

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Panhandle Eastern Pipe Line Company

Docket No. RP98-40-000

ORDER ON INITIAL DECISION

(Issued June 2, 2004)

1. This case is before the Commission on review of the February 19, 2004 Initial Decision (I.D.), 106 FERC ¶ 63,018, on the liability of Pioneer Natural Resources USA, Inc. (Pioneer) for Kansas ad valorem tax refunds owing to Panhandle Eastern Pipe Line Company (Panhandle). The Administrative Law Judge (ALJ) found no merit in the defenses asserted by Pioneer except for a minor adjustment for certain deregulated wells, but granted a partial waiver of the refunds attributable to payments to royalty interest owners. He also held that Pioneer should pay only the escrow fund rate of interest rather than the FERC interest rate.
2. Pioneer filed exceptions to the ALJ's ruling on all issues except the applicable interest rate. The Missouri Public Service Commission and Commission Staff filed exceptions as to the adjustment related to the royalty portion on the refund liability and the interest rate applicable to the refunds Pioneer had paid into an escrow account.<sup>1</sup> This order affirms the ALJ on all issues except the grant of a partial waiver of the refunds attributable to payments to royalty interest owners.

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<sup>1</sup> Commission Staff also filed exceptions to the adjustment of \$540 involving certain deregulated wells. We affirm the ALJ on this issue since there is record evidence supporting his conclusion, see P 23 infra.

### **Background**

3. This case involves the Kansas ad valorem tax refund liability of a producer of natural gas. The history of this issue has been described in numerous Commission and Court cases, the most recent one involving Pioneer and Southern Star Central Gas Pipeline, Inc.,<sup>2</sup> and we will not repeat that history here, but will set forth the matters relevant to this proceeding.
4. Panhandle is a pipeline that is owed refunds related to the illegal collection of Kansas ad valorem tax reimbursements from October 4, 1983 forward. Panhandle sent a Statement of Refunds Due (SRD) to Pioneer and other producers in accordance with the Commission's September 10, 1997 order establishing the procedure for recovery of these refunds.
5. In Panhandle Eastern Pipe Line Company, 96 FERC ¶ 61,274 (2001), clarified, 97 FERC ¶ 61,015 (2001), the Commission approved a settlement between Panhandle and certain producers of certain Kansas ad valorem tax refund claims. The settlement also provided that parties and state commissions could elect not to be bound by the settlement. If a state commission so elected, its election would also be binding on all parties whose rates are regulated by that state commission. The Missouri Public Service Commission (MoPSC) so elected. As a result, the settlement did not resolve that portion of the refund obligations of the relevant working interest owners that Panhandle has allocated for flow through to its Missouri customers (the Missouri opt-out portion).
6. The Commission set these unresolved claims for hearing, 102 FERC ¶ 61,002 (2003), and Pioneer was one of the producers named therein. As a result of subsequent settlements with producers, only issues related to the refund obligation of Pioneer were addressed at the hearing. A one-day hearing was held on October 16, 2003.
7. Panhandle's position was that during the refund period Pioneer's predecessors<sup>3</sup> made sales of natural gas to Panhandle at the maximum lawful price (MLP) for the subject well categories, and in addition received from Panhandle the reimbursement of the Kansas ad valorem taxes the predecessors had paid related to those sales. Thus,

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<sup>2</sup> 106 FERC ¶ 61,316 (March 30, 2004) (Southern Star).

<sup>3</sup> Pioneer's predecessors were Mesa Petroleum Co., Mesa Operating Limited Partnership and Tema Oil Company. Reference to Pioneer in this order will mean a predecessor where appropriate.

Panhandle argued, Pioneer owed the refunds arising from those reimbursements, and was obligated to pay the remaining 6.4556 percent opt-out portion under the settlement.

8. Pioneer argued that the Commission Staff has the burden of proof that Pioneer has any refund liability, and that the Staff has not carried this burden. However, even assuming that evidence introduced by other parties can satisfy this requirement, Pioneer asserted that the record demonstrated that the refund amount should be reduced or eliminated entirely. Among the arguments advanced by Pioneer were that (1) there was “headroom”<sup>4</sup> associated with certain of the reimbursements Pioneer’s predecessors received from Panhandle; (2) Pioneer should not have to refund reimbursements received after October 1983, but allegedly attributable to production pre-dating October 1983; (3) Pioneer should not have to refund any reimbursements received after June 28, 1988; (4) Pioneer should not have to refund the “royalty portion” of the Kansas ad valorem tax reimbursements because these payments are allegedly uncollectible from royalty owners; and (5) alleged mismeasurements by Panhandle of the Btu content of gas may be a potential defense to Pioneer’s violation of the MLP. Pioneer also contended that any of these factors that do not trigger a downward adjustment of the amount of the overcharge should be grounds for equitable relief under the Natural Gas Policy Act of 1978 (NGPA) section 502(c) for inequity and unfair distribution of burdens.

9. The ALJ rejected all of Pioneer’s defenses and determined that: (1) the record evidence shows that the Kansas ad valorem tax reimbursements that Panhandle paid to Pioneer violated the MLP in that Pioneer had no headroom; (2) Pioneer must make refunds for ad valorem tax reimbursements associated with production that took place before the October 4, 1983 start date if the reimbursements were made after that date; (3) Pioneer must make refunds for ad valorem tax reimbursements made after the June 28, 1988 end date; and (4) Pioneer has not satisfied the test for determining whether a producer is eligible for a waiver of the royalty portion of its refund liability. He also found that neither the Btu mismeasurement claim nor any of the other factors noted by Pioneer would be a basis for relief under NGPA section 502.

10. However, he concluded that (1) due to the difficulty Pioneer could face in trying to recover the 15.93 percent of the reimbursement Pioneer had paid to the royalty interest owners, the refunds attributable to royalty interest owners should be reduced by about one-third, or six percent of the total refund obligation to strike a balance between Pioneer and its customers on footing the bill for the loss of the royalty payments; and (2) Pioneer

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<sup>4</sup> Headroom refers to the extent to which the total sales price remains lower than the MLP, notwithstanding the collection of Kansas ad valorem tax reimbursements.

should pay only the escrow fund rate of interest rather than the FERC interest rate on the funds Pioneer had paid into the escrow account.

11. Pioneer excepts to all the ALJ's rulings on liability, and to the decision to grant only a partial waiver of the royalty interests owner refund amount. Staff and MoPSC except to the ALJ's ruling grant of the partial waiver and to the applicable interest rate for the funds deposited in the escrow account.

### **I. Is Pioneer Liable for the Refunds Claimed by Panhandle?**

12. The I.D. set forth the reasons advanced by Pioneer why it did not owe the refunds claimed by Panhandle, but rejected all these contentions. Much of the exceptions now urged by Pioneer in this case were also raised by Pioneer in Southern Star, and rejected by the Commission.<sup>5</sup> Where the arguments are similar we will refer to our ruling there, and not repeat the discussions here.

13. Pioneer argues that there was a failure "to do any analysis of individual wells and individual contracts" to determine if the MLP was violated on each well and each contract. Pioneer concedes that the ALJ found a violation because "before the price of gas from wells was deregulated, Pioneer's predecessors were charging the full MLP on all sales" (I.D. at P 50). In response to this finding, Pioneer refers to wells that were deregulated, and argues that since there was no MLP after deregulation when the reimbursements were received there could be no violation. Thus, it asserts, the I.D.'s general conclusion was not supported in the record.

14. The Commission has never required that there be a well by well analysis as Pioneer argues. The ALJ cited to testimony not only by Panhandle witnesses, but also to Pioneer's witness Stanley that:

Before the price of gas from wells was deregulated, Pioneer's predecessors were charging the full MLP on all sales. Consequently, at the time the sales were made, no headroom should have existed on any of the contracts, and a contract-by-contract or well-by-well analysis need not be made to satisfy Staff's burden of proof. All of Kansas ad valorem tax reimbursements should be recoverable from Pioneer, together with the appropriate interest. (I.D. at P 50).

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<sup>5</sup> See Pioneer's Brief on Exception, filed December 31, 2003, in Docket No. RP98-52-000.

15. Pioneer fails to show why this does not accurately represent the testimony. As we explained in Southern Star, whether or not Staff introduced the evidence, if the record shows that the MLP was exceeded by the Kansas ad valorem tax reimbursements to the producer, the liability has been established. We shall address the headroom argument as to deregulated wells below.

16. Pioneer also argues that the ALJ erroneously extended the scope of the proceedings to include reimbursement after June 28, 1988, because the hearing order specifically refers to that date. In Southern Star the Commission rejected the very same argument. The Commission stated:

The Commission requires that any reimbursement after October 3, 1983 that resulted in MLP violations must be refunded. The fact that before the Court, in 1999, expanded the period of the refund back from 1988 to 1983 ... the Commission used the June 28, 1988 date does not limit the scope of these proceedings to refunds prior to that date. Pioneer's reliance on the hearing order's reference to the period October 3, 1983 through June 28, 1988, is misplaced since the order merely implemented the Court's expansion of the period of the refund. The hearing order stated that previously the Commission had ordered refunds for MLP violations for the period commencing in 1988 and as a result of the Court's ruling the period would cover 1983 through 1988 as well. In no way did the hearing order exclude MLP violations after June 28, 1988.<sup>6</sup>

17. Pioneer also argues in its exceptions, at P 25-27, that the ALJ erred in failing to recognize that if Pioneer must make refunds after the alleged June 28, 1988 end-date then it cannot be liable for reimbursements related to production before the October 4, 1983 start date. Pioneer contends that the Court's decision in Public Service Company of Colorado, 91 F.3d 1478 (D.C. Cir. 1996), only requires the refund of reimbursements related to production after the start date, October 4, 1983.

18. There is no merit to this argument. In its last ruling on the issue, in Anadarko Petroleum Corp. v. FERC, 200 F.3d 867 (D.C. Cir.) cert. denied, 530 U.S. 1213 (2000), (Anadarko) the Court of Appeals held that producers must refund reimbursements received after October 4, 1983 if the reimbursement caused the MLP to be exceeded, and

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<sup>6</sup> 106 FERC at 61,243 P 27.

the Commission's orders implementing the Court's ruling have required producers to refund such amount. The Court stated, at 867:

Whatever the nature of these transactions, the principle embodied in our decision remains unchanged.... If the producers collected tax reimbursements from their customers after [October 4, 1983], whether by lumpsum transactions or by any other means, they did so unlawfully and must refund the amounts collected with interest, provided that the tax reimbursements caused their sales to exceed the maximum lawful price.

19. There is nothing in the Court's ruling that prevents the Commission from looking to the price received for the gas prior to October 4, 1983 to determine whether retention of an ad valorem tax reimbursement received after that date in addition to amounts already received violated the MLP. In Southern Star we stated, 106 FERC ¶ 61,316 P27 "The Commission requires that any reimbursement after October 3, 1983 that resulted in MLP violations must be refunded." Thus, the ALJ properly included reimbursements related to the pre-October 1983 production.

20. Pioneer also argues that the ALJ erred in finding that there was no "headroom" in any of the relevant sales. Pioneer contends in its exception that based on the Court's decision in Anadarko and the Commission's orders implementing that decision, the price the producer was receiving for its gas sales at the time it received the tax reimbursement must be considered to see if there was an MLP violation. Relying on this analysis of how to determine if the MLP was exceeded, Pioneer argues that the ALJ erred as to violations related to sales from wells that were deregulated. Pioneer refers to reimbursements under Contract Nos. 2378 and 3032 that Panhandle made to it after January 1, 1985, when certain wells were deregulated effective January 1, 1985, and to other reimbursements that Panhandle made after another 60 wells were deregulated on January 1, 1988, and claims there was no violation of the MLP with respect to those reimbursements.

21. We find no merit in this argument. In both these situations, while Panhandle paid Pioneer the reimbursement after the deregulation dates, the reimbursement related to the period before the deregulation dates when Panhandle was paying the MLP for the natural gas it was purchasing from Pioneer from those properties. Pioneer erroneously contends that to determine if the MLP was exceeded, the relevant MLP is the price of gas when the reimbursement is received. The ALJ properly ruled :

Here, we are not concerned with the notice date and the ability to avoid the completion of a violation, but with the calculation of the MLP, for which any date other than the sales date would be

inappropriate. To the extent that the sales price equals or exceeds the MLP on that sales date, no headroom exists and the entire KAVT for that year charged to that sale is recoverable regardless of when it will be collected by the producer. 106 FERC ¶ 63,018 P 56.

22. We similarly ruled in Southern Star that to determine if there is headroom the tax reimbursement from the pipeline relates to the sales to the pipeline during the tax year associated with that reimbursement. In Southern Star we explained that Pioneer's proposed "receipt date" approach to attributing reimbursements to sales was not correct. Pioneer had argued that there was headroom associated with certain ad valorem tax reimbursements it had received from Southern Star because while all Pioneer's sales to Southern Star were made at the MLP, at the time of the reimbursements, Pioneer was not receiving the MLP for sales of the gas. When it received the reimbursement it was selling the gas to others since the contract with Southern Star had been terminated. However, we held that the reimbursement related to the prior sales since Pioneer invoiced the pipeline for the tax reimbursement, and the pipeline had paid the reimbursement to Pioneer when the sales from those wells were being sold to others, see 106 FERC at 62,244. The same approach analysis applies here.

23. Contrary to Pioneer's contention, the ALJ specifically addressed Pioneer's headroom argument as to the deregulated wells. The ALJ rejected Pioneer's contention stating "Pioneer has proffered no evidence suggesting that wells were deregulated before sales were made, so as to remove the MLP limitation, with one de minimus exception." I.D. at P 56.<sup>7</sup>

24. The ALJ stated that Pioneer had contended that as to the wells that were deregulated January 1, 1985, Panhandle and Pioneer's predecessor entered into a contract in April 1985 (effective retroactive to January 1, 1985) under which Panhandle agreed to pay a negotiated price for gas from these wells which was inclusive of ad valorem tax reimbursements. Using its analysis, Pioneer matched reimbursement invoices after January 1, 1985, with the wells that were deregulated on that date. The ALJ found that Panhandle's subsequent payment of an ad valorem tax reimbursement relating to these wells must have related to sales made before deregulation because the April 1985 post-deregulation contract provided for a price that was inclusive of the ad valorem tax reimbursement.

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<sup>7</sup> With respect to that one instance, the Bates No. 23052 contract, the ALJ reduced the refund obligation by \$540, the Missouri opt-out portion of the reimbursement.

25. Similarly, Pioneer had argued that there were 60 wells that were deregulated after January 1, 1988, and that the relevant contracts covering these wells were terminated before tax reimbursements were made after deregulation. Using its analysis, Pioneer matched reimbursement invoices during 1988 and 1989 with the 60 wells that were deregulated during those years. Pioneer contends that at the time the reimbursements were received, Pioneer was selling gas to customers other than Panhandle at less than the MLP so no MLP violation occurred. The ALJ rejected this method because the receipt of the reimbursement was the completion of the violation, and the MLP related to the period of the sale.

26. We agree with the ALJ's analysis. The record also shows that as to the 60 deregulated wells, after deregulation Pioneer sold the gas to other than Panhandle, but nevertheless received tax reimbursements from Panhandle for the tax years prior to deregulation. The facts underlying these wells are identical to Pioneer's position it advanced in Southern Star, which position the Commission rejected in Southern Star. The same conclusion applies here, and we find no error in the ALJ's conclusion that no headroom existed as to those 60 deregulated wells.

27. The record also supports findings that as to wells deregulated after January 1, 1985, Pioneer received tax reimbursements subsequently that related to the period when Pioneer was receiving the MLP. The testimony of both Panhandle's and Pioneer's witnesses support relating the subsequent 1985 tax reimbursements to the regulated sales period. Pioneer's witness Mr. Stanley admitted that because the renegotiated prices in the April 1985 agreement were inclusive of ad valorem taxes, the 1985 reimbursements could not relate to the new renegotiated contract prices.

28. Accordingly, we affirm the ALJ's finding that Pioneer is liable for the amount of refunds that Panhandle claimed was owing by Pioneer.

## **II. The Applicable Interest Rate**

29. At issue here is what interest rate is applicable to the refunds owed by Pioneer. The I.D. states that in March 1998, when Pioneer was required to make payment of the refunds Panhandle claimed it owed,<sup>8</sup> Pioneer paid a portion of the amount directly to Panhandle, and the remainder was paid into an escrow account. The interest rate for

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<sup>8</sup> The Commission's September 10, 1997 Order, 80 FERC ¶ 61,264, required producers to pay the amount pipelines claimed were owed within 180 days of the order, namely by March 10, 1998.

funds in the escrow account is less than the interest rate prescribed by the Commission's regulations (the FERC interest rate). At issue is whether Pioneer is obligated to pay the additional amount if the FERC interest rate was applicable to the funds in the escrow account.

30. The ALJ stated that the Commission has allowed establishment of escrow accounts for Kansas ad valorem tax amounts in dispute, and that by the words "in dispute" the Commission "intended to limit the escrow only to an amount that was realistically in dispute, not all that was subject to litigation." (I.D. at P83). He reasoned that any funds that Pioneer had placed in escrow to assure recovery if Pioneer eventually won on appeal would be subject to the FERC interest rate because they were not in dispute under the Commission's standard. However, he found that all the funds Pioneer had paid into the escrow account satisfied the "in dispute" test since:

considering the twists and turns of the litigation in this area, the initial stage of the calculation at the time the escrow account was established, and Pioneer's lack of access to Panhandle's records at that time, it is difficult to conclusively attribute Pioneer's placing the amounts in escrow primarily to concerns other than about the correct calculation of the amounts of refund. That concern was sufficient to afford it the right to escrow the amounts in issue, rather than refund them outright to Panhandle. I.D at P 86.

Thus, he held that Pioneer would not be required to pay a higher rate of interest than the escrow interest rate.

31. MoPSC and Commission Staff filed exceptions to this ruling. They contend that the ALJ erred because it is clear that the amount placed in escrow was not limited to amounts that were "in dispute," but also covered refunds that Pioneer effectively admitted that it did owe under the Commission's rulings, which rulings Pioneer thought were erroneous. They refer to the Petition for Adjustment Relief that Pioneer filed with the Commission in March 1998 in Docket No. SA98-33-000, when Pioneer made the payment in to the escrow account. They contend that this petition clearly establishes that the only subjects that Pioneer thought still "subject to pending litigation" were principal and interest relating to (1) royalty amounts; and (2) pre-October 4, 1983 production. They argue that only these limited amounts are entitled to the escrow interest rate, and the balance should be subject to the FERC interest rate.

32. The same issue was presented in Southern Star. There the ALJ held that the FERC interest rate applied to the funds placed in escrow, and Pioneer was liable for the additional interest that would have accrued using that rate rather than the escrow

account's interest rate. The Commission reversed, and like the ALJ here, held that the escrow account interest rate was appropriate. The Commission stated:

At issue here is not whether interest should apply to the refund amount, but what interest rate. Moreover, the issue relates only to the period after Pioneer had paid the claimed refund into the escrow account. The FERC interest rate was applicable in calculating the claimed refund until that time, which amount Pioneer paid into the escrow account.... Moreover, even if it were liable for some KAVT refunds, the amount was less than what Southern Star claimed because of the "headroom" amount, and other arguments noted above. Once Pioneer placed the amount of the claimed KAVT refund in escrow it could no longer use those funds and it lost use of the money. This lost opportunity, the Commission's justification for adding interest to the refund, applied to Pioneer, as well as to the overcharged customer.<sup>9</sup>

33. In addition, the Commission explained that the reasons advanced why interest is included in calculating the refund are satisfied by applying the account escrow rate of interest. When the refund is deposited in the escrow account, that party no longer had "the benefits which were available to the companies which collected excessive rates." Similarly, once that party paid the refund into the escrow account, there is no longer an incentive for that party to prolong the litigation, which is another reason advanced to justify imposition of interest. As we noted in Southern Star, since Pioneer claimed it did not owe the amount claimed as owing, there would be an incentive to Pioneer to finalize the amount as soon as possible so it could recover the funds from the escrow account.

34. While it is true that Pioneer's petition in Docket No. SA98-33 did seem to refer to only certain amounts of the claimed refund, we are not inclined to limit Pioneer only to those items as to what was in dispute. The issue as to the ad valorem refund obligation of producers has not been an easy one to resolve. As the Court stated, "We leave to the Commission the unenviable task of apply this principle to the facts of ancient transactions."<sup>10</sup> Here, since the customers were assured of recovery of the amount placed in escrow, we agree with the ALJ's conclusion that the entire amount Pioneer paid into the escrow account can be considered "in dispute."

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<sup>9</sup> 106 FERC at 62,246 P 54.

<sup>10</sup> 200 F.3d at 868.

35. The Commission recognizes that refund orders require that interest is a component of the refund obligation since “interest is necessary to reflect the time value of money,” Public Service Co. of Colorado, 82 FERC ¶ 61,058 at 61,215 (1998). MoPSC and Staff argue that because the escrow account interest rate is lower than the FERC interest rate, customers have not received their just compensation.

36. The Commission is not denying customers receipt of interest, the only issue being what interest should apply in the period the funds were in escrow since the FERC interest rate applied to the prior period. The fact that the FERC interest rate was higher should not be the determining factor. Considering all the factors, we find that applying the escrow account interest rate is consistent with the rationale for including interest in the refund obligation.

37. Accordingly, we affirm the ALJ’s ruling that Pioneer is not obligated for any additional interest on the funds paid into the escrow account.

### **III. The Royalty Interest Owner Refund**

38. A certain percentage of the revenues received by a natural gas producer are paid to the owner of the mineral rights, and here Pioneer claims that percentage is 15.93 percent. Thus, that amount of the ad valorem tax reimbursement would have been paid to those owners. Producers have claimed that this amount was uncollectible by them and the Commission should waive that amount from the refund the producer owed to the pipeline.

39. As the Commission explained in Southern Star, the Commission has established a standard for uncollectability of royalty interest owner portion of the refund as set forth in Wylee Petroleum Corporation v. FERC, 33 FERC ¶ 61,014 (1985). That standard is that where producers and royalty owners “do not have an ongoing contractual relationship,” refunds will be found uncollectible if: (a) the royalty owner is deceased; (b) the royalty owner is bankrupt and bankruptcy proceedings are closed; (c) the owner cannot be located, assuming there have been reasonable steps to locate him; (d) or if statutes of limitations prohibit producers from taking legal action against the royalty owner.

40. The ALJ found that Pioneer did not demonstrate any of the prerequisites for a waiver under this standard. Specifically, he found that “Pioneer has not established that it made any meaningful efforts to collect refunds from the royalty owners.... Nor has Pioneer offered any evidence on whether it has continuing contractual relationships with any of the royalty owners.” (I.D. at P 70).

41. The I.D. observed that the only one of the elements that was possibly met was the question of whether statutes of limitation prohibited Pioneer from taking legal action against royalty owners to obtain the refunds. However, the ALJ concluded that even as to that Pioneer “has not fully satisfied the Commission’s requirements.” (I.D. at P 71).

42. Despite these findings, the ALJ cited six factors that supported a grant of some relief to Pioneer: (1) the \$70,000 royalty portion of the refund had been split between hundreds of royalty owners; (2) many royalty owners might not have been discovered even if a timely and diligent search had been made; (3) instituting suit where the individual royalty payment was minimal might be unproductive in a majority of the cases; (4) state courts were likely to find an equitable bar to collection, as suggested by certain Kansas litigations against royalty owners; (5) Pioneer did not benefit from the royalty payments since it paid them to others; and (6) the fact that there have been numerous settlements with other producers, in which it appears that large portions of the royalty payments, deemed to have slight recoverability, were forgiven. (I.D. at P 76).

43. On the other hand, the ALJ reasoned, was the fact that “none of the ultimate customers who were charged more than the MLP were at fault in the violations and they were powerless to protect themselves.” Balancing these factors the ALJ concluded it was “reasonable to reduce the refunds otherwise due by about six percent (slightly more than one-third of the 15.93 percent in issue), to strike a balance between Pioneer and its customers footing the bill for the loss of royalty payments.” (I.D. at P 78).

44. In its exceptions, Pioneer argues it is a successor to the producer who made the sales giving rise to the liability, and it did not have the detailed information on the royalty owners but estimates that there were hundreds of royalty owners. Given this lack of information, and the likelihood that the statute of limitations would bar any recovery from the royalty owners, Pioneer contends that the ALJ should have waived the entire refund amount that was paid over to royalty interest owners.

45. MoPSC and Staff take the opposite tack in their exceptions. They argue that none of the factors relied upon by the ALJ warranted an arbitrary reduction in the refund amount, particularly the one referring to other settlements where the refund liability was reduced. Moreover, they contend that the ALJ erroneously included as a basis for granting relief speculation as to what might have occurred if Pioneer had instituted legal proceedings to recover from royalty owners.

46. The same issue was presented in Southern Star where Pioneer advanced the same arguments to support a waiver of the royalty interest owner’s portion of the refund. In Southern Star the ALJ rejected Pioneer’s arguments and found Pioneer liable for the

entire amount. The Commission affirmed the ALJ on this issue rejecting the same exceptions offered by Pioneer that Pioneer urges here. The Commission stated:

Given those factors, Pioneer contends that it was not in a position that would allow it to determine who the royalty owners were, so the Wylee conditions should be considered as having been met.

While we recognize that this was not an enviable task, the party seeking relief on this ground must demonstrate that it attempted to determine who the royalty interest owners were. There is nothing in the record to show that these wells in question are not operating. Moreover, to argue, as Pioneer does, that it does not have the records relevant to ownership interest is not a valid defense since the Kansas ad valorem tax issue has been apparent for these many years and Pioneer could, and should have, taken steps to ensure the necessary records were retained. Pioneer admits that its efforts to locate the royalty owners consisted of contacting the association representing royalty owners but nothing more. In short, it argues that it had satisfied the Wylee standard because of the difficulty in trying to actually meet them. We reject that as a basis for granting relief. 106 FERC at 62,245 P 46-47.

47. In Southern Star, the Commission also rejected Pioneer's statute of limitations argument stating "Pioneer's contention that it met Wylee's Statute of Limitations exclusion is also unavailing," and discussed each of the arguments advanced by Pioneer in its exceptions here, see 106 FERC at 62,245-46 P 48-50, and we will not repeat the analysis set forth.

48. Accordingly, we affirm the ALJ's ruling that Pioneer has not satisfied the Wylee standard for waiver of the royalty interest owner refund amount.

49. However, we also find that the factors referred to by the ALJ to grant a waiver of a portion of the refund do not provide a ground for an arbitrary reduction in the refund amount. A number of the factors the ALJ relied upon are mere speculation, and others are similar to the reasons Pioneer argues justifies granting a complete waiver, which argument we have rejected. Accordingly, we reverse the ALJ on this issue, and will require Pioneer to include the entire amount of the royalty interest owner's portion of the refund.

#### IV. The Equity Adjustment Issue

50. Pioneer argues here, as it did in Southern Star, that there should be a reduction in the refund amount based upon equitable factors. In fact, except for an argument advanced in Southern Star based upon an earlier settlement, Pioneer advances the same argument here that it did in Southern Star, as indicated by the headings from the Briefs on Exceptions filed by Pioneer in the two proceedings as set forth in the Appendix to this order.

51. All five factors advanced here by Pioneer as a basis for equity relief were advanced by Pioneer in Southern Star. In Southern Star the Commission rejected Pioneer's argument stating:

To the extent that Pioneer seeks equitable relief based upon the various arguments why it should not be found liable for the refund, (i.e., settlement, starting date), the Commission has held that if the Commission finds no merit in arguments to relieve the producer of the refund obligation, they cannot be a basis for relief under NGPA Section 502(c).<sup>11</sup> Relief under Section 502(c) requires a showing that payment of the refund would be a hardship or an inequity. None of the factors urged by Pioneer satisfy that requirement.

Moreover, none of the elements have merit on their own. Pioneer's mismeasurement contention relies upon some cases pending in the courts where that was urged by the plaintiff. The Initial Decision correctly characterized this as speculative (I.D. at P 25) since there have been no decisions in favor of plaintiff in any case, and those cases clearly are not a basis for relief under Section 502(c). The "notice" issue was rejected by the Court in Public Service. There the court held that once the status of the ad valorem tax was questioned in 1983, all were on notice that these reimbursements might not qualify as an add-on to the MLP.

Whether other parties have received relief under settlements with Southern Star is not a basis for granting relief to Pioneer since a settlement is limited to those covered by it based upon the

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<sup>11</sup> See Burlington, 103 FERC ¶ 61,005 at P32, 104 FERC ¶ 61,317 P32, and Panhandle, 103 FERC ¶ 61,007 at P 33.

circumstances present in that proceeding. As the Commission has stated: “The fact that a different settlement with a different pipeline has different provisions does not require that the Commission impose those terms in this proceeding.”<sup>12</sup>

Finally, where the refund flows to is not a basis for granting relief from the refund obligation. The NGPA violation is the receipt by the producer in excess of the MLP. The remedy for the violation is payment of the refund to the party that paid the excess amount. How that refund is handled by the recipient has no bearing on the producer’s obligation to make that refund. Accordingly, we reject Pioneer’s request for adjustment relief under NGPA Section 502(c).<sup>13</sup>

52. The reasons advanced here by Pioneer for an equitable adjustment are the same as those it advanced in Southern Star. In Southern Star the Commission found these facts insufficient to warrant any adjustment. Pioneer has not identified any distinguishing facts in this case that would warrant any equitable relief under any of these rationales. Accordingly, we reject Pioneer’s catchall equity adjustment request consistent with our ruling in Southern Star.

The Commission orders:

(A) The Initial Decision is affirmed in part, and reversed in part, as discussed in the body of this order.

(B) Pioneer must pay Panhandle the ad valorem tax refund under this order within 30 days of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>12</sup> Colorado Interstate Gas Co., 93 FERC ¶ 61,185 at 61,614 (2000).

<sup>13</sup> 106 FERC ¶ 62,247 PP 59-60

**Appendix**  
**Panhandle Eastern Pipe Line Company, Docket No. RP98-40-000**

In this proceeding, Pioneer included the following in its Brief on Exceptions:

- F. Substantial Record Evidence Supports a Further Reduction in the Refund Claim Based on Equitable Factors.
1. The Commission has the authority to grant equitable relief.
  2. Factors not accepted as a preliminary adjustment support reduction of the refund claim as a matter of equity.
  3. Potential Btu mismeasurement should also be considered.
  4. No real notice of potential refund liability for 1983-88 was provided until long after receipt of the Kansas ad valorem tax reimbursements.
  5. It is inequitable for Pioneer to pay 100 percent of the refunds when customers who paid reimbursements in the 1983-88 will not necessarily receive the refunds.

In Southern Star, Pioneer's Brief on Exceptions included the following:

- G. The Initial Decision Fails to Provide any Analysis of the Equitable Factors Demonstrated in the Record.
1. The Commission has the authority to grant equitable relief.
  2. Pioneer's defenses state[d] above should be considered in an equitable analysis.
  3. Potential Btu mismeasurement should be considered in an equitable analysis.
  4. The lack of real notice of potential refund liability for 1983-88 should be considered in an equitable analysis.

5. The 100 percent waiver of refunds granted to many other producers should be considered in an equitable analysis.
6. The fact that customers who paid reimbursements in 1983-88 will not necessarily receive the refunds should be considered in an equitable analysis.