RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

GUD NO. 10606
Proposal for Decision

FORMAL COMPLAINT OF CNOOC ENERGY USA, LLC, AGAINST WILLIAMS MLP OPERATING, LLC, AND MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC

Administrative Law Judge John Dodson
Technical Examiners: Rose Ruiz, James Currier

PARTIES

COMPLAINANTS: **CNOOC Energy USA, LLC**
Brian Sullivan, Kelli Kenney, and Eno Peters
McElroy, Sullivan, Miller & Weber LLP
Joseph Thompson III
Porter Hedges LLP
Nick Shum
Vinson & Elkins LLP
Counsel for CEU

EXCO Operating Company, LP
T. Gregory Jackson, Ann Marie Arcadi, and Aaron Christian
Arcadi Jackson LLP
David Nelson
Gross & Nelson Attorneys at Law
Counsel for EXCO

RESPONDENTS: **Williams MLP Operating, LLC, and Mockingbird Midstream Gas Services, LLC**
Richard Howell, John Hayes, Amy Baird, and Joseph Fischer III
Jackson Walker LLP
Counsel for Respondents

INTERVENORS: **Jamestown Resources, LLC, Larchmont Resources LLC, and Pelican Energy, LLC**
Brian Sullivan, Kelli Kenney, and Eno Peters
McElroy, Sullivan, Miller & Weber LLP
Matt Reynolds (Black Falcon Energy, LLC)
Counsel for Intervenors

PROCEDURAL TIMELINE

Initial Complaint Filed (CEU):	February 22, 2017
Initial Complaint Filed (EXCO):	October 4, 2018
Claims Challenging the Rates Paid by Chesapeake to Williams, Severed into GUD No. 10856:	June 17, 2019
Hearing on the Merits:	June 18-20, 2019
Evidentiary Record Closed:	August 20, 2019
Deadline for Commission Action:	Not applicable

STATEMENT OF THE CASE

This case involves two potential shippers (CEU and EXCO) on a gas-gathering system in the Eagle Ford (Mockingbird System), both alleging unlawful discrimination by the gatherer pipeline (Williams). Broadly summarized, CEU and EXCO complain that Williams unfairly offers them only the rate amounts paid by Williams's anchor shipper, Chesapeake, pursuant to the terms of an anchor shipper contract between Chesapeake and Williams (Mockingbird Agreement). CEU and EXCO are not parties to the Mockingbird Agreement, and several other Williams customers pay substantially less. CEU and EXCO never accepted Williams's service offers.

A controversial and key feature of the 2012 Mockingbird Agreement is Chesapeake's right to "approve" any rate Williams offers new customers producing gas from wells owned by Chesapeake in 2012, which applies to CEU and EXCO (CEU owns an undivided 33-percent interest in the volumes produced from the wells then-owned by Chesapeake, including 130 wells that EXCO subsequently purchased from Chesapeake). The "approval" provision does not give Chesapeake any power over the rates Williams charges new customers; it serves as an accounting feature to reduce Chesapeake's annual revenue obligations to Williams if Williams chooses to offer another shipper a lower rate than what Chesapeake pays.

Though the types of discrimination alleged here pertain to rates, this is not a rate case and the lawfulness of the rate amounts offered to CEU and EXCO—under either a cost-of-service or market-based methodology—are not at issue. Discrimination is about unequal treatment, not fair prices.

SUMMARY OF RECOMMENDATIONS

The Commission should sustain the discrimination claims of CEU and EXCO, consistent with this Proposal for Decision. CEU and EXCO each proved two separate acts of unlawful discrimination by Williams. As to each complainant, Williams:

1. required repayment of the $1.6 billion Williams spent on the Mockingbird System, while writing these amounts off for other similarly-situated customers, in violation of Section 121.104(a)(2) of the Texas Utilities Code and Subchapter G (Code of Conduct) of the Commission's rules; and
2. processed the request for service in a different manner than requests from other similarly-situated customers, in violation of Commission Rule § 7.7001(b)(4).

Ratesetting by the Commission is not necessary to cure this discrimination. The recommendation is for Williams to: (1) remove from the rates offered to CEU and EXCO all amounts associated with repayment of the $1.6 billion Williams spent on the Mockingbird System, including a target return on those amounts; and (2) process requests for service from CEU and EXCO as new customers, free from any duties contained in the Mockingbird Agreement or other private contracts.

TABLE OF CONTENTS

PROPOSAL FOR DECISION

I. INTRODUCTION

This docket involves two separate complaints against Williams MLP Operating, LLC, and Mockingbird Midstream Gas Services, LLC (together, "Respondents" or "Williams"): (1) the complaint of CNOOC Energy USA, LLC ("CEU"),[1] initially filed on February 22, 2017, and most recently amended on March 1, 2019; and (2) the complaint of EXCO Operating Company, LP ("EXCO"), initially filed on October 4, 2018, and most recently amended on January 14, 2019.

CEU and EXCO each initially alleged both discrimination by Williams (the "Discrimination Claim") and that the contract gathering rates charged by Williams to Chesapeake Energy Marketing, Inc. (together with its affiliates, "Chesapeake"), are not lawful under either a market-based or cost-of-service method (the "Rate Claim"). The Rate Claim pertains only to the rates paid by Chesapeake under its anchor shipper contract with Williams. Because CEU and EXCO are not now, and have never been, direct customers of Williams, they have no rates of their own to challenge. Because these two claims are distinct and involve different relief, the Rate Claim was severed into a separate docket, GUD No. 10856, prior to the merits hearing.

At issue in this docket is whether Williams unlawfully discriminated against CEU and EXCO. Williams is a gas utility pipeline that provides gathering service[2] to producers of natural gas in the Eagle Ford Basin. In 2012, Williams entered into an anchor shipper contract with Chesapeake, whereby Chesapeake agreed to dedicate all its gas from approximately 2,000 wells to Williams's gathering system (the "Mockingbird System"). For all time periods relevant to this docket, CEU owned an undivided 33-percent interest in these wells and had the right to take all its gas in kind, including for the approximately 130 of these wells that EXCO later bought from Chesapeake in 2013.

CEU and EXCO are not signatories to Williams's 2012 anchor shipper contract with Chesapeake (the "Mockingbird Agreement") and have never been direct customers of Williams. CEU and EXCO had contracts only with Chesapeake (to market their gas), and Chesapeake was Williams's customer. From 2015 to 2017, CEU and EXCO each sought direct gathering service from Williams, and Williams offered them only Chesapeake's quality of service (firm "Priority 1" service) at the same rate Chesapeake paid. At the same time, certain other customers of Williams paid significantly lower rates for gathering service and had more service quality options (Priority 2 and Priority 3).

CEU and EXCO never took service from Williams and now allege that Williams unlawfully discriminated against them.

---

[1] CEU's entity name, originally "OOGC America, LLC" when this case started, subsequently changed to "CNOOC Energy USA, LLC" (CEU). The caption was amended on Feb. 6, 2019.

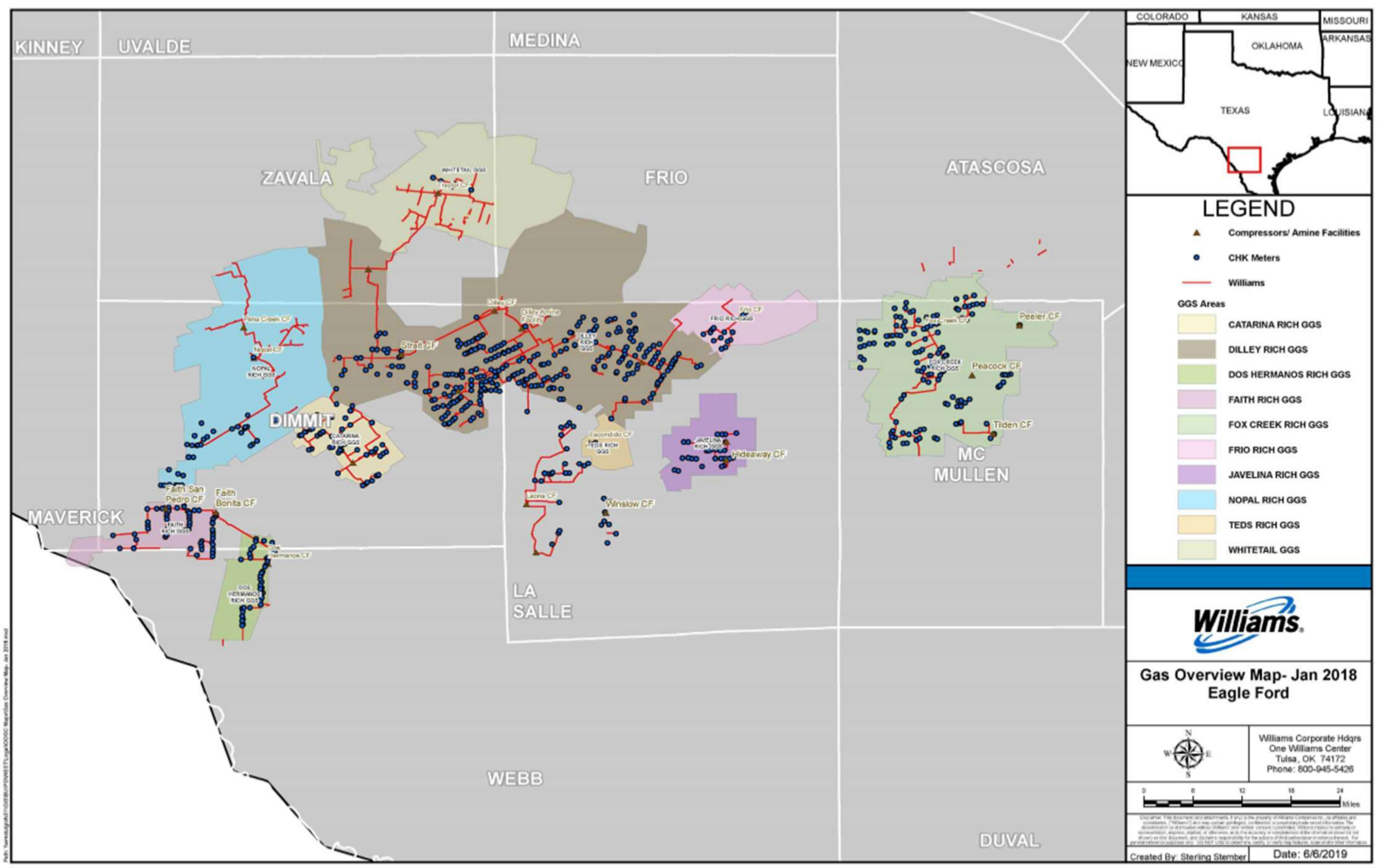
[2] Throughout this PFD, for simplicity, "gathering service" is used to refer to all three services provided by Williams—gathering, compression, and treating—unless otherwise specified.

II. THE MOCKINGBIRD SYSTEM

The Mockingbird System was built initially by Chesapeake Midstream Operating, LLC ("CMO"). In 2012, Williams purchased a 50-percent stake in CMO and acquired the remaining half in 2014. Williams spent more than $850 million since 2012 to expand the system, largely to serve all the wells owned and operated by Chesapeake, its contractual anchor shipper under the Mockingbird Agreement. Williams's total capital investment in the system to date is approximately $1.6 billion.

The Mockingbird System was built for the purpose of gathering and treating gas so that it could move to markets for beneficial uses.[3] The system consists of approximately 1,000 miles of gathering pipelines, spanning seven counties: Atascosa, Dimmit, Frio, La Salle, McMullen, Webb, and Zavala. The system capacity is more than 687 MMcf/d. The system consists of four separate systems: the Deep Oil System ("Deep"), the Shallow Oil System ("Shallow"), the Rich Gas System ("Rich"), and the Treating System ("Treating"). Each of these systems is designed to serve the characteristics of the gas delivered by producers.[4]

Below is a map showing the general footprint of the Eagle Ford interests served by the Mockingbird System, with an overlay of the relevant gas gathering systems.



[3] Joint Ex. 29 (Bennett Test.) at 4.
[4] *Id*.

III. PARTIES

CEU

Complainant CEU is a non-operating working interest owner in wells located in Atascosa, Dimmit, Frio, La Salle, McMullen, Webb, and Zavala Counties, Texas. The vast majority of CEU's gas is produced from wells operated by Chesapeake. CEU owns an undivided 33-percent interest of the gas volumes in these wells. CEU has a marketing arrangement with Chesapeake but may elect to take all its gas in kind. CEU is not a signatory to the Mockingbird Agreement and has never been a direct customer of Williams.

EXCO

Complainant EXCO is an operator of approximately 130 wells that it bought from Chesapeake in 2013. From 2013 through 2017, EXCO sold its casinghead gas to Chesapeake, who in turn nominated the gas onto the Mockingbird System pursuant to Chesapeake's Mockingbird Agreement with Williams. In January 2018, EXCO ceased selling its gas to Chesapeake and since then no gas has been gathered from these wells. Like CEU, EXCO is not a signatory to the Mockingbird Agreement and has never been a direct customer of Williams.

Williams

Respondents Williams MLP Operating, LLC, and Mockingbird Midstream Gas Services, LLC, together own and operate the Mockingbird System. As explained in detail below, Williams provides gathering, compression, and treating service for the gas it gathers on the Mockingbird System. Williams is the full owner of the Mockingbird System, purchasing a 50-percent interest in 2012 and the remaining half in 2014.

Williams is a gas utility pipeline as defined in Section 121.001 (Definition of Gas Utility) of the Texas Utilities Code. As a gas utility, Williams is subject to all the duties of gas utilities and pipelines, including the duty not to discriminate in service and charges.[5]

Intervenors

Intervenors Jamestown Resources, LLC, Larchmont Resources, LLC, and Pelican Energy, LLC (collectively, "Intervenors"),[6] are working interest owners of gas in the Eagle Ford that is gathered and shipped on the Mockingbird System. Like CEU, these companies each have marketing arrangements with Chesapeake and may elect to take their gas in kind.

[5] *See* Tex. Util. Code § 121.104 (Discrimination in Service and Charges Prohibited).

[6] These companies also filed their own discrimination claim, which was dismissed for lack of standing prior to the merits hearing (but after their motion to intervene had been granted). Thereafter, they continued to participate in this docket only as intervenors and not as complainants.

IV. JURISDICTION, BURDEN OF PROOF, AND NOTICE

Jurisdiction

The Commission has jurisdiction over Respondents and all matters in this proceeding pursuant to: Chapter 81 (Railroad Commission of Texas) of the Texas Natural Resources Code, including Section 81.051 (Jurisdiction of Commission);[7] Chapter 102 (Jurisdiction and Powers of Railroad Commission and Other Regulatory Authorities) of the Texas Utilities Code, including Section 102.001 (Railroad Commission Jurisdiction);[8] and Chapter 121 (Gas Pipelines) of the Texas Utilities Code, including Section 121.151 (Railroad Commission Regulation of Gas Pipelines).[9]

Burden of Proof

Complainants CEU and EXCO carry the burden of proving their respective discrimination claims by a preponderance of the evidence.[10]

Notice

Proper notice has been issued in this proceeding in accordance with all applicable statutory and regulatory requirements.

On February 22, 2017, CEU served a copy of its complaint on Williams.[11] On March 6, 2017, the Hearings Division sent a letter notifying Williams of the complaint.[12] On March 14, 2017, Williams formally appeared in the case, and since then all subsequent pleadings and amended pleadings have been served directly on their counsel of record.

On May 24, 2019, the presiding Administrative Law Judge ("ALJ") issued the Notice of Hearing, which complied with Chapter 2001 (Administrative Procedure) of the Texas Government Code, Part 1 (Railroad Commission of Texas) of Title 16 (Economic Regulation) of the Texas Administrative Code, and all other applicable requirements. On May 31, 2019, the Notice of Hearing was published in *Gas Utilities Information Bulletin No. 1108*,[13] consistent with Commission Rule § 7.235(b)(1) (Publication and Service of Notice).[14]

---

[7] Tex. Nat. Res. Code § 81.051(a)(3) ("The Commission has jurisdiction over all persons owning or operating pipelines in Texas.").

[8] Tex. Util. Code § 102.001(a)(2) ("The Railroad Commission has exclusive original jurisdiction over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas or synthetic natural gas to a gas utility that distributes the gas to the public.").

[9] *Id*. § 121.151 (Railroad Commission Regulation of Gas Pipelines).

[10] Commission Rule § 1.23(b) ("The complainant in a complaint proceeding shall have the burden of proof which is a preponderance of the evidence.").

[11] CEU Complaint, filed Feb. 22, 2017, at 6 (certifying that a copy was served on Respondents).

[12] Examiner Letter No. 01 (Request for Response to Complaint), issued March 6, 2017.

[13] *Gas Utilities Information Bulletin No. 1108*, published by the Oversight and Safety Division on May 31, 2019 ("Bulletin"), pp. 4-5 (containing the full Notice of Hearing).

[14] Commission Rule § 7.235(b)(1) (for Utilities Code proceedings that are not rate proceedings, requiring the Commission to "publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing").

V. PROCEDURAL HISTORY

On February 22, 2017, CEU filed its initial complaint. On March 14, 2017, Williams appeared in the case, timely answering the complaint and moving for dismissal.[15] On April 17, 2018, after briefing and oral argument, the motion to dismiss was denied.[16] On April 23, 2018, Williams appealed this interim ruling;[17] no action was taken by the Commissioners and consequently the appeal was deemed denied by operation of law.

On June 29, 2018, CEU filed an amended complaint. On August 2, 2018, a motion by Williams to "bifurcate" the docket was approved so that a determination on discrimination could be made prior to a rate proceeding.[18]

On October 4, 2018, EXCO filed a consolidated motion to intervene and complaint. On December 14, 2018, Intervenors Jamestown Resources, LLC, Larchmont Resources, LLC, and Pelican Energy, LLC, filed a consolidated motion to intervene and complaint.

At a prehearing conference held on December 20, 2018, the ALJ granted EXCO's motion to intervene.[19]

On January 14, 2019, EXCO timely amended its complaint. On February 19, 2019, the ALJ granted Intervenors' motion to intervene.[20] On March 1, 2019, Intervenors timely amended their complaint, bringing both a Discrimination Claim and a Rate Claim—similar to CEU and EXCO. Also on March 1, 2019, CEU filed a second amended complaint.

From January 18 to March 11, 2019, Williams separately moved to dismiss each of the complaints, as amended. On May 2, 2019, the ALJ issued a single ruling: (1) denying the motion to dismiss CEU's claims; (2) denying the motion to dismiss EXCO's claims; and (3) partially granting the motion to dismiss Intervenors' claims.[21] On May 7, 2019, Williams and Intervenors separately appealed this interim ruling;[22] no action was taken by the Commissioners and consequently both appeals were deemed denied by operation of law.

---

[15] Response and Motion to Dismiss Complaint, filed by Williams on March 14, 2017.
[16] Order Denying Respondents' Amended Motion to Dismiss OOGC's Complaint, issued on April 17, 2018.
[17] Williams' Appeal of Interim Ruling Denying Motion to Dismiss OOGC's Complaint, filed on April 23, 2018.
[18] Order Granting Williams' Motion to Bifurcate and Modify Scheduling Order, issued on Aug. 2, 2018.
[19] Prehearing Conf. Tr. (Dec. 20, 2018) at 39:3-11 ("I'm going to grant the motion to intervene. I think that EXCO has met the minimum threshold to participate here… So EXCO, your motion to intervene is granted.").
[20] Interim Ruling Granting Intervention by Jamestown Resources, LLC, Larchmont Resources, LLC, and Pelican Energy, LLC, issued Feb. 19, 2019.
[21] Interim Rulings on Respondents' Motions to Dismiss, issued May 2, 2019 (denying dismissal for Intervenors' Rate Claim, but granting dismissal for their Discrimination Claim: "Unlike EXCO, however, these companies did not allege that Respondents demanded compensation from them. Therefore, standing to complain of discrimination has not been established and Respondents' motion to dismiss this claim, without prejudice, is granted.")
[22] Williams' Appeal of Interim Rulings Denying Motions to Dismiss, filed on May 7, 2019; FWPP Companies' Appeal of Interim Ruling Partially Granting Motion to Dismiss FWPP Companies' Amended Complaint, filed on May 7, 2019.

On May 24, 2019, the ALJ issued the Notice of Hearing, setting the merits hearing to commence on June 18, 2019 (the "Notice of Hearing").[23] On May 31, 2019, the Notice of Hearing was published in *Gas Utilities Information Bulletin No. 1108*, available on the Commission's website.[24]

From June 14-18, 2019, the ALJ issued several written evidentiary rulings on the admissibility of certain pre-filed witness testimonies offered by CEU, EXCO, Williams, and Intervenors.[25]

On June 17, 2019, prior to the start of the merits hearing and after notice to the parties,[26] the ALJ severed the Rate Claims of CEU, EXCO, and Intervenors—all of which challenge the lawfulness of the contract rate amounts paid by Chesapeake to Williams under their Mockingbird Agreement—into a separate docket, GUD No. 10856, for the following reasons:

> *Because this docket involves two distinct claims—each involving separate and distinct applicable law and available remedies, each potentially requiring different parties to carry the burden of proof, and neither necessarily contingent upon the outcome of the other—fully severing these claims into separate dockets is appropriate and necessary in the interest of justice. Severance also allows the Commission to make a determination and issue a final order on the Discrimination Claims at an earlier date.*[27]

The merits hearing was held from June 18-20, 2019, in Austin (the "Hearing"). A combined list of the parties' exhibits admitted into the evidentiary record is attached as PFD Attachment 1.

On August 20, 2019, the ALJ made legal findings that certain exhibits and portions of the hearing transcript contain highly-sensitive, confidential information under Chapter 552 (Public Information) of the Texas Government Code and ruled that these materials shall remain sealed permanently in Commission records.[28] The evidentiary record then closed.[29]

---

[23] Examiner Letter No. 39 (Notice of Hearing), issued May 24, 2019 (attaching the Notice of Hearing).
[24] Bulletin, pp. 4-5 (containing the full Notice of Hearing).
[25] Evidentiary Ruling on Admissibility of the Pre-Filed Testimony of Sean Johnson, issued June 14, 2019; Evidentiary Ruling on the Admissibility of the Pre-Filed Testimony of Leo Williams, issued June 14, 2019 (as later reconsidered and partially vacated during the merits hearing at Hearing Tr. [June 18, 2019] at 162:4-17); Evidentiary Ruling on Admissibility of the Pre-Filed (Expert) Testimony of John Emory, issued June 14, 2019; Evidentiary Ruling on Admissibility of the Pre-Filed Testimony of Tyler Farquharson, issued June 14, 2019; Evidentiary Ruling on Admissibility of the Pre-Filed Testimony of Matthew Reynolds, issued June 14, 2019; Evidentiary Ruling on Admissibility of Documents Produced by Respondents, issued June 14, 2019; Evidentiary Ruling on Admissibility of the Supplemental Pre-Filed Testimony of (Expert) Jim Cantwell, issued June 14, 2019; Evidentiary Ruling on Admissibility of the Pre-Filed Testimony of (Expert) Jim Cantwell, issued June 18, 2019; and Evidentiary Ruling on Admissibility of the Pre-Filed Testimony of Walter Bennett, issued June 18, 2019.
[26] Examiner Letter No. 39 (Notice of Hearing), issued May 24, 2019 (also giving notice of a prehearing conference to be held on June 17, 2019, to consider whether rate review and possible rate-setting should be fully severed into a separate docket prior to the merits hearing being called).
[27] Order Severing Rate Claim, issued on June 17, 2019.
[28] Order Permanently Sealing Portions of the Record, issued Aug. 20, 2019.
[29] Examiner Letter No. 48 (Close of Evidentiary Record), issued Aug. 20, 2019.

VI. DISCRIMINATION UNDER TEXAS LAW

Not all discrimination is unlawful. Regulated utilities in Texas may treat customers differently, even similarly-situated customers, if there is a permissible basis for doing so.[30] Generally, proving *unlawful* discrimination requires a showing that (1) some other similar customer exists, (2) receiving contemporaneous service, (3) the treatment is unequal, and (4) there is no permissible basis for the unequal treatment.

Acting in its capacity as a gas utility pipeline, Williams is subject to the anti-discrimination requirements of the Texas Utilities Code and Railroad Commission Rules.

Texas Utilities Code

Section 104.004 (Unreasonable Preference or Prejudice Prohibited) generally provides that a gas utility may not (1) grant an unreasonable preference or advantage concerning rates or services to a person in a classification, (2) subject a person in a classification to an unreasonable prejudice or disadvantage concerning rates or services, or (3) establish or maintain an unreasonable difference concerning rates of services between localities or between classes of service.[31]

Specifically with respect to gas pipelines, Section 121.104 (Discrimination in Service and Charges Prohibited) broadly adds:

> *A pipeline gas utility may not directly or indirectly charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided than the compensation charged, demanded, or received from another for a similar and contemporaneous service*.[32]

Commission Rules

The above statutes embody the broad unlawful conduct prohibited by the Legislature. Through rulemaking, the Commission has construed these laws and determined certain specific acts by gas pipelines that qualify as discriminatory. While not exhaustive of every conceivable act that may constitute unlawful discrimination under the Utilities Code, discussed above, any violation of a Commission rule may also violate the broader statute.

Commission Rule § 7.7001 (Natural Gas Transportation Standards and Code of Conduct) is the Commission's rule prohibiting certain discriminatory conduct by gas pipelines such as Williams. The stated purpose of the rule is to "specify standards of conduct governing the provision of gas transportation services in order to prevent

---

[30] *Amtel Communications, Inc. v. Pub. Util. Com'n of Texas*, 687 S.W.2d 95, 102 (Tex. App.—Austin 1985, no writ) ("*But the [anti-discriminatory] principle includes a permissible range of unequal treatment which, while literally discriminatory, is not unlawfully so.* The dividing line is generally that drawn by the rule of reasonableness, for mere inequality is not itself unlawful discrimination.") (emphasis in original).

[31] Tex. Util. Code § 104.004.

[32] *Id*. § 121.104(a)(2).

discrimination prohibited by [Common Purchaser laws and Gas Regulation laws], which if violated, as found by the Commission, may constitute evidence of unlawful discriminatory activity."[33] Specifically, the rule requires that a gas pipeline shall:

- *Not give any shipper preference in the provision of transportation services over any other similarly-situated shippers*;[34] and
- *Process requests for transportation services from any shipper in a similar manner and within a similar period of time as it does for any other similarly-situated shipper*.[35]

Though the word "discrimination" is not found anywhere in the operative language of this rule, it is defined elsewhere as follows:

> *Any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly-situated shippers*.[36]

While defined terms and rules governing penalties,[37] by themselves, do not typically serve independently to prohibit conduct, the apparent intent of the Commission here was to do so. Conduct by gas pipelines that meets these defined criteria, therefore, also must be considered unlawful and prohibited by the Commission.

Each of the above three discriminatory actions uses the term "similarly-situated shippers." This term is defined by the Commission as follows:

> *Any shipper that seeks or receives transportation service under the same, or substantially the same, physical, regulatory, and economic conditions of service as any other shipper of a transporter*.[38]

In determining whether conditions of service meet these criteria, the Commission shall evaluate the significance of relevant conditions that are material and probative.[39]

Finally, in determining whether a gathering pipeline has engaged in prohibited discrimination against a shipper of natural gas, the Commission must "consider all relevant and material facts."[40]

---

[33] Commission Rule § 7.7001(a).
[34] *Id*. § 7.7001(b)(3).
[35] *Id*. § 7.7001(b)(4).
[36] *Id*. § 7.115(12) (Definitions).
[37] *See id*. § 7.7003(c)(2) (Administrative Penalties and Other Remedies for Discrimination) (imposing a penalty on natural gas gatherers for "discrimination" as that term is defined in Commission Rule § 7.115 (Definitions)).
[38] *Id*. § 7.115(32) (Definitions).
[39] Including, but not limited to, the following: (1) service requirements; (2) location of facilities; (3) receipt and delivery points; (4) length of haul; (5) quality of service (firm, interruptible, etc.); (6) quantity; (7) swing requirements; (8) credit worthiness; (9) gas quality; (10) pressure (including inlet or line pressure); (11) duration of service; (12) connection requirements; and (13) conditions and circumstances existing at the time of agreement or negotiation. *See* Commission Rule § 7.7003(d).
[40] Commission Rule § 7.7003(e).

VII. DISCRIMINATION ALLEGED AGAINST WILLIAMS

Broadly summarized, CEU and EXCO complain that Williams unfairly holds them to the same service and rates of Williams's anchor shipper, Chesapeake, despite CEU and EXCO not being signatories to Chesapeake's anchor shipper agreement with Williams (the Mockingbird Agreement) and despite Williams not doing this to certain other shippers on the system. Also, because the terms of the Mockingbird Agreement economically incentivize Williams to offer CEU and EXCO only the higher anchor rate paid by Chesapeake, CEU and EXCO additionally argue that the Mockingbird Agreement itself is discriminatory.

Many of the facts in this proceeding are not in dispute. Of the 90 total evidentiary exhibits in the record, 68 are joint exhibits. A significant portion of the evidentiary record contains highly sensitive, confidential information related to private customer information, contracts, and business negotiations. These exhibits were sealed by the ALJ following post-Hearing briefing by the parties.[41] All the comparison customers discussed below are referred to only by an identifying number, rather than their actual corporate name.

CEU and Williams each provided nonconfidential demonstrative exhibits that, while not by themselves weighable evidence, illustrate their core respective arguments and positions. Both are attached to this PFD as PFD Attachment 2 (CEU) and PFD Attachment 3 (Williams).

A. Relevant Timeline

2010: CEU purchases from Chesapeake an undivided 33-percent interest in oil and gas leases and other assets in the Eagle Ford, encompassing approximately 600,000 acres, for approximately $2.1 billion.[42]

CEU and Chesapeake enter into a Development Agreement, whereby Chesapeake markets CEU's production until such time as CEU elects to take its production in kind.[43]

CEU's gas is gathered on the system at this time under a fixed-fee gas gathering agreement between Chesapeake Energy Marketing, Inc. ("CEMI"), on the producer's side, and the then-owner of the system, Chesapeake Midstream Operating ("CMO"), and Mockingbird Midstream Gas Services, LLC ("Mockingbird"), both on the gatherer's side (the "CMO Agreement").[44]

[41] Order Permanently Sealing Portions of the Administrative and Evidentiary Record, issued Aug. 20, 2019 (permanently sealing Exhibit Nos. 2, 3, 9, 11, 14, 16, 27, 31, 40, 43, 44, 45, 47, 48, 67, 68, and 69 (select pages), as well as select portions of the Hearing transcript).
[42] CEU Ex. 41 (Williams Test.) at 5.
[43] Joint. Ex. 43 (Development Agreement).
[44] CEU Ex. 41 (Williams Test.) at 6; Joint Ex. 2 (CMO Agreement).

2012: Chesapeake Energy Corporation sells its subsidiary, CMO (including the gas-gathering system) to Access Midstream Partners for $2.16 billion.[45]

Chesapeake, Access Midstream Partners, Mockingbird, and Williams together negotiate and draft the Mockingbird Agreement,[46] which replaces the CMO Agreement.[47]

Williams acquires 50-percent ownership in Access Midstream Partners.[48]

2013: EXCO purchases the leasehold and well interests of 130 of Chesapeake's wells.[49] From 2013 through 2017, Chesapeake purchased the casinghead gas produced by these EXCO wells, and Chesapeake then nominated the gas to the Mockingbird System via its Mockingbird Agreement with Williams.[50]

2014: Williams acquires the remaining half of Access Midstream Partners (and full ownership of the Mockingbird System).[51]

Shippers 14, 15, and 27 become Williams customers.[52]

2015: CEU contacts Williams by email about the "options and possibility" of a gathering contract with Williams.[53]

2016: CEU requests, by telephone, gathering rates and terms of service from Williams.[54]

Shipper 33 becomes a Williams customer.[55]

2017: CEU emails Williams asking to "talk to someone" about gathering rates.[56]

CEU again asks Williams about rate options.[57]

Williams gives CEU a written offer, which references the Mockingbird Agreement and offers a "blended" version of Chesapeake's rate.[58]

CEU sends a written request to Williams, requesting rate quotes.[59]

Williams gives EXCO a written offer, which references the Mockingbird Agreement and offers a rate consistent with Chesapeake's rate.[60]

---

[45] Hearing Tr. (June 19, 2019) at 204 (Bennett testifying); Joint Ex. 28 (Bennett Test.) at 6.
[46] CEU Ex. 42/Williams Ex. 69 (Bennett Deposition Tr.) at 31:6-21; Joint Ex. 3 (Mockingbird Agreement), Exhibit A-2, Section 10.13.
[47] Joint Ex. 28 (Bennett Test.) at 7-11.
[48] Hearing Tr. (June 19, 2019) at 205 (Bennett testifying).
[49] Joint Ex. 100 (PSA between Chesapeake and EXCO).
[50] Joint Ex. 93 (Transaction Confirmation No. 7).
[51] Joint Ex. 28 (Bennett Test.) at 3 n2.
[52] Joint Exs. 116 (Shipper 14 contract), 117 (Shipper 15 contract), and 119 (Shipper 27 contract).
[53] Joint Ex. 4 (email from CEU and Williams, dated Dec. 9, 2015).
[54] CEU Ex. 41 (Williams Test.) at 12 ("In our telephone conversations, which continued into January of 2016, I requested rates and terms of service for CEU's volumes, but never received either. Further, Mr. Baker told me that Respondents would not offer CEU any rate that was different than what it was charging Chesapeake under the Mockingbird Agreement.").
[55] Joint Ex. 120 (Shipper 33 contract).
[56] Joint Ex. 5 (email from CEU to Williams, dated June 6, 2017).
[57] Joint Ex. 6 (email from CEU to Williams, dated July 13, 2017).
[58] Joint Ex. 9 (letter from Williams to CEU, dated Aug. 24, 2017).
[59] Joint Exs. 7 and 8 (letters from CEU to Williams, dated October 5 and 16, 2017).
[60] Joint Ex. 99 (letter from Williams to EXCO, dated October 24, 2017).

B. The Mockingbird Agreement

The Mockingbird Agreement and its terms are the centerpiece of the gas-gathering relationship between Williams and its anchor shipper, Chesapeake.

Prior to 2012, the Mockingbird System was owned by CMO, a Chesapeake midstream affiliate. As shown in the above timeline, three linked transactions occurred in late 2012 to transfer ownership of the Mockingbird System: (1) Chesapeake Energy Corporation sold CMO (which owned the Mockingbird System) to Access Midstream Partners for $2.16 billion; (2) Williams bought a 50-percent ownership interest in Access Midstream Partners;[61] and (3) Chesapeake, Mockingbird, Access Midstream Partners, and Williams together negotiated and drafted the new Mockingbird Agreement, which replaced the old CMO gathering agreement.[62]

Under the Mockingbird Agreement, Chesapeake dedicates all the gas from its wells on the covered acreage, including gas owned by CEU and other working-interest owners. In large part because the building of the Mockingbird System was predicated on gas volumes and revenues from the dedicated Chesapeake-operated wells, the Mockingbird Agreement was structured "to help ensure that all such gas volumes—volumes for which the system was built—would continue to flow on the system."[63] The structure of the Mockingbird Agreement was an important part of the balance struck that allowed the system to be built in light of the large scope of Chesapeake's leases and the high upfront capital costs that Williams bore totaling over $1.6 billion.[64] The rates charged to Chesapeake under the Mockingbird Agreement are designed both to recoup to Williams these prior capital investment costs, as well as Williams's costs to provide actual gathering service to Chesapeake.[65]

A key feature of the Mockingbird Agreement is Chesapeake's right to "approve" any rate Williams offers new customers producing gas from wells owned by Chesapeake in 2012, which applies to CEU and EXCO (CEU owns an undivided 33-percent interest in the volumes produced from the wells then-owned by Chesapeake, including 130 wells that EXCO subsequently purchased from Chesapeake). The "approval" provision does not give Chesapeake any power over the rates Williams charges new customers; it serves as an accounting feature to reduce Chesapeake's annual revenue obligations to Williams if Williams chooses to offer another shipper a lower rate than what Chesapeake pays.[66] A lower rate "disapproved" by Chesapeake but offered anyway by Williams to a new shipper will not consequently increase Chesapeake's revenue obligations to Williams.[67]

---

[61] Williams bought the remaining half in 2014.

[62] CEU Ex. 42/Williams Ex. 69 (Bennett Deposition Tr.) at 25:12-27:13.

[63] Joint Ex. 28 (Bennett Test.) at 9.

[64] *Id*.; Williams Post-Hearing Br. At 3.

[65] Joint Ex. 28 (Bennett Test.) at 11 ("Under the [Mockingbird] Agreement, the rates paid by Chesapeake helped pay for the building of the [Mockingbird] System."); *id*. at 13 ("Under the Agreement, Mockingbird incurs the connection costs and they are folded into the cost of service determination."); Joint Ex. 29 (Cantwell Test.) at 12 ("It is worth repeating, 80% of the System Fees for the four Mockingbird Systems is directly attributable to the capital and Target Return aspects of the Mockingbird Agreement where [Williams] bore all the upfront capital risk.").

[66] *See* Joint Ex. 3 (Mockingbird Agreement), Exhibit C-1, Section 3.2(b) (Rich), Exhibit C-2, Section 3.2(b) (Deep), Exhibit C-3, Section 3.2(b) (Shallow), and Exhibit C-4, Section 3.2(b) (Treating).

[67] Each year, the Mockingbird Agreement COS Model calculates "redetermined" rates designed to give Williams an 18-percent rate of return each year on all costs and expenses.

C. Complainants' Evidence and Arguments

Complainants CEU and EXCO are aligned on all issues. A nonconfidential slide-deck presentation offered at the Hearing that summarizes their discrimination claims and main arguments is attached as PFD Attachment 2. Together, they make identical claims and theories of discrimination against them by Williams. The primary claims are that: (1) the Chesapeake "approval provisions" in the Mockingbird Agreement are discriminatory on their face by granting an unreasonable advantage to Chesapeake, while at the same time disadvantaging CEU and EXCO; and (2) economically incentivized by the operation of these "approval provisions," Williams discriminated against CEU and EXCO by offering them only Chesapeake's anchor contract rate, which is significantly higher than rates paid by similarly-situated shippers. In support, CEU and EXCO provide testimony from the below witnesses.

- *Sean T. Johnson* (CEU), Managing Counsel and Assistant Secretary for CEU. Mr. Johnson describes the history of CEU's participation with Chesapeake in the Eagle Ford, CEU's contractual right with Chesapeake to take its gas in kind, and CEU's attempts to engage Williams to become a direct customer/shipper on the Mockingbird System.[68]
- *Leo Williams* (CEU), Senior Commercial Representative for CEU. Mr. Williams also discusses the history of CEU's participation with Chesapeake in the Eagle Ford, as well as CEU's attempt to obtain a rate from Williams.[69]
- *Jane Kidd* (CEU), an economist and Managing Member of Energy Litigation Services Group, a Houston-based economic consulting firm that focuses on the energy industry. Ms. Kidd explains the economic incentives under the Mockingbird Agreement, including the Chesapeake Approval Provisions, and why—according to CEU—the Mockingbird Agreement prevents Williams from offering CEU a non-discriminatory rate.[70]
- *John Emory* (CEU), an engineer and a Senior Consultant at Watson Millican & Company, an independent energy consultancy specializing in the energy industry. Mr. Emory offers opinions regarding which shippers on the Mockingbird System are similarly-situated to CEU, and whether rates charged to CEU unreasonably disadvantages or prejudices CEU.[71]
- *Tyler Farquharson* (EXCO), a Vice President and the Chief Financial Officer and Treasurer of EXCO Resources, Inc., and its wholly-owned subsidiary EXCO Operating Company, LP. Mr. Farquharson discusses the history of EXCO's presence in the Eagle Ford, EXCO's business relationship with Chesapeake, and EXCO's attempts to obtain gathering service from Williams.[72]

[68] CEU Ex. 30 (Johnson Test.).
[69] CEU Ex. 41 (Williams Test.).
[70] Joint Ex. 24 (Kidd Test.).
[71] CEU Ex. 39 (Emory Test.).
[72] EXCO Ex. 91 (Farquharson Test.).

1. *"Approval Provisions" in the Mockingbird Agreement*

CEU's gas and EXCO's gas both qualify as "third party gas" as the Mockingbird Agreement uses this term, meaning gas that is produced from wells Chesapeake owned in 2012 when it agreed to dedicate all its gas to Williams under the Mockingbird Agreement. Gathering rates for CEU's and EXCO's "third party" gas, then, are subject to the Chesapeake approval provisions in the Mockingbird Agreement, meaning that if Chesapeake "approves" lower rates for CEU and EXCO then the COS Model used in the Mockingbird Agreement probably would result in a higher revenue obligation for Chesapeake to pay to Williams to assure Williams an annual 18-percent rate of return.

CEU and EXCO argue that Chesapeake, acting in its economic self-interest, never will "approve" a lower rate for CEU and EXCO because doing so likely would result in more money that Chesapeake would have to pay annually to Williams. If Chesapeake "disapproves" a lower rate for CEU and EXCO, Williams then becomes economically incentivized not to offer CEU and EXCO anything lower than what Chesapeake pays, because doing so would reduce Williams's revenue under the COS Model. Because these "third party gas" approval provisions create strong economic incentives for Chesapeake to "disapprove" lower rates for CEU and EXCO, and for Williams consequently not to offer CEU and EXCO a lower rate than Chesapeake pays, CEU and EXCO argue that these approval provisions give an unfair advantage to Chesapeake and unreasonably disadvantage CEU and EXCO.

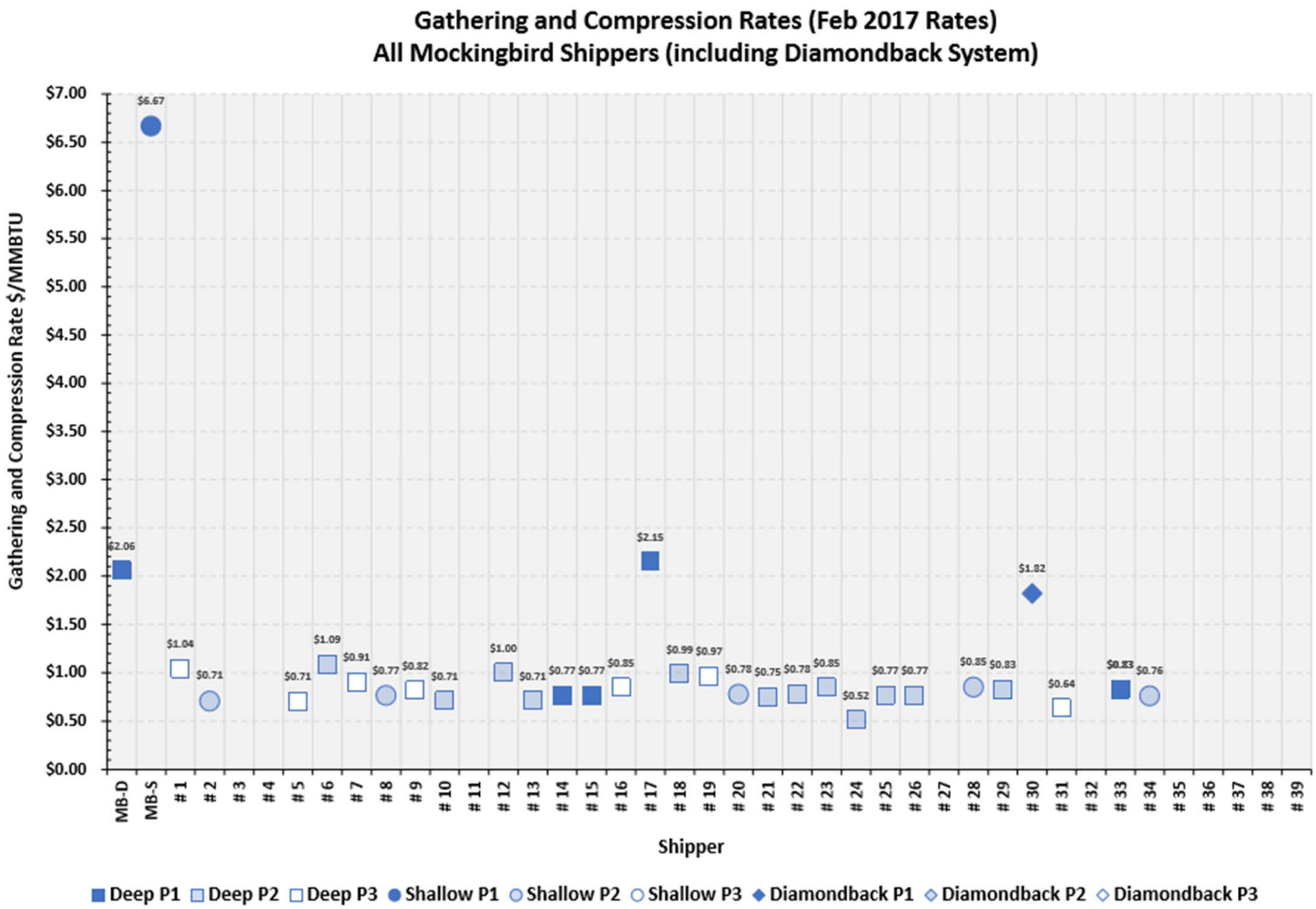
2. *Rates Offered to CEU and EXCO*

CEU and EXCO identified three other shippers in the Deep system (Shippers 14, 15, and 33) and one other shipper in the Shallow system (Shipper 27), all paying significantly lower rates than what CEU and EXCO were offered. According to CEU and EXCO, these are similarly-situated shippers, and Williams discriminated against CEU and EXCO in charging those shippers much lower rates, while only offering CEU and EXCO the same rates paid by Chesapeake under the Mockingbird Agreement.

In 2017, the Mockingbird Agreement rate in the Deep system was \$2.06/MMBtu. The same year and in the same system, the rates paid by Shippers 14, 15, and 33 ranged from \$0.77-0.83/MMbtu.[73] The Mockingbird Agreement rate in the Shallow system was \$6.67/MMbtu. The rate for Shipper 27 in the Shallow system was \$0.99/MMbtu.[74] According to CEU and EXCO, these lower rates are explainable and directly attributable to the "approval provisions" in the Mockingbird Agreement. Shippers 27 and 33 do not have "third party gas" and therefore are not subject to the above-discussed approval provisions. Put differently, Williams could charge these shippers much lower rates without significantly reducing Chesapeake's revenue obligations. Shippers 14 and 15 *do* have "third party gas," but they were located nearby to an alternative gas-gatherer, and both Chesapeake and Williams wanted to keep them on the system.

[73] CEU Ex. 39 (Emory Test.) at 37, Table 5.
[74] *Id*.

The below graph shows the rates paid by all Mockingbird shippers in 2017, including Shippers 14, 15, and 33,[75] compared to the Mockingbird Agreement (MB) rates on the far left.



As shown above, the Priority 1 rates (P1) for Shippers 14, 15, and 33 were less than half of the Mockingbird Agreement rate for the Deep system (MB-D). This graph also shows that several other Deep and Shallow customers received other quality of service options—Priority 2 (P2) and Priority 3 (P3)—at much lower rates than the corresponding Mockingbird Agreement rate, particularly in the Shallow system (MB-S). In addition to claiming discrimination based on the Mockingbird Agreement "approval provisions" and being offered higher comparative rate amounts, CEU and EXCO also allege that Williams discriminated against them by only offering firm Priority 1 rates, rather than other quality of service options.

[75] Shipper 27 had a "shifting quality of service" whereby the priority service level it obtains is dependent on the volume of gas it delivers at the receipt points. Joint Ex. 28 (Bennett Test.) at 16. Earlier, Shipper 27 paid $0.99/MMBtu in the Shallow system. CEU Ex. 39 (Emory Test.) at 37.

D. Opposition by Respondents

Respondents opposes all claims by CEU and EXCO and maintains that its treatment of CEU and EXCO was lawful and nondiscriminatory. A nonconfidential chart offered at the Hearing that illustrates Williams's position on similarly-situated shippers is attached as PFD Attachment 3. In further support, Williams provides testimony from the below witnesses.

- *Walter Bennett*, Senior Vice President of Williams's West Operating Area, which includes natural gas gathering and processing operations in Texas, Oklahoma, Louisiana, Colorado, and Wyoming. Mr. Bennett discusses CEU's and EXCO's relationship to the Mockingbird System, the mechanics of the Mockingbird Agreement and circumstances surrounding its creation, and the business risk Williams took when it bore the upfront capital investment in the Mockingbird System exceeding $1.6 billion. Mr. Bennett also offers opinions on similarly-situated shippers.[76]
- *Jim Cantwell*, an engineer and independent expert consultant. Mr. Cantwell responds to the expert witness testimony offered by CEU and offers his own opinions on (1) the reasonableness of fees charged by Williams to its shipper customers on the Mockingbird System, (2) the primary factors that define whether two or more shippers under the same or separate agreements are similarly situated, and (3) whether the rates charged by Williams under any of its agreements are discriminatory among similarly-situated shippers.[77]

Williams explains that it purchased the system and further expanded it primarily to serve gas volumes from Chesapeake's wells, and these now include both CEU's and EXCO's volumes. CEU and EXCO, therefore, are direct beneficiaries of all the upfront capital investment costs spent by Williams on the system, just like Chesapeake, and should pay what Chesapeake pays.[78] The ongoing development of the Mockingbird System facilitates Chesapeake's (as well as CEU's and EXCO's) drilling plans and allows gas to be gathered, treated, and saved for beneficial uses rather than having billions of cubic feet of natural gas and natural gas liquids wasted.[79] Due to the scope of their position in the Eagle Ford, Chesapeake and its non-operating working interest owners were intended to be the baseload shippers for the gathering system.[80] Accordingly, the system was designed to accommodate and benefit Chesapeake and CEU.[81]

Though Shippers 14 and 15 also produce from Chesapeake "dedicated" wells, like CEU and EXCO, Williams argues that giving those customers lower prices was necessary to keep them on the system because they had access to another gatherer.

[76] Joint Ex. 28 (Bennett Test.).
[77] Joint. Ex. 29 (Cantwell Test.).
[78] Joint Ex. 28 (Bennett Test.) at 6-11.
[79] *Id*. at 7-8.
[80] *Id*. at 8.
[81] *Id*.

Williams provides the below chart to illustrate and highlight that CEU is similarly-situated only to Chesapeake.[82]

	CEU	Chesapeake
Exhibit Reference		Exhibit 3
Contract Name	None. CNOOC delegated all gathering and marketing decisions to Chesapeake	Gas Gathering Contract Cost of Service Eagle Ford "Mockingbird Agreement"
Contract Date	N/A	July 2012
(1) Service Requirements	Gathering Compression Treating	Gathering Compression Treating
(2) Location of Facilities & Gathering Subsystem	**7 Counties / 11 Subsystems** Rich GGS Dos Hermanos Faith Deep GGS Dilley Catarina Fox Creek Javelina Leona Teds Shallow GGS Frio Nopal White Tail ***Williams spent > $1.5 billion in capital to build the system at no upfront cost to CNOOC & Chesapeake***	**7 Counties / 11 Subsystems** Rich GGS Dos Hermanos Faith Deep GGS Dilley Catarina Fox Creek Javelina Leona Teds Shallow GGS Frio Nopal White Tail ***Williams spent > $1.5 billion in capital to build the system at no upfront cost to CNOOC & Chesapeake***
(3) Receipt and Delivery Points	**More than 700 receipt points** located across the Mockingbird System	**More than 700 receipt points** located across the Mockingbird System
(4) Length of Haul	CNOOC has an interest in **more than 2,700 Chesapeake operated wells and more than 500,000 acres of leases** served by the Mockingbird Agreement CNOOC and Chesapeake use virtually all of the Mockingbird system's 1,000 miles of pipeline	Chesapeake operates **more than 2,200 wells and more than 500,000 acres of leases** served by the Mockingbird Agreement CNOOC and Chesapeake use virtually all of the Mockingbird system's 1,000 miles of pipeline

[82] Williams Closing Statement and Br., pp. 12-14.

	CEU	Chesapeake
(5) Quality of Service (Firm, Interruptible, etc.)	Priority 1 — Firm	Priority 1 — Firm
(6) Quantity	The Mockingbird Agreement is considered the anchor contract and the huge volumes enabled the system to be constructed	The Mockingbird Agreement is considered the anchor contract and the huge volumes enabled the system to be constructed
(11) Duration of Service	Chesapeake's and CNOOC's gas is currently delivered by Chesapeake under the Mockingbird Agreement, which has a 20-year term	Chesapeake's and CNOOC's gas is currently delivered by Chesapeake pursuant to the Mockingbird Agreement, which has a 20-year term
(12) Connect Requirements	CNOOC and Chesapeake bear no upfront connection or capital costs	CNOOC and Chesapeake bear no upfront connection or capital costs
(13) Other Relevant Conditions	Chesapeake and CNOOC retain the valuable drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Chesapeake and CNOOC retain the valuable drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*
(7) Swing Requirements	N/A	N/A
(8) Credit Worthiness	N/A	N/A
(9) Gas Quality	Same standards apply; treating required	Same standards apply; treating required
(10) Pressure	Same standards apply	Same standards apply
WILLIAMS'S CONCLUSION	**CEU IS SIMILARLY SITUATED TO CHESAPEAKE**	**CEU IS SIMILARLY SITUATED TO CHESAPEAKE**

VIII. ANALYSIS AND FINDINGS

Discrimination is about unequal treatment, not fair prices. Though the types of discrimination alleged here pertain to rates, this is not a rate case and the lawfulness of the rate amounts offered to CEU and EXCO—under either a cost-of-service or market-based methodology—are not at issue.

Also not at issue are the present or past business relationships between Chesapeake and its own customers, including CEU and EXCO. For this docket, Williams is a gas utility pipeline with regulated duties to treat all its similarly-situated customers and prospective customers equally and without unlawful discrimination, regardless the contractual arrangements they may have with other companies.

As treated separately below, CEU and EXCO each proved the same two separate acts of unlawful discrimination by Williams: (1) attempting to recoup from them a portion of $1.6 billion in prior initial system investment costs incurred by Williams, while writing these charges off for other similarly-situated customers; and (2) processing their request for service in a different manner than requests from other similarly-situated customers. Both are curable without the need for ratesetting by the Commission.

A. Approval Provisions in the Mockingbird Agreement

Regulated companies alone are accountable to the regulator for their conduct and blame for any unlawful actions should not be shifted to private contracts, which by extension also shifts blame to the other signatories. Language in private contracts exists for only one purpose: to create duties owed to the contracting parties. Should a regulated company put itself in a position where complying with its regulated duties consequently breaches a contractual duty—or triggers a *force majeure* event—then any remedy at law belongs exclusively to the other party to the contract, away from regulatory proceedings.

Notwithstanding this, it does not appear that the Mockingbird Agreement asks Williams to make this choice. The disputed "third party gas" approval provisions, located in attached "Cost of Service Calculation Methodology" exhibits rather than in the main contract,[83] facially and plainly function as revenue inputs used to calculate Chesapeake's annual revenue obligations to Williams. They do not prohibit Williams from offering different rates to any other customers, nor do they require Williams to treat any other customers the same as Chesapeake. Ultimately, these are mere accounting terms that do not appear designed give advantage to Chesapeake or prevent Williams from separately and additionally complying with its obligations as a regulated pipeline. Most companies, presumably, are "economically incentivized" to generate profits and must strike a balance with doing so lawfully. That Williams is similarly incentivized, by itself, does not unreasonably disadvantage or prejudice CEU or EXCO.

[83] *See* Joint Ex. 3 (Mockingbird Agreement), Exhibit C-1, Section 3.2(b) (Rich), Exhibit C-2, Section 3.2(b) (Deep), Exhibit C-3, Exhibit 3.2(b) (Shallow), and Exhibit C-4, Section 3.2(b) (Treating).

B. Charges and Quality of Service Offered by Williams

CEU and EXCO broadly complain of unfair treatment by Williams stemming from Williams holding them to the same firm service and rates of Williams's anchor shipper, Chesapeake, pursuant to terms of an anchor shipper contract to which CEU and EXCO are not signatories. Included in this alleged general misconduct, however, are discreet and separate acts, each potentially discriminatory in itself and therefore each warranting separate legal treatment: (1) Williams requiring repayment from CEU and EXCO for the $1.6 billion Williams spent on the Mockingbird System, while writing these amounts off for certain other customers; and (2) Williams offering CEU and EXCO only firm "Priority 1" service, while at the same time providing certain other shippers with more options.

<u>Similarly-Situated Shippers, Generally</u>

Discrimination is about unequal treatment, and so properly analyzing any discrimination claim by a shipper or prospective shipper involves selecting some other similar shippers, if any exist, that are relevant to the alleged misconduct. The Utilities Code never uses the term "similarly-situated shipper," requiring instead only that the comparable shipper or shippers be receiving "similar and contemporaneous service."[84] For all prohibited conduct under the Commission's rules, the comparable shipper must be "any shipper that seeks or receives transportation services under the same or substantially the same, physical, regulatory, and economic conditions of service."[85] The Commission may consider this criteria and the related nonexhaustive factors[86] independent of any arguments from the parties and determine based on the entire evidentiary record which shippers, if any, are similarly situated.[87]

Regardless the authority, forcibly shoehorning a single set of conditions to apply to multiple distinct acts of alleged unlawful conduct is a misstep that would complicate and ultimately frustrate any attempt to analyze these separate acts properly and clearly.[88] The total impasse of Williams, CEU, and EXCO to reach any agreement on similarly-situated shippers for these claims is the unsurprising result of their futile attempts at this. For each of the below types of alleged misconduct, different relevant conditions apply.

<u>Bases for Unequal Treatment, Generally</u>

As discussed above, unequal treatment by a gas pipeline is not automatically unlawful, even among similarly-situated shippers. Texas law affords public utilities a

---

[84] Tex. Util. Code § 121.104(a)(2) (Discrimination in Service and Charges Prohibited) ("A pipeline gas utility may not directly or indirectly charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided than the compensation charged, demanded, or received *from another for a similar and contemporaneous service*.") (emphasis added).

[85] Commission Rule § 7.115(32).

[86] *Id*.

[87] *Id*. ("[T]he Commission shall evaluate the significance of relevant conditions...").

[88] *See, e.g.*, *Black v. City of Killeen*, 78 S.W.3d 686, 699 (Tex. App.—Austin 2002, pet. denied) (citing *Ford v. Rio Grande Val. Gas Co.*, 141 Tex. 525, 527 (1943)) ("No rule of thumb exists for determining whether customers are similarly situated. The question of discrimination is one of fact and must be decided on a case-by-case basis."); *Amtel Communications*, 687 S.W.2d at 102 (same).

permissible range of unequal treatment which, while literally discriminatory, is not unlawfully so.[89] With respect to a gas pipeline's rates, service, and conditions of service, the unequal treatment must *unreasonably* disadvantage or prejudice the complaining shipper to amount to unlawful discrimination.[90] It is important, then, not to conflate "similarly-situated shipper" conditions with the gas pipeline's reasons for the unequal treatment. These are two distinct elements of unlawful discrimination and must be analyzed separately.

1. Charges

The single most impactful and contested issue in this docket is whether Williams lawfully may require CEU and EXCO to repay the approximately $1.6 billion Williams spent on the Mockingbird System. The answer to this question in a discrimination case may differ from the answer in a rate case, where different ratesetting laws apply that speak to a utility's right to recover certain expenses under traditional rate case elements, such as invested capital that is "used and useful" to certain customers.[91] Where discrimination is alleged, the guiding issue is *equal treatment by the utility*, not whether certain charges may be recoverable from customers under ratesetting standards and principles.[92]

For billing purposes, pipelines often combine recovery of initial capital investment costs, such as a new pipeline system, together with rates for the actual underlying service provided, such as gas gathering service. These combined charges, however, ask customers to pay for separate and distinct products: (1) costs to the pipeline to build or acquire the infrastructure needed to physically reach and connect

---

[89] *Amtel Communications*, 687 S.W.2d at 102 ("*But the [anti-discrimination] principle includes a permissible range of unequal treatment which, while literally discriminatory, is not unlawfully so.* The dividing line is generally that drawn by the rule of reasonableness, for mere inequality is not itself unlawful discrimination. That is to say, the different treatment practiced by the public utility must be founded upon a substantial and reasonable ground of distinction between the favored and disfavored classes or individuals.") (emphasis in original); *see also United Gas Corp. v. Shepherd Laundries Co.*, 144 Tex. 164, 172–73 (1945) ("Mere inequality in charges does not, therefore of itself amount to an unjust discrimination. It only becomes such when a discrimination is made in the rates charged for transportation of the goods of the same class of different shippers under like circumstances and conditions."); *Westlake Ethylene Pipeline Corp. v. R.R. Comm'n of Texas*, 506 S.W.3d 676, 683 (Tex. App.—Austin 2016, pet. denied) ("…the determination of what constitutes an unjust or unreasonable discrimination as between shippers is ordinarily a question of fact") (internal quote omitted); *El Paso Elec. Co. v. Pub. Util. Com'n of Texas*, 917 S.W.2d 846, 864 (Tex. App.—Austin 1995), writ dismissed by agreement sub nom. *El Paso Elec. Co. v. Pub. Util. Com'n*, 917 S.W.2d 872 (Tex. App.—Austin 1996, no writ) (unequal treatment by a utility is not unlawful discrimination where a "substantial and reasonable" basis exists for the distinction).

[90] *See Commission Rule* §§ 7.115(12) (defining discrimination) (emphasis added), and 7.703(c)(2) (imposing an administrative penalty against a gatherer for unreasonable discrimination).

[91] *See, e.g.*, Tex. Util. Code § 104.051 (Establishing Overall Revenues) ("In establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues at an amount that will permit the utility a reasonable opportunity to earn a reasonable return on the utility's invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses.").

[92] *See, e.g.*, *United Gas*, 144 Tex. at, 170 ("[A] discrimination may arise from a mere inequality in rates but an overcharge arises only when the rate charged is unreasonable in and of itself, irrespective of the rate exacted of others…"); *Collerain v. City of Granbury*, 760 S.W.2d 364, 367 (Tex. App.—Fort Worth 1988, no writ) ("An overcharge occurs when the rate charged is 'unreasonable in and of itself' irrespective of the rate charged other similarly-situated customers; or an overcharge occurs when the rate charged is in excess of the rates established for the particular customer or business. By contrast, discrimination may occur from a mere inequality of rates charged similarly-situated customers. Therefore, every overcharge, when one customer is charged more than other similarly-situated customers, is a discrimination; but not every discrimination is an overcharge.").

to customers, plus a return on that investment; and (2) costs to the pipeline for providing the actual underlying service.

Here, the rate Williams charges its anchor shipper, Chesapeake, pursuant to the Mockingbird Agreement includes both of these distinct products: (1) repayment of the $1.6 billion Williams spent on the system, and (2) actual gathering service.[93] By only offering CEU and EXCO the same rate—or constructively the same rate—that Chesapeake pays, Williams required CEU and EXCO to pay for both things, as well. Because CEU and EXCO sought only gathering service from Williams, but Williams offered only a rate amount paid by its anchor shipper that includes both gathering service *and* repayment of the $1.6 billion Williams spent on the system, parsing these two products out and treating each individually is necessary to see whether Williams unlawfully discriminated with either charge.

1. Repayment to Williams for the Cost of the System

Williams estimates that roughly 80 percent of the rate it charges to its anchor shipper, Chesapeake, is to pay itself back the $1.6 billion Williams spent on the Mockingbird System, plus a return on that investment.[94] From late 2015 through 2017, CEU and EXCO made attempts to obtain gathering service and rates from Williams,[95] and Williams responded by offering the same—or constructively the same—rates and service of its anchor shipper, Chesapeake.[96] At this same time: the Mockingbird Agreement was still in effect[97]; the $1.6 billion Williams spent on the Mockingbird System was not yet paid back[98]; and Williams was not requiring this repayment from certain other customers.[99]

---

[93] Joint Ex. 28 (Bennett Test.) at 11 ("Under the [Mockingbird] Agreement, Williams bore the upfront cost on the main system as well as the cost of connecting new wells. That cost is in excess of $1 billion. . . . Under the [Mockingbird] Agreement, the rates paid by Chesapeake helped pay for the building of the [Mockingbird] System, at a cost to date of over $1 billion, plus the rates help cover on-going operating costs and overhead."), and at 13 ("Under the Agreement, Mockingbird incurs the connection costs and they are folded into the cost of service determination. If those costs are instead borne by the producer, the gatherer does not need to recover those costs or any return on capital and the gatherer's gathering rate will be lower."); Joint Ex. 29 (Cantwell Test.) at 12 ("It is worth repeating, 80% of the [rates charged to Chesapeake] for the four Mockingbird Systems is directly attributable to the capital and Target Return aspects of the Mockingbird Agreement where [Williams] bore all the upfront capital risk. When you compare the [rates charged to Chesapeake] apples to apples on a given system to the [rates charged to third-party shippers] on that system by eliminating the capital and Target Return component of the System Fee, you will find them to be comparable and non-discriminatory.").

[94] Joint Ex. 29 (Cantwell Test.) at 12.

[95] Joint Exs. 4 (December 2015 email chain between CEU and Williams), 5 (June 2017 email chain between CEU and Williams), 6 (July 2017 email chain between CEU and Williams), 7 and 8 (letters dated October 5 and 16, 2017, from CEU to Williams requesting "quotes for gas gathering services" relating to all CEU's production from all wells operated by Chesapeake and by EXCO); EXCO Ex. 91 (Farquharson Test.) at 5 ("EXCO has requested rates from [Williams] and the parties have discussed the possibility of EXCO entering into a gathering agreement with [Williams] whereby EXCO could directly nominate its casinghead gas to the [Mockingbird] System.").

[96] CEU Ex. 9 (letter dated August 24, 2017, from Williams to CEU); Joint Ex. 99 (letter dated October 24, 2017, from Williams to EXCO); EXCO Ex. 91 (Farquharson Test.) at 5 ("EXCO has requested rates from [Williams] and…the rates demanded, and historically charged, by [Williams] for the casinghead gas from EXCO's wells are economically unreasonable such that EXCO must pay Mockingbird (or historically Chesapeake) rates…").

[97] Joint Ex. 3 (Mockingbird Agreement) (20-year term expiring in 2032).

[98] Hearing Tr. (June 20, 2019) at 22 (Bennett testifying) ("**Q**: Do you have a perspective on whether payout has been achieved based on the revenues that had been received and the capital that has been expended under the Mockingbird Agreement? **A**: Yes. Payout has not been achieved.").

[99] Joint Exs. 116 (Shipper 14 contract, initial term expiring in 2024), 117 (Shipper 15 contract, initial term expiring in 2024), 119 (Shipper 27 contract, initial term expiring in 2032), and 120 (Shipper 33 contract, initial term expiring in 2033); *see also* Hearing Tr. (June 20, 2019) at 24-25 (Bennett testifying) ("Because of the unique

Similarly-Situated Shippers

The parties sharply disagree which shippers are similarly-situated to CEU and EXCO. Perhaps adding confusion is the existence of a comprehensive glossary of defined terms in the Mockingbird Agreement, negotiated and drafted by Chesapeake and Williams,[100] including agreed defined terms such as "Dedicated Wells," "Dedicated Gas," "Third Party Wells," and "Third Party Gas." Helpful and likely prudent for signatories Chesapeake and Williams to clearly understand and carry out their contractual duties, these defined terms however carry no meaning outside of the Mockingbird Agreement and do not bind the Commission to categorize Eagle Ford shippers, wells, or gas the same way.

Financing the Mockingbird System's purchase and buildout was a purely economic action, and so the relevant "similarly-situated" conditions associated with repayment to Williams of those amounts likewise must be commercial, rather than geographical or geological. For these costs, shippers on the Mockingbird System in 2017 for whom Williams wrote these amounts off are similarly situated to CEU and EXCO, including, at minimum: Shippers 14, 15, 27, and 33. Uncontroverted evidence supports that the rates Williams charged these shippers covered only Williams's costs to let them use the system, with no repayment of the $1.6 billion Williams spent on the Mockingbird System.[101]

Williams's arguments that these shippers are not similarly situated to CEU and EXCO—either because they are not producing from "dedicated wells" or they are located nearby to alternative gathering systems—are both flawed. As already explained, artificial customer distinctions born from defined terms in a private contract are not controlling in a discrimination case. With respect to any nearby competitor gathering systems, Williams is wrong on the facts: there are no competitive alternatives for repaying Williams what it spent on the Mockingbird System. The threat of losing certain customers to a nearby gas-gathering system may be considered as a potential *permissible basis* for unequal treatment, discussed

situation that Shippers 14 and 15 had with existing pipeline from a competitor very nearby and very limited connection costs to move to that competitor, it forced us to reduce our rate to compete with that if we wanted to keep that gas on our system. I would liken it to third-party gas opportunities…and we've seen that there are lower rates for third-party wells when we connect them and essentially no capital costs to us, that is, you know—was a driver in a very low and very competitive fee from the other provider that we were competing against to keep those volumes on the system."), and Hearing Tr. (June 19, 2019) at 246 (Bennett testifying) ("**Q**: So [Shippers 14 and 15] get something that's roughly a third, maybe a little bit more, of the [Mockingbird Agreement] rate, and there's nothing in their gathering agreement that requires them to bear any capital costs associated with the existing receipt points and the capital that was spent already to connect them up. These capital provisions you talk about in your pre-filed testimony apply only when they go drill a new well that requires a new connection to the system? **A**: That's correct. Under that agreement, Williams doesn't have any future capital cost commitment. We're just providing service for that fee for their existing wells.").

100 *See* Joint Ex. 3 (Mockingbird Agreement), Exhibit A-2, Section 10.13.

101 Hearing Tr. (June 19, 2019) at 249 (Bennett testifying) ("**Q**: None of [Shippers 14, 15, 27, and 33] have a specific obligation to front reimbursement for the capital associated with the backbone of the system, do they? Their capital cost obligation is – you're talking about connection costs? **A**: Yes, correct."), at 250 (Bennett testifying) ("**Q**: The capital you're talking about is just the piece of capital to connect to the system. [Shippers 14, 15, 27, and 33] are not paying up front any reimbursement for the part of the system that's already in existence, are they? **A**: No. They aren't paying for any sort of past capital expenditures."), and at 250-51 (Bennett testifying) ("**Q**: When one of these third-party wells comes along and you have a contract and there's an aid-in-construction provision where they're paying capital up front, the capital that they pay is only the new capital associated with hooking them up to the system, not reimbursement for historical stuff? **A**: Correct.").

below, but for this type of charge the proximity to other gathering systems is not relevant.

Lastly, Williams's focus on CEU's similarity to Chesapeake conflates discrimination with ratesetting. Benchmarking a proposed contract rate against some other similar rate for the same service/product perhaps may be a lawful and amenable exercise in market-based ratesetting. Discrimination, on the other hand, is not about treating one similar customer the same, but rather treating no similar customers differently. Here, anchor shipper Chesapeake stands alone as the only shipper on the Mockingbird System contractually bound to pay Williams back any portion of the $1.6 billion capital investment that Williams spent on the system. The proper focus in this case, then, is not the one customer repaying these amounts, but rather the other customers who are not.

Basis for Unequal Treatment

Williams mainly defends its decision to write off repayment amounts for the above similarly-situated shippers, but not for CEU and EXCO, by arguing that the Mockingbird System was designed primarily to accommodate gas volumes produced from wells shared by CEU and EXCO, and therefore CEU and EXCO benefit from the system and should share in its repayment.

All shippers using the Mockingbird System benefit from its existence, not just Chesapeake, CEU and EXCO.[102] The decision by Williams to write off repayment of the $1.6 billion Williams spent on the system for some customers, but not for CEU and EXCO, appears to be based on a combination of several errors. ***First***, adding spent capital to the rates of customers based on who "benefits" from that capital is a rate case principle, distinct and separate from discrimination cases where the only focus is equal treatment. CEU and EXCO being beneficiaries of the Mockingbird System and money spent by Williams that is "used and useful" to them is not a permissible basis for shouldering them with repaying these amounts if other shippers—also beneficiaries of the same gathering system—repay nothing. ***Second***, Williams arbitrarily defines "connection costs" differently for CEU and EXCO than for other shippers. For the above similarly-situated shippers who became new customers from 2014 to 2016, Williams did not require them to repay to Williams the $1.6 billion Williams spent on the system. Instead, they only paid their own "connection costs" to connect their facilities to the already-built Mockingbird System.[103] The same gathering system that already was built by 2014 also existed three years later in 2017 when CEU and EXCO sought to become new customers. For CEU and EXCO, though, their "connection costs" determined by Williams included the full $1.6 billion

[102] *See* Joint Ex. 28 (Bennett Test.) at 6 ("Since 2012, Williams has spent more than $850 million to expand the Mockingbird system for the benefit of Chesapeake (and its working interest owner CNOOC) *and other shippers*.") (emphasis added).
[103] Joint Ex. 28 (Bennett Test.) at 15-16 (these four shippers bearing their own connection costs from their wells to the receipt points).

Williams spent on the system, even though by 2017 CEU and EXCO already were connected to the system, and therefore Williams had nothing new to build.[104]

Third, Williams explains that because Shippers 14 and 15 were geographically close to a competitor gathering system, Williams had good reason in 2014 to offer them a rate that was significantly lower than the Mockingbird Agreement rate to keep those customers on the system.[105] This argument overlooks a major element of discrimination: that the similar service be contemporaneous.[106] CEU and EXCO were not customers of Williams in 2014, and so the reasons for Williams's treatment of Shippers 14 and 15 then, vis-à-vis other customers at that time, are not relevant now. In 2017 when CEU and EXCO approached Williams as potential new customers, Shippers 14 and 15 already had signed long-term gathering contracts with Williams[107] and therefore were not at risk of leaving the system. The proper question here, then, is not why Williams in 2014 wrote off its prior capital costs for Shippers 14 and 15, but instead why, in 2017, did Williams not do the same for CEU and EXCO.

There is some old common law suggesting that a utility lawfully may charge a customer a deeply discounted rate for a service, even *gratis*, so long as other customers receive a fair price for the same service and are not "competitors in business" with the customer paying less.[108] The apparent rationale here being that customers paying a fair price for value received are not necessarily disadvantaged by the utility opting to lose money on another customer, regardless the reason. This scenario, however, does not apply to Williams. As treated below, the approximate portion of the Mockingbird Agreement rate in 2017 for actual gathering service, with prior capital expenditures removed, was not higher than the gathering rate Shippers 14 and 15 paid. Despite its statements to the contrary, Williams did not keep

---

[104] CEU Ex. 42/Williams Ex. 69 (Bennett Deposition Tr.) at 221:9-13 ("**Q**: And in the case of [CEU], there are receipt points in existence at all of these dedicated wells where Chesapeake has the right to produce gas, or they're connected to receipt points, correct? **A**: Yes.").

[105] Hearing Tr. (June 20, 2019) at 24:14-19 (Bennett testifying) ("Because of the unique situation that Shippers 14 and 15 had with existing pipeline from a competitor very nearby and very limited connection costs to move to that competitor, it forced us to reduce our rate to compete with that if we wanted to keep that gas on our system."), and at 25:11-26:3 (Bennett testifying) ("**Q**: And in determining what rate to offer Shippers 14 and 15, how did the location of the particular 70 receipt points that were at the locations of the facilities and the conditions and circumstances existing at the time of those negotiations influence Williams' [sic] decisions regarding what rate to agree to? **A**: Well, that was very impactful in determining the rate. As I said, the competitor had lines that were right in the vicinity, so it was very easy for those volumes—for those wells—from those wells to be connected to that other system and for that system to provide those services. So just the unique situation thre and the proximity of the other pipelines to our system, you know, drove an opportunity for Shippers 14 and 15, for those few wells, to be able to get an alternative rate proposal that was, you know, lower than our existing fees.").

[106] Tex. Util. Code § 121.104(a)(2) (Discrimination in Service and Charges Prohibited) ("A pipeline gas utility may not directly or indirectly charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided than the compensation charged, demanded, or received from another for a similar *and contemporaneous* service.") (emphasis added).

[107] Joint Exs. 116 (Shipper 14 contract) and 117 (Shipper 15 contract) (initial term expiring in 2024 for both).

[108] *See R.R. Comm'n of Texas v. Weld & Neville*, 96 Tex. 394, 406 (1903) ("The charging of another person too little is not charging you too much... There was nothing in the common law to hinder a carrier from carrying for favored individuals at an unreasonably low rate, or even gratis. All that the law required was that he should not charge any more than was reasonable."); *Leslie v. Houston Nat. Gas Corp.*, 280 S.W.2d 353, 357 (Tex. Civ. App.—Galveston 1955, writ ref'd n.r.e.) (equality in rates required if the similarly-situated customer receiving a lower price is a "competitor in business," reasoning that "if two customers are competitors, a favoring of one with a lower rate necessarily injures and damages the other").

Shippers 14 and 15 on the system by reducing their gathering rate[109] but did so by writing off their repayment share of the $1.6 billion Williams spent on the system—effectively lowering their bill by 63 percent[110] and redistributing their share of this repayment to CEU and EXCO. Every overcharge, when exacted of one to the exclusion of others, is indeed a discrimination.[111]

Lastly, Williams argues that, notwithstanding the rates paid by the above similarly-situated shippers, CEU's rate is proper because anything less would discriminate against Chesapeake, and EXCO's rate is proper because EXCO, in its prior business relationship with Chesapeake, voluntarily paid a similar rate amount and acknowledged to Chesapeake in writing that it was obligated to deliver its gas to Williams.[112] With respect to CEU, the Mockingbird Agreement expressly allows Williams to charge whatever it wants to other shippers; Chesapeake's bargained-for interest appears not to be the rate amounts Williams chooses to offer other shippers, but rather that the "third party gas" approval provisions be used to calculate Chesapeake's annual revenue requirement. With respect to EXCO, the location of its wells may matter for calculated revenue inputs under the Mockingbird Agreement, but the commercial backstory of potential new customers is immaterial when Williams acts in its capacity as a utility pipeline. Past or present contractual disputes between Chesapeake and its own customers do not involve Williams or the Railroad Commission.

Conclusion

The above conduct by Williams constitutes prohibited and unlawful discrimination under Texas law. Consistent with the above treatment, requiring repayment of the $1.6 billion Williams spent on the system from CEU and EXCO, but not from other shippers receiving similar and contemporaneous service—and under substantially the same physical, regulatory, and economic conditions—unreasonably disadvantaged and prejudiced both CEU and EXCO. This material difference in repayment amounts applies both as a numerical difference and as a condition of service. As to each CEU and EXCO, this conduct constitutes prohibited and unlawful discrimination under Section 121.104(a)(2)[113] of the Texas Utilities Code and under Subchapter G (Code of Conduct) of the Commission's rules.[114]

---

[109] Hearing Tr. (June 20, 2019) at 24 (Bennett testifying) ("Because of the unique situation that Shippers 14 and 15 had with existing pipeline from a competitor very nearby and very limited connection costs to move to that competitor, it forced us to reduce our rate to compete with that if we wanted to keep them on the system.").

[110] Joint Ex. 58 (Graph of 2017 gathering and compression rates with Priority 1 service) (Mockingbird Agreement rate in the Deep Oil system was $2.06; Shippers 14 and 15 paid $0.77).

[111] *United Gas*, 144 Tex. at 170 (quoting *Postal Tel.-Cable Co. v. Associated Press*, 228 N.Y. 370, 379 (1920)).

[112] Joint Ex. 36 (letter dated July 31, 2013, from EXCO to Chesapeake).

[113] Tex. Util. Code § 121.104(a)(2) (Discrimination in Service and Charges Prohibited) ("A pipeline gas utility may not directly or indirectly charge, demand, collect, or receive from anyone a greater or lesser compensation for a service provided than the compensation charged, demanded, or received from another for a similar and contemporaneous service.").

[114] *See* Commission Rule §§ 7.115(12) ("Discrimination—Any material difference in rates, service, rules and regulations, or conditions of service for transportation services which unreasonably disadvantages or prejudices similarly-situated shippers."), 7.7003(c)(2) (imposing administrative penalty against a gatherer of natural gas who engaged in prohibited discrimination, as defined in § 7.115(12)).

2. *Rates Charged to CEU and EXCO to Use the System*

With the money Williams spent on the system removed from Chesapeake's anchor rate under the Mockingbird Agreement, the remaining 20 percent approximates the rate component for actual gathering service.[115] No one disputes that CEU and EXCO should expect to pay for any actual gas-gathering services that Williams may provide them. Here, the Commission is not asked to determine the fair price for gathering service offered by Williams, as with a rate case. Rather, the only concern of the Commission is whether the portion of the rate charged to CEU and EXCO for gas gathering materially differed, without a lawful basis, from the gathering rates other similarly-situated shippers paid.

The below chart compares 20 percent of the Mockingbird Agreement rate with the actual gathering rates paid by the same four similarly-situated shippers in 2017.[116]

System	Mockingbird Rate	20 Percent	Similarly-Situated Rates
Shallow	$6.67	$1.33	$0.99
Deep	$2.06	$0.41	$0.77-0.83

Texas law allows some variance in the rates utilities charge their customers,[117] and the record here shows that most of Williams's contract customers had unique arrangements with Williams and therefore paid slightly different amounts. As shown above, the numerical differences between the 20-percent Mockingbird Agreement rate and the rate paid by similar customers are not material, and in the Deep system the 20-percent Mockingbird Agreement rate was less. For the approximate portion of the Mockingbird Agreement rate charged to CEU and EXCO for actual gas-gathering service, then, there was no material difference in treatment and therefore no discrimination. This is not a finding that these rate amounts ever were "just and reasonable" rates for CEU and EXCO, either in 2017 or now, but rather that there was no unequal treatment with respect to this charge.

CEU and EXCO also complain that their quoted rates were calculated using a cost-of-service methodology rather than a market-based "fixed fee" methodology used by Williams for other customers. The evidence does support that Williams used different methodologies, but CEU and EXCO have not established how they were unreasonably disadvantaged or prejudiced by this. Rates can be lawful under either a cost-of-service or a market-based method, and so the specific methodology chosen by a pipeline is immaterial so long as the charged rate is a fair and lawful price for value received.

---

115 Joint Ex. 29 (Cantwell Test.) at 12 ("It is worth repeating, 80% of the System Fees for the four Mockingbird Systems is directly attributable to the capital and Target Return aspects of the Mockingbird Agreement where [Williams] bore all the upfront capital risk. When you compare the System Fees apples to apples on a given system to the Third-Party fees on that system by eliminating the capital and Target Return component of the System Fee, you will find them to be comparable and non-discriminatory.").

116 CEU Ex. 39 (Emory Test.) at 37, Table 5.

117 *See, e.g.*, *Amtel Communications*, 687 S.W.2d at 102; *United Gas*, 144 Tex. at 172–73 (1945); *Westlake Ethylene Pipeline*, 506 S.W.3d at 683; *El Paso Elec.*, 917 S.W.2d at 864.

2. Quality of Service

CEU and EXCO both made general requests to Williams for gathering service, and Williams responded by offering them rates for firm "Priority 1" quality service[118]—the same type that Chesapeake received and several other shippers on the system received.[119] At this same time, several other shippers in both the Shallow and Deep systems were receiving Priority 2 or Priority 3 service.[120] Because certain other customers had more service quality options yet Williams offered CEU and EXCO only Priority 1 service, CEU and EXCO argue that this also was discriminatory.

For this claim, CEU and EXCO failed to prove that they were treated unequally or that they were unreasonably disadvantaged—both required elements of discrimination. The parties agree that Williams never offered CEU or EXCO either Priority 2 or Priority 3 service. CEU and EXCO have not shown, however, that they made clear and specific requests asking for it:

- *"CEU sought, generally, rate proposals from Respondents of any type that would accomplish the goal of gathering CEU's gas."*[121]
- *"I would like to discuss with either you guys or the appropriate contact person about the options and possibility of obtaining contract(s) to gather, transport, treat and process approximately 115,000 MMBtus/aday [sic]."*[122]
- *"I need to talk to someone about gas gathering rates for the Whitetail, Nopal, and Frio Gas Gathering Systems in the Eagle Ford. Can you or someone at Williams (Mockingbird Gas Gathering Services) please give me a quote or point me in the right direction."*[123]
- *"[CEU] requests quotes for gas gathering services…"*[124]
- *"EXCO has requested rates from [Williams]…"*[125]

With respect to other customers receiving Priority 2 and Priority 3 service, "similarly situated" does not mean identically situated. At the same time Williams offered Priority 1 service to CEU and EXCO, several other customers were getting Priority 2 service in the Deep and Shallow systems, and Priority 3 service in the Deep system. Considering these as similar customers, even assuming CEU and EXCO made clear and specific requests for Priority 2 and Priority 3 service, CEU and EXCO offered insufficient evidence that they were unreasonably disadvantaged by not getting it.

---

[118] Joint Ex. 9 (letter from Williams to CEU, dated August 24, 2017); Joint Ex. 99 (letter from Williams to EXCO, dated October 24, 2017).
[119] *See* Joint Ex. 51 (Deep P1 and Shallow P1 customers).
[120] Joint Exs. 59 (13 Deep customers with P2 service and five Shallow customers with P2 service), 60 (seven Deep customers with P3 service).
[121] CEU Ex. 41 (Williams Test.) at 15.
[122] Joint Ex. 4 (December 2015 email chain between CEU and Williams).
[123] Joint Ex. 5 (June 2017 email chain between CEU and Williams).
[124] Joint Ex. 7 (letter from CEU to Williams, dated October 5, 2017).
[125] EXCO Ex. 91 (Farquharson Test.) at 5.

C. Processing Requests for Service from CEU and EXCO

After the lawfulness of the Mockingbird Agreement's approval provisions, charges demanded by Williams, and quality of service options, the final remaining issue to address is how Williams processed CEU's and EXCO's requests for service. Commission Rule § 7.7001 (Natural Gas Transportation Standards and Code of Conduct) requires gas pipelines providing gathering service to process requests for transportation service from any shipper in a similar manner as it does for any other similarly-situated shipper.[126] The evidence strongly supports that Williams violated this rule with respect to both CEU and EXCO.

Williams states that, when determining what rate to charge new customers requesting service, it considers "all of the relevant market conditions" and the ultimate rate chosen is "the result of negotiations over a number of issues, including the nature and conditions of the market, what party bears the cost of connection, the term of the agreement, the location of the wells, dedication, liquids handling, and so forth."[127] Corroborating this general business policy are numerous gas-gathering relationships with other customers—all with slightly varied combinations of rate amounts, service quality, and contract term lengths.[128]

When CEU and EXCO requested service, however, Williams responded only with the Mockingbird Agreement—or a repackaged version of it.[129] The literal first sentence in both offer letters mentions "Chesapeake" at least four times.[130] Williams defends this "benchmarking" against Chesapeake's rate by explaining that it customarily does the same thing for all its "take in kind" customers that produce gas from the same wellbores as larger, existing customers.[131] This minimizes and mischaracterizes Williams's actions. Rather than mere benchmarking, Williams treated CEU and EXCO like debtors and actual Mockingbird Agreement signatories, processing their requests not as new customer requests for service, but instead as requests to be released from duties owed to Williams under the Mockingbird Agreement.[132]

---

[126] Commission Rule § 7.7001(b)(4).
[127] Joint Ex. 28 (Bennett Test.) at 12.
[128] Joint Exs. 54 (Deep P1, P2, and P3 contract rate amounts), 55 (Shallow P1, P2, and P3 contract rate amounts), 56 (Treating P1, P2, and P3 contract rate amounts), 64 (Deep contract term lengths), and 65 (Shallow contract term lengths).
[129] CEU Ex. 9 (letter from Williams to CEU, dated August 24, 2017); Joint Ex. 99 (letter from Williams to EXCO, dated October 24, 2017).
[130] *Id*.; *see also* CEU Ex. 41 (Williams Test.) at 12 ("In our telephone conversations, which continued into January of 2016, I requested rates and terms of service for CEU's volumes, but never received either. Further, [Williams] told me that Respondents would not offer CEU any rate that was different than what it was charging Chesapeake under the Mockingbird Agreement." "[In 2017] I met personally with [Williams representative] and spoke with him on the phone on several occasions. During our in-person meeting in Houston, and on at least one phone call, [Williams] told me again that Respondents would not offer CEU any rate that was different than what it was charging Chesapeake under the Mockingbird Agreement.") (evidentiary ruling sustaining objections later vacated).
[131] Hearing Tr. (June 19, 2019) at 255 (Bennett testifying) ("[T]he first step that we look at in the take-in-kind request is what is the current fee that's being charged for that well at that location. For take-in-kind requests, as I've mentioned, whether it's in the Eagle Ford or other areas, we view that as – you know, the starting point is definitely, 'What's our current fee?' Because it's the same gas coming out of the same wellbore, and so we view it as similarly situated…").
[132] CEU Ex. 41 (Williams Test.) at 13 ("When, on each occasion, I inquired as to the reason for not offering a different rate than Chesapeake's rate, Respondents, in each case, stated to me that the Mockingbird Agreement did not

Similarly-Situated Shippers

Shippers on the Mockingbird System who are not signatories to the Mockingbird Agreement, including Shippers 14, 15, 27, and 33, are similarly situated to CEU and EXCO.

Basis for Unequal Treatment

Williams processed CEU's and EXCO's requests for new gathering service as requests to be released from obligations owed to Williams under the Mockingbird Agreement, and Williams's offer letters functionally served to deny releasing them.[133] CEU and EXCO are not parties to the Mockingbird Agreement and owe Williams nothing under its terms. The weight of reliable evidence supports that Williams processed CEU's and EXCO's requests for service in this manner to attempt to mitigate revenue losses virtually guaranteed under the Mockingbird Agreement's "third party gas" revenue provisions, which substantially reduce Chesapeake's revenue requirement owed to Williams if Williams offers CEU and EXCO a lower rate. Put differently, Williams made a business decision to bear the upfront capital investment costs in the system totaling roughly $1.6 billion, protected only by a contractual arrangement with a producer who Williams knew could not fully dedicate all the gas from its wells. Williams agreed to this arrangement and also agreed to the "third party gas" revenue provisions. Williams must live with the bargain it struck and not look to nonsignatories to hedge losses or mitigate risk.

Conclusion

For both CEU and EXCO, this conduct violates Commission Rule § 7.7001 (Natural Gas Transportation Standards and Code of Conduct).[134] CEU and EXCO each proved that Williams unreasonably and unlawfully discriminated against them by processing their requests for service in a different manner than requests from other customers under substantially the same physical, regulatory, and economic conditions.

D. Conclusion

As treated above, CEU and EXCO each proved two separate acts of unlawful discrimination by Williams. As to each complainant, Williams: (1) required repayment of the $1.6 billion Williams spent on the Mockingbird System, while writing these amounts off for other similarly-situated customers; and (2) processed the request for service in a different manner than requests from other similarly-situated customers.

---

allow it to do so.") (evidentiary ruling sustaining objection later vacated during the merits hearing at Hearing Tr. [June 18, 2019] at 162:4-17).

[133] *See* CEU Ex. 9 (letter from Williams to CEU, dated August 24, 2017); Joint Ex. 99 (letter from Williams to EXCO, dated October 24, 2017).

[134] Commission Rule § 7.7001(b)(4) ("A transporter that provides transportation services for any shipper (including affiliate shippers) shall process requests for transportation services from any shipper in a similar manner and within a similar period of time as it does for any other similarly-situated shipper.").

IX. REMEDIES

Unlawful discrimination is cured by equalizing the unequal treatment. If the Commission adopts the discrimination findings herein, then the Commission "may issue any order necessary and reasonable to prevent the discrimination from continuing."[135] Here, all discrimination proven in this docket can be remedied immediately by ordering Williams to comply with the below measures.

1. Consistent with Williams's treatment of Shippers 14, 15, 27, and 33, remove from the rates offered to CEU and EXCO all amounts associated with repayment of the $1.6 billion Williams spent on the Mockingbird System, including a target return on those amounts, and charge CEU and EXCO only for use of the system. This applies to service requested anywhere on the Mockingbird System, including all four systems (Shallow, Deep, Rich, and Treating), and for any quality of service.

2. Consistent with Williams's treatment of virtually every other customer—including, at minimum, Shippers 14, 15, 27, and 33—process requests for service from CEU and EXCO as new customers, free from any duties contained in the Mockingbird Agreement or other private contracts. The rates and terms offered to CEU and EXCO need not mirror those offered to these four similar shippers, but they must be processed by Williams in good faith, reflect their own individualized business and commercial needs, and be consistent with the other remedy herein.

These two measures, if ordered by the Commission, adequately cure the unlawful discrimination proven by CEU and EXCO. Associated penalties potentially recoverable on behalf of the State of Texas, CEU, EXCO, and the Railroad Commission are outside the scope of this docket; they may, however, be considered in subsequent legal proceedings.[136]

A. Ratesetting by the Commission is Not Necessary

The Commission may set a rate to remedy discrimination only if doing so is necessary.[137] Here, no rates exist yet, just unaccepted service offers from Williams. The Commission can order Williams to stop discriminating against CEU and EXCO,

[135] Commission Rule § 7.7003(g).

[136] *See* Tex. Util. Code §§ 121.302 (Civil Penalty) (up to $1,000 per violation recoverable by the State, and "each violation and each day that the failure continues is subject to a separate penalty"), 121.303 (Penalty Recoverable by Victim of Discrimination) (up to $1,000 per violation recoverable by "any person against whom discrimination prohibited by Section 121.104 is committed"), and Commission Rule § 7.7003 (Administrative Penalties and Other Remedies for Discrimination) (up to $5,000 per violation recoverable by the Railroad Commission, and "each day a violation continues or occurs is a separate violation").

[137] Commission Rule § 7.7005(d) ("On the filing of a complaint by a shipper or seller of natural gas, the Commission may set a transportation or gathering rate in a formal rate proceeding *if the Commission determines that the rate is necessary to remedy unreasonable discrimination* in the provision of transportation or gathering services.") (emphasis added).

consistent with the above remedies, but the Commission cannot compel a business relationship between them. CEU and EXCO each have earned through this proceeding a nondiscriminatory *offer* for gathering service that (1) does not include any prior Mockingbird System investment costs incurred by Williams, and (2) is unique to their own business and commercial needs. Even with discrimination remedied, the business decision to accept transportation service with Williams remains one for CEU and EXCO each to make, given their available choices. Texas law provides all shippers of natural gas the bona fide business option of shipping their volumes at a fair and lawful price.[138] CEU and EXCO may opt to do so, but for now neither company is a customer of Williams, and so any prospective rates established by the Commission would be purely hypothetical and ultimately may never be paid.

Ratesetting (or rate equalizing) also is improper here because there was no finding of unlawful discrimination with respect to the actual gathering rate offered to CEU and EXCO—estimated by Williams to be roughly 20 percent of the Mockingbird Agreement rate. Remedies must cure only proven discrimination; with no unlawful discrimination proven for the actual gathering rate, there is nothing to remedy.

Remedy no. 1, above, is not an exercise in new rate calculation, review, or adjustment by the Commission. Rather, it directs that Williams not require CEU and EXCO, as a condition for using the system, repay the $1.6 billion Williams spent on the Mockingbird System so long as Williams lets other similarly-situated customers pay only to use the system. The Commission is not reviewing or lowering rates here, but rather telling Williams that it cannot force CEU and EXCO to repay these amounts, while at the same time writing them off for other customers.

B. The Severed Rate Case, GUD No. 10856

The challenged rates at issue in GUD No. 10856, previously severed from this docket, are unrelated to the discrimination claims in this docket. Though involving all the same parties, GUD No. 10856 involves claims by CEU and EXCO challenging the lawfulness of the contract rate amounts paid by Chesapeake to Williams under the Mockingbird Agreement. As explained above, CEU and EXCO are not yet customers of Williams and therefore have no rates of their own to challenge—or for the Commission potentially to adjust. While perhaps unusual for companies to formally challenge the rates paid by another third-party company, pursuant to a private bilateral contract, this is what CEU and EXCO are doing and why those unrelated claims were severed from this docket. Should those claims survive a pending motion to dismiss filed by Williams, then the Commission would be reviewing the lawfulness of Chesapeake's rate amounts paid to Williams under its anchor shipper contract—with any potential refunds of overcharges going directly to Chesapeake, not to CEU or EXCO.

---

[138] *See* Tex. Util. Code § 121.154 (Refund of Excess Charges) (where a complaint against a gas pipeline for overcharges is successful, the complaining customer is entitled to a refund of all overcharges paid [after the filing of the complaint] in excess of the proper rate ultimately established by the Railroad Commission).

X. CONCLUSION

CEU and EXCO each proved two separate acts of unlawful discrimination by Williams. As to each complainant, Williams:

1. required repayment of the $1.6 billion Williams spent on the Mockingbird System, while writing these amounts off for other similarly-situated customers, in violation of Section 121.104(a)(2) of the Texas Utilities Code and Subchapter G (Code of Conduct) of the Commission's rules; and
2. processed the request for service in a different manner than requests from other similarly-situated customers, in violation of Commission Rule § 7.7001(b)(4).

Ratesetting by the Commission is not necessary to cure this discrimination. The recommendation is for Williams to: (1) remove from the rates offered to CEU and EXCO all amounts associated with repayment of the $1.6 billion Williams spent on the Mockingbird System, including a target return on those amounts; and (2) process requests for service from CEU and EXCO as new customers, free from any duties contained in the Mockingbird Agreement or other private contracts.

XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law contained in the Proposed Final Order, appended to this Proposal for Decision as PFD Attachment 4, are incorporated herein by reference.

SIGNED on January 9, 2020.

John Dodson
Administrative Law Judge

Rose A. Ruiz

Rose Ruiz
Technical Examiner

James R. Currier III

James Currier
Technical Examiner

PFD Attachment 1

Combined Exhibit List

IN THE RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

COMPLAINT OF CNOOC ENERGY USA, LLC AGAINST WILLIAMS MLP OPERATING LLC & MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC	§ § § § §	**GUD DOCKET NO. 10606**

COMBINED ADMITTED HEARING EXHIBIT LIST

C = CONFIDENTIAL

HC = HIGHLY CONFIDENTIAL

N = NOT CONFIDENTIAL OR HIGHLY CONFIDENTIAL

CEU = CNOOC ENERGY USA, LLC

WMS = WILLIAMS MLP OPERATING LLC & MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC

EXCO = EXCO OPERATING COMPANY, LP

JOINT = CEU, WMS, AND EXCO JOINT OFFER OF EXHIBIT

Exhibit No.	Description	Admitted	Offered By	Confidential Status
2	CMO Agreement – Master Gas Gathering Agreement between Chesapeake Midstream and Chesapeake Energy Marketing, Inc. *CEU Prefiled Master Exhibit 2* OOGC000618-000687 Confidential	X	JOINT	C (perm. sealed)
3	"Mockingbird Agreement" Gas Gathering Contract Cost of Service – Eagle Ford by and between Chesapeake and Mockingbird *CEU Prefiled Master Exhibit 7* OOGC000279-000597 Confidential	X	JOINT	C (perm. sealed)
4	December 2015 Emails between B.Baker and L.Williams; *CEU Prefiled Master Exhibit 8* OOGC 035138-035139 Confidential	X	JOINT	C

Exhibit No.	Description	Admitted	Offered By	Confidential Status
5	June 2017 Emails between L.Williams, T.Bonine and A.Winkle; *CEU Prefiled Master Exhibit 9* OOGC 035142-035144 Confidential	X	JOINT	C
6	July 2017 Emails between L.Williams and T.Bonine; *CEU Prefiled Master Exhibit 10* OOGC 035142-035144 Confidential	X	JOINT	C
7	October 5, 2017 R. Jeff Pendrel Letter; *CEU Prefiled Master Exhibit 12* OOGC 035280-035281 Confidential	X	JOINT	C
8	October 16, 2017 R. Jeff Pendrel Letter; *CEU Prefiled Master Exhibit 13* OOGC 035282 Confidential	X	JOINT	C
9	August 24, 2017 Travis Bonine Letter; *CEU Prefiled Master Exhibit 11* OOGC 035275-035277 Confidential	X	CEU	C (perm. sealed)
11	December 3, 2013 email from Rob Gilkes to Jason Elder; *CEU Prefiled Master Exhibit 41* CHK_STGATE_00017742 Confidential	X	CEU	C (perm. sealed)
14	December 21, 2013 email between CHK and Access; *CEU Prefiled Master Exhibit 42* CHK_STGATE_00017843 Confidential	X	CEU	C (perm. sealed)
16	Letter Agreement Re Stonegate and JGC Take-In-Kind Gas and Dilley Rich GGS Third-Party Revenue Sharing also <u>*CEU Prefiled Master Exhibit 43*</u> WilliamsGUD10606.003699-3709; WilliamsGUD106067.000830-000832 Confidential	X	CEU	C (perm. sealed)
17	Fee Approval Letter; *CEU Prefiled Master Exhibit 36* WilliamsGUD10606.003518- 003520 *Highly Confidential	X	JOINT	HC
18	Gas Gathering Contract; *CEU Prefiled Master Exhibit 44* WilliamsGUD106061.003521- 003530 *Highly Confidential	X	JOINT	HC
19	Gas Gathering Contract;	X	JOINT	HC

Exhibit No.	Description	Admitted	Offered By	Confidential Status
	CEU Prefiled Master Exhibit 37 WilliamsGUD10606.003531-003545 *Highly Confidential			
20	Jane Kidd Curriculum Vitae; *CEU Prefiled Master Exhibit 18*	X	JOINT	N
24	Pre-filed Testimony of Jane K. Kidd	X	JOINT	C
26	Temporary Fee Agreement – Eagle Ford by and between Chesapeake and Mockingbird	X	CEU	N
27	Unanimous Final Award in OOGC America, LLC v. Chesapeake Exploration, LLC, Case No. 01-17-0001-2414 in the American Arbitration Association; *CEU Master Exhibit 17* OOGC027159-027185 Confidential	X	JOINT	C (perm. sealed)
28	Pre-filed Direct Testimony of Walter Bennett	X	JOINT	N
29	Corrected Pre-filed Direct Testimony of Jim Cantwell	X	JOINT	N
30	Pre-filed Testimony of Sean Johnson	X	CEU	C
31	Amended Answering Statement of Chesapeake Exploration in OOGC America, LLC v. Chesapeake Exploration, LLC, Case No. 01-17-0001-2414 in the American Arbitration Association; *CEU Prefiled Master Exhibit 14* OOGC008902-008927 Confidential	X	JOINT	C (perm. sealed)
36	Acknowledgement of Dedication Executed by Exco (filed with Walter Bennett's Pre-Filed Testimony as WB-7)	X	JOINT	C
38	John W. Emory, P.E., Curriculum Vitae; Appendix A to Exhibit 39	X	JOINT	C & HC
39	Pre-filed Testimony and Appendices of John W. Emory Confidential and *Highly Confidential	X	CEU	C & HC
40	Chesapeake Maps Showing Gas Gathering System 2010-2018; *CEU Prefiled Master Exhibit 3* OOGC032820-032828 Confidential	X	JOINT	C (perm. sealed)
41	Pre-filed Testimony of Leo Williams	X	CEU	C
42	Walter Bennett Deposition Transcript	X	CEU	HC

Exhibit No.	Description	Admitted	Offered By	Confidential Status
	Confidential and CEU's Designation of Walter Bennett Deposition *Highly Confidential			
43	Development Agreement; *CEU Prefiled Master Exhibit 1* Confidential	X	JOINT	C (perm. sealed)
44	Amendment to CMO Agreement, Appendix A-8; *CEU Prefiled Master Exhibit 4* Confidential	X	JOINT	C (perm. sealed)
45	Amendment to CMO Agreement, Appendix A-9; *CEU Prefiled Master Exhibit 5* Confidential	X	JOINT	C (perm. sealed)
47	Chesapeake Answer to Interrogatory No. 13; *CEU Prefiled Master Exhibit 15* OOGC 036017-036026 Confidential	X	CEU	C (perm. sealed)
48	Chesapeake's Response to MPSJ on Assignability; *CEU Prefiled Master Exhibit 16* OOGC 031826-031847 Confidential	X	CEU	C (perm. sealed)
50	Gathering and Compression Rates (Contract Rates) All Mockingbird Shippers (including Diamondback System); *CEU Prefiled Master Exhibit 20* *Highly Confidential	X	JOINT	HC
51	Gathering and Compression Rates (Contract Rates) Mockingbird Shippers with Priority 1 Service; *CEU Prefiled Master Exhibit 21* *Highly Confidential	X	JOINT	HC
52	Gathering and Compression Rates (Contract Rates) Mockingbird Shippers with Priority 2 Service; *CEU Prefiled Master Exhibit 22* *Highly Confidential	X	JOINT	HC
53	Gathering and Compression Rates (Contract Rates) Mockingbird Shippers with Priority 3 Service; *CEU Prefiled Master Exhibit 23* *Highly Confidential	X	JOINT	HC
54	Gathering and Compression Rates (Contract Rates) Mockingbird Shippers on Deep Oil System; *CEU Prefiled Master Exhibit 24*	X	JOINT	HC

Exhibit No.	Description	Admitted	Offered By	Confidential Status
	*Highly Confidential			
55	Gathering and Compression Rates (Contract Rates) Mockingbird Shippers with Priority 2 Service Gathering and Compression Rates (Contract Rates) Mockingbird Shippers on Shallow Oil System; *CEU Prefiled Master Exhibit 25* *Highly Confidential	X	JOINT	HC
56	Gathering and Compression Rates (Contract Rates) All Mockingbird Shippers; *CEU Prefiled Master Exhibit 26* *Highly Confidential	X	JOINT	HC
57	Gathering and Compression Rates (Feb 2017 Rates) All Mockingbird Shippers (including Diamondback System); *CEU Prefiled Master Exhibit 27* *Highly Confidential	X	JOINT	HC
58	Gathering and Compression Rates (Feb 2017 Rates) Mockingbird Shippers with Priority 1 Service; *CEU Prefiled Master Exhibit 28* *Highly Confidential	X	JOINT	HC
59	Gathering and Compression Rates (Feb 2017 Rates) Mockingbird Shippers with Priority 2 Service; *CEU Prefiled Master Exhibit 29* *Highly Confidential	X	JOINT	HC
60	Gathering and Compression Rates (Feb 2017 Rates) Mockingbird Shippers with Priority 3 Service; *CEU Prefiled Master Exhibit 30* *Highly Confidential	X	JOINT	HC
61	Gathering and Compression Rates (Feb 2017 Rates) Mockingbird Shippers on Deep Oil System; *CEU Prefiled Master Exhibit 31* *Highly Confidential	X	JOINT	HC
62	Gathering and Compression Rates (Feb 2017 Rates) Mockingbird Shippers on Shallow Oil System; *CEU Prefiled Master Exhibit 32* *Highly Confidential	X	JOINT	HC
63	Gathering and Compression Rates (Feb 2017 Rates) All Mockingbird Shippers; *CEU Prefiled Master Exhibit 33* *Highly Confidential	X	JOINT	HC

Exhibit No.	Description	Admitted	Offered By	Confidential Status
64	Gathering and Compression Rates By Term (Contract Rates) Mockingbird Shippers on Deep Oil System; *CEU Prefiled Master Exhibit 34* *Highly Confidential	X	JOINT	HC
65	Gathering and Compression Rates By Term (Contract Rates) Mockingbird Shippers on Shallow Oil System; *CEU Prefiled Master Exhibit 35* *Highly Confidential	X	JOINT	HC
66	Letter Agreement, Re Take-In-Kind Gas and Dilley Rich GGS Third-Party Revenue Sharing; *CEU Prefiled Master Exhibit 38* WilliamsGUD10606.003699-003709 *Highly Confidential	X	JOINT	HC
67	Jason Elder Depo Transcript; *CEU Prefiled Master Exhibit 39* Confidential	X	CEU	HC (perm. sealed)
68	Jason Elder Arbitration Transcript; *CEU Prefiled Master Exhibit 40* Confidential	X	CEU	HC (perm. sealed)
69	Walter Bennett Deposition Transcript (duplicate of Exhibit No. 42) *Highly Confidential-**REDACTED**	X	WMS	N (perm. sealed)
80	Email dated 8/7/2012 from Bryan Lemmerman to Mike Stice Subject: Midstream Process Update; CMD Equity Sale discussion OOGC 019315-019319 Confidential	X	JOINT	C
82	Email dated 1/13/2011 from John Seldenrust to Mike Stice et al. Subject CM Eagle Ford Shale JV Presentation-CNOOC Final OOGC 019412-019447 Confidential	X	JOINT	C
84	2018 COS Model WilliamsGUD10606.003936 *Highly Confidential	X	JOINT	HC
91	Pre-Filed Testimony of Tyler Farquharson and Exhibits	X	EXCO	N
92	TC #6	X	JOINT	C
93	TC #7	X	JOINT	C
94	TC #8	X	JOINT	C
95	TC #9	X	JOINT	C
96	TC #10	X	JOINT	C
97	TC #11	X	JOINT	C

Exhibit No.	Description	Admitted	Offered By	Confidential Status
98	Termination Notice regarding TC #7, May 31, 2017	X	JOINT	C
99	Williams to Exco letter, October 24, 2017 [May 11, 2018]	X	JOINT	HC
100	PSA between Chesapeake and EXCO	X	JOINT	C
101	Walter Bennett Profile (filed with Walter Bennett's Pre-Filed Testimony as WB-1)	X	JOINT	C
102	Williams' Eagle Ford Gas Gathering System Maps (filed with Walter Bennett's Pre-Filed Testimony as WB-2)	X	JOINT	C
103	Williams' Eagle Ford Gas Gathering System Maps Jan. 2012 – Jan. 2018	X	WMS	C
104	Maps Showing the Location of Receipt Point(s) for Shippers 14, 15, 17, 27, and 33	X	WMS	C
105	Excerpts of CNOOC's Responses to Williams' Second Set of Interrogatories (filed with Walter Bennett's Pre-Filed Testimony as WB-6)	X	JOINT	C
106	Excerpts of Exco's Closing Statement in Oil and Gas Docket No. 01-0308609 in the Railroad Commission of Texas (filed with Walter Bennett's Pre-Filed Testimony as WB-9)	X	JOINT	C
107	Excerpts of Exco's Chief Financial Officer's Testimony in Oil and Gas Docket No. 01-0308609 in the Railroad Commission of Texas (filed with Walter Bennett's Pre-Filed Testimony as WB-11)	X	JOINT	C
108	Williams' Eagle Ford Gathering System Performance Data (filed with Walter Bennett's Pre-Filed Testimony as WB-12)	X	JOINT	C
110	Exco Wells Hydrogen Sulfide Content Data – Exco Exhibit 16 in Oil and Gas Docket No. 01-0308609 in the Railroad Commission of Texas (filed with Walter Bennett's Pre-Filed Testimony as WB-13)	X	JOINT	C
111	Supplement to Corrected Pre-Filed Direct Testimony of Jim Cantwell	X	WMS	N
112	Jim Cantwell CV (filed with Jim Cantwell's Pre-Filed Testimony as JC-1)	X	JOINT	C
113	Spreadsheet – Net Benefit for Third-Party Gas Gathering Agreement (filed with Jim Cantwell's Pre-Filed Testimony as JC-2)	X	JOINT	C

Exhibit No.	Description	Admitted	Offered By	Confidential Status
114	Spreadsheet – Impact on Chesapeake's Rates and Williams' NPV Shortfall with and without CNOOC Volumes (filed with Jim Cantwell's Pre-Filed Testimony as JC-3)	X	WMS	C
115	Aid-in-Construct Summary and Invoices for Shippers 14, 15, 17, 27, and 33	X	WMS	N
116	Contract and amendments with Shipper 14 WilliamsGUD10606.003633-003652	X	JOINT	N
117	Contract and amendments with Shipper 15 WilliamsGUD10606.003212-003225	X	JOINT	N
119	Contract and amendments with Shipper 27 WilliamsGUD10606.003737-003741 and WilliamsGUD10606. 003746-003752	X	JOINT	N
120	Contract and amendments with Shipper 33 WilliamsGUD10606.000219-000238	X	JOINT	N
121	CNOOC Maps Regarding Eagle Ford Basin Gas Gathering Systems OOGC034822-034826	X	JOINT	C
122	CNOOC Gas Gathering Infrastructure Evaluation OOGC034863-034890	X	JOINT	C
123	Current Mockingbird Agreement Rates and Rates from 2012-2019	X	JOINT	N
124	Excerpts of CNOOC's Revenue Statements from Chesapeake	X	JOINT	C
125	Williams' Shipper Chart	X (limited purpose of a demonstrative)	WMS	N
126	CEU's Opening Statement	X (limited purpose of a demonstrative)	CEU	N

<u>**PFD Attachment 2**</u>

CEU Demonstrative Exhibit

GUD # 10606

CNOOC Energy U.S.A. LLC ("CEU")
Opening Statement

Brian R. Sullivan, PE
Joe G. Thompson III

June 18, 2019

Exhibit No. 126
Gas Utility Docket No. 10606
June 18-21, 2019

Introductions

CEU’s Claim - Discrimination

- “***Any material difference*** in rates, service, rules and regulations, or conditions of service for transportation services which ***unreasonably disadvantages or prejudices similarly-situated shippers***”

Introductions

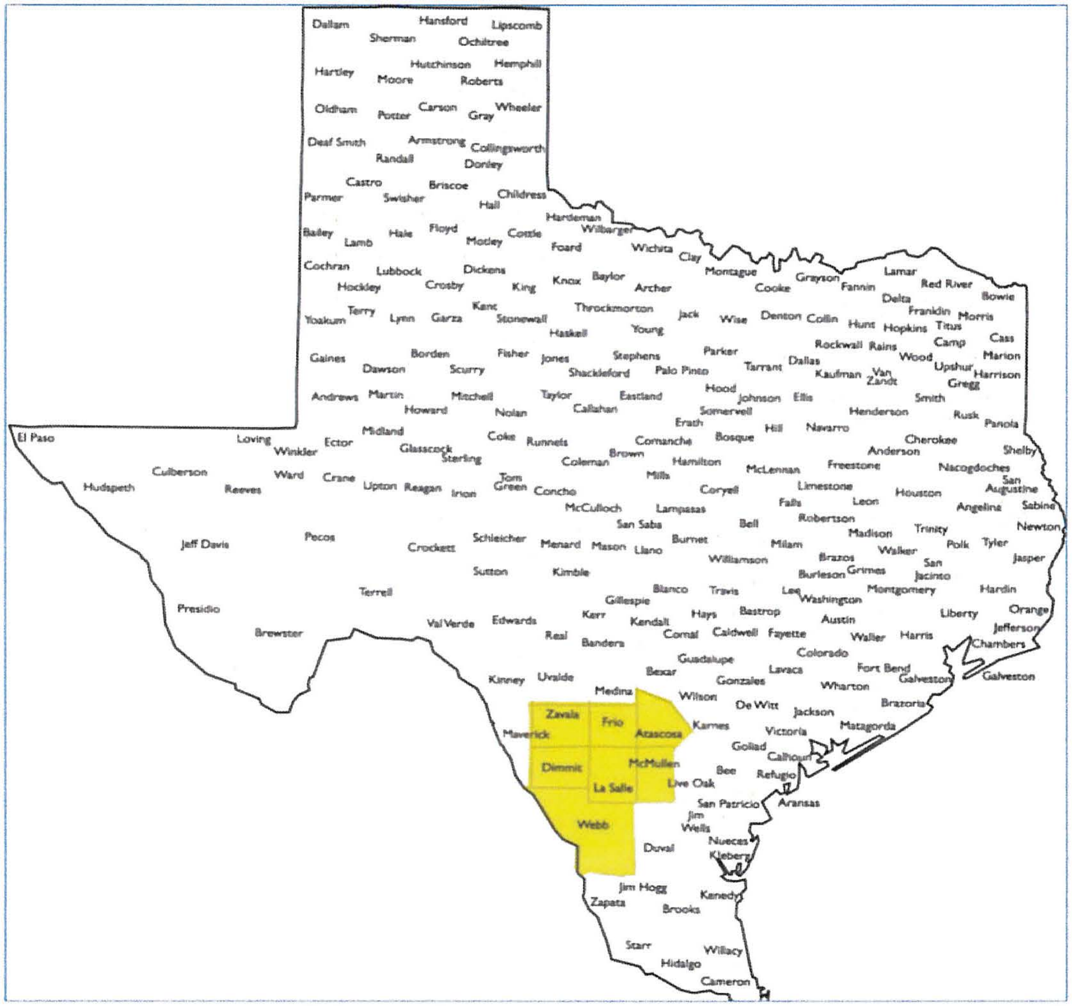
CEU's Claim - Discrimination

- Similarly Situated Shippers on the Mockingbird System enjoy significantly lower rates than CEU.
- The Mockingbird Agreement's "Chesapeake Approval Provisions" discriminate against CEU.
- Williams failure to offer a non-discriminatory rate to allow CEU to Take-In-Kind discriminates against CEU.
- The power given by Williams to one particular shipper, Chesapeake, to impact the rates received by all other shippers on the Mockingbird System is discriminatory ab initio.

Introductions

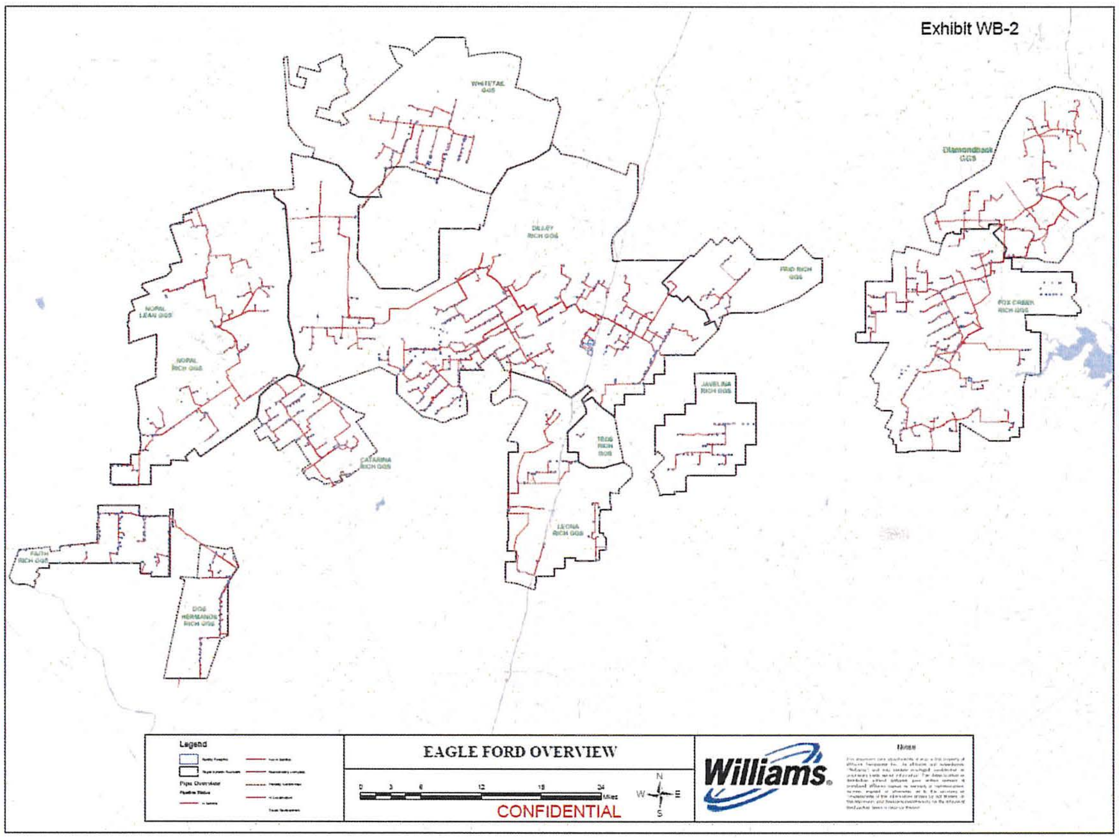
- Kelli T. Kenney – Co-Lead Counsel
- Joe G. Thompson III – Co-Lead Counsel
- Brian R. Sullivan, PE – Co-Lead Counsel
- Russell T. Gips – Copeland & Rice
- Rich K. Murray – Counsel to CEU
- Krystal E. Schmidt – Legal Assistant

Introductions - Eagleford in South Texas



Introductions

- Map of the Mockingbird System/Mockingbird Agreement



Introductions

- The Mockingbird Agreement is the gathering, transportation and treating agreement between Chesapeake and Williams for the Mockingbird System. CEU is not now, nor has it ever been a party to this agreement.

- The Mockingbird Agreement is structured to “trap” CEU’s gas on the Mockingbird System and is discriminatory. Walter Bennett’s Deposition.

- The two separate approval provisions (the “Chesapeake Approval Provisions”) treat CEU’s gas differently from that of others.

Introductions

- CEU is not a party to the Mockingbird Agreement.
- CEU's gas is not dedicated to the Mockingbird Agreement.
- CEU has the right to Take In Kind its gas.
- CEU's gas is currently marketed by Chesapeake because CEU cannot get a rate from Williams which will allow it to Take In Kind

Introductions

- What is NOT before the Examining Panel – A Rate Case.
  - Whether the rates are "just and reasonable"
  - How cost should be recovered
  - What the proper rates should be
  - What remedies are available for imposition of a rate that is not "just and reasonable"
  - We are not relitigating the arbitration
  - If there is ANY discrimination we go to the rate hearing

Introductions

CEU Witnesses

Fact Witnesses

- **Sean T. Johnson, Managing Counsel and Assistant Secretary**
    - Will describe the history of CEU's participation with Chesapeake in the Eagleford, CEU's right to Take In Kind and CEU's request for service from Mockingbird
- **Leo Williams, Senior Commercial Representative**
    - Will also discuss the history of CEU's participation with Chesapeake in the Eagleford and CEU's attempt to obtain a "rate" from Williams

Introductions

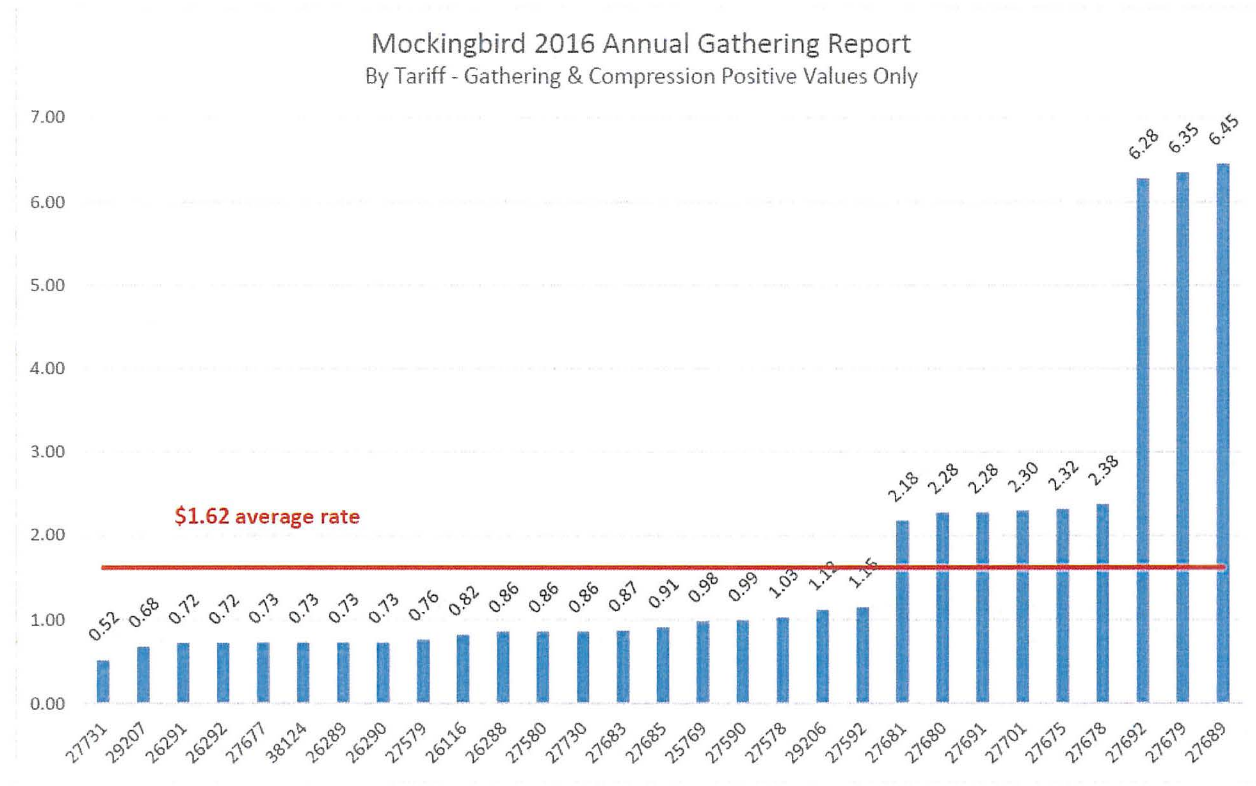
<u>Expert Witnesses</u>

- **Jane Kidd** - Economist - will explain the economic incentives under the Mockingbird Agreement, including the Chesapeake Approval Provisions, and why the Mockingbird Agreement prevents Williams from offering CEU a non-discriminatory rate.

- **John Emory, PE** - Engineer - has determined which shippers on the Mockingbird System are "similarly situated" to CEU and whether rates charged to CEU ***"unreasonably disadvantages or prejudices"*** CEU.

CEU's Case

- February 22, 2017 CEU's Original Complaint
- March 1, 2019 CEU's Second Amended Complaint



CEU's Case

- The Mockingbird Agreement covers four different systems:

    1. Deep Oil System
    2. Shallow Oil System
    3. Rich Gas System
    4. Treating System

History - Eagleford in South Texas

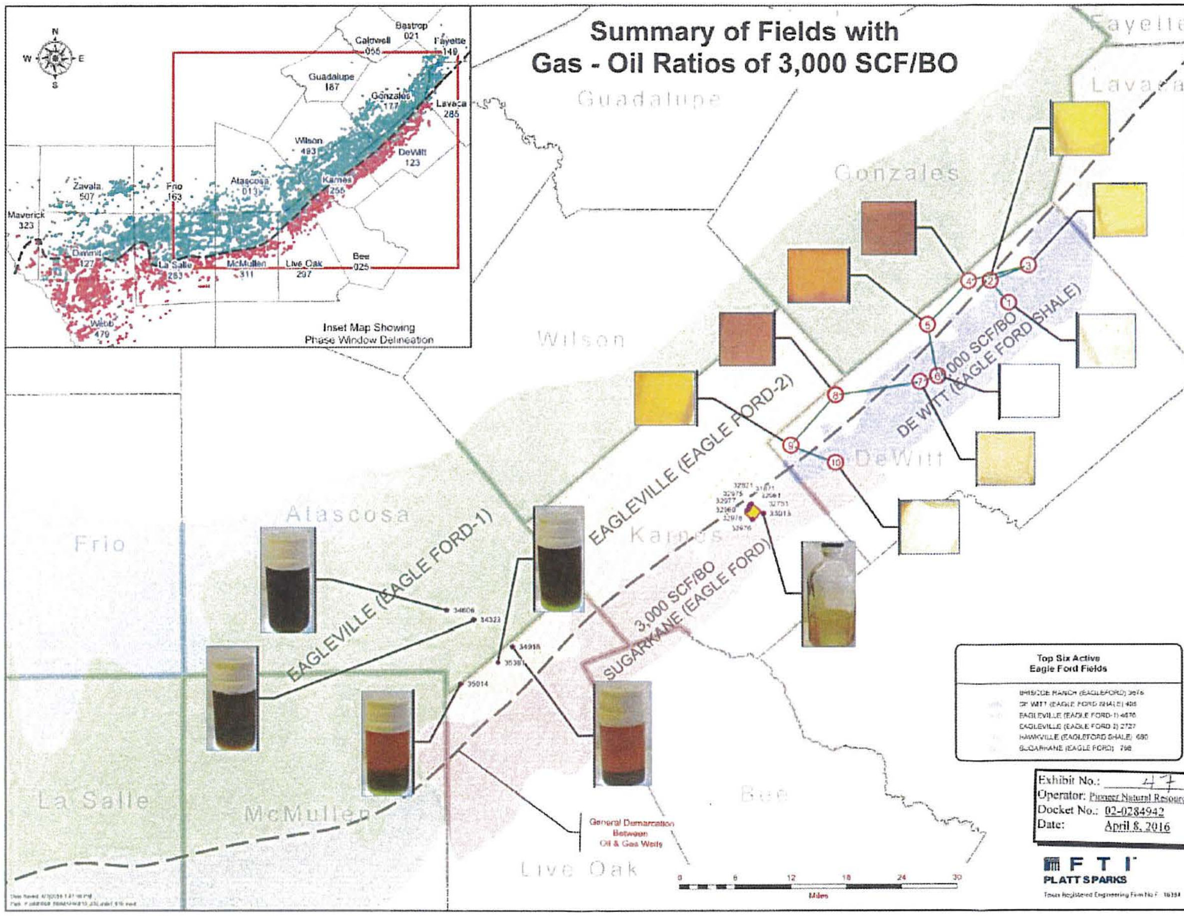


Exhibit No.: 47
Operator: Pioneer Natural Resources USA, Inc.
Docket No.: 02-0284942
Date: April 8, 2016

CEU's Case

- Mockingbird Agreement Analysis – Jane Kidd
  - The "Chesapeake Approval Provisions" in the Mockingbird Agreement result in discrimination against CEU.
- Similarly-Situated Shipper Analysis – John Emory
  - Similarly Situated Shippers to CEU enjoy much lower rates
  - The Rate Redetermination Provision in Mockingbird Agreement discriminates
  - Thirteen Factors – four are relevant (Emory Table 4)
    - Location of Facilities
    - Quality of Service
    - Quantity
    - Duration of Service

CEU's Case - Rate Discrimination

Priority 1 Service (February 2017) Gathering and Transportation Rates

System	CEU Rate	Similarly Situated Rate *
Shallow	$6.67	$0.99
Deep	$2.06	$0.77 - 0.83

* Emory Report at Table 5

CEU's Case - Harm to CEU

Shallow System Delta $6.67 - 0.99 = $5.68/MCF

- CEU Shallow Volume March, 2019 = 64,382 MCF
- **CEU Loss March, 2019** is Volume x Delta = **$365,688**

Deep System Delta $2.06 - 0.83 = $1.23/MCF

- CEU Deep Volume March, 2019 = 2,176,715 MCF
- **CEU Loss March, 2019** is Volume x Delta = **$2,677,345**

- **Total Loss to CEU for March, 2019 $3,043,047/Month**
- **Total Loss to CEU for March, 2019 $98,163/Day**

History - Chesapeake Acquires Acreage

2008-2010

- Chesapeake Energy Corporation acquires 600,000 acres in the Eagleford formation in South Texas.

History - CEU Buys Into the Eagleford

November, 2010

- CEU buys 1/3rd of Chesapeake's position.
- CEU enters into a **Development Agreement** with Chesapeake.
- CEU is a Non-Operating Working Interest Owner.
- Chesapeake is the Operator.
- CEU pays Chesapeake $2,100,000,000 for acreage and to drill wells.
- CEU reserves the right to Take-In-Kind both oil and gas.
- Chesapeake markets CEU's gas per the ***CMO Gathering Agreement***.

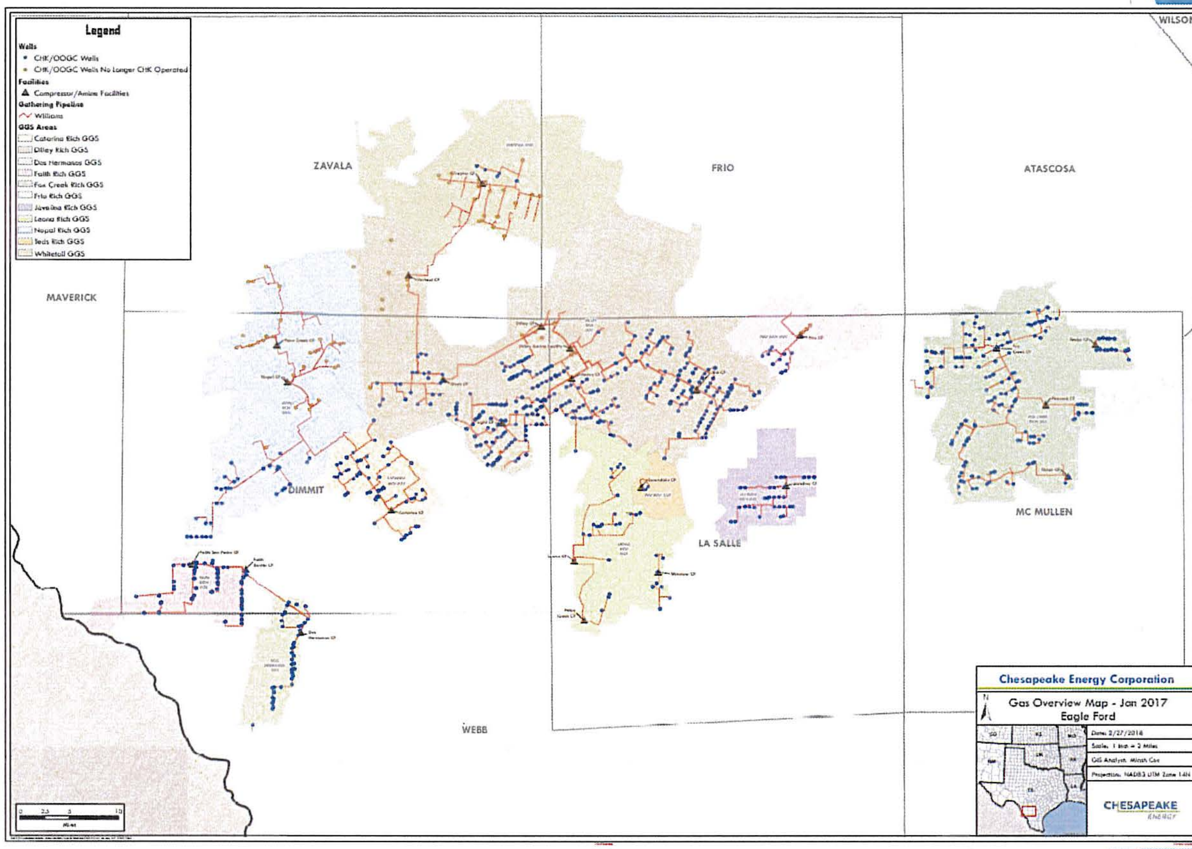
History - CEU Buys Into the Eagleford

November, 2010 (*CMO Gathering Agreement*)

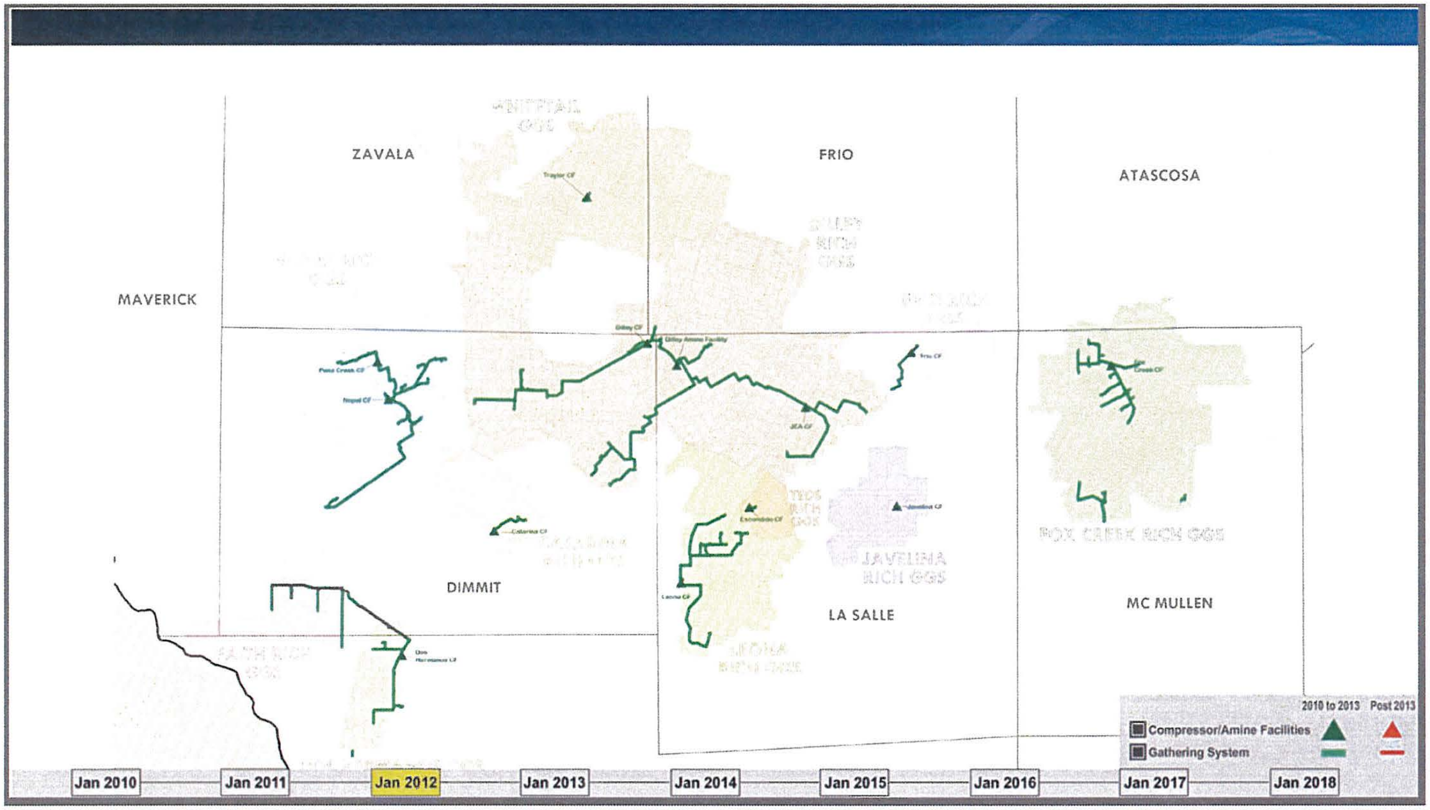
- **Fixed Fee Agreement.**
- Each well receives a system rate and 2.5% escalation.
- CEU and Chesapeake paid $0.36/MCF for gathering and transportation on the Mockingbird System for the HATCH 1-H well in 2010.
- The rate escalated at 2.5% per year. Thus, in January of 2011, the gathering and transportation rate for the HATCH 1-H rose to $0.369/MCF.

History - Chesapeake/CEU Develop the Eagleford

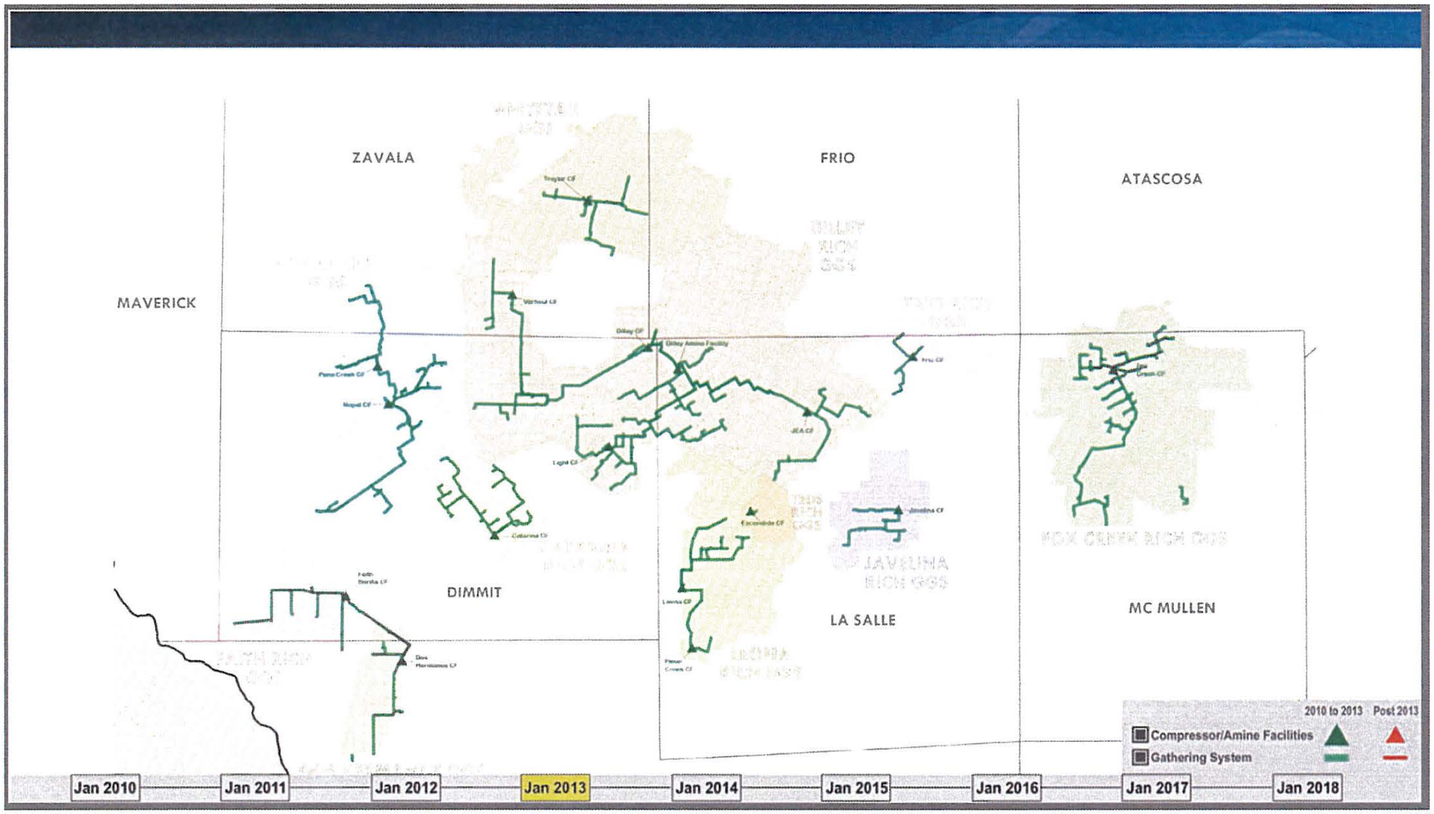
- 2,734 wells drilled and completed as of March, 2018.



History – Mockingbird System Buildout



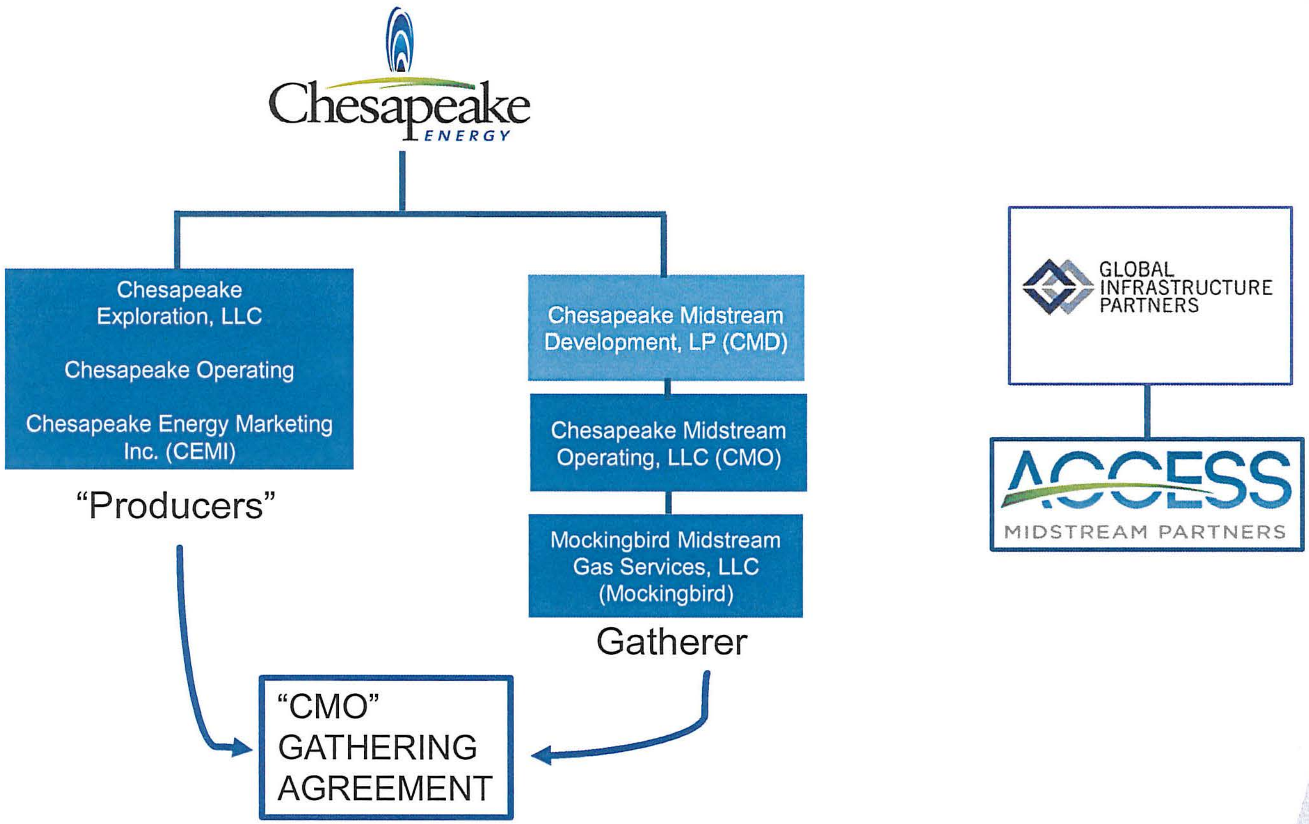
History – Mockingbird System Buildout



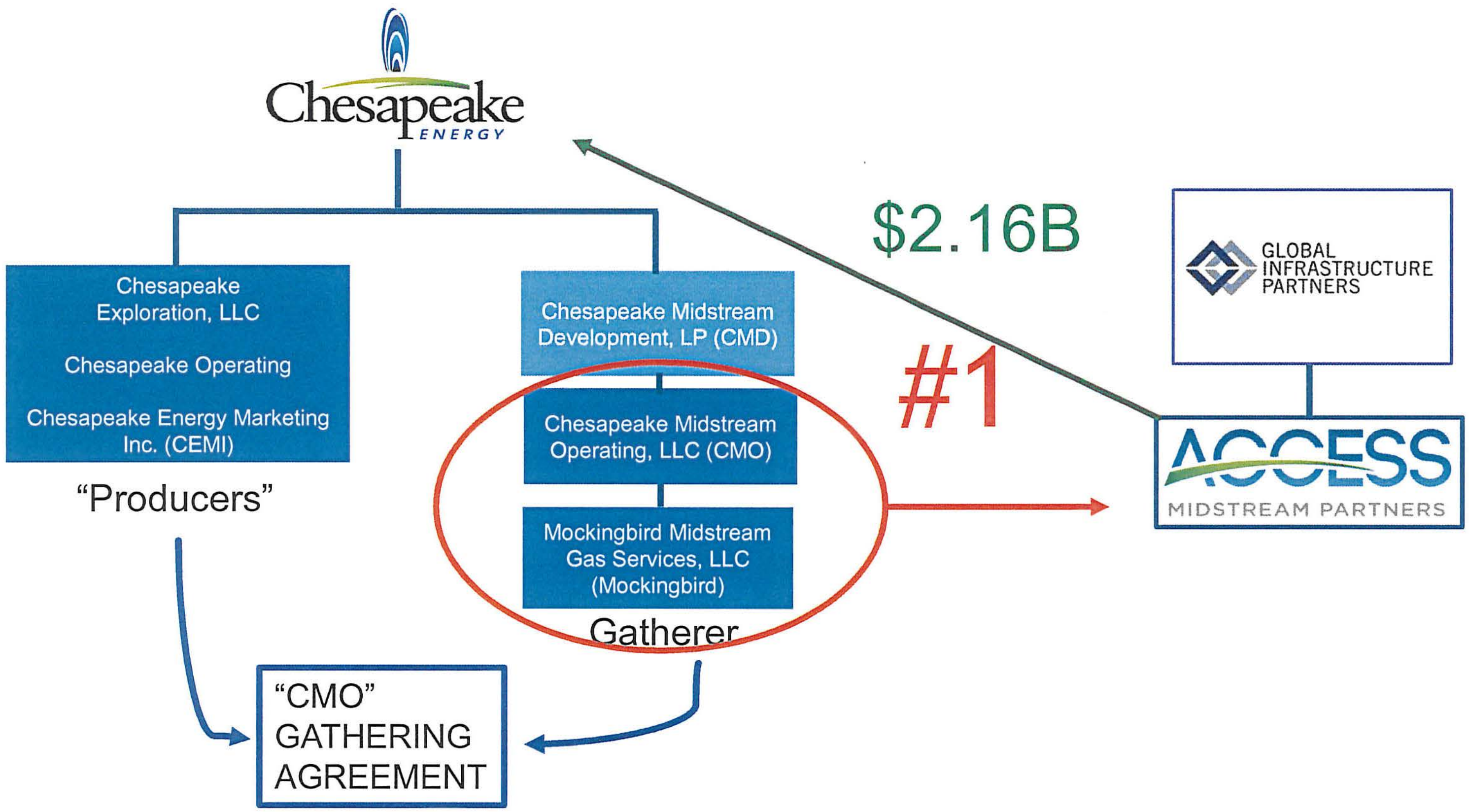
December 2012 Forward

- Joe Thompson III
- PorterHedges LLP

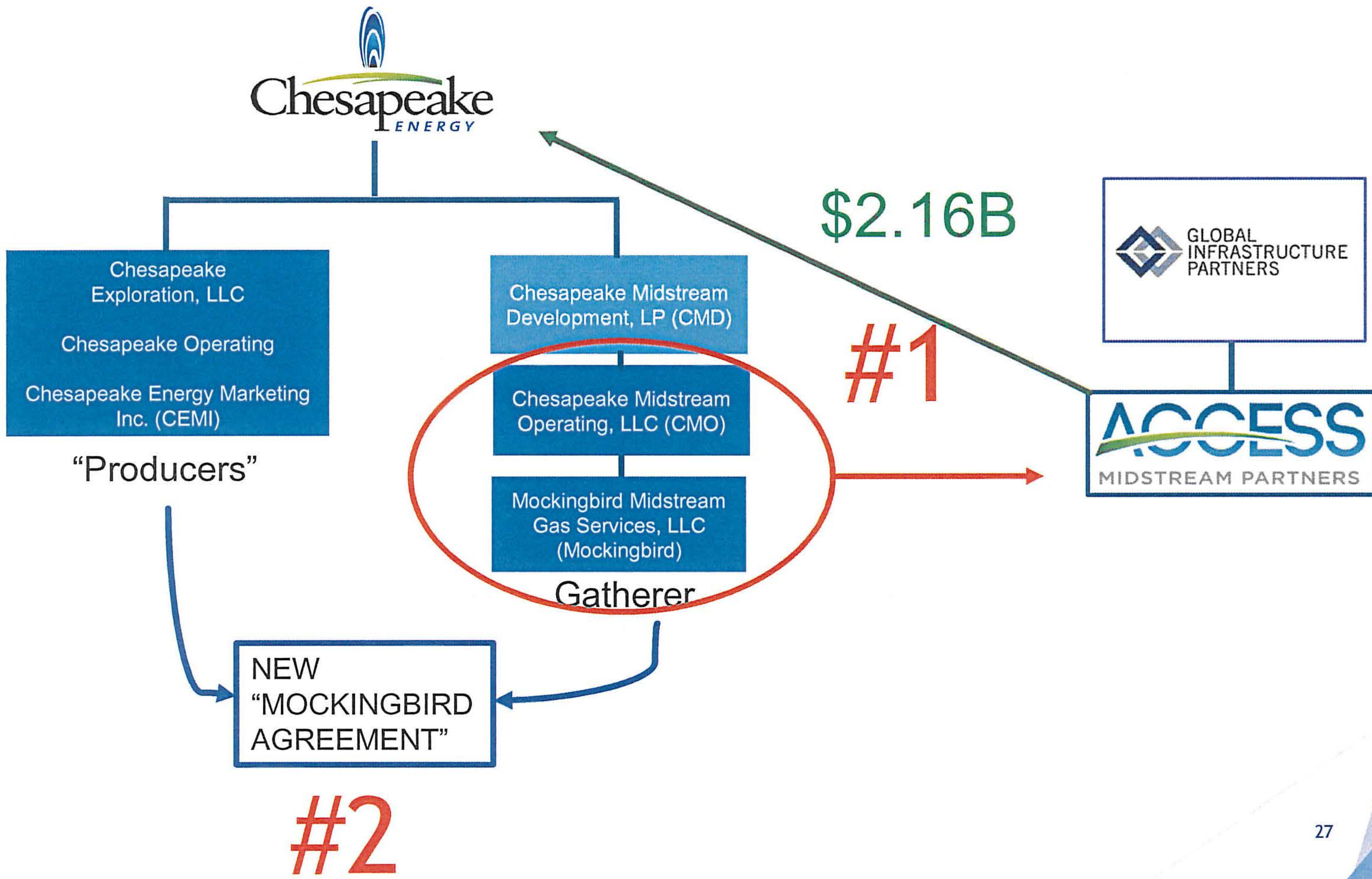
Eagleford Gas Gathering - Prior to December, 2012



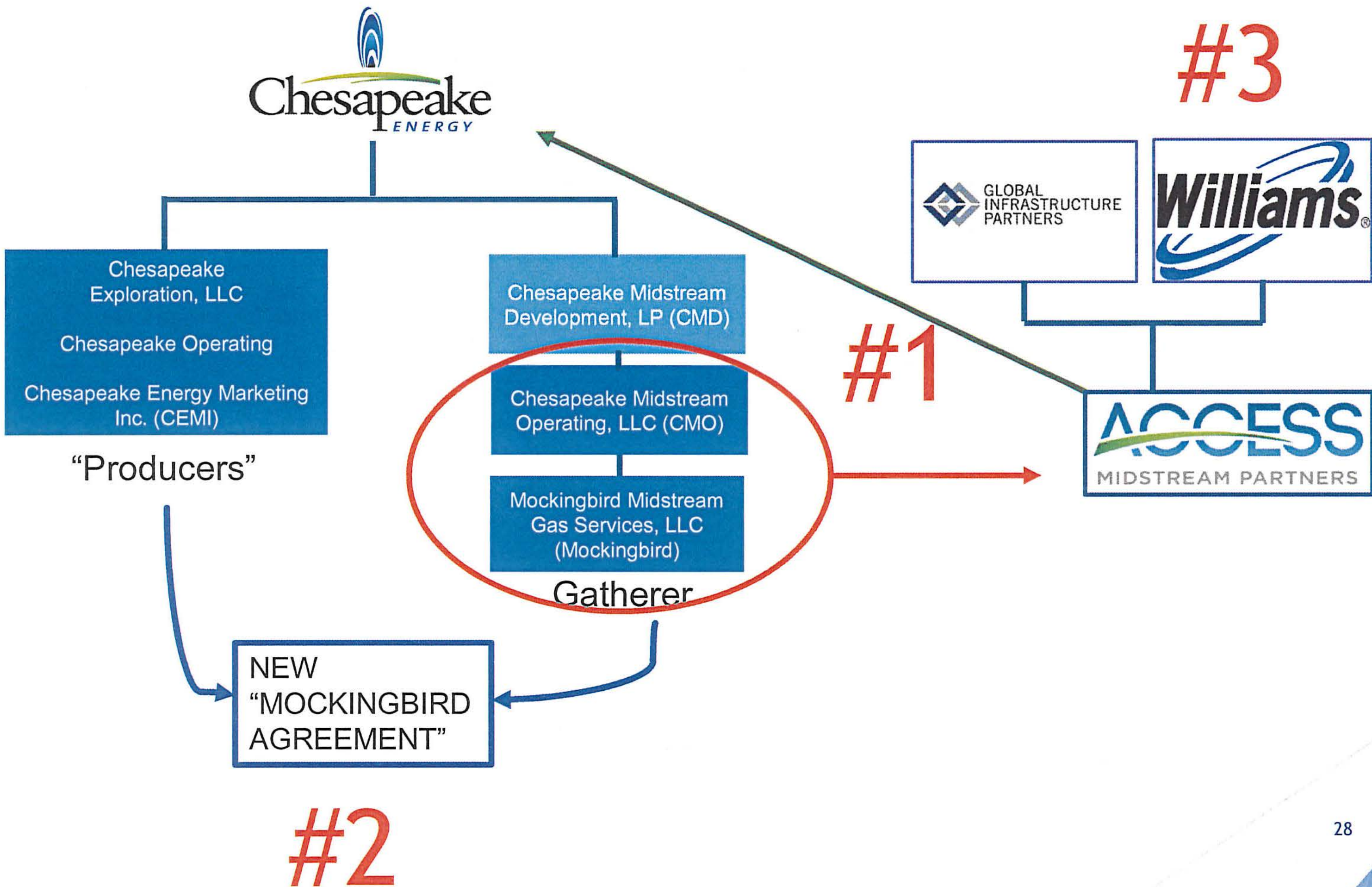
December 2012 - The Three Part Transaction



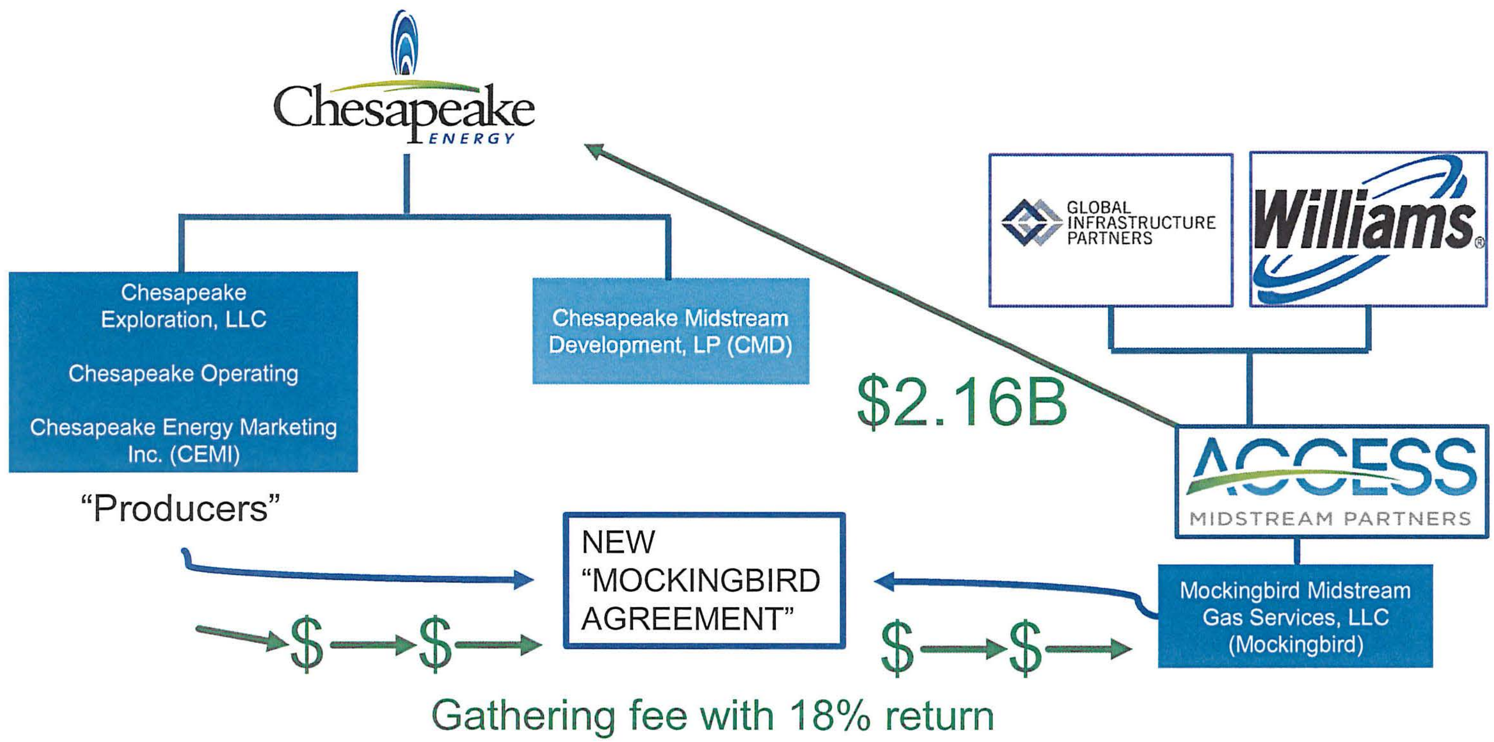
December 2012 - The Three Part Transaction



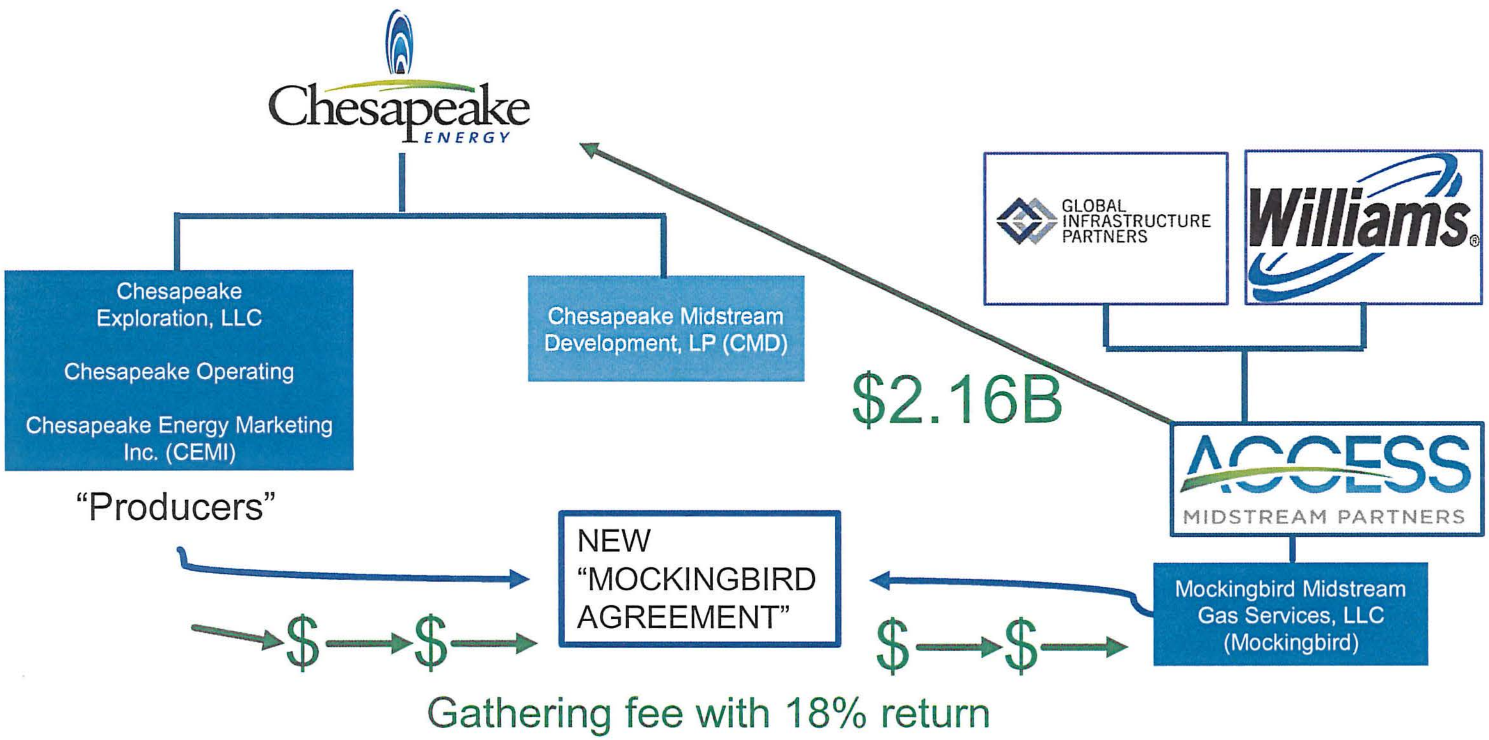
December 2012 - The Three Part Transaction



Mockingbird Gas Gathering Agreement Parties

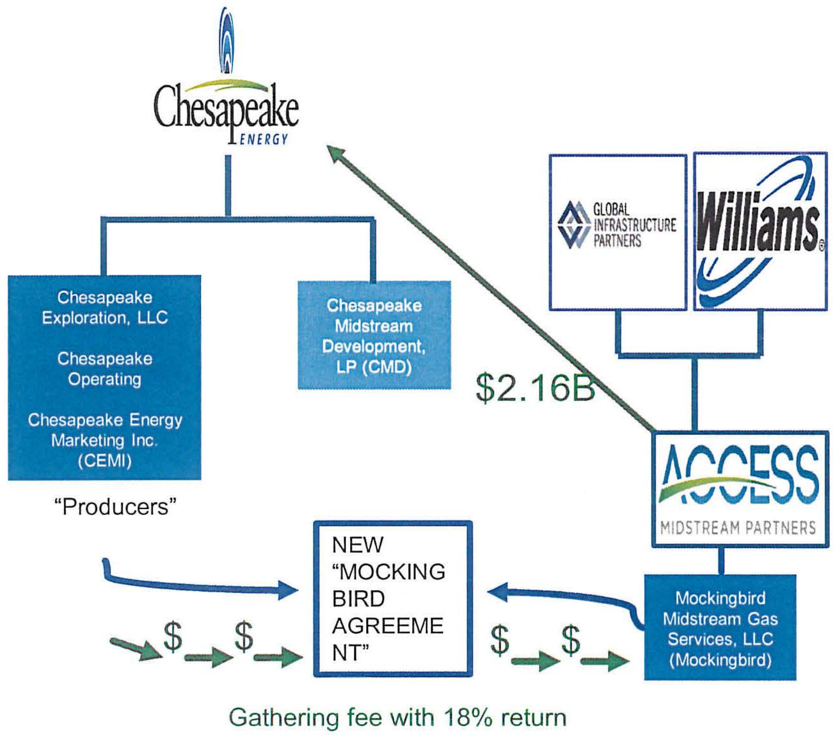


Mockingbird Gas Gathering Agreement Parties



Where was CEU in this?

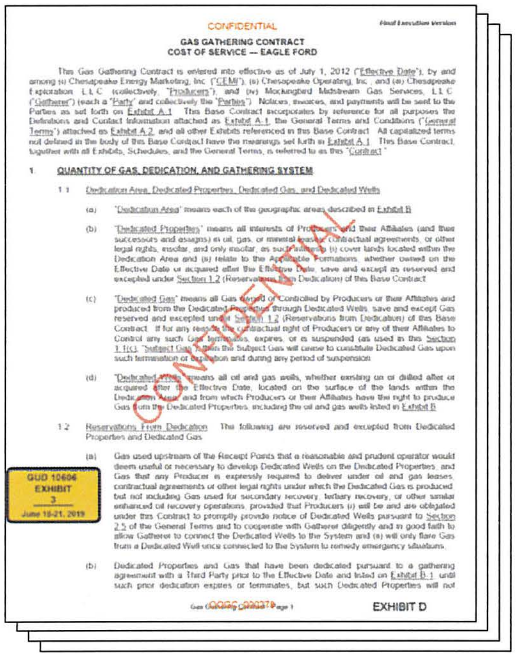
CEU Had Nothing to do with the Mockingbird Agreement



CEU

- CEU was not included in the negotiation.
- CEU is not a party to the Mockingbird Agreement.
- CEU's gas is not dedicated to the Mockingbird Agreement.
- CEU is not part of the annual rate redetermination process.
- CEU does not have audit rights.
- It is along for the ride - but only so long as Chesapeake continues to market its gas, and that continues so long as Williams refuses to offer CEU a competitive rate.

Mockingbird Agreement Key Terms



CONFIDENTIAL

Final Execution Version

GAS GATHERING CONTRACT
COST OF SERVICE — EAGLE FORD

This Gas Gathering Contract is entered into effective as of July 1, 2012 ("Effective Date"), by and among (i) Chesapeake Energy Marketing, Inc. ("CEMI"), (ii) Chesapeake Operating, Inc., and (iii) Chesapeake Exploration, L.L.C. (collectively, "Producers"), and (iv) Mockingbird Midstream Gas Services, L.L.C. ("Gatherer") (each a "Party" and collectively the "Parties"). Notices, invoices, and payments will be sent to the Parties as set forth on Exhibit A-1. This Base Contract incorporates by reference for all purposes the Definitions and Contact Information attached as Exhibit A-1, the General Terms and Conditions ("General Terms") attached as Exhibit A-2, and all other Exhibits referenced in this Base Contract. All capitalized terms not defined in the body of this Base Contract have the meanings set forth in Exhibit A-1. This Base Contract, together with all Exhibits, Schedules, and the General Terms, is referred to as this "Contract."

1. QUANTITY OF GAS, DEDICATION, AND GATHERING SYSTEM

1.1 Dedication Area, Dedicated Properties, Dedicated Gas, and Dedicated Wells

(a) "Dedication Area" means each of the geographic areas described in Exhibit B.

(b) "Dedicated Properties" means all interests of Producers and their Affiliates (and their successors and assigns) in oil, gas, or mineral leases, contractual agreements, or other legal rights, insofar, and only insofar, as such interests (i) cover lands located within the Dedication Area and (ii) relate to the Applicable Formations, whether owned on the Effective Date or acquired after the Effective Date, save and except as reserved and excepted under Section 1.2 (Reservations from Dedication) of this Base Contract.

(c) "Dedicated Gas" means all Gas owned or Controlled by Producers or their Affiliates and produced from the Dedicated Properties through Dedicated Wells, save and except Gas reserved and excepted under Section 1.2 (Reservations from Dedication) of this Base Contract. If for any reason the contractual right of Producers or any of their Affiliates to Control any such Gas terminates, expires, or is suspended (as used in this Section 1.1(c), "Subject Gas"), then the Subject Gas will cease to constitute Dedicated Gas upon such termination or expiration and during any period of suspension.

(d) "Dedicated Wells" means all oil and gas wells, whether existing on or drilled after or acquired after the Effective Date, located on the surface of the lands within the Dedication Area and from which Producers or their Affiliates have the right to produce Gas from the Dedicated Properties, including the oil and gas wells listed in Exhibit B.

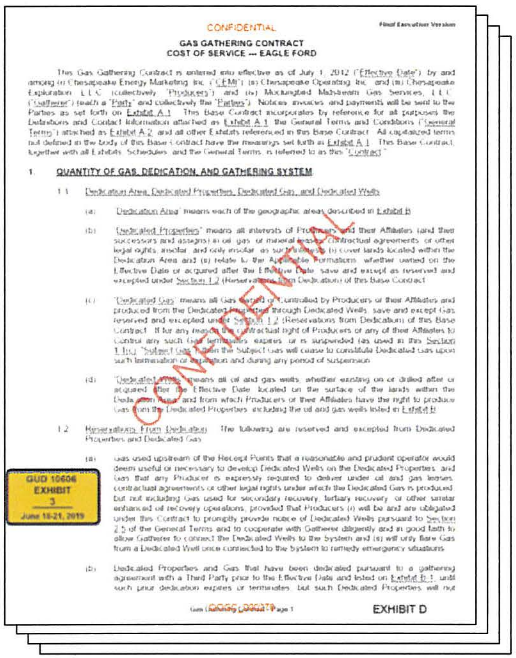
1.2 Reservations From Dedication. The following are reserved and excepted from Dedicated Properties and Dedicated Gas:

(a) Gas used upstream of the Receipt Points that a reasonable and prudent operator would deem useful or necessary to develop Dedicated Wells on the Dedicated Properties, and Gas that any Producer is expressly required to deliver under oil and gas leases, contractual agreements or other legal rights under which the Dedicated Gas is produced, but not including Gas used for secondary recovery, tertiary recovery, or other similar enhanced oil recovery operations, provided that Producers (i) will be and are obligated under this Contract to promptly provide notice of Dedicated Wells pursuant to Section 2.5 of the General Terms and to cooperate with Gatherer diligently and in good faith to allow Gatherer to connect the Dedicated Wells to the System and (ii) will only flare Gas from a Dedicated Well once connected to the System to remedy emergency situations.

(b) Dedicated Properties and Gas that have been dedicated pursuant to a gathering agreement with a Third Party prior to the Effective Date and listed on Exhibit B-1 until such prior dedication expires or terminates, but such Dedicated Properties will not

- 20-year dedication by Chesapeake – **not CEU.**
- Fees now based on "Cost of Service" ("COS") – with ***18%*** rate of return for Williams.
- The rate is "redetermined" each year in order to generate the 18% return.
  - If volumes are less that forecast, or costs are greater, the fee goes up.
  - If volumes are greater than forecast, or costs are less, the fee goes down.
- Four subsystems: Shallow Oil, Deep Oil, Rich Gas and Treating. Each runs its own 18% COS model.
- 18% Return virtually guaranteed.

Mockingbird Agreement - Chesapeake's Approval Rights


CONFIDENTIAL

Final Execution Version

GAS GATHERING CONTRACT
COST OF SERVICE — EAGLE FORD

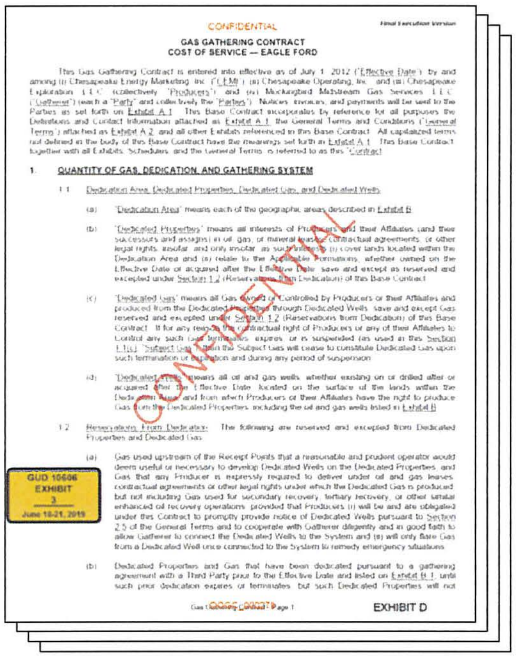
1 QUANTITY OF GAS, DEDICATION, AND GATHERING SYSTEM

GUD 10606
EXHIBIT
3
June 18-21, 2019

EXHIBIT D

- Chesapeake has two separate "approval rights" over how revenues from *other customers* are treated in the model.
  - One relates to few parties, like CEU, that own working interest in Chesapeake wells.
  - The other applies to everyone else.
- Approval provisions give Chesapeake influence over Williams regarding the rates it will offer, but the provision that applies to CEU is especially impactful.
- The "approval provisions" are unique, even among other Chesapeake and Williams gathering agreements.
- Designed to thwart CEU's ability to take in kind and negotiate its own rate.
- Instead, Chesapeake and Williams wanted to bind CEU to these rates in order to support their COS model.

Mockingbird Agreement – Chesapeake's Approval Rights


CONFIDENTIAL

GAS GATHERING CONTRACT
COST OF SERVICE — EAGLE FORD

1. QUANTITY OF GAS, DEDICATION AND GATHERING SYSTEM

GUD 10606
EXHIBIT
3
June 18-21, 2019

EXHIBIT D

2.5 Third Party Wells.

(a) Priority 1 Service. Prior to any annual fee redetermination that will include a Third Party Well, but after Gatherer has a binding contract with a Third Party with respect to a connection to the System of a Third Party Well that will receive Priority 1 Service, Gatherer will send written notice to Producers that includes the projected connection cost, all fees to be paid by the Third Party (and the terms of any escalation of the fees), volume forecasts and other economic data reasonably requested by Producers to determine whether to include the Third Party Well in the COS Calculations.

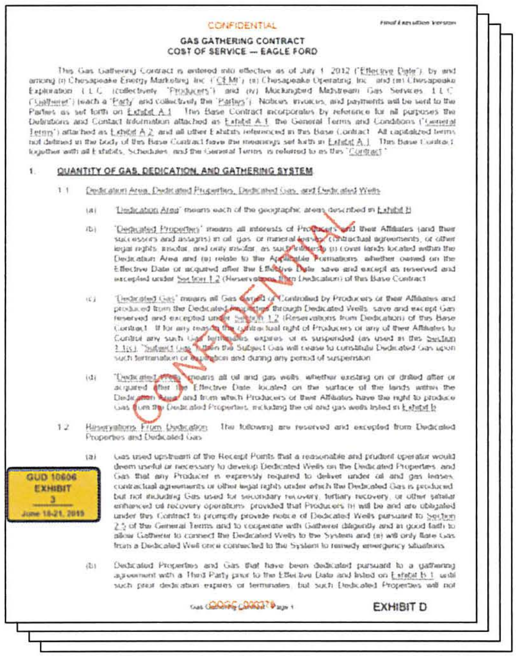
(i) Third Party Wells - Approved by Producers. If the connection of the Third Party Well to the System is approved by Producers in writing within thirty (30) Days after receipt of the above-described notice from Gatherer, all costs and revenues, and amounts owed but not paid by the Third Party, associated with the Third Party Well will be included in the COS Calculation and all Gas from the Third Party Well will be Priority 1 Gas, and the Third Party Well will bear its pro rata share of Fuel and L&U on the System. Gatherer may not decrease the fees or the escalation of the fees on the approved Third Party Well without either (a) maintaining the full credit of the agreed upon fee (with agreed escalation) to revenue in the COS Calculations, or (b) Producers' prior written consent which may be withheld in Producers' sole discretion.

(ii) Third Party Wells - Not Approved by Producers. If the connection of the Third Party Well is not approved by Producers or Producers fail to respond in writing within the thirty (30) Day period above, then: (a) the costs to connect the Third Party Well to the System will be excluded from the COS Calculations; (b) subject to the restrictions in Section 2.4(a) above, Gatherer may provide the Gas from the Third Party Well with Priority 1 Service; (c) Gatherer will credit to the COS Calculations for each Year, 25% of the System Fee hereunder for such Year for all volumes delivered to the System from the Third Party Well; and (d) the Third Party Well will bear its pro rata share of Fuel and L&U on the System.

(b) Other Service. If Gatherer connects any Third Party Well to the System that does not receive Priority 1 Service, then: (a) the costs to connect that Third Party Well to the System will be excluded from the COS Calculation; (b) for all volumes delivered to the System from that Third Party Well, Gatherer will credit to the COS Calculation 25% of the revenue attributable to Gas delivered to the System from that Third Party Well; and (c) the Third Party Well will bear its pro rata share of Fuel and L&U on the System.

- Found on page 5 of Mockingbird Agreement, Section 2.5
- Deals exclusively with Third Party <u>Wells</u> – that is, wells from which Chesapeake does not produce gas.

Mockingbird Agreement - Chesapeake's Approval Rights



3.2 Inputs. All items of Total Revenue, Total Expense and Capital Expenditures will be allocated on a cash basis to the System without duplication.

(a) Volume. Gatherer will convert the Volume Forecast from MCFs to MMBTUs in accordance with the measurement provisions in the Contract and based upon the most readily available Historical Data or, if Historical Data is not available, based upon similarly situated Gas.

(b) Revenue. Gatherer will include all Total Revenue Historical Data available for both Producers and Third Parties (including amounts owed by Third Parties which remain unpaid for more than 90 days after the due date) for previous periods (in the same manner Total Revenue is determined for Forecast Data in this section). For Third Party Gas volumes gathered by the Gatherer from Dedicated Wells, the revenue included in Total Revenue Historical Data and Forecasted Data from such Third Party Gas volumes shall be calculated based on (i) the actual Third Party gathering fee if the fee has been approved by the Producer or (ii) the System Fee if the actual Third Party gathering fee has not been approved by the Producer. For the remaining term of the Redetermination Period, Gatherer will forecast Total Revenue for the System by summing the following: (i) the System Fee multiplied by the Volume Forecast less Gas Lift Gas volumes (as provided in Section 5.2 of the Base Contract); provided that the portion of the Volume Forecast that represents Third Party Gas produced from the Dedicated Wells will be based on (x) the actual Third Party gathering fee if the fee has been approved by Producers or (y) the System Fee if the actual Third Party gathering fee has not been approved by Producers; (ii) for Third Party Wells approved by Producers in accordance with Section 2.5(a)(i) of the Base Contract, the expected revenues to be received from such Third Party Wells over the Redetermination Period; (iii) for any Third Party Wells with Priority 1 Service for which the connection is not approved by Producers under Section 2.5(a)(ii) of the Base Contract, 25% of the System Fee multiplied by the forecasted receipt point volumes over the Redetermination Period less the Gas Lift Gas volumes from such Third Party Wells; (iv) for any Third Party Well that does not receive Priority 1 Service pursuant to Section 2.5(b) of the Base Contract, 25% of the gathering fee applicable to Gas delivered to the System from that Third Party Well multiplied by the forecasted receipt point volumes over the Redetermination Period less the Gas Lift Gas volumes from such Third Party Well; and (v) for any Producer Installed Asset in accordance with Section 3.4 of Exhibit F of the Base Contract, 25% of the System Fee multiplied by expected volumes from such Producer Installed Asset over the Redetermination Period.

- Found on page 170, Exhibit C, Section 3.2 of agreement.
- Targets Third Party Gas – that is, gas produced by third parties which happens to come from a well in which Chesapeake also owns an interest. In other words, CEU and a few others.

Mockingbird Agreement - Comparison of Approval Rights

	Shippers from "Dedicated Wells"	Shippers from "Third Party Wells"
Governing Provision	Mockingbird Agreement (Exh. 3) at Exhibit C, Art. 3.2(b)	Mockingbird Agreement (Exh. 3) at Art. 2.5
Who does it apply to?	Only working interest owners in Chesapeake wells: CEU, Founders Entities, Stonegate and a few other	<u>Everyone</u> else.
Scope of Chesapeake's Approval Right	Any agreement with a working interest owner, *regardless of priority of service*.	<u>Only</u> applies to Priority 1 service.
Consequences if Chesapeake Disapproves....	Chesapeake gets a credit towards COS model for all shipper volumes at 100% of the Mockingbird System Rate In other words, Chesapeake gets credit as if the gas was still being gathered under Mockingbird and Williams eats the difference.	Chesapeake only gets a credit of: 25% of Mockingbird System fee if Priority 1, 25% of actual third-party rate for lower priorities and Chesapeake has no approval rights.

The Approval Provisions Treat Shippers Differently
Structural, Built In Discrimination

Walter Bennett (Pages 106:16 to 107:9)

Q. The effect of these two different approval mechanisms treats differently a shipper with gas coming from a dedicated well, on the one hand, and a shipper right across the fence line whose gas comes from a well that doesn't happen to be a well where Chesapeake is producing.

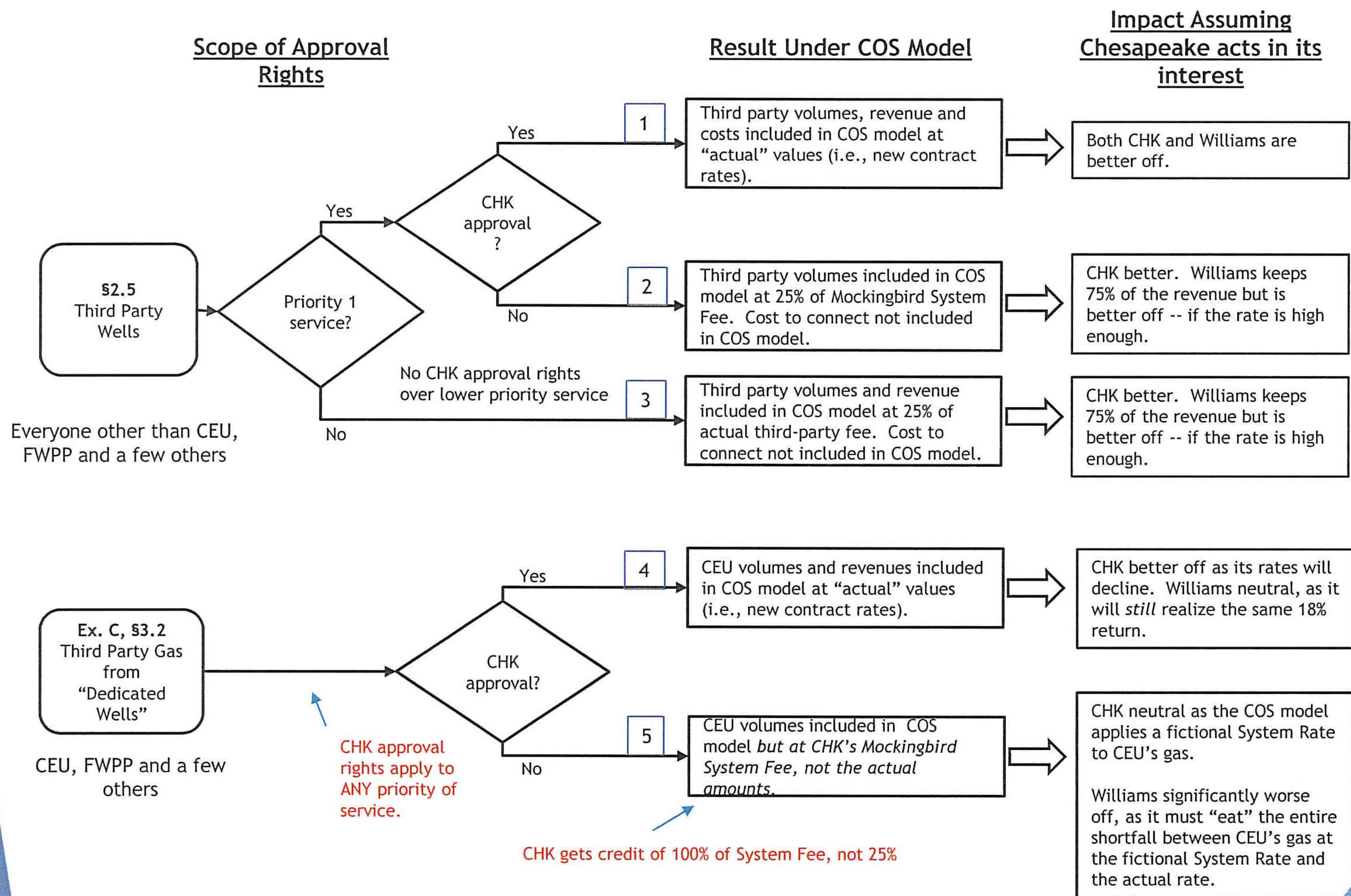
Q. They are treated differently under this contract, aren't they?

A. There's different circumstances to that that define those.

Q. With respect to the approval provision, they are -- this agreement draws a distinction and treats them differently, doesn't it?

A. Yes.

Mockingbird Agreement - Comparison of Approval Rights.



Economic Consequences of Approval Provision on Offers to CEU

How Williams Agreed to Give Chesapeake the Leverage….

Jane Kidd

Gas Utilities Docket No. 10606

FORMAL COMPLAINT OF CNOOC ENERGY U.S.A. LLC AGAINST WILLIAMS MLP OPERATING LLC AND MOCKINGBIRD MDSTRM GAS SERVICES, LLC

BEFORE THE RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

PREFILED DIRECT TESTIMONY OF

JANE K. KIDD

ON BEHALF OF CNOOC ENERGY U.S.A. LLC

APRIL 12, 2019

ENERGY LITIGATION SERVICES GROUP

GUD 10606
EXHIBIT
24
June 18-21, 2019

24

CONFIDENTIAL

One reasonably may expect different gathering arrangements for Third Party Shippers, depending on whether or not the gas is from a Dedicated Well. For example, a Dedicated Well Third Party Shipper like CEU would pay the same Rate for Priority 3 as it does for Priority 1, whereas an Other Third Party Shipper can pay a rate for Priority 3 Service lower than the Chesapeake's Rate.[24] Both of these provisions give significant economic leverage to one of Respondents' shippers, Chesapeake, over the Rates Respondents can afford (or are willing to afford) to offer to Third Party Shippers, with the most leverage being afforded to Chesapeake in the instance of Dedicated Well Third Party Shippers. These Dedicated Well Third Party Shippers like CEU, and the intervenors are, from an economic perspective, likely to be particularly disadvantaged in terms of Respondents' incentive relative to Other Third Party Shippers. Moreover, the effective of these "Chesapeake approval provisions" and the subsequent treatment of Third Party revenue and costs in the 18% COS Model creates a situation where a significant, if not primary, driver of Respondents' economic calculus on what Rates it is willing to offer Third Party Shippers is "how does this impact the 18% COS Model and ultimately the otherwise guaranteed 18% IRR" in the Mockingbird Agreement.

Table 2
Revised Chesapeake Rates With Chesapeake Approval
($/MMBtu)

	Current	CEU Rate Reduction 10%	CEU Rate Reduction 20%	CEU Rate Reduction 30%
Deep Oil System	$ 2.07	$ 2.13	$ 2.20	$ 2.27
Rich Gas System	0.62	0.63	0.65	0.67
Shallow Oil System	7.66	7.91	8.17	8.46
Treating System ($/MCF)	0.64	0.66	0.68	0.70

Table 3
Respondent Return Without Chesapeake Approval

	Current	CEU Rate Reduction 10%	CEU Rate Reduction 20%	CEU Rate Reduction 30%
Deep Oil System	18.0%	17.6%	17.1%	16.6%
Rich Gas System	18.0%	17.4%	16.9%	16.2%
Shallow Oil System	18.0%	17.5%	17.1%	16.5%
Treating System	18.0%	17.6%	17.2%	16.9%

Economic Consequences of Approval Provision on Offers to CEU

How Williams Agreed to Give Chesapeake the Leverage....

- This isn't controversial – Williams admits it.
- This is Williams Senior VP and designated corporate representative.

Walter Bennett (Pages 47:17 to 48:8)

Q. It's -- it is the case, Mr. Bennett, isn't it, that under the Mockingbird agreement, Chesapeake is given certain rights with respect to how Williams' fees from other shippers might be treated under the cost-of-service model?

A. Yes. They're given a right to determine whether it is included or excluded from the cost-of-service model.

Q. And how it's treated -- how those fees and revenues from other shippers are treated in the cost-of-service model can have the effect of raising or lowering the rate that Chesapeake is paying, correct?

A. It can.

Q. And the flip side of changing the rate that Chesapeake is paying, it can have the effect of raising or lowering Williams' revenues as well?

A. Yes.

Approval Rights Designed to Control CEU's Gas

- Gives one shipper the right to put its thumb on the sale. This was Williams' calculated decision - the deal it made to get the 18%.

- Williams have addressed this by including CEU and asking it to dedicate its gas.

  Walter Bennett (Page 114:5 to 114:12)

  Q. Because one way you could deal with this issue that we see in Section 3.2, which is what happens if a working-interest owner decides to take its production in kind, how does that affect the COS model? Because you could have gone to the working-interest owners and said, Here's the Mockingbird agreement. Will you sign it and dedicate your gas to it? Right?

  A. They could have done that, yes.

- Instead, without consulting CEU, they crafted a provision to accomplish this involuntarily.

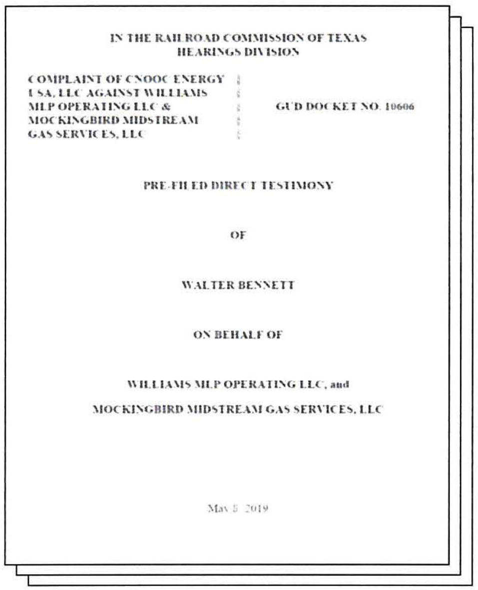
  Walter Bennett (Page 115:3 to 115:12)

  Q. Instead, for whatever reason -- again, I'm not suggesting it was a gatherer-side reason, necessarily, but for whatever reason, that didn't happen. And what happens is there's an approval provision built into Exhibits C-1 through 4 that tries to address that issue, what happens if a working-interest owner takes its gas in kind.

  A. Yes, that's what's described here.

- This was no accident - this was designed to hold CEU hostage to a system rate it never agreed to, despite CEU's right to take in kind, the fact that, 7 years later, the system rate is not compared to third parties, CEU did not sign up to be an anchor shipper, CEU didn't get $2,160,000,000 from Williams for selling midstream assets as part of the same deal.

Approval Rights Designed to Control CEU's Gas



IN THE RAILROAD COMMISSION OF TEXAS
HEARINGS DIVISION

COMPLAINT OF CNOOC ENERGY USA, LLC AGAINST WILLIAMS MLP OPERATING LLC & MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC	GUD DOCKET NO. 10606

PRE-FILED DIRECT TESTIMONY

OF

WALTER BENNETT

ON BEHALF OF

WILLIAMS MLP OPERATING LLC, and

MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC

May 8, 2019

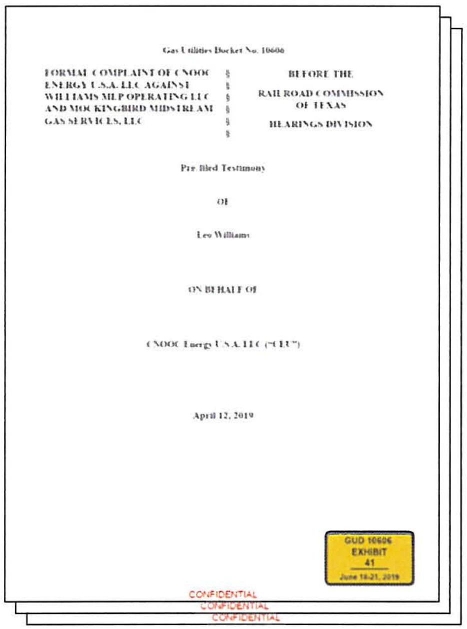
Walter Bennett, Williams Sr. VP Pre-File Testimony at 8-9.

"[U]nder the [Mockingbird] Agreement, Chesapeake dedicated all the gas from its wells on the covered acreage. This included hundreds of thousands of acres across seven Texas counties. Chesapeake had the responsibility to market gas attributable to CNOOC's interest unless CNOOC elected to take in kind. To this date, however, CNOOC has never taken its gas in kind.

In large part because the building of the system was predicated on gas volumes and revenues from the dedicated Chesapeake-operated wells, ***the Agreement was structured to help ensure that all such gas volumes – volumes for which the system was built – would continue to flow on the system.***"

- This "structure" purposefully treats CEU differently. It is per se discrimination.

CEU Asks for Rates, Repeatedly, and Williams offers only Mockingbird


Gas Utilities Docket No. 10606

FORMAL COMPLAINT OF CNOOC ENERGY U.S.A. LLC AGAINST WILLIAMS MLP OPERATING LLC AND MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC § § § § § §

BEFORE THE RAILROAD COMMISSION OF TEXAS HEARINGS DIVISION

Pre-filed Testimony

OF

Leo Williams

ON BEHALF OF

CNOOC Energy U.S.A. LLC ("CEU")

April 12, 2019

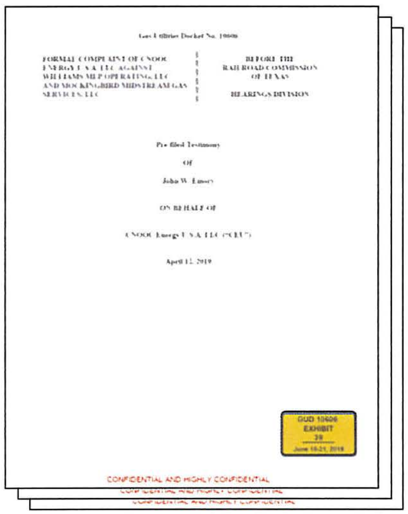
GUD 10606 EXHIBIT 41 June 18-21, 2019

CONFIDENTIAL
CONFIDENTIAL
CONFIDENTIAL

Leo Williams

- Undisputed that CEU asks for rates and Williams refuses to offer anything other than Mockingbird Rates.
- *Williams' Pre-Hearing Brief* "Both CNOOC and EXCO have requested rates for transportation on the Mockingbird Eagle Ford gathering system; both consistently were offered the same rate charged by Williams to Chesapeake under its gathering agreement with Chesapeake...."
- Williams explanation was not "the rate is fair" or "the rate is appropriate for us to recover our capital". Williams told CEU that the Mockingbird Agreement tied their hands and they couldn't offer anything else.
- Williams did no independent analysis of an offer to CEU.

Williams' "Offers" Reflect the Structural Discrimination Caused by the Approval Provisions


Gas Utilities Docket No. 10606

FORMAL COMPLAINT OF CNOOC ENERGY U.S.A. LLC AGAINST WILLIAMS MLP OPERATING, LLC AND MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC

BEFORE THE RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

Pre-filed Testimony

Of

John W. Emory

ON BEHALF OF

CNOOC Energy U.S.A. LLC ("CEU")

April 12, 2019

GUD 10606 EXHIBIT 39

CONFIDENTIAL AND HIGHLY CONFIDENTIAL

John Emory

- Examined all 39 Gas Gathering Agreements on the system.
- Analyzed the 13 non-exclusive factors for being similarly-situated.
- Applied against two scenarios:

Scenario 1 – considering CEU as a shipper that has been and is currently incurring the same rates and costs as Chesapeake under the terms of the Mockingbird Agreement for Priority 1 service;

Scenario 2 – considering CEU as a shipper who has requested gas gathering services from Respondents on the Mockingbird System for any level of priority service but has been informed the only rate available from Respondents is the rate under the Mockingbird Agreement.

Scenario 1 – Comparison of Status Quo to P1 Shippers

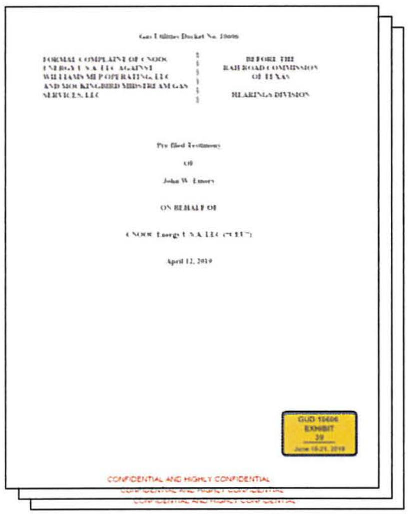
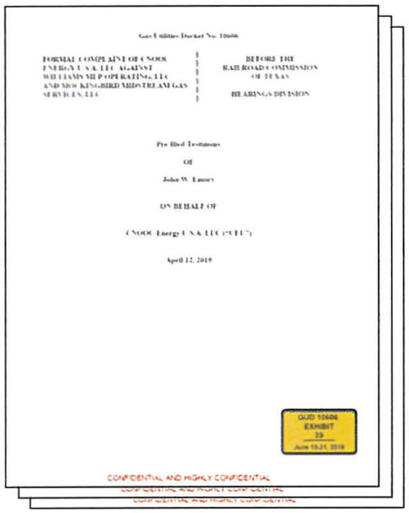


Table 5

Scenario 1 - Primary Commerical Terms for Similarily Situated Shippers to CEU

Shipper	Gathering System	Quality of Service	Gathering & Compression Rate, $/MMBtu	Treating Rate, $/Mcf	Rate Adjustment	FL&U	Drip
MB	Deep Oil	Priority 1	$1.96-$2.03 $2.00 to $3.87 (actual between 2012-2018) [Feb '17 $2.06]				
MB	Rich Gas	Priority 1	$0.62-$0.64 $0.62 to $1.27 (actual between 2012-2018) [Feb '17 $0.64]	$0.38-$0.40 $0.43 to $0.75 (actual between 2012-2018) [Feb '17 $0.64]	2013-14: monthly based on volumes 2015+: annually based on COS calc	Actual - subject to cap	Producer
MB	Shallow Oil	Priority 1	$5.30-$5.93 $5.36 to $7.89 (actual between 2012-2018) [Feb '17 $6.67]				
14	Deep Oil	Priority 1	$0.74 [Feb '17 $0.77]	$0.35 [Feb '17 $0.36]	CPI	Actual	Gatherer
15	Deep Oil	Priority 1	$0.74 [Feb '17 $0.77]	$0.35 [Feb '17 $0.36]	CPI	Actual	Gatherer
17	Deep Oil	Priority 1	$2.00 [Feb '17 $2.15]	Negotiated if applicable	2.5% per year	Actual	Gatherer
27	Shallow Oil	Priority 1	$0.99	$0.65	2.5% per year	Actual	Gatherer
33	Deep Oil	Priority 1	$0.81 [Feb '17 $0.83]	$0.49	2.5% per year	Actual	Gatherer

Scenario 2 - Comparison of Potential Rates to Other Shippers



- Nothing requires that all of CEU's gas be given the same rate, or that it receive Priority 1 service.
- This scenario permits comparison to non-P1 shippers, or shippers in discrete areas.
- No basis for Williams assertion that because CEU has 2700 wells, the only comparison is to Chesapeake.
    - First, number of receipt points makes no difference in the rates.
    - Second, nothing requires CEU to take all of its gas in kind, or receive the same rate for every well. Williams insistence that CEU's gas be treated in the aggregate is a straw man of its own creation.

> Based on the definition of "discrimination" as set forth by the RRC regulations, in my opinion, Respondents' failure to provide CEU a rate for any priority of service other than the higher rate and service provided to Chesapeake under the Mockingbird Agreement is discriminatory to CEU. The gathering and compression rates for all other shippers on the Deep Oil and Shallow Oil systems are considerably lower compared to the rates under the Mockingbird Agreement. The high gathering and compression rates Respondents are willing to provide to CEU for the Deep Oil and Shallow Oil gathering systems disadvantages CEU from a commercial perspective relative to other shippers who are incurring significantly lower rates than CEU.

Real World Examples

- Shippers 14 and 15
  - Another non-operating working interest owner in Deep Oil System – in the same wells as CEU.
  - Approximately 70 receipt points.
  - Because of location, was able to negotiate with another gatherer.
  - Williams offered them a lower rate – approximately 1/3 of the Mockingbird Rate, in order to keep the competition out.
  - Williams paid Chesapeake $5MM in order to secure their approval.
  - The availability of an alternative should not be a requirement for a non-discriminatory rate. Monopoly power does not justify discrimination.
- Shipper 17/20
  - Same producer to same receipt point.
  - Two contracts – one is a Chesapeake dedicated well, one is not.
  - The former is Priority 1 service at approximately $2.00, the other is Priority 2 at $.50.

Williams' Meritless Defenses

- CEU is just like Chesapeake.
- CEU doesn't take into account capital costs.
- The Commission Should Not Rewrite the Mockingbird Agreement.
- Nothing wrong with the approval provisions.
- Williams' process for rate setting was reasonable.
- CEU lost an arbitration to Chesapeake.

PFD Attachment 3

Williams Demonstrative Exhibit

	CNOOC	Chesapeake	Shipper #14 / #15[1]	Shipper #17	Shipper #27	Shipper #33
Exhibit Reference		Exhibit 3	Exhibits 116 & 117	Exhibits 18 & 19	Exhibit 119	Exhibit 120
Contract Name	None. CNOOC delegated all gathering and marketing decisions to Chesapeake[2]	Gas Gathering Contract Cost of Service Eagle Ford "Mockingbird Agreement"	Gas Gathering Contract Texas	Gas Gathering Contract Texas	Gas Gathering Contract Texas	Gas Gathering Contract Texas
Contract Date	N/A	July 2012	Jan. 2014; March 2014 (amended)	Feb. 2014	Nov. 2014	April 2016
(1) Service Requirements	Gathering Compression Treating	Gathering Compression Treating	Gathering Compression Treating	Gathering Compression	Gathering Compression Treating	Gathering Compression Treating
(2) Location of Facilities & Gathering Subsystem	**7 Counties** **11 Subsystems** Rich GGS Dos Hermanos Faith Deep GGS Dilley Catarina Fox Creek Javelina Leona Teds Shallow GGS Frio Nopal White Tail ***Williams spent > $1.5 billion in capital to build the system at no upfront cost to CNOOC & Chesapeake***	**7 Counties** **11 Subsystems** Rich GGS Dos Hermanos Faith Deep GGS Dilley Catarina Fox Creek Javelina Leona Teds Shallow GGS Frio Nopal White Tail ***Williams spent > $1.5 billion in capital to build the system at no upfront cost to CNOOC & Chesapeake***	**Just 1 Subsystem** Deep GGS – Dilley Adjacent to alternative gathering systems	**Just 1 Subsystem** Deep GGS – Catarina	**Just 1 Subsystem** Shallow GGS – White Tail Adjacent to alternative gathering systems	**Just 1 Subsystem** Deep GGS – Dilley Adjacent to alternative gathering systems
(3) Receipt and Delivery Points	**More than 700 receipt points** located across the Mockingbird System	**More than 700 receipt points** located across the Mockingbird System	**70 receipt points** (less than 10% vs. CNOOC and Chesapeake)	**1 receipt point** (less than 1% vs. CNOOC and Chesapeake)	**1 receipt point** (less than 1% vs. CNOOC and Chesapeake)	**1 receipt point** (less than 1% vs. CNOOC and Chesapeake)

[1] CNOOC's expert John Emory grouped these shippers together in his testimony (pp. 41-42), and that grouping is appropriate. Shippers 14 and 15 have overlapping receipt points and similar contracts (e.g. same rates, aid-in-construct obligations, subsystems, and contract term).

[2] *See* CNOOC's Development Agreement with Chesapeake (Ex. 43, Section 12)(Marketing and Other Services) and Eagle Ford Shale JV Presentation (Ex. 82).

(4) Length of Haul	CNOOC has an interest in **more than 2,700 Chesapeake-operated wells and more than 500,000 acres of leases** served by the Mockingbird Agreement CNOOC and Chesapeake use virtually all of the Mockingbird system's 1,000 miles of pipeline	Chesapeake operates **more than 2,200 wells and more than 500,000 acres of leases** served by the Mockingbird Agreement CNOOC and Chesapeake use virtually all of the Mockingbird system's 1,000 miles of pipeline	**Haul from points within the Dilley Subsystem where Delivery Point is located (receipt and delivery contained to 1 subsystem)**	**Haul from just 1 receipt point, from just 1 dedicated well**	**Haul from just 1 receipt point, from the 8 dedicated leases**	**Haul from just 1 receipt point, from just 1 dedicated well** **Service is in Dilley Subsystem where Delivery Point is located (receipt and delivery contained to 1 subsystem)**
(5) Quality of Service (Firm, Interruptible, etc.)	Priority 1 – Firm	Priority 1 – Firm	Priority 1 – Firm	Priority 1 – Firm	Firm or Interruptible based on volume of gas it delivered at the receipt point.	Firm or Interruptible based on volume of gas it delivered at the receipt point.
(6) Quantity	The Mockingbird Agreement is considered the anchor contract and the huge volumes enabled the system to be constructed	The Mockingbird Agreement is considered the anchor contract and the huge volumes enabled the system to be constructed	Volumes are a small fraction of the CNOOC and Chesapeake volumes	Volumes are from 1 receipt point	Volumes are from 1 receipt point	Volumes are from 1 receipt point
(11) Duration of Service	Chesapeake's and CNOOC's gas is currently delivered by Chesapeake under the Mockingbird Agreement, which has a 20 year term	Chesapeake's and CNOOC's gas is currently delivered by Chesapeake pursuant to the Mockingbird Agreement, which has a 20 year term	10 year initial term	10 year initial term	18 year initial term	17 year initial term
(12) Connect Requirements	CNOOC and Chesapeake bear no upfront connection or capital costs	CNOOC and Chesapeake bear no upfront connection or capital costs	Shipper #14 and Shipper #15 bear upfront capital costs	Shipper #17 bears upfront capital costs Paid >$519,000 on	Shipper #27 bears upfront capital costs **Paid >$142,000**	Shipper #33 bears upfront capital costs Paid >$5.6 million on

				all contracts **Paid > $235,000 on the 1 receipt point contract at issue**[3]	**(all related to contract at issue)**	all contracts **Paid > $3.45 million on 1 receipt point contract at issue**
(13) Other Relevant Conditions	Chesapeake and CNOOC retain the valuable drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Chesapeake and CNOOC retain the valuable drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Williams – not the shipper – retains drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Williams – not the shipper – retains drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Williams – not the shipper – retains drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*	Williams – not the shipper – retains drip condensate *Other relevant conditions are discussed in testimony of Cantwell and Bennett*
(7) Swing Requirements[4]	N/A	N/A	N/A	N/A	N/A	N/A
(8) Credit Worthiness[5]	N/A	N/A	N/A	N/A	N/A	N/A
(9) Gas Quality[6]	Same standards apply; treating required	Same standards apply; treating required	Same standards apply; treating required	Same standards apply; treating required	Same standards apply; treating required	Same standards apply; treating required
(10) Pressure[7]	Same standards apply	Same standards apply	Same standards apply	Same standards apply	Same standards apply	Same standards apply
CONCLUSION	**CNOOC IS SIMILARLY-SITUATED TO CHESAPEAKE**	**CNOOC IS SIMILARLY-SITUATED TO CHESAPEAKE**	**NOT SIMILARLY SITUATED**	**NOT SIMILARLY SITUATED**	**NOT SIMILARLY SITUATED**	**NOT SIMILARLY SITUATED**

[3] *See* Exhibit 115 for aid-in-construct payment breakdown, invoices, and supporting documentation.

[4] CNOOC's expert John Emory found that swing requirements are not a distinguishing characteristic (p. 25) and that finding is appropriate.

[5] CNOOC's expert John Emory found that credit worthiness is not a distinguishing characteristic (p. 25) and that finding is appropriate.

[6] CNOOC's expert John Emory found that credit worthiness is not a distinguishing characteristic (p. 26) and that finding is appropriate.

[7] CNOOC's expert John Emory found that pressure is not a distinguishing characteristic (p. 27) and that finding is appropriate.

PFD Attachment 4

Proposed Final Order

BEFORE THE
RAILROAD COMMISSION OF TEXAS

FORMAL COMPLAINT OF CNOOC ENERGY USA, LLC, AGAINST WILLIAMS MLP OPERATING, LLC, AND MOCKINGBIRD MIDSTREAM GAS SERVICES, LLC	§ § § § §	**GAS UTILITIES DOCKET NO. 10606**

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 Chapter 551 (Open Meetings) of the Texas Government Code. The Railroad Commission of Texas ("Commission") adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

General

1. This docket involves two separate complaints against Williams MLP Operating, LLC, and Mockingbird Midstream Gas Services, LLC (together, "Respondents" or "Williams"): (1) the complaint of CNOOC Energy USA, LLC ("CEU"), initially filed on February 22, 2017, and most recently amended on March 1, 2019; and (2) the complaint of EXCO Operating Company, LP ("EXCO"), initially filed on October 4, 2018, and most recently amended on January 14, 2019.

2. Only the discrimination claims are at issue in this docket.

3. In 2012, Williams purchased a gas-gathering system in the Eagle Ford, consisting of approximately 1,000 miles of gathering pipelines and spanning seven counties (the "Mockingbird System"). At the same time, Williams entered into a 20-year gas gathering agreement with various Chesapeake corporate entities (collectively, "Chesapeake"), whereby Chesapeake serves as the anchor shipper and dedicates all its gas from approximately 2,000 wells to the Mockingbird System.

4. CEU and EXCO are not signatories to Williams's 2012 anchor shipper contract with Chesapeake (the "Mockingbird Agreement") and are not direct customers of Williams.

5. CEU and EXCO had contracts only with Chesapeake, to market their gas, and Chesapeake was Williams's customer. The rates Chesapeake pays to Williams under the Mockingbird Agreement, then, are passed on to Chesapeake's own customers pursuant to Chesapeake's own, separate marketing contracts.

Parties

6. Complainant CEU is a non-operating working interest owner in wells located in Atascosa, Dimmit, Frio, La Salle, McMullen, Webb, and Zavala Counties, Texas. The majority of CEU's gas is produced from wells operated by Chesapeake. CEU owns an undivided 33-percent interest of the gas volumes in these wells. CEU has a marketing arrangement with Chesapeake, but CEU may elect to take all its gas in kind.

7. Complainant EXCO is an operator of approximately 130 wells that it bought from Chesapeake in 2013.

8. Respondent Williams is a gas utility pipeline as defined in Section 121.001 (Definition of Gas Utility) of the Texas Utilities Code. Williams provides gathering, compression, and treating service for the gas it gathers on the Mockingbird System. Williams is the full owner of the Mockingbird System, purchasing a 50-percent interest in 2012 and the remaining half in 2014.

9. Intervenors Jamestown Resources, LLC, Larchmont Resources, LLC, and Pelican Energy, LLC (collectively, "Intervenors"), are working interest owners of gas in the Eagle Ford that is gathered and shipped on the Mockingbird System. Like CEU, these companies each have marketing arrangements with Chesapeake and may elect to take their gas in kind.

Procedural Background

10. On February 22, 2017, CEU filed its initial complaint.

11. On March 14, 2017, Williams appeared in the case, timely answering the complaint and moving for dismissal.

12. On April 17, 2018, this motion to dismiss was denied.

13. On April 23, 2018, Williams appealed this interim ruling; no action was taken by the Commissioners and consequently the appeal was deemed denied by operation of law.

14. On June 29, 2018, CEU filed an amended complaint.

15. On August 2, 2018, a motion by Williams was approved to "bifurcate" the docket so that a determination on discrimination could be made prior to a rate proceeding. CEU's Rate Claim was not severed out into a separate docket, however.

16. On October 4, 2018, EXCO filed a consolidated motion to intervene and complaint.

17. On December 14, 2018, Intervenors filed a consolidated motion to intervene and complaint.

18. At a prehearing conference held on December 20, 2018, the presiding Administrative Law Judge ("ALJ") granted EXCO's motion to intervene.

19. On January 14, 2019, EXCO timely amended its complaint.

20. On February 19, 2019, the ALJ granted Intervenors' motion to intervene.

21. On March 1, 2019, Intervenors timely amended their complaint, bringing both a Discrimination Claim and a Rate Claim—similar to CEU and EXCO.

22. On March 1, 2019, CEU filed a second amended complaint.

23. From January 18 to March 11, 2019, Williams separately moved to dismiss each of the complaints, as amended.

24. On May 2, 2019, the ALJ issued a single ruling: (1) denying the motion to dismiss CEU's claims; (2) denying the motion to dismiss EXCO's claims; and (3) granting the motion to dismiss Intervenors' Discrimination Claim, but denying the motion to dismiss their Rate Claim.

25. On May 7, 2019, Williams and Intervenors separately and timely appealed this interim ruling; no action was taken by the Commissioners and consequently both appeals were deemed denied by operation of law.

26. On May 24, 2019, the Notice of Hearing was issued, setting the hearing on the merits to commence on June 18, 2019 ("Notice of Hearing").

27. On May 31, 2019, the Commission published the Notice of Hearing in *Gas Utilities Information Bulletin No. 1108.*

28. From June 14-18, 2019, the ALJ issued several written evidentiary rulings on the admissibility of certain pre-filed witness testimonies offered by CEU, EXCO, Williams, and Intervenors.

29. On June 17, 2019, prior to the start of the merits hearing and after notice to the parties, the presiding ALJ severed the Rate Claims of CEU, EXCO, and Intervenors into a separate docket, GUD No. 10856.

30. The hearing on the merits was held from June 18-20, 2019 (the "Hearing"). A combined list of the parties' exhibits admitted into the evidentiary record is attached to the Proposal for Decision ("PFD").

31. On August 20, 2019, the ALJ made legal findings that certain exhibits and portions of the hearing transcript contain highly sensitive, confidential information under Chapter 552 (Public Information) of the Texas Government Code and ordered that these materials shall remain sealed permanently in Commission records.

32. On August 20, 2019, the evidentiary record closed.

33. On January 9, 2020, the PFD was issued.

34. There were no attempts by Chesapeake to intervene or participate in this proceeding.

The Mockingbird System

35. The Mockingbird System was built for the purpose of gathering and treating gas so that it could move to markets for beneficial uses.

36. The system consists of approximately 1,000 miles of gathering pipelines, spanning seven counties: Atascosa, Dimmit, Frio, La Salle, McMullen, Webb, and Zavala.

37. The system consists of four separate systems: the Deep Oil System ("Deep"), the Shallow Oil System ("Shallow"), the Rich Gas System ("Rich"), and the Treating System ("Treating"). Each of these systems is designed to serve the characteristics of the gas delivered by producers.

Relevant Background

38. In 2010, CEU purchased from Chesapeake an undivided 33-percent interest in oil and gas leases and other assets in the Eagle Ford, encompassing approximately 600,000 acres, for approximately $2.1 billion.

39. In 2010, CEU and Chesapeake entered into a Development Agreement, whereby Chesapeake marketed CEU's production.

40. Prior to 2012, CEU's gas was gathered on the Mockingbird System under a fixed-fee gas gathering agreement between Chesapeake Energy Marketing, Inc. ("CEMI"), on the producer's side, and the then-owner of the system, Chesapeake Midstream Operating ("CMO"), and Mockingbird Midstream Gas Services, LLC ("Mockingbird"), both on the gatherer's side (the "CMO Agreement").

41. In 2012, Chesapeake Energy Corporation sold its subsidiary, CMO, including the gas-gathering system, to Access Midstream Partners for $2.16 billion.

42. In 2012, Chesapeake, Access Midstream Partners, Mockingbird, and Williams together negotiated and drafted the Mockingbird Agreement, which replaced the CMO Agreement.

43. In 2012, Williams acquired 50-percent ownership in Access Midstream Partners.

44. In 2013, EXCO purchased the leasehold and well interests of 130 of Chesapeake's wells.

45. From 2013 through 2017, Chesapeake purchased the casinghead gas produced by these EXCO wells and Chesapeake then nominated the gas to the Mockingbird System via its Mockingbird Agreement with Williams.

46. In 2014, Williams acquired the remaining half of Access Midstream Partners, and thereafter fully owned the Mockingbird System.

47. In 2014, Shippers 14, 15, and 27 became Williams customers.[1]

48. In late 2015, CEU contacted Williams by email about the "options and possibility" of a gathering contract with Williams.

49. In early 2016, CEU requested, by telephone, gathering rates and terms of service from Williams. In response, a representative from Williams said that Williams would not offer CEU any rate that was different than what it was charging Chesapeake under the Mockingbird Agreement.

50. In 2016, Shipper 33 became a Williams customer.

51. On June 6, 2017, CEU emailed Williams asking to "talk to someone" about gathering rates.

52. On July 13, 2017, CEU again emailed Williams about rate options.

53. On August 24, 2017, Williams gave CEU a written offer, which referenced the Mockingbird Agreement and offered a "blended" version of Chesapeake's rate.

54. On October 5, 2017, and as later clarified on October 16, 2017, CEU sent a written request to Williams, requesting rate quotes.

55. Prior to October 24, 2017, EXCO requested rates from Williams.

56. On October 24, 2017, Williams gave EXCO a written offer, which referenced the Mockingbird Agreement and offered a rate consistent with Chesapeake's rate.

57. CEU never accepted Williams's offer of service at the rate quoted.

58. EXCO never accepted Williams's offer of service at the rate quoted.

---

[1] A significant portion of the evidentiary record contains highly sensitive, confidential information related to private customer information, contracts, and business negotiations. These exhibits were sealed by the ALJ following post-Hearing briefing by the parties. All the comparison customers discussed, both in the PFD and in this Order, are referred to only by an identifying number, rather than their actual corporate name.

The Mockingbird Agreement

59. Chesapeake and Mockingbird are signatories to the Mockingbird Agreement.

60. Williams participated in negotiation and drafting of the Mockingbird Agreement.

61. CEU and EXCO are not signatories to the Mockingbird Agreement.

62. Under the Mockingbird Agreement, Chesapeake dedicates all the gas from its wells on the covered acreage, including gas owned by CEU and other working-interest owners.

63. CEU has the right to take its gas in kind and enter into its own transportation and marketing arrangements.

64. The Mockingbird Agreement uses a cost-of-service model ("COS Model"), which annually redetermines gathering rates to give Williams a targeted 18-percent rate of return.

65. In large part because the building of the Mockingbird System was predicated on gas volumes and revenues from the dedicated Chesapeake-operated wells, the Mockingbird Agreement was structured to help ensure that all such gas volumes—volumes for which the system was built—would continue to flow on the system.

66. The structure of the Mockingbird Agreement was an important part of the balance struck that allowed the system to be built in light of the large scope of Chesapeake's leases and the high upfront capital costs that Williams bore totaling over $1.6 billion.

67. The rates charged to Chesapeake under the Mockingbird Agreement are designed both to recoup to Williams these prior capital investment costs, as well as Williams's costs to provide actual gathering service to Chesapeake.

68. A key feature of the Mockingbird Agreement is Chesapeake's right to determine how the rates Williams charges other customers are used for revenue input purposes under the Mockingbird Agreement to calculate Chesapeake's annual revenue obligation to Williams.

69. Under the Mockingbird Agreement's terms, the "third party gas" approval provisions apply to rates that Williams charges to CEU and EXCO.

70. The "third party gas" approval provisions provide Williams an economic incentive to offer rates to CEU and EXCO that are not lower than the rates Chesapeake pays.

71. The "third party gas" approval provisions do not allow Chesapeake to control the service or rate amounts Williams offers to other customers.

72. The "third party gas" approval provisions, located in attached "Cost of Service Calculation Methodology" exhibits rather than in the main contract, function as revenue inputs used to calculate Chesapeake's annual revenue obligations to Williams.

73. The "third party gas" approval provisions do not prohibit Williams from offering different rates to any other customers, nor do they require Williams to treat any other customers the same as Chesapeake.

74. The "third party gas" approval provisions do not prevent Williams from complying with its obligations as a regulated pipeline.

75. The "third party gas" approval provisions do not give advantage to Chesapeake and do not unreasonably disadvantage or prejudice CEU or EXCO.

Charges and Quality of Service Offered by Williams

<u>Prior Capital Investment Costs Charged to CEU and EXCO</u>

76. The rate Williams charges its anchor shipper, Chesapeake, pursuant to the Mockingbird Agreement includes both: (1) repayment of the $1.6 billion Williams spent on the system, and (2) actual gathering service.

77. By only offering CEU and EXCO the same rate—or constructively the same rate—that Chesapeake pays, Williams required CEU and EXCO to pay for both things, as well.

78. Williams estimates that roughly 80 percent of the rate it charges to its anchor shipper, Chesapeake, is to pay itself back the $1.6 billion Williams spent on the Mockingbird System, plus a return on that investment.

79. From late 2015 through 2017, CEU and EXCO made attempts to obtain gathering service and rates from Williams, and Williams responded by offering the same—or constructively the same—rates and service of Chesapeake.

80. At this same time: Mockingbird Agreement was still in effect; the $1.6 billion Williams spent on the Mockingbird System was not yet paid back; and Williams was not requiring repayment from certain other customers.

81. Financing the Mockingbird System's purchase and buildout was a purely economic action, and so the relevant "similarly-situated" conditions associated with repayment to Williams of these amounts likewise must be commercial, rather than geographical or geological.

82. For these charges, shippers on the Mockingbird System in 2017 for whom Williams wrote these amounts off are similarly situated to CEU and EXCO, including, at minimum: Shippers 14, 15, 27, and 33.

83. Uncontroverted evidence supports that the rates Williams charged these shippers covered only Williams's costs to let them use the system, with no repayment of the $1.6 billion Williams spent on the Mockingbird System.

84. There are no competitive alternatives for repaying Williams what it spent on the Mockingbird System.

85. All shippers using the Mockingbird System benefit from its existence.

86. For similarly-situated Shippers 14, 15, 27, and 33 who became new customers from 2014 to 2016, Williams did not require them to pay back any amounts Williams previously spent on the Mockingbird System.

87. The same gathering system that already was built by 2014 also existed three years later in 2017 when CEU and EXCO sought to become new customers.

88. When CEU and EXCO approached Williams for service, there were no new costs required of Williams to connect them to the system.

89. Williams included in the "connection costs" for CEU and EXCO the $1.6 billion Williams spent on the system, even though by 2017 CEU and EXCO already were connected to the system and therefore Williams had nothing new to build.

90. CEU and EXCO were not customers of Williams in 2014, and so the reasons for Williams's treatment of Shippers 14 and 15 then, vis-à-vis other customers at that time, are not relevant now.

91. In 2017 when CEU and EXCO approached Williams as potential new customers, Shippers 14 and 15 already had signed long-term gathering contracts with Williams and therefore were not at risk of leaving the system.

92. The approximate portion of the Mockingbird Agreement rate in 2017 for actual gathering service, with prior capital expenditures removed, was not higher than the gathering rate Shippers 14 and 15 paid.

93. Williams did not keep Shippers 14 and 15 on the system by reducing their gathering rate but did so by writing off their share of the $1.6 billion Williams spent on the system—effectively lowering their bill by 63 percent and redistributing their share of this repayment to CEU and EXCO.

94. Shippers 14, 15, 27, and 33 received similar and contemporaneous service—and under substantially the same physical, regulatory, and economic conditions—as CEU and EXCO.

95. Requiring repayment of a share of the $1.6 billion Williams spent on the system from CEU and EXCO, but not from Shipper 14, 15, 27, and 33, unreasonably disadvantaged and prejudiced both CEU and EXCO.

96. This material difference in repayment amounts applies both as a numerical difference and as a condition of service.

Rates Charged to CEU and EXCO to Use the System

97. With the money Williams spent on the system removed from Chesapeake's anchor rate under the Mockingbird Agreement, the remaining 20 percent approximates the rate component for actual gathering service.

98. The numerical differences between the 20-percent Mockingbird Agreement rate and the rate paid by Shippers 14, 15, 27, and 33 are not material.

99. In the Deep system the 20-percent Mockingbird Agreement rate was less than the rate paid by similarly-situated customers.

100. For the approximate portion of the Mockingbird Agreement rate charged to CEU and EXCO for actual gas-gathering service, there was no material difference in treatment.

101. The evidence does support that Williams used different methodologies for the rates of Shippers 14, 15, 27, and 33, compared to CEU and EXCO, but CEU and EXCO did not establish that they were unreasonably disadvantaged or prejudiced by this.

Quality of Service

102. CEU and EXCO both made general requests to Williams for gathering service, and Williams responded by offering them rates for firm "Priority 1" quality service—the same type that Chesapeake received and several other shippers on the system received.

103. At this same time, several other shippers in both the Shallow and Deep systems were receiving Priority 2 or Priority 3 service.

104. Williams never offered CEU or EXCO either Priority 2 or Priority 3 service.

105. CEU and EXCO did not establish that they made clear and specific requests asking for Priority 2 or Priority 3 service.

106. CEU and EXCO did not establish that they were treated unequally or that they were unreasonably disadvantaged.

107. CEU and EXCO offered insufficient evidence that they were unreasonably disadvantaged or prejudiced by Williams not offering them Priority 2 or Priority 3 service.

Processing Requests for Service from CEU and EXCO

108. When determining what rate to charge other customers requesting service, Williams typically considers all of the relevant market conditions, and the ultimate rate chosen is the result of negotiations over a number of issues, including the nature and conditions of the market, what party bears the cost of connection, the term of the agreement, the location of the wells, dedication, and liquids handling.

109. When CEU and EXCO requested service, however, Williams did not go through the process described above; rather, Williams responded only with rates consistent with the Mockingbird Agreement, or a constructively-equivalent variation.

110. Williams treated CEU and EXCO like debtors and actual Mockingbird Agreement signatories, processing their requests not as new customer requests for service, but instead as requests to be released from duties owed to Williams under the Mockingbird Agreement.

111. For processing CEU's and EXCO's requests for service, shippers on the Mockingbird System who are not signatories to the Mockingbird Agreement, including Shippers 14, 15, 27, and 33, are similarly situated to CEU and EXCO.

112. Williams processed CEU's and EXCO's requests for new gathering service as requests to be released from obligations owed to Williams under the Mockingbird Agreement, and Williams's offer letters functionally served to deny releasing them.

113. CEU and EXCO are not parties to the Mockingbird Agreement and owe Williams nothing under its terms.

114. The weight of reliable evidence supports that Williams processed CEU's and EXCO's requests for service in a manner to attempt to mitigate revenue losses virtually guaranteed under the Mockingbird Agreement's "third party gas" revenue provisions, which substantially reduce Chesapeake's revenue requirement owed to Williams if Williams offers CEU and EXCO a lower rate.

115. CEU and EXCO each proved that Williams processing their requests for service in a different manner than requests from other customers under substantially the same physical, regulatory, and economic conditions.

116. CEU and EXCO each proved that Williams's actions were unreasonable.

CONCLUSIONS OF LAW

General

1. Williams is a gas utility pipeline as defined in Section 121.001 (Definition of Gas Utility) of the Texas Utilities Code.

2. As a gas utility, Williams is subject to the jurisdiction of the Commission all the duties of gas utilities and pipelines, including the duty not to discriminate in service and charges.

3. The Commission has exclusive original jurisdiction over all matters decided in this docket.

Notice and Procedure

4. All required notices were issued and/or provided in accordance with the requirements of Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.

5. This proceeding was conducted in accordance with Subtitle A (Administrative Procedure and Practice) of the Texas Government Code and applicable Commission rules.

6. The PFD was served on all parties in accordance with Commission Rule § 1.121 (Proposals for Decision).

Burden of Proof

7. Under Commission Rule § 1.23(b) (Burden of Proof), Complainants CEU and EXCO each carried the burden of proving their respective discrimination claims by a preponderance of the evidence.

8. Complainant CEU met its burden of proof in establishing two separate acts of unlawful discrimination by Williams, as demonstrated by the findings of fact herein.

9. Complainant EXCO met its burden of proof in establishing two separate acts of unlawful discrimination by Williams, as demonstrated by the findings of fact herein.

The Mockingbird Agreement

10. The "third party gas" approval provisions contained in the Mockingbird Agreement do not prevent Williams from complying with its obligations as a regulated pipeline.

11. The "third party gas" approval provisions contained in the Mockingbird Agreement do not give advantage to Chesapeake and do not unreasonably disadvantage or prejudice CEU or EXCO.

Discrimination Against CEU and EXCO

12. Consistent with the findings herein, Williams required repayment from CEU of the $1.6 billion Williams spent on the Mockingbird System, while writing these charges off for other similarly-situated customers, in violation of Section 121.104(a)(2) of the Texas Utilities Code and Subchapter G (Code of Conduct) of the Commission's rules.

13. Consistent with the findings herein, Williams required repayment from EXCO of the $1.6 billion spent by Williams on the Mockingbird System, while writing these charges off for other similarly-situated customers, in violation of Section 121.104(a)(2) of the Texas Utilities Code and Subchapter G (Code of Conduct) of the Commission's rules.

14. Consistent with the findings herein, Williams processed CEU's request for service in a different manner than requests from other similarly-situated customers, in violation of Commission Rule § 7.7001(b)(4).

15. Consistent with the findings herein, Williams processed EXCO's request for service in a different manner than requests from other similarly-situated customers, in violation of Commission Rule § 7.7001(b)(4).

Remedies

16. A lawful and adequate remedy to cure the discrimination in Conclusion of Law Nos. 12 and 13 is to require Williams to remove from the rates offered to CEU and EXCO all amounts associated with repayment of the $1.6 billion Williams spent on the Mockingbird System, including a target return on those amounts, and charge CEU and EXCO only for use of the system, consistent with Williams's treatment of Shippers 14, 15, 27, and 33.

17. A lawful and adequate remedy to cure the discrimination in Conclusion of Law Nos. 14 and 15 is to require Williams to process requests for service from CEU and EXCO as new customers, free from any duties contained in the Mockingbird Agreement or other private contracts, consistent with Williams's treatment of Shippers 14, 15, 27, and 33.

IT IS THEREFORE ORDERED that the discrimination claims of CEU and EXCO against Williams are sustained, consistent with the PFD and this Order.

IT IS FURTHER ORDERED that Williams shall comply with the remedies in Conclusion of Law Nos. 16 and 17 not later than seven (7) days after the date this Order becomes final.

IT IS FURTHER ORDERED that copies of this Order and the PFD shall be referred to the Commission's Enforcement Division and to the Office of the Attorney General for consideration of all associated administrative penalties that may be proper under Texas law.

IT IS FURTHER ORDERED that all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not granted or approved in this Order, are hereby **DENIED**.

IT IS FURTHER ORDERED this Order will not be final and effective until 25 days after the Commission's Order is signed. 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. The time allotted for Commission action on a motion for rehearing in this docket prior to its being overruled by operation of law is hereby extended until 100 days from the date this Order is signed.

SIGNED on February 11, 2020.

RAILROAD COMMISSION OF TEXAS

____
CHAIRMAN WAYNE CHRISTIAN

____
COMMISSIONER CHRISTI CRADDICK

____
COMMISSIONER RYAN SITTON

ATTEST:

____
SECRETARY