

143 FERC ¶ 61,200  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Texas Gas Service Company, a Division of ONEOK,  
Inc.

v.

Docket No. RP10-951-001

El Paso Natural Gas Company, L.L.C.

ORDER ON REHEARING

(Issued June 3, 2013)

1. On December 17, 2012, Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas) filed a request for rehearing of the Commission's November 15, 2012 Order on Initial Decision.<sup>1</sup> For the reasons discussed below, Texas Gas's request for rehearing is denied.

**I. Background**

2. On July 7, 2010, Texas Gas filed a complaint challenging the collection of fuel costs on a postage stamp basis by El Paso Natural Gas Company, L.L.C. (El Paso) and proposing a zone-based fuel charge. Texas Gas argued that El Paso's fuel rates are unjust and unreasonable because they ignore the impact of distance of haul on fuel costs.

3. On October 22, 2010, the Commission set for hearing all issues raised in the complaint.<sup>2</sup> On September 7, 2011, after hearing, the Presiding Administrative Law

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<sup>1</sup> *Texas Gas Service Co., a Division of ONEOK Inc. v. El Paso Natural Gas Co.*, 141 FERC ¶ 61,130 (2012).

<sup>2</sup> *Texas Gas Service Co., a Division of ONEOK Inc. v. El Paso Natural Gas Co.*, 133 FERC ¶ 61,079 (2010).

Judge (Presiding Judge) issued an Initial Decision (I.D.) dismissing the complaint.<sup>3</sup> The I.D. found that Texas Gas and its supporters did not satisfy their burden of proof under section 5 of the Natural Gas Act to show that El Paso's postage stamp fuel rate is unjust and unreasonable. Specifically, the I.D. concluded that the methodologies used by Texas Gas and its supporters to demonstrate that distance of haul is the predominant factor affecting fuel usage and costs had too many flaws to be considered sufficient evidence to satisfy their burden of proof. The Commission affirmed and adopted the I.D. on November 12, 2012, agreeing that Texas Gas and its supporters were unable to make their case by a preponderance of the evidence.

## **II. Request for Rehearing**

4. Texas Gas requests rehearing based on its contention that the Order on Initial Decision contains two errors. First, Texas Gas asserts that the Commission is being inconsistent when it claims that it is not requiring the tracing of gas molecules to establish the distance of haul, while concluding that Texas Gas and its supporters did not reliably establish the distance of haul between El Paso's receipt and delivery points.

5. Second, Texas Gas asserts that the Commission wrongfully concluded that Texas Gas did not account for the other factors that may offset the distance of haul. Specifically, Texas Gas claims that the Commission's conclusion is based solely on the testimony of Staff's witness, while ignoring the testimony of Texas Gas's witness, who accounted for these other factors and concluded that their presence on El Paso's pipeline system is not significant enough to offset the distance of haul.

## **III. Commission Determination**

6. With respect to Texas Gas's first contention, the Commission reiterates that its finding does not require the tracing of gas molecules. It does require, however, that the distance of haul be reliably established in some manner. Otherwise, there would be no way to set a mileage-based fuel rate that would be just and reasonable for all of El Paso's shippers. Having filed a complaint under section 5 of the Natural Gas Act alleging that El Paso's postage stamp fuel rate is unjust and unreasonable because it ignores the distance of haul, it was Texas Gas's burden to justify its analysis that distance of haul is the predominant factor affecting fuel costs. The I.D. determined that Texas Gas and its supporters failed to carry their burden of proof regarding the impact of distance of haul on fuel costs, and the Commission affirmed and adopted the I.D.'s determination.

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<sup>3</sup> *Texas Gas Service Co., a Division of ONEOK Inc. v. El Paso Natural Gas Co.*, 136 FERC ¶ 63,010 (2011).

7. Texas Gas argues that in the absence of actual flow data by contract path, it used the best available data in the record to evaluate the impact of distance on fuel costs. As a result, Texas Gas contends that the Commission should grant rehearing and find that it is sufficient to use aggregated hourly system flow data to determine the distance of haul. However, Texas Gas's contention overlooks the fact that it is primarily its methodology rather than its data that has been found wanting. The use of the best available data, even if true, does not ensure the validity of an analysis.

8. Referring to Texas Gas and its supporters, the Presiding Judge determined, as noted above, that "their methodologies had too many flaws to be considered sufficient evidence to justify their burden of proof."<sup>4</sup> In this regard, the I.D. is replete with references to these flaws.<sup>5</sup> Indeed, the Presiding Judge went so far as to interpret the criticism by the California Parties' witness as indicating that the methodology used by Texas Gas's witness for calculating mileage "strains credulity," and then agreed with that assessment.<sup>6</sup> Having affirmed and adopted the I.D., the Commission is not required to recapitulate all the reasoning included in the I.D.<sup>7</sup>

9. As for Texas Gas's second contention, it argues that the Commission ignored its witness's testimony that other factors did not significantly offset the impact of distance of haul on fuel costs. According to Texas Gas, its witness affirmatively accounted for each of these factors in his testimony. Moreover, Texas Gas argues that the Commission relied only on Staff's testimony, pointing out that the first sentence of P 50 in the Order on Initial Decision cites only to the Staff witness's testimony at the hearing.

10. However, the Commission's reference in P 50 to Texas Gas's failure to account for other factors that might offset the distance of haul was not meant to suggest that Texas Gas did not offer testimony on this issue. Rather, the Commission's conclusion reflected its view that Texas Gas's analysis of these other factors was not persuasive compared to the contrary evidence presented by other parties. Indeed, notwithstanding Texas Gas's charge, the balance of the discussion in P 50 cites to the briefs opposing exceptions of El Paso, California Parties, and Indicated Shippers, which all dealt extensively with the "other factors" issue, and which the Commission relied on in drawing its conclusion.

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<sup>4</sup> I.D. at P 356.

<sup>5</sup> See I.D. at PP 331-345.

<sup>6</sup> I.D. at P 345.

<sup>7</sup> See, e.g., *Boroughs of Ellwood City v. FERC*, 731 F.2d 959, 967 (D.C. Cir. 1984).

11. Moreover, while the analysis done by Texas Gas's witness addressed a number of the "other factors," it did so primarily on an individual basis. However, even if one were to assume that each of these other factors do not significantly offset the distance of haul individually, this does not mean that all the factors taken together do not do so. Among other things, El Paso states that its system reflects all the characteristics evaluated by Texas Gas's witness "to a greater or lesser degree."<sup>8</sup> In this regard, the computer study done by El Paso's witness of the operation of the El Paso system, which was given significant weight by the Presiding Judge, is the only evidence in the record that generally considers all factors together,<sup>9</sup> and concludes that fuel consumption on the south mainline "is relatively insensitive to distance."<sup>10</sup>

12. In any event, the discussion by the Commission of the "other factors" issue is *dicta* because it is not necessary to justify the Presiding Judge's dismissal of Texas Gas's complaint. As the Commission noted in P 51 of the Order on Initial Decision, in order to satisfy their section 5 burden of proof in this proceeding Texas Gas and its supporters would have to pass a two-prong test. The first prong requires that the distance of haul be measured reliably. If that had been done successfully, the second prong would then require demonstrating the extent to which "other factors" offset the fuel costs associated with the distance of haul. Since Texas Gas and its supporters failed to get by the first prong, there was no need for the Presiding Judge to make a finding regarding the second prong.

13. In other words, regardless of whether it could have been shown that other factors do not offset the impact on fuel costs of distance of haul, it would not have affected the finding made by the Presiding Judge—that there was no reliable demonstration of distance of haul or of fuel consumption related to distance. At bottom, Texas Gas and its supporters did not satisfy their section 5 burden of proof with respect to whether the distance that gas is transported is the predominant factor determining the incurrence of fuel usage on the El Paso system.

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<sup>8</sup> El Paso Brief Opposing Exceptions at 46.

<sup>9</sup> *Id.* at 34 ("While not focused on individual factors, this study . . . effectively considered the overall impact of all relevant factors on the factor of distance of haul as it relates to fuel use.") El Paso also pointed out that the computer study was based on a steady-state model and thus did not reflect the higher fuel consumption associated with non-ratable takes, which would have offset any distance of haul effects on fuel to an even greater degree. *Id.* at 62.

<sup>10</sup> I.D. at P 357 (citing Exhibit No. EPG-11 at 52-53).

14. Simply put, their case failed because they did not reliably establish what the distance of haul was between the receipt and delivery points on the El Paso system. Failing that, there is no way, as noted above, to calculate a mileage-based rate that could be considered just and reasonable for all shippers. Indeed, the Presiding Judge stated that, “[i]n view of my ruling [on distance of haul], there is no need for me to consider the matters raised by El Paso and the California shippers as to reasons why distance was not the predominant factor in fuel use.”<sup>11</sup> Under these circumstances, the issue of whether other factors may offset the impact of distance of haul on fuel costs becomes moot.

The Commission orders:

Texas Gas’s request for rehearing is denied for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,  
Secretary.

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<sup>11</sup> I.D. at P 358.