be upheld if it “has examined the relevant considerations and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.” *Id.* (cleaned up). “And nowhere is that more true” than an area like rate design. *Id.* “[I]ssues of rate design are fairly technical and, insofar as they are not technical, involve policy judgments that lie at the core of the [Commission’s] regulatory mission.” *Md. Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1286 (D.C. Cir. 2011) (cleaned up). As a result, the Commission receives “great deference” for “its rate decisions.” *Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 532 (2008).

Moreover, the Court defers to the Commission’s interpretation of any ambiguity in its own regulations, “so long as the interpretation is reasonable and ‘the character and context’ of the agency interpretation entitles it to controlling weight.” *Duke Energy Progress, LLC v. FERC*, 106 F.4th 1145, 1154 (D.C. Cir. 2024) (quoting *Kisor v. Wilkie*, 588 U.S. 558, 576 (2019)); see also *E. Tx. Elec. Coop., Inc. v. FERC*, 90 F.4th 579,

587 (D.C. Cir. 2024) (“We also defer to FERC's reasonable interpretation of the Uniform System of Accounts.”).

II. The Commission Reasonably Directed the Return of Excess Deferred Income Taxes

The Commission distinguished between accumulated deferred tax amounts and excess tax amounts, allowing Panhandle to retain the accumulated balances, but directing it to return excess balances through its future rates. *See* Opinion 885 P 61, JA781. Precedent holds that where an income tax allowance is completely eliminated, the existing deferred tax balances are not “excess.” *Id.* P 67, JA786. But where a change in income taxes results in excess tax balances, the pipeline’s obligation to return that surplus to its ratepayers is triggered. *Id.* P 83, JA795.

“In the event that a pipeline has [excess tax balances] due to a change in tax rates and no longer needs such amounts to recover future tax liability, the Commission’s long-standing policy has been to ‘flow back the effect of timing differences between the Commission approved income tax allowance and the IRS tax liabilities.’” *Id.* P 48, JA775 (quoting Order 849, 164 FERC ¶ 61,031, at P 140); *see also id.* P 81, JA794 (discussing decades-old policy).

This is so regardless of whether, as here, the pipeline subsequently undergoes a corporate reorganization that results in the elimination of its income tax allowance. “Panhandle was organized as a corporate tax paying entity on January 1, 2018, and on the date that the tax rate reduction of 35 percent to 21 percent from the Tax Cuts and Jobs Act came into effect, an EDIT balance of \$139,210,958 was created on Panhandle’s books.” *Id.* P 82, JA794. Panhandle’s excess deferred tax balance continued to grow until its corporate reorganization, whereupon it was no longer permitted to collect an income tax allowance in its rates.

A. It Matters Whether Deferred Tax Balances Are Excess or Not

The Commission correctly distinguished between deferred tax balances and excess tax balances. There are salient differences between the two categories of revenue:

First, ordinary deferred tax amounts represent the *correct* amount of revenues to match the cost of the pipeline’s future tax obligations (Opinion 885 PP 69-70, JA786-789), whereas excess deferred tax balances arise when a tax rate reduction means that the pipeline has collected *more* than it needs to match those costs. “Rates designed

pursuant to the normalization principles described above do not ‘over-collect’ the pipeline’s tax expenses in the early years. Rather, such rates require shippers receiving service in the early years to pay their properly allocated share of the pipeline’s tax expenses for the period of their service.” *Id.* P 74, JA790 (citations omitted). So if a pipeline has accumulated deferred tax amounts when its tax allowance is removed, “those ADIT amounts represent tax expenses that the Commission previously found were properly allocated to the approved rates in effect” *SFPP, L.P.*, 166 FERC ¶ 61,142, P 94 (2019) (“Opinion 511-D”). They are not “excess” simply because they will not ultimately be paid to the IRS.

Excess deferred tax amounts, by contrast, arise from a change in tax rates. “[W]hen tax rate reductions become law, pipelines amortize their EDIT balances in future rates.” Opinion 885 P 81, JA794. This is “long-standing Commission policy—codified in our regulations, accounting guidance, policy statements, and even through recent practice in FERC Form 501-G proceedings following the Tax Cut and Jobs Act.” *Id.* (citing 18 C.F.R. § 154.305(d), *Accounting for Income Taxes*, Docket No. AI93-5-000, at Item 8 (Apr. 23, 1993), *Accounting and*

Ratemaking Treatment of Accumulated Deferred Income Taxes and Treatment Following the Sale or Retirement of an Asset, 165 FERC

¶ 61,115, P 40 (2018) (“ADIT Policy Statement”); and *Dominion Energy Transmission*, 166 FERC ¶ 61,178 (2019)). None of the precedent Panhandle cites in support of its position (Br. 25-39) involved a pipeline being permitted to retain excess deferred tax balances.

The *SFPP* case, for example, involved a master limited partnership that had enjoyed a tax allowance. Following *United Airlines*, however, the Commission changed its policy to disallow tax allowances for master limited partnership pipelines. See Revised Policy Statement, 162 FERC ¶ 61,227, at P 47. It therefore removed the income tax allowance from SFPP’s cost of service. *SFPP, L.P.*, 162 FERC ¶ 61,228, P 21 (2018) (“Opinion 511-C”). The Commission permitted the pipeline to “eliminate” its income tax balance from its rates. Opinion 511-D, 166 FERC ¶ 61,142, at P 93. This Court upheld both decisions. *SFPP*, 967 F.3d at 794-95. That case did not involve

any reduction in the applicable tax rate and no portion of SFPP's deferred income tax balance was deemed to be "excess."⁴

In another case, a pipeline had been organized as a master limited partnership and consequently eliminated its deferred tax balances in the wake of the Commission's post-*United Airlines* policy. *Enbridge Energy Ltd. P'ship*, 169 FERC ¶ 61,109 (2019). When the pipeline subsequently reorganized as a tax-paying entity, it reinstituted its income tax allowance and began accumulating deferred income taxes with a starting balance of zero. The Commission allowed this. *Id.* P 27. There was no issue about excess tax balances.

Second, deferred tax is ultimately owed to the *IRS*, whereas excess deferred tax amounts are ultimately owed to the *ratepayer*. It is precisely because accumulated deferred taxes are owed to the IRS that

⁴ There are references to SFPP having "excess ADIT." *See, e.g.*, Opinion 511-D, 166 FERC ¶ 61,142 at P 104 ("We ... reject the shippers' argument that the Commission's normalization policy provides notice to participants that SFPP is required to adjust rates to reconcile excess ADIT sufficient to satisfy the bar on retroactive ratemaking.") In context, however, the reference is actually to *stranded* Accumulated Deferred Income Taxes, not *excess* taxes, because there was no reduction in tax rates in that case and the Commission specifically distinguished circumstances in which a tax rate reduction results in such surplus amounts. *Id.*

drives the conclusion that ratepayers have no equitable interest in them. Money paid in rates for the pipeline's future tax liabilities is not held in trust for the benefit of ratepayers. "ADIT is a regulatory construct to ensure that regulated entities do not earn a return on cost-free capital based on timing differences between federal and state tax liability and Commission ratemaking." *Enbridge*, 169 FERC ¶ 61,109, at P 24. That money is owed to the IRS, and it is only due to the timing differences that such monies have "accumulated."

Excess deferred tax balances are different. They are created when Congress reduces the applicable tax rate. Where a tax reduction results in more deferred tax than necessary, the excess becomes a regulatory liability that is owed back to the ratepayers. "[O]nce ADIT is reclassified to a regulatory asset or liability, these deficient ADIT and excess ADIT balances can no longer be characterized as deferred tax amounts to be settled with the IRS." Opinion 885 P 84 (quoting ADIT Policy Statement, 165 FERC ¶ 61,115, at P 40), JA796.

Had Panhandle remained a tax-paying entity—as it was for 18 months following the Tax Cuts and Jobs Act—that would have been the end of the story. But Panhandle voluntarily changed its corporate form,

and proposes that this change of corporate form allows it to intercept funds that would otherwise be flowed back to ratepayers. Panhandle has cited no evidence that Congress intended to allow a pipeline, newly-reorganized as a master limited partnership, to convert to its private use money that would have otherwise flowed back to ratepayers had it retained its original corporate form. Nor has it cited any precedent in which the Commission has allowed a pipeline to retain *excess* deferred tax balances.

It is true that ratepayers “have no equitable interest or ownership claim on” accumulated deferred tax amounts (Opinion 885 P 70, JA787), but it is just as true that *pipelines* have no equitable interest or ownership claim on excess deferred tax balances. Deferred tax is collected for the sole purpose of offsetting future tax liabilities based on tax rates then in effect; once the tax rates change, the portion of the tax allowance that exceeds what will be owed in the future becomes a liability to be amortized back to ratepayers. “In other words, the fact that Panhandle subsequently converted to [a master limited partnership] does not alter the proper treatment of the EDIT amounts

that had already been reclassified as a regulatory liability in Account No. 254 under Commission precedent.” Opinion 885 P 85, JA797.

Panhandle contends that, because stranded deferred tax balances are not amortized to ratepayers when a pipeline’s tax burden is eliminated entirely, excess deferred taxes necessarily belong to the pipeline. Br. 40. Not so. As the Commission explained, excess deferred taxes are a “separate regulatory construct” and the obligation to amortize those funds back to ratepayers is likewise separate. Opinion 885-A P 116, JA1289. “Because Panhandle’s EDIT in Account No. 254 reflects a regulatory liability, rather than deferred taxes like ADIT, EDIT is not subject to the same normalization restrictions that ADIT balances have and need not be extinguished under these circumstances.” Opinion 885 P 84, JA796.

Panhandle invokes the Commission’s Revised Policy Statement Rehearing Order to support its position that it was free to remove excess balances from Account 254. Br. 39. In amplifying the statement that, “when [a master limited partnership] pipeline’s income tax allowance is eliminated from cost of service, previously accumulated ADIT balances may also be eliminated,” the cited footnote identifies

accounts from which balances would be removed, including “excess ADIT” in Account 254. Revised Policy Statement Rehearing Order, 164 FERC ¶ 61,030, at P 13 & n.27. But Panhandle’s argument suffers from at least two grave defects.

First, that policy did not and does not apply to Panhandle. The policy applied to pipelines that had deferred tax balances as master limited partnerships. Panhandle, however, had deferred tax balances as a *corporation*.

Second, the Commission took pains to emphasize—specifically regarding whether “ADIT sums should be returned to ratepayers,”—that, “in future proceedings, the Commission will consider any arguments regarding not only the application of this policy to the facts of the case, but also any arguments regarding the underlying validity of the policy itself.” *Id.* That is exactly what the Commission did here.

B. The Obligation to Return Excess Tax Balances Survives Elimination of the Tax Allowance

It is true that the Commission has prescribed that excess deferred tax balances be amortized back to ratepayers via offsets against future tax allowances. *See* Order 849, 164 FERC ¶ 61,031, at P 119 (requiring “pipelines to reduce their income tax allowance ... reflecting . . . the

reduced income tax rates under the Tax Cuts and Jobs Act” in new FERC Form No. 501-G). And it is true that, where it has spoken to the question, the Commission has permitted pipelines to keep deferred tax balances in the absence of an ongoing tax liability. *See, e.g., SFPP*, 967 F.3d at 801; *Enable Gas Transmission, LLC*, 166 FERC ¶ 61,176 (2019); *E. Tenn. Natural Gas, LLC*, 165 FERC P 61,198 (2018). In each of those cases, the company had previously enjoyed a tax allowance as part of a master limited partnership that was subsequently eliminated, resulting in deferred tax balances with no ongoing income tax allowance in future rates. None of those cases, however, involved *excess* deferred taxes.

Where the excess deferred tax balance is associated with an asset retired or sold—*i.e.*, for which the entity no longer has an ongoing tax allowance—the Commission has found that the “excess ADIT balance is more reflective of a regulatory liability or asset” rather than “deferred taxes that are still to be settled with the IRS.” ADIT Policy Statement, FERC ¶ 61,115, at P 40. In such circumstances, the excess deferred tax must continue to be amortized back to ratepayers notwithstanding that

there are no going-forward tax allowances associated with that asset.

Id.

The Commission reasonably applied the same principles here. Panhandle was permitted to retain its \$346.3 million accumulated deferred tax balance following the elimination of its tax obligation. *See* Opinion 885 P 68, JA786. But here, uniquely, at the time the pipeline changed its corporate structure and eliminated its tax obligation, it was holding \$276.7 million in excess of funds that would “match” its previously-anticipated tax burden.

The Commission acknowledged there is no exact precedent for Panhandle’s situation: “[T]he Commission and the courts have never addressed this factual scenario, in which a pipeline corporation ... was subject to a Congressionally-mandated tax change and subsequently made a decision to convert to [a master limited partnership] structure after that tax rate change had occurred.” Opinion 885 P 81, JA794. “As a corporation in 2018, Panhandle had an obligation under section 154.305(d) to amortize EDIT balances in its rates on a going-forward basis.” Opinion 885-A P 113, JA1287. Panhandle “properly followed the Commission’s regulation to reclassify EDIT amounts as a regulatory

liability under Account No. 254”; accordingly, the Commission found that Panhandle “is now required to follow the Commission’s ratemaking treatment of that account.” Opinion 885 P 84, JA795-796 (citation omitted). Although the standard mechanism for amortizing such funds is via reductions to future tax allowances, there is no reason in principle why the absence of such an allowance means the pipeline gets to keep its ratepayers’ excess tax payments.

Once a portion of Panhandle’s deferred tax balances became excess and were placed into Account 254, they “became a regulatory liability,” which could be returned “to ratepayers as a credit to its cost of service in future rates.” Opinion 885-A P 116, JA1289. “Account 254 includes revenues or gains realized that a public utility is required, or expected to be required, to reduce future rates.” *So. Cal. Edison Co.*, 166 FERC ¶ 61,006, n.33 (2019). Reducing future tax allowances is not the exclusive mechanism for returning amounts in Account 254. Opinion 885 P 85, JA796. As the Commission explained, “Panhandle can return such amounts to ratepayers as a credit to its cost of service in future rates. Opinion 885-A P 116, JA1289.

In short, Panhandle was a formerly tax-paying entity whose tax rates were reduced. That cut resulted in excess deferred tax balances. Once the tax change rendered those funds “excess,” they ceased being taxes owed to the IRS and became a liability owed to ratepayers. Opinion 885 P 84, JA795-796. Panhandle’s subsequent change of corporate form did not extinguish that liability.

C. Requiring Panhandle to Return Excess Deferred Taxes Is Not Retroactive Ratemaking

Amortizing excess deferred tax balances in future rates does not violate the rule against retroactive ratemaking, because it does not increase any past rate. Nor is it predicated on the notion that Panhandle’s prior rates “were in retrospect too high.” *SFPP*, 967 F.3d at 803. On the contrary, “[s]ince ADIT arises from timing differences, a pipeline does not ‘overcollect’ ADIT; rather, ratepayers pay their properly allocated share.” Opinion 885-A P 80, JA1269. Excess funds exist only because of present changes to future tax liabilities.

As discussed above, due to those “timing differences” between collecting the tax allowance in rates and paying its taxes, Panhandle accrued deferred tax balances. Until the Tax Cuts and Jobs Act went into effect on January 1, 2018, Panhandle was collecting the correct

amount in the tax allowance provided for in its rates. Since then, however, the newly-reduced tax rate has rendered a portion of that amount—\$276.7 million of it—“excess.” “[I]t has been a long-standing policy for the Commission to require natural gas companies to flow back the effects of timing differences between the Commission approved income tax allowances and the IRS tax liabilities.” Order 849, 164 FERC ¶ 61,031, at P 140 (citation omitted). The Commission’s regulations require a pipeline to return the resulting excesses to its ratepayers in future rates: “an interstate pipeline must continue to include, as an addition or reduction to rate base, any deficiency or excess attributable to ... changes in tax rates ... until such deficiency or excess is fully amortized” 18 C.F.R. § 154.305(d)(4). Indeed, the Commission noted that § 154.305(d) “and the Commission’s amortization policies since at least 1993 have placed Panhandle and its shippers on notice that rates may be subject to adjustment at a later date should tax rates change.” Opinion 885 P 88, JA799.

This Court has found that, where purchasers and sellers are on notice that rates may be subject to future adjustment, such adjustments do not violate the rule against retroactive ratemaking. “Instead, it

changes what would be purely retroactive ratemaking into a functionally prospective process.” *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 797 (D.C. Cir. 1990); *see also Cogentrix Energy Power Mgmt., LLC v. FERC*, 24 F.4th 677, 685 (D.C. Cir. 2022) (“The filed rate doctrine simply does not extend to cases in which buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at the time of service.”) (internal quotations omitted).

In early 2018, the Commission specifically explained that the new tax legislation would result in excess deferred tax balances to be returned to cost-of-service ratepayers:

As a result of the Tax Cuts and Jobs Act reducing the federal corporate income tax rate from 35 percent to 21 percent, *a portion of an ADIT liability* that was collected from customers will no longer be due from ... interstate natural gas pipelines ... to the IRS and *is considered excess ADIT, which must be returned to customers* in a cost-of-service ratemaking context

Inquiry Regarding the Effects of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates, 162 FERC ¶ 61,223, P 13 (2018) (“Tax Cut Inquiry”) (emphasis added).

A few months later, the Commission reiterated its longstanding policy that natural gas companies must “adjust [their] deferred tax liabilities and assets for the effect of the change in tax law or rates in the period that the change is enacted,” by recognizing such impacts in Account 254 for ultimate return to ratepayers. ADIT Policy Statement, 165 FERC ¶ 61,115, at P 9; *see also The Empire Dist. Elec. Co.*, 166 FERC ¶ 61,164, P 29 (2019) (“[P]ublic utilities ... were required to re-measure their ADIT balances when the new tax rate was known and measurable (i.e., when the Tax Cuts and Jobs Act was passed, December 22, 2017), and to record ... a regulatory liability (Account 254) associated with excess ADIT that is probable of future refund to customers.”).

Therefore, Panhandle understood that it must—and, in fact did—reclassify the excess deferred tax balance as a regulatory liability in Account 254 to be amortized back to its ratepayers against its cost-of-service rates going forward. *See* Opinion 885 P 87, JA798. Opinion 885-A P 118, JA1291. Panhandle’s subsequent decision to convert its ownership structure has no bearing on this pre-existing obligation, *see* Opinion 885-A P 126, JA1290; its change of corporate form did not

change the “cost-of-service ratemaking context” in which excess deferred taxes “*must* be returned to customers.” Tax Cut Inquiry, 162 FERC ¶ 61,223, at P 13 (emphasis added).

III. Balances Collected in an Income Tax Allowance Must Be Removed Entirely from Capital Structure

Pipelines may recover tax costs but may not profit from them.

Deferred tax amounts are “deducted from rate base not to give shippers the ‘time value’ of ADIT prior to payment to the IRS, but rather, to ensure that pipelines do not gain a benefit from ADIT by way of earning a return on cost-free capital, which is the reason it is deducted from rate base.” Opinion 885-A P 79, JA1269; *see also SFPP*, 967 F.3d at 800.

Both deferred tax balances represent “cost-free capital.” Opinion 885-A P 79, JA1269. They were collected by Panhandle from ratepayers to pay taxes to the IRS. Panhandle’s rates were “reasonable” in part because deducting deferred tax balances from rate base ensured that ratepayers would not have to pay Panhandle a rate of return on the money they had paid Panhandle to cover its tax liabilities.

The basic formula is:

$$\begin{array}{l} \text{Gross Plant} \\ \text{-Accumulated Depreciation} \\ \hline = \text{Net Plant} \\ \text{-Accumulated Deferred Income Taxes} \\ \text{+Working Capital} \\ \hline = \text{Rate Base} \end{array}$$

RATES MANUAL 8. All else being equal, the larger the deferred tax balance, the smaller the rate base. So Panhandle's elimination of that balance—which the Commission has found is appropriate where the tax allowance has been terminated (Opinion 885 P 98, JA803)—will tend to increase the value of its rate base.

To calculate a pipeline's return, its rate base is multiplied by its rate of return. See RATES MANUAL 14. That rate of return is a function of the pipeline's debt-to-equity capitalization ratio. *Id.* 15; see also *supra* p. 16. A pipeline earns a higher return on equity than it does on debt, so the more its debt-to-equity ratio is slanted towards equity, the higher the multiplier that will be applied to rate base. By reclassifying all of its accumulated and excess deferred tax balances as "equity," Panhandle proposes to increase its return in two ways at once: first by

increasing the rate base itself and second by increasing the multiplier applied to that rate base—all with the same “cost-free capital.”

Panhandle’s reorganization as part of a master limited partnership extinguished its future tax liabilities, meaning they are no longer part of its cost of service. Consequently, the Commission concluded it is appropriate to eliminate those deferred tax balances from its cost of service. Opinion 885 P 98, JA803. But by assigning deferred tax balances to the equity portion of its capital structure, Panhandle has sought to retain such amounts in its cost of service in a way that increases its return.⁵ Because “the capital structure of a utility determines the [return on equity] of the utility,” which “is a component in calculating the cost of service for a utility’s rate,” the Commission concluded that “Panhandle must ... adjust its capital structure to eliminate ADIT and EDIT—otherwise they will continue to be embedded in the cost of service.” Opinion 885-A P 145, JA1304-1305.

⁵ Panhandle has represented that the change to its equity ratio is worth “approximately \$6.5 million” to its return. Jan. 2024 Reh’g Req. 16 (R.579).

Panhandle asserts that its deferred tax balances are “retained earnings.” Br. 42. But they are not “earnings” at all; they are an allowance. They were collected from ratepayers to pay taxes to the IRS. Panhandle incurred no risk and forewent no other investment opportunities to obtain these funds. Hence, the underlying premise of granting a return on equity for such monies does not apply.

Panhandle is wrong to suggest that this position is inconsistent with *SFPP*. Br. 44. There the Commission did not address whether such funds—or excess deferred taxes—should be reclassified as “retained earnings” and added to equity for ratemaking purposes.

The Commission took the view that the same monies that should be deducted from rate base to lower rates as of June 30, 2019, should not, on July 1, 2019, be added to equity to *raise* rates when the only change was to Panhandle’s corporate form. Panhandle’s cost of service did not increase simply because it found itself with access to roughly a quarter billion dollars it could spend as it wished rather than pay to the IRS. The Commission’s decision not to allow Panhandle to force its ratepayers to pay a rate of return on their own funds is consistent with

the premises underlying cost-based ratemaking and well within the Commission's authority.

IV. The Commission Correctly Established the Equity Cost Rate for Panhandle's Construction Allowance

A pipeline may include a Construction Allowance in its rate base and earn a "reasonable rate of return" on that allowance. *Mid-Tex Elec. Co-op., Inc. v. FERC*, 773 F.2d 327, 331-32 (D.C. Cir. 1985). The rate of return is governed by regulations providing that, "[t]he cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used." 18 C.F.R. pt. 201, Gas Plant Instruction 3(17)(b). The Commission found that "the rate granted in the last rate proceeding ... was 12.13% in Opinion No. 404." Opinion 885 P 44 (citing *Panhandle E. Pipe Line Co.*, 74 FERC ¶ 61,109 (1996) ("Opinion 404")), JA774.

Panhandle contends that the Commission erred in making this finding and that, instead, "the rate granted in the last rate proceeding" is the 13.25% rate it contends is reflected in a settlement resolving multiple proceedings—including the proceeding in which Opinion 404

was issued. Br. 45. Thus, Panhandle argues, either 13.25% was the last rate granted, or there was no last rate granted, in which case it should be permitted a rate of 13.25%, which it contends was supported in the record. Br. 45.

Panhandle is wrong. In early 1996, after specifically considering the question of return on common equity, the Commission granted Panhandle a rate of 12.13% on common equity. Opinion 404, 74 FERC ¶ 61,109, at p. 61,363.

Opinion 404 remanded one issue to the administrative law judge for further fact finding, but not this one. *Id.* at 61,353 (remanding only “issue of the appropriate adjustment to Panhandle’s rate design volumes to reflect non-affiliate discounts”). Parties timely sought agency rehearing of Opinion 404, but the Commission had not ruled on those rehearing applications when it approved the settlement resolving that case and others (1996 Settlement). *Panhandle*, 77 FERC ¶ 61,284, at p. 62,253.

The regulations in question “do not state that a rate of return on common equity must take effect; only that it is the rate granted.” Opinion 885 P 39 (citing 18 C.F.R. pt. 201, Gas Plant Instruction

3(17)(b)), JA773. The Commission’s findings on rate of common equity in Opinion 404 were not provisional, tentative, or non-final simply because they were subject to subsequent alteration. *Cf.* Br. 46. The Natural Gas Act gives the Commission freedom to “modify” the order under section 19(a), which it did in approving the subsequent settlement. 15 U.S.C. § 717r(a). But the Act also provides that “[t]he filing of an application for rehearing . . . shall not, unless specifically ordered by the Commission, operate as a stay of the Commission’s order.” 15 U.S.C. § 717r(c); *see also id.* § 717o (“Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe); *Allegheny Def. Project v. FERC*, 964 F.3d 1, 19 (D.C. Cir. 2020) (en banc) (aggrieved party may petition for judicial review when the Commission does not act on the merits of a request for rehearing within 30 days).

In approving the 1996 Settlement, “[t]he Commission did not grant a 13.25% [equity return] in the 1996 Panhandle Settlement because it was not stated in the settlement.” Opinion 885 P 36, JA772. Panhandle could have negotiated a provision that specifically set forth a cost rate for common equity in that 1996 Settlement, just as it

negotiated a specific rate for depreciation. *Panhandle*, 77 FERC ¶ 61,284, at p. 62,256. It did not do this. Accordingly, when presented with the settlement proposal, the Commission did not have occasion to “grant” *any* rate for common equity. Moreover, it explained that “approval of the subject Offer of Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.” *Id.* p. 62,263, Ordering Paragraph (D). The 1996 Settlement was a “black box”: “In approving a black box settlement, the Commission reviews whether an overall settlement is just and reasonable, and does not make individualized determinations as to specific components of the settlements rates.” Opinion 885-A P 53, JA1256.

Panhandle’s assertion that Opinion 404 “was—by FERC’s own description—‘not a final decision,’ nor a ‘merits decision’ as to Panhandle’s proper rates” is misleading. Br. 46 (quoting *Panhandle*, 78 FERC ¶ 61,180, at p. 61,747). The quoted language appears in the context of rejecting an argument that “the Commission cannot approve the settlement because the settlement rates deviate from the just and reasonable rates determined by the Commission in Opinion No. 404.” *Panhandle*, 78 FERC ¶ 61,180, at p. 61,747. This language merely

reiterates that the Commission still retained authority under the Natural Gas Act to modify Opinion 404. *See* 15 U.S.C. §§ 717r(a), (c).

V. The Commission Properly Calculated Panhandle’s Refund Obligation

A. The Commission is Obligated to Afford Customers “Complete” and “Effective” Protection Against Unlawful Rates

Section 4(e) of the Natural Gas Act provides that, if a pipeline begins charging its proposed rates (sometimes called “motion rates”) during the course of a rate proceeding, the Commission may require it “to keep accurate accounts in detail of all amounts received by reason of such increase,” and order refunds of “the portion of such increased rates or charges by its decision found not justified.” 15 U.S.C. § 717c(e). To ensure that the pipeline is not made worse off by seeking a rate increase, the refund obligation is limited to amounts received above the pre-existing lawful rates (the “refund floor”). *See supra* p. 6 (discussing statutory scheme). The Commission’s congressional charge in section 4(e) is “to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges.” *Atl. Refin. Co. v. Pub. Serv. Comm’n*, 360 U.S. 378, 388 (1959).

B. The Commission Directed Panhandle to Calculate Refunds Based on the Real-World Rate Paid by Shippers

1. The Commission's directive

In the rate case below, the Commission found that aspects of Panhandle's proposed rates for service were unlawful. And because Panhandle had been charging shippers those rates during the proceeding, the Commission ordered refunds. *See* Opinion 885-A P 29, JA1245-1246.

To calculate the required refunds, the Commission directed Panhandle to take a straight-forward approach: Consider each shipper on a contract-by-contract basis and look at the money received for their shipments under the proposed rates. Refunds are due when the revenues generated under the proposed rates exceed the greater of the rates approved in Opinion 885 ("Opinion 885 Rates"), or the pre-existing rates, which serve as the refund floor. *See* Refund Order PP 14, 17, JA1520, 1523. This real-world approach "aligns the total payments that each shipper made to Panhandle during the refund period with the rates determined in Opinion No. 885 when considering the limitations on refunds imposed by the refund floor." *Id.* P 17, JA1523.

2. Panhandle's contrary approach

Rather than look at the bottom-line rate invoiced to and paid by customers, Panhandle teased apart the various components of its proposed rates. *See supra* p. 28 (discussing Panhandle's rate components). Where the proposed subcomponent was higher than before, Panhandle refunded the amount by which it exceeded the approved charge in Opinion 885, subject to the refund floor (*i.e.*, the price of that charge in the pre-existing rates).

The difference of the two approaches can be illustrated by reference to the table below, which identifies the charges associated with a particular Panhandle contract.

TABLE 2							
AIC EFT 11745 rate calc	Pre-Existing Rates		Motion Rates		Opinion No. 885 Rates		
	Reserv	Comm	Reserv	Comm	Reserv	Comm	
FZ Trans (Fixed)	0.1555	0.0195	0.1095	0.0122	0.0757	0.0106	
Access (Fixed)	0.1085	0.0006	0.0816	0.0002	0.0399	0.0009	
Mileage @ 6 blks	<u>0.1182</u>	<u>0.0150</u>	<u>0.3516</u>	<u>0.0276</u>	<u>0.2322</u>	<u>0.0240</u>	
Total rate	0.3822	0.0351	0.5427	0.0400	0.3478	0.0355	

See Protest of Ameren Ill. Co. 7, filed Dec. 12, 2023 (R.623), JA1459.

Under the Commission's method, refunds are based on the total rate paid by the shipper, with all "subcomponents ... considered

together as one filed rate.” Refund Order P 16, JA1522. By contrast, Panhandle, in the above example, only looked at the Market Zone mileage charge (“Mileage@6 blks”). This difference can have a significant impact on refund amounts. *See, e.g., id.* n.37, JA1521.

C. The Commission’s Approach is Consistent With the Language of the Statute and With Agency and Court Precedent

1. Consistent with the language of Natural Gas Act section 4(e)

Panhandle claims the refund methodology used here contravenes the Act’s “text and structure” (Br. 49), but it flows directly from the language of section 4(e).

The Commission’s refund authority is triggered when “increased rates or charges” go into effect during a rate case. 15 U.S.C. § 717c(e). Here Panhandle’s proposed rates became effective on March 1, 2020. *See* Refund Order P 2, JA1515. And at the close of a rate case, section 4(e) authorizes the Commission to order a pipeline “to refund, with interest, the portion of such increased rates or charges by its decision found not justified.” 15 U.S.C. § 717c(e).

That is precisely what the Commission did. In comparing the revenues generated from a particular shipment under Panhandle’s

proposed rates to the greater of the revenues generated by that same shipment under the pre-existing rates or the Opinion 885 Rates, the Commission's methodology isolates the "portion of [the] increased rates or charges ... found not justified." *Id.*

Nothing in the text of section 4(e) requires the Commission to calculate refunds on a charge-by-charge level. *See* Refund Rehearing Order P 13, JA1626. The statute speaks to the refund of "rates or charges," which plainly can embrace the total, all-encompassing rate or the charge paid by a shipper for moving gas from point A to point B. The Commission's approach, which looks at the revenues generated from a shipment, also is consistent with the language of section 4(e)'s accounting provision, which requires pipelines to account for "the amounts received" from shippers.

In enacting section 4(e), "Congress did not specify how the refunds should be computed," instead leaving it "to the discretion of the agency." *Belco Petroleum Corp. v. FERC*, 589 F.2d 680, 686 (D.C. Cir. 1978). The Commission's approach is well within that discretion.

2. Consistent with ordinary usage

Treating all charges assessed for a shipment as the “rate charged to shippers” also is consistent with ordinary usage. A “rate” is “[a]n amount paid or charged for a good or service.” *Rate*, *Black’s Law Dictionary* (8th ed. 2004); *see also Rate*, Merriam-Webster.com (“an amount of payment or charge based on another amount”) <https://perma.cc/2E2S-CH4G>; *Charge*, *Black’s Law Dictionary* (“the price of, or rate for, something”). The Interstate Natural Gas Association of America similarly explains that a “rate” encompasses subsidiary charges as it is “[t]he unit charge or charges made by an energy company or utility to customers.” *See* INGAA, Glossary, <https://perma.cc/9D97-3Q2D>.

Courts also describe a “rate” as the total of the constituent charges that may be assessed on a shipment. For instance, in *Valley Gas Company v. Federal Power Commission*, 487 F.2d 1182 (D.C. Cir. 1973), the Court explained that “[t]he rate for pipeline general service normally consists of two parts: (1) a commodity charge ... and (2) a demand charge.” *Id.* at 1184 n.7; *see also Off. of Consumers’ Counsel v. FERC*, 783 F.2d 206, 217 n.23 (D.C. Cir. 1986) (“A pipeline’s rates

usually consist of two parts, a demand charge and a commodity charge”). The Court has thus recognized that, because a rate is the sum of its constituent parts, there can be “changed and unchanged components of [a] proposed higher rate.” *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 514 (D.C. Cir. 1985).

3. Consistent with precedent

The refund methodology ordered here is consistent with the Commission’s policy of “using the entirety of the revenues derived from a rate schedule [as] the standard method of calculating refunds.” *Kern River Gas Transmission Co.*, 129 FERC ¶ 61,240, P 195 (2009); *see also* Refund Order P 16, JA1522 (collecting cases). Panhandle’s charge-by-charge approach would “permit utilities to routinely shield refunds whenever certain component charges of a rate fall below the level of the prior component charges, even when application of the complete rate schedule produces an overall increase. Such a result would be highly undesirable [and] is not required” by the statute. *Niagara Mohawk Power Corp.*, 40 FERC ¶ 61,335, pp. 62,021-22 (1987) (discussing Federal Power Act section 205(e), the ratemaking analog to Natural Gas Act section 4(e)).

Indeed, Panhandle itself has recognized that an analysis of the total revenue generated from a shipment is the proper focus under section 4(e): “Panhandle responds that, for refund purposes, the focus must be on the overall revenue effect of the filing and that demand and commodity components do not form independent bases for refunds.” *Panhandle E. Pipe Line Co.*, 73 FERC ¶ 61,287, at p. 61,789 (1995); *see also id.* at 61,790 (“Panhandle ... correctly viewed the demand and commodity components as components of rates for one service using the entirety of revenues for such service to determine the refunds”).

4. Consistent with purpose of the Natural Gas Act

“The overriding intent of the Congress” in section 4 of the Act is “to give full protective coverage to the consumer.” *Atl. Refin. Co.*, 360 U.S. at 389. Consistent with this aim, the Commission selects a refund methodology that “best place[s] customers in approximately the same position they would have been in” had they not been subjected to an unlawful rate increase. Refund Rehearing Order P 15 (cleaned up), JA1628. In this case, since Panhandle “shippers cannot take service without paying for all the rate subcomponents” associated with their movements on the system, “examining ‘the entirety of the revenues

derived from a rate schedule” is necessary. *Id.* P 14 (quoting Refund Order P 16), JA1627.

This approach also comports with the Supreme Court’s directive that the agency “look at the backdrop of the practical consequences” of its refund remedy. *FPC v. Tenn. Gas Transmission Co.*, 371 U.S. 145, 154-55 (1962). Here, the Commission explained that considering the total revenues generated from a particular shipment “help[s] maintain accurate comparability.” Refund Rehearing Order P 14, JA1627.

Having refund amounts fluctuate due to “cost shifts between subcomponents would be arbitrary given that shippers must pay for all subcomponents to receive service.” *Id.* Focusing on total revenues, rather than how pipelines choose to designate the various components of the ultimate charge to shippers, also avoids arbitrary outcomes among pipelines “given that tariff designations can vary from tariff to tariff at each pipeline’s discretion.” *Id.* P 13, JA1626.

In sum, the Commission’s refund methodology is consistent with the language of section 4(e), Commission and court precedent, and the remedial discretion bestowed upon it by Congress. *See* Refund Rehearing Order P 13, JA1626; *see also XO Energy MA, LP v. FERC*, 77

F.4th 710, 716 (D.C. Cir. 2023) (“In fashioning remedies, the Commission’s discretion is at its zenith.”)

D. Panhandle’s Objections Lack Merit

Panhandle raises several additional arguments that the Commission’s refund methodology is at odds with section 4(e) of the Act or is otherwise arbitrary. None has merit.

1. Practicalities

Panhandle claims that limiting “rate” to a particular subcomponent “makes practical sense” since a particular shipment may not incur all possible charges in a rate schedule. Br. 51, 56. But the total “rate” in the Commission’s methodology only considers the revenues generated from a particular shipment—*i.e.*, only the specific charges incurred. So “where a shipper’s rate under a particular service agreement increased due to the” proposed rates, “the refund is not larger than the revenue collected from the rates associated with that service agreement.” Second Refund Rehearing Order P 26 n.78, JA1782. And where the total rate for a particular type of service is less than the pre-existing rate for that service, no refunds are due. As the Commission explained, “for short-haul shippers” taking “Rate Schedule [Firm Transmission] service,” the proposed rate “actually went down

compared to the Pre-Existing Lawful Rate.” *Id.* P 26 n.76, JA1781; *cf.* Br. 57 (claiming that the Commission “completely elided” the distinction between charges applicable to short-haul and long-haul shippers).

2. Forfeited statutory arguments

Panhandle also contends that the Commission’s refund methodology gives the term “rate” in section 4(e) of the Act a different meaning than that used in sections 4(c) and 4(d), conflates “rate” with the concept of a “rate schedule,” and conflicts with the “broader structure” of section 4. Br. 52-55. None of these arguments was presented to the Commission on rehearing, so the Court lacks jurisdiction to consider them. *See* 15 U.S.C. § 717r(a). Instead, Panhandle’s rehearing arguments focused on section 4(e)’s reference to that “portion of such increased rates.” *See* June 2024 Reh’g Req. 6-16 (R.640), JA1539-1549; *see also* Jan. 2025 Reh’g Req. 5-7 (R.660) JA1730-1732. This falls short of a petitioner’s obligation to “raise each argument with specificity.” *Food & Water Watch v. FERC*, 28 F.4th 277, 287 (D.C. Cir. 2022) (internal quotations omitted); *see also FNGE Ltd. v. FERC*, 77 F.4th 842, 861 (D.C. Cir. 2023) (“Our jurisdiction is

strictly limited by the specific arguments a petitioner makes in its application for rehearing”).

In any event, the purported inconsistencies arising from the Commission’s reading are illusory. The requirement that pipelines file schedules showing “all rates and charges” (15 U.S.C. § 717c(c)) and any “change or changes” thereto (*id.* § 717c(d)) does not show a “rate” must mean the cost component making up a shipment’s ultimate cost. As the Commission explained, “tariff designations can vary from tariff to tariff at each pipeline’s discretion.” Refund Rehearing Order P 13, JA1626. One pipeline could state a single price for a particular type of service, while another lists the constituent costs making up the final rate. The reference to “rates or charges” in subsections 4(c), (d), and (e) is broad enough to capture these differences. But “as a practical matter, tariff designations, while labelled as a rate in the tariff, are in fact subcomponents of the total rate charged to shippers.” *Id.*

Nor does the Commission’s interpretation conflate the term “rates” with “rate schedules.” Br. 52-53. A “rate” is the amount “charged to shippers for a particular service.” Refund Rehearing Order P 13, JA1626. A “rate schedule” includes “a statement of a rate for a

particular” transportation service, but also the attendant “terms, conditions, classifications, practices, rules, and regulations.” 18 C.F.R. § 154.2(e). And construing rate to mean the total cost to a shipper does no violence to a pipeline’s right to set rates in the first instance. *Cf.* Br. 54-55. It simply preserves the Commission’s ability to fully protect shippers from unlawful charges to the extent permissible. *See, e.g.*, Refund Rehearing Order P 14, JA1627.

3. The Commission’s review

Panhandle attempts to support its crabbed interpretation of “rate” by claiming the Commission only reviews individual charges for reasonableness, and not the total cost paid by shippers for a particular service. Br. 49-50. But “the interaction of all components of a larger rate schedule” is, in fact, a relevant consideration when analyzing “whether an individual subcomponent is just and reasonable.” Refund Rehearing Order P 15 (citing cases), JA1627-1628.

4. Refund amounts

Finally, Panhandle suggests that the Commission’s methodology is arbitrary because it results in different refund amounts compared to the pipeline’s preferred method. Br. 57. But as the Commission explained, a “difference in outcome” between the two methodologies is

irrelevant. Refund Rehearing Order P 17, JA1628. The question is what remedy will best protect consumers from unlawful rates consistent with the dictates of section 4(e). *See, e.g., id.* P 14, JA1628.

CONCLUSION

The petitions for review should be denied, and the Commission's orders should be affirmed in all respects.

Respectfully submitted,

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April 6, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,807 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Century Schoolbook 14-point font using Microsoft Word 365.

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CERTIFICATE OF SERVICE

I hereby certify that, on April 6, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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