

110 FERC ¶ 61,155
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 14, 2005

In Reply Refer To:
Panhandle Eastern Pipe Line Company, LP
Docket No. RP04-454-001

Panhandle Eastern Pipe Line Company, LP
5444 Westheimer Road
Houston, TX 77056-5306

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

Reference: Supplemental Information Explaining Contract Demand Reduction Options

Ladies and Gentlemen:

1. On September 28, 2004, Panhandle Eastern Pipe Line Company, LP (Panhandle), filed additional information and explanation to comply with the Commission's Letter Order, issued on September 9, 2004 (September 9 Order).¹ Panhandle's response addressing the issues raised by SEMCO Energy Gas Company (SEMCO) fully complies with the September 9 Order and is accepted. This order benefits the public by providing customers more flexibility in making contracting decisions.

Background

2. On August 13, 2004, Panhandle, filed revised tariff sheets to provide shippers with contract demand reduction rights under specified circumstances. The proposed tariff provisions would allow shippers to elect from four types of contract demand reduction options if they meet specified eligibility requirements including: (1) regulatory unbundling; (2) loss of load; and (3) plant outage. Panhandle stated that the Commission had approved similar provisions in *ANR Pipeline Company (ANR)*.²

¹ 108 FERC ¶ 61,225 (2004).

² *ANR Pipeline Co.*, 99 FERC ¶ 61,310 (2002) (*ANR*); *ANR Pipeline Co.*, 101 FERC ¶ 61,246 (2002); *ANR Pipeline Co.*, 106 FERC ¶ 61, 210 (2004).

Panhandle also proposed to allow a shipper to buy out all or a portion of its service agreement by paying the net present value of the remaining reservation charges stating that the Commission approved a similar buy-out provision in *Florida Gas Transmission Company*.³

3. Each of the four options contains specific eligibility and notice requirements. For regulatory unbundling, the state regulatory body must have issued a final order requiring unbundling, and eligibility is limited to local distribution companies (LDCs) or their agents. The shipper must give Panhandle sixty days prior written notice of the anticipated effective date of the reduction. For loss of load, Panhandle limits eligibility to LDCs or municipalities or their agents. The shipper must give Panhandle written notice no more than thirty days after shipper receives notice from its customers of a loss of load. For plant outage, eligibility is limited to industrial customers of Panhandle. The shipper must give Panhandle written notice no more than thirty days following a public announcement that the shipper will close the plant or will permanently and materially reduce plant production output. Any shipper may elect buy-out rights by paying Panhandle the net present value of the remaining reservation charges. Panhandle limits all of the reduction rights to service agreements with terms of five years or more, and eligible shippers may only exercise the contract demand reduction option during the last two years of the contract, unless otherwise agreed. In addition, the provisions include conditions addressing the level of reduction permitted when another pipeline also provides service to the shipper in addition to Panhandle, or when a shipper has contracted for both storage and related transportation service. In both of these instances, the proposed tariff provision provides for a proportionate reduction in contract quantity.

4. East Ohio Gas Company, d/b/a Dominion East Ohio filed a request for conditions, *inter alia*, objecting to Panhandle's proposed minimum contract term requirement as too long. SEMCO filed comments and requests for clarification of the eligibility requirements.

5. In the September 9 Order, the Commission accepted Panhandle's proposed minimum contract term of five years. The Commission noted that, in this case, Panhandle voluntarily offered to provide contract demand reduction rights in contracts of at least five years. The Commission pointed out that there is no policy requiring pipelines to allow contract reduction or termination before the end of the contract term and it previously approved pipeline proposals to offer shippers this right subject to various limitations, so long as the limitations are not unduly discriminatory.

6. The Commission also found that Panhandle should further explain with adequate support, and address certain other issues raised in SEMCO's comments and requests for

³ *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401 (2002).

clarification. Those issues included: (1) the type of orders the state regulatory body must issue before an LDC can reduce its contract demand due to retail unbundling; (2) the notice period before such contract demand reduction becomes effective; and, (3) the extent of load loss an LDC must suffer to be eligible for a contract demand reduction based on a load loss. The Commission permitted the parties ten days from the date of Panhandle's response to file reply comments. On September 28, 2004, Panhandle filed its response. SEMCO filed an answer on October 12, 2004.

Discussion

7. The Commission finds Panhandle's response fully complies with the September 9 Order. Panhandle provided a sufficient explanation of its proposed tariff provisions.

8. As the Commission noted in its September 9 Order, under the Natural Gas Act, pipelines have the initiative under section 4 to propose rates, terms, and conditions for their services. If the pipeline's proposal is just and reasonable, the Commission must accept it, regardless of whether other just and reasonable rates, terms, and conditions may exist.⁴ As the Commission further explained in *ANR* and *Columbia Gas Transmission Corp. (Columbia)*,⁵ there is no policy requiring pipelines to permit customers to terminate or reduce their contractual obligations before the end of their contract terms and, accordingly, the Commission previously approved pipeline proposals to offer this right subject to various limitations, so long as the limitations are not unduly discriminatory. For the reasons discussed below, the Commission finds that Panhandle's proposed conditions are reasonable and not unduly discriminatory.

Regulatory Unbundling Requirement

9. Panhandle's proposed tariff language in section 7.6(a)(1) requires that, for LDCs to be eligible for a contract demand reduction due to regulatory unbundling, a state regulatory or legislative body must require, by a final order, that the LDC unbundle its merchant and transportation functions. In addition, that section requires that "[s]uch state body does not approve a mechanism to provide [that LDC] the opportunity to recover costs incurred by [that LDC] under [the LDC's] Service Agreement (s)". Section 7.6(a)(2)(ii) also requires that the LDC certify that it "...has used reasonable

⁴ Citing *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 at 61,223 (1997) (Opinion No. 406-A) and cases cited.

⁵ *ANR* 99 FERC at 62,321, *Columbia Gas Transmission Corp.*, 103 FERC ¶ 61,388 (2003), *reh'g denied*, 105 FERC ¶ 61,373 (2003) (the Commission accepted only a regulatory unbundling contract reduction option with a requirement that the service agreement have an initial or remaining term of at least five years).

efforts to seek state body approval of a mechanism that allows [the LDC] to recover the costs incurred under [the LDC's] Service Agreements and that such recovery efforts were unsuccessful prior to requesting its contract quantity reduction.”

10. SEMCO complained that Panhandle's proposal did not clearly define what constituted a final order of the state regulatory body. SEMCO stated that its state commission, the Michigan Public Service Commission (MPSC), approved a customer choice plan which is the functional equivalent of unbundling SEMCO's merchant and transportation functions. SEMCO opposed the requirement that it seek a mechanism to recover stranded costs.

11. Panhandle contends that the Commission previously approved the words “final order,” as used in this context, in various prior orders,⁶ and that they are clear. Panhandle further contends that the MPSC action described by SEMCO is not a “final order” because SEMCO has not sought a mechanism to recover costs. Panhandle asserts that, rather than a clarification, SEMCO actually seeks to include within the eligibility requirement for a “final order”, circumstances which do not qualify for contract reduction. Panhandle argues that, as the Commission previously stated, “there is no policy or precedent to force an expansion of the flexibility” voluntarily offered by the pipeline.⁷ With respect to section 7.6(a)(2)(ii), Panhandle asserts that, while SEMCO objects to the requirement that the LDC show its reasonable but unsuccessful efforts to seek state body approval of a mechanism to recover costs incurred under its service agreements, contract reduction is meant as a last resort after the LDC exhausts other possible relief. Panhandle further asserts that it designed the contract reduction option to mitigate the effects of an LDC's contract quantity decrease and not to totally insulate an LDC from its contracting decisions at the expense of the pipeline and its remaining customers. SEMCO responds that whether an LDC can file for and gain approval of a cost recovery mechanism is irrelevant to the larger issue that the shipper no longer needs the capacity and therefore, it should be permitted to reduce its contract demand. SEMCO further contends that, otherwise, an LDC would be required to retain capacity that it does not need through no fault of its own. SEMCO also states that the MPSC order approving SEMCO's customer choice plan is a “final order,” at least as the term is traditionally used in the administrative law sense. SEMCO states that it appears that Panhandle is requiring a “final order” on the issue of whether a shipper can implement a cost recovery mechanism, not a “final order” solely on unbundling. SEMCO argues that, if so, Panhandle should so clarify and clarify whether a shipper would require a “final order” every time a customer leaves the system.

⁶ Citing *ANR Pipeline Co.*, 106 FERC ¶ 61,210 (2004) and *Columbia Gas Transmission Corp.*, 107 FERC ¶ 61,225 (2004).

⁷ Citing *Gulf South Pipeline Co.*, 98 FERC ¶ 61,186 at 61,178, *order on reh'g*, 99 FERC ¶ 61,256 (2002).

12. SEMCO also claims that the requirement that a shipper seek a cost recovery mechanism from the state commission is inappropriate on its face. SEMCO states that it failed to seek approval of a cost recovery mechanism because it, fortunately, has not lost customers under its customer choice plan. Furthermore, SEMCO states any attempt by it at this time to file with the MPSC for approval of a cost recovery mechanism would be premature because SEMCO would not know what, exactly, it would be seeking to recover. SEMCO further states that, if and when SEMCO loses a portion of its customer base as a result of deregulation, it could take several months before it receives an order addressing a cost recovery mechanism. SEMCO contends that it would have to see its customer base erode, file a proposal with the state commission which could take up to six months, and then proceed through the onerous steps required by Panhandle's tariff to have its contract demand reduced. SEMCO believes this is unnecessary and will result in considerable delays before SEMCO could exercise its contract demand reduction rights. Finally, SEMCO maintains the need for final orders or the filing of a cost recovery mechanism are simply attempts to delay the LDC's ability to take advantage of section 7.6 of Panhandle's tariff.

13. We find that the requirements in the tariff are reasonable. Panhandle need not provide a contract demand reduction mechanism to LDCs which insulates them from all risks of loss as a result of lost load due to state unbundling. Panhandle can reasonably balance offering relief to the LDCs with minimizing adverse effects on the pipeline and its remaining customers. Therefore, it is reasonable for the pipeline to require that the LDC exhaust other means of relief, such as seeking a cost recovery mechanism from the state regulatory body, before obtaining a contract demand reduction from the pipeline. In any case, SEMCO's assertion that it cannot seek a cost recovery mechanism from the state regulatory body until it has lost customers is speculative and unsupported. All that Panhandle's tariff provision requires the LDC to seek is a mechanism to recover stranded costs. It does not require that the LDC have sought actual costs under the mechanism. The Commission found that the requirement that no cost recovery mechanism be approved to be reasonable in ANR.⁸

Other Regulatory Unbundling Requirements

14. SEMCO also claims that other requirements by Panhandle were unnecessarily onerous. Panhandle proposed that the LDC provide sixty days prior written notice of the anticipated effective date of the requested contract quantity reduction. The notice must state the reduction sought, the date or anticipated date of a final order requiring unbundling and the anticipated effective date of the unbundling order. Panhandle asserts that its sixty-day notice of the anticipated effective date of the requested contract quantity reduction is thirty days less than the ninety-day notice period approved by the

⁸ ANR, 99 FERC at 62,325.

Commission in ANR. Panhandle claims that a customer subject to regulatory unbundling necessarily receives months of notice from a state commission as they work together through the regulatory unbundling process. Panhandle further claims that the pipeline needs this notification period to prepare to mitigate the effects of this voluntary reduction of service. SEMCO states that it is true that the regulatory unbundling process may take several months, but under Panhandle's proposal, a LDC customer must wait until the end of that process, an additional intentional delay on top of the delay of waiting for a final order.

15. The Commission finds that the 60-day notice requirement is reasonable. The Commission accepted a 90-day notice requirement in ANR. The 60-day notice requirement of the anticipated effective date of the requested contract reduction strikes a reasonable balance between allowing the LDC to give up unneeded capacity while giving the pipeline an opportunity to market the capacity to others so as to mitigate any potential loss. Also the LDC need not wait until after a final order is issued by the state body, to give the notice, since the notice is only required to state "the date *or anticipated date of a final order requiring unbundling*" (emphasis added).

16. Panhandle argues that its requirement that the LDC provide data showing that the requested reduction equals the level of stranded capacity resulting from a decrease in system sales is not onerous and was approved in ANR. Panhandle asserts that this required data is no more than routine customer records, such as consumption reports, customer profiles, throughput records, or plant demand records, which the shipper can provide electronically with no additional document production. SEMCO contends that Panhandle's response shows that the pipeline asks for a substantial amount of data that the LDC must organize and tie to a specific requested reduction. SEMCO further contends that Panhandle does not address scenarios where a LDC may have lost some customers, but has acquired new customers located on a different part of its system that can be better served economically by other pipelines. SEMCO argues that in such circumstances, the Commission should still permit the LDC to reduce its contract demand because the new customers' use of the LDC's system is not related to the capacity contracted for on Panhandle.

17. We find the requirement that a shipper must provide data showing that the requested reduction equals the level of stranded capacity is not onerous and is reasonable. Allowing an LDC to reduce its contract demand creates a potential revenue loss for the pipeline if it cannot remarket the capacity and may adversely affect Panhandle's remaining customers. Therefore, Panhandle may reasonably limit the LDC's reduction of contract demand to situations where the LDC makes a clear showing that it has lost sales.

18. Panhandle also proposed to require the LDC to use reasonable efforts to release its capacity by posting the capacity on the Messenger system for thirty days at the rate

provided under the relevant service agreement. SEMCO asserts that this requirement was also onerous. Panhandle responds that the requirement of an electronic transaction demonstrating that an LDC tried to release capacity is met by showing evidence that the shipper posted the capacity. Panhandle maintains that capacity release has become a routine practice and that demonstrating that this process has occurred is simple and not burdensome. SEMCO contends that while the mechanics of posting capacity are simple, this requirement results in yet another 30-day delay in addition to the other delays and is unnecessary.

19. We believe that when a pipeline voluntarily permits a contract reduction that potentially causes a revenue loss, the pipeline may reasonably require the LDC to show that it has exhausted all the means of getting rid of its unneeded capacity. Therefore, we find reasonable the requirement that the LDC should attempt to release the capacity.

20. Panhandle proposed a requirement that the LDC use reasonable efforts to assign capacity to the new merchants of retail service in a customer's territory. SEMCO commented that this requirement was also onerous. Panhandle responds that these efforts are routine, part of regulatory unbundling, and not burdensome. Panhandle further claims that these reasonable efforts would have already occurred as part of normal business practice. SEMCO argues that to the extent that Panhandle is right, and this has already occurred as part of normal business practice, then the requirement is unnecessary. SEMCO further argues that Panhandle never clarifies what "reasonable efforts" are required.

21. As explained above, the pipeline may properly require the LDC to exhaust other means of obtaining relief. Therefore, the requirement that the LDC use reasonable efforts to assign capacity to new merchants of retail service is reasonable. Further, this requirement is reasonable even if the efforts are part of a normal business practice. In addition, as the Commission pointed out in the context of another contract reduction requirement, it is premature to further define the term "reasonable effort" until the pipeline applies the term to a specific request.⁹

Loss of Load

22. Panhandle proposed to permit an LDC to reduce its contract demand due to "loss of load" which occurs when any of the LDC's firm customers with daily requirements on the facilities owned or operated by it exceeding 100 Dth/day either permanently cease gas consuming operations or reduce such operations to plant protection levels, or bypass the LDC by directly connecting to Panhandle. SEMCO argued in its comments that Panhandle should clarify what it means by plant protection levels and whether daily

⁹ See ANR 99 FERC at 62,325.

requirements refers to daily consumption profiles of a particular customer or that customer's contractual rights on the LDC's system. SEMCO also argued that Panhandle should be required to reduce the 100 Dth/day threshold requirement. Finally, SEMCO requested that Panhandle clarify that loss of load eligibility requirements can be met if a group of customers cease to take service.

23. With respect to the loss of load requirements for contract reduction, Panhandle states that it is generally understood in the natural gas industry that plant protection levels are levels of capacity which provide heating for the facility during the coldest months to prevent damage caused by freezing and protections to prevent damage or deterioration of inactive facilities. Panhandle clarifies that "daily requirements" refers to a customer's contractual rights on the system. Panhandle also clarifies that the 100 Dth/day threshold requirement is fulfilled when a group of customers, not just a single customer, ceases to take service. Panhandle asserts that in proposing the 100 Dth/day threshold requirement, it balanced the need for flexibility for its LDC shippers to reduce their contract demands with protecting the pipeline and its remaining customers from potential revenue loss and other adverse effects. SEMCO responds that it appears that the only reason why Panhandle chose the 100 Dth/day threshold requirement is because it is the same figure the Commission accepted in ANR.¹⁰ SEMCO further responds that for smaller LDCs even a 50 Dth/day loss of load can be quite significant and that this requirement unduly discriminates against smaller LDC customers.

24. The Commission finds that Panhandle's explanation that it is balancing the need for flexibility for LDCs while protecting the pipeline and its customers from potential revenue loss and other adverse effects of the voluntary offer of contract reduction is reasonable. Moreover, Panhandle has adequately clarified its loss of load requirements, and we note that SEMCO did not respond to those clarifications. Accordingly, we find that Panhandle's 100 Dth/day threshold requirement is not unduly discriminatory, as the provision strikes a reasonable balance between the needs of the pipeline and its customers.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.

¹⁰ *Id.* at 62,323-4.