

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Panhandle Eastern Pipe Line Company, LP)

Docket No. RP21-616-000

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME, COMMENTS, AND
LIMITED PROTEST OF SPIRE MARKETING INC.**

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ Spire Marketing Inc. (“Spire Marketing”) submits this Motion for Leave to Intervene Out of Time, Comments, and Limited Protest of the Request for a Limited Waiver Determination that Panhandle Eastern Pipe Line Company, LP (“Panhandle”) filed in the above captioned proceeding on March 9, 2021 (“Waiver Request”). In support, Spire Marketing states as follows:

I. COMMUNICATIONS AND CORRESPONDENCE

Spire Marketing requests that the following individuals be placed on the Commission’s Official Service List and that communications and correspondence in this proceeding be addressed to:²

Sean P. Jamieson, General Counsel*
Steven W. Ballard, Assoc. General Counsel*
Spire Marketing Inc.
3773 Richmond Avenue, Suite 300
Houston, Texas 77046
Phone: (346) 308-7555
sean.jamieson@spireenergy.com
steve.ballard@spireenergy.com

Kirstin E. Gibbs*
Pamela T. Wu*
Morgan Lewis & Bockius LLP
1111 Pennsylvania Avenue NW
Washington, DC 20004
Phone: (202) 739-5026/5199
kirstin.gibbs@morganlewis.com
pamela.wu@morganlewis.com

¹ 18 C.F.R. §§ 385.211, 385.212, 385.214 (2020).

² Persons designated to receive service pursuant to Rule 2010 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2020) are identified by asterisk. To the extent necessary, Spire Marketing requests waiver of Section 385.203(b)(3) of the Commission’s regulations, *id.* § 385.203(b)(3), in order to allow more than two persons identified above to receive service in this proceeding.

II. BACKGROUND

On March 9, 2021, Panhandle filed the Waiver Request seeking to waive certain Operational Flow Order (“OFO”) penalties that shippers incurred on its system during Winter Storm Uri. According to Panhandle, on the morning of February 15, 2021, the pipeline notified its shippers that it was curtailing Field Zone auto-unpark nominations beginning Intraday Gas Day 15 (“Update #2”) and indicated that it might need to issue an OFO if shippers did not comply with instructions to adjust their pool nominations accordingly.³ That evening, Panhandle issued an OFO which required, in part, that auto-unpark nominations be reduced to zero in the Field Zone until further notice.⁴ Panhandle indicated that the OFO may remain in effect until February 19, 2021.⁵

In the Waiver Request, Panhandle explains that, due to the deteriorating weather and the associated unprecedented market conditions, it was not able to issue the OFO on February 15, 2021 until shortly before the deadline for the Intraday 1 nomination cycle.⁶ In addition, Panhandle did not issue the OFO until 5:59 pm CST, which gave shippers only one hour to make their Intraday 3 nominations. Therefore, Panhandle proposes to waive the OFO penalties for all shippers for Gas Day 15.⁷

However, Panhandle does not propose to waive the OFO penalties for Gas Days 16, 17, and 18. Despite the rapidly changing circumstances and the continuing impacts of the extreme weather, Panhandle contends that “the affected shippers had more than adequate time to adjust their pool nominations as required by Panhandle’s OFO.”⁸ Although some shippers were able to

³ Waiver Request at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.*

take actions to comply with the OFO on Gas Days 16, 17, and 18, other shippers were not able to do so due to other curtailments, OFOs, force majeure notices, and other impacts of the changing circumstances. According to Panhandle, “Field Zone shippers that are gas marketers failed to comply with the OFO and took unauthorized deliveries of gas through unpermitted quantities,”⁹ which resulted in total OFO penalties in excess of \$121 million on approximately 480,000 Dth of unauthorized takes.¹⁰ Despite significant efforts to comply with the OFO notice, Spire Marketing is one of the shippers that has incurred these OFO penalties.

III. MOTION FOR LEAVE TO INTERVENE OUT OF TIME

Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹¹ Spire Marketing respectfully moves for leave to intervene out of time in this proceeding. Spire Marketing is a shipper on Panhandle’s system and takes transportation service under Rate Schedules EFT, IT, and GPS. Spire Marketing is one of the shippers that has incurred OFO penalties that are the subject of Panhandle’s filing. Therefore, Spire Marketing has a direct and substantial interest in this proceeding that will be directly affected by the outcome of this proceeding.¹² Spire Marketing is not now, and will not be, adequately represented by any other party in this proceeding, and may be bound or adversely affected by the Commission’s action in this proceeding. Accordingly, Spire Marketing’s intervention will be in the public interest and is in accordance with Commission regulations.¹³

Good cause exists to grant Spire Marketing’s motion for leave to intervene out-of-time. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, the Commission

⁹ *Id.* at 3

¹⁰ *Id.*

¹¹ 18 C.F.R. § 385.214.

¹² *Id.* § 385.214(b)(2)(ii).

¹³ *Id.* § 385.214(b)(2)(iii).

considers the following factors in acting on a motion to intervene out of time: (1) whether the movant has good cause for failing to file the motion within the time prescribed; (2) whether permitting the intervention will disrupt the proceeding; (3) whether the movant's interest is adequately represented by other parties in the proceeding; (4) whether permitting the intervention might result in any prejudice to or additional burdens upon existing parties, and (5) whether the motion conforms with the requirements of Section 385.214(b).¹⁴

Spire Marketing respectfully submits that it satisfies the factors set forth in Rule 214(d). First, Spire Marketing had good cause for filing this motion three days out of time. Panhandle's Waiver Request was subject to a shortened seven-day comment period,¹⁵ rather than the 12-day comment period that is typically applied to tariff filings.¹⁶ Once Spire Marketing became aware of the shortened comment period, it worked diligently and expeditiously to prepare and file this motion. Spire Marketing seeks to intervene in the above-captioned proceeding to preserve its rights as Panhandle's Waiver Request raises issues that directly affect Spire Marketing. Good cause therefore exists to grant this motion.

Second, granting Spire Marketing's motion will not disrupt the proceedings. The Commission has stated that "[l]ate intervention at the early stages of a proceeding generally does not disrupt the proceeding or prejudice the interests of any party."¹⁷ As noted above, Spire Marketing is filing this motion three days after the close of a shortened comment period. No party will be prejudiced by Spire Marketing's intervention, and the proceeding will not be

¹⁴ *Id.* § 385.214(d).

¹⁵ *Panhandle Eastern Pipe Line Co., LP*, Combined Notice of Filings (issued March 10, 2021) (establishing a seven-day comment period, with comments due by March 16, 2021).

¹⁶ 18 C.F.R. § 154.210.

¹⁷ *Maritimes & Northeast Pipeline, L.L.C.*, 154 FERC ¶ 61,182 at P 33 (2016).

delayed or disrupted as a result of Spire Marketing's intervention. Spire Marketing will accept the record as it stands.

Third, as noted above, Spire Marketing takes transportation service under Rate Schedule EFT, IT, and GPS on Panhandle's system and is accordingly subject to the penalties set forth in Panhandle's filing. Therefore, Spire Marketing has a direct and substantial interest in the proceeding, and that interest cannot be adequately represented by any other party and will be directly affected by the outcome of this proceeding.

Fourth, Spire Marketing submits that its intervention will not result in any prejudice to or additional burdens upon existing parties. The Commission has stated that "[l]ate intervention at the early stages of a proceeding generally does not ... prejudice the interests of any party."¹⁸ Panhandle filed its Waiver Request just ten days ago, and the Commission has not issued an order on the merits. In addition, as noted above, Spire Marketing will accept the record as it stands.

Finally, this motion conforms to the requirements of Section 385.214(b).

IV. COMMENTS AND LIMITED PROTEST

Spire Marketing supports Panhandle's request for waiver of the penalties assessed on shippers, including Spire Marketing, on February 15, 2021. Spire Marketing agrees that such waiver is appropriate given the extreme unprecedented weather conditions and market events.

However, Spire Marketing believes that Panhandle's request for waiver should be extended to waive all OFO penalties incurred from February 16, 2021 through February 19, 2021. As noted in other protests and comments, pipelines such as Algonquin Gas Transmission, LLC and Texas Eastern Transmission, L.P. have made postings that waived all applicable OFO

¹⁸ *Id.*

penalties.¹⁹ Southern Star has also filed an OFO penalty waiver request with the Commission that proposes to waive OFO penalties incurred from February 11, 2021 through February 19, 2021.²⁰ As those pipelines have recognized, OFO compliance during Winter Storm Uri was complicated by numerous factors including curtailments, OFOs, and force majeure notices.

The purpose of the OFO provisions in pipeline tariffs is to enable the pipeline to deter shipper behavior that threatens the integrity and reliability of the pipeline transportation and storage operations. As Direct Energy Business Marketing, LLC (“DEBM”) noted, the deterrent purpose underlying the Commission’s OFO policy is not fully applicable here because shippers’ behavior was dictated by the extreme and changing conditions, rather than bad faith motivation.²¹ The recent weather events resulted in significant and unanticipated disruptions, all of which impeded shippers’ ability to match deliveries to nominated volumes, as required by the OFO. The imbalances were not the result of intentional bad behavior and were instead the result of the impact of Winter Storm Uri and the unprecedented chaos and confusion in the natural gas market.²² Without an extended waiver, Spire Marketing and similarly situated shippers will be significantly penalized, despite its unintentional actions and its best efforts to comply with the OFO notice.²³

To the extent the Commission declines to require full waiver of the OFO penalties incurred after February 15, 2021 and through February 19, 2021, Spire Marketing submits that,

¹⁹ Comments of Exelon Corporation in Support of Limited Waiver and Limited Protest at 3 n.2; Comments and Limited Protest of Direct Energy Business Marketing, LLC at 3; Motion to Intervene and Comments of NextEra Energy Marketing, LLC at 2-3.

²⁰ *Southern Star Central Gas Pipeline, Inc.*, Docket No. RP21-618-000, Request for OFO Penalties Waiver (Mar. 11, 2021).

²¹ Comments and Limited Protest of Direct Energy Business Marketing, LLC at 4.

²² In particular, Spire Marketing experienced confusion related to the application of the auto-unpark nomination feature.

²³ Motion to Intervene and Comments of NextEra Energy Marketing, LLC at 5 (noting that NEM was assessed \$4,287,723.28 in OFO penalties on one day).

at a minimum, good cause exists to require waiver of the OFO penalties incurred on February 16, 2021 (in addition to the OFO penalties incurred on February 15, 2021). Because Monday, February 15, 2021 was a federal holiday (Presidents Day), which is observed as a gas trading holiday by Intercontinental Exchange,²⁴ gas transactions that were entered into on Friday, February 12, 2021 remained in effect until Tuesday, February 16, 2021. In other words, shippers experienced further complications during Winter Storm Uri due to the timing of the extreme weather event because nominations for gas flow on Tuesday, February 16, 2021, the first business day of the week, were designed as part of the commercial transactions entered into with counterparties on Friday, February 12, 2021. By filing its Waiver Request, Panhandle acknowledges that assessing penalties based on the high daily gas price from February 15, 2021 of \$374.67 would impose an undue burden on shippers. That same high daily gas price of \$374.67 was applied to calculate the OFO penalties on February 16, 2021. Therefore, at a minimum, good cause exists for the Commission to direct Panhandle to waive the OFO penalties incurred on February 16, 2021.

If the Commission declines to require full waiver of the OFO penalties incurred on any one of the remaining days in the OFO period, Spire Marketing requests that, in the alternative, Panhandle be directed to calculate OFO penalties in a manner that is more commensurate with the harm that was caused by shippers who inadvertently violated the OFO notice. As Panhandle explains in the Waiver Request, during this challenging winter period (February 15-February 19), it was not required to curtail deliveries in the Field Zone, and due in large part to the availability of system storage, it was able to maintain Market Area deliveries.²⁵ Spire Marketing supports NextEra Energy Marketing, LLC and DEBM's alternative request that Panhandle be

²⁴ ICE, 2021 Trading Schedule, *available at* https://www.theice.com/publicdocs/Trading_Schedule.pdf.

²⁵ Waiver Request at 3-4.

directed to calculate OFO penalties incurred from February 16, 2021 through February 19, 2021 without the penalty multiplier, or in other words, as equal to the applicable daily gas price, rather than as two times that price.²⁶ As DEBM noted, the unique circumstances of the emergency conditions warrant some degree of equitable relief from what would otherwise be an unwarranted burden on market participants.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, Spire Marketing respectfully requests that the Commission grant its motion for leave to intervene out of time, for good cause shown, and permit Spire Marketing to participate in this proceeding with full rights of a party. Spire Marketing also requests that the Commission accept its comments and limited protest and require full waiver of the OFO penalties incurred on February 16, 2021 through February 19, 2021. If the Commission declines to require full waiver of the OFO penalties incurred on any one of the remaining days in the OFO period, the Commission should direct Panhandle to calculate OFO penalties without the penalty multiplier so that the OFO penalties assessed are more commensurate with the harm that was caused by the shippers who inadvertently violated the OFO notice.

²⁶ Comments and Limited Protest of Direct Energy Business Marketing, LLC at 6; Motion to Intervene and Comments of NextEra Energy Marketing, LLC at 6.

Respectfully submitted,

/s/ Kirstin E. Gibbs

Kirstin E. Gibbs

Pamela T. Wu

Morgan Lewis & Bockius LLP

1111 Pennsylvania Avenue NW

Washington, DC 20004

Phone: (202) 739-5026/5199

kirstin.gibbs@morganlewis.com

pamela.wu@morganlewis.com

Dated: March 19, 2021

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 19th day of March, 2021.

/s/ Pamela T. Wu

Pamela T. Wu

Morgan, Lewis & Bockius LLP

1111 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 739-5199

Email: pamela.wu@morganlewis.com

Document Content(s)

RP21-616 Spire MTI Comments and Limited Protest.PDF1