

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 29, 2004

In Reply Refer To:
Docket Nos. RP98-40-000,
GP98-6-000, GP98-32-000
GP98-7-000

Stinson Morrison Hecker, LLP
Attn: David D'Alessandro, Esq.
Attorney for Missouri Public Service Commission
1150 18th Street, NW
Suite 800
Washington, DC 20036-3816

Re: Panhandle Eastern Pipe Line Company

Dear Mr. D'Alessandro:

1. On November 20, 2003, the Missouri Public Service Commission (MoPSC), Anadarko Petroleum Corp. (Anadarko) and OXY USA Inc., (OXY) (collectively, Indicated Producers), and Duke Energy Services, Inc. (Duke) (collectively, Settling Parties) filed an Offer of Settlement (Settlement) in the instant proceeding, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.602 (2003).
2. On December 1, 2003, Commission Trial Staff (Staff) filed comments in support of the certification of the Settlement. Also on December 1, 2003, the Kansas Corporation Commission (KCC) filed comments in opposition to the Settlement. KCC objected to the omission of a provision waiving claims against royalty owners. KCC did not want the approval of a settlement with such an omission to establish precedent that such provisions could be absent from Kansas ad valorem tax settlements.
3. On December 8, 2003, the Indicated Producers filed reply comments agreeing to modify the Settlement by deleting language in Article II and Article IV, paragraph C, and adding waiver language to Article II. Indicated Producers represented that Staff, MoPSC, and Panhandle all support or do not oppose the modification. Indicated Producers also represented that KCC has been advised of these changes and would file to withdraw its objections and state its affirmative support of the Settlement as modified (Modified

Settlement). The Indicated Producers requested that the Commission approve the Modified Settlement as fair, reasonable, and in the public interest.

4. Also on December 8, 2003, MoPSC filed a response to KCC's reply comments. MoPSC stated that while its comments were intended to support the original Settlement, it had been informed by telephone of the changes resulting in the Modified Settlement, and that the Modified Settlement appeared agreeable to MoPSC. MoPSC further stated that it would file supplemental comments the next day after seeing the modifications. The same day, Staff also filed reply comments on the original Settlement. Staff argued that KCC's comments should not affect the certification of the Settlement because each settlement is negotiated independently and cannot serve as precedent for other cases.

5. On December 8, 2003, KCC filed reply comments withdrawing its opposition to the Modified Settlement and indicating support for the Modified Settlement.

6. On December 9, 2003, MoPSC filed Supplemental Reply Comments in support of the Modified Settlement. The same day, Duke submitted a brief comment, noting that it concurred fully with the position of that Indicated Producers set out in their December 8, 2003 comments and that the Modified Settlement may be viewed as unopposed.

The Modified Settlement

7. On December 8, 2003, the Indicated Producers filed reply comments agreeing to modify the Settlement by deleting language in Article II and Article IV, paragraph C, and adding language to Article II. Indicated Producers represented that Staff, MoPSC, and Panhandle all support or do not oppose the modification. Indicated Producers also represent that KCC had been advised of these changes and would file to withdraw its objections and state its affirmative support of the Modified Settlement.

8. The Modified Settlement consists of the Settlement filed on November 20, 2003, with altered language in ARTICLES II and VI as described below. The modifications are described in the Reply Comments of the Indicated Producers, filed on December 8, 2003.

9. ARTICLE II of the Modified Settlement originally provided the Indicated Producers and Duke with a release from any further liability for Kansas ad valorem tax reimbursements related to periods prior to June 28, 1988. Unlike prior Kansas ad valorem tax settlements, the original Settlement did not address and did not resolve any issues relating to claims or potential claims of any producer against that producer's royalty owners for any of the amounts at issue in this proceeding.

10. However, in response to the comments of KCC, ARTICLE II of the Settlement has been modified to state that the Indicated Producers waive and release all claims associated with Kansas ad valorem tax refunds for periods through June 28, 1988 by each

such Indicated Producer against any royalty interest owner for royalty-related Kansas ad valorem tax refund claims on the Panhandle system.

11. Specifically, the last paragraph of ARTICLE II originally read as follows:

Unlike prior Kansas ad valorem tax settlements, this Settlement does not address and does not resolve any issues relating to claims or potential claims of any producer against that producer's royalty owners for any of the amounts at issue in this proceeding.

12. In the Modified Settlement, this language in ARTICLE II has been deleted and replaced with the following:

Indicated Producers fully, completely, and irrevocably waive and release any and all claims associated with Kansas ad valorem tax refunds for periods through June 28, 1988 by each such Indicated Producer against any royalty interest owner for royalty-related Kansas ad valorem tax refund claims on the Panhandle system. This waiver and release is effective as to any Indicated Producer on the Effective Date. Amounts, if any, paid prior to the Effective Date of this Settlement by royalty interest owners to Indicated Producers for refunds associated with Kansas ad valorem tax refunds for periods through June 28, 1988 on the Panhandle system covered by this Settlement shall be refunded by Indicated Producers without interest to royalty interest owners. Such refund responsibility, if any, shall be the sole and exclusive responsibility of the Indicated Producers to which such payments by the royalty interest owners were made, and in no event shall any claim for relief be raised against any other party hereunder.

13. ARTICLE III identifies the Base Settlement Obligations for each of the Indicated Producers and Duke, the requirement to pay such obligation to Panhandle with interest and the process for verifying the calculation of interest. The dollar amounts are listed in Appendix A of the Modified Settlement. As reflected in Appendix A to the Modified Settlement, Anadarko will pay \$1,310,000, OXY will pay \$660,000, and Duke will pay \$500,000.

14. ARTICLE VI originally discussed the relationship of the Settlement to pending judicial cases and made clear that the original Settlement did not affect any rights the Indicated Producers and Duke may have to seek recovery of ad valorem taxes from their royalty owners. As altered in the Modified Settlement, Paragraph C of ARTICLE VI has been deleted from the Modified Settlement.

15. The deleted language from Paragraph C of ARTICLE VI follows:

This Settlement does not address and does not resolve any issues relating to claims or potential claims of any producer against that producer's royalty owners. Nothing in this Settlement shall be interpreted to impair the ability of producers to seek recovery from their royalty owners of the ad valorem payments attributable to such royalty owners related to payments made by producers pursuant to this Settlement. The rights, claims and defenses of both producers and their royalty owners in any such litigation shall not be affected by this Settlement.

16. This change reflects alterations noted above to ARTICLE II of the Modified Settlement that add a waiver of by Indicated Producers of any and all claims associated with Kansas ad valorem tax refunds for periods through June 28, 1988 by each such Indicated Producer against any royalty interest owner for royalty-related Kansas ad valorem tax refund claims on the Panhandle system.

17. The subject settlement appears to be fair and reasonable and in the public interest, and is hereby approved.

18. This letter order terminates Docket Nos. GP98-6-000, GP98-32-000, and GP98-7-000.

By direction of the Commission.

Magalie R. Salas
Secretary.

cc: All Parties