

108 FERC ¶ 61,045
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Panhandle Eastern Pipe Line Company, LLC

Docket No. RP98-40-035

ORDER REJECTING REFUND REPORT

(Issued July 12, 2004)

1. On May 18, 2004, Panhandle Eastern Pipe Line Company, LLC (Panhandle) filed a Kansas ad valorem refund report (May 18 refund report) with the Commission to comply with the Commission's September 10, 1997 Order in Docket Nos. RP97-369-000, et al.¹ In this order, we reject Panhandle's May 18 refund report for the reasons discussed below.

Background

2. On April 1, 2003, the Commission issued an order directing Burlington Resources Oil & Gas Company (Burlington) to pay its outstanding Kansas ad valorem tax refund obligation to Panhandle within 30 days of the order.² On April 14, 2003, Burlington filed a motion seeking the establishment of "a mechanism to ensure that Burlington will receive a refund of this payment in the event the April 1 Order is reversed on rehearing or on judicial review."

3. On April 30, 2003, the Commission denied Burlington's motion, noting Burlington's motion was, in effect, a request for a stay of the Commission's refund order(s) and that the arguments presented by Burlington were not sufficient to overcome

¹ Public Service Company, et al., 80 FERC ¶ 61,264 (1997).

² Panhandle Eastern Pipe Line Co., 103 FERC ¶ 61,007; reh'g denied, 105 FERC ¶ 61,141 (2003).

the Commission's policy against staying refund orders.³ Burlington complied with the Commission's directives and paid its outstanding refund obligation of \$633,953.94 to Panhandle on May 1, 2003. Burlington's appeal of the Commission's orders requiring it to pay this refund and another refund to another pipeline is currently pending before the United States Court of Appeals for the District of Columbia, D.C. Circuit, Nos. 03-1340 and 03-1432.

4. The May 18 refund report shows that Panhandle refunded \$2,578,443.53 to its Missouri customers on March 29, 2004, in accordance with the settlement the Commission approved on January 29, 2004,⁴ in Docket No. RP98-40-000, et al., and refunded \$220,689.06 to its jurisdictional customers on April 29, 2004, in accordance with the settlement the Commission approved on February 13, 2004,⁵ in Docket No. RP98-40-000, et al.

5. The May 18 refund report also shows that on May 31, 2003, Burlington paid Panhandle \$633,953.94 in accordance with the Commission's April 30, 2003 Order. However, Panhandle has chosen to hold this refund pending resolution of Burlington's court appeal.

May 28, 2004 Protest

6. On May 28, 2004, Missouri Public Service Commission (MoPSC) and Consumers Energy Company (collectively, Protesters) filed a protest objecting to Panhandle's failure to pay out the Burlington refund to the customers entitled to the refund. The Protesters request that the Commission direct Panhandle to distribute the Kansas ad valorem tax refund received from Burlington (along with the accrued interest through the date of distribution) to its customers.

7. Protesters argue that by withholding the Burlington refund pending appeal, Panhandle is unilaterally implementing the relief the Commission rejected in the Burlington Refund Order in contravention of the Commission's instructions that the Burlington refunds be returned to overcharged customers as soon as possible.

³ Panhandle Eastern Pipe Line Co., 103 FERC ¶ 61,099 (2003) (Burlington Refund Order).

⁴ Missouri Public Service Commission, et al., 106 FERC ¶ 61,067 (2004).

⁵ Panhandle Eastern Pipe Line, et al., 106 FERC ¶ 61,138 (2004).

8. Protestors add that the only explanation Panhandle provides for holding the more than \$658,000 in Burlington ad valorem refunds is that it is doing so “pending resolution of Burlington’s court appeal.” Protesters argue, that despite Panhandle’s claim that it would be an administrative hassle to obtain reimbursement of these amounts from downstream customers should Burlington prevail on appeal, the Commission’s Burlington Refund Order clearly mandates distribution of the Burlington refund amounts without further delay.⁶

9. Finally, Protesters also state that the MoPSC has pursued Kansas ad valorem refunds from Pioneer Natural Resources USA, Inc. (Pioneer) in this proceeding. MoPSC submits that the Commission should also clarify that, to the extent it finds that Pioneer has refund liability in this proceeding and Pioneer seeks to challenge such finding on appeal, Panhandle may not withhold refund amounts received from Pioneer pending appeal absent a compelling justification.⁷

Panhandle’s June 17, 2004 Answer

10. In its answer to Protesters’ protest, Panhandle argues that, as set forth in the procedures adopted by the Commission for the payment of ad valorem refunds in these proceedings, it is entitled to retain the funds for the present time, provided that when the funds are distributed they include interest accrued from the date payment was received from Burlington.⁸

11. Panhandle states that the Commission made it clear in its 1997 order establishing the procedures for ad valorem tax refunds, “that pipelines will not be required to be guarantors of refunds. However, the Commission urges interstate pipelines to actively pursue refunds owed by first sellers.”⁹ Panhandle claims that it has done its part and

⁶ The Burlington Refund Order rejected Burlington’s request that the Commission “establish a mechanism to ensure that Burlington will receive a refund of [its ad valorem tax] refund payment in the event the April 1 Order is reversed on rehearing or judicial review.”

⁷ MoPSC is also seeking refunds from Pioneer in the parallel Kansas ad valorem refund proceeding in Docket No. RP98-52 involving liability to Southern Star Central Gas Pipelines, Inc.

⁸ Public Service Commission of Colorado, 80 FERC ¶ 61,264, at 61,957, App. E. (1997).

⁹ Id.

actively pursued such refunds from Burlington, but argues that MoPSC is asking the Commission to direct Panhandle to act as a guarantor for Burlington. Under the circumstances here, Panhandle insists that the Commission must assure that Panhandle is protected and the policy specifying “that pipelines will not be required to be guarantor of refunds” does just that.

12. Panhandle states, under the Refund Procedures language below which has been adopted in this proceeding, the Commission appeared to make allowance for pipelines to retain any refunds paid to them:

If a pipeline does not make refunds within the 30-day period, the interest provisions of section 154.67(c) will be triggered and interest must be paid from the date the pipeline receives the refunds from its producers until the date the pipeline pays refunds to its customers.

13. Panhandle argues that if the Commission grants MoPSC’s request and directs Panhandle to make immediate refunds, this portion of the Commission’s prior order will have no meaning.

Discussion

14. We reject Panhandle’s argument that it is entitled to retain the ad valorem refunds it was paid by Burlington until Burlington’s pending court appeal is resolved. The Burlington Refund Order specifically states the Commission generally denies requests for stays of refund orders pending judicial review “because either the Commission or the court may provide a remedy to recover refunded amounts in the event the Commission is reversed on appeal.”¹⁰ In the instant proceeding, Panhandle essentially requests, as Burlington previously had, for a stay of the Commission’s explicit order to immediately pay refunds back. Thus, like the case with Burlington, Panhandle’s action must overcome the Commission’s general policy “to refrain from granting stays in order to assure definitiveness and finality in Commission proceedings.”¹¹

15. However, like Burlington, Panhandle has not presented any additional information that is sufficient to justify granting an exception to that Commission’s policy. Panhandle fails to establish the factual premise underlying its request for relief, *i.e.*, that it would be difficult for it to recoup the refunds. Panhandle is incorrect in its assertion that the

¹⁰ Burlington Refund Order at P 5.

¹¹ Olympic Pipe Line, 102 FERC ¶ 61, 055 at P 16 (2003).

Refund Procedures language above permits a pipeline to indefinitely retain any ad valorem tax refunds at its own discretion, as long as the pipeline, when and if it decides to pay the refund, pays the refund with interest. Under the initial ad valorem tax refund procedures established by the 1997 order cited by Panhandle, the producer was required to make refunds to the pipeline upon the basis of the Statement of Refund Due that the pipeline submitted, even though the producer might be contesting the amount of the refund before the Commission.¹² Thus, initially there may have been a reason the pipeline did not need to pay over the refund to its customers while issues were still being litigated before the Commission as to the amount of the refund. However, it was not the intention of the Commission to allow the pipeline to retain the refund indefinitely after there was a final Commission order determining the liability. Thus, while Panhandle arguably may have relied on this provision temporarily, once the Commission denied rehearing and finally established the amount of the refund owed by Burlington, Panhandle could not retain the refund.

16. As we stated in the Burlington Refund Order, the public interest plainly favors providing refunds as soon as possible to illegally overcharged customers. Commission-ordered refunds owing to customers are to be paid promptly, since, as the Supreme Court has stated, "[It is the duty of the Commission ..., where refunds are due, to direct their payment at the earliest possible moment consistent with due process."¹³

17. Panhandle has had these refunds in its possession since May 1, 2003. Customers should not have to wait any longer for their refunds based merely on Panhandle's contention that the Court may find the Commission erred. Accordingly, consistent with our policy on the stay of refunds, we reject Panhandle's refund report and order Panhandle to pay these retained refunds to its customers 10 days from the date of this order.

18. The Commission also clarifies that, to the extent it finds that Pioneer has refund liability in this proceeding and Pioneer seeks to challenge such finding on appeal, Panhandle may not withhold refund amounts received from Pioneer pending appeal absent a compelling justification.

¹² Subsequently, the Commission permitted producers to pay the disputed amount into escrow or post a bond.

¹³ FPC v. Tennessee Gas Transmission Co., 371 U.S. 145 at 1556 (1962).

The Commission orders:

(A) Panhandle's refund report is hereby rejected, as discussed in the body of this order.

(B) Panhandle is directed to submit a refund report in accordance with the September 1997 Order within 30 days from the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.