RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NO. 10358

**RATE-SETTING PROCEEDING REGARDING WESTLAKE PIPELINE
SEVERED FROM GUD NO. 10296**

APPEARANCES:

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PROCEDURAL HISTORY:

Docket Established - Severed from GUD No. 10296:	May 14, 2014
Hearing on the Merits:	August 6 – 7, 2014
Heard By:	Cecile Hanna, Hearings Examiner Rose Ruiz, Technical Examiner
Record Closed:	September 19, 2014
PFD Issuance:	December 16, 2014
Statutory Deadline:	None

STATEMENT OF THE CASE

On July 29, 2013, Eastman Chemical Company (Eastman) filed a complaint against Westlake Ethylene Pipeline Corporation (Westlake Pipeline or Westlake). The complaint was docketed as GUD No. 10296 and related to Westlake Pipeline's system operated pursuant to T-4 Permit No. 05253. Eastman's complaint centered on allegations of (1) discrimination and (2) unjust and unreasonable rates by the filing of Westlake Pipeline's 2013 Tariff. These issues were bifurcated with the discrimination claim remaining in GUD No. 10296 and the allegations related to rates severed into the instant docket, GUD No. 10358. In this case, the Commission is asked to consider whether the rate in Westlake Pipeline's July 2013 Tariff that increases the rate for all volumes of ethylene transported or exchanged from $1.90 per 100 pounds for the first 320,000 pounds in a single day and $0.70 per 100 pounds for each additional amount transported or exchanged in a single day to $3.50 per 100 pounds of ethylene for all volumes transported, is just and reasonable.

The Examiners recommend that the Commission find that Westlake's 2013 Tariff rate of $3.50 per 100 pounds for all volumes of ethylene transported or exchanged is not just and reasonable. Further, the Examiners recommend that the Commission adopt the Examiners' recommended rate of $2.45 per 100 pounds of ethylene transported or exchanged as supported by the preponderance of the credible evidence in the record.

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PROPOSAL FOR DECISION

1. Background

Westlake Ethylene Pipeline Corporation (Westlake Pipeline or Westlake) is a 194 mile common carrier pipeline that was originally constructed in 1996 by Mustang Pipeline Company (Mustang Pipeline), a subsidiary of Eastman Chemical Company (Eastman) for the purpose of transporting ethylene from Mont Belvieu, Texas to the Eastman plant in Longview, Texas.[1] The pipeline traverses the following seven Texas counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg Counties. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.

Westlake Longview owns polyethylene and other manufacturing facilities that are located within Eastman's industrial complex in Longview, Texas. These manufacturing facilities were owned by Eastman until they were sold in 2006 as part of a broader transaction that included the sale of the common carrier pipeline to Westlake Pipeline by Mustang Pipeline. The pipeline is used to physically deliver ethylene to the pipeline's chemical company affiliate, Westlake Longview.

Eastman owns and operates chemical facilities in Longview including four olefin cracking units (crackers), which produce propylene and ethylene. Eastman consumes all propylene produced in these facilities as raw material on-site but consumes approximately 50% of the ethylene produced.

Ethylene is the largest volume petrochemical produced in the world. It is the starting material, or chemical feedstock, for the manufacture of many different chemical products that are used in almost every sector of the economy. The most important derivatives are polymers, such as polyethylene, polystyrene, and polyvinyl chloride. Many plastics including packaging, appliances, toys, automotive parts, and construction materials contain one or more derivatives of ethylene. Eastman produces large quantities of ethylene in Longview. Both Westlake Chemical and Eastman consume large quantities of ethylene in Longview. Westlake Chemical's principal use of ethylene in Longview is for the production of polyethylene.[2]

Compression was added to the Mustang Pipeline by Eastman in 2002 to allow the bi-directional flow of ethylene from Longview back to Mont Belvieu in instances where the Eastman facilities produced more ethylene than was being utilized in Longview by either Eastman, or Westlake's polyethylene production plants. The compression to move the ethylene bi-directionally remained in place after Westlake Chemical bought the pipeline and certain polyethylene facilities at Eastman's Longview plant in 2006.[3] Eastman, however, retained the crackers, which produce ethylene. Westlake Chemical re-named the pipeline the Westlake Ethylene Pipeline and kept the tariff in place for approximately an additional seven years (2002 Tariff).[4]

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[1] A map of the pipeline system is attached to this Proposal for Decision as "Exhibit C."
[2] Eastman Ex. 2, Direct of George M. Intille, pp. 4-5.
[3] Eastman Ex. 101, Direct Testimony of J. Stephen Long, pp. 4-5 and Westlake Ex. 6 – Pipeline Purchase Agreement.
[4] Eastman Ex. 101, Direct Testimony of J. Stephen Long, p. 5 and Westlake Ex. 2 – 2002 Tariff.

The dispute giving rise to this complaint started in July 2013, when Westlake filed a new tariff raising the rate for ethylene transportation. Eastman uses the pipeline as a shipper to sell its excess ethylene and continue operations of its facilities at the capacity required to satisfy its propylene requirements. Transportation costs for ethylene are a significant portion of the costs for most polyethylene processes. Under the 2002 Tariff, the declining block tariff rate for ethylene transported or exchanged by the common carrier pipeline was $1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day and $0.70 per 100 pounds for each additional amount transported or exchanged in a single day. The 2013 Tariff, that is the subject of this docket, increases the rate to $3.50 per 100 pounds of ethylene transported. The 2013 Tariff also terminated the exchange services and backhaul (reverse flows) for ethylene, the subject of GUD No. 10296.[5] On December 9, 2014, the Commission approved a Tariff in GUD No. 10296 that continues backhaul and exchange services.

Table 1.1 is a timeline of the key events related to the pipeline:

Table 1.1
Timeline of Key Events[6]

1995	Eastman began planning the pipeline
12/1996	Mustang Pipeline Company began construction on the pipeline
06/02/1997	Eastman issued the first Tariff
2002	Compression added to the pipeline system to enable backhaul
07/24/2002	Mustang issued the second Tariff
10/06/2006	Westlake Chemical purchased the pipeline from Eastman
07/03/2013	Westlake Pipeline issued its first Tariff
07/29/2013	Eastman files Complaint with Commission
02/05/2014	Westlake's 2013 Tariff suspended by Examiners in GUD No. 10296 and 2002 Tariff reinstated during pendency of proceedings

2. Procedural History

Complaint. On July 29, 2013, Eastman Chemical Company filed a complaint against Westlake Ethylene Pipeline Corporation relating to Westlake Pipeline's system operated pursuant to T-4 Permit No. 05253. Eastman's complaint alleged that changes to the Westlake Pipeline 2013 Tariff: (1) unlawfully terminated the ability of shippers to conduct exchanges on the Westlake Pipeline; (2) unlawfully terminated the ability of shippers to ship product from Longview, Texas to Mont Belvieu, Texas; and (3) resulted in an unreasonably preferential, prejudicial, or discriminatory tariff. A response to the complaint was filed by Westlake Pipeline on August 16, 2013. On August 29, 2013, the complaint was docketed as Gas Utilities Docket No. 10296. A hearing on jurisdictional issues and the scope of this proceeding was held on September 27, 2013.[7]

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[5] Westlake Ex. 3 – 2013 Tariff.
[6] Timeline of Key Events Table is from companion case GUD No. 10296.
[7] *See* GUD No. 10296, Transcript on Hearing on Jurisdictional Issues (Jurisdictional Hearing).

On November 19, 2013, the Examiners in GUD No. 10296 concluded that the scope of the hearing in this matter would be limited to allegations of discrimination raised in the complaint by stating that the Common Carrier Act did not provide the Railroad Commission of Texas (Commission) authority to set the rate for transportation of ethylene on the pipeline. An interim appeal of the Examiners' ruling was filed by Eastman. Eastman contended that the Commission's jurisdiction included the discrimination issues encompassed by the Common Carrier Act and provided the Commission the authority to set rates for the transportation of ethylene.

Westlake Pipeline agreed that the Commission had jurisdiction to consider the discrimination claims raised by Eastman. Westlake Pipeline argued, however, that the Common Carrier Act did not provide jurisdiction for the Commission to establish rates. On January 7, 2014, the Commission reversed the GUD No. 10296 Examiners' ruling and determined that the Commission had jurisdiction to consider the discrimination claim and to set rates pursuant to the Common Carrier Act. The Commission clarified the applicability of the Common Carrier Act and concluded that all provisions of the Common Carrier Act applied to all common carrier pipelines regardless of the product transported.

Bi-furcation of Proceeding. The hearing related to Eastman's complaint was divided into two phases. The Notice of Hearing was issued on March 23, 2014. The first phase (Phase I) would address the discrimination claims and the second phase (Phase II) would address all issues related to rates.

Phase I Hearing – Discrimination Claims. The Phase I hearing was held on May 6, 2014. At the conclusion of the Phase I hearing the Examiners requested that the parties clarify their position regarding whether the Phase II hearing should be bifurcated. Eastman argued that the phases should be severed into separate dockets. Westlake Pipeline opposed severance. On May 14, 2014, after considering the arguments of the parties, the Examiners in GUD No. 10296 severed the proceedings and Phase II was docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296*. On December 9, 2014, the Commission issued a Final Order in GUD No. 10296 adopting the Examiners' Recommendation and approving a Tariff that continues backhaul and exchange services.[8]

Phase II Hearing – Rates. This proposal for decision is Phase II, GUD No. 10358, where the Commission is to consider whether the rate in Westlake Pipeline's July 2013 Tariff is just and reasonable. The rate portion went to evidentiary hearing on August 6 – 7, 2014. Closing Briefs were filed on September 5, 2014, and Replies to Closing Briefs were filed on September 19, 2014.

At the Phase II hearing, Westlake presented two witnesses: (1) Dr. Daniel S. Arthur, Principal of The Brattle Group, an economic and management consulting firm, who has over fifteen years of experience consulting with firms in the regulated energy industries on ratemaking, pricing, and antitrust issues; and (2) Amy Moore, Olefins Commercial Manager,

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[8] A copy of the Final Order in GUD No. 10296 issued by the Commission on December 9, 2014 is attached to this Proposal for Decision as "Exhibit F."

Westlake Chemical, who is responsible for commercial dealings for Westlake Chemical and its subsidiaries for ethylene or ethylene co-products, including the movement of those products.

Eastman presented the testimony of three witnesses: (1) Dr. Bruce Fairchild, Principal in Financial Concepts and Applications, Inc. (FINCAP), a firm engaged in financial, economic, and policy consulting to business and government; (2) Dr. George M. Intille, Principal at Nextan Inc. within its Energy and Chemical Consulting Group; and (3) J. Stephen Long, Eastman Chemical Company, Manager - Texas Global Indirect Procurement & Supply Chain, which includes supply and distribution responsibilities for the Texas region as well as the development of global sourcing strategies. Mr. Long is responsible for sourcing, procurement and supply chain activities associated with indirect materials and services for Eastman's Longview, Texas and Texas City, Texas sites.

On July 29, 2013, through Examiner Letter No. 6, the transcript of testimony and evidentiary record for companion case GUD No. 10296 was admitted into the record of the current docket, GUD No. 10358.

3. Jurisdiction

The Commission has jurisdiction over Westlake Pipeline, Eastman, associated affiliates, and the matters at issue in this proceeding pursuant to *TEX. NAT. RES. CODE ANN.* Title 3, Subtitles A, B, and D, Chapters 81, 85, 86, and 111. The statutes and rules involved in this proceeding include, but are not limited to the following: *TEX. NAT. RES. CODE ANN.* §§ 81.051, 81.061, 111.001 – 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262; and 16 TEX. ADMIN. CODE Chapters 3 and 7.

4. Burden of Proof

The instant case, GUD No. 10358, is the second phase of a bifurcated hearing. In GUD No. 10296 the complainant, Eastman, had the burden of proof to demonstrate that the exclusion of exchange and backhaul provisions in the 2013 Tariff were discriminatory. Whereas, in the current docket, GUD No. 10358, Westlake Pipeline, Respondent, has the burden to show that the 2013 Tariff rate is just and reasonable.[9]

5. Legal Standard

The Commission has specific and substantial authority over ratemaking for common carrier pipelines. The Commission has discretion to administer the state's oil and gas laws.[10] It also has plenary jurisdiction over all pipelines in Texas.[11] The Legislature has directed the Commission to "adopt all necessary rules for governing and regulating" these pipelines.[12]

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[9] Transcript of Testimony, Vol. I, p. 8, Westlake's counsel confirming that Westlake Pipeline, the Respondent, has the burden of proof regarding the rates portion of the case.

[10] *Stewart v. Humble Oil & Refining Co.*, 377 S.W.2d 830, 834 (Tex. 1964) (emphasizing that "the courts have consistently recognized that the Commission must be given discretion in administering the oil and gas statutes").

[11] *Bullock v. Shell Pipeline Corp.*, 671 S.W.2d 715, 719 (Tex. App.—Austin, 1984 writ ref'd n.r.e.).

[12] TEX. NAT. RES CODE ANN. § 81.052; *see also Bullock v. Shell Pipeline Corp.*, 671 S.W.2d 715, 719 (Ct. App.—Austin, writ ref'd n.r.e.) (finding that the Commission "has primary and plenary jurisdiction" over a common carrier pipeline).

In this case, an evaluation of pipeline transportation rates is governed by four relevant statutes authorizing the Commission to consider a number of factors, use varied methodologies, and use considerable latitude in their application. First, Section 111.183 of the Natural Resources Code is the statutory provision that governs the basis for the rate for common carriers. Section 111.184 of the Natural Resources Code goes on to authorize the Commission to use reasonable latitude in establishing and adjusting competitive rates. Third, Natural Resources Code Section 81.051 gives the Commission jurisdiction over common carriers. Lastly, 81.061(b) provides the Commission the power to use either a cost-of-service method or a market-based rate method when exercising its rate-setting authority.

A. Natural Resources Code Sections 111.183 and 111.184

Chapter 111 of the Natural Resources Code includes provisions specific to common carriers. Section 111.183 governs the Commission's process for common carrier ratemaking that outlines a method ensuring a fair return to the common carrier. Section 111.183 states:

> The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

Similarly, Section 111.184, titled "Discretion of Commission," authorizes the Commission to use "reasonable latitude in establishing and adjusting competitive rates." This provision contemplates that the Commission might consider a range of factors to determine a common carrier's rates. For this reason, Sections 111.183 and 111.184 are used to guide the Commission in setting rates in this docket.

There is little precedent at the Commission for setting rates for common carriers under Sections 111.183 and 111.184. A common carrier case from 1997, however, did apply Sections 111.183 and 111.184.[13] In *Weeks*, the pipeline (Chevron) sought to increase its rate from $0.89 per barrel to $1.44 per barrel, attributing the need for the increase to declining throughputs on the pipeline. The shipper, Weeks/Santos, protested the rate. The Examiner in *Weeks* employed a comparative approach using two sets of benchmarks. First, he utilized a cost-of-service analysis to derive the recommended rate and then found that a comparison of the recommended rate was within the range of rates reflected both in Chevron Pipeline Company FERC tariffs for transportation from offshore to land-based delivery points.[14] He also explained that his recommendation was within "the sampling filed by Weeks/Santos of tariffs on file at the Railroad Commission for similar transportation by other entities."[15] On July 22, 1997, the Commission adopted the rate that the Examiner recommended.[16]

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[13] Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997). GUD No. 8434 is attached to this Proposal for Decision as "Exhibit E."

[14] Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 4.

[15] *Id.*

[16] Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997).

B. Natural Resources Code Sections 81.051 and 81.061

Subsequent to the *Weeks* docket, the Legislature enacted Natural Resources Code Section 81.061(b), relating to the Commission's general powers and authority to set market-based and cost-of service based rates. Thus, the applicability of Section 81.061(b) to the instant case is an issue of first impression for the Commission. After careful analysis, the Examiners find that the Commission has jurisdiction over Westlake as a common carrier pipeline under Section 81.051(a)(1)[17] and in turn, Section 81.061(b).

Section 81.061(b) of the Natural Resources Code is under Chapter 81, Subtitle A, Subchapter C related to the Commission's "Jurisdiction, Powers and Duties" and gives the Commission the power to use a cost-of-service method or a market-based method in setting rates for common carrier pipelines, as follows:

> The commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

In construing whether Section 81.061(b) applies to rate-setting for ethylene pipelines, as in this proceeding, the Examiners considered, among other things, both the legislative intent and the regulatory construction of Section 81.061(b).[18]

This analysis is supported by the Code Construction Act, which provides that: "In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy."[19] The Act further states that, in construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters: (1) the legislative history; and (2) the administrative construction of the statute.[20]

(1) Legislative Intent

The construction a statute is to be given depends upon the legislative intent, which is to be determined from the language used and purpose in enacting the law.[21] "A court must look to the entire Act in determining the legislature's intent with respect to a specific provision."[22] Furthermore, "the entire statute is intended to be effective and that public interest is favored over any private interest."[23] While Section 81.061(b) was enacted into law as part of a broader cluster of statutes related specifically to natural gas pipelines, the language of Section 81.061(b) does not expressly limit using a market-based rate method to only natural gas pipelines. Indeed,

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[17] TEX. NAT. RES CODE § 81.051(a)(1) gives the commission jurisdiction over all common carrier pipelines defined in TEX. NAT. RES CODE § 111.002.

[18] *See* Tex. Gov't Code § 312.005 (Vernon 1998).

[19] Tex. Gov't Code § 312.005 (Vernon 1998); *Garland v. Dallas Morning News*, 22 S.W.3d 351, 358 (Tex. 2000) (stating courts must take statutes as they find them and should not give strained readings to statutes).

[20] *Id.*

[21] *Wilburn v. State*, 824 S.W.2d 755, 760 (Tex. App. – Austin 1992, no writ); citing *Ross Amigos Oil Co. v. State*, 138 S.W.2d 798, 800 (Tex. 1940).

[22] *Wilburn*, 824 S.W.2d at 760; citing *Taylor v. Firemen's & Policemen's Civil Service*, 616 S.W.2d 187, 190 (Tex. 1981).

[23] *Wilburn*, 824 S.W.2d at 760; *citing* Tex. Gov't Code § 311.021(1), (5).

Section 81.061(a) limits the section's inapplicability to just a handful of Utilities Code rate-setting provisions, none of which apply to this case.[24]

Where, as here, when specific exclusions to a statute are stated by the Legislature, the intent is usually clear that no other exclusions are to apply.[25] Section 81.061(b) expressly excludes rates established under Chapters 103 and 104 of the Utilities Code, however, it does not otherwise limit the Commission's authority to impose rates. Therefore, the Examiners find that the Legislature did not intend to prohibit the Commission from setting either a market-based rate or cost-of-service based rate in cases such as this one.[26]

(2) Administrative Construction

After carefully considering the plain language of Section 81.061(b), along with the legislative intent analysis described above, the Examiners recommend that full consideration should be given to the plain language of Section 81.061(b).[27] The Examiners believe that, by specifically excluding only certain, specific rate-setting provisions, the Legislature purposefully intended to make Section 81.061(b) applicable to all others. The Examiners therefore recommend that statutory construction principles also support the applicability of Section 81.061(b) to the Commission's ratemaking authority in this docket to set market-based or cost-of-service based rates.

(3) Conclusion

Since Section 81.061(b) allows the Commission to set either a cost-of-service based rate or market-based rate, the Examiners note that a cost-of-service method has been used in Texas for gas and various other utilities for many years. On the other hand, a market-based rate has been less widely used by the Commission. A market-based rate is a rate that the market will accept or a rate that the market will bear. A market-based method is intended to produce rates that would exist in a competitive market. Analogous to the Commission's jurisdiction, the Federal Energy Regulatory Commission (FERC) not only uses cost-of-service based rates but also introduced a procedure for using market-based rates when Congress enacted the Energy Policy Act of 1992 (EPAct).[28] In FERC cases, however, a pipeline may employ market-based rates if it is able to make an affirmative showing that the oil pipeline lacks significant market power in the relevant markets.[29]

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[24] Section 81.061(a) states: "This section does not apply to rates established under Chapter 103, Utilities Code, or Subchapter C or G, Chapter 104, of that code" (internal footnote omitted).

[25] *Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.*, 409 S.W.3d 908, 918 (Tex. App. – Texarkana 2013, pet. denied) (The principle of *exclusion unius* recognizes that "'[t]he inclusion of the specific limitation excludes all others.'"); *Unigard Security Insurance Co. v. Schaefer*, 572 S.W.2d 303, 307 (Tex.1978).

[26] *See also Crawford Family Farm Partnership*, 409 S.W.3d at 918 (finding that if Legislature intended to limit Commission's authority over common carriers, it would have done so with an express limitation); Tex. Nat. Res. Code 81.051 (Commission has authority to regulate all common carrier pipelines in Texas).

[27] The Examiners also carefully reviewed the amicus letters filed in the GUD 10296 proceeding, in which several industry organizations expressed their opinions and analysis that the Commission has authority under the Natural Resources Code to exercise jurisdiction over ethylene pipelines. *See* Letter from Texas Chemical Council, Dec. 23, 2013, GUD 10296; Letter from Texas Pipeline Association, Dec. 30, 2013, GUD 10296; Letter from Texas Oil & Gas Association, Dec. 31, 2013, GUD 10296; and Letter from Gas Processors Association, Jan. 6, 2014, GUD 10296.

[28] *Ass'n of Oil Pipe Lines v. F.E.R.C.*, 83 F.3d 1424, 1429 (D.C. Cir. 1996) (quoting the legislative history of the EPAct).

[29] *Ass'n of Oil Pipe Lines v. F.E.R.C.*, 83 F.3d 1424, 1431 (D.C. Cir. 1996) (quoting Order No. 572, at 31,181; *see also* 18 C.F.R. § 342.4(b).

While there have been few common carrier rate setting cases before the Commission, the focus on competitive results has been apparent in Commission ratemaking for over a century. In *Railroad Commission of Texas v. Weld & Neville*, the Texas Supreme Court observed that the Commission was obligated to evaluate rates from both the perspective of the carrier and the shipper.[30] While the carrier was entitled to a fair return, the Commission also had to take into account the interests of the industry so that both the rights of the shipper and the rights of the carrier were evaluated in determining the reasonableness of rates.

In conclusion, the Examiners recommend that the Commission adopt the Examiners' findings that the Commission has jurisdiction over Westlake Pipeline under Section 81.051(a)(1) and further that the Commission may rely upon Section 81.061(b) to set either a cost-of-service based rate or market-based rate in this docket. With either approach, the Commission is to balance the interests of both the pipeline and the shipper.

6. Tariff – Rate

There are three tariffs relevant to this docket. These include: (1) the 1997 Mustang Tariff; (2) the 2002 Mustang Tariff, which is a two-tiered declining block rate structure charging $1.90 per 100 pounds for the first 320,000 pounds shipped per day and $0.70 per 100 pounds for all remaining volumes shipped the same day; and (3) the 2013 Westlake Pipeline Tariff that proposes to charge a rate of $3.50 per 100 pounds for all volumes transported. The Commission in this case is being asked to determine whether the 2013 Westlake Pipeline Tariff is just and reasonable. Table 6.1 below summarizes the rates contained in the three tariffs.

Table 6.1
Tariff – Rate Summary Comparison

	Initial Tariff – 1997 Mustang Pipeline	**2002 Revised – Mustang Pipeline**	**Filed 2013 Westlake Tariff**
	Tariff No. M-3	**Tariff No. M-3**	**Tariff No. 1.0.0**
Tier 1	$11.60 per 100 pounds for the first 275,000 pounds transported in a single day	$ 1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day	$ 3.50 per 100 pounds for all pounds transported in a single day from an Origin Point to the Delivery Point.
Tier 2	$ 0.70 per 100 pounds for each additional amount transported in a single day	$ 0.70 per 100 pounds for each additional amount transported or exchanged in a single day.	

The 1997 Mustang Tariff was the original tariff. In 2002, Mustang imposed the 2002 Tariff, which is the existing rate. As part of the initial complaint, GUD No. 10296, Eastman

[30] *R.R. Comm'n of Texas v. Weld & Neville*, 96 Tex. 394, 408, 73 S.W. 529, 533 (1903).

requested relief that the 2013 Westlake Tariff be immediately suspended and the prior 2002 Tariff be reinstated. Effective February 5, 2014, the Examiners in GUD No. 10296 granted Eastman's request that the Westlake Pipeline 2013 Tariff be suspended pending a resolution of this pursuant to Section 111.185 of the Natural Resources Code.

Finally, Natural Resources Code Section 111.014 requires that common carriers make and publish their tariffs under rules prescribed by the Commission. Regulated entities may not charge rates or provide services other than those properly filed with the appropriate regulatory authority.[31] As a corollary to that regulatory construct, a common carrier's obligations to its customers cannot exceed its duties under a filed tariff.[32] Filed tariffs govern the relationship of the common carrier with its customers.[33] Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly filed tariffs.[34] The filed tariff and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the filed tariff.[35]

7. Overall Position of the Parties

A. Westlake's Position

It is Westlake's position that the 2013 Tariff rate of $3.50 per 100 pounds of ethylene transported was set using reasonable rate making methods. According to Westlake, the July 2013 rate was within a range of rates reflected in other tariffs for similar transportation by other entities and also consistent with the indexing methodology used by the FERC. Finally, Westlake maintains that the July 2013 Tariff rate provides Westlake no more than a fair return on their investment.

B. Eastman's Position

Eastman argues that Westlake failed to meet its burden of proof to show that the 2013 Tariff is just and reasonable, and consistent with statutory criteria for common carrier rates. Eastman requests that the Commission reject Westlake's rate increase and allow the prior 2002 Tariff to remain in effect. In the alternative, Eastman requests that the Commission adopt one of

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[31] *Entex v. R.R.Comm'n of Tex*, 18 S.W.3rd 858, 862-63 (Tex. App., – Austin 2000, pet denied); *Southwestern Bell Tell. Co. v. Metro-Link Telecom, Inc.*, 919 S.W.2d 687, 692 (Tex. App. – Houston [14th Dist.] 1996, writ denied).

[32] *Arkansas La. Gas Co. v. Hall*, 101 S. Ct. 2925 (1981); *Texaco, Inc. v. Central Power & Light Co.*, 955 S.W.3rd 373, 377 (Tex. App. – San Antonio 1997, pet. denied); *Central Power & Light Co., v. Romero*, 948 S.W. 2d 764, 767 (Tex. App. – San Antonio 1996, writ denied).

[33] *See Keogh v. Chicago & Northwestern Ry.*, 43 S. Ct. 47 (1922) (holding that the legal right of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate as between carrier and shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.); *Carter v. AT & T Co.*, 365 F.2d 486, 496 (5th Cir. 1966) (holding that a tariff, required by law to be filed, is not a mere contract – it is the law.); *Southern Elec. Power Co. v. Grant*, 73 S.W.3rd 211, 217. (Tex. 2002) (discussing the *filed rate doctrine* and holding that filed tariffs govern a utility's relationship with its customers and have the force and effect of law until suspended or set aside); *Southwestern Bell Tell. Co.*, at 692 (discussing the *filed rate doctrine*, noting that the doctrine was created because of the unique nature of tariffs filed with the appropriate agency, and holding that filed tariffs govern a utility's relationship with its customers).

[34] *See CenterPoint Energy Entex*, 208 S.W.3rd at 622 (holding that regulated utilities may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those properly filed with the appropriate regulatory authority).

[35] *Id.*

Eastman's proposed rates that Eastman believes will protect both the shippers and Westlake. Overall, Eastman maintains that Westlake's 2013 Tariff rate is substantially too high and asserts that it is based neither on a cost-of-service nor market rate, but rather is an after the fact derived number. According to Eastman, the two tests that Westlake used to determine the reasonableness of the proposed rate, (1) simple cost of capital analysis, and (2) FERC escalation formula, were misapplied and not a reasonable basis for the proposed new rate.

8. Method to Set Rate

At the outset, the Examiners note that the method to set rates in this case is distinct from historical ratemaking methodologies contained in the Texas Utilities Code for natural gas utilities. As discussed in Section Five above, the legal standard for setting common carrier rates derives from Natural Resources Code Sections 81.061, 111.002, 111,181, 111.183 and 111.184. As a result, the basis for ratemaking focuses on a fair return by setting either a market-based rate or a cost-of-service based rate for the common carrier with consideration given to typical cost-of-service factors. In addition, other methods such as indexing have been utilized by the parties as a benchmark for the reasonableness of the rate proposed.

A. Westlake's Position

Westlake used a market-based tariff comparison to set its proposed rate at issue and then checked the reasonableness of that rate with a simple cost-of-service analysis and an indexing method. Westlake, therefore argues the pipeline used a combination of methods to set the July 2013 Tariff rate.

Amy Moore, Olefins Commercial Manager for Westlake Chemical, compared the 2002 Tariff rate to other tariffs rates that provide for the transportation of ethylene.[36] Ms. Moore primarily compared three tariffs and determined the Shell Concha tariff to be the most comparable to the Westlake Pipeline in terms of length. The Shell Concha tariff contains several different rates for the transportation of ethylene, depending on the location of where the shipper wants to ship the ethylene.[37]

Ms. Moore testified that under the Shell Concha tariff, a shipper will pay \$0.78[38] per 100 pounds from Geismar, Louisiana to Napoleonville, Louisiana, a pipeline distance of less than 30 miles. A shipper will pay \$3.50 per 100 pounds to ship from Mont Belvieu, Texas to Lake Charles, Louisiana, a distance of approximately 115 miles. The Mont Belvieu to Lake Charles rate is the same \$3.50 selected as the July 2013 rate although it covers a distance of approximately 60% of the Westlake Pipeline's 194.7 miles.[39]

Reviewing Ms. Moore's decision, Dr. Daniel S. Arthur, Principal of the Brattle Group, Economic and Management Consulting Firm, presented evidence comparing the rates offered in the Shell Concha tariff, the Enterprise TE Products tariff, the SouthTex 66 tariff, and others by

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[36] Transcript of Testimony, Vol. I, Amy Moore, p. 22 and Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.
[37] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.
[38] In Westlake Ex. 101, Direct Testimony of Amy Moore, Exhibit A, this rate is represented as \$0.69.
[39] Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 2-3.

converting them to $/pound-mile and by scaling them to a 195-mile length of transport, which is the length of the Westlake Pipeline.[40] Dr. Arthur testified that at $0.000179/pound-mile, the July 2013 Tariff rate is approximately half of the $0.000371/pound-mile rate in the Shell Concha tariff.[41] Moreover, Dr. Arthur testified that the July 2013 Tariff rate's average rate per pound-mile is below the majority of the other pipelines' rates per pound-mile.[42] Thus, Dr. Arthur believes this comparison shows that the July 2013 Tariff rate is one of the least expensive rates for the transportation of ethylene and when the rates on other ethylene pipelines were adjusted for the distance of transport, as advocated by Eastman's internal procedures, the July 2013 rate compares favorably.[43]

B. Eastman's Position

Eastman claims that Westlake arbitrarily arrived at the $3.50 per 100 pounds rate by an Internet search that looks only at a single, incomparable, ethylene pipeline rate. Ms. Moore testified that she did an Internet search for the tariffs of other ethylene pipelines, some of which were already known to her.[44] She testified further that she checked the reasonableness of the new rate by comparing the transportation distances of the Westlake Pipeline with the distance of other pipelines and decided that the Shell Concha tariff was the closest in distance.

Likewise, Dr. Arthur testified that Westlake compared its ethylene transportation rate for its 195 mile movement from Mont Belvieu, Texas to Longview, Texas with the $3.49 or $3.50 per 100 pounds ethylene transportation rates on the Shell Concha Chemical Pipeline for the approximately 100-mile to 200-mile movements from Mont Belvieu, Texas to destinations in Texas and Louisiana, including Lake Charles, Baton Rouge, and Napoleonville. Both Ms. Moore and Dr. Arthur concluded that since the longest distance movements on the two pipelines are approximately the same, it follows that the transportation rates per pound-mile are also approximately the same for any longer movements.[45]

Conversely, Eastman argues that the Shell Concha Tariff is generally a "postage stamp"[46] rate tariff, with the rate of $3.50 or $3.49 per hundred charged for hauls of widely varying distances. On a pound-mile basis, a rate of $3.50 per hundred over the 195-mile Westlake Pipeline is more expensive than the $3.49 per hundred rate Concha charges for the estimated 250-mile haul between Napoleonville, Louisiana and Mont Belvieu, Texas.[47] Eastman adds that pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul. According to Eastman, some of these factors include capacity, operating costs, location (urban v. rural and underground v. underwater), pipe diameter, age, throughput, capital and operating costs, competition, and market conditions.[48]

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[40] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment H – "Comparison of Ethylene Pipeline Rates/Pound-mile," which is attached to this Proposal for Decision as "Exhibit D."

[41] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 15.

[42] *Id.*

[43] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment H.

[44] Transcript of Testimony, Vol. I, Amy Moore, pp. 40-42.

[45] Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 6; Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5; and Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 2-3 and Ex. A, WLP000503.

[46] A "postage stamp" rate means regardless of the distance of the haul, the rate is the same price, Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, p. 203.

[47] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 7.

[48] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 8.

Eastman asserts that none of these factors were known to either of the Westlake witnesses regarding either the Shell Concha tariff or the other two pipeline tariffs pulled from the Internet by Westlake witness Ms. Moore.[49] Likewise, Ms. Moore confirmed that at the time she selected the new $3.50 rate, she was not in possession of basic budget or finance information about the Westlake Pipeline, nor had she ever been in contact with the controller for Westlake Pipeline for purposes of obtaining budget and finance information.[50] Ms. Moore also testified that she did not know that Westlake Pipeline was a common carrier with a tariff on file with the Commission and subject to regulation until late June 2013. She testified that she learned that the pipeline was a regulated common carrier when she visited an online virtual data room that Eastman had set up for potential investors in its cracking facilities.[51] Ms. Moore filed the 2013 tariff with the Commission on July 3, 2013, with an effective date of July 4, 2013.

Eastman asserts that Westlake's rate of $3.50 per hundred is the highest of any rate being charged for the transportation of ethylene in Texas or Louisiana identified by the Westlake witnesses in this case.[52] Contrary to Westlake's position, Dr. Fairchild's tariff comparison analysis demonstrates that the average of the Texas intrastate ethylene pipeline rates identified in this case is approximately $1.71 per hundred pounds.[53] Thus, Eastman argues that Ms. Moore's Internet search for other "comparable" ethylene pipeline tariffs was insufficient as a benchmark for Westlake's new rate as there has been no showing that the Concha Pipeline rate was comparable to the Westlake Pipeline or was itself just and reasonable.

Similarly Eastman argues that with the 2013 Tariff, Westlake arbitrarily eliminated the prior declining block rate structure, with no offsetting allowance and without knowing whether Concha Pipeline's rates were ceilings, or if they were fixed rates.[54] As previously discussed, the 2002 Tariff had a rate design of a declining block rate providing a base rate of $1.90 per hundred pounds for the first 320,000 pounds transported or exchanged in a single day, with a rate of $0.70 per hundred pounds for all remaining volumes transported or exchanged the same day.[55]

Westlake's rate, however, eliminates the lower cost of the declining block rate and replaces it with a new single rate applicable to all volumes shipped, regardless of their size. Ms. Moore testified that Westlake decided that the Pipeline would no longer offer a volume discount and that not all common carrier pipelines offer volume discounts.[56] Eastman maintains that the new rate has a double impact to Westlake's rate because the base rate has more than doubled and there is no longer the opportunity for Eastman to benefit from the lower rate of the declining block.

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[49] Transcript of Testimony, Vol. I, Amy Moore, p. 41.
[50] Transcript of Testimony, Vol. I, Amy Moore, pp. 20-21, 25, 28-32.
[51] Transcript of Testimony, Vol. I, Amy Moore, pp. 16-17.
[52] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-2.
[53] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22.
[54] Transcript of Testimony, Vol. I, Amy Moore, p. 42.
[55] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 3-4 and Examiners' Ex. 1, 2002 Mustang Pipeline Company Tariff with parties' Red-lined changes to 2013 Westlake Ethylene Pipeline Corp. Tariff.
[56] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.

9. Verification of the 2013 Tariff Rate

Ms. Moore testified that after selecting the Concha Pipeline tariff as the most comparable in terms of pipeline length, Westlake performed two tests to verify the reasonableness of the $3.50 rate.[57] These tests included a FERC escalation formula to the 2002 Tariff rate and a simple cost of capital analysis to confirm that the $3.50 rate would give Westlake Pipeline a reasonable rate of return.[58]

10. FERC Escalation Formula

A. Westlake's Position

Ms. Moore testified that once she selected the market-based tariff comparison of a $3.50 rate, she then considered a FERC escalation formula as another data point to compare the rate.[59] Ms. Moore testified further that she is familiar with using the FERC escalator because the methodology is used in other Westlake pipeline agreements.[60] Applying the multiplier contained in the FERC oil pipeline index, Ms. Moore determined that the 2002 tariff rate, if escalated, would be $3.01 per 100 pounds for 2013.[61]

Westlake points out that the Examiner in *Weeks* ultimately rejected the FERC method proposed in that case, because it was ill-suited under the circumstances and because of its complexities.[62] Westlake contrasts the *Weeks* analysis, by arguing that the FERC escalator used by Ms. Moore is simple and well-suited for Westlake Pipeline's purpose, which adjusts the rate for 11 years of inflation.[63]

B. Eastman's Position

To begin with, Eastman's argues that Westlake's application of the FERC escalator is incorrect. In order for a pipeline to use indexing to set a rate ceiling, the baseline rate that is being escalated must have been found to be reasonable at some prior point in time based on a cost-of-service rate.[64] This is because indexing is only a methodology for changing rates at FERC, not for setting an initial rate.[65] Here, Westlake Pipeline did nothing to ensure that the Pipeline's previous rate was reasonable.[66] Therefore, Westlake's FERC escalator is not a proper benchmark.

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[57] Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 3-4.
[58] *Id.*
[59] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3 and Ex. B.
[60] Transcript of Testimony, Vol. I, Amy Moore, p. 39.
[61] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3.
[62] Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 5.
[63] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 1.
[64] Transcript of Testimony, Vol. I, Amy Moore, p. 38.
[65] *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Docket No. RM93-11-000, Order No. 561A, Order on Rehearing at 2, 59 Fed. Reg. 40243 (Aug. 8, 1994). Under the FERC's Order 561, indexing can be used only after a pipeline's initial rate has been shown to be just and reasonable, either through a cost-of-service showing or the agreement of at least one non-affiliated shipper.
[66] Transcript of Testimony, Vol. I, Amy Moore, p. 39.

Secondly, Eastman asserts that Ms. Moore's testimony and accompanying exhibit shows a spreadsheet with an application of the FERC escalators to both tiers of the 2002 rate, however, Dr. Fairchild states that upon review, Ms. Moore compared only the $1.90 part of the 2002 rate with the new $3.50 rate, while disregarding the $0.70 rate entirely.[67] Dr. Fairchild believes that a meaningful application of the FERC index factors must consider both tiers of the declining block rate.[68]

Dr. Fairchild testified that much of the ethylene shipped on the pipeline under the 2002 Tariff was shipped at the $0.70 per hundred declining block rate. Dr. Fairchild's analysis utilized the historical 2006-2013 volumes from Dr. Arthur's direct testimony, Table 1, to calculate an effective FERC index rate. Applying the FERC escalator to both non-incentive and incentive volumes he calculated a weighted average rate for 2014 of $2.22, $2.07, and $1.79 at the respective proposed annual volumes of 200, 230, and 326 million pounds which shows that at lower volumes the proper application of the FERC index results in a higher rate. Dr. Fairchild concludes that this range falls within the range of rates produced by his return on investment analysis.[69]

Thirdly, it is Dr. Fairchild's opinion that a proper escalation of the 2002 rates indicates that the $3.50 rate is grossly out of line and excessive. Dr. Fairchild reaches this conclusion by comparing his weighted average escalated rates of $1.79 and $2.22 to the proposed rate of $3.50. His calculated range of rate differences vary between approximately 58% and 96%.[70] Eastman argues that Westlake erred in using the FERC escalator because after performing the analysis, Westlake selected a rate of $3.50 per 100 pounds, which is 49 cents, or sixteen percent higher than the escalated rate of $3.01 per hundred. Dr. Fairchild believes this deviation does not support Westlake Pipeline's 2013 rate of $3.50 per hundred.[71]

C. Westlake's Response

Dr. Fairchild testified that the 2002 rate contained both an incentive and non-incentive rate and that the FERC escalator should be applied to both rates, then averaged.[72] Westlake believes that Dr. Fairchild used high throughput estimates and too often uses the lower incentive rate, which skews his escalation analysis.[73] Moreover, Westlake Pipeline has eliminated the incentive rate in the 2013 Tariff, so Dr. Arthur concludes that the non-incentive rate is a more reasonable benchmark for estimating the impact of FERC Indexing than a weighted average of the incentive and non-incentive rates.[74]

Likewise, Westlake maintains that the FERC escalation performed by Ms. Moore produced a rate that is actually too low. The $3.01 escalated rate is based upon Eastman's 2002 tariff rate of $1.90, which Westlake argues is unreasonably low because it rarely allowed

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[67] Westlake Ex. 101, Direct Testimony of Amy Moore, Ex. B.
[68] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.
[69] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.
[70] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 12-13.
[71] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 11-13.
[72] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.
[73] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 10.
[74] *Id.* at 11.

Mustang to receive a profit.[75] Dr. Fairchild testified that from 2002 through 2006, Mustang Pipeline had a negative rate of return.[76] In 2002, the $1.90 rate produced $916,112 in revenues,[77] but direct costs plus depreciation, insurance, taxes and other costs were $4,663,660.[78] The $1.90 rate was therefore generating a $3.7 million loss in 2002. It is Westlake's response that since the 2002 rate did not allow Mustang Pipeline a return on investment, Westlake Pipeline's use of the 2002 rate as a starting point for indexing produces a conservatively low estimate of what a cost-justified rate would be in 2013 after FERC indexing.[79]

11. Fair Return

A. Westlake's Position

As a final step in her approach to set a new 2012 Pipeline Tariff rate, Ms. Moore performed what she described as a simple cost of capital analysis to confirm whether the July 2013 Tariff rate would give Westlake Pipeline a reasonable rate of return.[80] Westlake maintains that the approach was consistent with Eastman's own rate-setting process, which considered the pipeline owner's return on capital,[81] and with *Weeks*, in which the Examiner sought a rate that would provide the pipeline "a fair return."[82] What is more, Westlake asserts that Eastman's expert witness Dr. Bruce Fairchild states that a fair return is consistent with a long line of cases, including at least three landmark decisions by the U.S. Supreme Court, holding that common carrier rates must provide a fair return, or they will be unconstitutionally confiscatory.[83]

Ms. Moore testified that a 12% after-tax return on capital is considered a generally acceptable after-tax rate of return on capital for Westlake Pipeline.[84] Ms. Moore testified that she took the purchase price of the Pipeline, estimated annual operating costs, the current corporate tax rate, and the estimated amount of ethylene that will flow through the pipeline for 2013, to achieve a 12% after-tax rate of return.[85] Ms. Moore determined that Westlake Pipeline would need to charge approximately $3.66 per 100 pounds transported.[86] Since the $3.50 per 100 pounds market-based rate of tariff comparisons is close to the $3.66 per 100 pounds transported, Ms. Moore concluded that the $3.50 proposed rate was reasonable.[87]

Westlake argues that it is reasonable for the Commission to allow considerable latitude in Westlake Pipeline's rate-setting approach in light of the uncertain legal framework for setting

[75] *Id.* at 11-12.
[76] Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, pp. 198-199.
[77] Westlake Ex. 104 at 4 (Eastman's Response to Interrogatory No. 3).
[78] Westlake Ex. 107 at Eastman 01593 (2002 cost data for Mustang Pipeline).
[79] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 13.
[80] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3.
[81] Westlake Ex. 30, Eastman Chemical Co. Texas Operations, Utilities and Feedstocks Division, p. 2.
[82] Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 4.
[83] Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, pp. 207-208 and *See Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Federal Power Comm'n et al. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of the State of Virginia*, 262 U.S. 679 (1923).
[84] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 4 and Transcript of Testimony, Vol. I, Amy Moore, pp. 36-37.
[85] Westlake Ex. 101, Direct Testimony of Amy Moore, p. 4.
[86] *Id.*
[87] *Id.*

rates on an intrastate ethylene pipeline in Texas. It is Westlake's position that all of the elements that Ms. Moore utilized to determine the July 2013 Tariff rate were reasonable and that the tariff comparison when adjusted for the distance of transport is substantially lower than rates contained in other published tariffs for transportation of ethylene.

Table 11.1
Summary of Westlake Pipeline's Proposed 2013 Rate Analysis

Method	Rate per 100 pounds
Tariff Comparison	$ 3.50
FERC Escalation Formula	$ 3.01
Simple Cost-of-Service Analysis using 140,000,000 volumes and purchase price of $ 18 million	$ 3.66

B. Eastman's Position

It is Eastman's position that Westlake's simple cost-of-capital analysis is faulty. Eastman points out that Ms. Moore provided no work papers to demonstrate her analysis, making it difficult, if not impossible, to understand exactly how Ms. Moore calculated the rate of return that the new $3.50 rate would provide. Eastman argues that it is unknown what numbers Ms. Moore used as the components of the pipeline's expenses, including operations and maintenance, depreciation, and property taxes. This lack of transparency also makes it difficult to understand her assumptions about the volumes of ethylene that would be transported on the pipeline. The only component that she makes clear is Westlake's investment using the purchase price of $18,000,000.

According to Eastman, without Ms. Moore's workpapers or documents to demonstrate how she performed her analysis, the record is void of evidence to support her conclusions. Eastman argues that Westlake is after the fact attempting to explain this return with Dr. Arthur's analysis.[88] Eastman believes that Westlake used unreasonable assumptions engineered to yield a result that allegedly supports Westlake's proposed $3.50 per hundred pound rate that came from the single, incomparable Concha Pipeline tariff. According to Eastman, some of those unreasonable assumptions include an assumed 100% equity ratio in the pipeline, a low assumption regarding volumes that are expected to be shipped over the pipeline and an assumed capital investment in the pipeline that exceeds the price Westlake paid for the pipeline.

On the other hand, Eastman's witness, Dr. Fairchild, utilized information obtained during legal discovery of this case to develop a conventional return on investment analysis.[89] Dr.

[88] For example, when Dr. Arthur attempts to explain Ms. Moore's process, he backs off of her use of the purchase price as an element and he uses an appraised value, Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 16-19.

[89] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4. Eastman notes that, while Schedules BHF-4 and BHF-8 are presented as confidential exhibits, only the figures presented under the "Expenses" line are confidential. Those figures were provided to Eastman by Westlake as confidential protected materials provided pursuant to the protective

Fairchild demonstrated that using the volume and operating expense data from Westlake Pipeline's 2014 budget, as well as capital cost data using standard ratemaking methods, Westlake's proposed $3.50 per hundred pound rate yields a more than 40% return on equity. Eastman argues that this proposed rate exceeds a reasonable return on investment to the owners of the Westlake Pipeline and is contrary to the Commission's requirements to review and set a pipeline rate for a common carrier pursuant to § 111.183 of the Natural Resources Code. It is Eastman's position that when reasonable assumptions are made in the return on investment analysis, using standard ratemaking methods, a reasonable range of pipeline rates of between $1.30 per hundred pounds to $2.11 per hundred pounds is produced.[90] To develop this range of rates for the Westlake Pipeline, Dr. Fairchild used three return on investment calculations, each with a different annual pipeline volume figure, to show a range of reasonable rates, as will be discussed in detail below in Section 13A.(1). of this Proposal for Decision.[91]

Eastman maintains that an examination of Dr. Arthur's Rebuttal Attachment F and Dr. Fairchild's Schedule BHF-8 reveal that the differences in the calculations for return on investment center on only two inputs: (1) the net investment made by Westlake in the Pipeline; and (2) the representative volumes that are reasonably expected over the pipeline. According to Eastman, the significant calculations for recovery of the reasonable operating expenses were provided by Westlake to Eastman in discovery and are identified in the Westlake Pipeline 2014 budget. Property tax information was also obtained from the 2014 budget, with Dr. Fairchild making an allowance for the Texas franchise tax in his calculations.[92] The use of these expenses in Dr. Fairchild's return on investment calculations is not challenged in Westlake's rebuttal testimony and Westlake witness Dr. Arthur also used these same expenses in his Rebuttal Attachment F.[93]

12. Elements for Fair Return

Natural Resources Code Section 111.183 provides that the basis of the rate shall be an amount that will provide a fair return on the aggregate value of used and useful investment value and then lists historical cost-of-service type rate making processes such as depreciation and reasonable operating expenses. The parties also broke down their arguments for a fair return on these typical ratemaking principles that include identifying an appropriate Test-Year, a rate base or investment value for the pipeline, depreciation expense, Test-Year operating expenses, and revenues demonstrated by volume or throughput, as discussed in detail in this section.

A. Test-Year

(1) Westlake's Position

It is Westlake's position that the proper Test-Year for this proceeding is the second quarter of 2012 through the first quarter of 2013, which is the most recent period available to

order adopted in this proceeding. In all other respects, the figures presented on Schedules BHF-4 and BHF-8 are non-confidential.

[90] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22 and Schedule BHF-8.
[91] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-8.
[92] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.
[93] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment F.

Westlake Pipeline during the time that it was revising its rate in late June and early July 2013. Similarly, in the natural gas context, the Commission uses the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data is available.[94] Dr. Arthur testified that the historical Test-Year approach is common not only at the Commission, but also at FERC and at the Texas Public Utility Commission.[95] Thus, Dr. Arthur testified that either the calendar year 2012 or the 12 months ending March 2013, adjusted for known and measurable changes, would be an appropriate Test-Year for this proceeding.[96]

(2) Eastman's Position

Eastman does not recommend the use of a specific Test-Year, instead, Eastman argues that adherence with the historical Test-Year standard is not required here because none of the statutes that guide the Commission in its review and setting of a rate for a common carrier require the application of the historical Test-Year standard. If, however, an historical Test-Year standard were applied to this proceeding, Eastman argues that Westlake failed to establish the required data for Test-Year end investment, Test-Year operating expenses, and Test-Year revenue necessary to meet its burden of proof.

With the caveat that the Commission's Rate Review Handbook for Gas Utilities is not applicable to this common carrier rate-setting proceeding, Eastman argues that the Handbook may provide a guide for the Commission's application of the Test-Year standard. With respect to rate base, the Handbook states that the "present practice of the Commission is to use asset balances as of the Test-Year end adjusted for known changes."[97] According to Eastman, Westlake has failed to establish not only its Test-Year end asset balance but also the pipeline's revenue deficiency and operating expenses.

B. Rate Base or Investment in the Pipeline

(1) Westlake's Position

According to Westlake, there are two reasonable ways to determine Westlake Pipeline's equity investment as of 2006. The first is to use the original cost of the pipeline and depreciate it to determine a 2006 value. Dr. Arthur testified that the original cost of the pipeline assets in mid-1997 was approximately $54.0 million, which would be depreciated by approximately 9.5 years by the end of 2006.[98] Dr. Arthur testified that 30 to 35 years is a typical depreciation life for pipeline assets.[99] Westlake notes that Eastman's witness, Dr. Fairchild, testified that a shorter depreciation life might be appropriate in some circumstances, yet testified further that a 30 to 35 year period may also be reasonable.[100] Dr. Arthur testified that this method produces a 2006

[94] TEX. UTIL. CODE ANN. § 101.003(16) (West Supp. 2014).
[95] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 3-4.
[96] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5 and Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 91–92.
[97] Railroad Commission of Texas, Natural Gas Review Handbook ("Handbook") at 16 (Jan. 2013).
[98] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.
[99] *Id.*
[100] Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 26-28.

equity investment of $39.4 million using a 35-year depreciation life or $36.9 million using a 30-year depreciation life.[101]

Secondly, Westlake believes that the other method for determining the 2006 equity investment for the pipeline is at a minimum $29.8 million, which is the value set by Ernst & Young in an independent assessment contemporaneous with the sale of the pipeline to Westlake in 2006. It is Westlake's position that the $29.8 million value is the proper value to be used in this case, and points out that credibility lies in the fact that the assessment was performed before any dispute arose between Westlake Pipeline and Eastman.[102] Dr. Arthur testified that use of an independent valuation instead of a purchase price would be reasonable where, as in this proceeding, the pipeline sale was part of a bundled transaction that involved both regulated and unregulated assets.[103]

Westlake disagrees with Eastman's use of the $18 million purchase price of the pipeline.[104] Dr. Arthur testified that even though Westlake witness Ms. Moore used the $18,000,000 purchase price for capital investment, this figure is low based on industry norms.[105] Using an $18 million value for Westlake Pipeline's 2006 equity investment would imply an average per-mile construction cost of only $185,000, compared to industry norms of between $554,000 and $983,000 for 1996 and 1997 when the pipeline was built.[106] Westlake argues this supports the conclusion by Ernst & Young of a $29.8 million 2006 equity investment and discredits the use of an $18 million price assigned to the pipeline in the 2006 transaction, which understated the value of the pipeline and overstated the value of the non-regulated assets being sold.[107]

(2) Eastman's Position

Dr. Fairchild used the $18,000,000 actually paid by Westlake for the pipeline in 2006 as the capital investment.[108] Similarly, Westlake witness, Ms. Moore, also used $18 million as Westlake's investment in the pipeline in her return on investment calculation.[109] When Dr. Arthur filed his direct testimony, he opined that Ms. Moore's calculation was reasonable.[110] Yet, in his rebuttal testimony, Westlake witness Dr. Arthur changes his testimony and alleges that Westlake's investment in the pipeline was $29.8 million, based on an estimate done by Ernst & Young at the request of Westlake Ethylene Pipeline Corporation's parent, Westlake Chemical Corporation, in 2007.[111]

Eastman claims that no one at Westlake has ever told Dr. Arthur that the $18 million paid by Westlake Ethylene Pipeline Corporation was an inaccurate representation of Westlake's

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101 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18.
102 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18.
103 Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 107-108.
104 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 15.
105 Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 84-85.
106 *Id.*
107 *Id.* at 108–109.
108 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.
109 Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 9.
110 Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 12.
111 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.

investment in the pipeline or of the pipeline's value. Dr. Arthur testified that he has not spoken with anyone involved with the Pipeline Purchase Agreement where the $18 million purchase price was set.[112] Eastman believes that Dr. Arthur's most recent position that Westlake invested more than $18 million in the pipeline is another after-the-fact attempt to justify a proposed $3.50 per hundred pound rate developed long before Dr. Arthur was retained for this case.

C. Depreciation Expense

(1) Westlake's Position

It is Westlake's position that the proper annual depreciation expense in this proceeding is a minimum of $868,705. To support this conclusion, Dr. Arthur performed three calculations. First, Dr. Arthur used the Ernst & Young 2006 valuation of $29.8 million to calculate an annual depreciation expense for the pipeline of $850,429 using Dr. Fairchild's assumed 35-year remaining life beginning in 2006.[113] Combining the annual depreciation expense of $850,429 for the pipeline with an annual depreciation expense of $18,276 for computer equipment produces a total annual depreciation expense of $868,705.

Second, Dr. Arthur believes that if the 2006 valuation is used, a more reasonable remaining depreciation life as of the end of 2006 when the pipeline is approximately 10 years old would be 25 years, consistent with a 35-year depreciation life as of 1997 when the pipeline was placed in service.[114] Depreciating the Ernst & Young 2006 valuation of $29.8 million over 25 years yields an annual depreciation expense of $1.2 million.[115]

Third, Dr. Arthur used Mustang's 1997 original cost of $54.0 million and calculated an annual depreciation expense of $1,544,057 based on an assumed 35-year depreciation life starting in 1997, with accumulated depreciation of $14.7 million by the end of 2006.[116] This results in a depreciated original cost value for the pipeline of $39.4 million as of 2006.[117] It is Westlake's position that the Ernst & Young 2006 valuation or Eastman's 1997 original cost provide far more reasonable starting values when combined with a reasonable assumed remaining life of 35 years from 1997, when the pipeline was placed in service.

(2) Eastman's Position

It is Eastman's position that the depreciation calculations of Dr. Arthur and Dr. Fairchild are substantially the same. Both Dr. Fairchild and Dr. Arthur agree that it is reasonable to use either a 30-year or 35-year service life depreciation period for the pipeline.[118] They both, however, use a 35-year period in their calculations to depreciate Westlake's investment in the pipeline.[119] The main difference between the two approaches is that the annual depreciation of

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[112] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 85-86.
[113] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment F, n.(b).
[114] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p.19, n.41.
[115] $29,800,000/25 years = $1,192,000/year.
[116] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G, n.(b).
[117] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G, n.(b).
[118] Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 27-28.
[119] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachments F & G.

$868,705 calculated by Westlake witness Dr. Arthur and the $514,286 of depreciation calculated by Eastman witness Dr. Fairchild is that Dr. Fairchild started with Westlake's purchase price of $18 million from Mustang[120] and Dr. Arthur started with the Ernst & Young 2006 estimated value of $29.8 million. As an alternative, Dr. Arthur also used an alternative of a depreciated original cost of $39.4 million.[121]

Eastman argues that Dr. Arthur's two investment values far exceed Westlake's actual investment in the pipeline and thus are not a reasonable basis on which to calculate rates. Eastman points out that Westlake's second depreciation calculation is based upon a 25-year period over which to depreciate Westlake's investment in the pipeline, which Dr. Arthur explained is the 25 years remaining on the life of the pipeline if the 35 year service life period begins in 1997 when Mustang built the pipeline. Dr. Fairchild believes that the 25-year assumption is contrary to the actual 35-year period over which Westlake is depreciating its investment in the pipeline.[122]

D. Operating Expenses

(1) Westlake's Position

The next component for calculating a fair return for the common carrier pipeline is an operating expense figure for the reasonable operating expenses of the pipeline. Westlake asserts that the proper operating expenses (expenses other than depreciation) for this docket are at least as high as the $2,135,000 from the 2014 Westlake Pipeline budget used by Eastman witness, Dr. Fairchild, in his return on investment analysis.[123]

Westlake witness, Dr. Arthur, used the same operating expenses to perform his analysis.[124] Westlake notes that the budget numbers were projections and not actual Test-Year expenses, but the actual Test-Year expenses were comparable. At the hearing, Westlake Pipeline introduced accounting data for 2012 and 2013 to calculate expenses for the Test-Year ending March 2013. Using the same expense categories found in the 2014 budget, assuming expenses allocated evenly over the course of a year, and using 75% of the 2012 numbers and 25% of the 2013 numbers, Test-Year expenses were $1,613,502.[125] Westlake maintains that this result is very close to the $1.8 million used by Ms. Moore in July 2013.[126] The numbers are also close if one uses the 2012 or 2013 calendar year as the Test-Year.[127]

Dr. Arthur testified that he had reviewed the Test-Year accounting data, but that it did not alter his opinions.[128] All other things being equal, using the Test-Year numbers rather than those used by Dr. Fairchild and adopted by Dr. Arthur would reduce expenses by roughly $500,000 per

[120] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4, n.(b). Note that Dr. Fairchild also included $18,276 in depreciation for computer equipment, so his total depreciation expense, $532,562, was a bit higher.
[121] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18 and Rebuttal Attachment G, n (b) and (e).
[122] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.
[123] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4, BHF-8, and Appendix C. Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 13.
[124] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 19 and Rebuttal Attachments F & G.
[125] Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836.
[126] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 9.
[127] Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836.
[128] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, 104-106.

year. If Westlake's historical test-year expenses of $1,613,502 are used instead of the budgeted expenses, then Westlake argues that the historical test-year depreciation of $1,125,506 should also be used.[129] Westlake believes, however, that any possible overstatement of expenses is more than balanced out because Westlake argues that Dr. Fairchild understated Westlake Pipeline's depreciation expense ($300,000 to $700,000) and overstated Westlake Pipeline's volume revenues.

(2) Eastman's Position

Eastman maintains that Westlake's operating expenses are best shown by the use of the $2,135,000 figure contained in Westlake Pipeline's 2014 budget with an allowance for Texas franchise taxes.[130] The 2014 budget figure of $2,135,000 is also the number utilized by Dr. Arthur in his rebuttal testimony and exhibits.[131]

Eastman believes that Westlake's "historical accounting data" should be viewed with skepticism as it was not supported by the pre-filed testimony of any Westlake witness. Instead, the data was first introduced at hearing through the redirect examination of Westlake witness Dr. Arthur. Eastman asserts that on cross-examination, Dr. Arthur appeared to know little about this data. Specifically, when questioned about one line item of the data containing amounts for "Intco Alloc Recd," Dr. Arthur stated that it was his understanding that these costs were overhead costs allocated from Westlake Pipeline's parent company, Westlake Chemical. Regarding this allocation, Dr. Arthur testified that in the case of a regulated entity, a reasonable allocation is required to arrive at a reasonable level of expenses for the regulated entity.[132]

Yet, after testifying that a reasonable allocation is required, Dr. Arthur admitted that he knew nothing of how that allocation was made in this case.[133] Eastman argues that Dr. Arthur's lack of knowledge of how this overhead allocation was made is particularly troubling since it appears that this allocation in most cases amounted to no more than allocating a fixed amount of the parent's cost to Westlake Pipeline each month, with most monthly entries appearing to be exactly $10,000.[134] Eastman asserts that if Westlake believed that actual accounting data was important in establishing the operating expenses of the pipeline for a return on investment calculation, it is unclear why it waited until the final day of hearing, on redirect of its expert witness, to introduce this data into the record and why their expert witness knew nothing about it.

E. Volume or Throughput

The issue of quantifying the annual pipeline volume, or throughput, is hotly contested in this case and the recommendations range from as low as 140,000,000 pounds per year to as high

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[129] Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836. (Westlake maintains that this is derived the same way as the actual cost figure, by taking 75% of the depreciation expense in 2012 and 25% of the depreciation expense in 2013 to arrive at the test-year number.)

[130] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

[131] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Testimony and Attachments.

[132] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 112-113.

[133] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, p. 113.

[134] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 112-114.

as 326,000,000 pounds per year. The amount of annual volumes directly relate to the annual revenues calculated for the pipeline upon which a fair return is calculated.

(1) Westlake's Position

It is Westlake's position that the proper Test-Year volume or throughput for calculating revenues is 140 million pounds of ethylene after adjustments for known and measureable changes. Dr. Arthur testified that it is his opinion that a proper Test-Year for volumes would be either the calendar year 2012 or the 12 months ending March 2013, with adjustments for known and measureable conditions.[135] The historical volumes for 2012 calendar year were 278 million pounds.[136] Likewise, utilizing the Test-Year ending March 2013 results in an annual throughput of 278,000,000 pounds.[137]

Westlake argues that the volumes for neither the 2012 calendar year, nor the Test-Year ending March 2013, take into account known and measurable conditions and therefore must be adjusted. Eastman's ethylene cracker production affects the volumes transported on the pipeline in any given year.[138] According to Dr. Arthur, the two are inversely proportional. As ethylene production in Longview increases, demand for ethylene from Mt. Belvieu and throughput on the pipeline decrease by a similar amount. Westlake shows that Eastman's level of ethylene production has changed over the period 2007 through 2013.[139] In 2007, Eastman began implementing a plan to phase out some of its ethylene producing facilities in Longview. In late 2007, Eastman idled one of its crackers, and it idled another in late 2008.[140] Eastman later changed its plans and restarted one of the idled crackers in late 2010 and completed a debottlenecking of its largest cracker in early 2013.[141]

According to Westlake, the throughput on the pipeline correlates with these events. As shown in Table 12.1 below, ethylene production rose from 110 million pounds in 2006 to over 300 million pounds in 2008 as the first cracker was idled and the second was preparing to be idled.[142] Then in 2009 and 2010, with two crackers idled, volumes exceeded 500 million pounds.[143] After one cracker returned to service in late 2010, volumes on the pipeline declined to approximately 225 million and 275 million pounds per year in 2011 and 2012, respectively.[144] Finally, with the completion of the debottlenecking project in early 2013, throughput fell to slightly less than 134 million pounds per year.[145]

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[135] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 91-92.

[136] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 92-93 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment C.

[137] Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 93-94 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment C.

[138] Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 10-11; Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5.

[139] *Id.*

[140] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Attachment A, (Eastman's 2010 SEC Form 10-K, page 12).

[141] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Attachment B, (Eastman's 2012 SEC Form 10-K, pages 24, 47).

[142] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 6-7.

[143] *Id.*

[144] *Id.*

[145] *Id.*

Table 12.1
Historical Volumes on Pipeline from 2002 – 2013[146]

Year	Amount (Pounds) Total Flow North to Longview	Amount (Pounds) Total Flow South to Mt. Belvieu	Total Volumes
(1)	(2)	(3)	(4)
Eastman Ownership			
2002	25,752,384		25,752,384
2003	42,132,689		42,132,689
2004	126,885,518		126,885,518
2005[147]	41,755,471		41,755,471
2006[148]	109,123,612		109,123,712[149]
Westlake Ownership			
2007	197,634,891	8,548,594	206,183,485
2008	337,144,778	15,395,778	352,540,556
2009	525,376,000		525,376,000
2010	564,176,715		564,176,715
2011	224,092,000		224,092,000
2012	277,848,000		277,848,000
2013	133,565,868	103,158	133,669,026

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146 Sources & Notes: 2002-Nov 2006 data provided by Eastman in Response to Westlake Interrogatory No. 1, included in Rebuttal Attachment D to Dr. Arthur's Rebuttal testimony. Dec-2006 through 2013 data provided in the document, Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony.

147 The evidence supports backhauls occurring during 2005, however, the quantity of the backhaul volumes are not quantified in this record. Eastman Ex. 6, Rebuttal Testimony of Thomas J. Mittler, pp. 11-12.

148 The evidence supports backhauls occurring during 2006, however, the quantity of the backhaul volumes are not quantified in this record. Eastman Ex. 6, Rebuttal Testimony of Thomas J. Mittler, pp. 11-12

149 Sources & Notes: 2002-Nov 2006 data provided by Eastman in Response to Westlake Interrogatory No. 1, included in Rebuttal Attachment D to Dr. Arthur's Rebuttal testimony. Dec-2006 through 2013 data provided in the document Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony. The 2006 total in Dr. Arthur's rebuttal was 109,123,612. However, when taking the Jan.-Nov. 2006 from attachment D, 84,212,912 and adding Dec. 2006 from Attachment C, 24,910,800, the corrected total is 109,123,712.

Table 12.2 below shows the test-year volumes totaling 277,943,000. No backhauls or exchanges occurred during the test-year.

Table 12.2
Test-Year Historical Volumes on Pipeline[150]

Year	Amount (Pounds) Total Flow North to Longview	Amount (Pounds) Total Flow South to Mt. Belvieu	Total Volumes
(1)	(2)	(3)	(4)
Westlake Ownership – Test Year Volumes			
April – Dec 2012	232,483,000		232,483,000
Jan. – March 2013	45,460,000		45,460,000
TY Total	277,943,000		277,943,000

Westlake asserts that this inverse relationship between Eastman's Longview ethylene production and the throughput on the pipeline supports the use of 140 million pounds per year by Ms. Moore in July 2013 and by Dr. Arthur in his analysis as a reasonable volume with current operations in Longview. During the first six months of 2013, volumes on the pipeline had fallen to 53.5 million pounds or an annualized level of 107 million pounds.[151] Similarly, Westlake argues that Ms. Moore's use of 140 million pounds as the annual throughput for setting rates in mid-2013 was consistent with the known and measurable change in Eastman's Longview production.[152]

(2) Eastman's Position

Eastman argues that Westlake's volume assumption of 140 million pounds per year is mere speculation. Eastman points out that Westlake's own 2014 Pipeline budget, from which both parties have taken the estimated operating costs for the pipeline, projects 2014 tariff fees of $7,000,000, which was based on 200 million pounds of ethylene being transported at Westlake's proposed rate of $3.50 per hundred pounds shipped.[153] This volume amount was developed by Westlake's corporate controller for internal business purposes, not as a litigation position for either Eastman or Westlake.

Eastman asserts that not only is the 140,000,000 pounds per year of ethylene transported over the Westlake Pipeline an unreasonably low volume assertion, but when viewed by a

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Sources & Notes:. Dec-2006 through 2013 data provided in the document Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony.

151 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 7.

152 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 8.

153 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

historical perspective the 200 million pounds per year assumption remains conservative. Below is a table contained in the direct testimony of Westlake witness, Dr. Arthur, showing the volumes experienced on the pipeline during each of the seven full calendar years of Westlake ownership of the pipeline:[154]

Table 12.3
Westlake Pipeline's Estimated Revenues Under Prior Rate and 2013 Rate

Table 1: Westlake Pipeline's Estimated Revenue under Prior Rates & 2013 Rate

Year	Total Volumes (lbs.)	Non-Incentive Volumes (lbs.)	Incentive Volumes (lbs.)	Non-Incentive Rate ($/lb.)	Incentive Rate ($/lb.)	Estimated Total Revenue ($)	Proposed Revenue ($)
[1]	[2]	[3]	[4] = [2] - [3]	[5]	[6]	[7] = ([3] x [5]) + ([4] x [6])	[8]
2007	206,183,485	116,800,000	89,383,485	0.019	0.007	2,844,884	
2008	352,540,556	117,120,000	235,420,556	0.019	0.007	3,873,224	
2009	525,376,000	116,800,000	408,576,000	0.019	0.007	5,079,232	
2010	564,176,715	116,800,000	447,376,715	0.019	0.007	5,350,837	
2011	224,092,000	116,800,000	107,292,000	0.019	0.007	2,970,244	
2012	277,848,000	117,120,000	160,728,000	0.019	0.007	3,350,376	
2013	133,669,026	116,800,000	16,869,026	0.019	0.007	2,337,283	
Estimated Going-Forward Annual Volume, Rate & Revenue	140,000,000			0.035			4,900,000

Note that the non-incentive volumes under the 2002 tariff are estimated at a uniform 320,000 pounds per day.
Sources:
Volumes: WPL000020 - WPL000021
Tariffs: Mustang Pipeline Company Texas Local Tariff No. M-3; Westlake Ethylene Pipeline Corporation T.R.R.C. No. 1.0.0.

Eastman argues that the table above demonstrates that the pipeline experienced volumes in excess of 200 million pounds per year in six of those seven years. Only in year 2013 did the volumes fall below the 200 million pounds expected by Westlake for 2014. Eastman believes that the volumes in Dr. Arthur's Table 1 for 2013 are an outlier, exhibiting volumes more than 70 million pounds below the next lowest year during Westlake's ownership of the pipeline. According to Eastman, the average of the yearly volumes experienced during Westlake's ownership of the pipeline has been approximately 326 million pounds per year. Westlake's 140 million pounds is also significantly lower than the 200 million pounds included in Westlake's own budget for 2014.

Furthermore, Eastman claims that Westlake's 140 million pound per year volume assumption is inconsistent with Dr. Arthur's own statements about what a reasonable Test-Year would be in this proceeding if the traditional utility Test-Year concept were applied. Dr. Arthur's rebuttal attachment shows that the historically-experienced volumes for both calendar year 2012 and for the 12 months ending in March 2013 are approximately 278 million pounds. Eastman argues that this 278 million of historically experienced volumes is consistent with the analysis proposed by Dr. Fairchild and is nearly double the 140 million pound volume Westlake

[154] Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 11 (Table 1).

advocates for the return on investment analysis for this case. Eastman believes that the Commission should not rely upon the 140 million pounds per year volume because Westlake has failed to establish that the 140 million pounds figure is reliable and reasonable.

(3) Westlake's Response

Westlake believes that Dr. Fairchild's reliance on the 200 million pounds per year estimate in the 2014 Westlake Pipeline budget is not reasonable. Westlake argues that the budget was created by the Westlake Controller for internal accounting purposes and without consulting Ms. Moore.[155] The Controller utilized only recent months toward the end of 2013, which support an estimate of 200 million pounds per year.[156] Westlake asserts that the Controller's estimate was created based on a few higher-than-average months in the latter part of 2013 without accounting for known and measurable changes in the underlying drivers of throughput on the pipeline.[157]

13. Eastman's Proposed Rate and Competitive, Market-Based Verification

A. Eastman's Proposed Rate

(1) Eastman's Position

Eastman believes that the evidence is insufficient to determine that Westlake's $3.50 rate is reasonable based on the Shell Concha Tariff and requests that the Commission reject Westlake's proposed 2013 Tariff as neither just nor reasonable. In the alternative, Eastman requests that the Commission adopt one of Eastman's proposed rates that Eastman believes will protect both the shippers and Westlake.

Eastman witness, Dr. Fairchild, demonstrated three different recommended rates that include three different volume assumptions. First, Dr. Fairchild uses the 2014 Westlake Pipeline budget volume assumption of 200 million pounds per year. Secondly, Dr. Fairchild uses a 230 million volume assumption. Finally, Dr. Fairchild shows his analysis using the historical average of 326 million pounds per year during the years that Westlake has owned the pipeline as the upper end of the volumes assumed in his return on investment analyses.[158] Eastman argues that the source of both ends of Dr. Fairchild's volume range is known, verifiable, and reasonable.

Dr. Fairchild offered the following alternative rates of return on common equity analysis that taken as a whole Dr. Fairchild believes show a "postage stamp" rate of $1.86 per hundred pounds is just and reasonable. Alternatively, if the Commission declines to set a "postage stamp" rate of $1.86 per hundred pounds, Eastman requests that the Commission set a separate rate for exchanges on the pipeline. Eastman argues that Dr. Fairchild's analyses taken as a whole

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155 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 8.
156 *Id.*
157 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 8-9.
158 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 18.

supports an exchange rate of no more than $0.96 per hundred and a rate of $2.00 per hundred pounds for all other services on the pipeline.[159]

This recommended rate results from the following range of rates using different volumes that have previously been asserted by the parties:

Table 13.1
Eastman's Recommended Rates

Description	200 Million Pounds	230 Million Pounds	326 Million Pounds
Average 2002 Tariff Rate	$1.40	$1.31	$1.13
Average Intrastate Pipeline Rate	$1.71	$1.71	$1.71
FERC Indexed Rate	$2.22	$2.07	$1.79
Return on Investment Analysis	$2.11	$1.84	$1.30
Return on Investment (Exchange at $0.96)	N/A	$1.97	$1.33[160]

Dr. Fairchild testified that since Ms. Moore did not provide any work papers on how she performed her analysis, his results are based on an independent analysis. Dr. Fairchild testified in detail about the method he utilized in his independent analysis. By taking revenue and operating expense data from the 2014 Westlake budget and capital cost data developed using standard ratemaking methods, Dr. Fairchild performed a return on investment capital.[161] Dr. Fairchild then took the projected pipeline tariff fees of $7,000,000 during 2014, which was based on 200 million pounds of ethylene being transported at $3.50 per hundred. After accounting for operating expenses, depreciation expense on an $18 million purchase price and a 35 year service life, property taxes and Texas franchise tax, he concluded that the pipeline would have $4.3 million in earnings before interest and income taxes.[162]

Next, Dr. Fairchild calculated interest expense by utilizing a synchronized interest method, where the net investment in assets is multiplied times the debt ratio in the capital structure and cost of debt. He determined net investment by using Westlake's 2006 purchase price, accounted for accumulated depreciation from 2007 through 2013 by multiplying annual depreciation expense by seven years. He also accounted for $183,000 in computer equipment from 2010. He used a cash working capital allowance equal to 12.5% of O&M and A&G consistent with the Railroad Commission of Texas *Natural Gas Handbook*. Furthermore, Dr. Fairchild calculated accumulated deferred income taxes resulting in a net investment value of $12.8 million.[163]

Dr. Fairchild continued with his analysis by determining an appropriate debt ratio and cost of debt for the pipeline. The capital structure of Westlake Chemical Corporation at

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[159] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 23.
[160] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22.
[161] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 13 and BHF-4.
[162] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14 and BHF-4.
[163] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 14-15.

December 31, 2013, was approximately 24% debt and 75% equity. Dr. Fairchild testified that these ratios are not consistent with debt ratios by other companies primarily engaged in oil pipeline activities, so he utilized an industry average of debt ratio of approximately 50% based on proxy companies.[164] Likewise, he used the average embedded debt cost of the proxy companies of 5.3% as the cost of debt in his analysis.[165]

Dr. Fairchild testified that he then multiplied the net investment in plant of $12.8 million by a 50% debt ratio and a 5.30% cost of debt produced interest expense, which was subtracted from the $4.3 million of earnings before interest and taxes to result in a taxable income. After applying a 35% marginal corporate income tax rate, Dr. Fairchild's analysis showed net income available for shareholders of $2,563,718.[166] To arrive at a rate of return on equity, he multiplied the $12.8 million net investment in the pipeline by a 50% equity ratio, which produced an equity investment in the pipeline of $6,401,083. Dividing this investment into the $2,563,718 of net income available for shareholders, Dr. Fairchild concluded that Westlake would produce a rate of return on equity of 40.1%.[167]

(2) Westlake's Position

In response, Dr. Arthur took the return analysis that Dr. Fairchild conducted and made three adjustments: (1) Westlake Pipeline's investment at $29.8 million dollar; (2) depreciation expense (which flows from investment); and (3) annual volumes of 1,400,000.[168] Dr. Arthur utilized the same figures for annual operating expenses, interest expenses, and taxes as Dr. Fairchild.[169]

Westlake argues that Dr. Arthur's analysis demonstrates that the significant two numbers at issue in this proceeding are (1) Westlake Pipeline's investment in the pipeline and (2) the annual throughput on the pipeline. Dr. Arthur caveats this statement by noting that the depreciation expense, while also at issue, flows from the investment value, and for purposes of rebutting Dr. Fairchild's analysis, he used a conservatively low annual depreciation number based on the $29.8 million investment, $868,705.[170]

Westlake asserts that the annual throughput suggested by Dr. Fairchild of 200 million or 230 million ignores both the annual flow for 2013 and the test-year flow adjusted for known and measurable changes. Westlake believes that $29.8 million is the most reliable investment value because it is the one conducted for the 2006 sale. Dr. Arthur used the $29.8 million in investment value and 140 million pounds of throughput, a $3.50 rate per hundred pounds, results in an 8.1% return on equity. Dr. Arthur justifies Westlake's proposed $3.50 rate by showing that it requires a rate of $3.95 to generate a return on equity of 12% that Dr. Fairchild agrees is a reasonable return on equity to Westlake Pipeline.[171]

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164 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 15-16 and BHF-5.
165 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 15-16 and BHF-6.
166 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 16 and BHF-4.
167 Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 16 and BHF-4.
168 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 19–20 and Attachment F.
169 *Id.*
170 *Id.* at Attachment F.
171 *Id.*

B. Eastman's Competitive, Market-Based Verification of Reasonableness of Rate

(1) Eastman's Position

Eastman argues that a market-based rate is a rate that the market will accept or a rate that the market will bear. Eastman introduced evidence through expert witness, Dr. George Intille, Principal at Nexant Inc. with the Energy and Chemical Consulting Group, who conducted a market-based analysis. Eastman believes that Dr. Intille's analysis provides another means by which the Commission can test whether Westlake's new rate falls within the range of reasonableness.[172] Based on Dr. Intille's analysis, Eastman asserts that Westlake's rate is neither market-based nor competitive because the rate is in excess of what the market can bear.

Eastman maintains that the economic production of polyethylene has narrow margins and depends on the price of ethylene.[173] This makes polyethylene production sensitive to transportation costs of ethylene. Dr. Intille evaluated the new Westlake rate from the perspective of a participant in the chemical industry producing LDPE and LLDPE, which are the same two types of polyethylene that Westlake Longview produces in its Longview plants.[174]

Dr. Intille's testimony focuses on whether a polyethylene manufacturer that sources its ethylene from the Mont Belvieu ethylene market can produce polyethylene competitively if it pays the $3.50 per hundred pounds transportation charge. He testified that a polyethylene manufacturer that is unaffiliated with the Westlake Pipeline could not profitably build and operate a polyethylene manufacturing facility if it had to pay $3.50 rate source ethylene from Mont Belvieu. Margins and returns would be too low for the producer according to Dr. Intille. At this tariff rate, a polyethylene producer would achieve such low margins that he would not obtain a return on investment that would support the investment.[175] The economics of a $3.50 per hundred pound rate would even make it difficult for a manufacturer to expand production of an existing plant.[176]

Eastman argues that Dr. Intille's analysis shows that Westlake's July 2013 rate is unreasonable and anticompetitive in the marketplace.[177] Dr. Intille concluded that it is not possible to manufacture polyethylene competitively if a producer has to source its ethylene from Mont Belvieu via the Westlake Pipeline. According to Dr. Intille, for a polyethylene manufacturer in Longview to be profitable, the manufacturer must be affiliated with the Pipeline. This would allow the manufacturer to pay what he considers an unreasonable rate, knowing that ultimately the costs will come out at some affiliated entity.[178]

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[172] Transcript of Testimony, Vol. I, Dr. George M. Intille, p. 120.
[173] Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 3.
[174] Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, pp. 2-6.
[175] Transcript of Testimony, Vol. I, Dr. George M. Intille, p. 167.
[176] *Id.*
[177] Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 12.
[178] Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 13.

(2) Westlake's Position

Westlake argues that Dr. Intille's analysis is not a competitive, market-based check on reasonableness because it is not based on any actual competitive market. Moreover, in Dr. Intille's analysis there is no reasonable rate for transportation on the pipeline. Westlake contrasts his analysis with their market-based rate demonstrating by actual tariff comparisons that shippers on the Concha Pipeline are currently willing and able to pay $3.50 per 100 pounds to ship ethylene over distances similar to the Westlake Pipeline.

Dr. Intille is evaluating whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit. If not, he concludes that the 2013 Tariff rate is discriminatory in favor of Westlake Pipeline's affiliate. Westlake asserts that Dr. Intille's logic is flawed and that he looks at the returns earned by a hypothetical shipper without regard to the return earned by the common carrier. Westlake points out that it is undisputed that there is no rate Westlake Pipeline could charge that would meet Dr. Intille's test.[179] Finally, Westlake maintains that Dr. Intille's analysis is not relevant to any applicable legal standard in this case.

14. Exchange Rate

A. Eastman's Position

Exchanges are basically a swap of products that do not involve any physical transportation of ethylene. Westlake Pipeline regularly ships ethylene from Mont Belvieu to Longview for its affiliated shipper. In an exchange for Eastman, the pipeline offsets ethylene delivered to Mont Belvieu with ethylene that is already in the pipeline at the Longview end. The pipeline does not incur any costs for this transaction. Westlake Chemical gets the ethylene at Longview that it wanted delivered to its facilities in Longview, while Eastman gets ethylene it needs in Mont Belvieu. The result is that Eastman pays Westlake Pipeline the tariff rate for the exchange as if the Eastman product had been physically transported on the pipeline.[180]

Under the 2002 Tariff, Westlake Pipeline is currently charging Eastman the same rate for exchange services as it does for actual physical transportation, even though no physical transportation of ethylene is required with an exchange. Eastman argues that exchanges are being used and that exchanges benefit the pipeline, so a lower rate for exchanges is warranted.

Eastman points out that the FERC has recognized the lower cost for a pipeline to perform exchanges and has recognized either low or zero rates for exchanges. Since, exchanges cost less to the pipeline than actual transportation of ethylene, it is Eastman's position that if the Commission adopts a new rate higher than $1.86 per hundred pounds, that the Commission should then set an exchange rate of no more than $0.96 per hundred pounds plus a rate of $2.00

[179] Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 8.
[180] Eastman Ex. 1, Direct Testimony of Mark Bogle, p. 12.

per hundred pounds for the transportation rate on the pipeline.[181] The $0.96 per hundred pounds is also the negotiated rate for backhauls in the Ethylene Supply Agreement between Eastman and Westlake Chemical.[182]

B. Westlake's Position

As for Eastman's request that the Commission establish a separate rate for exchange service, Dr. Arthur explained that a requirement to facilitate exchanges can impose significant commodity risks on a pipeline.[183] Also, Westlake maintains that exchanges do not necessarily lower a pipeline's costs, because the switch from physical transport to exchange does not alter the cost of the asset or a pipeline's fixed operating costs.[184] Dr. Arthur also testified that Dr. Fairchild's suggested use of the exchange rate in the Ethylene Sales Contract is unreasonable, because that rate was one element within a complex long-term ethylene sales agreement that undoubtedly involved negotiation over numerous elements, whereby each party gave on individual elements to reach an overall agreement.[185] Moreover, Dr. Arthur testified that imposing a separate charge for exchange service would provide the opportunity for a cross-subsidy between physical shippers and exchange shippers.[186]

Westlake believes that the most compelling reason to reject Eastman's request for a separate exchange rate, is that the 2002 Tariff includes the same rates for transportation as exchanges.

15. Examiners' Recommendation

In this docket, the issue before the Commission is whether the 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported on the Westlake Pipeline is just and reasonable, and if not, for the Commission to set a just and reasonable common carrier pipeline rate for Westlake Pipeline.[187] Both parties agree that Westlake has the burden of proof in the rate portion of the complaint.

At the outset, the Examiners have carefully considered the applicable laws related to common carrier rates[188] and distinguished the method for common carrier ratemaking from the provisions of the Texas Utilities Code for gas utility ratemaking. The Commission's general powers under the Natural Resources Code provides that the Commission may use a cost-of-

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[181] Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 20.

[182] *Id.*

[183] Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, pp. 13-15 and Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 124-125.

[184] *Id.*

[185] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 24.

[186] *Id.* at 23.

[187] This docket is the rate segment of a bifurcated case arising from the complaint filed by Eastman alleging in part that Westlake's proposed 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported on the Westlake Pipeline, is neither just nor reasonable. The Procedural History, Section 2 of this Proposal for Decision, contains a detailed discussion of the scope of this rate case, GUD No. 10358 and the companion case, GUD No. 10296, related to Eastman's allegations of discrimination by a common carrier.

[188] The applicable legal standard is discussed in detail in Section 5 of this Proposal for Decision.

service method or a market-based rate method to set rates.[189] Additionally, Subtitle D, Chapter 111 of Natural Resources Code authorizes setting a common carrier transportation rate. Section 111.183 outlines a return on investment method for common carriers that uses some of the same concepts from cost-of-service ratemaking similar to public utility ratemaking, as follows:

> The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.[190]

This provision emphasizes the concept of a fair return to the common carrier and sets out the elements for the Commission to consider in determining the fair return. Moreover, the Commission is authorized to use "reasonable latitude in establishing and adjusting competitive rates."[191]

It follows that both of these ratemaking methodologies, cost-of-service or market-based, are authorized pursuant to the Natural Resources Code for setting rates for a common carrier. In the *Weeks* case, the Commission adopted the Examiner's recommendation utilizing a cost-of-service method rate, which the Examiner had verified with a market-based, comparative benchmark.

In the case currently before the Commission, Westlake witness, Ms. Moore, is the employee who set the proposed rate of $3.50 per hundred pounds transported from a combination of rate setting methods. Initially, Ms. Moore based the proposed rate on a market-based rate comparison of the Shell Concha interstate pipeline ethylene transportation tariff. According to Westlake, the Shell Concha Tariff provides a rate that Westlake believes is the rate that shippers expect to pay in a competitive market to transport a quantity of ethylene approximately 195 miles. Obvious distinctions in this comparison include the pipeline which is an interstate pipeline regulated by the U.S. Surface Transportation Board, not an intrastate pipeline like Westlake Pipeline which is regulated by the Commission. Just as critical, however, is that pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul. Westlake failed to produce evidence demonstrating that the Shell Concha Tariff rate was itself reasonable based upon its pipeline capacity, operating costs, capital investment, or operating characteristics.

As for Eastman's market-based evidence presented by Dr. Intille, the Examiners carefully considered Dr. Intille's effort to demonstrate that Westlake's 2013 Tariff rate is not a competitive market-based rate. The examiners concur with Westlake that Dr. Intille's testimony and analysis shed little light on the issues at hand. Dr. Intille attempted to evaluate whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit. The Examiners believe that the hypothetical nature of his analysis lacks credibility and thus the Examiners gave it little weight especially since he concluded that there is

[189] Section 81.061(1) of the Natural Resources Code.
[190] TEX. NAT. RES. CODE ANN. § 111.183.
[191] TEX. NAT. RES. CODE ANN. § 111.184.

no rate Westlake Pipeline could charge that would still allow a hypothetical shipper to earn a 10% to 15% return. Likewise, the rate of $1.86 per hundred pounds proposed by Eastman's expert witness, Dr. Fairchild, was also too high in Dr. Intille's analysis to permit the hypothetical shipper to earn a 10% to 15% return.[192] The Examiners believe an analysis based on whether Eastman is able to earn a fair margin while paying the 2013 Tariff rate would have had more merit.

After the tariff comparison method, Ms. Moore uses a FERC indexing and "simple" cost-of-service as a benchmark for the proposed $3.50 rate. As for Westlake Pipeline's application of the FERC escalation factors, the Examiners find that the application was an inadequate check on the reasonableness of the new rate because Westlake Pipeline eliminated the non-incentive rate and then applied the FERC escalator incorrectly by not escalating both tiers of the declining block rate structure in the 2002 Tariff.

The Commission may have authority to use a strict market-based rate as a primary method to set a just and reasonable rate in certain circumstances. In this case, however, given the scant evidence related to the manner that Ms. Moore set the rate and her apparent lack of evaluation of that information, the Examiners do not believe that a market-based rate setting approach is appropriate. A market-based approach may be useful in this docket as a benchmark or comparison much like the Commission utilized in the *Weeks* docket but not as the primary approach due to the lack of credibility of the evidence presented by Ms. Moore in her tariff comparison. Accordingly, the Examiners find that the preponderance of credible evidence in the record does not establish that Westlake's tariff based comparison is reliable to support a rate of $3.50 per hundred pounds as either competitive or market-based.

Turning to the alleged "simple" cost-of-service as a benchmark for the proposed rate emphasizes concerns related to the credibility of Ms. Moore's testimony. The pre-filed direct testimony to support her process was so minimal that it produced more questions than it answered. Westlake witness, Dr. Arthur, testified from a back-end approach in an effort to explain and justify her conclusions.

For example, when Ms. Moore explained her analysis for achieving a 12% after-tax return on capital, she states, "I took the purchase price of the pipeline, estimated annual operating costs, the current corporate tax rate, and the estimated amount of ethylene that will flow through the pipeline for this year." Yet, Ms. Moore had no work papers or further testimony on direct examination about quantifying the amount of the purchase price, operating costs, volumes, and year. Ms. Moore did not file rebuttal testimony. At the hearing, Ms. Moore attempted to quantify these figures. Dr. Arthur's testimony did make an effort to clarify the methods and quantify the figures that Ms. Moore utilized, however, Ms. Moore's testimony lacked credibility. The evidence in the record of Ms. Moore's cost of capital analysis is inadequate to conclude that Westlake's rate should be $3.66 per hundred pounds to achieve a 12% after-tax rate of return on common equity.

The Examiners believe that Eastman witness, Dr. Fairchild, presented highly credible methodology for determining a transportation rate and fair return that protects the rights of both

[192] Transcript of Testimony, Vol. I, Dr. George M. Intille, pp. 169-170.

the pipeline and the shipper. Dr. Fairchild testified regarding his experience setting an overall rate of return for both the non-regulated competitive sector and the regulated sector.[193] He testified that due to the lack of transparency with Ms. Moore's process, he utilized documents produced in discovery to analyze the fair return and related pipeline costs. The Examiners find that Dr. Fairchild's methodology, described on pages 14-16 of his direct testimony and accompanying schedules and discussed in this Proposal for Decision Section 13, is a reasonable process and method to determine a fair return, with the caveat that the Examiners find that adjustments should be made to rate base, depreciation and volumes, as discussed below.

Test-Year. The guiding statutes do not specifically mention the use of a Test-Year in deriving a fair return for the common carrier pipeline in a rate setting case. Yet, § 81.061(b) of the Natural Resources Code does state that the Commission has authority to set a market-based rate and a cost-of-service based rate. Furthermore, Section 111.183 refers to cost-of-service type factors. A Test-Year is a standard component of cost-of-service based rate making.

The Examiners in the instant docket believe that Test-Year evidence adjusted for known and measurable changes is relevant and is generally the preferred historical period to collect rate making data as it is closest to the period of time upon which the carrier bases its rates. The Test-Year in this case is year end March 31, 2013, as this is the most recent year end historical data available to Westlake at the time that they proposed the 2013 Tariff in July 2013. The Examiners point out that the Test-Year data, however, may not always be the most persuasive evidence in each element to consider in calculating a rate for a common carrier, as other evidence may ultimately be more credible given the specific circumstances. The Examiners note that in *Weeks*, a Test-Year was identified, yet the Examiner did not use Test-Year data in findings related to the credibility of the evidence for operating expenses or volumes.

Rate Base. Natural Resources Code § 111.183, in part, provides that the basis of rates shall provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed. In determining the aggregate value of Westlake Pipeline's property, Westlake asserts the use of the $29.8 million Ernst and Young valuation performed in 2006 in conjunction with the purchase of several assets from Eastman. In the alternative, Westlake believes the Commission should use a form of original cost less depreciation that accounts for working capital and taxes. Conversely, Eastman asks the Commission to use the $18,000,000 purchase price that Westlake paid for the pipeline assets in 2006.

The use of the purchase price or current valuations of a pipeline are contrary to standard ratemaking methodologies used at the Commission for rate base. This is demonstrated by the Commission adopting the Examiner's recommendation in *Weeks* utilizing an original cost capital investment approach to the rate base component of a fair return calculation of the rate.

The Examiners believe that the preponderance of the credible evidence related to Westlake's capital investment is the use of original cost less depreciation with allowance for working capital and taxes. The evidence in the record shows that the original cost of the pipeline when completed by Mustang in 1997 was $54,042,000.[194] In order to assess Westlake's net

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193 Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 56-57.
194 Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G.

invested capital, this amount must be reduced by depreciation and allowances for working capital and taxes taken into account for rate base amount of $25,764,021.[195]

Depreciation Expense. Westlake did not provide a depreciation study to support its assertions related to depreciation of the pipeline. Dr. Arthur testified that while an appropriate depreciation life for the assets could be determined by a full depreciation study, pipeline depreciation lifetimes that he is familiar with for ratemaking are approximately 30 to 35 years.[196] Dr. Fairchild acknowledged that a 30 to 35 year period can be reasonable and he also applied a 35 year life to his analysis.[197]

The Examiners find that the preponderance of the credible evidence in the record supports a 35 year life for the pipeline asset. Applying a 35 year life to the original 1997 cost of $54 million yields an annual depreciation expense of $1,544,057. The 2006 value is $39.4 million with accumulated depreciation of $14.7 million. This result is a reasonable estimate of the depreciated original cost at the end of 2006 when Westlake acquired the assets. At 2013, the net investment is approximately $28.5 million with accumulated depreciation of approximately $25.5 million.

Computer equipment is assumed acquired in mid-2010 and has been depreciated over a 10 year life. The result is an annual depreciation expense of $18,276 and a net value at 2013 of $118,794.

Operating Expenses. Natural Resources Code § 111.183 provides that reasonable operating expenses under honest, efficient, and economical management should be considered in the basis of the rate. There is little dispute among the parties that $2,135,000 in operating expenses from the 2014 Westlake budget is reasonable and both experts use this figure in their respective return on investment calculations. While historical operating expenses may be preferable in many cases, in this docket, as pointed out by Eastman, some credibility of evidence issues exist with the historical data presented by Dr. Arthur at the hearing. Thus, the Examiners find that the preponderance of the credible evidence regarding the reasonable operating expenses under honest, efficient, and economical management are $2,135,000.

Volume or Throughput. The Examiners have carefully considered all of the evidence presented regarding what amount of annual volume, or throughput, of pounds of ethylene transported through the Westlake Pipeline, with known and measurable changes, is reasonable. The Examiners are not persuaded by Westlake's argument of the use of a decline in volumes in the amount of 140,000,000 pounds per year.

The Examiners believe that the preponderance of credible evidence supports a finding of throughput of 278,000,000 pounds per year. Westlake filed their 2013 Tariff in July 2013. The methodology that supports the 2013 Tariff rate should be based upon actual historical volumes, with known and measurable changes. June 2013 and early July 2013 was the time period that Ms. Moore was preparing the proposed tariff. The most recent volumes available to her at that

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[195] Shown on Examiners' Schedule Recommended Rate, attached to this Proposal for Decision as "Exhibit A."
[196] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.
[197] Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, p. 26.

time were Test-Year volumes ending March 2013 of approximately 278,000,000 pounds. Similarly, Dr. Arthur testified that the Test-Year in this case should either be Calendar Year 2012 or March 2013 year end. Westlake volumes are 278,000,000 for both year end March 2013 and Calendar Year 2012.

Yet, Westlake argues that the subsequent 2013 annual year volumes of 133,565,867 (133,669,026 including backhaul volumes) are more representative of the volumes going forward and that circumstances related to Eastman's cracker facilities have caused an inverse relationship in variations in the annual throughput. Westlake asks the Commission to find that due to this "known and measurable" change that 140,000,000 pounds per year is the amount of throughput per year going forward.

The Examiners do not believe that the preponderance of credible evidence supports Westlake's position. While there was a decline in volumes in 2013, Westlake has failed to substantiate that the decline is not just another variation in the system. Westlake has admitted that the volumes have varied widely since the 2002 Tariff has been in place. Volumes have spiked during two separate years over 500,000,000 and gone as low as approximately 25,000,000. The evidence was unpersuasive that the significantly lower 2013 volumes represent a going forward annual amount of volumes particularly in light of the historical averages.

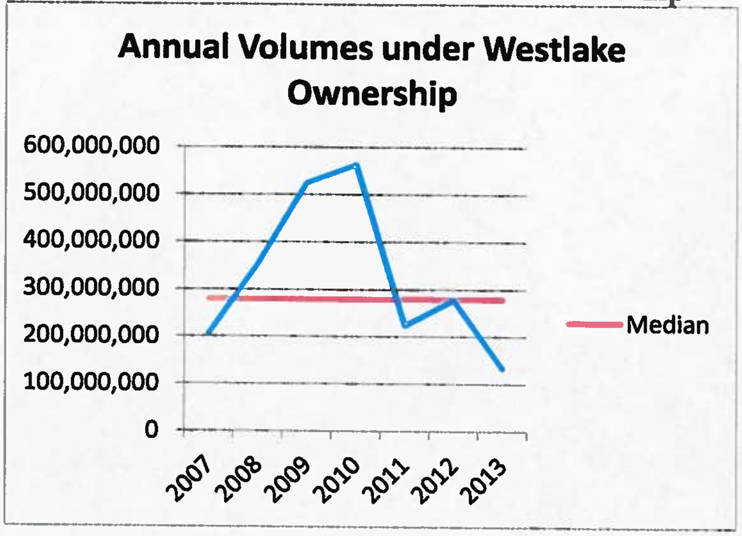
Again, the Examiners believe that the volumes that were available to Ms. Moore at the time she proposed the rate, which were Test-Year ending March 2013 of 278,000,000 pounds is highly credible evidence to base a determination on annual volumes in this docket. The total historical volumes on the system, including backhaul, also support this finding, as follows:

277,943,000	Test-Year ending March 2013
277,848,000	Calendar Year 2012
326,269,397	Average under Westlake ownership from 2006-2013
224,029,000	Calendar Year 2011
219,127,963	Average during 2002 Tariff from 2002-2013
205,758,513	Average Past Two Calendar Years 2012-2013
200,000,000	2014 Westlake Pipeline Budget Projected Volumes
133,669,026	2013 Calendar Year

The historical averages of 326,269,397 under Westlake ownership, and 219,127,963 during the 11 year period for the 2002 Tariff, account for variations by the nature of averages. The throughput figure proposed by Westlake is out of step with the experience of the last several years and does not include revenues from backhaul and exchange services.

Under Westlake ownership, historical volumes from 2007 through 2013, constitute median volumes of 278,000,000, which is also the test-year volumes. Below is a graphical representation of Westlake historical volumes on the system:

Figure 15.1
Median Volumes Under Westlake Ownership



The Examiners do not consider annual variations in volumes as a known and measurable change. The Examiners calculated the median volumes, under Westlake ownership, 2007-2013, as 278 million. The use of the median volumes of 278 million takes into consideration normal variations. A known and measurable change is a fixed change to plant or O&M.

The Examiners have considered the fact that Eastman currently has two cracker units up for sale. However, the Examiners are not convinced that "forecasted" changes in the system such as the pipeline demands of a potential new cracker owner as discussed by Eastman witness, Mr. Long, constitute a known and measurable change.[198] Mr. Long forecasts potential volumes to increase by 650 million pounds per year after the sale of the crackers. The Examiners do not consider potential volume increases from a potential sale and potential demands of a new owner to be a known and measurable change and do not recommend any additional volume adjustment at this time. Currently, there is not a buyer or date for the sale of the crackers. In order for an adjustment to be considered there should be a reasonably effective date and amount of the change.

The 278 million test-year volumes recommended by the Examiners do not include backhaul of exchange volumes. The Examiners have taken those volumes into consideration. The recent volume history indicates that backhaul occurred only in June 2013, at a volume of 103,158. No other backhauls happened in the previous five years. Under the 2002 tariff, no exchanges have occurred on the pipeline until February 2014.[199] If significant backhauls and exchanges begin to occur and Eastman believes that Westlake is over-earning, Eastman may avail itself of the Commission's rate setting procedures.

198 Eastman Ex. 101, Direct Testimony of J. Stephen Long, pp. 6-8.
199 Transcript of Testimony, Vol. I, J. Stephen Long, pp. 70-71.

Thus, the record does not support a finding that 140,000,000 in volumes is representative going forward based upon known and measurable changes. To the contrary, it is inconsistent with past known and measurable volumes. Instead, the preponderance of the credible evidence supports a finding of annual volumes of 278,000,000 reflected in both the test-year and median annual volumes during Westlake's ownership of the pipeline. Under standard ratemaking theory, if Westlake's decline in volumes continues, the common carrier may return to the Commission for additional relief in the future once the level of that decline is known and measurable with the data supporting Westlake's ongoing operations.

Overall Recommendation. As a result, the Examiners' find that Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported is just and reasonable. The Examiners find that Dr. Fairchild's method for determining the rate, with adjustments, is credible. The Examiners find that the preponderance of the credible evidence in the record demonstrates that a rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

The rate recommended by the Examiners is derived[200] from Test-Year approximate annual volumes of 278,000,000, which produce annual revenues for Westlake Pipeline of approximately $6,811,000. Expenses are deducted in the amount of approximately $3,745,010 million. This includes approximately $2,135,000, for operations and maintenance, administrative, and general expenses under honest, efficient, and economical management. Also deducted are expenses for pipeline annual depreciation in the amount of approximately $1,544,057. The pipeline annual depreciation is calculated using a 35-year straight line depreciation based upon the original cost of the pipeline. Next, deductions for the depreciation expense for computer equipment in the amount of $18,276 are taken based on 10-year life. Another reduction to revenue includes allowance for Texas franchise taxes in the amount of $47,677. This calculates to total expenses of $3,745,010.

Taking the total expenses of $3,745,010 and deducting them from annual revenues of $6,811,000 results in earnings before interest and tax (EBIT) of $3,065,990. After considering the interest on debt expense of $682,747, an earnings before taxes of $2,383,243 remains. Applying a 35% Federal Income Tax rate, calculates to $834,135 in federal incomes taxes that reduce Westlake's net income to $1,549,108.

Net investment of the Westlake Pipeline was calculated using the method presented by Dr. Fairchild. Changes were made to use the original pipeline cost of $54 million in 1997. Depreciation was calculated using straight line over a 35 year life with no salvage value. This results in an annual depreciation expense of $1,544,057 for the pipeline asset. Accumulated depreciation in 2013 of $25,476,943 is the result of multiplying annual depreciation expense by 16.5 years from 1997 to 2013. These calculations leave a remaining pipeline investment in 2013 of $28.5 million. Similarly, as presented by Dr. Fairchild, $183,000 in computer equipment, acquired in mid-2010, with an estimated 10-year life, resulted in annual depreciation expense of $18,276.

[200] Shown on Examiners' Schedule Recommended Rate, attached to this Proposal for Decision as "Exhibit A."

Accumulated depreciation in 2013 of $63,966 is the result of multiplying annual depreciation expense by 3.5 years. A cash working capital allowance was included equal to 12.5% of O&M and A&G, similar to that described in the Commission's *Natural Gas Rate Review Handbook.* Also included was a calculation for accumulated deferred income taxes (ADIT). ADIT was derived by multiplying the timing difference between accumulated book and tax depreciation by the federal corporate income tax rate of 35%. ADIT was calculated following Dr. Arthur's methodology using the estimated original cost of $39.4 million dollars as of December 2006. Dr. Arthur's calculation of ADIT was based on his understanding that deferred income taxes on the books of Eastman, as of the date of the sale, would not be transferred to Westlake Pipeline. Westlake would begin to accumulate its own accumulated deferred income tax balance.[201] As shown in footnote (d) to the Examiners Schedule, this resulted in a net investment in the Westlake Pipeline of approximately $25.7 million.

The Examiners' recommendation also adopts Dr. Fairchild's recommended capital structure based on an industry average debt ratio of approximately 50% and the average embedded debt cost of the firms comprising the oil pipeline proxy group of 5.30%. Multiplying the net investment in plant of $25.7 million by a 50% debt ratio and a 5.30% cost of debt produced interest expense of $682,747, which was subtracted from the $3 million of earnings before interest and taxes to arrive at taxable income of $2.3 million. From this, income taxes calculated at the marginal corporate rate of 35% were subtracted to arrive at net income available for shareholders of $1,549,108.

Multiplying the $25.7 million net investment in the Westlake Pipeline by a 50% equity ratio produced an equity investment in the Westlake Pipeline of $12,882,011. Dividing this investment into the $1,549,108 of net income available for shareholders produces a rate of return on common equity of 12.03%. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provide Westlake a return on equity capital of 12.03%, or $12,882,011.

The Examiners' recommendation requires $6.8 million in annual revenue to provide Westlake a 12% return on equity. At the 278 million pound annual volumes recommended by the Examiners, a rate of $2.45 per hundred pounds is the rate required to produce $6.8 million in revenue and a 12% return on equity. Both parties agree that a 12% return on equity is reasonable. The Examiners find that the resulting return on equity capital of 12.03% is a fair return on the aggregate value of the property used and useful in the services that the common carrier preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

The Examiners further find that the preponderance of the credible evidence demonstrates that weighing the above-referenced findings of the elements comprising the rate, that no separate rate for exchanges of ethylene is warranted at this time. Westlake Pipeline did not perform any exchanges of ethylene under the 2002 Tariff during the period of December 2006 through the end of 2013. Similar to the Examiners' recommendation on Westlake's proposed decline in volumes, the Examiners do not believe that the test-year evidence supports a finding of

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[201] Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 20.

30,000,000 in exchanges going forward. The Examiners recommend keeping exchanges in the 2013 Tariff at the same rate of $2.45 per hundred pounds as other volumes. This finding is also consistent with the current 2002 Tariff that provides the same rate for exchanges as throughput. As a result, the Examiners recommend the adoption of a rate of $2.45 per hundred pounds for all volumes transported or exchanged.

The Examiners' recommendation impacts only Section II(b) of the tariff approved in GUD No. 10296. The Examiners have updated Section II(b) of the tariff to include the rate of $2.45 per 100 pounds for all volumes transported or exchanged, as recommended in this docket. The changes to Section II(b) are below. The Examiners also recommend that within 30 days of the date this Order is signed, Westlake Pipeline shall file the tariff with the Commission.[202]

Table 15.1
Summary of Changes to Section II(b) - Rate
WESTLAKE ETHYLENE PIPELINE CORPORATION
T.R.R.C. No. ______
Mont Belvieu to Longview Pipeline

Section	GUD No. 10296 Approved	Examiners' Recommended
II. (b) Product Specifications and Local Rates	Rate: a. $1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day. b. $0.70 per 100 pounds for each additional amount transported or exchanged in a single day.	Rate: $2.45 per 100 pounds for all pounds transported or exchanged in a single day.

16. Conclusion

In conclusion, the Examiners recommend that the Commission reject Westlake's 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported and adopt the Examiners' proposed rate of $2.45 per 100 pounds for all volumes transported or exchanged.

Respectfully submitted,

Cecile Hanna
Hearings Examiner
Hearings Division

Rose A. Ruiz

Rose Ruiz
Technical Examiner
Hearings Division

[202] The tariff that the Examiners' recommend adopting is attached to this Proposal for Decision as "Exhibit B." This tariff includes the tariff adopted by the Commission on December 9, 2014, with the addition of the rate recommended in this docket shown in Table 15.1.

BEFORE THE
RAILROAD COMMISSION OF TEXAS

RATE-SETTING PROCEEDING	§	
REGARDING WESTLAKE	§	**GAS UTILITIES DOCKET NO. 10358**
PIPELINE SEVERED FROM	§	
GUD NO. 10296	§	

PROPOSED FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, *et seq*. (Vernon 2008 & Supp. 2014). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Westlake Ethylene Pipeline Corporation (Westlake Pipeline or Westlake) is a 194 mile common carrier pipeline that was originally constructed in 1996 by Mustang Pipeline Company (Mustang Pipeline), a subsidiary of Eastman Chemical Company (Eastman) for the purpose of transporting ethylene from Mont Belvieu, Texas to the Eastman plant in Longview, Texas.

2. Westlake Pipeline operates a pipeline pursuant to T-4 Permit No. 05253.

3. The pipeline runs from Mont Belvieu, Texas to Longview, Texas and traverses seven counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg.

4. The only product transported on the pipeline system is ethylene.

5. Westlake Pipeline is 100 percent owned by the Westlake Longview Corporation, which, in turn, is owned by Westlake Chemical Corporation.

6. Westlake Pipeline is an affiliate of Westlake Chemical Corporation.

7. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.

8. Westlake Longview Corporation is the largest shipper on the pipeline.

9. Westlake Longview owns polyethylene and other manufacturing facilities that are located within Eastman's industrial complex in Longview, Texas.

10. These manufacturing facilities were owned by Eastman until they were sold in 2006 as part of a broader transaction that included the sale of the common carrier pipeline to Westlake Pipeline by Mustang Pipeline.

11. Eastman still owns and operates chemical facilities in Longview including four olefin cracking units (crackers), which produce propylene and ethylene.

12. Eastman's Longview facility converts natural gas liquids (NGLs) feedstock, such as ethane and propane, to ethylene and propylene.

13. Eastman uses the pipeline as a shipper to sell its excess ethylene and continue operations of its facilities at the capacity required to satisfy its propylene requirements.

14. Eastman Chemical Company is currently the only shipper on the Westlake Pipeline that is not affiliated with Westlake Pipeline.

15. In 1997, Mustang Pipeline issued the original tariff for the pipeline, known as the *1997 Mustang Pipeline Tariff.*

16. The pipeline system was configured in 2002 to accept bidirectional flow.

17. In 2002, Mustang Pipeline revised its original *1997 Mustang Pipeline Tariff* by filing the *2002 Mustang Pipeline Tariff.*

18. The *2002 Mustang Pipeline Tariff* changed the 1997 rates and added exchanges and backhauls as services on the pipeline.

19. On November 10, 2006, Eastman and Westlake Chemical entered into an acquisition agreement.

20. As part of the sales agreement, the Mustang Pipeline assets were transferred to Westlake Pipeline.

21. The overall sales agreement between Eastman and Westlake Chemical included the acquisition by Westlake Longview of three polyethylene units that are located within the Eastman's plant in Longview.

22. As part of the overall sale, on November 10, 2006, Eastman Chemical and Westlake Chemical Corporation entered into the Ethylene Sales and Exchanges Contract (ESA).

23. Westlake Pipeline kept Mustang's 2002 Tariff in place approximately seven more years until Westlake Pipeline published and filed a new tariff in July 2013, the *Westlake Pipeline 2013 Tariff.*

24. The only cost-effective means for transporting ethylene between Longview and Mont Belvieu is the Westlake Pipeline.

25. Transportation costs for ethylene are a significant portion of the costs for most polyethylene processes.

26. Pipeline transport is among the most important factors that determine regional prices, supply, and demand for ethylene.

27. The *2002 Mustang Pipeline Tariff* provided for a declining block rate of $1.90 per 100 pounds for the first 320,000 pounds of ethylene transported or exchanged in a single day and $0.70 per 100 pounds for all remaining volumes transported or exchanged the same day.

28. Backhauls and exchanges were services specifically offered at the same rates in the *2002 Mustang Pipeline Tariff.*

29. The *2013 Westlake Pipeline Tariff* increased the rates on the pipeline to a flat $3.50 per hundred pounds from the previous declining block rate design.

30. The *2013 Westlake Pipeline Tariff* eliminated exchanges and backhauls as services on the Pipeline.

31. On July 29, 2013, Eastman filed a complaint against Westlake Pipeline alleging that a tariff published and filed by Westlake Pipeline in 2013 (*2013 Westlake Pipeline Tariff*) was unreasonably preferential, prejudicial, or discriminatory and that the rate increase was unjust and unreasonable.

32. Eastman's Complaint was docketed as GUD No. 10296, *Complaint Filed by Eastman Chemical Company Against Westlake Ethylene Pipeline Corp. Regarding Westlake Pipeline's System T-4 Permit No. 05253.*

33. A hearing was held regarding jurisdictional issues on September 27, 2013.

34. On November 19, 2013, an interim ruling was issued in GUD No. 10296 in which the Examiners recommended that the scope of the proceeding be limited to issues encompassed by the Common Carrier Act that refer generally to all common carriers.

35. On December 2, 2013, Eastman appealed the November 19, 2013, Examiners' interim ruling.

36. On January 7, 2014, the Commission granted Eastman's appeal of the interim ruling and the Commission determined that Westlake Pipeline is a common carrier subject to all provisions of Chapter 111 of the Natural Resources Code and has jurisdiction to hear all aspects of Eastman's complaint.

37. On January 7, 2014, pursuant to Examiners' Letter No. 10 in GUD No. 10296, Westlake Pipeline's 2013 Tariff rate was suspended effective February 5, 2014, and the 2002 Tariff was reinstated pending resolution of these dockets.

38. A notice of hearing was issued on March 24, 2014, which bifurcated the issues into two hearing phases, with Phase I, GUD No. 10296, addressing all discrimination issues and Phase II, GUD No. 10358, addressing the rate issues.

39. On May 2, 2014, Westlake Pipeline filed an affidavit attesting that notice was served on the entity that operates the pipeline on behalf of Buckeye and all current customers of the pipeline that is the subject of this proceeding.

40. The hearing on Phase I, GUD No. 10296, was held on May 6, 2014.

41. Phase II related to the rate issues were severed into this proceeding, docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296.*

42. A Notice of the hearing in GUD No. 10358 was issued on July 25, 2014.

43. No additional party moved to intervene in GUD No. 10358.

44. The hearing in GUD No. 10358 commenced on August 6, 2014 and concluded on August 7, 2014.

45. Westlake Pipeline prepared and filed the *2013 Westlake Pipeline Tariff* soon after several Westlake Chemical employees saw the 2002 tariff in an on-line data room that Eastman Chemical had set up for prospective buyers of its Longview ethylene cracking facilities.

46. Westlake used a market-based tariff comparison to set its proposed rate at issue and then attempted to verify the reasonableness of the rate with a simple cost-of-service analysis and an indexing method.

47. Westlake Pipeline relied upon a single incomparable tariff from the Shell Concha Pipeline (Concha Pipeline), an interstate ethylene pipeline, to benchmark the $3.50 rate for the *2013 Westlake Pipeline Tariff* that was found through an Internet search.

48. The Concha Pipeline is an interstate ethylene pipeline that is regulated by the U.S. Surface Transportation Board.

49. Pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul, which include capacity, operating costs, location (urban v. rural and underground v. underwater), pipe diameter, age, throughput, capital and operating costs, competition, and market conditions.

50. Westlake Pipeline used the Concha Pipeline as a benchmark even though it had no information about the capacity, operating costs, capital investment, or operating characteristics of the Concha Pipeline.

51. It was not reasonable for Westlake Pipeline to base its new rate on a single tariff of a dissimilar interstate ethylene pipeline and there was no showing that the Concha Pipeline rate was comparable to the Westlake Pipeline or was itself just and reasonable.

52. Westlake Pipeline's use of other ethylene pipeline tariffs by comparing only the transportation distances as a means to set the new rate for the Westlake Pipeline was inadequate because Westlake failed to show any other information about the pipelines

other than the rates and approximate lengths of some of those pipelines' hauls based on their origin and destination points.

53. A strict market-based rate setting approach is not appropriate in this case due to the scant evidence related to the manner that Ms. Moore set the rate and her apparent lack of evaluation of that information.

54. The preponderance of credible evidence does not demonstrate that Westlake's tariff based comparison is reliable to support a rate of $3.50 per hundred pounds rate as either competitive or market-based.

55. Westlake Pipeline's application of the FERC escalation factors was an inadequate check on the reasonableness of the July 2013 rate because Westlake Pipeline applied the FERC escalator incorrectly by not escalating both tiers of the declining block rate structure in the 2002 Tariff.

56. The evidence in the record of Amy Moore's simple cost-of-capital analysis is an inadequate basis to conclude that the Westlake Pipeline's rate should be $3.66 per hundred pounds to achieve a 12 percent after-tax rate of return on common equity.

57. Westlake Pipeline provided no work papers in support of Ms. Moore's simple cost-of-capital analysis making it impossible to determine her analysis to calculate the rate of return on common equity that Westlake's $3.50 rate would provide.

58. The lack of transparency in Ms. Moore's analysis results in a lack of credibility regarding her conclusions.

59. The after the fact efforts by Ms. Moore in hearing and Dr. Daniel S. Arthur to clarify the analysis that Ms. Moore utilized for the simple cost-of-capital analysis at the time Westlake set the 2013 Tariff rate in July 2013 were not substantiated by the preponderance of the credible evidence.

60. For determining a transportation rate and fair return that protects the rights of both the pipeline and the shipper, the preponderance of the credible evidence supports the methodology utilized by Dr. Bruce H. Fairchild, with adjustments for volumes, rate base and depreciation, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the Proposal for Decision, which is incorporated by reference into this Final Order.

61. Eastman's evaluation of whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit was unpersuasive due to the hypothetical nature of the analysis and that under the analysis there is no rate Westlake Pipeline could charge that would still allow a hypothetical shipper to earn a 10% to 15% return.

62. Westlake Pipeline's simple cost of capital analysis assumed annual throughput volumes of ethylene of 140 million pounds, which is not a reasonable assumption.

63. Westlake Pipeline's expert witness, Dr. Daniel S. Arthur, assumed throughput volumes on the Westlake Pipeline that are substantially lower than a historical, representative level of throughput volumes.

64. Test-year evidence, adjusted for known and measurable changes, is relevant and generally the preferred historical period to collect rate making data as it is closest to the period of time upon which the carrier based its rates.

65. The test-year in this case is year end March 31, 2013, as this is the most recent year end historical data available to Westlake during the time that the carrier was revising its rate in late June and early July 2013, and the subsequent publishing and filing of the *Westlake Pipeline 2013 Tariff.*

66. Test-Year data may not always be the most persuasive evidence in each element to consider in calculating a rate for a common carrier, as other evidence may ultimately be more credible given the specific circumstances.

67. The preponderance of the credible evidence related to Westlake's capital investment is the use of original cost less depreciation with allowance for working capital and taxes.

68. The evidence in the record shows that the original cost of the pipeline when completed by Mustang Pipeline in 1997 was approximately $54,042,000.

69. After reducing the original cost by depreciation and allowances for working capital and taxes, Westlake's net invested capital is $25,764,021.

70. The preponderance of the credible evidence in the record supports a 35 year straight line depreciation for the pipeline asset.

71. Applying a 35 year straight line to the original 1997 cost of approximately $54 million yields an annual depreciation expense of $1,544,057 and an accumulated depreciation amount of approximately $25.5 million in 2013.

72. Computer equipment is assumed acquired in mid-2010 and it is reasonable to depreciate it over a 10 year life, resulting in an annual depreciation expense of $18,276, and a net value at 2013 of $118,794.

73. The preponderance of the credible evidence regarding the reasonable operating expenses under honest, efficient, and economical management are $2,135,000 contained in Westlake Pipeline's 2014 budget.

74. Westlake's proposed annual volume, or throughput, of 140,000,000 pounds of ethylene transported through the Westlake Pipeline, with known and measurable changes, is unreasonable and not supported by the preponderance of the credible evidence in the record.

75. Westlake failed to substantiate that the decline in volumes for 2013 is not just another variation in a system that has historically varied in annual volumes from approximately \$25 million to \$564 million from 2002 through 2013.

76. To the contrary, Westlake's proposed annual volume of 140,000,000 is inconsistent with past known and measurable volumes.

77. The preponderance of credible evidence supports a finding of known and measurable annual throughput of 278,000,000 pounds per year as these were the volumes that were available to Ms. Moore at the time she proposed the rate, which were Test-Year ending March 2013.

78. Calendar Year 2012 had annual volumes of approximately 278,000,000 pounds.

79. The total historical volumes on the system, including backhaul, also support the finding of annual volumes in the amount of 278,000,000 pounds, such as (a) the average volumes under Westlake ownership of the pipeline from 2006-2013 in the amount of 326,269,397 and (b) the average volumes during the 2002 Tariff from 2002-2013 in the amount of 219,127,963.

80. Under Westlake ownership, historical volumes from 2007 through 2013, constitute median volumes of 278,000,000.

81. Westlake itself projected 200,000,000 million pounds of annual volumes in its 2014 Annual Budget.

82. The recent volume history indicates that backhaul occurred only in June 2013, at a volume of 103,158.

83. No other backhauls happened in the previous five years.

84. Under the 2002 tariff, no exchanges have occurred on the pipeline until February 2014.

85. If significant backhauls and exchanges begin to occur and Eastman believes that Westlake is over-earning, Eastman may avail itself of the Commission's rate setting procedures.

86. It is unreasonable to assume a 100 percent equity ratio in the Westlake Pipeline.

87. It is reasonable to use a capital structure based on an industry average debt ratio of approximately 50% as the average embedded debt cost of the firms comprising the oil pipeline proxy group utilized by Dr. Fairchild is 5.30%.

88. Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of \$3.50 per hundred pounds of ethylene transported is just and reasonable, competitive, or market-based.

89. The preponderance of the credible evidence in the record demonstrates that a rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

90. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provides Westlake a fair return on equity capital of 12.03%, or $12,882,011, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the Proposal for Decision, which is incorporated by reference into this Final Order.

91. A return on equity capital of 12.03% is a fair return on the aggregate value of the property used and useful in the services that the common carrier preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, and also balances the needs of carriers with the needs of shippers.

92. The preponderance of the credible evidence demonstrates no separate rate for exchanges of ethylene is warranted at this time as Westlake Pipeline did not perform any exchanges of ethylene under the 2002 Tariff during the period of December 2006 through the end of 2013, and is consistent with the 2002 *Mustang Pipeline Tariff.*

93. The adoption of a $2.45 per hundred pounds rate for all volumes of ethylene transported or exchanged is consistent with the 2002 *Mustang Pipeline Tariff's* same rate for transportation and exchange.

94. It is reasonable to supplement Section II.(b) of the Tariff approved in GUD No. 10296 with the following Examiners' Recommended Rate, as reflected in Exhibit B to the Proposal for Decision and incorporated by reference to this Final Order, as follows:

WESTLAKE ETHYLENE PIPELINE CORPORATION
T.R.R.C. No. ______
Mont Belvieu to Longview Pipeline

Section	**GUD No. 10296 Approved**	**Examiners' Recommended**
II. (b) Product Specifications and Local Rates	Rate: a. $1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day. b. $0.70 per 100 pounds for each additional amount transported or exchanged in a single day.	Rate: $2.45 per 100 pounds for all pounds transported or exchanged in a single day.

CONCLUSIONS OF LAW

1. Westlake Pipeline is a "common carrier" as that term is defined under TEX. NAT. RES. CODE ANN. §§ 111.002 and 111.020(d) (Vernon 2001 & Supp. 2014) and is therefore subject to the jurisdiction of the Railroad Commission of Texas (Commission).

2. The Commission has jurisdiction over Westlake Pipeline, Eastman, associated affiliates, and the matters at issue in this proceeding pursuant to *TEX. NAT. RES. CODE ANN.* Title 3, Subtitles A, B, and D, Chapters 81, 85, 86, and 111, including but not limited to the following: *TEX. NAT. RES. CODE ANN.* §§ 81.051, 81.061, 111.001 – 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262; and 16 TEX. ADMIN. CODE Chapters 3 and 7.

3. This matter is in accordance with the requirements of the Common Carrier Act (TEX. NAT. RES. CODE ANN., Chapter 111) and the Administrative Procedures Act (TEX. GOV'T CODE ANN. Sections 2001.001-2001.902).

4. Adequate notice of this proceeding was properly provided to all interested parties.

5. As required by *TEX. NAT. RES. CODE ANN.* § 111.014, Westlake Pipeline shall make and publish their tariffs.

6. A common carrier's obligations to its customers cannot exceed its duties under a published tariff and published tariffs govern the relationship of the common carrier with its customers. Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly published tariffs. The published tariffs and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the published tariff. *CenterPoint Energy Entex v. R.R. Commn'n of Tex*, 208 S.W. 3d 608 (Tex. – Austin 2006, pet. dism'd).

7. The Commission has authority to set rates charged by pipeline common carriers pursuant to TEX. NAT. RES. CODE ANN. Chapters 81 and 111.

8. The Commission may set the rate of a common carrier pipeline from a cost-of-service method or market-based method pursuant to TEX. NAT. RES. CODE ANN. Section 81.061.

9. The Commission has ensured that the rates established in this docket are just and reasonable to the pipeline and to shippers.

10. The Commission has ensured that the rates established in this docket provide a fair return to the pipeline on the aggregate value of the property used and useful in the services that the common carrier preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest,

efficient, and economical management in accordance with TEX. NAT. RES. CODE ANN. Section 111.183.

11. The Commission has discretion to use many factors to determine whether a common carrier pipeline's rate is just and reasonable as the Commission has reasonable latitude in determining a just and reasonable rate for a common carrier pipeline pursuant to TEX. NAT. RES. CODE ANN. Section 111.184.

12. Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of $3.50 per hundred pounds of ethylene transported is just and reasonable, competitive, or market-based.

13. A rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

14. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provides Westlake a fair return on equity capital of 12.03%, or $12,882,011, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the Proposal for Decision, which is incorporated by reference into this Final Order.

15. A return on equity capital of 12.03% is a fair return on the aggregate value of the property used and useful in the services that the common carrier preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, and also balances the needs of carriers with the needs of shippers.

16. Section II.(b) of the Tariff approved in GUD No. 10296 with the following Examiners' Recommended Rate, as reflected in Exhibit B to the Proposal for Decision and incorporated by reference to this Final Order.

IT IS THEREFORE ORDERED that the *2013 Westlake Pipeline Tariff* is rejected and may not be enforced by Westlake Pipeline.

IT IS FURTHER ORDERED that Westlake Pipeline publish and file with the Commission the Tariff approved in GUD No. 10296 with the revised Tariff Section II.(b), as reflected in Finding of Fact No. 94, and Exhibit B to the Proposal for Decision, and incorporated by reference to this Final Order, establishing just and reasonable rates.

IT IS FURTHER ORDERED that, in accordance with TEX. NAT. RESOURCE CODE ANN. § 111.015, within 30 days of the date this Order is signed, Westlake Pipeline shall file the approved tariff with the Director of the Oil and Gas Division. The tariff shall reflect the findings of fact and conclusions of law herein.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**.

IT IS ALSO ORDERED that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE ANN. § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

SIGNED this ____ day of January 2015.

RAILROAD COMMISSION OF TEXAS

____

CHAIRMAN CHRISTI CRADDICK

____

COMMISSIONER DAVID PORTER

____

COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

____

SECRETARY

EXHIBIT A

Gas Utilities Docket No. 10358
Examiners' Recommended Rate
Based on Original Cost

Original Cost (1997)	54,042,000			
Revenues				
Non-incentive volumes (00s)		$2,780,000		
2013 Rate per hundred		$2.45		
Revenues			$6,811,000	
Expenses				
O/M (a)		$2,135,000		Note (1)
Depreciation Expense (b)		$1,562,333		
Texas Franchise Taxes (c)		$47,677		
Expenses			$3,745,010	
Earnings Before Interest and Taxes			$3,065,990	
Interest Expense			$682,747	
Earning before taxes			$2,383,243	
Federal Income Tax @ 35%	0.35		$834,135	
Net Income			$1,549,108	
Equity Capital (d)			$12,882,011	
Rate of Return on Equity Capital			12.03%	

(a)	Westlake's Pipeline Budget 2014		
(b)	Depreciation Expense	Pipeline	Computers
	Original Investment	54,042,000	182,760
	Life yrs	35	10
	Depreciation Expense	1,544,057	18,276
	Yrs Depreciated Pipeline(1997-2013)	16.5	
	Yrs Depreciated computers(2010-2013)		3.5
	Accumulated Depreciation	25,476,943	63,966
(c)	Revenues	6,811,000	
	Taxable Margin Rate	70.00%	
	Franchise Tax Rate	1.00%	
	Texas Franchise Tax		47,677
(d)	Investment (Pipeline/Computers)	54,224,760	
	Accumulated Depreciation	-25,540,909	
	CWC	191,875	
	ADIT (e)	-3,111,705	
	Net Investment	25,764,021	
	Debt Ratio	50.00%	
	Debt Capital	12,882,011	
	Cost of Debt	5.30%	
	Interest Expense		682,747

(e)	ADIT:	Pipeline	Computers	
	Net Book Property as of 12/2006	39,373,457		Note (2)
	Accum. Tax Depr. % (2007-2013)	0.4981	0.8264	Note (3)
	Accum. Tax Depreciation	19,611,919	151,033	
	Accum. Book Depreciation	-10,808,400	-63,966	
	Timing Difference	8,803,519	87,067	
	Income Tax Rate	35.00%	35.00%	
	Accum. Deferred income Taxes	3,081,232	30,473	

(f)	Net investment (d)	25,764,021	
	Equity Ratio	50.00%	
	Equity Capital		12,882,011

Note (1) Individual expense items comprising Operations and Maintenance are confidential pursuant to the Protective Order agreed to in this case, however, the total amount is not confidential.

Note (2) Depreciated Original Cost at end of 2006 assuming 35 year life, no salvage value and Straight-line Depreciation

54,042,000
14,668,543 (Accum Dep. At end of 2006)
39,373,457

Note (3) Pipeline:

From Dr. Fairchild's BHF-4, 8, 9, 10 and Dr. Arthur's Rebuttal Schedules F and G. Accumulated Deferred IncomeTaxes calculated on seven years (2007-2013) of tax and book depreciation factors applied to the net original cost of the pipeline assets as of the end of 2006, which is $39.4 million.

Computers:

From Dr. Fairchild's BHF-4, 8, 9, 10 and Dr. Arthur's Rebuttal Schedules F and G. Accumulated Deffered Income Taxes calculated on four years (2010-2013) of tax and book depreciation factors applied to the 2010 original cost of the assets of $182,760.

EXHIBIT B

EXHIBIT B

Westlake Ethylene Pipeline Corporation-T.R.R.C. No. _________
[Cancels Mustang Pipeline Company – Texas Local Tariff. -3]

WESTLAKE ETHYLENE PIPELINE CORPORATION
Mont Belvieu to Longview Pipeline

LOCAL TARIFF
Applying on

PETROLEUM PRODUCTS
As Defined in This Tariff

TRANSPORTED OR EXCHANGED BY PIPELINE
Between Points Within the State of Texas
Subject to the Regulations
Set Forth Herein

ISSUED: _________ EFFECTIVE: _________

Filed with the Railroad Commission

DATE: _________

Issued and Compiled By:

WESTLAKE ETHYLENE PIPELINE CORPORATION
2801 Post Oak Boulevard, Suite 600
Houston, Texas 77056

EXHIBIT B

WESTLAKE ETHYLENE PIPELINE CORPORATION, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below in Section III, "Rules and Regulations," at the rates set forth in Section II, "Product Specifications and Local Rates."

I. DEFINITIONS

a) The term "barrel" as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60° F).
b) The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in questions) and extending until 7:00 a.m. on the following calendar day.
c) The term "Delivery Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for delivery of Product by Carrier to Shipper.
d) The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60° F).
e) The term "Origin Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for introducing Product into the respective pipelines.
f) The term "pound," as used herein, means one (1) pound avoirdupois.
g) The term "Product" as used herein, means the liquid petroleum gas products defined in Section II, "Product Specifications and Local Rates," for the respective pipelines.
h) The term "Shipper," as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.

As the context may require, the plural form shall be construed to include the singular, and the singular form shall be construed to include the plural.

II. PRODUCT SPECIFICATIONS AND LOCAL RATES

a) The rates published in this tariff are for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such transportation or exchange is subject to the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.
b) Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at points named below.

Product: Liquefied petroleum gas meeting the following specifications:

Components	**Specifications**	**Test Method**
Ethylene (Minimum)	99.90 mol %	ASTM D 2505
Methane	350 ppmV	ASTM D 2505
Ethane	465 ppmV	ASTM D 2505
Acetylene	1.5 ppmV	ASTM D 2505
Propylene & Heavier	5 ppmV	ASTM D 2505
Carbon Dioxide	1 ppmV	ASTM D 2505
Carbon Monoxide	0.15 ppmV	ASTM D 2504
Water	2 ppm wt	Panametrics
Total Sulfur	1 ppm wt	ASTM D 3246
Oxygen	4 ppm wt	ASTM D 2504
Hydrogen	5 ppmV	ASTM D 2504
Ammonia	1 ppm wt	ASTM D 5234
Methanol	1 ppm wt	ASTM D 5234

Origin/Delivery Point: Carrier's stations located at or adjacent to the terminals of Equistar Chemicals, Williams Storage, and Flint Hills Resources at Mont Belvieu, Texas, when such points of origin are practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Origin/Delivery Point: Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery is practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Rate: $2.45 per 100 pounds for all pounds transported or exchanged.

III. RULES AND REGULATIONS

1. Testing

Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate.

Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. In the event that any test indicates that the Product offered for transportation <u>or exchange</u> does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to case delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.

2. <u>Measurement</u>

Carrier will utilize meters located at the Origin Point and Delivery Point whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with the standard procedures utilized by the owner or operator of such meters.

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

a. By using the registration of any check measuring equipment of Carrier.
b. By using any measurement equipment which Carrier may have in the flowing stream.
c. By any independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, inspection, or test.

Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60° F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.

Physical and legal transfer of custody of the Product from Shipper to Carrier shall be at the point immediately downstream of applicable measuring and metering facilities at the

Origin Point. Physical and legal transfer of custody of the Product from Carrier to Shipper shall be at the point immediately downstream of applicable measuring and metering facilities at the Delivery Point.

3. Facilities at Origin and Delivery Point

Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:

a. When Shipper has provided facilities satisfactory to Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and
b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or other services to effectuate the entry of the Product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at the Delivery Point.

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to Pipeline's customers.

Separate pipage contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.

4. Minimum and Maximum Shipments

The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its sole election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.

5. <u>Tender Deductions</u>

A tender deduction of 1/2 percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.

6. <u>Payment of Transport or Exchange</u>

The charges for transportation <u>or exchange</u> of Product accepted for shipment shall be based on the applicable rate set forth above in Section II before tender deduction, if any, is made. Shipments accepted for transportation <u>or exchange</u> shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation <u>or exchange</u> charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days of receipt of invoice. Carrier may require that charges:

a. be prepaid at time of acceptance, or
b. on demand be paid before release of Product from custody of Carrier. Carrier may charge Shipper interest of 1½ percent per month (18 percent per annum) for overdue transportation <u>or exchange</u> charges.

Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the dale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation <u>or exchange</u> and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for whomsoever may be lawfully entitled thereto. The remedies set forth in this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. <u>Clear Title</u>

Shipper shall notify Carrier when any Product tendered for transportation <u>or exchange</u> is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation <u>or exchange</u>, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

8. <u>Tenders</u>

All Shippers desiring to tender Product for transportation <u>or exchange</u> on Carrier's facilities shall furnish a written nomination to Carrier by the fifteenth (15th) day (excluding Carrier holidays) of the month prior to the month Shipper desires transportation <u>or exchange</u>. Nominations shall specify the quantity of Product to be transported <u>or exchanged</u>, the Origin Point, the Delivery Point, and any other information required by Carrier. If Shipper does not furnish such written nomination, Carrier shall be under no obligation to accept such Product for transportation <u>or exchange</u>.

Nominations shall be transmitted to Carrier to the attention of Westlake Ethylene Pipeline Corporation Scheduler as follows:

a. by facsimile to the Westlake Ethylene Manager at (713) 960-8761, or
b. by electronic mail, as arranged between Carrier and Shipper.

Any nominations accepted by Carrier will be delivered on a ratable basis.

9. <u>Identity of Shipments</u>

In view of the impracticability of maintaining the identity of shipments, shipments will not be segregated, but will be commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.

10. <u>Disposition of Shipments</u>

In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at the Delivery Point in accordance with Carrier's schedules, Carrier may make whatever disposition of such undelivered shipment which is necessary to order to free its pipeline. Carrier shall not be liable to Shipper because of such disposition, and Shipper shall pay for all costs and fees thereof the same as if Shipper had requested or authorized such disposition.

11. Apportionment of Tenders and Withdrawals

In the event Shipper's tenders at Origin Point or Shipper's withdrawal requirements at the Delivery Point are greater than can be currently handled by Carrier, Carrier may restrict or suspend tenders or withdrawals in order to apportion deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.

12. Transit Privileges

Carrier may not be required by Shipper to stop Product in transit for any reason.

13. Liability of Carrier and Indemnity

Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public enemy, quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, riots, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause outside of the reasonable control of the Carrier, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof involved in such loss in the proportion that such shipment or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation or exchange services and not as an owner, manufacturer, or seller of Product transported or exchanged hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

FOR ALL SERVICES PROVIDED FOR AND RECEIVED UNDER THIS TARIFF, SHIPPER SHALL INDEMNIFY AND DEFEND CARRIER FROM ANY CLAIMS, LIABILITIES, OR LOSSES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES), INCLUDING CLAIMS FOR PERSONAL

INJURY, DEATH OR PROPERTY DAMAGE INVOLVING THE CARRIER, SHIPPER, CONSIGNEES, OR THIRD PARTIES BASED ON OR ARISING OUT OF CARRIER'S PERFORMANCE OF SUCH SERVICES. THIS INDEMNIFICATION SHALL INCLUDE CLAIMS OF ANY NATURE, LEGAL, CONTRACTUAL OR EQUITABLE, WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSES OF ACTION. THE INDEMNITY PROVIDED IN THIS TARIFF IS INTENDED TO BE APPLICABLE TO THE FULL EXTENT ALLOWED BY LAW AND IS LIMITED ONLY IN ACCORDANCE WITH STATUTORY OR COMMON LAW. TO THE EXTENT NOT PROHIBITED BY LAW, THIS INDEMNITY APPLIES TO ANY ACT OR OMISSION, WHETHER NEGLIGENT OR NOT, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF SERVICE BY CARRIER PURSUANT TO THIS TARIFF, INCLUDING THE SOLE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF CARRIER.

14. Claims

Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.

15. Additives, Dyes, and Odorization

a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at Delivery Point containing portions of corrosion inhibitor.
b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported or exchanged, unless negligent conduct by Carrier is determined to be the sole, proximate cause of the cost, expense, damage or liability incurred by Shipper.
c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:
    (1) Will furnish the dye to be injected and/or the malodorant to be added and
    (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing.

16. Imbalance Charges

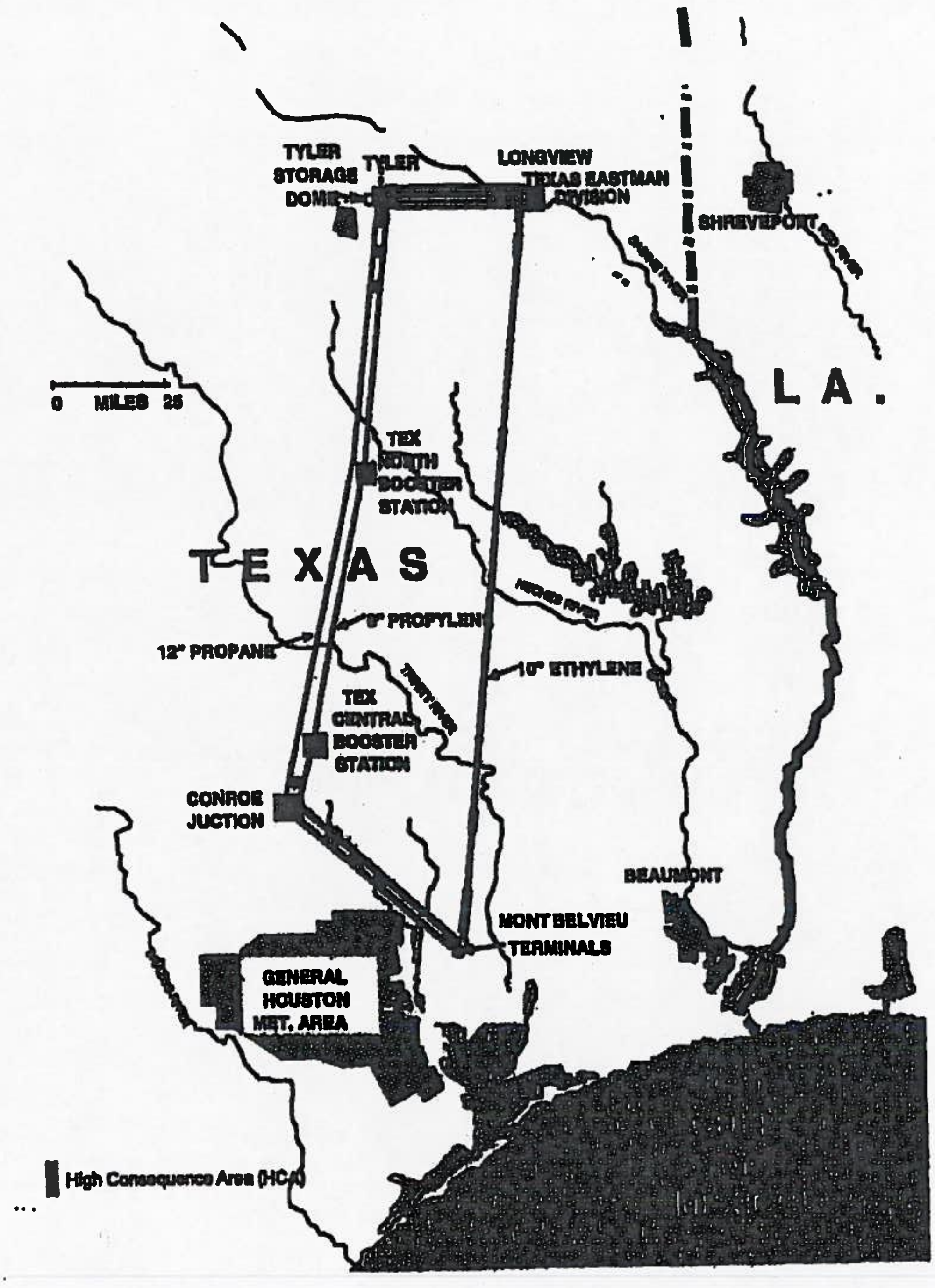
In the event that Shipper fails to deliver to Carrier at the Origin Point the equivalent volumes of Product which Carrier redelivers to Shipper at the Delivery Point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for any particular imbalance period is not to be construed as a waiver of such charges for any other imbalance and Carrier maintains the right to collect such charges from Shipper for any imbalance not the subject of a written waiver.

17. Direction of Flow

In the event the pipeline is configured and equipped so that it is physically capable of bi-directional flow, Carrier at its sole discretion will choose the direction of flow between the Origin Point and Delivery Point. Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.

END OF DOCUMENT

EXHIBIT C


TYLER STORAGE DOME
TYLER
LONGVIEW
TEXAS EASTMAN DIVISION
SHREVEPORT
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0 MILES 25
TEX NORTH BOOSTER STATION
T E X A S
8" PROPYLENE
12" PROPANE
10" ETHYLENE
TEX CENTRAL BOOSTER STATION
CONROE JUCTION
BEAUMONT
MONT BELVIEU TERMINALS
GENERAL HOUSTON MET. AREA
High Consequence Area (HCA)

vgs/11-03

EXHIBIT D

Comparison of Ethylene Pipelines Rates/Pound-mile

Ethylene Pipeline	Receipt Point	Delivery Point	Rate/100 Lbs		Estimated Miles*	Rate/pound-mile	Estimated Rate/100 lbs at 195 miles
[a]	[b]	[c]	[d]		[e]	[f] = [a]/[b]/100	[g]
Westlake Ethylene Pipeline	Mont Belvieu TX	Longview TX	$3.5000		195	$0.000179	$3.5000
Concha Chemical Pipeline	Napoleonville LA	Geismar LA	$0.6900		25	$0.000276	$5.3820
		Petrologistics Choctaw LA	$0.7300		25	$0.000292	$5.6940
		Borden Plant LA	$0.7800		25	$0.000312	$6.0840
		Plaquemine LA	$3.4900		30	$0.001163	$22.6850
		Lake Charles LA	$3.4900		150	$0.000233	$4.5370
		Mont Belvieu TX	$3.4900		260	$0.000134	$2.6175
		Orange TX	$3.4900		175	$0.000199	$3.8889
	Mont Belvieu TX	Napoleonville LA	$3.4900		260	$0.000134	$2.6175
		Plaquemine LA	$3.4900		240	$0.000145	$2.8356
		Lake Charles LA	$3.4900		115	$0.000303	$5.9178
		Orange TX	$3.4900		70	$0.000499	$9.7221
	Orange TX	Napoleonville LA	$3.4900		175	$0.000199	$3.8889
		Mont Belvieu TX	$3.4900		70	$0.000499	$9.7221
		Plaquemine LA	$3.4900		160	$0.000218	$4.2534
	Plaquemine LA	Orange TX	$3.4900		160	$0.000218	$4.2534
	Lake Charles LA	Napoleonville LA	$3.5000		150	$0.000233	$4.5500
		Plaquemine LA	$3.5000		120	$0.000292	$5.6875
		Mont Belvieu TX	$3.5000		115	$0.000304	$5.9348
	Petrologistics Choctaw LA	Napoleonville LA	$3.5000		25	$0.001400	$27.3000
	Average					$0.000371	$7.2408
Enterprise TE Products Pipeline	Mont Belvieu TX	Fannet TX	$0.0770	(a)	40	$0.000019	$0.3754
		Mont Belvieu TX	$0.0770	(a)	1	$0.000770	$15.0150
		Port Arthur TX	$0.0770	(a)	60	$0.000013	$0.2503
		Port Neches TX	$0.0770	(a)	70	$0.000011	$0.2145
	Port Arthur TX	Fannet TX	$0.0770	(a)	20	$0.000039	$0.7508
		Mont Belvieu TX	$0.0770	(a)	60	$0.000013	$0.2503
		Port Arthur TX	$0.0770	(a)	1	$0.000770	$15.0150
		Port Neches TX	$0.0770	(a)	10	$0.000077	$1.5015
	Mont Belvieu TX	Fannet TX	$1.6698		40	$0.000417	$8.1403
		Mont Belvieu TX	$1.6698		1	$0.016698	$325.6110
		Port Arthur TX	$1.6698		60	$0.000278	$5.4269
		Port Neches TX	$1.6698		70	$0.000239	$4.6516
	Port Arthur TX	Fannet TX	$1.6698		20	$0.000835	$16.2806
		Mont Belvieu TX	$1.6698		60	$0.000278	$5.4269
		Port Arthur TX	$1.6698		1	$0.016698	$325.6110
		Port Neches TX	$1.6698		10	$0.001670	$32.5611
	Average					$0.002427	$47.3176
Chevron Phillips Chemical Pipeline	Napoleonville LA	St. James Plant LA	$0.1344		20	$0.000067	$1.3104
	Average					$0.000067	$1.3104
SouthTex 66 Pipeline Co.	Battleground Connection TX	Pasadena Area TX	$0.1355	(b)	10	$0.000136	$2.6423
	Brazoria Area	Bayport Area TX	$1.6500	(b)	60	$0.000275	$5.3625
		Battleground Area TX	$1.6930	(b)	65	$0.000260	$5.0790
		Pasadena Area TX	$1.7665	(b)	60	$0.000294	$5.7411
	Average					$0.000241	$4.7062
ExxonMobil Pipeline Company	Baton Rouge LA	Choctaw Storage LA	$0.2000	(c)	20	$0.000100	$1.9500
		Dow Chemical Plant LA	$0.2000	(c)	20	$0.000100	$1.9500
		Copolymer LA	$0.2000	(c)	20	$0.000100	$1.9500
		GA Gulf Plant LA	$0.2000	(c)	20	$0.000100	$1.9500
		Shintech PVC Plant LA	$1.0000	(c)	20	$0.000500	$9.7500
	Average					$0.000180	$3.5100
Koch Pipeline Company	Port Arthur TX	Port Neches TX	$0.7500		10	$0.000750	$14.6250
	Average					$0.000750	$14.6250

Sources/Notes:
Schedule BHF-2 attached to Dr. Fairchild's Direct Testimony.
(a) Second tier incentive rate.
(b) Converted from price per ton
(c) Includes return to receipt point.
* Mileage estimated using Google Maps.

EXHIBIT E

CHARLES R. MATTHEWS, CHAIRMAN
BARRY WILLIAMSON, COMMISSIONER
CAROLE KEETON RYLANDER, COMMISSIONER

LINDIL C. FOWLER, JR., GENERAL COUNSEL
GAS SERVICES SECTION

RAILROAD COMMISSION OF TEXAS
OFFICE OF GENERAL COUNSEL

RECEIVED
APR 24 1997
... OF
... HAYS, JR.

April 23, 1997

TO ALL PARTIES OF RECORD:

Gas Utilities Docket No. 8434
Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company

Attached is a proposal for decision (PFD) submitted by the examiner in this docket. This is only a proposal and should not be interpreted as a final decision unless a final order is signed and issued by the Commission.

The examiner had announced at the December 2, 1996, prehearing conference that the proposal would be issued within a few weeks after the prehearing conference. However, the examiner's duties in Gas Utilities Docket No. 8664, *Statement of Intent Filed by Lone Star Gas Company and Lone Star Pipeline Company, Divisions of Enserch Corporation, and ENSAT Pipeline Company to Increase the Intracompany City Gate Rate Established in GUD 3543*, took precedence over all other matters sooner than anticipated and forced a delay in the issuance of the attached PFD.

Pursuant to 16 TEX. ADMIN. CODE §§ 1.141(a) and 1.142(a), you may file written exceptions to the proposal for decision or present briefs to the Commission. You may also file replies to any exceptions filed by other parties. You must file your exceptions by no later than 5:00 p.m., Friday, May 9, 1997. You must file your briefs and/or replies to exceptions by no later than 5:00 p.m., Monday, May 19, 1997. You must file your exceptions, briefs, and replies with the Docket Services Section of the Office of General Counsel (Room 12-112).

In addition to written exceptions, you may file with the Commission a one page summary of the case. The summary shall be filed with the Commission at the time exceptions are due. The summary shall be no more than one page and shall contain only information of record or argument based on the record. The summary shall not be submitted in reduced print. The summary shall contain the name of the party, the status of the party, the name and docket number of the case, the issue(s), the key facts, the legal principles involved (including proposed conclusions of law), and the action requested (see attached form).

Pleadings are considered filed only upon actual receipt by the Docket Services Section. Exceptions, replies, briefs, and/or summaries may not be filed by FAX. You must file an original and nine copies of your exceptions, replies, and/or briefs.

Any revisions or modifications made by the examiners in response to the exceptions, replies, briefs, and/or summaries will be served on all parties. If you desire service of revisions and modifications by FAX, please provide a written request for FAX service (include your FAX number).

The attached proposal for decision and any revisions or modifications made by the examiners in response to the exceptions, briefs, replies, and/or summaries may be considered by the Commission at any Tuesday open conference convened after the expiration of the time for filing exceptions, replies, briefs, and/or summaries or after the exceptions, replies, briefs, and/or summaries are filed (if filed before the filing deadline) but no sooner than ten days from the date of this letter. It is most likely that the Commission will consider the proposal for decision on May 27th, June 3rd, and June 10th.

The agenda for the scheduled conferences will be published in the *Texas Register* and posted in the office of the Secretary of State. The conferences are open meetings. You are welcome to attend the conference, but you are not required to attend. You may call Carol Goodman at (512) 463-7017 after 3:00 p.m. any Wednesday to inquire whether this docket has been included in the conference materials for the next Tuesday's open conference.

You will be notified by mail of any final decision or order of the Commission. If regular mail delivery is unsatisfactory, you may provide a charge account number for an expedited or overnight delivery service. The Commission will thereafter utilize that delivery service, billed to your account, for transmittal of proposals for decision and orders.

Very truly yours,

James Brazell

James Z. Brazell
Hearings Examiner
Gas Services Section
Office of General Counsel

JZB/olg

cc: Sonia O'Neal
Dave Howard
Kim Williamson

g:\data\gulp\wp\jzb\pfd\8434\8434.NTP

CASE SUMMARY

PREPARED BY: STATUS:

EXAMINER(S):

DOCKET NO./CASE NAME:

ISSUE(S):

KEY FACTS:

LEGAL PRINCIPLES INVOLVED:

ACTION REQUESTED:

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

COMPLAINT OF WEEKS EXPLORATION COMPANY, INC./SANTOS USA CORP. AGAINST CHEVRON PIPELINE COMPANY	§ § §	DATE ISSUED: APRIL 23, 1997 GAS UTILITIES DOCKET NO. 8434

PROPOSAL FOR DECISION

James Z. Brazell

Hearings Examiner

TABLE OF CONTENTS

I. SUMMARY OF THE CASE

Weeks Exploration, Inc. (Weeks) and its parent Santos USA (Santos) operate an offshore production platform in the High Island Area near Bolivar Island on Jefferson County in the southeast Texas coast. Three other parties have interests in the production from the platform: Camterra Resources Partners, Ltd. (Camterra) is a working interest owner along with Weeks/Santos; Eastex Crude Company purchases production from the platform; and the State of Texas owns a royalty interest and takes its royalty oil in kind (8-28-96 PHC Tr. 23; March 18, 1996, letter from Stroud C. Kelley, Docket File, vol. 4, item 126).

From June 21, 1990, through June 30, 1996, Chevron Pipeline Company (CPL), a common carrier, has transported Weeks/Santos's crude to a Chevron shore terminal at McFaddin Beach over CPL's High Island 52 pipeline system (Weeks Ex. 5; July 19, 1996, letter from Jay Cookingham, Attorney for Shoreham Pipeline, Docket File, vol. 4, item 139). At the McFaddin Beach terminal, Chevron stores Weeks/Santos's crude in tanks, then ultimately delivers the crude to Scurlock Permian Corporation (Scurlock) at a nearby staging facility.

CPL's shore facility is located in the McFaddin National Wildlife Refuge. Operations at the site are within the jurisdiction of the U.S. Department of Interior's Fish and Wildlife Service and are conducted under a permit issued November 23, 1981 (Weeks Ex. 13). Initially, CPL did not own the shore facility; a sister company, Chevron, U.S.A. owned the terminal and was the permittee (Weeks Ex. 13). At that time, CPL charged Weeks/Santos a rate of $0.33 per barrel (bbl.) to transport Weeks/Santos's crude ashore. Later, CPL purchased the McFaddin beach Terminal from Chevron U.S.A., and, effective May 1, 1991, increased its rate to $0.89 per bbl. Eastex refused to pay the difference, and continued to pay $.0.33 (II Tr. pp. 171, 177).

There was some dispute over whether CPL properly filed a tariff sheet at the Commission when CPL increased its rate to $0.89 per bbl. This issue was litigated in the hearing. Although CPL asserted that it did properly file a tariff with the Commission, no tariff exists in the Commission's files and CPL cannot produce a copy of the file-marked tariff sheet.

In recent years, production has decreased from the platform and Chevron has become less enthusiastic about providing transportation service. Chevron tried unsuccessfully to sell the system first to Neste Oy (II Tr. 192) and, subsequently, to Weeks/Santos (I Tr. 47). On November 18, 1993, Chevron notified Weeks (Santos's predecessor) that Chevron would increase the rate by at least 50 percent, effective January 1, 1994 (Weeks Exh. 1). On December 16, 1993, Chevron filed a tariff with the Commission proposing to increase the rate Chevron would charge from $0.89 per bbl to $1.44 per bbl, effective January 1, 1994 (CPL Ex. 8).

In this application, Weeks/Santos USA (successor to Weeks Exploration Company, Inc.), complains of the proposed $1.44 rate sought by Chevron. Chevron, on the other hand, seeks approval of its requested rate of $1.44 per barrel, or any other rate that it can support. As an alternative, Chevron had sought authority under 16 TEX. ADMIN. CODE §3.68(a) (Statewide Rule 73) to abandon its connection to Weeks/Santos's production platform. That request has already been resolved both by the Commission's ruling denying the requested abandonment and by Chevron's sale of the facilities to Shoreham Pipeline Company on June 1, 1996. The examiner permitted Shoreham to intervene in this proceeding.

At first, CPL requested an increase to $1.44. per bbl. However, during the hearing CPL requested Commission approval of increases to $3.33, $4.55, and $6.51 bbl. for 1994, 1995, and 1996, respectively. CPL asserted that its requested pattern of increase was required by the declining throughput occasioned by the decline in Weeks/Santos's production from the platform. CPL asserted that because of its declining throughput, it must either increase rates as requested or abandon service to stop losing money (II Tr. p. 169).

As mentioned, while this proceeding was pending, Chevron sold the system to Shoreham Pipeline Company. Shoreham and Weeks/Santos sought to determine a rate by agreement, but were unsuccessful. In mid-1996, Examiner Brazell severed the issues that pertain Shoreham's rates and all other issues occurring after June 1996. Examiner Brazell reserved for decision in this docket all issues pertaining to the appropriate rates that should have been charged during the period from February 1994 through June 1996, the period during which CPL was transporting Weeks/Santos's crude.

More recently, Shoreham, its affiliate American Producers, Inc., and Weeks/Santos have become embroiled in a dispute over a proposed tariff filing by API. This proposal for decision does not address those issues. This proposal covers the rates for the period from the date of the filing of the complaint through the date CPL sold the system to Shoreham. The issues regarding Shoreham/API's rate have been severed out of this proceeding and are currently docketed in Gas Utilities Docket No. 8740.

II. PROCEDURAL HISTORY

CPL gave Weeks/Santos notice of CPL's intent to increase its crude transportation rate from $0.89 to $1.44 on November 18, 1993. CPL filed its proposed tariff with the Commission on December 18, 1993. Weeks filed its Complaint on December 22, 1993. The examiners convened prehearing conferences throughout early 1994. At the direction of the examiners, the parties published notice in the *Oil & Gas Journal* on August 15, 1994. Eastex, Camterra, and the State of Texas intervened. No other parties intervened or filed notices of protest.

At that time the parties asserted that there was a possibility that they could resolve the matter by negotiation. By the early-summer of 1994 it was clear that negotiations would be fruitless. In August 1994, the examiners imposed a procedural schedule, set the case for hearing, and required the parties to file pre-filed written testimony.

The examiners conducted the hearing on September 27 through 30, 1994. All issues were considered at the hearing, but the bulk of the evidence was directed towards the rate issues. The parties filed their post-hearing briefs in January 1995.

In early 1995, Examiner Brazell became involved in a statutory deadline statement of intent proceeding. However, during that time, the examiners directed the parties to research the Commission's common carrier tariffs and to provide copies of any tariffs for similar service. In addition, during the summer of 1995, the Commission heard and considered three other Rule 73 abandonment cases. By agreement of all the parties, the proceedings in this docket were abated until after the Commission's decision in those Rule 73 dockets. The examiners permitted the parties to file supplemental briefs to discuss the impact of the Commission's decisions in these abandonment proceedings in September 1995.

In addition, in July, 1995, the examiners ordered the bifurcation of the proceeding. This order provided that the abandonment issues would be considered and resolved first. If the Commission granted the abandonment, the rate issues would in large part become moot. However, if the Commission denied abandonment, the examiners could then set rates based upon the expected future production pattern.

In December 1994, while the case was in progress, Examiner Clarkson left the Commission. In January 1995, Examiner Pender was assigned to replace him. Examiner Pender issued the PFD on the abandonment issues in February 1996. The parties filed exceptions and replies in the ensuing weeks and the Commission considered the abandonment PFD in March and April 1996.

In its deliberations on the abandonment matter, the Commission decided to grant the parties oral argument. At the parties' request, oral argument was later cancelled.

Subsequently, on July 1, 1996, Chevron sold the system to Shoreham Pipeline Company and withdrew the abandonment request. The change in ownership raised issues regarding the appropriate disposition of the remaining issues and the appropriate status to be given to the parties in light of the fact that CPL no longer owned the system. In the fall of 1996, Examiner Brazell convened a prehearing conference. In that conference he ordered the parties to seek to resolve the remaining issues through mediation and suspended all filings for 30 days. Mediation was unsuccessful. On December 2, 1996, Examiner Brazell convened a final prehearing conference. In that conference, Examiner Brazell severed the Shoreham/API issues into Docket No. 8740 and announced that the PFD would address the appropriate rate for the period from the filing of the complaint through the sale of the system to Shoreham. Subsequently, Examiner Brazell was assigned to preside in a rate case with a statutory deadline, Docket No. 8664, *Statement of Intent of Lone Star Gas Company to Increase the Intracompany City Gate Rate Established in G.U.D. 3543.*

III. SUMMARY OF EXAMINER'S RECOMMENDATION

The examiner recommends that the Commission: reject Chevron's TOC and units of production methodologies; exclude from rate base that Chevron property that is not used and useful; and disallow operating costs on which Chevron failed to meet its burden of proof. The examiner recommends approval of a simple original cost rate base; use of a straightforward rate of return analysis; and the inclusion of all reasonable and necessary operating costs. The examiner recommends that the Commission reject CPL's proposed inclusion in rates of the costs of manning the McFaddin Beach shore facility on a 24-hour basis. And the examiner recommends that the Commission base its approved rate design on a reasonable throughput that reflects the expected average throughput for 1995-1996, as shown in the Commission's own production records.

Specifically (as shown in Schedules 1 through 6 in Attachment A), the examiner recommends a revenue requirement of $141,893; a throughput for rate design of 650 BOPD; and a unit rate of $0.60 per bbl. The examiner recommends the approval of a 15 percent, or $0.09, surcharge for rate case expenses, bringing the total recommended rate to $0.69 bbl.

The bases for the examiner's recommendations are discussed in the following sections. The examiner's recommendations establish rates: at the level required by the preponderance of the credible evidence in the record; at an amount that will provide Chevron a fair return on the aggregate value of its property used and useful in providing service to Weeks/Santos after providing a reasonable allowance for depreciation and other factors and reasonable operating expenses under honest, efficient, and economical management; and within the rage of rates reflected both in Chevron Pipeline Company FERC tariffs for transportation from offshore to land-based delivery points (FERC tariffs) and in the sampling filed by Weeks/Santos of tariffs on file at the Railroad Commission for similar transportation by other entities (Attachment B).

IV. RATES

A. General Issues

CPL's proposed rates in this case are almost entirely the result of CPL's use of two distinctive ratemaking methodologies for calculating rate components in this case: a trended original cost (TOC) calculation of rate base, return, and other expenses, and a "units of production" method for determination of depreciation expenses, dismantlement, removal and restoration (DR&R) costs, and rate case expenses. The examiner recommends that the Commission reject both Chevron's TOC and units of production methods. The TOC method was first approved by the FERC in Opinion No. 154-B, *Williams Pipeline Company*, Docket No. OR79-1-000 and 022, 31 F.E.R.C. ¶ 61,377, 61,831 (June 28, 1985). The FERC adopted the TOC methodology in response to three distinct needs:

1. the need to switch from the old "valuation" ratemaking methodology that had been employed at the Interstate Commerce Commission during the period it had regulated crude oil pipelines;

2. the need to craft rates in a period of extremely high inflation (the *Williams* case originated in 1972 and was rendered in 1985); and

3. the need to mitigate the front-loading rate effect for new pipelines that were competing with older pipelines. 31 F.E.R.C. ¶ 61,377, at 61,834-35; *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1516-17 (D.C. Cir.--1984) (hereinafter "Farmers Union II"); *Endicott Pipeline Company*, FERC Docket Nos. IS87-36-000 and 001, 55 F.E.R.C. ¶ 63,028, 65,139, at 65,142 (May 28, 1991); Henry E. Kilpatrick, Jr. and Dennis H. Melvin, *The trended vs. Depreciated Original cost Controversy: How Real are the Real Returns?* 12 Energy Law Journal 323 (1991); Leonard L. Coburn, *Oil Pipeline Regulation: Has the FERC Finally Slain the Minotaur?* 6 Energy Law Journal 209 (1985).

The TOC method is not necessarily inconsistent with Texas's statutory ratesetting scheme for crude oil pipelines and may be approved by the Commission if it finds from the credible evidence adduced at the hearing that it would produce rates that meet the statutory standards. TEX. NAT. RES. CODE ANN. §§ 111.181, *et seq.* However, TOC is inappropriate in this case and should not be approved for several reasons. First, the days of runaway inflation are long ago. Currently, the nation is experiencing low inflation, which is likely to be the case throughout the period for which rates will be set in this proceeding.

Next, the pipeline at issue in this case is not a new pipeline operating in competition with older pipelines. Accordingly, the front-loading issue that was the basis of the *Williams* case does not exist in this proceeding. Third, the FERC's adoption of the TOC methodology in the *Williams* case was to avoid front-loading in competitive markets--it was not intended to result in an alarming *back-loading* of costs on firms operating in a *non-competitive* market. Such back-loading would result if the TOC methodology were employed in this case, producing patently unjust and unreasonable rates.

The Commission should reject Chevron's assertion that the Commission should use the TOC method in this case because it has been used by the FERC. First, even though the FERC may have used the TOC method, it is clearly not the only appropriate method. In *Farmers Union II* the court stated that the FERC could use any appropriate method to determine rate base, so long as the result of the ratemaking process is reasonable. *Farmers Union II*, at 1527.

The complexities of the TOC methodology (the determination of the starting or transition rate base, the amortization of the write up of the starting rate base, the amortization of the annual inflation write up, the use of the debt and equity rate bases) are either the result of the problems posed in the transition from ICC regulation to FERC regulation or are artifacts produced by the FERC's seeking to avoid the front-loading problem discussed earlier. Those very complexities have been rejected by the FERC both in the *Buckeye* cases, in which market-based rates were approved, and in FERC Order No. 561, in which the FERC follows Congress's mandate to simplify crude oil pipeline ratemaking. Section 1801(a) of the Energy Policy Act of 1992. The complexity of Chevron's TOC method is not required for any useful purpose in this case and merely complicates the otherwise simple task of determining reasonable rates under the cost of service methods that have been used in Texas for gas, electric, telephone, and water utilities for many years (Weeks Ex. 6, p. 3-5).

And finally, the TOC methodology should be rejected simply on the basis of the persuasiveness of the credible evidence: Weeks/Santos persuasively demonstrated that TOC was not necessary or appropriate, while Chevron failed to persuasively show that the TOC methodology should be approved.

The transportation of crude oil in this case is *intrastate* transportation. It is not unreasonable for the methodology used by the states to regulate rates for intrastate transportation to vary from the methodology used by the FERC to regulated the rates for interstate transportation. The Commission should not consider itself under any compulsion to adopt the TOC method simply because the FERC has used it in the past.

As stated, the examiner also recommends rejection of Chevron's proposed units of production depreciation and DR&R methodologies. This recommendation does not indicate that the method could not be approved in this case, had the record supported it, or cannot be approved in other, subsequent cases. The units of production method may have merit when it is applied consistently throughout the life of the facility in such a manner as to produce levelized rates that fairly apportion costs over the units transported throughout the life of the facility. As proposed in this case, however, the units of production method causes mismatching of costs, services, customers, and revenues; allows the recovery of expenses that were underrecovered in the past (retroactive ratemaking); and results in rate shock (the sudden, unexpected, and unfair increase in rates beyond levels that could be reasonably expected). In this docket, CPL has proposed to apply the units of production method unfairly, applying the units of production method to remaining balances of depreciation which were underrecovered in past periods and recovering such underrecovered depreciation over units currently remaining, rather than applying the method to the original cost balances throughout the life of the facility and recovering those balances in all units transported through the facility during its life since 1963.

B. Test Year

As its proposed test period, Chevron used the 12 months from July 1993 through June 1994. But Chevron also calculated and provided costs of service for 1993, eleven months of 1994, and the entirety of 1995 and 1996. Weeks/Santos proposed a single test year, comprising of the twelve months ending December 31, 1994.

The examiner recommends that the Commission approve Weeks/Santos' proposed test year. This recommendation is consistent with Texas' history of basing rates on a *single* historical test year, adjusted for known and measurable changes. Chevron's proposed costs of service for 1994, 1995, and 1996, are unsupported, are not known and measurable, are inconsistent with the rate methodology applied in Texas, and are based on a decline in production and a total cessation of service. Such a cessation of production is inconsistent with the record evidence of past production and the fact that Shoreham has purchased the system and continues to provide service.

C. Rate Base

As mentioned above, CPL proposed a TOC rate base. CPL's stated reason for proposing the TOC method was to remain consistent with the treatment accorded by FERC to oil pipelines under the doctrine established in *Williams*. Weeks/Santos proposed a simple original cost rate base. Weeks/Santos also suggested, through its cross and redirect examination, that its proposed rate base should be adjusted to exclude items located at the shore facility that were not used and useful in providing service to Weeks/Santos.

The examiner recommends that the Commission approve Weeks/Santos's proposed simple original cost method. The examiner recommends a plant in service of $1,673,583. This recommended plant in service includes Weeks/Santos' proposed initial plant in service of $2,955,217, adjusted to remove the

$1,281,634 cost of the heater treater which was not used and useful in rendering service to Weeks/Santos (Attachment A, Schedule 3, line SAN1).

The examiner also recommends that the Commission approve accumulated depreciation of ($1,483,951). This figure is the result of adjusting Weeks/Santos' proposed accumulated depreciation of $2,344,068 to remove the $860,117 in accumulated depreciation associated with the heater treater through 1994. These recommendations produce an examiner's recommended net plant of $189,633 (Attachment A, Schedule 3, line SAN3).

The examiner's recommended adjustments to remove the impact of the heater treater are appropriate. CPL claims that it was required to purchase the entire facility to serve Weeks, including the heater treater, salt water disposal facility, and other unneeded facilities. The examiner recommends that the Commission reject these arguments. The purchase of the system was an affiliate transaction: CPL bought the facilities from Chevron, U.S.A., which operated a production platform southwest of the Weeks/Santos platform. The record indicates that CPL and Chevron U.S.A. expected there was a possibility that Chevron U.S.A. would use the facilities later and CPL bought the heater treater, salt water disposal facility, and other unneeded items on the chance that they would become needed when and if Chevron U.S.A resumed production. Of these facilities, only the value of the heater treater could be quantified with sufficient particularity to permit an adjustment.

The examiner also recommends that the Commission approve Weeks/Santos's proposed cash working capital of $8,131 (Attachment A, Schedule 3, line SAN4). Weeks/Santos calculated this recommended amount at one-eighth of operating and maintenance expense. The examiner also recommends that the Commission approve accumulated deferred income taxes of ($31,033) (Attachment A, Schedule 3, SAN5). The recommended sum is calculated by applying CPL's effective 38 percent tax rate to CPL's cumulative excess of tax depreciation over book depreciation for each asset as of June 30, 1994, and making an adjustment to remove $160,186 in accumulated deferred income taxes associated with the heater treater.

The product of these recommendations is an examiner's recommended rate base of $166,730. This recommendation is shown on Attachment A, Schedule 3, line SAN6.

As part of this recommendation, the examiner also recommends that the Commission reject Chevron's annual equity write up and the amortization of the pre-1984 inflation write up because 1) they are components of the TOC methodology; 2) they add a wholly unneeded and confusing level of complexity; and 3) their only effective purpose this proceeding is to inflate the rate base and push up the cost of service.

On a side note, the examiner points out that CPL's proposed TOC method not only affects rate base, but also certain other components of the cost of service. As discussed in subsequent sections, the examiner recommends that the Commission reject all other impacts and features of CPL's TOC method where they appear in the cost of service.

D. Rate of Return

CPL proposed an overall cost of capital of 10.91 percent, composed of a cost of equity of 12.1 percent and a cost of debt of 6.79 percent, and based on a capital structure of 77.42 percent equity and 22.58 percent debt. CPL started with the recommendation of its witness, Dr. Charles Olson of 13.5 percent rate of return on equity; it added a 200 basis point adjustment to reflect the risk of the High Island pipeline system; and it deducted 3.4 percent to eliminate the effect of inflation (which, under CPL's TOC methodology, was included in the rate base write up and the amortization of the pre-1984 inflation write up). In fact, CPL's actual requested rate or return was difficult to discern because the figures calculated by Dr. Olson did not match the those included by Mr. Peterhans, another CPL witness, in CPL's rate schedules. The figures shown in the examiner's schedules are those reflected in the Company's schedules, not those proposed by Dr. Olson.)

Weeks/Santos proposed an overall rate of return of 11.98 percent, composed of the same 13.5 percent return on equity recommended by Dr. Olson, a 6.79 percent cost of debt, and a capital structure of 77.42 percent equity and 22.58 percent debt.

The examiner recommends that the Commission approve Weeks/Santos's proposed rate of return and reject CPL's proposed cost of capital. Weeks/Santos's proposal is direct, understandable, fair, reasonable, and consistent. Chevron's proposal is confusing and internally inconsistent. It is based on inapplicable conditions and unnecessary theories and is not supported by credible evidence.

E. Recoverable Expenses

1. General Issues. As discussed above, the examiner recommends that the Commission reject CPL's TOC methodology and its units of production method. The examiner has already discussed the impact of this recommendation on the determination of rate base and rate of return. The examiner's recommendation also affects specific recommendations regarding certain recoverable expenses, including depreciation, DR&R costs, Federal Income Tax (FIT), monetary return, rate case expenses, and throughput/rate design. These are discussed in the following sections.

2. Manning Costs. CPL included approximately $200,000 in annual costs associated with manning the McFaddin Beach terminal facility on a 24-hour basis. The bulk of the record in this case focused on the necessity and appropriateness of 24-hour manning of the facility and the appropriateness of including of the costs of manning the facility in the rates in this case. Next to the approval or rejection of CPL's proposed TOC methodology, approval or rejection of manning costs is most responsible for the wide differences in the parties' rate requests (Weeks Ex. 10). As reflected on line 8 of Schedule 4, manning costs comprise the bulk of the costs requested by CPL.

CPL asserted that the McFaddin Beach Terminal facility must be manned on a 24-hour basis because it is located within the McFaddin National Wildlife Refuge (Weeks Ex. 2). CPL maintains that presence on-site of personnel round-the-clock is required to prevent a devastating oil spill. In spite of its claims, the record shows that CPL and its affiliates have not staffed the facility on a 24-hour basis throughout its history. True, CPL has staffed the facilities since it began serving Weeks in 1991. However, prior to CPL's commencing to provide service to Weeks/Santos, CPL did not staff the facility, but monitored it by remote sensors stationed on the CPL platform. CPL also made regular site visits by off-site CPL personnel.

Weeks/Santos asserts that manning is unnecessary. Weeks/Santos recognizes the need to prevent any spills damaging to the wildlife refuge (Weeks Ex. 2), but maintains that 24-hour manning is not necessary to safely operate the facility, as demonstrated persuasively by CPL's practice prior to beginning to serve Weeks/Santos in 1991.

The record supports Weeks/Santos position that through a combination of remote monitoring, daily visits from personnel stationed nearby, or weekly visits plus helicopter fly-by's, the facility can be fully monitored and safely operated. The examiner recommends that the Commission reject CPL's proposed manning costs for a number of reasons.

First, CPL's practice of operating the facility for years without staffing without incident is highly probative of the lack of necessity for manned operation. CPL's assertion that the facility was "manned" by personnel on the Chevron U.S.A. facility 12 miles out in the Gulf is not credible. And, the record reflects that while men or women may be present at the site around the clock, they are not constantly patrolling the facility. In fact, they are likely to be inside the trailer located at the facility eating, watching television, or talking on the telephone.

Moreover, the record demonstrates that remote monitoring equipment can immediately alert Weeks/Santos and CPL of any change in operating conditions indicating a problem. And, by responding by helicopter or vehicle, CPL can be present at the scene virtually without delay to respond to and correct the problem. In fact, the record indicates that a higher degree of vigilance would be provided by automated monitoring equipment than by 24-hour manning and that a quicker response to problems would be provided by remote monitoring than by reliance on on-site men or women who are as likely to be sitting inside the trailer house at the site watching television as patrolling the facility.

Also, the U.S. Department of the Interior (DOI) has not required CPL to man the facilities on a 24-hour basis. The DOI's M-3 permit does not required the site to be manned (Weeks Ex. 13) and nothing else in the record imposes any such requirement.

After the hearing, Shoreham submitted a letter dated December 10, 1996, from Daniel R. Dinkler, Refuge Manager, McFaddin National Wildlife Refuge, Fish and Wildlife Service of DOI. In his letter, Mr. Dinkler states that the facility should be "staffed as much as possible, preferable [sic] on a 24 hour basis." Mr. Dinkler's letter was not considered by the examiner and should not be considered by the Commission to determine whether the facilities should be manned on a 24-hour basis. The letter is not part of the evidentiary record. Mr. Dinkler's preference has never been tested by cross examination. The letter pertains to conditions that may or may not have arisen after the period from February 2, 1994, through June 30, 1996, the period at issue in this case. Mr. Dinkler's letter was written after he had been contacted by only one party. Nothing demonstrates that he was familiar with the record in this case or that he had a complete understanding of the effectiveness of the alternatives to manning. Finally, Mr.

Dinkler did not impose any official condition or obligation upon CPL to man the facilities 24 hours each day during the period at issue.

Next, the record clearly shows that the facility is accessible from neighboring towns by automobile and by helicopter. If people can reach the facility to staff it 24 hours per day, they can also reach it to perform daily visits and respond to any emergency. It is as accessible as any platform operating in the Gulf and as accessible as it was during Chevron U.S.A.'s remote operation of the facility prior to 1991. The presence of personnel at the site will not prevent fires, trespassers, or line breaks from occurring; in fact the presence of personnel operating charcoal grills could increase the likelihood of fires.

Finally, a serious leak at the tanks has never occurred, and that if a leak at the tanks did occur: 1) it would be detected immediately with remote monitoring; 2) the entire contents of the pipe would not be lost (Weeks Ex. 2); 3) the berms in place would contain it until CPL responds (Weeks Ex. 2); and 4) CPL would be able to respond within 7 minutes by helicopter, within minutes from the town of High Island, ten miles away, and within 1.5 hours from Houston or Beaumont by automobile.

3. Operating Expenses. CPL included operating expenses in the cost of service of $35,042 for 1993; $34,573 for 1994; $38,998 for 1995; and $16,802 for 1996 (Attachment A, Schedule 4, line 5). Most of these expenses are incurred in manning the facility 24-hours per day. These figures include the costs of providing labor and contract facilities for the men/women manning the facility, electric power, sewage, cellular telephone service, and food to support those individuals.

The preponderance of the credible evidence in the record indicates that these expenditures, aside from not being necessary, were also unreasonable. The cost of providing contract labor and a rental trailer house were simply excessive. The charges incurred for food and cellular telephone service were also entirely unreasonable (Weeks Exs. 14, 15, & 16).

Weeks/Santos proposed operating cost of $51,000 (Attachment A, Schedule 4, line 5). Weeks/Santos' proposed operating costs are higher than CPL's requested costs because Weeks/Santos included the costs of remote monitoring and regular site visits in its requested operating expense.

Consistent with the examiner's recommendation that the Commission reject CPL's proposed expenses related to 24-hour manning of the facility in favor of a combination of expenses for remote monitoring and regular site visits, the examiner recommends approval of Weeks/Santos's proposed operating expense.

4. Maintenance Expenses. CPL requested $217,600 in maintenance expenses for 1993; $212,702 for 1994; $239,927 for 1995; and $103,369 for 1996 (Attachment A, Schedule 4, line 9). Again, most of these expenses are incurred in manning the facility 24-hours per day. As for operating expense, these figures include the costs of providing labor and contract facilities for the men/women manning the facility and electric power, sewage, cellular telephone service, and food to support those individuals. And, as for the operating expenses, these were not only unsupported and unnecessary, but also unreasonable.

Weeks/Santos recommended maintenance expense of $14,049 (Attachment A, Schedule 4, line 9). This proposed figure includes $9,600 in additional costs for providing unmanned operation and $4,449 in dismantlement, removal, and restoration costs.

The examiner recommends that the Commission reject CPL's maintenance expense and approve Weeks/Santos's $9,600 in maintenance costs for unmanned operation. The examiner also recommends that the Commission reject Weeks/Santos's $4,449 in DR&R costs. (The examiner's recommendation for DR&R costs is discussed in a subsequent subsection of this section of the PFD.)

5. Administrative & General Expense. CPL sought to include $120,568 in allocated administrative and general expenses (A&G), including corporate overhead, in the cost of service in 1993; $98,278 in the test year; $90,088 in 1994; $101,619 in 1995; and $43,781 in 1996 (Attachment A, Schedule 4, line 15). These include central office costs: 1) allocated from CPL Corporation to CPL Pipeline; 2) allocated by CPL Pipeline to its Southwestern Business Unit; and 3) allocated to the High Island 52 facility.

The examiner recommends that the Commission exclude all but $2,800 of CPL's requested A&G expense due to CPL's failure to meet its burden of proof. CPL proved that its allocation methodology was reasonable (Weeks Ex. 6, p. 6), but it wholly failed to prove up the nature of the services reflected in the allocated amounts, the applicability of those services to the system in question, and the reasonableness and necessity of the dollars expended providing the services allocated under the formula (Weeks Ex. 6, p. 6). *Rio Grande Valley Gas Company v. Railroad Commission of Texas*, 683 S.W.2d 783 (Tex. App.--Austin 1984, reh. den. 1985). CPL's requested figures are impeached by its own statement in correspondence from 1991, which indicate that its actual amounts at that time were in the range of from $10,941 to $13,023.

6. Insurance Expense. CPL included $28,000 in self-insurance expense in the cost of service (Attachment A, Schedule 4, line 12). CPL explained that this was the amount that it would spend to buy insurance to provide coverage for the system up to the $15 million lower limit of its current umbrella coverage.

The examiner recommends that the Commission reject the requested insurance expense. While insurance coverage is appropriate and a reasonable figure could be included in the cost of service; however, CPL failed to prove that coverage up to $15 million would be necessary, considering the cost of spills and the spill history of the facility. It also failed to show that the quote received for the coverage was reasonable, compared to the rates that would have been demanded by other providers (Weeks Ex. 18); CPL failed to explain from whom the quote it based its request on was received and whether competing quotes were obtained (Weeks Ex. 18). Finally, CPL failed to address whether there was any overlap in coverage with loss obligations borne by Weeks/Santos or Sunland.

7. Depreciation and Amortization. CPL requested depreciation expense of $61,356 and amortization expense of $36,166 for 1993; depreciation expense of $331,989 and amortization expense of $39,552 for 1994; depreciation expense of $220,457 and amortization expense of $42,299 for 1995;

and depreciation expense of $61,795 and amortization expense of $41,452 for 1996 (Attachment A, Schedule 5, lines CPL3 and CPL6).

The substantial increases in depreciation expense for 1994, 1995, and 1996, CPL explains, are due to the sooner-than-expected end of the productive life of Weeks/Santos' platform and the related end of the useful life of CPL's system. CPL claimed that because the platform would cease producing by the end of 1996 and because CPL still had undepreciated balances in its plant accounts, CPL should now recover the remaining balances over the three-year remaining life of the platform (1994, 1995, and 1996). CPL agreed that, at the least, the remaining undepreciated balance of $133,000 in investment made in 1991 to serve Weeks/Santos should be recovered over the remaining units of production during 1994, 1995, and 1996.

Weeks/Santos recommended depreciation expense of $36,935 (Attachment A, Schedule 5, last line). Weeks/Santos' request includes $4,407 in annual depreciation of 1991 pipeline fittings and construction and $32,528 in annual depreciation for 1975 through 1989 for other station equipment (Attachment A, Schedule 5, lines SAN1 and SAN2). Weeks/Santos took the position that CPL's original investment in the offshore pipeline system was fully depreciated in 1993; accordingly, Weeks/Santos includes no depreciation for those facilities.

As mentioned above, the examiner recommends that the Commission reject CPL's units of production calculation of depreciation. Such a calculation constitutes retroactive ratemaking in that it seeks to allow recovery in future periods for amounts underrecovered during past periods. The units of production methodology should be rejected because it is founded on an incorrect assumption that the useful life of the system will end in 1996, a proposition that is impeached by CPL's continued use of the system during years of low production (Weeks Exh. 39, Schedule 12) and by Shoreham's purchase and operation of the system. Finally, CPL's units of production methodology fails to properly match the recovery of expenses to the related provision of service and the associated revenues. As stated above, the apparent purpose of the units of production method was to justify a rate high enough to motivate Weeks/Santos to purchase the system from CPL.

The examiner recommends that the Commission approve a modified version of Dr. Olson's suggested recovery of depreciation for the 1991 investment of $133,090 because CPL made this investment specifically to serve Weeks; however, the examiner recommends that the Commission reject Dr. Olson's proposal to include in rates depreciation of the remaining $119,000 undepreciated balance of that account over three years. This aspect of Dr. Olson's recommendation would result in retroactive ratemaking (recovery in future periods of amounts underrecovered in past periods) and would fail to recognize that the facilities will not reach the end of their useful life in 1996 (Weeks Exh. 39, Schedule 12).

The examiner recommends that the Commission replace Weeks/Santos's requested $4,407 depreciation expense for 1991 pipeline fittings and construction with a depreciation expense of $13,309 (Attachment A, Schedule 5, line SAN1). This represents one year's portion of the depreciation of CPL's $133,090 investment over a ten-year period. The examiner's recommendation is appropriate because it does not permit recovery of past underrecoveries and it recognizes that the useful life of the 1991 investment will be longer than three years but shorter than 30 years (as recommended by Weeks/Santos witness, Mr. Graves).

8. DR&R Costs. CPL proposed to recover $75,882 in dismantlement, removal, and restoration (DR&R) costs from Weeks/Santos in a units of production "surcharge" (Attachment A, Schedule 1, line 11). The surcharge, applied over CPL's estimated remaining barrels of oil to be transported of 501,770 bbl., equals $0.15 per bbl.

Weeks/Santos proposed DR&R costs of $4,449, to be included within the maintenance expense category, and recovered as a part of CPL's base rates. Weeks/Santos calculated its proposed DR&R costs using a sinking fund methodology, which included the recovery and compounding of reinvested interest over the life of the fund.

The examiner recommends that the Commission find that CPL failed to meet its burden of proof regarding its proposed DR&R costs. CPL failed to demonstrate that its removal costs were not included in the determination of depreciation expense, as normally calculated. Without such proof, granting DR&R costs could be expected to result in double recovery of such costs. CPL also included in its requested DR&R expense items which will either be borne by Weeks/Santos or that were not used and useful (Weeks Ex. 9). CPL's DR&R figures were impeached by its own statements regarding such expenses made in its 1991 correspondence and in written offers to Weeks/Santos (Weeks Ex. 10).

The examiner also recommends that the Commission reject CPL's proposed treatment of DR&R costs. CPL's DR&R costs do not include any component for salvage value. DR&R costs are appropriate for separate listing from normal depreciation in instances where there are major expenditures above and beyond normal cost of removal and recovery of salvage that would be calculated in the course of determining normal depreciation. An example is the case of the removal of the Alaska pipeline or, in the electric utility industry, in the decommissioning of a nuclear power plant. The dismantlement and removal of a simple pipeline and tank battery hardly justifies such treatment.

Nevertheless, because an adverse party requested it, the examiner recommends that the Commission approve Weeks/Santos's proposed DR&R cost of $4,449 in maintenance expense.

9. Other Taxes. No party included any sums for taxes other than income taxes. Accordingly the examiner recommends that the Commissión approve a zero amount for other taxes.

10. Federal Income Tax. CPL proposed federal income tax expense (FIT) of $51,106 for 1993; $39,993 for 1994; $28,153 for 1995; and $19,371 for 1996 (Attachment A, Schedule 6, line 8). CPL's proposed FIT calculation includes an entry to add a component for amortization of deferred earnings to the calculated return. This adjustment was made for consistency with CPL's proposed TOC rate base methodology, and it increased the taxable income by from approximately $36,000 to $42,000.

Weeks/Santos proposed a straightforward return method calculation of FIT which does not include any adjustment to add amortization of deferred earnings. Weeks/Santos' calculation produced a proposed FIT expense of $27,421 (Attachment A, Schedule 6, line 8). However, Weeks/Santos' recommended FIT is prior to any revision of return that results from rate base adjustments to remove property that was not used and useful.

The examiner recommends FIT expense of $8,225 (Attachment A, Schedule 6, line 8). This figure is calculated using Weeks/Santos's proposed return method of calculating FIT and applying the examiner's recommended $19,982 return figure, which results from the examiner's recommended adjustments to remove the unused heater treater.

11. Monetary Return. The examiner has recommended a rate base of $166,730, founded on Weeks/Santos's proposed rate base, adjusted to remove the book value of a heater treater (Attachment A, Schedule 3, line SAN6). The examiner has also recommended approval of a rate of return of 11.98 percent, for the reasons discussed above. The resulting examiner's recommended monetary return is $19,982 (Attachment A, Schedule 3, last line).

F. Rate Case Expenses

CPL sought $217,785 in rate case expenses for this proceeding (Attachment A, Schedule 1, line 12). That figure included $30,000 for Dr. Olson's testimony and $92,134.10 for attorneys' fees for the law firm of McElroy & Sullivan. The record does not reveal what is included in the remaining $95,650.

Dr. Olson, as usual, was an excellent witness. His credentials are impeccable. His testimony on direct and cross was clear, thoughtful, helpful, even-handed, and truthful. The only difficulty was that his testimony appeared to be developed to support a position adopted by CPL that, in the preponderance, lacked merit and appeared calculated only to inflate the proposed rate rather than to identify a truly defensible position.. In more than one instance, Dr. Olson's testimony served mostly to reveal the fundamental weakness of CPL's position. Because of his truthful answers, in many ways Dr. Olson was a better witness for Weeks/Santos than for CPL.

Dr. Olson's testimony, which focused on the proposed TOC methodology, was not necessary for CPL in this proceeding. CPL's TOC methodology was so lacking in merit that Dr. Olson's testimony served little if any purpose. Accordingly, Dr. Olson's charges of $30,000 should not be allowed.

On the other hand, CPL's attorneys demonstrated that their hourly charges and rates were reasonable, and that the number of hours spent was reasonable. However, they failed to separate the hours spent on the abandonment issues (which had no merit) from the hours spend on the rate issues. They failed to show that the overall level of rate case expenses were justified, considering the merits of CPL's position (which has been discussed earlier).

In addition, CPL's rate case expenses are disproportionately high in comparison to the overall revenue requirement. In fact, $0.43--48 percent of the current $0.89 rate, 30 percent of the proposed $1.44 rate, and 13 percent of the $3.33 proposed rate-- is due to the requested rate case expenses *alone*, rather than to costs of providing service. A $0.43 rate case expense surcharge would be 71.33 percent of the examiner's recommended $0.60 per bbl base rate. To allow CPL to charge a $0.43 surcharge for the cost of a rate case in which CPL failed to meet its burden of proof and in which CPL's rates were ultimately decreased would be extraordinarily unreasonable. Had this been a gas utilities proceeding, the rate case expenses would fail the test of 16 Tex. Admin. Code § 7.57(a) in light of the examiner's recommended rate reduction.

Finally, the preponderance of the credible evidence in the record supports a conclusion that the real purpose of the rate case was to pressure Weeks/Santos to purchase the system, rather than to actually achieve a rate increase. Accordingly, rate case expenses are wholly unjustified as a component of the rates charged to Weeks/Santos.

The examiner must to clarify that this recommendation is in no way a recommendation that CPL deny payment to its attorneys and consultants. Payment is between CPL and its attorneys and consultants. The examiner's finding is merely a recommendation that the Commission order that Weeks/Santos should not be required to pay CPL's requested $0.43 rate case expense surcharge in rates because of the disproportionate level of those expenses and underlying purpose of the proceeding.

Instead, the examiner recommends that the Commission approve Weeks/Santos' proposed 15 percent or $0.09 per bbl. rate case expense surcharge, to be recovered for each barrel of oil transported during the period in question. This rate case expense is appropriate because it is low enough to discourage future unwarranted filings, but it is high enough to permit recovery for the aspects of the filing that had merit, including CPL's defense against Weeks/Santos' complaint. The examiner's recommendation is shown on line 16 of Attachment A, Schedule 1.

G. Throughput and Rate Design

CPL recommended recovering its proposed revenue requirement over predicted declining throughputs of 1,249 BOPD in 1993; 812 BOPD in 1994; 493 BOPD in 1995; and 138 BOPD in 1996 (Attachment A, Schedule 1, line 9). CPL's recommended throughput assumed that by 1997, production from the Weeks/Santos platform would reach zero BOPD. CPL based its prediction upon a reserve analysis that had been commissioned by Weeks/Santos. CPL also used an estimated remaining recoverable barrels of 501,770 in the calculation of its units of production surcharge for DR&R and rate case expenses.

Weeks/Santos used a throughput of 790 BOPD in its proposed rate design. Weeks/Santos' proposed throughput recognized that throughput would decline, but assumed that under standard ratemaking theory, CPL must seek additional rate relief in the future once the level of that decline is known and measurable. Applying Weeks/Santos's recommended throughput of 790 BOPD to Weeks/Santos's recommended revenue requirement of $180,707 (before Weeks/Santos's adjustment to remove the heater treater from rate base) would produce a rate of $0.63 per barrel. Weeks/Santos's recommended rate would necessarily be lower after adjustment of its revenue requirement to take into account the removal of the heater treater. As discussed above, Weeks/Santos's rate design also included a 15 percent, or $0.09, surcharge for rate case expenses. Weeks/Santos's resulting total recommended rate is $0.72 (prior to heater treater removal) (Attachment A, Schedule 1, line 17).

The record reflects that production is reasonably expected to decline. However, as Weeks Exh. 39, Schedules 11 and 12, and Weeks Exh. 25, Exhibit RHC-4 demonstrate, the inevitable decline in production does not prove that the facilities' useful life would expire in 1996. Schedules 11 and 12 and Exhibit RHC-4 clearly show that CPL continued to operate the facilities for years after the production from its affiliate's platform had declined to levels well below those discussed in this proceeding. Reduced but marketable production could flow from the platform for years. Moreover, the decline of production from the Weeks/Santos wells does not preclude the drilling of additional wells or the connection of other platforms. Finally, Shoreham's purchase of the system is in itself antithetical to the proposition that production would cease at the end of 1996 and that throughput would be zero thereafter. These issues are appropriate for consideration in Docket No. 8740 when the level of throughput upon which to base Shoreham's rates will be determined.

For purposes of setting rates in this case for the period from February 1, 1994, through June 30, 1996, however, a known and measurable throughput level may be determined. The examiner has taken official notice of Commission production records for the Weeks/Santos platform from November 1994 through June 1996 (the date of CPL's sale to Weeks/Santos) and have analyzed those records to determine the most representative level of production (Attachment C). Based on the production levels stated in those records, the examiner recommends a throughput for rate design of 650 BOPD.

The recommended 650 BOPD throughput applied to the examiner's recommended revenue requirement of $141,893 produces a rate of $0.60 per bbl. (Attachment A, Schedule 1, lines 8-10). When the examiner's recommended $0.09 rate case expense surcharge is added to the recommended rate, a total rate of $0.69 per bbl. is the result (Attachment A, Schedule 1, lines 16-17).

H. Tariff Filing/Refund Issues

Finally, the parties litigated the issue of whether CPL had appropriately filed its $0.89 tariff to support the rates it began charging in 1993. Weeks/Santos, Eastex, and Camterra maintained that CPL had not filed a tariff or, at the least, could not prove that it had filed a tariff. They argued (or implied) that, because CPL had failed to properly file a tariff, CPL's $0.89 charges were charged without Commission authorization. Accordingly, they asserted, CPL should be ordered to refund all charges it collected in excess of the $0.33 rate reflected in its last tariff.

CPL presented proof showing that it sent the tariff to the Railroad Commission. CPL could not, however, produce a file-marked copy of the tariff.

The examiner recommends that the Commission reject the parties' requested refund. The evidence on this issue is inconclusive. At best, it seems likely that CPL filed the tariff but neglected to secure a file-marked copy. And, as the record reflects, because the Commission staff discards crude transportation tariffs when they cease to be in effect, the non-existence of the tariff in the file in early 1994 is not proof that the tariff was never filed. Accordingly, the examiner recommends that the Commission reject Weeks/Santos' requested refund for amounts collected by CPL from the time it implemented its $0.89 rate until February 1, 1994.

A separate refund/surcharge issue is the issue of agreed refund/surcharge of charges collected by CPL from February 1, 1994, through June 30, 1996. At the January 21, 1994, prehearing conference, the parties agreed to request that the Commission make whatever rates it finds appropriate effective as of February 1, 1994 (January 21, 1994, PHC Tr. 5-8; Examiners' Letter No. 5, March 16, 1994, Docket File, vol. 1, item 18). This agreement includes an implicit understanding that CPL would be entitled to surcharge Weeks/Santos for the difference between its $0.89 rate and any higher rate approved by the Commission for crude transported between February 1, 1994, and June 30, 1996, and would be obligated to refund the difference between its $0.89 rate and any lower rate the Commission approved for crude transported during that period.

The examiner recommends that the Commission grant the parties' request and make the recommended $0.69 per bbl. rates effective on February 1, 1994, and that the Commission order CPL to refund $0.20 per bbl. for each barrel of crude transported from February 1, 1994, through June 30, 1996. Pursuant to the parties' agreement and the remainder of the record, which do not specify any refund period or interest, the refund should be made in a lump sum within 60 days of the Commission's order and should not include interest.

IV. CONCLUSION

In conclusion, the examiner recommends that the Commission: 1) approve a rate of $0.69 per bbl. for crude transported from the Weeks/Santos platform over CPL's High Island Pipeline System for the period from February 1, 1994, through June 30, 1996; 2) reject CPL's TOC and units of production methodologies; exclude non-used and useful property from rate base; and exclude costs for which CPL failed to meet its burden of proof; 3) approve a simple original cost rate base; a straightforward rate of return analysis; and inclusion of all reasonable and necessary costs; 4) reject the costs of 24-hour manning of the McFaddin Beach terminal facility; 5) base throughput/rate design on a reasonable throughput 650 BOPD, which reflects the expected average throughput for late 1994 through-mid 1996; 6) approve a $0.09 per bbl. surcharge for CPL rate case expenses; and 7) make the rates effective on February 1, 1994, and require CPL to refund $0.20 bbl. for each barrel transported from February 1, 1994, through June 30, 1996.

Respectfully submitted,

James Brazell

James Z. Brazell
Hearings Examiner
Gas Services Section
Office of General Counsel

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION

GAS UTILITIES DOCKET NO. 8434

COMPLAINT OF WEEKS EXPLORATION COMPANY, INC. AND ITS SUCCESSOR SANTOS USA CORP. AGAINST CHEVRON PIPELINE COMPANY

ORDER

Notice of Open Meeting to consider this order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. §551, *et seq.*

FINDINGS OF FACT

1. From June 21, 1990, through June 30, 1996, Chevron Pipeline Company (CPL) owned and operated the High Island 52 crude pipeline system in waters off the Texas coast near Bolivar Island in Jefferson County, Texas.

2. During the applicable period, CPL and its affiliate Chevron Company, U.S.A. owned and operated the McFaddin Beach Terminal facility, an on-shore tank battery.

3. CPL's McFaddin Beach Terminal is located within the McFaddin Beach Wildlife Preserve.

4. CPL operated its McFaddin Beach Terminal facility under a permit issued by the Fish and Wildlife Service of the U.S. Department of the Interior.

5. During the applicable period, the DOI's permit did not require 24-hour manning of CPL's McFaddin Beach Terminal facility.

6. From February 1, 1994, through June 30, 1996, CPL transported dry crude petroleum for Weeks Exploration Company, Inc. and its parent company, Santos U.S.A., from High Island Offshore Texas Tract 86-S near Weeks/Santos' production platform to CPL's McFaddin Beach Terminal facility.

7. Prior to May 1, 1991, CPL charged Weeks/Santos a rate of $0.33 per bbl. to transport Weeks/Santos' crude.

8. Between May 1, 1991, and January 1, 1994, CPL charged Weeks/Santos a crude transportation rate of $0.89 per bbl.

9. On November 18, 1993, CPL notified Weeks/Santos that CPL proposed to increased its crude transportation rate from $0.89 per bbl. to $1.44 per bbl.

10. On December 16, 1993, CPL filed its proposed tariff T.R.S. No. 85 with the Railroad Commission. The purpose of CPL's filing was to increase its transportation rate from $0.89 per bbl. to $1.44 per bbl., effective January 1, 1994.

11. Weeks/Santos filed a complaint with the Oil & Gas Division on December 20, 1993. Gas Utilities Docket No. 8434 was initiated on December 22, 1993, as a result of Weeks/Santos' filing.

12. On January 18, 1994, CPL filed a response to Weeks/Santos' complaint. In its response CPL requested authority to abandon service under 16 Tex. Admin. Code §3.68(a) (Statewide Rule 73). This application was docketed as Oil & Gas Docket No. 03-0204895, *Request of Chevron Pipeline Company for Authority to Abandon a Pipeline Pursuant to Rule 73.*

13. On February 9, 1994, the Assistant Director of the Oil & Gas Division consolidated Oil & Gas Docket No. and Gas Utilities Docket No. 8434.

14. On January 21, 1994, the parties agreed that CPL would continue to charge its then effective crude transportation rate of $0.89 per bbl. throughout the pendency of the proceeding, subject to any increased rate being made effective on February 1, 1994.

15. On March 16, 1994, Carnterra Resources Partners Ltd. and Eastex Crude Company were granted intervenor status. On March 18, 1996, the General Land Office of the State of Texas filed its request for leave to file responses to CPL's exceptions to the PFD.

16. CPL published notice of this proceeding in the *Oil & Gas Journal* on August 15, 1994.

17. A hearing on the merits was convened on September 27, 1994. All parties appeared and presented evidence.

18. CPL's proposed 24-hour manning costs are not reasonable expenses under honest, efficient, and economical management.

19. CPL's proposed trended original cost rate base is not a reasonable determination of the aggregated value of CPL's property used and useful in providing service to Weeks/Santos.

20. CPL's proposed units of production depreciation expenses are not reasonable expenses under honest, efficient, and economical management.

21. CPL's proposed operating and maintenance expenses are not reasonable expenses under honest, efficient, and economical management.

22. CPL's proposed allocation of corporate central office expenses are not reasonable expenses under honest, efficient, and economical management.

23. CPL's proposed $28,000 self insurance expenses are not reasonable expenses under honest, efficient, and economical management.

24. CPL's proposed DR&R costs are not reasonable expenses under honest, efficient, and economical management.

25. CPL's proposed federal income tax expense are not reasonable expenses under honest, efficient, and economical management.

26. CPL's proposed monetary return is not a fair return on the aggregate value of CPL's property used and useful in providing service to Weeks/Santos.

27. CPL's proposed rate case expenses are not reasonable expenses under honest, efficient and economical management.

28. CPL's proposed throughput and rate design would not produce a reasonable allowance for depreciation and other factors and for reasonable expenses under honest, efficient, and economical management.

29. Weeks/Santos was a shipper that paid CPL's filed $0.89 rate from May 1, 1991, through February 1, 1994, and filed a complaint against both CPL's $0.89 and $1.44 rates, which complaint is sustained in this order.

30. Weeks/Santos is a shipper that is entitled to reparation or reimbursement for all rates paid in excess over and above the proper rate as determined in this order.

31. The operating and maintenance costs shown in the schedules attached to this order are reasonable expenses under honest, efficient, and economical management.

32. The original cost rate base shown in the schedules attached to this order is a reasonable determination of the aggregate value of CPL's property used and useful in providing service to Weeks/Santos.

33. The rate of return shown in the schedules attached to this order will provide CPL a fair return on the aggregate value of the property used and useful in providing Service to Weeks Santos.

34. The general expense shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

35. The depreciation and amortization expenses shown in the schedules attached to this order are reasonable under honest, efficient, and economical management.

36. The allowance for taxes other than income taxes shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

37. The federal income tax expense allowance shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

38. The monetary return allowance shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

39. A throughput level for rate design of 650 BOPD is reasonable.

40. The base transportation rate of $0.60 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

41. The rate case expense surcharge allowance of $0.09 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

42. The overall tariffed rate of $0.69 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

43. CPL filed its tariff for its $0.89 rate for Weeks/Santos with the Commission in a timely manner.

44. Rates collected from Weeks/Santos from and after the filing of CPL's $0.89 tariff were not collected without an applicable tariff or in violation of any Commission requirement or rule.

45. Denial of Weeks/Santos's requested refund of amounts collected in excess of CPL's $0.33 per bbl. rate during the period from May 1, 1991, through February 1, 1994, is reasonable.

46. Between February 1, 1994, and June 30, 1996, CPL collected $0.89 per barrel of oil transported.

47. A Commission order for CPL to refund the $0.20 per bbl. difference between the $0.89 per bbl. charged by CPL between February 1, 1994, and June 30, 1996, and the $0.69 per bbl. rate approved in this Order is reasonable.

CONCLUSIONS OF LAW

1. During the period from February 1, 1994, through June 30, 1996, CPL was a common carrier pipeline, as defined under TEX. NAT. RES. CODE ANN. § 111.002.

2. The Commission has jurisdiction over CPL, CPL's shipping activities, and the issues in this proceeding under TEX. NAT. RES. CODE ANN. §§ 111.011, 111.013, 111.131, 111.133, and 111.181.

3. Chevron Pipeline Company and Weeks Exploration Company, Inc./Santos USA properly instituted proceedings before the Commission on this matter, pursuant to TEX. NAT. RES. CODE ANN. § 111.221.

4. CPL was obliged to make and publish tariffs for its transportation service pursuant to TEX. NAT. RES. CODE ANN. § 111.014.

5. This order of the Commission establishing, rates was made after a hearing with not less than 10 days nor more than 30 days notice, as required under TEX. NAT. RES. CODE ANN. §§ 111.134, 111.189, and 111.190.

6. The rates set out in the Findings of Fact and the Attached Schedules are established at an amount that will provide CPL a fair return on the aggregate value of the property used and useful in the services performed after providing CPL a reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, as required under TEX. NAT. RES. CODE ANN. § 111.183.

7. The refund set out in the Findings of Fact and ordered herein is authorized under TEX. NAT. RES. CODE ANN. §§ 111.186 and 111.187.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that Chevron Pipeline Company's authorized rate for all crude oil transported for shipper Weeks Exploration Company, Inc./Santos USA from February 1, 1994, to June 30, 1996, over the High Island 52 common carrier pipeline system SHALL BE $0.69 per barrel.

IT IS FURTHER ORDERED that within 60 days of this order CPL SHALL refund to Weeks/Santos the sum of the $0.20 per bbl. difference between the $0.89 per bbl. rate charged by CPL and the $0.69 per bbl. rate approved in this Order for each barrel of crude oil transported over the High Island 52 common carrier pipeline system from February 1, 1994, through June 30, 1996.

IT IS FURTHER ORDERED that CPL SHALL file a tariff pursuant to the terms and conditions of TEX. NAT. RES. CODE ANN. § 111.014 and the Commission's rules for the rate approved in this order.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted herein are DENIED.

SIGNED this _____ day of April, 1997.

RAILROAD COMMISSION OF TEXAS

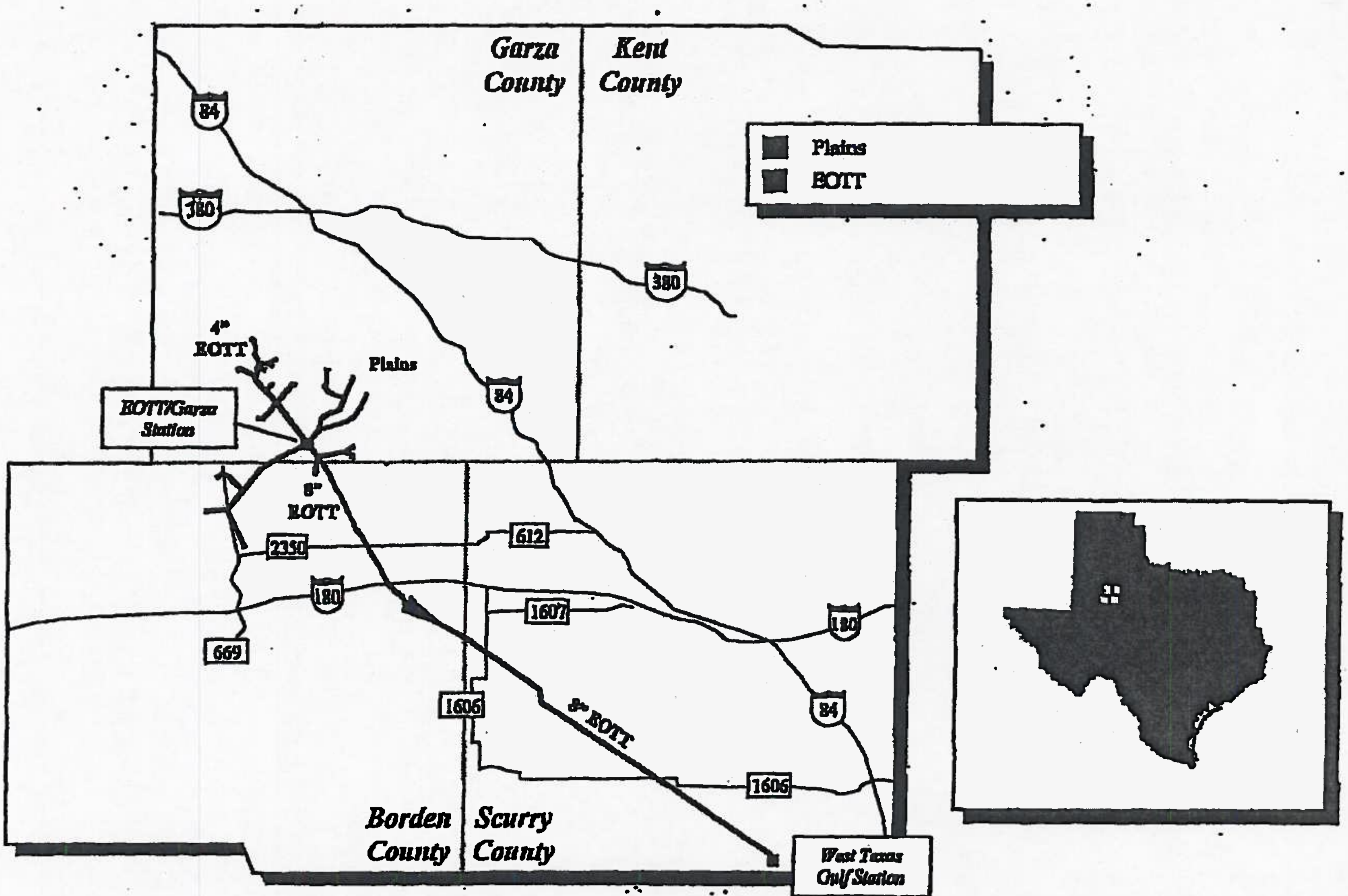
____
Chairman

____
Commissioner

____
Commissioner

ATTEST:

____
Secretary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669
1606
8" BOTT
Borden County
Scurry County
West Texas Gulf Station

RAILROAD COMMISSION OF TEXAS
LEGAL DIVISION

GAS UTILITIES DOCKET NO. 8434

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3. CPL's McFaddin Beach Terminal is located within the McFaddin Beach Wildlife Preserve.

4. CPL operated its McFaddin Beach Terminal facility under a permit issued by the Fish and Wildlife Service of the U.S. Department of the Interior.

5. During the applicable period, the DOI's permit did not require 24-hour manning of CPL's McFaddin Beach Terminal facility.

6. From February 1, 1994, through June 30, 1996, CPL transported dry crude petroleum for Weeks Exploration Company, Inc. and its parent company, Santos U.S.A., from High Island Offshore Texas Tract 86-S near Weeks/Santos' production platform to CPL's McFaddin Beach Terminal facility.

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16. CPL published notice of this proceeding in the *Oil & Gas Journal* on August 15, 1994.

17. A hearing on the merits was convened on September 27, 1994. All parties appeared and presented evidence.

18. CPL's proposed 24-hour manning costs are not reasonable expenses under honest, efficient, and economical management.

18A. Manning is not the most economical alternative to achieve environmental protection of the McFaddin Wildlife Refuge. Other alternatives, including the use of remote monitoring facilities and equipment, daily dispatching of personnel from nearby towns, and helicopter fly-bys achieve the same or better level of environmental protection, at a substantially lower cost.

18B. Manning is an inefficient means to insure environmental protection because: the cost of manning is higher than the cost of other alternatives; personnel stationed at the facility are not monitoring the system at all times, while remote monitoring equipment permits continuous monitoring; personnel at the facility, although trained to respond to an emergency, could not prevent or arrest a spill but would simply call for help, which would be provided by off-site personnel brought to the site.

18C. Because the condition of the roads into CPL's McFaddin Beach Terminal are sufficiently passable to allow manning, they are also sufficiently passable to allow the daily visits by Chevron personnel and to allow access to the facility by off-site personnel in any environmental emergency.

18D. Chevron's manning costs, including costs for contract labor, cellular telephone service, sewage service, trailer rental, food, and electricity, are higher than the cost of remote monitoring, daily visits by personnel stationed nearby, and periodic helicopter fly-bys.

19. CPL's proposed trended original cost rate base is not a reasonable determination of the aggregated value of CPL's property used and useful in providing service to Weeks/Santos.

19A. CPL's trended original cost rate base calculation method provides for levels of economic inflation that do not currently exist.

19B. CPL's trended original cost rate base calculation method would produce an backloading of plant recovery that causes a disproportionate recovery from later generations of shippers.

19C. CPL's trended original cost rate base calculation method is inappropriate because there is not a competitive market for transportation over CPL's High Island system.

20. CPL's proposed units of production depreciation expenses are not reasonable expenses under honest, efficient, and economical management.

20A. CPL's proposed units of production depreciation methodology would: recover a disproportionate depreciation expense from Weeks/Santos; cause inequity in the recovery of depreciation expenses between prior generations of shippers and current generations; and permit overrecovery of total depreciation expense.

21. CPL's proposed operating and maintenance expenses are not reasonable expenses under honest, efficient, and economical management.

21A. CPL's proposed operating and maintenance expenses predominantly include the cost of manning CPL's McFaddin Beach Terminal Facility.

22. CPL's proposed allocation of corporate central office expenses are not reasonable expenses under honest, efficient, and economical management.

22A. CPL's proposed allocated corporate central office expenses were not itemized and justified and were higher than and inconsistent with CPL's own statements regarding the level of such expenses made in prior correspondence with its shippers.

23. CPL's proposed $28,000 self insurance expenses are not reasonable expenses under honest, efficient, and economical management.

23A. Reasonable self insurance expense should provide an appropriate level of coverage, reflect the spill history of the facility, be comparable in price to private insurance, and should not overlap other coverage. CPL's proposed self insurance has not been shown to meet these criteria.

24. CPL's proposed DR&R costs are not reasonable expenses under honest, efficient, and economical management.

24A. Reasonable DR&R costs should not duplicate charges recovered in depreciation expense and should not recover for decommissioning paid for by other persons or parties. CPL's requested DR&R expenses do not meet this criteria.

24B. DR&R costs are appropriately applied in rate proceedings separately from normal depreciation expense where the decommissioning of major projects, such as the Alaska pipeline or a nuclear power plant, involve costs of removal that are so extraordinary as to not be capable of adequately being reflected in normal depreciation accounting. CPL's requested DR&R expenses do not meet this criteria.

25. CPL's proposed federal income tax expense are not reasonable expenses under honest, efficient, and economical management.

25A. CPL's proposed federal income tax calculation is based on, a part of, and consistent with CPL's trended original cost rate base calculation methodology.

26. CPL's proposed monetary return is not a fair return on the aggregate value of CPL's property used and useful in providing service to Weeks/Santos.

26A. CPL's proposed 200 basis point risk and 3.4 percent inflation adjustments are based on conditions inapplicable to the High Island Pipeline system, are based on unnecessary theoretical propositions, are unnecessarily confusing, and are internally inconsistent.

27. CPL's proposed rate case expenses are not reasonable expenses under honest, efficient, and economical management.

27A. CPL's rate case expenses were expended primarily to secure abandonment or sale of the facility and, secondarily, to secure a rate increase. CPL's rate case expense support does not discriminate between the expenses incurred for abandonment and the portion incurred in pursuit of rate relief.

27B. CPL's requested rate case expenses were incurred to litigate a rate application that had no merit.

27C. CPL witness Olson's testimony supported a trended original cost theory that was rejected as without merit; supported rate of return request that was superseded and in many respects inconsistent with the other CPL witnesses; supported rate of return adjustments that were rejected; and supported depreciation and DR&R recovery methodologies that were rejected as without merit.

27D. CPL's rate case expenses are disproportionate to the rate approved and are excessive.

28. CPL's proposed throughput and rate design would not produce a reasonable allowance for depreciation and other factors and for reasonable expenses under honest, efficient, and economical management.

28A. A throughput of 650 bbl. per day is the most representative level of production for the period in question.

29. Weeks/Santos was a shipper that paid CPL's filed $0.89 rate from May 1, 1991, through February 1, 1994, and filed a complaint against both CPL's $0.89 and $1.44 rates, which complaint is sustained in this order.

30. Weeks/Santos is a shipper that is entitled to reparation or reimbursement for all rates paid in excess over and above the proper rate as determined in this order.

31. The operating and maintenance costs shown in the schedules attached to this order are reasonable expenses under honest, efficient, and economical management.

31A. The operating and maintenance costs shown in the schedules attached to this order include the costs of unmanned operation, remote monitoring of the McFaddin Beach Terminal Facility, daily visits by CPL personnel, and periodic helicopter fly-bys, which combined provide a superior level of environmental monitoring and protection at a lower cost.

32. The original cost rate base shown in the schedules attached to this order is a reasonable determination of the aggregate value of CPL's property used and useful in providing service to Weeks/Santos.

32A. The original cost rate base shown in the schedules attached to this order includes the cost of facilities used to provide service to Weeks/Santos, but excludes the cost of a heater treater and disposal well and other facilities which were used to provide service to CPL's affiliate in the past but were not used to provide service to Weeks/Santos.

33. The rate of return shown in the schedules attached to this order will provide CPL a fair return on the aggregate value of the property used and useful in providing Service to Weeks Santos.

33A. CPL's High Island Pipeline System has a 13.5 percent rate of return on equity; 6.79 percent cost of debt; and a capital structure of 77.42 percent equity and 22.58 percent debt.

34. The general expense shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

34A. CPL's allocated central office expenses of $2,800 for mailing costs, taxation, tax accounting, and tax filing, are reasonable, necessary, and prudent.

35. The depreciation and amortization expenses shown in the schedules attached to this order are reasonable under honest, efficient, and economical management.

35A. The deprecation and amortization expense shown in the schedules attached to this order will: prevent CPL from recovering depreciation expense it failed to recover in past periods (retroactive ratemaking); take into account that the useful life of the system does not end in 1996; match expenses to the recovery of revenue; avoid generational inequity; and will include recovery of depreciation on CPL's investment of $133,309 consistent with recovery over an appropriate ten year period.

36. The allowance of $0.00 for taxes other than income taxes shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

37. The federal income tax expense allowance shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

37A. The federal income tax expense allowance shown in the schedules: does not include adjustments associated with the trended original cost method; reflects a single figure, rather than three or more requests; is produced by a straightforward calculation; and reflects revisions caused by rate base adjustments.

38. The monetary return allowance shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

39. A throughput level for rate design of 650 BOPD is reasonable.

40. The base transportation rate of $0.60 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

41. The rate case expense surcharge allowance of $0.09 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

42. The overall tariffed rate of $0.69 per bbl. shown in the schedules attached to this order is reasonable under honest, efficient, and economical management.

43. CPL filed its tariff for its $0.89 rate for Weeks/Santos with the Commission in a timely manner.

44. Rates collected from Weeks/Santos from and after the filing of CPL's $0.89 tariff were not collected without an applicable tariff or in violation of any Commission requirement or rule.

45. Denial of Weeks/Santos's requested refund of amounts collected in excess of CPL's $0.33 per bbl. rate during the period from May 1, 1991, through February 1, 1994, is reasonable.

46. Between February 1, 1994, and June 30, 1996, CPL collected $0.89 per barrel of oil transported.

47. A Commission order for CPL to refund the $0.20 per bbl. difference between the $0.89 per bbl. charged by CPL between February 1, 1994, and June 30, 1996, and the $0.69 per bbl. rate approved in this Order is reasonable.

CONCLUSIONS OF LAW

1. During the period from February 1, 1994, through June 30, 1996, CPL was a common carrier pipeline, as defined under TEX. NAT. RES. CODE ANN. § 111.002.

2. The Commission has jurisdiction over CPL, CPL's shipping activities, and the issues in this proceeding under TEX. NAT. RES. CODE ANN. §§ 111.011, 111.013, 111.131, 111.133, and 111.181.

3. Chevron Pipeline Company and Weeks Exploration Company, Inc./Santos USA properly instituted proceedings before the Commission on this matter, pursuant to TEX. NAT. RES. CODE ANN. § 111.221.

4. CPL was obliged to make and publish tariffs for its transportation service pursuant to TEX. NAT. RES. CODE ANN. § 111.014.

5. This order of the Commission establishing, rates was made after a hearing with not less than 10 days nor more than 30 days notice, as required under TEX. NAT. RES. CODE ANN. §§ 111.134, 111.189, and 111.190.

6. The rates set out in the Findings of Fact and the Attached Schedules are established at an amount that will provide CPL a fair return on the aggregate value of the property used and useful in the services performed after providing CPL a reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, as required under TEX. NAT. RES. CODE ANN. § 111.183.

7. The refund set out in the Findings of Fact and ordered herein is authorized under TEX. NAT. RES. CODE ANN. §§ 111.186 and 111.187.

IT IS THEREFORE ORDERED BY THE RAILROAD COMMISSION OF TEXAS that Chevron Pipeline Company's authorized rate for all crude oil transported for shipper Weeks Exploration Company, Inc./Santos USA from February 1, 1994, to June 30, 1996, over the High Island 52 common carrier pipeline system **SHALL BE** $0.69 per barrel.

IT IS FURTHER ORDERED that within 60 days of this order CPL **SHALL** refund to Weeks/Santos the sum of the $0.20 per bbl. difference between the $0.89 per bbl. rate charged by CPL and the $0.69 per bbl. rate approved in this Order for each barrel of crude oil transported over the High Island 52 common carrier pipeline system from February 1, 1994, through June 30, 1996.

IT IS FURTHER ORDERED that CPL **SHALL** file a tariff pursuant to the terms and conditions of TEX. NAT. RES. CODE ANN. § 111.014 and the Commission's rules for the rate approved in this order.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted herein are **DENIED.**

SIGNED this 22 day of July, 1997.

RAILROAD COMMISSION OF TEXAS

Chairman

Commissioner

Carole Keeton Rylander
Commissioner

ATTEST:

Kim Williamson
Secretary

SCHEDULE 1
REVENUE REQUIREMENT SUMMARY
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY
GAS UTILITIES DOCKET NO. 8434

LINE NO.	ITEM	CHEVRON REQUESTED 1993 (ACTUAL)	CHEVRON REQUESTED 1994 (11 MOS.)	CHEVRON REQUESTED 1995	CHEVRON REQUESTED 1996	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a-1)	(a-2)	(a-3)	(a-4)	(b)	(c)	(d)
	REVENUE REQUIREMENT (EXCLUDING UNIT OF PRODUCTION ADJUSTMENTS)							
1	OPERATIONS EXPENSE	$35,042	$34,673	$38,898	$16,802	$51,000	$51,000	
2	MAINTENANCE EXPENSE	$217,800	$212,702	$239,927	$103,369	$14,049	$14,049	
3	GENERAL EXPENSE	$148,568	$115,755	$130,571	$58,254	$0	$2,800	
4	DEPRECIATION AND AMORTIZATION	$97,522	$371,541	$262,755	$103,247	$38,935	$46,837	
5	TAXES OTHER THAN INCOME TAXES	$0	$0	$0	$0	$0	$0	
6	INCOME TAX	$51,106	$39,893	$28,163	$19,371	$27,421	$8,225	
7	RETURN	$84,863	$37,484	$13,282	($922)	$51,302	$19,962	
8	TOTAL REVENUE REQUIREMENT	$814,891	$812,049	$713,887	$299,221	$180,707	$141,883	
9	THROUGHPUT (BARRELS/DAY)	1,249	812	493	138	790	650	
10	TARIFF	$1.35	$2.74	$3.97	$5.92	$0.63	$0.60	
	UNIT OF PRODUCTION ADJUSTMENTS							
11	DISMANTLEMENT, REMOVAL, & RESTORATION	$75,882					$0	
12	RATE CASE EXPENSES	$217,785					$0	
13	TOTAL	$293,667						
14	ESTIMATED RECOVERABLE BARRELS	501,770						
15	UNIT OF PRODUCTION TARIFF COMPONENT	$0.59	$0.59	$0.59	$0.59		$0.00	
16	RATE CASE EXPENSE SURCHARGE					$0.09	$0.09	
17	TOTAL TARIFF	$1.93	$3.33	$4.56	$6.51	$0.72	$0.69	

SCHEDULE 2
RATE OF RETURN
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY
GAS UTILITIES DOCKET NO. 8434

LINE NO.	ITEM	CHEVRON REQUESTED	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a)	(b)	(c)	(d)
1	EQUITY CAPITALIZATION	73.49%	77.42%	77.42%	
2	RATE OF EQUITY RETURN	11.98%	13.50%	13.50%	
3	WEIGHTED COST OF EQUITY	8.80%	10.45%	10.45%	
4	DEBT CAPITALIZATION	26.51%	22.58%	22.58%	
5	COST OF DEBT	8.00%	6.79%	6.79%	
6	WEIGHTED COST OF DEBT	2.12%	1.53%	1.53%	
7	WEIGHTED AVERAGE COST OF CAPITAL	10.92%	11.98%	11.98%	

SCHEDULE 3
RATE BASE AND CALCULATION OF RETURN
GAS UTILITIES DOCKET NO. 8434
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY

LINE NO.	ITEM	CHEVRON REQUESTED 1993 (ACTUAL)	CHEVRON REQUESTED 1994 (11 MOS.)	CHEVRON REQUESTED 1995	CHEVRON REQUESTED 1996	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a-1)	(a-2)	(a-3)	(a-4)	(b)	(c)	(d)
	CHEVRON RATE BASE AND RETURN							
CPL1	DEBT COMPONENT OF RATE BASE	$220,435	$173,667	$142,096	$132,919			
CPL2	EQUITY COMPONENT OF RATE BASE	$362,708	$161,594	($24,905)	($140,461)*			
CPL3	TOTAL DEBT + EQUITY RATE BASE	$583,143	$335,161	$117,191	($7,542)			
CPL4	NET ACCUMULATED WRITE UP	$108,499	$78,103	$42,299	$0			
CPL5	TOTAL RATE BASE LESS NET DEFERRED EARNINGS	$474,644	$258,058	$74,892	($7,542)			
CPL6	WEIGHTED COST OF DEBT	2.12%	1.53%	1.53%	1.53%			
CPL7	WEIGHTED COST OF EQUITY	8.80%	9.37%	9.37%	9.37%			
CPL8	REAL RETURN ON EQUITY	11.98%	12.10%	12.10%	12.10%			
CPL9	DEBT RETURN	$10,067	$3,925	$1,148	($118)			
CPL10	EQUITY RETURN	$41,788	$24,888	$7,016	($707)			
CPL11	RETURN ON DEFERRED EARNINGS	$12,998	$8,671	$5,118	$0			
CPL12	TOTAL RETURN	$64,853	$37,484	$13,282	($822)			
	SANTOS RATE BASE AND RETURN							
SAN1	PLANT IN SERVICE					$2,855,217	$1,673,583	
SAN2	LESS ACCUMULATED DEPRECIATION					($2,344,068)	($1,483,951)	
SAN3	NET PLANT					$511,149	$189,632	
SAN4	WORKING CAPITAL					$8,131	$8,131	
SAN5	LESS ACCUM. DEF. FIT					($191,219)	($31,033)	
SAN6	TOTAL INVESTED CAPITAL					$428,061	$166,730	
SAN7	RATE OF RETURN					11.98%	11.98%	
	TOTAL RETURN	$64,853	$37,484	$13,282	($822)	$51,302	$19,982	

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SCHEDULE 4
RECOVERABLE EXPENSES
GAS UTILITIES DOCKET NO. 8434
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY

LINE NO.	ITEM	CHEVRON REQUESTED. 1993 (ACTUAL)	CHEVRON REQUESTED 1994 (11 MOS.)	CHEVRON REQUESTED 1995	CHEVRON REQUESTED 1996	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a-1)	(a-2)	(a-3)	(a-4)	(b)	(c)	(d)
	OPERATING EXPENSES							
1	POWER AND WATER	$8,843		NO DETAIL PROVIDED		$0	$0	
2	LABOR	$193		NO DETAIL PROVIDED		$7,200	$7,200	
3	CONTRACT SERVICES	$3,035		NO DETAIL PROVIDED		$43,800	$43,800	
4	OTHER	$22,971		NO DETAIL PROVIDED		$0	$0	
5	TOTAL OPERATING EXPENSES	$35,042	$34,573	$38,998	$16,802	$51,000	$51,000	
	MAINTENANCE EXPENSES							
6	LABOR	$8,229		NO DETAIL PROVIDED		$9,600	$9,600	
7	CONTRACT SERVICES	$196,891		NO DETAIL PROVIDED		$0	$0	
8	OTHER	$12,480		NO DETAIL PROVIDED		$4,449	$4,449	
9	TOTAL MAINTENANCE EXPENSES	$217,600	$212,702	$239,927	$103,369	$14,049	$14,049	
10	TOTAL OPERATING AND MAINTENANCE EXPENSES	$252,642	$247,275	$278,925	$120,171	$65,049	$65,049	
	GENERAL EXPENSES							
11	ALLOCATED OVERHEAD	$120,658	$90,098	$101,619	$43,781	$0	$2,800	
12	INSURANCE & OTHER COSTS	$28,000	$25,667	$28,952	$12,473	$0	$0	
13	RATE CASE EXPENSES					$0	$0	
14	UNMANNED OPERATION					$0	$0	
15	TOTAL GENERAL EXPENSES	$148,658	$115,765	$130,571	$56,254	$0	$2,800	

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SCHEDULE 5
DEPRECIATION AND AMORTIZATION
GAS UTILITIES DOCKET NO. 9434
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY

LINE NO.	ITEM	CHEVRON REQUESTED 1993 (ACTUAL)	CHEVRON REQUESTED 1994 (11 MOS.)	CHEVRON REQUESTED 1995	CHEVRON REQUESTED 1996	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a-1)	(a-2)	(a-3)	(a-4)	(b)	(c)	(d)
	CHEVRON DEPRECIATION AND AMORTIZATION							
CPL1	TOTAL ADDITIONS TO ANNUAL BOOK DEPRECIATION	$61,356	$0	$0	$0	NA	NA	
CPL2	UNITS OF PRODUCTION DEPRECIATION EXPENSE	$0	$331,989	$220,457	$61,795	NA	NA	
CPL3	TOTAL DEPRECIATION	$61,356	$331,989	$220,457	$61,795	NA	NA	
CPL4	AMORTIZATION OF AFUDC	$0	$0	$0	$0	NA	$0	
CPL5	AMORTIZATION OF DEFERRED EARNINGS (WRITE-UP)	$36,166	$39,552	$42,299	$41,452	NA	$0	
CPL6	TOTAL AMORTIZATION	$36,166	$39,552	$42,299	$41,452	NA	$0	
	SANTOS DEPRECIATION AND AMORTIZATION							
SAN1	1991 PL FITTINGS & CONSTRUCTION					$4,407	$13,309	
SAN2	1975 THROUGH 1989 OTHER STATION EQUIPMENT					$32,528	$32,528	
	TOTAL DEPRECIATION & AMORTIZATION EXPENSE	$97,522	$371,541	$262,756	$103,247	$36,935	$45,837	

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SCHEDULE 6
FEDERAL INCOME TAX EXPENSE
GAS UTILITIES DOCKET NO. 8434
WEEKS EXPLORATION, INC. (SANTOS U.S.A.) V. CHEVRON PIPELINE COMPANY

LINE NO.	ITEM	CHEVRON REQUESTED 1993 (ACTUAL)	CHEVRON REQUESTED 1994 (11 MOS.)	CHEVRON REQUESTED 1995	CHEVRON REQUESTED 1996	WEEKS/ SANTOS PROPOSED	EXAMINERS' RECOMMENDED	COMMISSION APPROVED
		(a-1)	(a-2)	(a-3)	(a-4)	(b)	(c)	(d)
1	RETURN ALLOWANCE	$64,853	$37,464	$13,282	($822)	$51,302	$19,982	
CPL2	LESS: DEBT EXPENSE (IMPUTED DEBT)	$17,635	$11,764	$9,448	$9,024			
SAN2	LESS IMPUTED INTEREST					($6,562)	($6,562)	
3	RETURN ON EQUITY	$47,218	$25,700	$3,834	($9,846)	$44,740	$13,420	
CPL4	PLUS: AMORT. OF DEF'D EARNINGS	$36,166	$39,552	$42,299	$41,452			
CPL5	AMORT. OF EQUITY AFUDC	$0	$0	$0	$0			
6	TAXABLE INCOME	$83,384	$65,252	$45,935	$31,606	$44,740	$13,420	
7	GROSS UP	0.6129	0.6129	0.6129	0.6129	0.6129	0.6129	
8	INCOME TAX ALLOWANCE	$51,106	$39,993	$28,153	$19,371	$27,421	$8,225	

EXHIBIT F

BEFORE THE
RAILROAD COMMISSION OF TEXAS

COMPLAINT FILED BY EASTMAN CHEMICAL COMPANY AGAINST WESTLAKE ETHYLENE CORP., (WESTLAKE PIPELINE) REGARDING WESTLAKE PIPELINE'S SYSTEM T-4 PERMIT NO. 05253	§ § § § § §	**GAS UTILITIES DOCKET NO. 10296**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, *et seq*. (Vernon 2008 & Supp. 2014). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Westlake Ethylene Pipeline Corporation (Westlake Pipeline) operates a pipeline pursuant to T-4 Permit No. 05253.

2. The pipeline that is subject to T-4 Permit No. 05253 runs from Mont Belvieu, Texas to Longview, Texas and traverses seven counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg, Counties.

3. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.

4. On July 29, 2013, Eastman Chemical Company (Eastman) filed a complaint against Westlake Ethylene Pipeline Corporation (Westlake Pipeline) alleging that a tariff published and filed by Westlake Pipeline in 2013 (*2013 Westlake Pipeline Tariff*) was discriminatory.

5. A notice of hearing on jurisdictional issues was issued on September 13, 2013, and a hearing on jurisdictional issues was held on September 27, 2013.

6. A notice of hearing on the merits was issued on March 24, 2014. The notice of hearing bifurcated the hearing in this matter into two phases. Phase 1 addressed all discrimination and non-rate issues. All rate issues have been severed into Phase II.

7. Phase II was severed into a separate proceedings docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296.*

8. On May 2, 2014, Westlake Pipeline filed an affidavit attesting that notice was served on the entity that operates the pipeline on behalf of Buckeye and all current customers of the pipeline that is the subject of this proceeding.

9. The hearing on Phase I, GUD No. 10296, was held on May 6, 2014.

10. Westlake Pipeline is subsidiary of Westlake Chemical Corporation (Westlake Chemical). Another Westlake Chemical subsidiary, Westlake Longview Corporation (Westlake Longview) is located in Longview.

11. The facilities of Westlake Longview are connected to ethylene supplies at Mt. Belvieu through Eastman's ethylene distribution system at Longview and the Westlake Ethylene Pipeline.

12. Westlake Longview consumes large quantities of ethylene in Longview.

13. Westlake Longview, or its ethylene supplier, is a shipper on the pipeline operated by Westlake Pipeline.

14. Eastman owns and operates ethylene producing facilities in Longview.

15. Eastman's Longview facility converts natural gas liquids (NGLs) feedstock, such as ethane and propane, to ethylene and propylene.

16. Eastman currently produces about 1,400 million pounds of ethylene annually from its crackers at Longview.

17. Eastman uses about 600 million pounds of ethylene annually at Longview, leaving about 800 million pounds of ethylene that must either be sold in Longview or transported to, or exchanged at, Mont Belvieu each year.

18. Other than Eastman's own use, the only substantial market for ethylene in Longview is Westlake Longview.

19. Eastman is a shipper on the pipeline operated by Westlake Pipeline.

20. In 1995, Eastman began planning a "common carrier" pipeline to provide ethylene to its Longview plant and construction began in December 1996.

21. Mustang Pipeline Company (Mustang), an Eastman subsidiary, started construction on the pipeline.

22. In 2002, Eastman constructed the "Williams Connection."

23. The Williams Connection connected Eastman's Mont Belvieu terminal to contracted storage owned by the Williams Company, the first fungible ethylene storage facility in

Mont Belvieu, and added the compression necessary to ship ethylene south to Mont Belvieu.

24. At the time of the construction of the Williams Connection, Eastman sought the ability to sell surplus ethylene produced in Longview and allow Eastman to maintain ethylene production when ethylene-consuming facilities were down in Longview.

25. In 1997, Mustang Pipeline issued the original tariff for the pipeline (*1997 Mustang Tariff*).

26. The *1997 Mustang Tariff* identified the "origin point" as Mont Belvieu and the "delivery point" as Longview.

27. The *1997 Mustang Tariff* did not include provisions for the exchange of ethylene.

28. In 2002, after adding compression necessary to deliver ethylene from Longview to Mont Belvieu, Mustang Pipeline issued a revised tariff (*2002 Mustang Tariff*).

29. The *2002 Mustang Tariff* identified Mont Belvieu as both an origin and delivery point.

30. The *2002 Mustang Tariff* identified Longview as both an origin and delivery point.

31. The *2002 Mustang Tariff* also indicated that Mustang, the operator of the pipeline, would, in addition to physical deliveries of ethylene, offer exchange services.

32. On November 10, 2006, Eastman and Westlake Chemical entered into an acquisition agreement.

33. As part of the sales agreement the Mustang pipeline assets were transferred to Westlake Pipeline.

34. As part of the acquisition agreement certain ethylene-consuming facilities owned by Eastman were sold to Westlake Longview.

35. The purchase agreement between Mustang Pipeline and Westlake Pipeline included the sale of the pipeline conduit.

36. Westlake Pipeline's ownership of the pipeline at the southern end begins just outside the two meters belonging to Equistar and Williams and a check meter and pipeline belonging to Eastman. The pipeline extends from that ownership point at Mont Belvieu to a point that connects the Eastman plant to distribution facilities in Longview. The pipelines' connection at Longview is on property that is owned by Eastman.

37. The pipeline purchase agreement also included all right of ways, easements, privileges and grants upon and under which the pipeline system was laid and installed.

38. Westlake Pipeline did not acquire any terminals in the sale, the pipeline terminals, nor any of the compression necessary to operate the pipeline.

39. The overall sales agreement between Eastman and Westlake Chemical included the acquisition, by Westlake Longview, of three polyethylene units that are located within the Eastman's plant in Longview.

40. As part of the overall sale, on November 10, 2006, Eastman Chemical and Westlake Chemical Corporation entered into the Ethylene Sales and Exchanges Contract (ESA).

41. The ESA is a ninety-nine year ethylene contract that sets a market price using a pre-determined formula agreed to by both parties in the contract.

42. Pursuant to the ESA, Eastman Chemical secured a guaranteed market for ethylene, and Westlake Longview Corporation secured an ethylene supplier.

43. The ESA also provided Eastman with the ability to exchange any excess ethylene that Westlake Longview did not purchase from Eastman.

44. In 2013, Westlake Pipeline published and filed a new tariff for the pipeline (*2013 Westlake Tariff*).

45. Pursuant to the *2013 Westlake Pipeline Tariff*, Mont Belvieu was no longer designated as both an origin and delivery point. Mont Belvieu was designated as an origin point.

46. Pursuant to the *2013 Westlake Pipeline Tariff*, Longview was no longer designated as both an origin and delivery point. Longview was designated as a delivery point.

47. The *2013 Westlake Pipeline Tariff* removed all references to ethylene exchange as Westlake Pipeline determined that exchange services would no longer be offered.

48. Mont Belvieu is the largest market for ethylene producers in the United States.

49. Pipeline transport is among the most important factors that determine regional prices, supply, and demand.

50. It is reasonable to conclude that the ethylene producers in Longview would require access to the ethylene market in Mont Belvieu.

51. It is reasonable to conclude that ethylene consumers that engage in transactions in Mont Belvieu would desire access to ethylene produced in Longview

52. Eastman produces large quantities of ethylene in Longview and has a physical necessity to move ethylene to Mont Belvieu.

53. Ethylene was transported from Longview to Mont Belvieu on several occasions in the following years: 2005, 2006, 2007, 2008, and 2013.

54. The necessity for southbound flow predates the purchase of the system by Westlake Pipeline. It is the reason that compression was added in 2002 to allow backhaul and to permit Eastman to sell surplus ethylene that it produced in Longview to customers on the Gulf Coast.

55. Eastman has demonstrated a demand for exchanges as Eastman has engaged in exchanges with Westlake Pipeline's affiliate, Westlake Longview since entering into the ESA.

56. Backhaul service is physically possible on the pipeline operated by Westlake Pipeline.

57. The pipeline system was configured in 2002 to accept bidirectional flow.

58. Backhaul on the pipeline occurred in 2005, 2006, 2007, 2008, and 2013.

59. The *2013 Westlake Pipeline Tariff* removed the backhaul service previously offered in the *2002 Mustang Tariff*.

60. The record in this case does not provide evidence of the impediment to the continued provisions of backhaul service.

61. Any concern that this operator lacks the compression necessary to provide backhaul service is addressed by the language in the preexisting *2002 Mustang Tariff*, which requires shippers to deliver and receive product at the necessary pressures.

62. Additional language may be added to further protect the common carrier;

> The paragraph means that a shipper is responsible for providing or arranging sufficient compression or services to effectuate the entry of the product into the pipeline at an Origin Point and delivery of the product out of the Pipeline at a Delivery Point.

63. There is no impediment for a pipeline to provide exchange service and the risks associated with that service may be mitigated by appropriate language in the tariff.

64. The *2002 Mustang Tariff* contained language that protected the pipeline operator and is included in the *2013 Westlake Pipeline Tariff*. Additional language may be added to protect the operator as follows:

> Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes to the common stream out of which deliveries are made to Pipeline Customers.

65. Due to the unique circumstances of the ethylene market in Longview, without an exchange provision in the applicable pipeline tariff the only alternative for Eastman is to engage in exchanges with Westlake Longview, the pipeline operator's affiliate.

66. If exchange service is included in the applicable pipeline tariff Eastman may engage in exchanges with market participates in Mont Belvieu and will no longer be a captive to Westlake Longview.

67. Eastman, Westlake Longview, and Westlake Longview's ethylene suppliers (other than Eastman), are potential shippers on the pipeline operated by Westlake Pipeline.

68. Eastman and Westlake Longview are located in Longview.

69. Eastman and Westlake Longview each require movement of ethylene between Mont Belvieu and Longview.

70. Eastman and Westlake Longview require access to the ethylene market in Mont Belvieu and the ethylene market in Longview.

71. The only difference is that Eastman requires deliveries from Longview to Mont Belvieu and Westlake Longview requires deliveries from Mont Belvieu to Longview.

72. Eastman and Westlake Longview, or its other potential suppliers of ethylene, are similarly-situated shippers.

73. The tariff changes in the *2013 Westlake Pipeline Tariff* related to backhaul eliminated a service that was previously provided to Eastman on this pipeline.

74. The tariff changes in the *2013 Westlake Pipeline Tariff* related to backhaul physically shut Eastman out of the pipeline.

75. Longview is no longer designated as an "Origin Point" and Mont Belvieu is no longer designated as a "Delivery Point."

76. Due to the operation of the filed tariff Eastman would no longer be able to demand backhaul service

77. Due to the operation of the filed tariff, Westlake Pipeline would be unable to treat those points as Origin and Delivery points.

78. Westlake Longview will continue to have access to the pipeline and the Mont Belvieu ethylene market.

79. Eastman would be shut out of the Mont Belvieu market by the changes in the *2013 Westlake Pipeline Tariff*.

80. Westlake Pipeline has offered no reasonable basis for the disparate treatment as regards to physical deliveries on the pipeline.

81. The tariff change in the *2013 Westlake Pipeline Tariff* related to exchanges eliminates a pre-existing service offered by the pipeline operator.

82. Once that service is eliminated, Eastman must engage in exchanges with Westlake Longview, an affiliate of the pipeline operator.

83. The removal of exchange service further limits Eastman's access to the Mont Belvieu market through the pipeline.

84. The elimination of backhaul and exchanges, pre-existing service offered by the common carriers of this pipeline, provides an unreasonable preference in favor of Westlake Longview.

85. Whether discrimination by a common carrier exists depends on the facts of a particular case. The discriminatory act found to have occurred in this docket is the cancellation of pre-existing backhaul and exchange services so that one shipper, Eastman Chemical, is forced to sell or exchange the ethylene it produces to the only other shipper on the pipeline, Westlake Longview, the parent company of the pipeline.

CONCLUSIONS OF LAW

1. Westlake Pipeline is a "common carrier" as that term is defined under TEX. NAT. RES. CODE ANN. § 111.020(d) (Vernon 2001 & Supp. 2014) and is therefore subject to the jurisdiction of the Railroad Commission of Texas (Commission).

2. As a common carrier Westlake Pipeline is subject to all provisions of the Common Carrier Act, TEX. NAT. RES. CODE ANN. §§ 111.002, 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262.

3. In addition to the powers provided by other sections of Chapter 2, Subchapter B of the Business Organization Act, TEX. BUSINESS CORP. ACT ANN. § 2.105 provides that a corporation, such as Westlake Pipeline engaged as a common carrier in the pipeline business for the purpose of transporting oil products has all of the rights and powers conferred on a common carrier by Sections 111.019 – 111.022.

4. The Commission has jurisdiction over Westlake Pipeline, associated affiliates, and the matters at issue in this proceeding pursuant to *TEX. NAT. RES. CODE ANN.* §§ 81.051 and §§ 111.002, 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262.

5. As required by *TEX. NAT. RES. CODE ANN.* § 111.014 Westlake Pipeline shall make and publish their tariffs.

6. A common carrier's obligations to its customers cannot exceed its duties under a published tariff and published tariffs govern the relationship of the common carrier with its customers. Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly published tariffs. The published tariffs and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the published tariff. *CenterPoint Energy Entex v. R.R. Commn'n of Tex*, 208 S.W. 3rd 608 (Tex. – Austin 2006, pet. dism'd)

7. Westlake Pipeline, as a common carrier, is required to receive and transport ethylene delivered to it for transportation and perform its other related duties without discrimination as required by *TEX. NAT. RES. CODE ANN.* § 111.015.

8. Westlake Pipeline, as a common carrier, shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstance in the transportation of ethylene as required by *TEX. NAT. RES. CODE ANN.* § 111.015.

9. Westlake Pipeline, as a common carrier, may not charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from another for a like and contemporaneous service.

10. Westlake Pipeline's 2013 tariff terminated pre-existing backhaul and exchange services and provided an unreasonable preference and advantage to its affiliate, Westlake Longview.

11. The Commission has the authority to require that tariffs published by a common carrier and filed with the Commission are not discriminatory.

12. Tariffs that provide disparate treatment to similarly-situated shippers or provide an unreasonable preference or advantage to an affiliate at the expense of other shippers are discriminatory.

13. There is no general duty for a common carrier to provide backhaul and exchange services. Neither is there a general duty to maintain services previously offered by a common carrier. It is discriminatory, however, for a common carrier to cancel previously existing services and cut off access to a market so that all other shippers on the pipeline are forced to sell or exchange their product with a shipper on that same pipeline which is affiliated with the pipeline.

IT IS THEREFORE ORDERED that the *2013 Westlake Pipeline Tariff* is rejected and may not be enforced by Westlake Pipeline.

IT IS FURTHER ORDERED that Westlake Pipeline publish and file with the Commission a revised tariff that is not discriminatory and conforms to the tariff attached to this Final Order as Exhibit A.

IT IS FURTHER ORDERED that, in accordance with TEX. NAT. RESOURCE CODE ANN. § 111.015, within 30 days of the date this Order is signed, Westlake Pipeline shall file the approved tariff with the Director of the Oil and Gas Division. The tariffs shall reflect the findings of fact and conclusions of law herein.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED.**

IT IS ALSO ORDERED that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED.**

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE ANN. § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

SIGNED this 9th day of December 2014.

RAILROAD COMMISSION OF TEXAS

Christi Craddick
CHAIRMAN CHRISTI CRADDICK

David Porter
COMMISSIONER DAVID PORTER

COMMISSIONER BARRY T. SMITHERMAN

ATTEST:

Kathy Way
SECRETARY

Westlake Ethylene Pipeline Corporation-T.R.R.C. No. __________
[Cancels Mustang Pipeline Company – Texas Local Tariff. -3]

WESTLAKE ETHYLENE PIPELINE CORPORATION
Mont Belvieu to Longview Pipeline

LOCAL TARIFF
Applying on

PETROLEUM PRODUCTS
As Defined in This Tariff

TRANSPORTED OR EXCHANGED BY PIPELINE
Between Points Within the State of Texas
Subject to the Regulations
Set Forth Herein

ISSUED: __________ EFFECTIVE: __________

Filed with the Railroad Commission

DATE: __________

Issued and Compiled By:

WESTLAKE ETHYLENE PIPELINE CORPORATION
2801 Post Oak Boulevard, Suite 600
Houston, Texas 77056

WESTLAKE ETHYLENE PIPELINE CORPORATION, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below in Section III, "Rules and Regulations," at the rates set forth in Section II, "Product Specifications and Local Rates."

I. DEFINITIONS

a) The term "barrel" as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60° F).
b) The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in questions) and extending until 7:00 a.m. on the following calendar day.
c) The term "Delivery Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for delivery of Product by Carrier to Shipper.
d) The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60° F).
e) The term "Origin Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for introducing Product into the respective pipelines.
f) The term "pound," as used herein, means one (1) pound avoirdupois.
g) The term "Product" as used herein, means the liquid petroleum gas products defined in Section II, "Product Specifications and Local Rates," for the respective pipelines.
h) The term "Shipper," as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.

As the context may require, the plural form shall be construed to include the singular, and the singular form shall be construed to include the plural.

II. PRODUCT SPECIFICATIONS AND LOCAL RATES

a) The rates published in this tariff are for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such transportation or exchange is subject to the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.
b) Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at points named below.

Product: Liquefied petroleum gas meeting the following specifications:

Components	Specifications	Test Method
Ethylene (Minimum)	99.90 mol %	ASTM D 2505
Methane	350 ppmV	ASTM D 2505
Ethane	465 ppmV	ASTM D 2505
Acetylene	1.5 ppmV	ASTM D 2505
Propylene & Heavier	5 ppmV	ASTM D 2505
Carbon Dioxide	1 ppmV	ASTM D 2505
Carbon Monoxide	0.15 ppmV	ASTM D 2504
Water	2 ppm wt	Panametrics
Total Sulfur	1 ppm wt	ASTM D 3246
Oxygen	4 ppm wt	ASTM D 2504
Hydrogen	5 ppmV	ASTM D 2504
Ammonia	1 ppm wt	ASTM D 5234
Methanol	1 ppm wt	ASTM D 5234

Origin/Delivery Point: Carrier's stations located at or adjacent to the terminals of Equistar Chemicals, Williams Storage, and Flint Hills Resources at Mont Belvieu, Texas, when such points of origin are practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Origin/Delivery Point: Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery is practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Rate: a. $1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day.

b. $0.70 per 100 pounds for each additional amount transported or exchanged in a sing day.

III. RULES AND REGULATIONS

1. Testing

Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate.

Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. In the event that any test indicates that the Product offered for transportation <u>or exchange</u> does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to case delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.

2. <u>Measurement</u>

Carrier will utilize meters located at the Origin Point and Delivery Point whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with the standard procedures utilized by the owner or operator of such meters.

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

a. By using the registration of any check measuring equipment of Carrier.
b. By using any measurement equipment which Carrier may have in the flowing stream.
c. By any independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, inspection, or test.

Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60° F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.

Physical and legal transfer of custody of the Product from Shipper to Carrier shall be at the point immediately downstream of applicable measuring and metering facilities at the Origin Point. Physical and legal transfer of custody of the Product from Carrier to Shipper shall be at the point immediately downstream of applicable measuring and metering facilities at the Delivery Point.

3. Facilities at Origin and Delivery Point

Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:

a. When Shipper has provided facilities satisfactory to Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and
b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or other services to effectuate the entry of the Product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at the Delivery Point.

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to Pipeline's customers.

Separate pipage contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.

4. Minimum and Maximum Shipments

The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its sole election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.

5. Tender Deductions

A tender deduction of 1/2 percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.

6. Payment of Transport or Exchange

The charges for transportation or exchange of Product accepted for shipment shall be based on the applicable rate set forth above in Section II before tender deduction, if any, is made. Shipments accepted for transportation or exchange shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation or exchange charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days of receipt of invoice. Carrier may require that charges:

a. be prepaid at time of acceptance, or
b. on demand be paid before release of Product from custody of Carrier. Carrier may charge Shipper interest of 1½ percent per month (18 percent per annum) for overdue transportation or exchange charges.

Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the dale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation or exchange and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for whomsoever may be lawfully entitled thereto. The remedies set forth in this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. Clear Title

Shipper shall notify Carrier when any Product tendered for transportation or exchange is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation or exchange, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

8. Tenders

All Shippers desiring to tender Product for transportation or exchange on Carrier's facilities shall furnish a written nomination to Carrier by the fifteenth (15th) day (excluding Carrier holidays) of the month prior to the month Shipper desires transportation or exchange. Nominations shall specify the quantity of Product to be transported or exchanged, the Origin Point, the Delivery Point, and any other information required by Carrier. If Shipper does not furnish such written nomination, Carrier shall be under no obligation to accept such Product for transportation or exchange.

Nominations shall be transmitted to Carrier to the attention of Westlake Ethylene Pipeline Corporation Scheduler as follows:

a. by facsimile to the Westlake Ethylene Manager at (713) 960-8761, or
b. by electronic mail, as arranged between Carrier and Shipper.

Any nominations accepted by Carrier will be delivered on a ratable basis.

9. Identity of Shipments

In view of the impracticability of maintaining the identity of shipments, shipments will not be segregated, but will be commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.

10. Disposition of Shipments

In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at the Delivery Point in accordance with Carrier's schedules, Carrier may make whatever disposition of such undelivered shipment which is necessary to order to free its pipeline. Carrier shall not be liable to Shipper because of such disposition, and Shipper shall pay for all costs and fees thereof the same as if Shipper had requested or authorized such disposition.

11. Apportionment of Tenders and Withdrawals

In the event Shipper's tenders at Origin Point or Shipper's withdrawal requirements at the Delivery Point are greater than can be currently handled by Carrier, Carrier may restrict or suspend tenders or withdrawals in order to apportion deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.

12. Transit Privileges

Carrier may not be required by Shipper to stop Product in transit for any reason.

13. Liability of Carrier and Indemnity

Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public enemy, quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, riots, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause outside of the reasonable control of the Carrier, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof involved in such loss in the proportion that such shipment or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation or exchange services and not as an owner, manufacturer, or seller of Product transported or exchanged hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

FOR ALL SERVICES PROVIDED FOR AND RECEIVED UNDER THIS TARIFF, SHIPPER SHALL INDEMNIFY AND DEFEND CARRIER FROM ANY CLAIMS, LIABILITIES, OR LOSSES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES), INCLUDING CLAIMS FOR PERSONAL

INJURY, DEATH OR PROPERTY DAMAGE INVOLVING THE CARRIER, SHIPPER, CONSIGNEES, OR THIRD PARTIES BASED ON OR ARISING OUT OF CARRIER'S PERFORMANCE OF SUCH SERVICES. THIS INDEMNIFICATION SHALL INCLUDE CLAIMS OF ANY NATURE, LEGAL, CONTRACTUAL OR EQUITABLE, WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSES OF ACTION. THE INDEMNITY PROVIDED IN THIS TARIFF IS INTENDED TO BE APPLICABLE TO THE FULL EXTENT ALLOWED BY LAW AND IS LIMITED ONLY IN ACCORDANCE WITH STATUTORY OR COMMON LAW. TO THE EXTENT NOT PROHIBITED BY LAW, THIS INDEMNITY APPLIES TO ANY ACT OR OMISSION, WHETHER NEGLIGENT OR NOT, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF SERVICE BY CARRIER PURSUANT TO THIS TARIFF, INCLUDING THE SOLE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF CARRIER.

14. Claims

Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.

15. Additives, Dyes, and Odorization

a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at Delivery Point containing portions of corrosion inhibitor.
b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported or exchanged, unless negligent conduct by Carrier is determined to be the sole, proximate cause of the cost, expense, damage or liability incurred by Shipper.
c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:
    (1) Will furnish the dye to be injected and/or the malodorant to be added and
    (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing.

16. <u>Imbalance Charges</u>

In the event that Shipper fails to deliver to Carrier at the Origin Point the equivalent volumes of Product which Carrier redelivers to Shipper at the Delivery Point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for any particular imbalance period is not to be construed as a waiver of such charges for any other imbalance and Carrier maintains the right to collect such charges from Shipper for any imbalance not the subject of a written waiver.

17. <u>Direction of Flow</u>

In the event the pipeline is configured and equipped so that it is physically capable of bi-directional flow, Carrier at its sole discretion will choose the direction of flow between the Origin Point and Delivery Point. <u>Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.</u>

END OF DOCUMENT