

125 FERC ¶ 61,134  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Texas Gas Transmission LLC

Docket Nos. RP09-3-000  
RP09-7-000  
RP09-7-001

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS AND ESTABLISHING  
TECHNICAL CONFERENCE

(Issued October 31, 2008)

1. On October 1, 2008, in Docket No. RP09-3-000, Texas Gas Transmission LLC (Texas Gas) filed tariff sheets to establish new Effective Fuel Retention Percentages for its transportation and storage services<sup>1</sup> and to modify its fuel tracker.<sup>2</sup> On the same date, in Docket No. RP09-7-000, Texas Gas also filed tariff sheets, as modified on October 2, 2008 in Docket No. RP09-7-001, to implement an experimental fuel savings sharing mechanism to promote fuel savings and increase long-term fuel efficiency on its system.<sup>3</sup> As discussed below, the Commission (a) accepts and suspends the tariff sheets listed in Appendix A setting forth Texas Gas's revised fuel retention percentages to be effective November 1, 2008 subject to Texas Gas refiling the tariff sheets reflecting its annual fuel rate adjustment consistent with its existing fuel tracker mechanism, (b) accepts and suspends the tariff sheets listed in Appendix B revising its fuel tracker mechanism to be effective April 1, 2009, and (c) accepts and suspends the tariff sheets listed in Appendix C implementing an experimental fuel savings mechanism to be effective April 1, 2009. The Commission also establishes a technical conference to consider the issues raised by the protests to both of Texas Gas's filings.

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<sup>1</sup> See Appendix A.

<sup>2</sup> See Appendix B.

<sup>3</sup> See Appendix C.

## I. BACKGROUND

2. Texas Gas currently recovers its system's fuel requirements and lost and unaccounted for gas (LAUF) by retaining in-kind a percentage of gas tendered by customers.<sup>4</sup> Section 9.2 of the General Terms and Conditions (GT&C) of its tariff governs how Texas Gas's retention percentages are set and annually updated. Texas Gas must file annually at least 30 days before the required effective date to revise its fuel retention percentages effective November 1 of each year. Fuel retained for each transaction under Texas Gas's transmission rate schedules<sup>5</sup> is calculated as the product of the applicable Effective Fuel Retention Percentage and quantity of gas tendered for transportation. Fuel retained for each storage service transaction under Rate Schedules FSS and ISS<sup>6</sup> is calculated as the product of the applicable Effective Fuel Retention Percentage and the quantity of gas tendered for injection into storage. Texas Gas is required to establish separate Effective Fuel Retention Percentages for each of its transmission services by zone and by season.<sup>7</sup> The Effective Fuel Retention Percentages for storage services are calculated and established on an annual basis.

3. The Effective Fuel Retention Percentage is comprised of two components, the Projected Fuel Retention Percentage and the Fuel Adjustment Percentage. The Projected Fuel Retention Percentage is intended to compensate Texas Gas for fuel use during the year the Effective Fuel Retention Percentage is in effect, and is based on the average of the last two years of actual throughput and fuel use and the average of the last four years of LAUF volumes.

4. The Fuel Adjustment Percentage is intended to true-up over- and under-recoveries from past periods. Section 9.2.4 requires Texas Gas to maintain a Fuel Retention Deferred Account to record, on a system-wide basis, the monthly difference between the quantity of gas retained under its Effective Fuel Retention Percentages and the actual quantity of fuel used by all services.<sup>8</sup> Texas Gas calculates the Fuel Adjustment

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<sup>4</sup> Hereafter unless otherwise indicated, the term "fuel" will refer to fuel and company-use gas required for operations, as well as LAUF.

<sup>5</sup> Rate Schedules FT, STF, IT, NNS, SGT, SNS, NNL, and SGL.

<sup>6</sup> FSS – Firm Storage Service; ISS – Interruptible Storage Service.

<sup>7</sup> The summer season is April 1 through October 31, and the winter season is November 1 through March 31.

<sup>8</sup> Texas Gas explains that due to a typographical error in its tariff, section 9.2.4 of its tariff had included "PFRP," the acronym for Projected Fuel Retention Percentage,

(continued)

Percentage in each annual fuel tracker filing in order to amortize during the current tracking period the net balance in the Fuel Retention Deferred Account as of the preceding August 31. For transportation services, a Fuel Adjustment Percentage is calculated for each zone and service on a seasonal basis.<sup>9</sup> For storage services, the Fuel Adjustment Percentage is applied to injections and calculated on an annual basis.

5. On October 1, 2008, in Docket No. RP09-3-000, Texas Gas filed to establish Effective Fuel Retention Percentages for the fuel tracking period beginning November 1, 2008, and to modify its fuel tracking mechanism. Also on October 1, 2008, in Docket No. RP09-7-000, *et al.*, Texas Gas filed to implement an experimental fuel savings sharing mechanism. The filings are discussed in detail below.

## **II. Docket No. RP09-3-000**

### **A. Details of Filing**

6. As described below, Texas Gas proposes four changes to its fuel tracking mechanism. It asserts that these changes will help simplify its fuel tracker and reduce the volatility in its fuel retention percentages. Texas Gas also proposes revised fuel retention percentages, which are calculated based on the proposed changes to its fuel tracking mechanism.

#### **1. Three Fuel Zones**

7. Texas Gas proposes to reduce the number of fuel zones from five to three (South, Middle, and North), maintaining that this would simplify its fuel rate matrix. Texas Gas states that changing to three fuel zones will not affect existing rate zones or the operation of the system. Texas Gas notes that Appendix A, Schedule 1 of its filing shows the rate impact of reducing the number of fuel zones from five to three.

8. Texas Gas also indicates that, at the request of customers, and in light of the fuel zone consolidation, it proposed to revise language in section 9.2.2 currently stating that no fuel will be retained for transportation transactions consisting solely of backhauls. Texas Gas added a condition to this language that such transactions consist solely of

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rather than “EFRP,” the acronym for Effective Fuel Retention Percentage, in the tariff calculation of the Fuel Retention Deferred Account. Texas Gas Answer, Docket No. RP09-3-000, at 7-8. However, Texas Gas explains that in practice it calculated the Fuel Retention Deferred Account using “EFRP.” *Id.*

<sup>9</sup> GT&C section 9.2.4(b).

backhauls “that do not consume gas between two physical points.” Texas Gas explains that “[t]he reference to physical points is necessary to make it clear that a fuel usage analysis can only be performed between physical points. Since paper points and logical meters are not physical locations, it would be inappropriate to view those transactions as ‘backhauls’.”<sup>10</sup>

9. Finally, Texas Gas also states that it made minor revisions to proposed section 9.2.7 to specify that the required information in each fuel tracker filing will be provided by fuel zone. Further, Texas Gas states in its answer to the protests that it has included in proposed section 9.2.7 a sentence that was previously inadvertently left out regarding the inclusion of Sheet No. 38, which separately states the fuel charges for the leased capacity from Gulf South Pipeline Company, LP (Gulf South).

## **2. Annual Fuel Rates**

10. Texas Gas proposes to shift from seasonal fuel rates to an annual fuel rate for most of its services, but to retain some seasonal rates as an option for those transportation services that Texas Gas characterizes as seasonal in nature. Texas Gas asserts that adoption of an annual fuel rate will provide several significant benefits to Texas Gas and its customers by simplifying the existing fuel matrix for Rate Schedules FT and IT and reducing the volatility in those fuel rates from year-to-year.

11. With an annual rate, Texas Gas expects that discrepancies in the amount of fuel actually collected versus the projected fuel to be consumed during an annual period will be substantially less than under the current seasonal calculation. Texas Gas states that variances in the seasonal usage patterns cause the pipeline’s fuel usage to vary during both summer and winter seasonal periods. Texas Gas asserts that an annual rate, on the other hand, reduces volatility and is easier to predict because seasonal variations tend to balance out over the course of the entire year.

12. Texas Gas states that to address customer concerns regarding annual rates, Texas Gas proposes to allow customers to elect seasonal rates for those transportation services that Texas Gas deems to have a seasonal component, including NNS, NNL, SGT, SGL, SNS, and STF service. For most of these services, the annual rate will be the default option. However, since Rate Schedule SNS is a summer-only service and Rate Schedule STF service agreements are often entered into for only one specific season, the default effective fuel retention rates for Rate Schedules SNS and STF will be seasonal fuel rates. Texas Gas explains that no seasonal fuel rate option will be available for FT, IT, FSS, and ISS service, since, according to Texas Gas, these services are not seasonal in nature.

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<sup>10</sup> Texas Gas Transmittal Letter, Docket No. RP09-3-000, at 8 n.16.

13. Texas Gas proposes that customers give notice of their election of annual or seasonal rates by August 1 of each year so that Texas Gas can (i) ensure that all procedures are in place; (ii) ensure that each contract is matched with the correct fuel rates for the upcoming annual period; (iii) eliminate potential gamesmanship; and (iv) provide additional information in its fuel tracker filing regarding how customers intend to use Texas Gas's transportation services during the upcoming year.

14. Texas Gas explains that because the proposed seasonal election was not available prior to August 1 of this year, Texas Gas notified customers on September 5, 2008 that they could elect the non-default seasonal option until September 30, 2008. Texas Gas further requests that, if the Commission determines that customers should be granted additional time to make their elections, the customers be required to make the election no later than fifteen days following the approval of this provision.

15. Texas Gas states that if a customer releases capacity, the fuel election applicable to the released contract will apply to the replacement contract. Texas Gas further explains that in order to provide fuel rate certainty for replacement customers, any customer who releases capacity for a term extending into the next annual period will not be allowed to make a fuel election change; rather, the existing fuel election will continue for the subsequent annual period.

16. Texas Gas states that there is no risk of subsidization between the seasonal and annual fuel rates because the rates will be calculated independently. Texas Gas also asserts that on a 100 percent load factor basis, the fuel paid during the annual period should be the same regardless of whether the rates are calculated on an annual or seasonal basis.

### **3. Injection and Withdrawal Fuel Rates for FSS and ISS Services**

17. Texas Gas proposes to institute a fuel rate that applies to both the injection and withdrawal of storage gas under Rate Schedules FSS and ISS. Texas Gas asserts that the modification would reflect the realities of its operations because fuel is consumed during both injection and withdrawal. Texas Gas states that the modification is necessary to reduce the risk of under-collections of fuel for FSS and ISS service, to ensure appropriate allocation of fuel costs, and to ensure uniform rates for FSS and ISS customers.

18. Texas Gas states that since 2007, it has imposed a fuel rate only on storage injections under its FSS/ISS rate schedules. Texas Gas asserts that, absent a withdrawal fuel charge, customers with multiple contracts can avoid paying a FSS/ISS fuel rate by injecting gas into storage under a no-notice rate schedule and then withdrawing the gas under the FSS or ISS rate schedules. Texas Gas explains that under its present fuel tracker, since the gas was withdrawn but not injected under the FSS/ISS schedule, the customer is not assessed the fuel retention collection related to storage services. As a consequence, Texas Gas's no-notice customers can avoid paying for fuel charges that

should be allocated to FSS and ISS services, potentially causing consistent under-collections of fuel retention related to storage and an increase in fuel retention rates for FSS and ISS customers under the true-up mechanism.

**4. Hybrid Fuel Rate for Swing Allocations at No-Notice Delivery Points**

19. Texas Gas proposes to calculate a “hybrid” fuel retention rate that will apply to customers using swing allocations that transfer excess quantities of gas at no-notice delivery points into storage. Texas Gas asserts that the adoption of the hybrid rate will address the under-collection of fuel for no-notice service.

20. Texas Gas describes how the swing allocation methodology at no-notice delivery points results in under-collection of fuel. Texas Gas explains that not all undelivered gas diverted into a customer’s no-notice storage account pursuant to a swing allocation is necessarily nominated for transportation to the no-notice delivery point using no-notice service. Rather, Texas Gas explains that for customers with multiple transportation contracts, some of this fuel may have been delivered to the no-notice delivery point under a FT/STF/IT transportation rate schedule. Such transportation would have charged a lower fuel retention rate than the fuel rate charged for no-notice service. Texas Gas states that regardless of the initially nominated service, once this gas is allocated to the no-notice storage account, the customer may then withdraw the gas under its no-notice contract. Texas Gas explains that the ultimate deliveries of such gas from storage would be accounted for as no-notice activity, even though the customer would have been charged a lower fuel rate when the gas was initially tendered for transportation. This results in the fuel tracker recording an under-collection of no-notice fuel which, in turn, tends to increase the no-notice fuel rate.

21. Texas Gas states that to prevent potential fuel under-collections and possible cross-subsidization, it proposes to charge a hybrid fuel rate on gas allocated to no-notice storage under the swing allocation method. Texas Gas explains that the proposed hybrid fuel rate will be the difference between the applicable no-notice effective fuel retention rate and the lowest forward-haul FT/STF/IT effective fuel retention rate to the applicable zone of delivery.<sup>11</sup> Texas Gas states that if an over-collection of fuel does occur through

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<sup>11</sup> Texas Gas explains that if the NNS customer elects an annual option for the customer’s NNS service agreements, the annual fuel rates shall be used to calculate the NNS Swing Allocation fuel retention; if the NNS customer utilizes a seasonal option, only seasonal fuel rates shall be used to calculate the NNS Swing Allocation Fuel Retention.

this process, it would be included in the fuel tracker and contribute to a reduction in the no-notice fuel rates through the true-up mechanism. Texas Gas explains that it does not propose to collect the no-notice fuel rates on the gas transferred into storage because customers will have already paid fuel for FT/STF/IT service to the no-notice delivery point. Texas Gas states that this hybrid fuel rate would apply only to those no-notice customers who elect to use the swing allocation methodology at their primary no-notice delivery points.

## **5. Revised Fuel Rates**

22. Texas Gas's filing reflects fuel rates for the fuel tracking period beginning November 1, 2008. These tariff sheets appear to be based, in part, on Texas Gas's proposed modifications to its fuel tracking mechanism, as described above.

### **B. Public Notice, Intervention and Comments**

23. Notice of Texas Gas's filing was issued on October 3, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely-filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. PSEG Energy Resources & Trade (PSEG) filed comments. Protests were filed by Louisville Gas and Electric Company (Louisville); the Cities;<sup>12</sup> ProLiance Energy,

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<sup>12</sup> The Cities include the Western Tennessee Municipal Group, the Jackson Energy Authority, City of Jackson, Tennessee, and the Kentucky Cities. The Western Tennessee Municipal Group consists of the following municipal distributor-customers of Texas Gas Transmission Corporation (Texas Gas Transmission): City of Bells, Gas & Water, Bells, Tennessee; Brownsville Utility Department, City of Brownsville, Brownsville, Tennessee; City of Covington Natural Gas Department, Covington, Tennessee; Crockett Public Utility District, Alamo, Tennessee; City of Dyersburg, Dyersburg, Tennessee; First Utility District of Tipton County, Covington, Tennessee; City of Friendship, Friendship, Tennessee; Gibson County Utility District, Trenton, Tennessee; Town of Halls Gas System, Halls, Tennessee; Humboldt Gas Utility, Humboldt, Tennessee; Martin Gas Department, Martin, Tennessee; Town of Maury City, Maury City, Tennessee; City of Munford, Munford, Tennessee; City of Ripley Natural Gas Department, Ripley, Tennessee. The Kentucky Cities are the Cities of Carrollton, Henderson, and Murray, Kentucky. They are municipal distributor-customers of Texas Gas.

LLC (ProLiance); and, one day out-of-time, by Tennessee Valley Authority (TVA). The Peoples Natural Gas Company and Hope Gas, Inc. (Dominion LDCs) filed a limited protest. The Commission grants TVA's late-filed protest, as doing so does not delay or disrupt the proceeding or create additional burdens on the other parties. On October 21, 2008, Texas Gas filed an answer which we will accept because it provides information that will assist us in our decision-making process, and corrections to the filed redlined tariff sheets.<sup>13</sup>

### 1. Motion to Reject Filing

24. Pursuant to Rule 2001(b),<sup>14</sup> the Cities ask the Commission to reject, without prejudice, Texas Gas's tariff revisions, asserting that Texas Gas failed to comply with section 154.201(a),<sup>15</sup> which requires a pipeline to submit a marked version of the changed or superseded tariff pages showing all additions and deletions. The Cities assert that the marked versions of Texas Gas's proposed tariff sheets omitted many of its proposed revisions, notably an alteration changing "PFRP" (acronym for Projected Fuel Retention Percentage) to "EFRP" (acronym for Effective Fuel Retention Percentage) in section 9.2.4<sup>16</sup> (Fuel Retention Deferred Amount). The Cities state that the failure to identify all of the changes makes it difficult for the customers to evaluate the pipeline's proposal, and, thus, the Cities urge the Commission to reject Texas Gas's tariff for failure to file a proper mark-up of its tariff revisions as mandated by section 154.201(a) of the Commission's regulations.<sup>17</sup>

25. In its answer, Texas Gas urges the Commission to deny the motion to reject because the errors in the redlined tariff sheets are minor and have no substantive impact. Texas Gas asserts that the parties had been informed months prior to the filing of the change in terminology from "PFRP" (acronym for Projected Fuel Retention Percentage) to "EFRP" (Effective Fuel Retention Percentage) in renumbered section 9.2.5, that the

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<sup>13</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority.

<sup>14</sup> 18 C.F.R. § 385.2001(b) (2008).

<sup>15</sup> 18 C.F.R. § 154.201(a) (2008).

<sup>16</sup> Proposed to be renumbered as section 9.2.5.

<sup>17</sup> The Cities Protest, Docket No. RP09-3-000, at 3 & n.8 (citing *Crossroads Pipeline Co.*, 96 FERC ¶ 61,256 (2001)).

change simply corrected an earlier typographical error, and that the change was identified in the original redline (although the redline identified this revision as language that had been “moved” rather than changed). In order to address this and other flaws in its redline, Texas Gas has included in Exhibit D of its Answer what it describes as two corrected redlined tariff sheets. Rather than rejecting the filing, Texas Gas urges the Commission to accept the corrected sheets to be filed as substitutes for the improperly marked sheets.<sup>18</sup>

## **2. Adoption of Three Fuel Zones**

26. The Dominion LDCs and PSEG state that the information provided by Texas Gas in Appendix A, Schedule 1, is inadequate to assess the true impact of Texas Gas’s shift to a three-zone fuel rate proposal. PSEG and Dominion LDCs claim that there is a mismatch in Texas Gas’s analysis presented in Appendix A, Schedule 1, which compares 3-zone fuel rates calculated using 2008-09 filing data with the 5-zone fuel rates derived from historical 2007-08 filing data. ProLiance also expressed concern regarding the inability of customers to assess the impact of the fuel zones on rates. TVA also asserted that the consolidation of the fuel zones may adversely impact TVA while benefiting other shippers.

27. Texas Gas states in its answer that the Commission should approve the conversion from five fuel zones to three fuel zones. Texas Gas states that in Exhibit E of its answer, it provides the additional data requested by the Dominion LDCs and PSEG. With regard to TVA, Texas Gas states that it invited TVA officials to meetings discussing the proposed change from five zones to three zones, but the TVA officials never attended.

## **3. Annual v. Seasonal Fuel Rates**

28. Multiple parties expressed concerns regarding Texas Gas’s proposal to adopt an annual fuel rate for most of its services while retaining optional seasonal rates for some services that Texas Gas describes as seasonal in nature.

29. Some parties objected that the annual rates proposal was discriminatory. Louisville and TVA allege that Texas Gas’s proposal discriminates against customers that nominate significant volumes of gas during the summer months, when transportation requires less fuel. ProLiance objects that the proposal to deny FT, IT, FSS, and ISS customers a seasonal fuel option is discriminatory and would further complicate Texas

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<sup>18</sup> Texas Gas Answer, Docket No. RP09-3-000, at 6 & n.16 (citing *Transcontinental Gas Pipe Line Corp.*, 71 FERC ¶ 61,364 (1995); *Columbia Gulf Transmission Corporation*, 76 FERC ¶ 61,104 (1996)).

Gas's fuel matrix. ProLiance notes that while it has no underlying objection to either seasonal or annual fuel rates, it asserts that Texas Gas must have uniform fuel rates across the system to avoid cross-subsidization.

30. Other parties expressed objections to the timing of the election process for customers to select either annual or seasonal fuel rates. ProLiance and PSEG object that Texas Gas's tariff requires customers to elect seasonal fuel rates before Texas Gas has disclosed the proposed annual and seasonal fuel rates in its annual tracker filing, impairing customers' ability to make informed decisions. ProLiance further objects that Texas Gas required customers to make their elections for the annual tracking period beginning November 1, 2008 prior to September 30, 2008, even though Texas Gas's proposed tariff changes had not been filed or approved by the Commission.

31. ProLiance claims the proposed change to annual fuel rates will adversely impact the capacity release market on the Texas Gas system. In particular, ProLiance is concerned about the proposal to prohibit releasing customers from changing their election of seasonal or annual rates for the released capacity if the term of the release bridges the election period. ProLiance states that this proposal may inhibit the capacity release market, and create an unreasonable competitive advantage regarding fuel rates for certain releasing parties.

32. Other parties emphasized that the change from annual to seasonal rates was more complicated and would likely have a greater impact than Texas Gas's proposal acknowledged. ProLiance objects that Texas Gas's election option may cause problems due to its interactions with other portions of the tariff revisions, in particular how the hybrid rate would be calculated if a customer utilizes both an annual and a seasonal NNS fuel rate. Louisville emphasizes the potential impact of the change upon customers. In response to Texas Gas's claim that the change from seasonal to annual fuel rates is neutral for customers with a 100 percent load factor, Louisville responds that none of Texas Gas's customers approach a 100 percent load factor. Louisville further claims that annual rates are more volatile than seasonal rates, that seasonal fuel rates are more accurate than the proposed annual fuel rates, and that Texas Gas failed to demonstrate any tangible benefit to the annual rates that it seeks to adopt.

33. Finally, Louisville and ProLiance state that the Commission has rejected a similar proposal in 2007 by Texas Gas to annualize rates for some services and to retain seasonal rates for other services.<sup>19</sup>

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<sup>19</sup> *Citing Texas Gas Transmission LLC*, 120 FERC ¶ 61,186 (2007).

34. Texas Gas responds that the annual/seasonal proposal is not discriminatory, but rather, recognizes the inherent differences in the nature of the transportation services. In particular, Texas Gas argues that services in which the customer may elect a seasonal option also have demand that varies on a seasonal basis. Texas Gas states that, in contrast, “annual services” which lack the seasonal option have contract demand that is constant throughout the year.

35. Further disputing that the annual/seasonal proposal is discriminatory against shippers with relatively large summer loads, Texas Gas objects to the assumptions that less fuel is consumed by the pipeline system in the summer months and that future seasonal variations will resemble previous seasonal variations. Texas Gas states that shipments have increased for power plants and other new customers that transport gas more ratably throughout the year. Texas Gas adds that since “annual services” tend to be utilized consistently throughout the year with little variation in nominations, winter and summer transportation rates should converge as annual service usage increases.

36. Texas Gas also opposes a requirement that customers have access to the fuel rates for the following year prior to the election period for selecting annual or seasonal fuel rates. Texas Gas states that the election was designed to permit customers to select the rate most appropriate for their business model, not to serve as a mechanism for customers to select the lowest rate. Texas Gas further claims that placing the election period after the setting of fuel rates could create opportunities for customers to game the system.

37. Texas Gas also asserts the annual/seasonal option does not complicate capacity release. Rather Texas Gas states that the proposal increases the market options available to replacement shippers. Texas Gas states that the restriction on customers from switching their fuel election during the term of their release protects replacement shippers, and Texas Gas adds that the releasing party can minimize the economic impact of differing fuel rates into its determination of price and term for the release. Texas Gas suggests that it would be willing to allow a customer that has released capacity for a term which extends into the next annual period and that customer’s replacement shipper to make a fuel election change for the subsequent annual period provided that both the releasing customer and the replacement shipper agree in writing to the fuel election change prior to the election.

38. In opposition to the protestors’ allegation that the annual/seasonal rate structure lacks stability, Texas Gas states that annual rates are actually more stable because the annual rates are developed from a larger time range and tend to average out seasonal variations. Texas Gas claims that analysis of pipeline data from the last four years indicates that swings in seasonal rates would have been reduced under an annualized fuel tracker.

39. Regarding the Commission's earlier decision rejecting Texas Gas's proposal for annual rates for its FT, STF and IT services,<sup>20</sup> Texas Gas states that the Commission merely held that Texas Gas had not provided the required support for its proposal at that time.

40. Texas Gas urges the Commission to approve their seasonal rate proposal, stating it offers flexibility to shippers requesting seasonal rates, develops a less volatile fuel rate, and is consistent with the Commission's policy of allocating costs to those customers that incur them.

#### **4. No-Notice Swing Allocation Hybrid Fuel Rate**

41. Parties also expressed objections to the no-notice swing allocation hybrid fuel rate. The Cities claim that Texas Gas over-recovers in its proposed calculations. Rather than using the lowest applicable FT/STF/IT Effective Fuel Retention Percentage rate in Texas Gas's hybrid formula, which results in the highest possible hybrid rate, the Cities assert that the hybrid calculation should consist of the difference between the no notice rate and the highest FT/STF/IT Effective Fuel Retention Percentage rate.

42. Although not objecting to the hybrid method, PSEG seeks assurance from Texas Gas that the proposals to adopt the hybrid fuel rates for no-notice service will not adversely impact charges under Rate Schedule STF. ProLiance also expresses concern regarding the lack of clarity between the interaction of the hybrid rates proposal and the annual rates proposal advanced by Texas Gas.

43. Texas Gas acknowledges that the hybrid rate will not be precise and will likely result in some level of over- or under-collection. However, Texas Gas rejects the Cities' proposal to calculate the hybrid rate using the highest forward haul FT/STF/IT effective fuel rate since this would lead to the lowest possible hybrid rate and perpetuate the under-collection the hybrid rate is designed to eliminate. As a consequence, Texas Gas asserts that the Cities' proposal will continue to tempt customers to "game" the fuel percentages and to create the potential for cross-subsidization. Furthermore, Texas Gas asserts that if the hybrid rate is uneconomically high, the customer can still utilize no-notice service without using the swing allocation and the hybrid rate.

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<sup>20</sup> *Citing Texas Gas Transmission LLC*, 120 FERC ¶ 61,186 (2007).

**5. Replacement of Projected Fuel Rate Percentage with Effective Fuel Retention Percentage in the Fuel Retention Deferred Account**

44. The Cities object that Texas Gas’s replacement of the acronym “PFRP” (an abbreviated form of Projected Fuel Retention Percentage) with “EFRP” (an abbreviated form of Effective Fuel Retention Percentage) in section 9.2.5, which defines the Fuel Retention Deferred Account, is not correct and would distort fuel retention calculations.<sup>21</sup> The Cities claim that this change should not have occurred because the purpose of the Fuel Retention Deferred Account is to “track variations between *projected* fuel needs and *actual* fuel needs.” In the Cities’ view, the Fuel Retention Deferred Account uses the difference between the projected fuel use and the actual fuel use, in order to calculate the Fuel Adjustment Percentage, the “true up over and under-recoveries from past periods.”<sup>22</sup> The Cities allege that Texas Gas’s modification will skew the Fuel Adjustment Percentage calculations.

45. In its answer, Texas Gas denies the Cities’ contention that the replacement of Projected Fuel Replacement Percentage with Effective Fuel Percentage Rate in section 9.2.5 would adversely affect fuel calculations or distort the Fuel Adjustment Percentage. Texas Gas explains that the inclusion of the Effective Fuel Retention Percentage is necessary to track all over- and under-collections of fuel. Texas Gas states that the use of “PFRP,” the acronym for Projected Fuel Retention Percentage, rather than “EFRP,” the acronym for Effective Fuel Retention Percentage, in the current tariff was a typographical error. In the actual calculations of its fuel retention rates, Texas Gas states that its adjustments to the Fuel Retention Deferred Account have always consisted of the difference between Effective Fuel Retention Percentage and all company use fuel and LAUF fuel on the system.

**6. Fuel Retention Deferred Account Balance**

46. The Cities assert that Texas Gas may have improperly calculated the balance in the Fuel Retention Deferred Account. The Cities object that Texas Gas “carried over the *entire* August 2007 balance and applied it to the August 2008 balance.”<sup>23</sup> Instead, the

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<sup>21</sup> In Texas Gas’s current tariff, the Fuel Retention Deferred Account calculation methodology at issue here is contained within section 9.2.4; Texas Gas’s revised tariff has moved this provision to section 9.2.5. *See* Texas Gas Answer, Docket No. RP09-3-000, Exhibit D at 1.

<sup>22</sup> The Cities Protest, Docket No. RP09-3-000, at 8.

<sup>23</sup> The Cities Protest, Docket No. RP09-3-000, at 9.

Cities assert that the Fuel Adjustment Percentage for the 2007-2008 period should have been at least partially amortized, reducing the August 31, 2007 account balance.

47. Texas Gas responds that the Fuel Retention Deferred Account Balance was calculated correctly. Texas Gas states that the balance of 419,921 MMBtu on August 31, 2007, was amortized in the Fuel Adjustment Percentage, and by August 31, 2008, the shortfall had been reduced to 180,396 MMBtu, which will be amortized via the Fuel Adjustment Percentage in the proposed fuel rates for 2008-09. Texas Gas explains that this process is consistent with prior filings.

### **7. Separately Stating LAUF Gas**

48. PSEG also urges the Commission to require Texas Gas to state LAUF separately from compressor fuel and other fuel categories. PSEG states that this modification will enable separate percentages to be applied for each transaction, will provide incentives to Texas Gas management to minimize both fuel compressor usage and LAUF, and will provide valuable operational information.

49. Texas Gas urges in its answer the rejection of PSEG's proposal to require LAUF to be separately stated. Texas Gas claims that PSEG failed to support the benefits it claims will accrue from the proposal, and did not meet its NGA section 5 burden to prove that Texas Gas's existing, Commission-approved method of recovering LAUF is unjust and unreasonable. Texas Gas states that regarding transparency, Texas Gas has already provided workpapers demonstrating the allocation of LAUF between zones and the amount of LAUF for each month. Texas Gas states that the Commission has previously upheld its method for recovering LAUF.<sup>24</sup>

### **8. Assessment of Fuel Charge to Backhauls**

50. PSEG also contends that Texas Gas should be required to apply a charge for LAUF to all transportation, such as backhauls, which do not consume fuel. PSEG claims that such a charge would ensure that all transportation customers benefiting from the pipeline system contribute to the fuel requirements associated with the system's operations.

51. Texas Gas opposes the assessment of a LAUF charge to backhauls. Texas Gas emphasizes any party seeking to modify this aspect of Texas Gas's fuel tracker has the

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<sup>24</sup> Texas Gas Answer, Docket No. RP09-3-000 (citing *Texas Gas Transmission LLC*, 120 FERC ¶ 61,186, at P 31 (2007)).

burden of proof under section 5 of the NGA and must demonstrate that the presumptively just and reasonable existing rate is not reasonable.

### **9. Other Requests for Additional Information**

52. In addition to the concerns cited above, several parties expressed the need for additional information. Dominion asserts that Texas Gas must provide assurances that other services' fuel rates will not be impacted by any of Texas Gas's proposed changes. PSEG seeks assurance that the proposal to adopt an injection and withdrawal rate will not adversely impact charges under Rate Schedule STF and that the problems identified in the transmittal letter do not apply to Rate Schedule STF. TVA claims that it needs to learn more about the implications of Texas Gas's proposal because it was not previously aware of Texas Gas's proposal. TVA requests that the FERC suspend the implementation of Texas Gas's proposal until after a technical conference can be held to address customer concerns.

53. In its answer, Texas Gas states that numerous meetings were held prior to the announcements of the filing, and that, in the protests, only a very small number of parties requested additional information. Further, Texas Gas states that TVA representatives were invited to some early meetings, but that they did not attend or express interest.

### **C. Commission Determination**

54. The Commission denies the Cities' proposal to reject Texas Gas's filing for failure to comply with section 154.201(a). As Texas Gas demonstrated, the errors in the marked-up pages detailing the tariff changes were relatively minor and the technical conference established below will give the parties a further opportunity to comment upon the proposal as corrected by Texas Gas. The Cities cite *Crossroads Pipeline Co.*, 96 FERC ¶ 61,256 (2001) to support rejecting the tariff filing. However, quite distinct from the minor omissions here, the pipeline in *Crossroads* had completely failed to file any mark-up with its tariff. The motion to reject is denied.

55. Texas Gas's proposal to modify the existing fuel tracking mechanism raises concerns that warrant further review and consideration. The parties object to several aspects of the filing. In these circumstances, the Commission will establish a technical conference to gather additional information and to provide parties with a forum to discuss relevant issues and concerns raised by the filing. Texas Gas should be prepared to address all issues raised by the protests and any concerns others may express.

56. The Commission's general policy is to suspend rate filings for the maximum period permitted by statute where preliminary study leads the Commission to believe that

the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.<sup>25</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>26</sup> Such circumstances do not exist with respect to Texas Gas's proposal to modify the provisions of section 9 of its GT&C governing its fuel tracker mechanism, which are listed in Appendix B. Accordingly the Commission accepts and suspends the tariff sheets in Appendix B until the earlier of April 1, 2009, or further order of the Commission.

57. Since the Commission has not yet approved Texas Gas's proposed modifications to its fuel tracking mechanism, the proposed 2008-09 fuel retention percentages included in the tariff sheets in Appendix A are inconsistent with Texas Gas's existing tariff. Since Texas Gas's existing tariff requires it to restate its fuel retention percentages effective November 1 of each year, the Commission accepts and suspends Texas Gas's tariff sheets in Appendix A to be effective November 1, 2008, subject to Texas Gas refiling the tariff sheets in Appendix A within 30 days to be consistent with its existing fuel tracker mechanism, and subject to further Commission review.

### **III. Docket Nos. RP09-7-000 and RP09-7-001**

#### **A. Details of Filing**

58. In this filing, Texas Gas proposes to implement an experimental fuel savings sharing mechanism to promote fuel savings and increase long-term fuel efficiency on its system. Texas Gas maintains that one of the weaknesses of its current fuel tracker is that it has little economic incentive to invest in capital projects for the purpose of reducing fuel use, as long as its rates are competitive, because all fuel costs and savings are passed directly through to the customers. Texas Gas states that its proposed experimental fuel savings sharing mechanism is designed to align the economic incentives of Texas Gas with those of its customers by incentivizing Texas Gas to put capital at risk to attempt to reduce its system's fuel rate and by allowing Texas Gas to share the benefits of any fuel savings with its customers.<sup>27</sup>

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<sup>25</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980).

<sup>26</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980).

<sup>27</sup> As described further below, Texas Gas in its answer proposes to correct certain inadvertent errors contained in its proposed tariff sheets, including its omission of the definition of Fuel Sharing Deferred Account and incorrect section references. Our discussion herein takes into account such corrections.

59. Texas Gas states that, under proposed section 9.2.7(a) of its GT&C, it will commit to spend between \$2.5 million and \$6 million (Total Capital Investments)<sup>28</sup> during the calendar years 2008 and 2009 on projects designed to reduce fuel consumption on its system.<sup>29</sup> Texas Gas states that, under proposed section 9.2.7(b), Texas Gas will track fuel savings by creating a Fuel Sharing Deferred Account, which will track the difference between the quantity of gas retained as a result of the applicable Projected Fuel Retention Percentage and the quantity of fuel consumed for all services rendered.<sup>30</sup> As described previously, Texas Gas calculates its Projected Fuel Retention Percentage based on the average of the last two years of actual throughput and fuel use, and the average of the last four years of LAUF volumes. Thus, the Fuel Sharing Deferred Account will, in essence, track the difference between Texas Gas's average fuel use and LAUF over a preceding multi-year period and its fuel use and LAUF during the current year. The annual Fuel Sharing Deferred Account balance will be determined based upon activity for each twelve-month period (September 1 through August 31) during the term of the experimental program, which Texas Gas states will be from October 1, 2008 through September 30, 2011. However, proposed section 9.2.7(d) states that the fuel savings sharing mechanism shall be effective on an experimental basis from September 1, 2008 until September 30, 2011.

60. Proposed section 9.2.7(c),<sup>31</sup> provides that Texas Gas and its customers will share any positive balance in the Fuel Sharing Deferred Account (i.e., any reduction in fuel use

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<sup>28</sup> Texas Gas states that the Total Capital Investments amount will not include return, taxes, depreciation or any other capital-related costs.

<sup>29</sup> Texas Gas states that it is contemplating the following types of projects: upgrading older meters to improve measurement accuracy, installing high pressure fuel injection on reciprocating engines, installing verification measurement at high volume meters, installing monitoring capabilities for compressor rod packing leakage on reciprocating engines, and installing fuel gas recovery systems. In addition, Texas Gas states in its filing that it will not install additional electric compression to further effectuate fuel savings and it will not attempt to create fuel savings by investing in or more heavily utilizing its existing electric compression.

<sup>30</sup> Texas Gas states that its existing Fuel Retention Deferred Account will remain unaffected and Texas Gas will continue to calculate Projected Fuel Retention Percentages, Fuel Adjustment Percentages, and Effective Fuel Retention Percentages for each annual period.

<sup>31</sup> As revised by Texas Gas in Docket No. RP09-7-001.

based on the comparison described above), beginning with Texas Gas's 2009 annual fuel tracker filing. Specifically, Texas Gas will monetize the value of the ending volumetric balance in the account as of August 31 by multiplying the balance by the weighted average of the monthly NYMEX closing price for the annual period. Texas Gas will retain 80 percent of this value until it has recovered its total Capital Investments. By monetizing the fuel savings, Texas Gas will be able to determine when it has fully recovered its Total Capital Investments. Texas Gas will apply twenty percent of this value in-kind to its Fuel Retention Deferred Account<sup>32</sup> and, through that account, to the Fuel Adjustment Percentages used to true up any under- or over-recoveries for the prior year. Section 9.2.7(c) further provides that after Texas Gas has recovered its investments, fifty percent of the in-kind fuel savings will be applied to the Fuel Adjustment Percentages instead of twenty percent.

61. Texas Gas maintains that the proposed 80/20 split is an essential element of the sharing mechanism because Texas Gas will have only 3 years in which to recover its capital investment and that the 50/50 split is fair and reasonable given Texas Gas's capital investment and the risks involved in making the capital investments. Texas Gas states that the 50/50 sharing gives Texas Gas an economic incentive to invest capital under this experiment as no return, taxes, depreciation, or any other capital-related costs are included in the Total Capital Investments and consequently, this will be Texas Gas's only means of earning a return on its investment. Texas Gas points out that once the fuel savings sharing mechanism terminates at the end of the three year experiment, Texas Gas's customers will receive one hundred percent of the future fuel savings resulting from the capital projects associated with the experiment.

62. Texas Gas states that the Fuel Sharing Deferred Account will include volumes attributable to a prior period adjustment or measurement-related settlement (PPA) triggered by an event that occurs during a production month falling within the experimental period, provided that such PPA is applied during the same time period. Texas Gas states that this means that all PPAs for events which occur and are corrected during the experimental period will be tracked as part of the fuel savings, and that those events which occur, but are not corrected prior to or during the last month of the experimental period, will not be included in the fuel savings. Texas Gas contends that including PPAs in this manner will ensure that fuel is accurately accounted for, while allowing Texas Gas the necessary time to finalize all data needed for each fuel tracker

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<sup>32</sup> That account tracks the difference between (1) the quantity of gas retained as a result of both the Projected Fuel Retention Percentage and the Fuel Adjustment Percentage and (2) the quantity of fuel and LAUF consumed for all services rendered.

filing during the experiment. All PPAs outside of the above-defined time period will not affect the fuel sharing mechanism and will be handled under existing procedures.

63. Texas Gas states that, under proposed section 9.2.7(a), the Total Capital Investments will be excluded from Texas Gas's rates in any future rate case, and such exclusion will survive the termination of section 9.2.7. In its transmittal letter, Texas Gas also states that the Total Capital Investments will be separately accounted for in its capital accounts and not be part of its normal operating and maintenance budget.

64. To ensure the transparency of the fuel savings sharing mechanism, Texas Gas is proposing additional language to section 9.2.8 of its tariff, which section outlines the data that Texas Gas is required to include in its annual fuel tracker filing. Under proposed section 9.2.8(s), Texas Gas states that, for each fuel tracker filing in which the sharing mechanism will be effective (2009, 2010, and 2011), Texas Gas will report the following information: (i) the capital investment made in each project category, (ii) the project(s) to which such investments were dedicated, (iii) why such project(s) qualifies for inclusion in the fuel savings sharing mechanism, and (iv) the in-kind fuel savings to be applied to the Fuel Adjustment Percentages. By filing this information in its annual fuel tracker, Texas Gas maintains that it is giving all of its customers, as well as the Commission, an opportunity to analyze and comment upon the method in which Texas Gas is implementing the fuel savings sharing mechanism and assess the effectiveness of the experimental mechanism.

## **B. Public Notice, Intervention and Comments**

65. Notice of Texas Gas's filings in Docket No. RP09-7-000 and Docket No. RP07-7-001 was issued on October 3, 2008 and October 6, 2008, respectively. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2008), all timely-filed motions to intervene and any motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. The Associations,<sup>33</sup> Constellation Energy Commodities Group, Inc. (Constellation), Louisville, and the Cities filed protests. The Dominion LDCs, the

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<sup>33</sup> The Associations include the American Forest & Paper Association, the Independent Petroleum Association of America, the American Iron and Steel Institute, and the Process Gas Consumers Group.

Indicated Shippers,<sup>34</sup> New York State Electric & Gas Corporation (NYSEG) and Rochester Gas and Electric Corporation (RG&E), ProLiance, PSEG, and National Grid<sup>35</sup> filed comments. Texas Gas filed a motion to file an answer to protests and reply comments and answer of Texas Gas. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Texas Gas's answer because it has provided information that assisted us in our decision-making process.

66. The Associations, Constellation, Louisville and the Cities argue that Texas Gas's proposed fuel saving sharing mechanism permits Texas Gas to over-recover fuel costs, which the Associations and the Cities argue is prohibited under current Commission policy. The Associations note that in *ANR*<sup>36</sup> the Commission permitted pipelines to recover fuel costs through fuel trackers with true-ups, making a limited exception to its general rule requiring rate adjustments to occur only in full section 4 rate cases. The Cities state that the Commission made it clear that, if a pipeline does track fuel costs, "there must be an assurance that the fuel costs are tracked accurately so that the pipeline does not over-recover its fuel costs under any circumstances."<sup>37</sup>

67. By allowing Texas Gas to over-recover its fuel costs, the Associations, Constellation and the Cities argue that Texas Gas's incentives to file a section 4 rate case are reduced.<sup>38</sup> The Cities state that this same concern was raised by the Commission in the Commission's NOI. Louisville and the Cities state that, although other pipelines have

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<sup>34</sup> The Indicated Shippers include BP America Production Company, BP Energy Company, ConocoPhillips Company, and Marathon Oil Company.

<sup>35</sup> National Grid includes The Brooklyn Union Gas Company, Keyspan Gas East Corporation; Boston Gas Company, Colonial Gas Company, Essex Gas Company, EnergyNorth Natural Gas, Inc., Niagara Mohawk Power Corporation, and The Narragansett Electric Company.

<sup>36</sup> *Citing ANR Pipeline Co., order on compliance filing*, 108 FERC ¶ 61,050, *order inviting comments*, 109 FERC ¶ 61,038 (2004), *order on reh'g and compliance filing*, 110 FERC ¶ 61,069, *order on reh'g and compliance filing*, 111 FERC ¶ 61,290 (2005).

<sup>37</sup> *Citing Fuel Retention Practices of Natural Gas Companies*, 120 FERC ¶ 61,255, at P 6 (2007) (NOI).

<sup>38</sup> The Associations and the Cities note that Texas Gas is not required to file another rate case because the last rate case settlement has no "comeback" requirement.

sharing mechanisms that may result in over-recovery,<sup>39</sup> those mechanisms are distinguishable as they were established as part of rate case settlement agreements.

68. The Associations also maintain that removing the likelihood that a pipeline will file a rate case also removes the incentive for infrastructure investment because capital improvements cut into profits and will not be added to the rate base so long as the pipeline refuses to come in for a rate case. The Associations assert therefore that the Commission could reject the proposal outright or condition the acceptance of proposals such as this on the pipeline submitting to periodic rate review.

69. In its answer, Texas Gas states that its proposal is “not a scheme to ‘avoid’ filing a section 4 rate case or to ‘exploit’ customers, it is a limited-term, experimental fuel sharing mechanism.”<sup>40</sup> In any event, they argue that the Commission does not have the authority to require a pipeline to submit to periodic rate reviews.<sup>41</sup> Texas Gas also objects to the Associations’ claim that by allowing Texas Gas to over-recover its fuel costs Texas Gas will have a reduced incentive to invest in infrastructure. Texas Gas states that the Associations’ claim is unfounded and disregards the billions of dollars that Texas Gas and its parent company, Boardwalk Pipeline Partners, have invested in new facility expansions and new infrastructure during the last couple of years.

70. The Associations, Constellation and the Cities reject Texas Gas’s claim that it is not incentivized to make capital investments to increase fuel efficiency. The Associations and Constellation maintain that Texas Gas is incentivized under existing Commission ratemaking policies, which would allow Texas Gas to include such capital investments in their rate base and earn a return thereon. The Cities maintain that Texas Gas’s proposal incents Texas Gas to do something it should be doing anyway, reducing costs so that it can be competitive in obtaining marginal throughput.

71. The Associations also believe that the questions raised by Texas Gas’s proposal should be resolved in a general rulemaking or other generic proceeding rather than through piecemeal adjudications. In addition, the Associations, along with the Cities,

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<sup>39</sup> Citing *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007); *Colorado Interstate Gas Co.*, 116 FERC ¶ 61,126 (2006); and *Southern Natural Gas Co.*, FERC Docket No. RP04-523, Letter Order Approving Uncontested Offer of Settlement (July 13, 2005).

<sup>40</sup> Texas Gas Answer, Docket No. RP09-7-000, at 17.

<sup>41</sup> Citing *Public Service Commission of New York v. FERC*, 866 F.2d 487 (D.C. Cir. 1989).

72. Texas Gas contends that the proposed incentive mechanism does not warrant a general rulemaking or other generic proceeding in that it represents a narrow, limited-term, creative approach to promoting fuel efficiency that will benefit it and its customers. Further, they state that the proposal does not affect any other pipeline or have industry-wide implications.

73. The parties raise several issues regarding the mechanics of Texas Gas's proposed fuel savings sharing mechanism. The Associations, Constellation, Louisville and ProLiance raise issues concerning Texas Gas's proposed benchmark for measuring fuel savings. The Associations argue that, by measuring efficiency improvements against the Projected Fuel Retention Percentage, Texas Gas's proposal creates an opportunity for Texas Gas to game the system by projecting higher gas consumption. The Associations propose instead that Texas Gas measure fuel savings by comparing the fuel usage of newly installed equipment to the fuel usage of the replaced equipment.

74. Texas Gas states in its answer that the Projected Fuel Use Percentage is the appropriate baseline because Texas Gas does not have the ability to manipulate its fuel projections as they are based upon actual historical usage.

75. The Associations, Constellation, Louisville and PSEG argue that Texas Gas's proposed incentive mechanism should not include fuel savings that result from factors other than Texas Gas's capital investments, including normal maintenance, weather, incorrect projections caused by volatility, changes in operations and other reasons. In its answer, Texas Gas states that it is true that the fuel savings sharing mechanism will include all fuel variances, including those not attributable to fuel savings projects. However, Texas Gas believes this is a minor concern and the customers still benefit through additional savings and lower fuel charges.

76. The Cities doubt Texas Gas's assertion that its existing Fuel Retention Deferred Account "will remain unaffected" and that Texas Gas will continue to calculate Projected Fuel Retention Percentages, Effective Fuel Retention Percentages, and Fuel Adjustment Percentages for each annual period.<sup>42</sup> Texas Gas confirms in its answer that the fuel savings sharing mechanism will not affect the basic structure of the existing fuel tracker

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<sup>42</sup> *Citing* Texas Gas Transmittal Letter, Docket No. RP09-7-000, at 4 n.6.

and states that Texas Gas does not contemplate that the sharing mechanism will negatively affect the Fuel Retention Deferred Account.

77. Constellation, Louisville and the Cities contend that Texas Gas's proposed incentive mechanism inappropriately includes investments made by Texas Gas prior to the Commission's approval of the proposed mechanism. The Cities also object to Texas Gas's attempt to measure savings retroactively, commencing on September 1, 2008. Louisville states that Texas Gas disclosed that it had already committed to a series of measurement upgrades intended to reduce meter error, and would include this work under its incentive mechanism. The Cities argue that, if the Commission permits Texas Gas to include previously installed projects, it should revise the sunset date for the sharing mechanism from September 30, 2011 to September 30, 2010 in order to appropriately shift the risk to Texas Gas for projects that it chose to undertake without the sharing mechanism in place.

78. In its answer, Texas Gas states that throughout the customer discussions it stated that it planned to include projects installed in 2008 and 2009 and that after it appeared that a consensus was being developed, it installed new ultrasonic meters. Texas Gas contends that, if it is required to install all capital projects in 2009, its ability to implement its proposal and recover its investment will be reduced. If the Commission disallows these projects, Texas Gas requests that the Commission shift the timeline of the mechanism by one year.

79. Louisville and the Cities also object to Texas Gas's inclusion of metering upgrades in Texas Gas's proposed incentive mechanism. They argue that metering upgrades do not reduce the amount of fuel consumed; rather, they merely improve the accuracy of the measurements. In its answer, Texas Gas states that metering upgrades should be eligible projects under the fuel saving sharing mechanism because such projects significantly improve meter accuracy, thereby reducing Texas Gas's LAUF volumes. Texas Gas states that though its older gas meters are in compliance with the American Gas Association's (AGA) standards and Texas Gas's tariff, which requires accuracy within two percentage points, this level of accuracy may be problematic when dealing with large-volume meters or high natural gas prices.

80. Louisville argues that Texas Gas should be required to identify for review by the Commission and customers the capital projects and their estimated savings prior to construction and that only Commission approved projects should be eligible for the proposed incentive mechanism. Texas Gas believes that the Commission should reject Louisville's request to submit proposed capital projects to the Commission and customers prior to construction. Texas Gas argues that adding a pre-construction review process would unnecessarily delay, and possibly prevent, project installation.

81. PSEG and ProLiance would prefer customers to receive at least eighty percent of the savings upon Texas Gas's successful recovery of its capital investment versus fifty percent, as proposed by Texas Gas. Constellation proposes that Texas Gas's potential return be capped at a reasonable level (e.g., a return equal to twenty percent on the capital spent). PSEG also objects to Texas Gas's proposal to implement the savings only when a tracker filing is filed, suggesting instead immediate sharing by customers upon Texas Gas's full recovery of its capital investments. Texas Gas states that the 50/50 post-investment-recovery split is appropriate because it is taking full financial risk for the capital investments, the 50/50 split is its only opportunity to recover any depreciation, taxes, or any return, the 50/50 split is for limited term and is not guaranteed, and further because there is no downside risk for customers. Texas Gas states that PSEG's proposal for immediate sharing is unworkable considering that the fuel tracker filing is filed annually.

82. Constellation and Louisville claim that Texas Gas has failed to provide its customers sufficient information to meaningfully evaluate Texas Gas's proposal, including, Louisville argues, a list of proposed projects and the estimated savings associated therewith. PSEG requests that Texas Gas's investments be subject to audit, with the opportunity for parties to examine, protest, and otherwise authenticate its investment decisions. Texas Gas states that they are not withholding information and they contend that they cannot calculate with any degree of precision the fuel savings that will result from the projects. They also point out that they are proposing to include information in their annual fuel track filing regarding the fuel saving sharing mechanism, which, they contend, will provide customers and the Commission an opportunity to analyze and comment upon the experiment.

83. Although the Indicated Shippers continue to strongly support pipelines being required to implement fuel trackers and true-up mechanisms, they also believe there can be benefits to customers and the pipeline from a mutually acceptable sharing mechanism implemented on an experimental or limited basis. One issue the Indicated Shippers raised with Texas Gas's mechanism was Texas Gas's failure to address PPAs that occur after the fuel savings/sharing period, but are related to events that occurred during the fuel savings/sharing period. The Indicated Shippers request clarification that, to the extent a PPA is applied after the experiment ends that relates to events that occurred during the experiment, Texas Gas must adjust any fuel savings shared with Texas Gas during the experiment. Texas Gas argues that while PPAs applied after the experiment could potentially reduce customers' fuel savings, it is equally likely that such PPAs will reduce Texas Gas's portion of the savings. They argue that the risk is reasonable given that PPAs tend to alter small volumes of gas and are largely outside the control of the affected parties.

84. In addition to PSEG's comments discussed above, PSEG requests other specific tariff modifications and clarifications, including confirmation from Texas Gas that it may

only seek recovery of operation and maintenance costs in future rate proceedings. In its answer, Texas Gas confirms that it will not include in its transportation rates items such as return, taxes, and depreciation related to the Total Capital Investments. Further, while it does intend to include related operations and maintenance costs in its rates, it does not anticipate that the projects will result in incremental increases to such costs.

85. The Dominion LDCs state that they do not oppose Texas Gas's experimental program, but reiterate that this is an experimental fuel savings sharing mechanism that is specific to Texas Gas and not a template for generic application.

### **C. Commission Determination**

86. The Commission accepts and suspends for five months Texas Gas's proposed experimental fuel savings sharing mechanism, subject to refund and the outcome of a technical conference to further consider issues raised in the protests. In the NOI, the Commission sought comments on the fuel retention practices of natural gas pipelines. The issues upon which the Commission sought comment included whether the Commission should permit pipelines with fuel trackers and true-up mechanisms to include provisions giving them a greater incentive to reduce their fuel use, such as a profit or loss sharing mechanism.<sup>43</sup>

87. In this proceeding, Texas Gas has proposed a three-year experimental incentive mechanism. A number of parties either do not oppose the proposal or express general support while requesting clarifications or modifications to the proposal. Other parties protest the proposal and ask the Commission to reject it. While the proposal may have flaws as asserted in the protests and comments, the Commission believes that careful consideration of Texas Gas's concrete proposal to implement an experimental incentive mechanism could assist in the development of the Commission's policies concerning pipelines' recovery of their fuel costs. Therefore, the Commission is directing its staff to hold a technical conference to consider Texas Gas's incentive proposal and what changes, if any, might be necessary or appropriate. A technical conference will provide an appropriate forum to obtain responses to the questions raised by the parties and provide further information on Texas Gas's filing. Additionally, in light of Texas Gas's omission of significant tariff language in its tariff filing, a technical conference will afford the Commission and the parties the opportunity to analyze Texas Gas's entire proposal, which as of this order has not been possible.

88. Based upon a review of Texas Gas's filings, the Commission finds that Texas Gas's fuel incentive proposal may not be just and reasonable, and may be unjust,

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<sup>43</sup> NOI at P 23 to 26.

unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept Texas Gas's proposed tariff sheets for filing and suspend their effectiveness for the period set forth below, subject to refund and the outcome of a technical conference to address issues in the proceedings.

89. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.<sup>44</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.<sup>45</sup> Such circumstances do not exist here with respect to experimental fuel savings mechanism. Therefore, the Commission shall exercise its discretion to suspend the Appendix C tariff sheets to take effect on April 1, 2009 (or some earlier date if directed in a subsequent order), subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The tariff sheets in Appendix A are accepted and suspended, to be effective November 1, 2008, subject to refund and conditions and subject to Texas Gas's refiling the tariff sheets in Appendix A, within 30 days of the date of this order, consistent with its existing fuel tracker methodology.

(B) The tariff sheets in Appendix B are accepted and suspended, to be effective the earlier of April 1, 2009 or further order of the Commission, subject to refund and conditions.

(C) Texas Gas's tariff sheets listed in Appendix C hereof are accepted and suspended to be effective the earlier of April 1, 2009 or further order of the Commission, subject to refund and conditions.

(D) The Commission's staff is directed to convene a technical conference to address the issues raised by Texas Gas's filings in both Docket Nos. RP09-3-000 and

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<sup>44</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>45</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

RP09-7-000 and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX A**

**Texas Gas Transmission, LLC  
FERC Gas Tariff  
Third Revised Volume No. 1  
Docket No. RP09-3-000  
Tariff Sheets Accepted and Suspended, to be Effective November 1, 2008  
Subject to Refund, Technical Conference and Refiling**

First Revised Sheet No. 36  
First Revised Sheet No. 37  
First Revised Sheet No. 38

**APPENDIX B**

**Texas Gas Transmission, LLC  
FERC Gas Tariff  
Third Revised Volume No. 1  
Docket No. RP09-3-000  
Tariff Sheets Accepted and Suspended, to be Effective April 1, 2009  
Subject to Refund and Technical Conference**

First Revised Sheet No. 2100

First Revised Sheet No. 2101

Original Sheet No. 2101A

First Revised Sheet No. 2102

First Revised Sheet No. 2103

**APPENDIX C**

**Texas Gas Transmission, LLC  
FERC Gas Tariff  
Third Revised Volume No. 1  
Docket No. RP09-7-000, *et al.*  
Tariff Sheets Accepted and Suspended, to be Effective April 1, 2009  
Subject to Refund and Technical Conference**

Substitute Second Revised Sheet No. 2102  
Second Revised Sheet No. 2103  
Original Sheet No. 2103A