155 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Texas Eastern Transmission, LP — Docket No. CP15-90-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued May 20, 2016)

I. Background

1. In a December 17, 2015 order, the Commission issued a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act authorizing Texas Eastern Transmission, LP (Texas Eastern) to construct and operate a new compressor station and make modifications to existing facilities (Project).[1] In doing so, the Commission approved Texas Eastern's request to charge the existing system reservation rate for service on the Project facilities and required Texas Eastern to file incremental fuel reimbursement percentages and electric power costs (EPC) for the same service.[2]

2. On January 19, 2016, Texas Eastern sought rehearing of the Commission's requirement that it charge incremental rates for fuel reimbursement and EPC costs associated with the Project, or in the alternative, clarification regarding the implementation of the December Order's directives to assess such costs. Texas Eastern claims incremental fuel and EPC charges cannot be feasibly implemented. Texas Eastern also contends the Commission erroneously adopted an analysis that could result in improper subsidization by Project shippers, and that a separate analysis of fuel and EPC costs and revenues could encourage inefficient facility construction. For the reasons discussed below, we deny Texas Eastern's request for rehearing and grant clarification.

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[1] *Texas Eastern Transmission, LP*, 153 FERC ¶ 61,311 (2015) (December Order).

[2] *Id.* P 28.

II. Commission Determination

A. Integrated vs. Separate Analyses

3. Texas Eastern argues the Commission should have compared the overall project transportation, fuel, and EPC costs with overall Project revenues in one integrated analysis, and not isolated fuel and EPC costs for separate analyses.[3] In support of this claim, Texas Eastern states that the Project will provide firm transportation to multiple shippers on twelve different path combinations across four Market and Access Area Zones, in opposite directions, using both existing and Project capacity with optionality to transport over different paths, with not every Project shipper using all Project facilities.[4] These characteristics purportedly make it impractical to estimate precisely which facilities will be used by Project shippers and the frequency such facilities will be used,[5] unlike linear systems where calculations are more straightforward.

4. Texas Eastern also contends that, because fuel and power cost components are embedded in the pipeline's existing mainline system FT-1 service reservation and usage rates, an analysis of Project fuel costs versus estimated fuel revenues or an analysis of Project EPC costs versus estimated EPC revenues would be inaccurate, since it would omit the fuel and EPC cost components embedded in the existing FT-1 transportation rates. Texas Eastern also argues the segregated fuel and EPC analyses are impractical because it would require Texas Eastern to forecast contract usage by shippers.[6]

5. We reject Texas Eastern's assertion that the Commission erred by addressing fuel costs in a separate rate analysis, rather than adopting the integrated Project cost and revenue analysis advocated by Texas Eastern. The Commission's "current policy is to address fuel costs in a separate analysis and it is common for a project … to qualify for rolled-in rate treatment with regards to the reservation rate but to have a separate fuel surcharge assessed if the project increases the pipeline's system fuel rate."[7] Three factors

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[3] Request for Rehearing at 9.

[4] *Id*. at 7.

[5] *Id*. at 7-8.

[6] *Id*. at 8.

[7] *Southeast Supply Header, LLC*, 151 FERC ¶ 61,032, at P 10 (2015) (*SESH*) (citing *ETC Tiger Pipeline, LLC*, 134 FERC ¶ 61,084 (2011); *Wyoming Interstate Co., Ltd.*, 130 FERC ¶ 61,251 (2010); *Rockies Express Pipeline LLC*, 128 FERC ¶ 61,036 (2009); *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303 (2003)).

underlie this policy. First, an integrated analysis of fuel costs "would require a monetization of the impact of the project on the pipeline's increased fuel requirements and some future projection of the price of natural gas" which involves "assuming a future fuel price [that] is inherently subject to error."[8] Second, it is inappropriate to combine non-fuel expansion costs, which only impact firm transportation customers paying a reservation charge, with fuel costs, which affect all shippers on the system. Third, the timing of the impact of costs may significantly differ. While adjustments to fuel trackers are generally periodic and predictable, the benefits derived from rolling-in a project's incremental revenues will not be predictable since a pipeline has no obligation to file a rate case.[9]

6. Where, as here, it is not clear that allowing recovery of fuel and EPC costs through the system fuel retention rate will not result in the subsidization of the project by existing shippers, the Commission requires the establishment of an incremental fuel rate.[10] Texas Eastern has failed to establish that either the purported complexity of its system or the fact that fuel and power cost components are embedded in its existing mainline system FT-1 service reservation and usage rates makes segregated fuel and EPC analyses impractical. In fact, as discussed below, we find that Texas Eastern has developed adequate methodologies to determine incremental fuel reimbursement percentages and EPC rates for the Project that satisfy the directives of the December Order. Accordingly, we find that the circumstances of this case do not warrant deviation from the Commission's policy of addressing fuel costs in separate analyses.

B. Improper Subsidization

7. Texas Eastern contends that an incremental fuel and power charge violates cost causation principles because it could result in Project shippers subsidizing existing shippers through their payment of incremental fuel and EPC charges in addition to the mainline system FT-1 service rate that includes embedded EPC and fuel charges.[11]

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[8] *SESH*, 151 FERC ¶ 61,032 at P 10.

[9] *Id.* P 12.

[10] *See, e.g.*, *ANR Pipeline Co.*, 152 FERC ¶ 61,021, at P 10 (2015); *SESH*, 151 FERC ¶ 61,032 at P 13.

[11] Texas Eastern states that since Project shippers pay the FT-1 transportation rate, in addition to a separate, incremental fuel and EPC charge, the Project shippers will pay a portion of the fuel and power costs incurred by mainline shippers.

8. We reject this argument. Texas Eastern's proposed project is designed to meet new demand.[12] In such circumstances, the Commission's policy requires that there be no subsidization from existing customers.[13] In order to accomplish this policy aim, expansion costs will generally be incrementally priced to ensure expansion shippers will pay the full costs of the expansion without subsidization from existing customers through rolled-in pricing.[14] Project shippers are required to pay any additional fuel costs if the expansion would result in an increase in fuel costs to existing shippers.[15] And, as noted above, when it is not clear that allowing recovery of fuel costs though the system rates will not result in the subsidization of the project by existing shippers, the Commission requires the establishment of an incremental rate.

9. The December Order found insufficient data existed in the record to determine that existing shippers would not subsidize the expansion if Texas Eastern were authorized to charge its currently effective system fuel and EPC charges.[16] Consequently, the Commission directed Texas Eastern to charge incremental fuel reimbursement and EPC costs "to ensure that only the expansion shippers who use the capacity will pay for the incremental fuel and EPC costs associated with such expansion capacity."[17] Texas Eastern may seek rolled-in rate treatment in the future for fuel and EPC costs if it can

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[12] December Order, 153 FERC ¶ 61,311 at P 16.

[13] See, e.g., *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128 (2000), *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement); *SESH*, 151 FERC ¶ 61,032 at P 13; *ANR*, 152 FERC ¶ 61,021 at P 13.

[14] *See Kern River Gas Transmission Company*, 117 FERC ¶ 61,077, at P 333 (2006) (*Kern River*); Certificate Policy Statement, 88 FERC ¶ 61,227, *orders clarifying policy*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094. *See also PG&E Gas Transmission Northwest Corporation*, 96 FERC ¶ 61,194, *reh'g denied*, 97 FERC ¶ 61,101 (2001) (discussing that expansion shippers should bear the costs of any increased fuel costs); *Equitrans, L.P.*, 143 FERC ¶ 61,108, at P 19 (2013) (same); *Equitrans, L.P.*, 153 FERC ¶ 61,381 at PP 28-29 (2015) (same).

[15] *Nw. Pipeline Corp.*, 99 FERC ¶ 61,365, at P 37 (2002) (*Northwest*).

[16] December Order, 153 FERC ¶ 61,311 at PP 23-28.

[17] *Id.*

demonstrate the rolled-in treatment will not result in expansion capacity subsidized by other shippers.[18]

C. Impact on Facility Design

10. Texas Eastern next argues the December Order will encourage inefficient design and construction of facilities by pipelines seeking rolled-in rate treatment for new projects.[19] For example, Texas Eastern contends that if it proposed new capacity by constructing new pipeline loops along the mainline system rather than by compression, the looping would receive non-fuel cost treatment and would be included in a rolled-in rate analysis. Even if a separate analysis for fuel costs were implemented, Texas Eastern contends that pipeline looping would keep Project fuel costs low, making rolled-in treatment easier to support. However, Texas Eastern explains that looping would result in greater environmental disturbance than compression. Thus, Texas Eastern claims the December Order could encourage inefficient construction with greater environmental impacts because pipelines may construct in a certain manner to receive rate-related benefits.[20]

11. We disagree with Texas Eastern's presumed policy implications. Under the Commission's Certificate Policy Statement, existing customers must be shielded from subsidizing new project.[21] Pipelines are dissuaded from overbuilding or inefficient system design because this policy ensures that projects are economically self-sustaining.[22] Where project costs for new expansions may exceed project revenues, incremental rates are required. Moreover, environmental concerns are comprehensively addressed through the requirements of the National Environmental Policy Act of 1969 (NEPA),[23] where environmental impacts, project alternatives, and mitigation measures are considered.[24] Thus, we reject Texas Eastern's arguments that the rate analysis

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[18] *Id*. at P 28.

[19] Request for Rehearing at 14-15.

[20] *Id*. at 14-15.

[21] Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746.

[22] *Id.*

[23] 42 U.S.C. §§ 4321 *et. seq.* (2012).

[24] 42 U.S.C. § 4332 (C). *See also* 18 C.F.R. Part 380 (2015).

methodology adopted in the December Order will encourage greater environmental impacts and inefficient project design.

D. **Request for Clarification**

12. Alternatively, Texas Eastern requests clarification that certain proposed methodologies will satisfy the December Order's directive to file incremental fuel retention percentages and EPC charges to Project shippers.

13. To calculate fuel reimbursement, Texas Eastern proposes to track the in-kind fuel usage for each compressor along the Project paths on a monthly basis after the Project commences service.[25] Then Texas Eastern would calculate monthly horsepower utilization at each compressor and the corresponding base horsepower utilization to ultimately acquire a daily fuel requirement.[26] Texas Eastern intends to calculate the monthly difference between actual Project fuel requirements and the actual fuel recovery realized from the Project shippers by Project path and record the variance as a debit or credit, to which a monetary value will be assigned in separate subaccounts.

14. To calculate EPC costs, Texas Eastern proposes to utilize actual throughput data at each of the electric-fired compressor stations along the Project's path to calculate each station's monthly horsepower utilization. Next, Texas Eastern plans to calculate the monthly difference between actual Project EPC requirements and the EPC recovery realized from the Project shippers and record the variance as a debit or credit. Texas Eastern would then reconcile each Project shipper's pro rata share.[27]

15. We confirm that, as described in the Request for Rehearing and briefly summarized above, Texas Eastern's proposed methodologies to determine the incremental fuel reimbursement percentages and EPC rates for the Project will satisfy the December Order's directive. In light of the clarification herein, Texas Eastern's contention that it is infeasible to separate fuel and power costs by Project shippers[28] is rendered moot.

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[25] Request for Rehearing at 16.

[26] *Id*. at 16-17.

[27] *Id*. at 18-19.

[28] *Id*. at 13-14.

<u>The Commission orders</u>:

The Commission hereby denies Texas Eastern's request for rehearing, and grants clarification, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.