

133 FERC ¶ 61,079  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Texas Gas Service Company, a Division of ONEOK,                      Docket No. RP10-951-000  
Inc. v.

El Paso Natural Gas Company

ORDER ON COMPLAINT AND ESTABLISHING HEARING

(Issued October 22, 2010)

1. On July 7, 2010, pursuant to section 5 of the Natural Gas Act and Rule 206 of the Commission's Rules of Practice and Procedure, Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas) filed a complaint challenging the collection of fuel costs on a postage stamp basis by El Paso Natural Gas Company (El Paso) and proposing a zone-based fuel charge. The Commission sets for hearing all issues raised in the complaint, as discussed below.

**I. Background**

2. On June 30, 2008, El Paso filed a general system-wide rate case in Docket No. RP08-426-000. On August 5, 2008, the Commission issued an order accepting and suspending El Paso's primary tariff sheets, subject to refund and conditions, and setting some issues for technical conference, while referring other issues to hearing.<sup>1</sup> On March 11, 2010, El Paso submitted an offer of settlement which resolved all but four

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<sup>1</sup> *El Paso Natural Gas Co.*, 124 FERC ¶ 61,124 (2008) (Suspension Order).

specified issues in Docket No. RP08-426-000.<sup>2</sup> The Commission approved the settlement on April 28, 2010.<sup>3</sup>

3. The settlement established rates on a “black box” basis during a term that ends no earlier than March 31, 2011 and no later than March 31, 2012, during which time a rate moratorium will be in effect. The settlement also states in Article 13.3 that any time after the settlement is filed with the Commission, any shipper may file a complaint pursuant to section 5 of the NGA alleging El Paso’s current “postage stamp” rate design for fuel reimbursement percentages is unjust and unreasonable and may propose an alternative methodology for such fuel reimbursement.

4. On July 7, 2010, Texas Gas filed a complaint pursuant to Article 13.3 of the settlement.

## **II. Complaint**

5. Texas Gas argues that the collection of fuel costs on a postage stamp basis by El Paso is unjust and unreasonable because it fails to reflect distance of haul and, therefore, results in an improper cross-subsidy between the rates charged to shippers by El Paso. Texas Gas contends El Paso’s methodology for recovering fuel costs should be replaced with a just and reasonable fuel recovery methodology. Texas Gas asserts that recovering fuel costs by zone based on actual miles of haul is a just and reasonable alternative.

6. Texas Gas explains that during the study period, El Paso charged a postage stamp mainline fuel rate of 2.60 percent,<sup>4</sup> and that the current fuel rate is 2.56 percent. Texas Gas states that the rate is charged using a fixed percentage applied to a shipper’s gas delivery quantity and is unaffected by the distance gas travels on its pipeline system.

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<sup>2</sup> The four unresolved issues relate to (1) capital structure; (2) the amount to be included in El Paso’s capital account for ratemaking and accounting purposes related to Line 1903; (3) rate design for IT, PAL and STF Transportation Rates; and (4) the continued application of Article 11.2 of the 1996 Settlement in Docket No. RP95-363, *et al.* The evidentiary hearing on those issues was completed on June 8, 2010.

<sup>3</sup> *El Paso Natural Gas Co.*, Docket No. RP08-426-000 (April 28, 2010) (unpublished letter order).

<sup>4</sup> On June 25, 2010 in Docket No. RP10-886-000, El Paso filed to revise its Mainline fuel percentage to 2.39 percent and its Lost and Unaccounted For Fuel to 0.18 percent, effective August 1, 2010, based on 12 months of data ending May 31, 2010.

Texas Gas asserts that it is not seeking to disallow the recovery of any fuel costs claimed by El Paso, but that it seeks to revise the methodology by which El Paso's actual fuel is recovered from its shippers.

7. Texas Gas asserts that distance of haul is a major determinant of fuel usage on the El Paso mainline system, which stretches from Texas to California. Texas Gas argues that as a result of using the postage stamp fuel methodology, instead of a methodology that appropriately reflects distance of haul, shippers in Texas, New Mexico, and Nevada are overcharged for fuel by approximately \$12.7 to \$25.3 million annually, while shippers in California and Arizona are subsidized by those same amounts.

8. Texas Gas explains that the Commission's regulations specify as follows:

Any rate filed for service subject to this section must reasonably reflect any material variation in the cost of providing the service due to: (i) Whether the service is provided during a peak or an off-peak period; and (ii) The distance over which the transportation is provided. 18 C.F.R. § 284.10(c)(3) (2009).

9. Texas Gas asserts that this regulation specifically requires that distance must be recognized as a primary factor in a pipeline's ratemaking process where any material variation in the cost of providing service exists.

10. Texas Gas recognizes that the Commission allows the use of the postage stamp fuel methodology on pipelines whose specific operational circumstances support such a methodology, such as on pipelines that have a web-like configuration with numerous bidirectional flows. However, Texas Gas asserts it is clear that there is a material variation in the cost of providing service on the El Paso system, and in particular the amount of fuel used, due to the distance gas is transported. Accordingly, Texas Gas contends the assessment of fuel on a postage stamp basis on the El Paso system is contrary to 18 C.F.R. § 284.10(c)(3).

11. In addition, Texas Gas states that its expert, Russell A. Feingold, addresses in his affidavit each of the factual circumstances the Commission has identified that might support a finding that a postage stamp rate is just and reasonable. Texas Gas asserts the Feingold affidavit demonstrates that the El Paso system does not exhibit these characteristics in a manner which would offset the importance of distance as the major determinant of fuel usage on the system. Texas Gas states that, for example, the bi-directional flows and the physical deliveries on the west end of the El Paso system are limited. Texas Gas also states that true backhauls on the system are limited and, in any event, are exempt from the assessment of fuel. Furthermore, Texas Gas states while

some displacement does occur on the El Paso system, those displacements are generally consistent with the clear and consistent flow of gas from the east to the west on the system and are properly reflected in the dth-mile study based on actual flows.

12. Texas Gas states that as an alternative to the unjust and unreasonable postage stamp rate design, El Paso's mainline fuel costs should be allocated to each delivery zone based on the dth-mile allocation factors supported by the Feingold Affidavit. Texas Gas states that a fuel rate differentiated by delivery zone based on costs allocated on a dth-mile basis is consistent with El Paso's firm transportation rate design and properly reflects distance and throughput – the two primary factors causing El Paso to incur mainline fuel costs.

13. Texas Gas states that in El Paso's prior rate case in Docket No. RP08-426, El Paso proposed to allocate transmission costs to zones based on contractual miles of haul. Texas Gas states that allocating fuel costs using El Paso's miles-of-haul basis derived using the contract path approach is incorrect because gas is consumed as fuel in a manner consistent with how gas physically moves on the El Paso system, not based on theoretical contract paths. Texas Gas states that given the importance of the actual physical gas movement in the incurrence of fuel costs, the use of miles-of-haul that reflect actual physical flows is a crucial step in deriving a just and reasonable fuel rate by delivery zone.

14. Texas Gas also asserts that a mechanism should be established to ensure that no legitimate fuel costs are stranded by virtue of the transition from a postage stamp fuel methodology to a zonal fuel methodology. Texas Gas states that El Paso's current tracker contains a true-up mechanism that ensures El Paso only recovers its actual fuel costs – any over or under recovery in a given fuel year is trueed up in the next year's fuel assessment. Texas Gas submits that it is appropriate to keep El Paso and its shippers whole as to any over or under fuel recovery in the period prior to a new fuel methodology going into place. Texas Gas asserts the most straightforward way to accomplish that (consistent with filed rate doctrine and the prohibition against retroactive ratemaking) would be via a one time postage-stamp surcharge (either positive or negative). Texas Gas states that in other words, El Paso would calculate the outstanding true up amount, and establish a postage-stamp surcharge or credit projected to recover the outstanding true up amount in one year. Texas Gas states that the surcharge or credit would be tracked and only remain in place as long as necessary to fully amortize the outstanding true up amount.

15. Texas Gas argues that expedited treatment of this complaint is warranted to avoid the continuing cross-subsidization of the west end shippers by the shippers in Texas and New Mexico. In addition, Texas Gas explains that the structure of the NGA allows a pipeline to cut off any possibility of prospective relief under NGA section 5 by filing a

section 4 proceeding. Texas Gas states that in this instance, the Settlement allows El Paso to file a new general section 4 rate case to be effective no later than March 31, 2012. Texas Gas states that if that section 4 filing contains any changes to fuel rates, it is likely El Paso will argue that its filing cuts off any rights to prospective relief under the instant complaint. Accordingly, Texas Gas argues that in order for the Commission to ensure any meaningful relief in this proceeding, a final order would need to be issued by March 30, 2011. Texas Gas requests that the Commission establish procedures that would allow for a final order by that date.

### **III. Notice and Comments**

16. Notice of Texas Gas's filing was issued on July 9, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2010), all timely filed motions to intervene and any motions to intervene out-of-time filed 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.

17. On July 27, 2010 El Paso filed an answer to the complaint. On the same day, Southern California Gas Company, San Diego Gas & Electric Company, Pacific Gas and Electric Company, and the California Public Utilities Commission (jointly California Parties) filed a Joint Protest; Arizona Public Service Company (APS) filed a Motion to Intervene and Response to Request for Expedited Treatment; the Indicated Shippers<sup>5</sup> filed an Answer; Southwest Gas Corporation (Southwest) filed a Motion to Intervene in Opposition to Complaint; and Southern California Edison Company (Edison) filed a Motion to Intervene and Preliminary Comments. Also on the same day, MGI Supply Ltd., New Mexico Gas Company, and El Paso Electric Company (EPE) filed comments in support of the complaint.

18. On August 11, 2010, Texas Gas filed an answer. On August 26, 2010, El Paso filed an answer to Texas Gas's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>6</sup> prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by Texas Gas and El Paso because they have provided information that assisted us in our decision-making process.

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<sup>5</sup> The Indicated Shippers are BP America Production Company, BP Energy Company, and ConocoPhillips Company.

<sup>6</sup> 18 C.F.R. § 385.213(a)(2) (2010).

19. MGI Supply, New Mexico Gas, and EPE support the relief advocated by Texas Gas. New Mexico Gas and EPE provide additional support for the complaint by quantifying the approximate amount that New Mexico Gas and EPE have allegedly been overcharged in 2008 and 2009 for fuel costs as a result of El Paso's existing postage stamp methodology not properly reflecting the distance of haul. New Mexico Gas supports the mileage-based fuel reimbursement methodology to recover El Paso's mainline fuel costs because it accurately accounts for the amount of fuel used by El Paso to transport shipper's gas to its zone of delivery. New Mexico Gas states that by doing so, this methodology more closely matches cost responsibility with cost incurrence, and therefore, is consistent with the Commission's cost-causation policies. Moreover, New Mexico Gas argues that basing El Paso's fuel rate on the miles of haul that gas actually flows on El Paso's system properly reflects the variance in costs needed to transport the gas over greater distances, and therefore, is consistent with the Commission's regulations.

20. EPE argues the Commission should establish paper hearing procedures and issue an order on the complaint before March 30, 2011. EPE contends it would be inappropriate for the Commission to establish settlement judge procedures or to set the issue for a trial-type hearing before an administrative law judge (ALJ). EPE argues that settlement judge procedures and alternative dispute resolution procedures will unreasonably delay resolution of the issue and give opponents an opportunity to stall. EPE also points out that the same issue was raised in the Docket No. RP08-426-000 proceeding but was not resolved through settlement in that docket. In addition, EPE argues that a formal hearing before an ALJ is not necessary to resolve the issue of the appropriate rate design.<sup>7</sup> EPE contends the issue is primarily one of policy that has been effectively resolved by the Commission's regulations. Moreover, EPE argues that there have already been three rounds of filed testimony and many months of discovery on the issue in the Docket No. RP08-426-000 proceeding. EPE asserts that the complaint lends itself ideally to a paper hearing because there are no material facts to be determined in a trial-type hearing.

21. El Paso states that Texas Gas has failed to meet its section 5 burden to demonstrate that El Paso's existing fuel rates are unjust and unreasonable and that Texas Gas's proposed rate is just and reasonable. El Paso states that it is more administratively efficient and equitable to all shippers to resolve the issue in El Paso's upcoming rate case. El Paso argues that if the complaint is not dismissed, the Commission should set it for hearing because it raises complex issues of material fact. In addition, El Paso states that

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<sup>7</sup> EPE's July 27, 2010 Comments in Support of Complaint at 9 (citing *Union Pacific Fuels, Inc. v. FERC*, 129 F.3d 157, 164 (D.C. Cir. 1997)).

fast track procedures are inappropriate for the complex rate design issues raised by the complaint.

22. El Paso states the Commission has approved non-mileage based rates, such as postage stamp rates, where a pipeline operates its system in an integrated or reticulated fashion evidenced by a number of factors, such as having gas receipts and deliveries interspersed, multiple flow paths, use of displacement, bidirectional flows or null points.<sup>8</sup> El Paso explains that the Commission adopted an overall rate design for El Paso's rates that included fuel expenses that modestly reflected distance and specifically adopted a postage-stamp rate design for certain costs that included fuel expenses, based on a finding that El Paso operated its system in an integrated manner.<sup>9</sup> El Paso states that its system has become even more integrated, reticulated, and grid-like as a result of changes on its system and other circumstances, such as supplies from both ends of its system, displacement deliveries and bi-directional flow on a portion of its south mainline. As a result, El Paso states that the actual fuel consumed on its system is a function of all the transportation transactions which are occurring on the system and not necessarily of the distance of any particular haul or transaction. Thus, El Paso states that distance is not the primary determinate of unit costs.

23. El Paso asserts that the significant point about the flow of gas on its system and the fact that gas is received from both ends and the middle of its system is that gas does not flow in a single upstream or downstream direction. El Paso explains that gas flows both south-east and west from the San Juan Basin for deliveries throughout El Paso's system and also is delivered to shippers on the north to displace supplies that northern shippers have purchased from the south.

24. El Paso states that Texas Gas's analysis is flawed in that it systematically undercalculates the amount of displacement occurring on El Paso's system. El Paso states that Texas Gas's calculations only reflect the displacement from San Juan to California, and not the other required transactions. For these reasons, El Paso contends that Texas Gas has failed the first prong of its section 5 burden of proof by failing to show that El Paso's current overall rates are unjust and unreasonable.

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<sup>8</sup> El Paso's July 27, 2010 Answer to Complaint at 7 (citing *Northwest Pipeline Corp.*, 82 FERC ¶ 61,158, at 61,578-79 (1998); *Koch Gateway Pipeline Co.*, 85 FERC ¶ 61,426, at 62,610 (1998)).

<sup>9</sup> *Id.* (citing *El Paso Natural Gas Co.*, 22 FPC 260, 277-78 (1959)).

25. El Paso states that Texas Gas has also not demonstrated that its proposed zone-of-delivery fuel rates are just and reasonable. Texas Gas's proposal is largely consistent with Texas Gas's joint proposal as part of the Texas-New Mexico Shipper Group in Docket No. RP08-426-000. El Paso states that it previously filed testimony disputing many of the elements of that proposed methodology. El Paso asserts that Texas Gas's dth-mile study does not appropriately reflect the actual flows on El Paso's system. El Paso states that contract reservation miles have not been shown to be an appropriate allocation factor for the variable cost of fuel, particularly when shippers use significant amounts of alternate point flexibility in daily scheduling activity. El Paso also states that Texas Gas has omitted miles of haul associated with interruptible and short-term firm services but includes miles associated with the within-basin fuel calculations even though Texas Gas is not proposing any changes to the within-basin fuel rates.

26. El Paso argues the Commission should dismiss the complaint to allow the issues to be more appropriately addressed in El Paso's next system-wide rate case required to be filed by September 2010. El Paso asserts that the issue raised by the complaint is the very type of issue more properly adjudicated in a general rate case and does not lend itself to a complaint proceeding. El Paso notes that Texas Gas even raises the issue of the interrelationship between the design of El Paso's fuel rates and the design of the reservation and usage rates. El Paso contends that to determine whether El Paso's fuel retention rates are appropriately distance sensitive, the sensitivity of El Paso's overall rates must be considered. In addition, El Paso argues it is more appropriate and efficient to decide all rate design issues based on the same data (El Paso states that Texas Gas relies on data that is two years old).

27. El Paso further contends that, in light of El Paso's long-standing postage stamp rate design for fuel, it is difficult to believe that the alleged infirmities of El Paso's fuel rate design now require immediate redress. El Paso argues that, instead of rushing to resolve the issue before El Paso's next rate proceeding, the Commission should rely on that rate proceeding to ensure fair and equitable results among all shippers. El Paso further states that, if Texas Gas prevails on this issue, some shippers will pay higher fuel rates, but they may obtain lower rates as a result of the outcome of other issues in the rate case. El Paso contends that it would be inequitable and inefficient to decide the issues raised by the complaint in isolation.

28. APS agrees with El Paso that Texas Gas's request for expedited treatment should be denied as unwarranted because the Commission approved the postage stamp fuel charge and Texas Gas has not alleged that El Paso violated its tariff. APS argues that a

simple allegation that a tariff provision is unjust and unreasonable does not justify expedited treatment.<sup>10</sup>

29. APS states that Texas Gas's allegations rely on numerous complex factual issues, as well as out-of-date factual data, that could fundamentally alter the calculations that support Texas Gas's argument. APS argues that only full discovery with a hearing will permit an accurate assessment of Texas Gas's allegations. Moreover, APS alleges that Texas Gas knew the risk of El Paso filing a section 4 rate case when it opted to delay resolution of the fuel charge issue by removing it from El Paso's prior rate case.

30. The Indicated Shippers argue that the existing postage stamp rate design for mainline fuel is just and reasonable, as the Commission found in 1959.<sup>11</sup> The Indicated Shippers state that while there have been many changes to the El Paso system since that determination, the underlying premise is the same – that El Paso's is a complex, reticulated system, with many bi-directional points and segments. The Indicated Shippers argue that because El Paso's system and operational characteristics today are similar in relevant respects to those the Commission reviewed in 1959, there is no basis for reversing the postage-stamp rate design. The Indicated Shippers state that while Texas Gas argues that the current fuel rate design is not just and reasonable because there are better alternatives, the existence of more just and reasonable alternatives does not render the postage-stamp mainline fuel rate unjust and unreasonable.

31. The Indicated Shippers further argue the complaint does not prove that the zone-of-delivery proposal is just and reasonable for El Paso's system. Given the complexities of El Paso's system, the Indicated Shippers contend that zone-of-delivery rates cannot accurately reflect the actual consumption of fuel. The Indicated Shippers state that Texas Gas's proposal does not reflect the different distances of haul and the number of compressors used from the three major producing areas to the various zones of delivery. As an example, the Indicated Shippers state that a shipper taking gas from the San Juan Basin in northwest New Mexico to California would pay the same mainline fuel rate as a shipper taking gas from the Permian Basin in southwest Texas to California, even though the number of compressors used is different. In addition, the Indicated Shippers state that

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<sup>10</sup> APS's July 27, 2020 Response to Expedited Treatment at 2 (citing *Amoco Energy Trading Corp. v. El Paso Natural Gas Co.*, 89 FERC ¶ 61,165, at 61,498-99 (1999), *reh'g denied*, 90 FERC ¶ 61,354 (2000) (*Amoco Energy Trading*)).

<sup>11</sup> The Indicated Shippers' July 27, 2010 Answer in Opposition to Complaint at 2 (citing *El Paso Natural Gas Co.*, 22 FPC 260, 50-51 (1959)).

the multitude of flow paths and use of displacement on El Paso's system makes it virtually impossible to specifically identify actual compressors used, and fuel consumed, for any specific transaction.

32. The Indicated Shippers conclude that the Commission should deny the complaint, but if the Commission determines that further procedures are warranted, it should reject the request for fast track processing. The Indicated Shippers state that fast track processing is not appropriate where a complainant, like Texas Gas, is seeking a change to a pipeline's tariff.

33. Edison argues that El Paso's existing postage stamp rate fuel methodology has been in place for at least half a century, and it remains just and reasonable today. Edison states that the Commission has not established a bright-line distinction for when a pipeline must design rates based on zones or mileage, as opposed to a postage stamp design. Edison states that the Commission has found that on some pipelines, where displacement substantially decreases the distance of physical transportation, postage stamp rates are appropriate. Edison states that considerable evidence indicates that distance is not a material factor on El Paso's system.

34. Edison further states that the replacement methodology proposed by Texas Gas would be unjust and unreasonable. While Texas Gas argues that its proposed zone-based fuel rates would be consistent with El Paso's current method of allocating costs on its system, Edison argues that El Paso's existing zone-based rates are unjust and unreasonable, and that any proceedings established to resolve the Texas Gas complaint should consider, and will affect, issues related to general transmission cost allocation as well. In addition, Edison states that the zone of delivery methodology fails to accurately reflect cost variations because it ignores receipt points. Edison also states that the zone of delivery methodology is outdated and no longer reflects the functional and operational realities of the El Paso system as a result of significant changes in recent years, including substantial growth in the East of California contract demand and resulting significant facility additions to accommodate those increased loads. Edison believes that, while zone of delivery rates may have made sense with system-wide receipt rights, the existing postage stamp methodology is just and reasonable now that El Paso's shippers have specific receipt point rights. If postage stamp rates are abandoned, Edison believes they should be replaced by a zone matrix methodology where fuel retainage would depend on the combination of supply and delivery points, not on the flawed zone of delivery methodology. Edison proposed such a methodology for transportation costs in the last rate case.

35. Edison states that if the Commission does not dismiss the complaint summarily on the merits, it should be set for hearing. Edison states that a Commission pronouncement about the extent to which distance of transportation has a material effect on cost

incurrence on El Paso's system or a holding that postage stamp rates (or a zone of delivery methodology) for fuel is not just and reasonable, will have a continuing and lasting significance. Edison asserts that the important thing is that the Commission exercise the opportunity to get the determination right, and not rush to act before El Paso's next rate case. Moreover, Edison does not agree that procedures can be limited because some of the same issues were the subject of discovery and testimony in the recent rate case. Edison states that the necessary and appropriate hearing procedures, with full discovery and multiple rounds of testimony, should not be short circuited.

36. The California Parties believe the complaint should be dismissed. The California Parties state that Texas Gas cannot deny that the majority of gas supplies transported on El Paso (55 percent) are from the San Juan Basin which is in the middle of the system, resulting in longer distances to Texas than to Arizona or California. The California Parties assert that Texas Gas has not met the initial burden to establish a *prima facie* case that El Paso's mainline fuel rate is unjust and unreasonable. Therefore, the California Parties argue the complaint should be rejected as unsupported, or in the alternative, the Commission should dismiss the complaint because Texas Gas has made no showing of changed circumstances. The California Parties state that if not dismissed, El Paso's fuel rate should only be considered as part of El Paso's next general rate case.

37. Southwest argues the Feingold Affidavit supporting the complaint raises numerous issues of material fact which require an on-the-record hearing. Southwest concludes that Texas Gas disputes virtually every key operational and cost causation issue relevant to the issue of fuel rates and thus a hearing is necessary to resolve the complaint.

38. Southwest also asserts that the fast track process is not appropriate where a complainant alleges that a stated rate has become unreasonable, as Texas Gas does.<sup>12</sup> Southwest states that Texas Gas chose to settle the fuel issue in El Paso's last rate case subject to obtaining a right to file a future section 5 complaint. Southwest states that Texas Gas did so knowing the prospective nature of relief under section 5 and that the settlement allows El Paso to file a section 4 rate case to become effective after the settlement moratorium period. Southwest asserts that other shippers would be burdened by fast track processing, contrary to Texas Gas's claims. Moreover, Southwest contends that the record in Docket No. RP08-426-000 is not adequate to support a decision on a change to El Paso's fuel rates because the 2008 data is stale, throughput and fuel use has

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<sup>12</sup> Southwest's July 27, 2010 Motion to Intervene in Opposition to Complaint and Request for Hearing at 9 (citing *Amoco Energy Trading*, 89 FERC at 61,498-99, *reh'g denied*, 90 FERC ¶ 61,354).

decreased, and supply source volumes and flows have changed. For these reasons, Southwest concludes that on-the-record hearing procedures with full discovery rights are needed to address the issues raised by the complaint.

#### **IV. Discussion**

39. The Commission has examined the pleadings, exhibits, and affidavits filed in this proceeding and finds that Texas Gas's complaint raises issues which are best addressed in a hearing. The complaint filed by Texas Gas raises genuine issues of material fact that must be resolved through a trial-type evidentiary hearing. While certain protestors argue the Commission should resolve the complaint on the basis of the pleadings alone or by setting the issue for paper hearing, the Commission disagrees. The issue of the appropriate cost allocation methodology for fuel use on the El Paso system turns largely on whether distance is a dominant factor in determining fuel costs on El Paso's system, which is a factual issue best determined at a hearing. Texas Gas and other parties argue this issue has already been the subject of extensive discovery in El Paso's previous rate case in Docket No. RP08-426-000. However, the Commission finds it would be inappropriate to rely heavily on the record in Docket No. RP08-426-000 because that information is now at least two years old and may be out of date.

40. Texas Gas argues fast track processing of the complaint is necessary to ensure prompt relief in light of the fact that El Paso is required to file its next section 4 rate case to be effective no earlier than March 31, 2011, and no later than March 31, 2012. However, the Commission finds fast track processing is infeasible for this complex issue, which has remained an open issue for some years now. El Paso has employed a postage stamp methodology to recover fuel costs since 1959, and it cannot be determined on the pleadings before us, whether or not it remains just and reasonable. The Commission seeks a full and complete examination of whether the continued use of this methodology remains just and reasonable, where both opponents and proponents can make and test each other's cases before a trier of fact. Fast track processing is not appropriate in the circumstances.

41. Certain other protestors argue the Commission should defer resolution of this issue until El Paso's next NGA section 4 rate case. The Commission declines this approach because it would unreasonably delay resolution of the Texas Gas complaint. While the Commission finds no reason to fast track Texas Gas's complaint, it also finds no reason to defer resolution of the issue until El Paso's next section 4 rate case. Moreover, parties to the settlement in El Paso's last rate case in Docket No. RP08-426-000, *et al.*, specifically agreed that any shipper may file a complaint alleging El Paso's current postage stamp rate design is unjust and unreasonable in the interim period between rate cases. Now that Texas Gas has done so, the Commission finds it inappropriate to defer resolution of the complaint to a later date. On September 29, 2010, El Paso made a new

general rate case filing in Docket No. RP10-1398-000, and has indicated its intention to move to have the complaint that is the subject of this order consolidated with the rate case proceeding. As we are setting the complaint filed in the instant proceeding for hearing, pursuant to the Commission's regulations the Chief Administrative Law Judge, on motion or otherwise, may order the proceedings consolidated.<sup>13</sup> As is the case for any complaint filed before us, whatever procedural path is chosen, the Commission intends a thorough examination of the issues raised in the complaint.

42. For the reasons discussed above, we find that Texas Gas's complaint raises issues that are best addressed in a hearing. Accordingly, the Commission will set all issues raised by the Complaint for hearing. The presiding ALJ may make a recommendation as to a remedy, if appropriate, at the conclusion of the hearing.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP10-951-000 to resolve Texas Gas's complaint.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304 (2010), must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>13</sup> See 18 C.F.R. §§ 385.501 and 385.503(a) (2010).