141 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

v.

El Paso Natural Gas Company

ORDER ON INITIAL DECISION

(Issued November 15, 2012)

1. On July 7, 2010, Texas Gas Service Company, a Division of ONEOK, Inc. (Texas Gas) filed a complaint pursuant to section 5 of the Natural Gas Act (NGA) and Rule 206 of the Commission's Rules of Practice and Procedure, 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.

2. On October 22, 2010, the Commission set for hearing all issues raised in the complaint.[1] On September 7, 2011, after hearing, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision dismissing the complaint.[2] This order addresses the briefs on and opposing exceptions to the Initial Decision and affirms and adopts the Initial Decision.

[1] *Texas Gas Service Co., a Division of ONEOK Inc. v. El Paso Natural Gas Co.*, 133 FERC ¶ 61,079 (2010).

[2] *Texas Gas Service Co., a Division of ONEOK Inc. v. El Paso Natural Gas Co.*, 136 FERC ¶ 63,010 (2011) (Initial Decision or ID).

I. Background

3. El Paso is a natural gas company that operates an interstate pipeline system for the transportation of natural gas from areas in the southwestern United States through the states of Texas, New Mexico, Colorado, and Arizona, to two points of termination at the boundary between the states of California and Arizona, near Ehrenberg and Topock, Arizona. El Paso also delivers natural gas to numerous on-system delivery points and off-system eastern markets. El Paso's system consists of the south mainline and the north mainline, which can deliver natural gas from the San Juan, Permian, and Anadarko basins to various delivery points throughout its system. In addition, its system includes several "cross-overs," which can deliver gas between the north and south mainlines.

4. 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 a technical conference, while setting other issues for hearing.[3] On March 11, 2010, El Paso submitted an offer of settlement, which resolved all but four of the specified issues in Docket No. RP08-426-000.[4] The Commission approved the settlement on April 28, 2010.[5]

5. The settlement established rates on a "black box" basis during a term that ended no earlier than March 31, 2011 and no later than March 31, 2012, during which time a rate moratorium would be in effect. The settlement also stated 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 that 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.

6. On July 7, 2010, Texas Gas filed the subject complaint pursuant to Article 13.3 of the settlement. As noted above, the Commission issued an order on October 22, 2010, setting for hearing all issues raised in the complaint. After hearing, the ALJ issued his Initial Decision on September 7, 2011. Texas Gas and the Commission Trial Staff (Staff)

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[3] *El Paso Natural Gas Co.*, 124 FERC ¶ 61,124 (2008).

[4] The four unresolved issues related to (1) capital structure; (2) the amount to be included in El Paso's capital account for ratemaking and accounting purposes involving 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 these issues was completed on June 8, 2010.

[5] *El Paso Natural Gas Co.*, 131 FERC ¶ 61,077 (2010).

filed briefs on exceptions on October 7, 2011. Briefs opposing exceptions were filed on October 27, 2011 by El Paso, the California Parties (The California Public Utilities Commission, Southern California Edison Company, Southern California Gas Company, San Diego Gas & Electric Company, and Pacific Gas and Electric Company), and the Indicated Shippers (BP America Production Company, BP Energy Company, ConocoPhillips Company, and Shell Energy North America (US), L.P.).

II. Initial Decision

7. The ALJ found that "[t]he record does not support the Texas Gas, Staff, and New Mexico Gas position that the El Paso postage stamp fuel rate is unjust and unreasonable."[6] They had argued that distance is the dominant factor affecting fuel usage. The ALJ, however, concluded that they did not establish that gas travels further between receipt by the El Paso system and delivery to California and Arizona versus delivery to Texas and New Mexico. Significantly, the ALJ also concluded that Texas Gas and its supporters failed to show that it costs more to haul gas to California and Arizona because of the additional distance, than it does to haul gas to Texas and New Mexico. In the ALJ's view, these two showings were necessary to make a *prima facie* case.

8. According to the ALJ, even if one assumed that distance is the most, but not the only, significant factor in fuel use, it must still be determined how far the gas received by El Paso at its receipt points must be physically hauled for delivery to its customers. In this regard, the ALJ stated that while Texas Gas's witness "continually asserted that distance is the 'predominant' factor in fuel use, none of [his] evidence clearly proves that gas delivered to far western parts of the El Paso system travels further than gas delivered to locations closer to its eastern end." Indeed, contrary to Texas Gas's theory, the ALJ found that "the record establishes that the mileage between the San Juan Basin and the California gates was 551 miles (Topock) and 716 miles (Ehrenberg), while the distance from the San Juan Basin to El Paso, Texas is 915 miles."[7]

9. The ALJ discussed in some detail why he considered the analysis of Texas Gas's witness "problematic."[8] For example, notwithstanding the explanations offered in the witness's direct testimony regarding his mileage analysis, the ALJ determined that none of that testimony really explains exactly what the calculations were that resulted in the mileage figures included in his exhibits. In addition, the ALJ stated that the witness on

[6] Initial Decision, 136 FERC ¶ 63,010 at P 331.

[7] *Id.* PP 332-333.

[8] *Id.* PP 334-337.

re-direct examination stated that the miles on Exhibit No. TGS-57 "not only were not actual physical miles, not only were not just average miles, but rather were 'weighted' average miles" that were adjusted to take into account displacement after his review of actual system flow data.[9]

10. Given the assumptions and adjustments reflected in his analysis, the ALJ concluded that the mileage figures of Texas Gas's witness bear "little if any relationship to the actual miles of haul between the two points included in his matrix, but instead represent his subjective evaluation of that distance."[10] In this same vein, the ALJ agreed with the suggestion by the California Parties' witness that the methodology of Texas Gas's witness for calculating mileage "strains credulity."[11]

11. The ALJ also discussed what he considered errors or omissions in the Staff's analysis.[12] Among other things, the ALJ found that Staff's witness provided no evidence that gas is actually hauled over each of the paths used in his analysis. Even though Staff's witness contended that the distance of haul to each of the delivery zones could be measured, the ALJ stated that he failed to perform those measurements. Instead, the ALJ stated that Staff's witness determined which paths were "plausible" and then averaged the distances.[13] He also faulted Staff's witness for using a longer route in his analysis (e.g., San Juan Basin to Ehrenberg, Arizona), when a more logical, shorter route was available.[14]

12. In addition, the ALJ stated that Staff's witness eventually agreed at the hearing that other factors besides distance should be considered in evaluating the appropriate fuel rate. However, despite acknowledging that one should consider these other factors, Staff's witness did not do so because "there was no quantification provided."[15] In this

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[9] *Id.* PP 336-337.

[10] *Id.* P 337.

[11] *Id.* P 345.

[12] *Id.* PP 346-355.

[13] *Id.* n.248.

[14] *Id.* P 346.

[15] *Id.* P 353 (citing Tr. 479).

regard, the ALJ stated that the overriding problem with the Staff witness's position was "his apparent desire to shift the burden of proof from complainant to opposing parties."[16]

13. Based on his review of the record, the ALJ found that the only evidence that reflected the actual effects of fuel use in the operation of the El Paso system is a study done by El Paso witness Westhoff.[17] As explained by the ALJ, the study made use of a computer model that was created to test the question of whether fuel consumption on the pipeline was distance sensitive. The model used actual data for El Paso's south mainline for the two years prior to the study. After running four different demand scenarios, the results reflected little change in fuel use.[18] Therefore, El Paso's witness concluded "fuel consumption along the South Mainlines is relatively insensitive to distance."[19]

14. In rejecting the theory espoused by Texas Gas, Staff, and New Mexico Gas, the ALJ summarized his findings as follows:

> [T]o prove their *prima facie* case, Texas Gas, etc., had to show that: (1) gas travels further between receipt by the El Paso system and delivery to California and Arizona than it does between receipt by the El Paso system and delivery to Texas and New Mexico, (2) that it costs more [fuel] to haul gas to California and Arizona because of that additional distance than it does to haul gas to Texas and New Mexico. However, the record does not establish either point.[20]

III. Exceptions

A. Briefs on Exceptions

1. Texas Gas

15. Texas Gas argues that the ALJ erred in concluding that it failed to meet its burden of establishing that El Paso's fuel costs increase with distance of haul, such that El Paso's

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[16] *Id.* P 355.

[17] *Id.* P 357.

[18] *Id.* n.256.

[19] *Id.* P 357, (citing Ex. EPG-11 at 52-53).

[20] *Id.* P 331.

postage stamp rate is unjust and unreasonable. In particular, Texas Gas argues that the ALJ imposed "an impossibly high standard of proof" on it and its supporters.[21]

16. In Texas Gas's view, holding that complainants have not met their burden of proof unless they can trace molecules is clear error that should result in the reversal of the fundamental finding of the Initial Decision that Texas Gas and its supporters did not meet their burden of proof.[22] Even though they did not have actual data by contract path, Texas Gas contends that the Commission should nonetheless find that they "reasonably relied on available data to analyze the impact of distance on fuel cost incurrence on the El Paso system."[23]

17. Texas Gas agrees with the ALJ that, with respect to its burden of proof under section 5, the preponderance of the evidence standard can be met by showing that the existence of a fact is more probable than its nonexistence.[24] However, by requiring that it be proven that gas flowed over actual paths, Texas Gas argues that the ALJ applied a "heightened evidentiary standard" that exceeds the preponderance of the evidence standard of proof.

18. According to Texas Gas, the application of this heightened evidentiary standard required that it trace gas flows from receipt to delivery points by individual contract to prove cost causation. However, Texas Gas argues that El Paso does not track gas flows from receipt to delivery point by contract path. Moreover, the Commission has recognized that it is impossible to trace molecules in a commingled natural gas stream.[25] As a result, Texas Gas argues that the ALJ failed to consider whether it had demonstrated that it is more probable than not that distance is the predominant factor in fuel incurrence on the El Paso system.[26]

19. Texas Gas also argues that while numerous factors can affect flows on a pipeline system, which could affect the amount of fuel consumed, the record evidence shows that these factors do not offset distance of haul as a major determinant of fuel consumed.

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[21] Texas Gas Brief on Exceptions at 19.

[22] *Id.* at 15.

[23] *Id.* at 22.

[24] *Id.* at 19-20, citing ID, 136 FERC ¶ 63,010 at P 326.

[25] *Id.* at 20 (citing *Natural Gas Pipeline Co.*, 92 FERC ¶ 61,221, at 61,740 (2000)).

[26] *Id.* at 21.

Moreover, Texas Gas contends that its witness analyzed all possible factors that could offset the role of distance and tried to quantify these factors whenever possible. His conclusion was that none of the operational circumstances significantly overrides the role of distance on the El Paso system.[27]

2. Staff

20. Staff argues similarly that the ALJ erred in concluding that Staff and Texas Gas failed to meet their burden of establishing that El Paso's fuel costs vary significantly from zone to zone such that its existing postage stamp fuel rate design is unjust and unreasonable. Staff contends that the ALJ's "factual conclusions are not based on the facts evinced in the record but rather his mistaken understanding of key factual issues in this proceeding."[28] In Staff's view, the Initial Decision "clearly conflicts with established Commission precedent on cost allocation and distance-based rate design."[29]

21. Staff states that El Paso itself agrees that delivery costs increase with distance when it charges its distance-based transportation rates. Therefore, the ALJ erred by ignoring the undisputed fact that El Paso charges distance-based transportation rates and determining that all its compressor-related transportation costs vary with distance of haul. Instead, the ALJ accepted El Paso's postage-stamp fuel rate based on his mistaken belief that El Paso charges postage-stamp transportation rates.[30]

22. According to Staff, no party disputes the general principle that delivery costs increase with distance of haul. In fact, a study done by Texas Gas's witness confirms this general principle with respect to the El Paso system.[31] Moreover, this same result is reflected in a study done by a California Parties witness after correcting for the flaws in his study.[32] In addition, and consistent with the general principle, Texas Gas's witness testified that customers in Texas, New Mexico, and Nevada subsidize customers in

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[27] *Id.* at 55-56.

[28] Staff Brief on Exceptions at 12.

[29] *Id.* at 13.

[30] *Id.* at 19.

[31] *Id.* at 20.

[32] *Id.* at 23.

Arizona and California by up to $15.7 million a year under El Paso's existing postage stamp rate design.[33]

23. Staff argues that the ALJ erred in failing to find that El Paso's contract paths are the appropriate starting point for establishing its mainline fuel charges. Staff's witness explained that many of the contract paths are plausible contract paths and are identical to physical flows. However, "impossible" contractual paths that do not reflect actual physical flows were replaced with plausible actual paths in his mileage study. In addition, Staff argues that El Paso's usage rates, which recover variable costs, as fuel does, are based on dekatherm-mile allocations using contract path miles.[34]

24. Staff argues further that the ALJ also erred in rejecting the mileage calculations of the Staff and Texas Gas witnesses as subjective or conveniently chosen to prove the points they wanted to make. In response, Staff argues that these witnesses made substitutions to the contract paths using objective and consistent criteria, and only where necessary, based on known data provided by El Paso.[35] As a result, Staff argues that their studies are much more reflective of actual system flows than is El Paso's own mileage study used to calculate its transportation and usage and reservation rates.[36]

B. Briefs Opposing Exceptions

1. El Paso

25. El Paso contends that Texas Gas and Staff have a simplistic view of its pipeline system, which caused them to conclude erroneously that more fuel is consumed delivering gas to Arizona and California than to Texas and New Mexico.[37] El Paso's witness Westhoff, the Director of Facility Planning for Western Pipelines, explained that while the east-to-west theory espoused by Texas Gas and Staff may have been applicable years ago, El Paso's system is no longer a unidirectional, east-to-west pipeline commencing in the Permian Basin.

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

[34] *Id.* at 79-80.

[35] *Id.* at 82.

[36] *Id.* at 84.

[37] El Paso Brief Opposing Exceptions at 9.

26. Mr. Westhoff presented "extensive and detailed testimony" describing El Paso's system configuration and operations, explaining how gas is actually routed through the system and specifying the implications of this manner of operations for fuel cost incurrence. Indeed, El Paso states that no other participant offered testimony at variance with his description of the facts. Moreover, the principal witnesses for Texas Gas and Staff testified that they accepted the accuracy of Mr. Westhoff's factual descriptions.[38]

27. As Mr. Westhoff explained, the preferred and largest supply source for the system is now the San Juan Basin, located in roughly the center of the system on the north mainline. San Juan gas is delivered not only to all major delivery locations on the north mainline, but also to all major delivery locations on the south mainline by means of three north-to-south crossovers, located on both the western and eastern ends of the system. By use of these crossovers, San Juan supplies now enter the south mainline from both ends.[39] As a result, Mr. Westhoff testified at the hearing that the relationship between distance and fuel consumption is rendered "somewhat moot, because effectively you're saying everybody is about the same distance from the ends."[40]

28. Based on the record evidence, El Paso maintains that the ALJ "reasonably and properly" found that neither Texas Gas nor Staff had shown that El Paso's postage stamp rate is unjust or unreasonable. According to El Paso, the mileage studies submitted by Texas Gas and Staff do not reflect El Paso's actual operations. In addition, El Paso contends that the ALJ properly rejected their attempts to measure distance of haul.[41]

29. Echoing the findings of the ALJ, El Paso states that it is not enough for Texas Gas and Staff to establish as a general proposition that fuel use varies with distance of haul. In its view, the ALJ properly found that "[t]hey must show that specific shippers on the system are being overcharged and others are being undercharged." To show this, "they must demonstrate that fuel costs vary with distance between specific receipt points and specific delivery points on the EPNG system, and they must establish a proper way to measure distance of haul."[42]

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[38] *Id.*

[39] *Id.* at 10.

[40] *Id.* (citing Tr. 841:4-19).

[41] *Id.* at 7.

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

30. In addition, El Paso criticizes Texas Gas's and Staff's reliance on its transmission cost allocation methodology. It argues that there is no basis for their apparent assumption that transmission costs and fuel must be allocated on the same basis, given that the Commission has approved different allocation methods for the two categories of costs on other pipelines.[43] According to El Paso, fuel costs must be allocated on a basis that reflects the manner in which they are incurred regardless of how transmission system costs are allocated. Indeed, El Paso notes that the proper method for allocating transmission system costs is an issue that is currently being litigated in Docket No. RP10-1398-000, and El Paso's own proposal is being attacked from both sides. Finally, El Paso contends that Texas Gas and Staff "overlook the critical differences between the nature of the transmission system costs being addressed in the rate case (principally fixed costs) and the variable fuel costs at issue in this case."[44]

31. Moreover, El Paso argues that regardless of whether distance of haul is a factor in determining the incurrence of fuel costs, it is "completely offset by other factors." According to El Paso, the Commission has recognized the relevance of certain offsetting factors, such as "the existence of a reticulated, grid-like pipeline system, extensive reliance on displacement, receipt of gas on both ends of a system and the existence of null points." El Paso contends that its system and operations reflect all of these characteristics to a greater or lesser degree. In addition, El Paso states that the record also includes several other factors that offset the impact of distance on fuel costs, namely, "the non-ratability of takes by shippers in its more eastern delivery zones, the design of its system to meet large terminal loads, and the existence of facilities with varying fuel efficiencies."[45]

32. Even if these offsetting factors did not exist, El Paso asserts that the ALJ would still have been justified in rejecting the position of Texas Gas and Staff that fuel costs increase in an east-to-west direction. This is because their theory rests on an incorrect view of system flows and is predicated on an invalid measure of distance.[46]

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[43] *Id.* at 26-27 (citing *Koch Gateway Pipeline Co.*, 85 FERC ¶ 61,426, at 62,610 (1998)).

[44] *Id.* at 27.

[45] *Id.* at 46.

[46] *Id.* at 14.

2. California Parties

33. California Parties argue that postage stamp rates are generally found on reticulated systems like El Paso's and that the Commission has held it reasonable to use postage stamp rates where it is not possible to attribute specific fuel usage to specific shipments of gas, and the mileage of haul for particular shipments cannot be determined.[47]

34. Moreover, California Parties state that while the El Paso and California Parties witnesses may not dispute the general principle that delivery costs increase with distance of haul, that general principle does not apply to El Paso's complex and integrated system.[48] In this regard, California Parties argue that the Commission approved postage stamp fuel charges for El Paso in 1959 based on the integrated nature of the system and the fact that "the various parts of El Paso's system support each other by displacement."[49]

35. As California Parties explain further, the Commission recognized even then that gas from the northern part of the system can supply southern customers, and vice versa, and that each part of the system bears loads that could be borne by other parts. As a result, the Commission concluded "there is little logic in computing the exact distance that gas travels from the various producing basins to the various customers."[50] Indeed, California Parties argue that El Paso's system has only become more integrated and grid-like in the intervening years, with the distance that gas is transported becoming even less relevant to costs.[51]

36. California Parties agree with the ALJ's finding that the underlying theory of Texas Gas and Staff is unsupported, given their failure to prove that gas actually travels farther to reach the western-most zone of delivery and that the farther gas is transported, the more fuel is consumed. Countering that theory, among other things, is that much of El Paso's mainline fuel, particularly fuel used by compressors in the production basins, is unrelated to distance. According to California Parties, once all of the categories of non-distance-sensitive fuel are recognized (e.g., storage-related fuel, fuel associated with heating buildings and generating power at sites, Account No. 858 fuel associated with

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[47] California Parties Brief Opposing Exceptions at 6 (citing *Koch Gateway Pipeline Co,* 84 FERC ¶ 61,143 (1998)).

[48] *Id.* at 34.

[49] *Id.* at 6-7 (citing *El Paso Natural Gas Co. (El Paso),* 22 FPC 260, 277 (1959)).

[50] *Id.* at 7 (citing *El Paso,* 22 FPC 278).

[51] *Id.* at 39.

capacity held on the Mojave pipeline, and fuel associated with transporting gas from north to south on the Havasu crossover), the portion of fuel unrelated to distance increases from about one-third (just from the production areas) to nearly one half of the total fuel.[52]

37. Moreover, California Parties state that the remainder of the fuel consumed is also influenced by a wide variety of factors other than distance, including the reticulated and integrated nature of the system, widespread use of displacement, different characteristics of specific facilities, differing hourly takes, and large terminal loads. They argue that Texas Gas and Staff either ignore or understate the importance of these other factors that should be considered in evaluating the relative impact of distance on the El Paso system's fuel consumption.[53] In their view, El Paso's unrebutted analysis of its actual system operations demonstrates that these other factors entirely offset the impact of distance, thereby showing that fuel usage does not increase with the distance that gas is transported.[54]

38. California Parties state that the study done by El Paso witness Westhoff was not rebutted, challenged, or even mentioned in the rebuttal testimony filed by Texas Gas and Staff. They therefore agree with the ALJ that Westhoff's analysis "represents the only evidence in the record that reflects the effects on fuel use in a study of the actual operation of the El Paso system."[55] In addition, they disagree with the suggestion that the 300,000 dth/day moved to the east across the southern mainline in Westhoff's study is insufficient to test the relationship between fuel usage and distance. They point out that this volume level amounts to nearly one-third of the actual average deliveries to Ehrenberg, more than the actual deliveries to Phoenix, and nearly three times the deliveries to El Paso, Texas.[56]

39. California Parties also disagree with Texas Gas's charge that the ALJ established an insurmountable burden of proof by concluding that the Texas Gas and Staff witnesses did not prove that gas actually flows over specific paths on the El Paso system. In this regard, they note that the basis of Texas Gas and Staff's entire case was their purported

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[52] *Id.* at 33-34.

[53] *Id.* at 40.

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

[55] *Id.* at 42 (citing ID, 136 FERC ¶ 63,010 at n.256).

[56] *Id.* at 46 (citing Ex. EPG-64).

explanation of how gas actually flows on the El Paso system.[57] As a result, California Parties argue that the ALJ correctly recognized that the fact that the testimony of these witnesses does not reflect actual gas flows is fatal to their challenge to the existing postage stamp methodology.[58]

3. Indicated Shippers

40. Indicated Shippers contend that there are several undisputed facts in the proceeding, which have a direct bearing on whether distance is the predominant factor in fuel use on El Paso's system. They maintain that these undisputed facts support the ALJ's conclusion that distance is not the predominant factor in the consumption of fuel on the El Paso system.[59]

41. First, at least one-third of El Paso's fuel use is not distance-sensitive because it is associated with supply basin compressors, which are used to increase the pressure of the delivered gas to mainline levels, but not to move gas across the mainline.[60] In addition, there is record evidence that two-thirds of the supply received by the El Paso system is from the San Juan Basin, which is approximately equidistant to the markets in California, Arizona, and Texas, and which is significantly closer to California than it is to El Paso, Texas (by approximately 200 miles).[61]

42. Second, displacement is a significant factor affecting fuel use on the El Paso system. Because displacement transactions are not accomplished through the physical act of transporting gas from Point A to Point B, distance is not a relevant consideration. Texas Gas's witness admitted that 506,000 Dth, or about 14.4 percent of the system flow, is accomplished through displacement.[62]

43. Third, contract path does not always reflect flow path. As Indicated Shippers explain, the distance a particular contract quantity travels can vary depending on the particular flow on any given day on El Paso's system. This is because gas can flow in a

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[57] *Id.* at 9.

[58] *Id.* (citing ID, 136 FERC ¶ 63,010 at P 356).

[59] Indicated Shippers Brief Opposing Exceptions at 6-8.

[60] *Id.* at 8-10.

[61] *Id.* at 10-11.

[62] *Id.* at 11.

variety of ways to get from a receipt point to a delivery point, including through displacement, and shippers can, and do, use alternate receipt and delivery points. Therefore, a shipper's given contractual volumes may use more fuel one day, and less on another depending on many factors, including the shipper's nominations.[63]

44. Finally, contrary to Staff's position, Indicated Shippers contend that Commission precedent supports the retention of the postage stamp rate design. Staff's position is that Commission precedent requires that fuel rates be designed on a basis that reflects that distance is the predominant factor in how fuel is consumed on El Paso's system. However, Indicated Shippers argue that this precedent is only applicable if distance is actually the predominant factor, which Staff and Texas Gas failed to prove in this proceeding. According to Indicated Shippers, the more applicable precedent is the Commission's decision in the *Koch* case,[64] where the Commission discussed the impossibility of determining the "actual" miles of flow on the Koch system, and approved a postage stamp rate design.[65]

IV. Commission Determination

45. The primary factual issue in this section 5 proceeding is whether the distance of haul between receipt points and delivery points on El Paso's system is the predominant factor affecting fuel costs. As the petitioner, Texas Gas has the burden of showing, by a preponderance of the evidence, that the impact of the distance of haul on fuel costs is so substantial that El Paso's existing, postage-stamp fuel rate is unjust and unreasonable. The Commission affirms and adopts the ALJ's ruling that no such showing was made.

46. In this regard, the Commission rejects the argument made by Texas Gas that the ALJ applied an impossibly high burden of proof, "which essentially requires the tracing of molecules."[66] On the contrary, Texas Gas and its supporters failed to carry their burden of proof under section 5 for the reasons discussed in the Initial Decision, which reflects the ALJ's determination that they did not demonstrate that it is more probable than not that distance is the predominant factor in fuel incurrence on the El Paso system.

47. As a basis for their position, Texas Gas and its supporters rely on the Commission's regulations that require that rates "must reasonably reflect any material

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[63] *Id.* at 11-12.

[64] *Koch Gateway Pipeline Co.*, 85 FERC at 62,610.

[65] Indicated Shippers Brief Opposing Exceptions at 17-18.

[66] Texas Gas Brief on Exceptions at 15-16, 21.

variation in the cost of providing the service due to . . . [t]he distance over which the transportation is provided."[67] They contend that El Paso's existing postage stamp rate design for its fuel rate fails to comply with these regulations because it ignores distance of haul, which they assert is the "predominant" cost factor affecting fuel usage. While that may or may not be true,[68] the Commission finds that the ALJ correctly determined that the record evidence developed in this proceeding did not support their position that distance was the predominant driver of fuel usage on the El Paso system.

48. Texas Gas and its supporters appeared to assume as fact that the distance of haul causes a material variation in fuel usage, and thus cost incurrence, on El Paso's system.[69] However, while the Commission's regulations support the general proposition that distance of haul drives usage of fuel, the issue of whether the distance of haul causes a material variation in fuel costs on the El Paso system must be proven by record evidence and not merely assumed or asserted. While Texas Gas and its supporters characterize the distance of haul as the predominant factor affecting fuel usage and costs on the El Paso system, they did not offer sufficiently persuasive evidence to contradict El Paso's evidence to the contrary.

49. Among other things, the ALJ concluded that Texas Gas's witness was unable to explain exactly what the calculations were that resulted in the mileage figures included in his exhibits.[70] Given the assumptions and adjustments reflected in his analysis, the ALJ further concluded that these mileage figures bear "little if any relationship to the actual miles of haul between the two points included in his matrix, but instead represent his subjective evaluation of that distance."[71] The ALJ also found, based on his review of the record, that the only evidence that reflected the actual effects of fuel use in the operation of the El Paso system is a study done by El Paso's witness.[72] The ALJ concluded that

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[67] 18 C.F.R. § 284.10 (c)(3)(ii) (2012).

[68] The ALJ noted that Texas Gas's witness had included "some evidence . . . that *might* prove that point." ID, 136 FERC ¶ 63,010 at P 333 (emphasis in original).

[69] *See, e.g.*, Texas Gas Brief on Exceptions at 17 ("'[O]n *most* pipeline systems the costs of providing service are materially affected by the distance the gas is transported ….'" Emphasis in original. Footnote omitted.) and Staff Brief on Exceptions at 14 ("The Commission has long recognized that '[i]t is a simple economic fact that the delivery cost of natural gas increases in close proportion to the length of the transmission line of any given size.'" Footnote omitted.).

[70] ID, 136 FERC ¶ 63,010 at P 336.

[71] *Id.* P 337.

there is no evidence in the record that faults this study or contradicts the conclusion that fuel use on El Paso's south Mainline does not vary with regard to distance.[73]

50. Notwithstanding the deficiencies of their mileage analyses, Texas Gas and its supporters also failed to account for the many factors that offset whatever fuel usage may be attributable to distance of haul.[74] These other factors include items such as the reticulated and integrated nature of the system, receipt of gas on both ends of the system, the significant use of displacement, the existence of null points, different characteristics of specific facilities, differing hourly takes, and large terminal loads.[75] Finally, the record also contains evidence that at least one-third of El Paso's fuel use is not distance-sensitive because it is associated with supply basin compressors used to increase pressure and not to move gas, and that two-thirds of the supply received by the El Paso system is from the San Juan Basin, which is approximately equidistant to both ends of the system.[76]

51. Therefore, even if one were to accept the general proposition that distance of haul is the predominant factor affecting fuel usage on a pipeline, there was still insufficient evidence to prove that El Paso's existing postage stamp rate design is unjust and unreasonable. In particular, the record evidence on what the actual mileage was to serve various markets on El Paso was insufficient to support the complainant's position. As a result, because of an inability to justify their mileage calculations, Texas Gas and its supporters were unable to show that a mileage-based rate would be materially lower than the current postage stamp rate. To do this, they would first need to establish reliably what the distance of haul between receipt and delivery points on the El Paso system actually was. Had they been able to do that, they would then need to show the extent to which any fuel usage associated with these measured distances of haul was offset by other factors that affect fuel usage on the El Paso system. In the final analysis, Texas Gas and its supporters were unable to make their case by a preponderance of the evidence.

52. In sum, the Commission finds that Texas Gas and its supporters did not successfully demonstrate that distance of haul was the predominant factor affecting fuel usage and thus costs on the El Paso system. Accordingly, the Commission affirms and

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[72] *Id.* P 357.

[73] *Id.* n.256.

[74] *Id.* P 353.

[75] *See* El Paso Brief Opposing Exceptions at 45 and California Parties Brief Opposing Exceptions at 40.

[76] *See* Indicated Shippers Brief Opposing Exceptions at 8-11.

adopts the ALJ's conclusion that "their methodologies had too many flaws to be considered sufficient evidence to satisfy their burden of proof."[77] That being the case, there is no need to address issues related to any of the alternatives proposed to replace El Paso's postage stamp fuel rate.[78]

The Commission orders:

The Initial Decision is affirmed and adopted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[77] *Id.* P 356.

[78] *Id.* P 358.