144 FERC ¶ 61,039
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 Eastern Transmission, LP — Docket No. RP13-237-000

ORDER FOLLOWING TECHNICAL CONFERENCE

(Issued July 18, 2013)

1. On October 31, 2012, Texas Eastern Transmission, LP (Texas Eastern) filed revised tariff records to reflect revisions to the Applicable Shrinkage Adjustment (ASA) Percentages and Surcharges of its tariff. In addition, Texas Eastern submitted its Annual Interruptible Revenue Reconciliation Report. On November 29, 2012, the Commission issued an order accepting and suspending the tariff records to be effective December 1, 2012, subject to refund, and establishing a technical conference to address the issues raised by Texas Eastern's filing.[1] Specifically, the Commission stated that the technical conference should address Texas Eastern's proposal not to treat any transportation transactions in its Access Area as backhauls exempt from fuel charges. In this order the Commission addresses the comments filed subsequent to the technical conference and lifts the suspension of the tariff records.

I. Background

2. Texas Eastern's pipeline system extends from Texas and offshore Louisiana through the Appalachian areas to the eastern seaboard into the Philadelphia and New York areas. Texas Eastern's tariff defines its Access Area as the portion of its pipeline system located upstream of the suction side of Little Rock, Arkansas and the upstream of the suction side of Kosciusko, Mississippi.[2] Historically, gas has flowed in a south to north direction on all portions of Texas Eastern's system.

[1] *Texas Eastern Transmission, LP*, 141 FERC ¶ 61,172 (2012) (November 2012 Order).

[2] Texas Eastern's FERC NGA Gas Tariff, Texas Eastern Database 1, Part 6, General Terms and Conditions (GT&C), 1., Definitions, 5.0.0. According to the

(continued…)

3. On October 31, 2012, Texas Eastern submitted its annual ASA Filing (October 2012 filing), including proposed surcharge rate adjustments, and proposed adjustments to ASA Fuel Use and Retention Percentages based on fuel use and retention for the upcoming filing period, September 1, 2012 through August 31, 2013. Texas Eastern's tariff provides that "transportation transactions consisting solely of backhaul transportation" shall not be subject to fuel charges.[3] Consistent with the historic south-to-north flow direction on Texas Eastern's system, Texas Eastern had treated all north-to-south transactions as backhauls exempt from fuel charges. However, in its October 2012 Filing, Texas Eastern stated it was proposing to assess fuel on all contract paths in the Access Area of its system. According to the filing, due to changes in system flow direction and fuel use, no contract paths in that Access Area continue to satisfy Texas Eastern's tariff fuel exemption requirements.

4. In support of this proposal, Texas Eastern asserted that a recent analysis of flows in all zones on its system demonstrated that its past treatment of all north-to-south transactions in its Access Area as backhauls no longer reflected actual system flows and fuel use in the Access Area of its system. According to Texas Eastern, significant new sources of supply have emerged, particularly in the Marcellus Shale area, which is located in the Market Area of Texas Eastern's system. Texas Eastern claimed these new supply sources have precipitated a material shift in customer sourcing patterns across its system. According to Texas Eastern, these shifts in nomination patterns for gas sourced in, or moving into, the Access Area have rendered customer-nominated flows that are counter to historical flows in the Access Area as likely to occur as customer-nominated flows in the same direction as historical flows. Texas Eastern thus argued that because it is no longer feasible under these circumstances to make case-by-case determinations of actual flows in order to establish which individual transactions should be assessed fuel, it would assess a fuel charge on all transactions in the Access Area.

5. Several parties protested or opposed Texas Eastern's proposal, claiming that Texas Eastern had failed to demonstrate that charging fuel for transportation service over contract paths that have historically been characterized as backhaul transportation is just and reasonable. Parties argued that Texas Eastern's proposal lacked factual support and that Texas Eastern's proposed fuel charges would require backhaul shippers to subsidize forward haul shippers.

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pipeline's map, the Access Area includes Rate Zones ETX, ELA, STX and WLA. 1., System Map, 0.0.0.

[3] Texas Eastern notes that the tariff definition of "Applicable Shrinkage" requires that "Applicable Shrinkage for transportation transactions consisting solely of backhaul transportation shall be zero." Initial Comments of Texas Eastern on Technical Conference (Texas Eastern Initial Comments) at 3.

6. As noted, on November 29, 2012, the Commission accepted and suspended the tariff sheets to be effective December 1, 2012, subject to refund, and to the outcome of a technical conference to address the issues raised by Texas Eastern's filing. At the January 15, 2013 technical conference, Texas Eastern presented data intended to justify its proposal to assess a fuel charge for all transportation in its Access Area, including information regarding monthly receipts and deliveries in each of its Rate Zones between September 2010 and November 2012 and the direction of actual daily gas flows through selected compressor stations located within its Access Area. At the conclusion of the technical conference, Commission Staff requested that Texas Eastern file actual daily flow data for the remaining compressor stations located within its Access Area that it had not included at the technical conference, and established dates for parties to file comments.

II. <u>Summary of Comments</u>

7. Texas Eastern filed its technical conference presentation and the additional information requested by Staff on January 25, 2013 (January 25 Filing). Piedmont Natural Gas Company, Inc, New England Local Distribution Companies, Topaz Power Holdings, LLC, Southwest Energy, L.P., Indicated Shippers (consisting of Anadarko Petroleum Corporation, Anadarko Energy Services Company, ConocoPhillips Company, Noble Energy, Inc., SWEPI LP and Shell Energy North America (U.S.), L.P.) filed initial comments. Southwest Energy, L.P. and Topaz Power Holdings (Joint Commenters) filed joint reply comments, and Texas Eastern also filed reply comments. The New England Local Distribution Companies (New England LDC's) filed comments in support of Texas Eastern's proposal. We summarize the issues raised in the comments below.

A. <u>Changes in Access Area Flows</u>

8. In its post technical conference comments, Texas Eastern asserted that the data provided in the January 25 filing demonstrates that flows in the Access Area are bi-directional, and that those Access Area compressors with bi-directional capability use fuel both when flows are in the traditional south to north flow direction and in a reverse north to south flow direction. Texas Eastern contends that because of these changes in Access Area flows, Texas Eastern is now operating compression, and thus incurring fuel costs, both when Access Area flows are in a traditional flow and reverse flow direction. Accordingly, Texas Eastern claims transactions that were historically solely backhauls no longer satisfy the necessary tariff conditions for a fuel exemption.

9. The New England LDCs filed in support of Texas Eastern's proposal, claiming the pipeline's data supports its conclusion that no transactions in its Access Area satisfy the definition of backhaul under the tariff. The New England LDCs agree with Texas Eastern that the proposal to assess the fuel charge on all transactions in the Access

Area is consistent with Texas Eastern's tariff, and is just and reasonable, and not unduly discriminatory.

10. The Joint Commenters assert that Texas Eastern's and the New England LDCs' interpretation of the tariff ignores its actual historical application. The Joint Commenters claim that intermittent bi-directional flows have existed in the Access Area well before the submission of Texas Eastern's proposal[4] and none of the reverse flows were ever deemed by Texas Eastern to be grounds for revoking the fuel exemption for backhauls (north to south transactions in the Access Area). The Joint Commenters also claim that the practical operational difficulties in measuring and tracking flows and fuel consumption on a daily or hourly basis should not affect the application of the tariff fuel exemption.

11. The Joint Commenters claim that in practice, Texas Eastern has historically interpreted its tariff backhaul fuel exemption provision to exempt backhaul paths that experience reverse flows from time to time. The Joint Commenters further claim Texas Eastern has an established practice of treating all north to south transactions in the Access Area as fuel exempt. Joint Commenters argue that consistent with Commission precedent, these longstanding established practices must be given determinative weight now in assessing Texas Eastern's data.[5] The Joint Commenters conclude that the reverse flows identified by Texas Eastern in this proceeding do not represent a proven and definitive change in normal operating conditions that would justify the abandonment of the longstanding practice of treating all north to south transactions in the Access Area as fuel exempt. Joint Commenters claim that it continues to be reasonable to treat as fuel-exempt all north to south paths in the Access Area, even though some of those paths may experience forward flows at times.

12. In response to the Joint Commenters, Texas Eastern asserts that it did not propose to change the backhaul exemption within the definition of Applicable Shrinkage, nor did it propose to revise its fuel recovery mechanism contained in Section 15.6 of its GT&C. Rather, contends Texas Eastern, given the changes in flows through the Access Area,

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[4] Joint Commenters claim that actual flow slides for Union Church, Opelousas, Vidor, and Blessing Stations (Texas Eastern Technical Conference presentation at 12-15) and the Clinton and St. Francisville Stations (January 25 Filing) show sporadic reverse flows occurring in 2010 and 2011. They further assert that Joaquin Station (Texas Eastern Presentation at 16), Huntsville, and Longview Stations (January 25 Filing) show more frequent reverse flows during 2010 and 2011 than occurred in late 2010.

[5] Reply Comments of Joint Commenters at 4 (citing *Transcontinental Gas Pipe Line Corp.*, 105 FERC ¶ 61,040, at P 13 (2003) (*Transco*); *Questar Pipeline Co.*, 109 FERC ¶ 61,226, at P 18 (2004) (*Questar*)).

changes to the rates are required by Texas Eastern's tariff because transactions are no longer solely effectuated by displacement and therefore no longer entitled to an exemption from fuel. Texas Eastern states that its proposal is required by its tariff and is consistent with FERC precedent[6] that presumes that all pipeline transactions consume fuel and requires that a pipeline that grants a fuel exemption demonstrate that those customers do not and will not use fuel.[7] Texas Eastern claims that based on the changes in the Access Area, it can no longer demonstrate that any Access Area transactions are eligible for fuel exemptions under Commission precedent.

13. Texas Eastern argues that the proposed assessment of fuel on its system is not based on a "longstanding practice," but instead is determined by requirements set forth in its tariff. Texas Eastern states that pursuant to its tariff, backhauls were entitled to an ASA of zero because those transactions were completed solely by displacement. Texas Eastern notes that it is not changing a longstanding practice, nor is it changing the language or the application of the ASA provisions. Rather, Texas Eastern claims, its filing proposed to modify relevant rate sheets to reflect the tariff requirement to assess fuel on certain transactions as a result of the change in the direction of flows on its system.

14. Several parties state that Texas Eastern's data fails to demonstrate that all transactions in the Access Area are forward haul transactions. For example, Indicated Shippers state that with respect to Rate Zone WLA, Texas Eastern's data demonstrates that receipts have decreased between September 2010 and November 2012, while deliveries have only minimally increased. Indicated Shippers argue this data does not conclusively establish that all transactions within Rate Zone WLA should be deemed forward haul transportation. Indicated Shippers further state that the data shows that Rate Zone STX deliveries exceed receipts in that zone but claim the data also illustrates that receipts have *increased* by approximately 1,500,000 Dth between September 2010 and November 2012, therefore supporting a conclusion that more forward haul transportation has been occurring within Rate Zone STX as receipts have increased at a quicker rate

[6] *See* Texas Eastern Initial Comments at 4 (citing Texas Eastern's November 21, 2012 Answer at 8-9 and *El Paso Natural Gas Co.*, 129 FERC ¶ 61,280, at PP 26-28 (2009) (*El Paso*); *Columbia Gas Transmission Corp.*, 95 FERC ¶ 61,171, at 61,558 (2001); *NorAm Gas Transmission Co.*, 84 FERC ¶ 61,006, at 61,021-22 (1998)).

[7] Reply Comments of Texas Eastern on Technical Conference (Texas Eastern Reply Comments) at 4 (citing *Ozark Gas Transmission, L.L.C.*, 122 FERC ¶ 61,295, at P 12 (2008); *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 and 61,354 (2002); *Williams Natural Gas Co.*, 75 FERC ¶ 61,023, at 61,075 (1996); *Florida Gas Transmission Co.*, 68 FERC ¶ 61,270 (1994); and *NorAm Gas Transmission Co.*, 70 FERC ¶ 61,269 (1995)).

than deliveries during the same time period. In addition, Indicated Shippers note that Rate Zones ELA and ETX have continued to experience receipts that significantly exceed deliveries and thus do not warrant a change in how Texas Eastern assesses for fuel through those Rate Zones.

15. In response, Texas Eastern contends that Indicated Shippers selected certain isolated data trends and misinterpreted data to reach conclusions out of context.[8] For example, Texas Eastern states that contrary to Indicated Shippers' conclusion regarding the trends for receipts and deliveries in Rate Zone STX, the rate at which receipts and deliveries have increased is not dispositive of the direction of flow. Similarly, Texas Eastern argues compression used on production area laterals to effectuate forward haul flows does not dictate the direction of flows on the mainline. Texas Eastern contends that volumes transported throughout Rate Zones ETX, STX, ELA, and WLA cannot be considered in isolation when determining whether fuel charges should apply.

16. Texas Eastern claims that the data reflecting actual daily flow submitted in its January 25 Filing demonstrates that flows on mainline facilities in all four zones in the Access Area are bi-directional. In addition, Texas Eastern claims that fuel is consumed both when nominations are in a traditional flow and reverse flow direction. According to Texas Eastern, the only exceptions to the bi-directional flows are on segments that are on supply laterals, which either have no markets for deliveries or involve backhaul deliveries that require a mainline component, and thus, are not considered to be solely backhaul transactions.

17. Further, Texas Eastern states that while Southwest and Topaz claim that Rate Zone ELA shows "mainly forward hauls" and that the claim "forward haul flows have become predominate…," may be accurate, commenters do not dispute that the data shows bi-directional flows both prior to and after April 2012.[9]

B. <u>Data Issues</u>

18. Several parties filed comments claiming that Texas Eastern provided insufficient and inconclusive data. Southwest states that only sixteen of thirty-five compressor stations were represented in Texas Eastern's technical conference presentation and supplemental June 25 Filing. Southwest also argues that flow data provided to purportedly show changes in flow direction is too sporadic and inconclusive to support Texas Eastern's position that traditional backhaul transactions no longer qualify for a fuel exemption.

[8] *See* Texas Eastern Reply Comments at 12.

[9] *See* Texas Eastern Reply Comments at 16.

19. Southwest and Topaz challenge Texas Eastern's claim that flows in the Access Area are bi-directional asserting that Texas Eastern's data demonstrate that five compressor stations experience exclusive (Thomaston, Charco, Monroe, and Yazoo City) or near exclusive (Hope) forward haul flows. Further, Southwest and Topaz note that at least nine compressor stations that were missing from the data presented by Texas Eastern also experience exclusive or near exclusive forward haul flows.[10] Topaz notes that nineteen other compressor stations in the Access Area were not addressed at the technical conference or by the June 25 Filing.

20. Southwest also claims that Texas Eastern's data is not transaction-specific as is required by its tariff. Southwest asserts that Texas Eastern's tariff requires it to analyze each transaction in the Access Area to determine whether it is a backhaul or not, and accord it the appropriate fuel charge treatment on that basis.[11] Southwest states that the data provided by Texas Eastern at the technical conference is too generalized and incomplete, and that Texas Eastern has not proven that it cannot perform transaction-specific flow analysis.

21. Piedmont also argues that Texas Eastern's data is insufficient, and asserts that the only way to ascertain the degree to which compression is needed to flow gas from north to south from the Marcellus Shale (backhaul) is to examine coincidentally timed data from all compressors on the system. Noting that Texas Eastern's original filing states that customer nominations that flow in the Market Area have not changed direction to the same extent as those in the Access Area, Piedmont claims that both Access Area and Market Area data is required to discern whether deliveries are made using compression or made solely by displacement.

22. Piedmont also notes that the western leg of the Texas Eastern's system is located in the same area as the Haynesville and Eagle Ford shale plays within the Access Area. Piedmont contends that similar to the Marcellus shale, both of these areas have experienced significant natural gas production growth. However, absent additional information, Piedmont states it is impossible to know whether backhaul flows within the Access Area are attributable to moving supply from Haynesville and Eagle Ford or from

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[10] Southwest Initial Comments at 6. According to Southwest, these compressor stations include: Karon, Grand Chenier, Venice, Larose, White Castle, Atlanta, Castor, Donaldson, and North Little Rock.

[11] In support of its argument, Southwest points to the tariff's repeated use of 'transaction" when referring to Shrinkage, including the definition ("Applicable Shrinkage for each service *transaction* shall be…" and when declaring that the fuel charge "for *transportation transactions* consisting solely of backhaul transportation be zero." (emphasis added). Southwest Initial Comments at 7.

bringing natural gas supply from Marcellus, which theoretically would require bi-directional compressor use. In addition, Piedmont asserts that a portion of the backhaul flow within the Access Area may be attributable to gas transportation supporting large customers such as power generation plants. Piedmont claims that, without more detailed data, it cannot ascertain whether change in flows and compressor usage is due to a large number of customers using backhaul transportation or a few large customers taking advantage of northern supply options.

23. In response to Southwest and Topaz's claims, Texas Eastern states that in the technical conference and the January 25 Filing, it provided data for 16 compressor stations that represent more than 75 percent of the 21 compressor stations in the Access Area and 100 percent of the gas-driven compressor stations operating in the Access Area during the relevant period.[12] The five stations that were omitted include two electric-driven compressor stations and three stations that did not operate in the relevant two-year period. Texas Eastern also replies that the arguments concerning whether the data was taken from a time period long enough to establish a representative pattern are irrelevant because the tariff exemption only applies to transactions solely by backhaul. Texas Eastern states that given that its tariff requires that one-hundred percent of a given transaction be counter to actual system flow, if the transaction direction is in the same direction as system flow, even infrequently, the shipper is not entitled to the exemption. Texas Eastern asserts such interpretation is consistent with Commission precedent that presumes that all transactions consume fuel,[13] and thus requires pipelines to demonstrate that a particular transaction will not use fuel prior to providing an exemption.[14] According to Texas Eastern, there is sufficient evidence to demonstrate that during the applicable time periods bi-directional flows were present. Finally, Texas Eastern asserts that analysis of each transaction in the Access Area is not possible and Commission precedent does not require a transaction-by-transaction analysis as suggested by Southwest.

24. Joint Commenters state in their reply comments that Texas Eastern's fuel consumption data is unreliable in establishing how flows occur in the Access Area and that at many compressor stations, fuel consumption does not occur during reverse flows or occurs only intermittently during such flows. Joint Commenters suggest that for many stations, consumption during backhaul flows is so low that the compressor could just be

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[12] *See* Texas Eastern Reply Comments at 10.

[13] *See* Texas Eastern Answer at 9 (citing *El Paso*, 129 FERC ¶ 61,280 at PP 26-28).

[14] Texas Eastern Reply Comments at 6 (*citing El Paso*, 129 FERC ¶ 61,280 at P 25; *Colorado Interstate Gas Co.*, 112 FERC ¶ 61,199 at PP 15-18 (2005); *Ozark Gas Transmission L.L.C.*, 124 FERC ¶ 61,290 at P 15 (2008)).

consuming fuel in "standby mode." Joint Commenters affirm that Texas Eastern has not proven any relationship between reverse flows and compressor operation.

25. Texas Eastern states it presented actual daily flows for twelve compressor stations that have been operating bi-directionally in the Access Area since September 2010. Texas Eastern claims that the definition of Applicable Shrinkage does not rely on whether transactions use fuel but whether they are accomplished solely by displacement. Texas Eastern asserts it is no longer able to determine whether any transportation transaction in the Access Area is accomplished solely by displacement, and concludes that because compression is operating and using fuel for transactions in both directions, it is appropriate to assess fuel on all Access Area shippers.

C. Cross-Subsidization

26. Southwest asserts that Texas Eastern's proposal is discriminatory and contravenes the Natural Gas Act (NGA) and Commission's regulations[15] because it harms one class of shippers, Access Area backhaul shippers, while another class of shippers, Market Area forward haul shippers, will directly benefit. Southwest asserts that fuel retention percentages for long haul transportation will decrease by approximately 35 percent while Access Area backhaul shippers will see their fuel costs increase.[16] Southwest states that this cross-subsidization is contrary to the Commission's ratemaking principles and contravenes the principle of cost-causation.[17]

27. Piedmont states that it recognizes Texas Eastern does not profit from additional fuel revenue collection. Piedmont avers that reasonably defining the percentage of fuel used for backhauls and forward hauls will avoid the charging of shippers utilizing mere displacement and minimize the inadvertent subsidization between shippers. Piedmont notes that without demonstrating that backhaul transportation has involved any compressor use, allocating fuel to all contracts is not a reasonable solution. Piedmont suggests that compression utilization for backhauls could be attributable to infrequent local usage phenomena and that it is doubtful that forward haul and backhaul shippers are equally causing the need for compression.

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[15] 15 U.S.C. 717c(b); 18 C.F.R. 284.7(d).

[16] According to Southwest, it derived these estimates using data depicted in the compressor fuel use charts provided by Texas Eastern.

[17] Southwest Initial Comments at 9 (citing *System Energy Resources, Inc.*, 41 FERC ¶ 61,238, at 61,616 (1987)).

28. In response, Texas Eastern acknowledges that former backhaul shippers will be assessed fuel under its proposal, and as a result, forward haul shipper fuel rates will go down. Texas Eastern acknowledges that Southwest's fuel assessment will increase at the same time as aggregate Access Area fuel use is decreasing. Texas Eastern states that the decrease in Access Area fuel occurred for the same reasons as the change in flows, and that these changes result in nominations from south to north being delivered, at times, by displacement. Texas Eastern asserts that these operational and business reasons for the changing flows do not violate the principle of cost-causation.[18]

29. Joint Commenters and Texas Eastern challenge Piedmont's suggestion that fuel be allocated on an end user class basis to avoid the possible situation where backhaul shippers effectively subsidize forward-haul shippers, as discussed above.[19] They contend that fuel charges must be administered on a non-discriminatory basis, regardless of the end user who will consume the gas, and that there is no precedent for Piedmont's approach. Additionally, Texas Eastern maintains that the degree to which compression is utilized by backhaul deliveries is irrelevant because its tariff bases fuel exemptions on the contract direction of flow as compared to the actual direction of flow. Texas Eastern further claims that because it is not feasible to make case-by-case determinations of individual transactions, it allocates fuel equally to all shippers within a zone, excluding those shippers that are entitled to an ASA of zero. Therefore, Texas Eastern contends that additional information sought by Piedmont regarding the cause of change in the Access Area flows is irrelevant.[20]

D. Effect on Contracts

30. Southwest states that it holds certain long-term maximum rate contracts for backhaul service in Texas Eastern's Access Area. According to Southwest, it entered into those agreements with the expectation that it would not be assessed fuel during the term of the contract based on Texas Eastern's longstanding practice of treating north to south transactions in the Access Area as fuel-exempt.[21] Southwest asserts that Texas Eastern's proposal would result in an increase of $1.5 to $1.7 million per year (a 32-33 percent hike) for the same service it has been receiving. Southwest claims that this increase may render shippers' and end users' contracts uneconomic, and in turn, negatively affecting reliability and competition in the gas and power markets. Further, Southwest and Topaz claim that Texas Eastern restricted shippers under backhaul

[18] *See* Texas Eastern Reply Comments at 19.

[19] *See* Piedmont Post Technical Conference Comments at 2-3.

[20] *See* Texas Eastern Reply Comments at 7.

[21] Southwest Initial Comments at 3.

contracts to only use paths that fell within the receipt and delivery points specified in the agreements, ensuring that the contract would be used only in the fuel-exempt direction.

31. Topaz states that it also holds long-term contracts with Texas Eastern that were entered into on the reasonable reliance and longstanding practice that its backhaul transportation would not be assessed for fuel. Topaz asserts that due to the extraordinarily competitive market and razor thin profit margins for independent power producers such as Topaz, any increase in variable costs such as pipeline fuel will require the generator to increase its bid price and substantially reduce the likelihood of being selected. Topaz states that it and similarly situated merchant generators will be forced to absorb millions of dollars of the variable cost of pipeline fuel with very little opportunity to recover any of that cost.

32. Both Southwest and Topaz contend that Texas Eastern bears the burden of proof under section 4 of the NGA to demonstrate that its proposal to change the *status quo* for fuel in the Access Area is just and reasonable, and that Texas Eastern has failed to meet that burden.

III. Relief Sought

33. Those parties opposing Texas Eastern's proposal request that the Commission direct Texas Eastern to provide additional supporting information. Indicated Shippers, Topaz, and Southwest also request that the Commission reject Texas Eastern's proposal.

34. Indicated Shippers and Topaz ask that should the Commission find in favor of Texas Eastern's proposal, the Commission: (1) direct Texas Eastern to undertake an analysis of Access Area transactions and exempt from fuel charges those receipt and delivery point combinations that remain bona fide backhauls; and (2) exempt all transactions under those existing Access Area backhaul contracts that were entered into prior to October 31, 2012 (date of filing), with the exemption expiring upon the conclusion of the terms of the agreements.[22] Topaz states that "grandfathering" existing contracts will mitigate the adverse impacts to merchant generators and to the reliability of the electric power market. Additionally, Topaz states that since Texas Eastern's ASA Usage Surcharge includes the calculation of projected backhaul quantities as part of its "projected annual quantities " for Access Area service, Texas Eastern's ASA Usage Surcharge, too, should be rejected.

35. Texas Eastern states the relief sought by Joint Commenters would violate the principle of cost-causation and result in cross-subsidization. Texas Eastern maintains that if the Commission granted the request to grandfather existing contracts, the relief to

[22] Southwest Initial Comments at 11.

backhaul shippers will be borne by other shippers who are not responsible for cost incurrence.

IV. **Commission Determination**

36. For the reasons discussed below, the Commission finds Texas Eastern's proposal to be consistent with its existing tariff and to be just and reasonable and thus we approve the tariff records effective December 1, 2012. Based on the data and comments submitted by Texas Eastern, we find that Texas Eastern has demonstrated that it is experiencing bi-directional flows in its Access Area to the extent that it is no longer feasible for it to ascertain whether certain individual transactions consist solely of backhaul transportation, which would thus qualify for an ASA of zero under its tariff. Given that Texas Eastern can no longer demonstrate that any transactions in the Access Area are accomplished solely by backhaul transportation, Commission policy and Texas Eastern's tariff require it to assess a fuel charge on all transactions in the Access Area.

37. The Commission does not permit pipelines to discount the charges through which they recover the cost of fuel used in connection with transportation services because fuel is a variable cost, and the Commission's regulations do not permit discounts below the variable cost.[23] Moreover, the Commission's presumption is that all transactions require fuel.[24] The Commission has permitted pipelines to exempt certain transactions along particular transportation paths from fuel charges only if no fuel is used in those transactions. However, the Commission has only permitted the pipeline to provide such exemptions if the pipeline can demonstrate that transactions on those transportation paths never require the use of fuel.[25] Accordingly, all transportation service transactions should be assessed a fuel charge unless the pipeline can demonstrate that transactions on a specified transportation path do not consume fuel.[26] As we have stated previously,

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[23] In *Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol,* Order No. 436 FERC Stats. & Regs. ¶ 30,665 (1985), the Commission announced that it was impermissible for a pipeline to provide service at a rate that would not allow it to recover the variable costs of the service. This policy is now codified in section 284.10(c)(4) of the Commission's regulations, stating that a pipeline's minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies." *Mississippi River Transmission Corp.*, 98 FERC at 61,352.

[24] *El Paso*, 129 FERC ¶ 61,280 at P 26.

[25] *See, e.g.*, *Ozark Gas Transmission, LLC*, 122 FERC ¶ 61, 295, at P 11 (2008) (citing *Colorado Interstate Gas Co.*, 112 FERC ¶ 61, 199, at P 19 (2005).

[26] *El Paso*, 129 FERC ¶ 61,280 at P 26.

these requirements are necessary to "assure that there will be non-discriminatory selection of exempted transactions and to avoid unwarranted costs shifts to other customers."[27]

38. Texas Eastern represents that historically it was able to establish that certain customer nominations resulted in transactions consisting solely of backhaul transportation, and therefore the pipeline determined that pursuant to the tariff definition of "Applicable Shrinkage," those transactions qualified for an ASA of zero (i.e. no fuel charge).[28] In this proceeding, Texas Eastern states that as a result of changes in flow in the Access Area of its system, it can no longer demonstrate that any transportation transactions in the Access Area consist "solely of backhaul transportation," as required by its tariff for an exemption from fuel charges. Nor can it show that such transactions do not use fuel. As discussed below, the factual data submitted by Texas Eastern supports its position, and thus Commission policy and Texas Eastern's tariff requires Texas Eastern to assess a fuel charge on all transportation transactions in the Access Area.

39. In support of its claim that flows in its Access Area are bi-directional, Texas Eastern submitted data showing that during 2011 and 2012, deliveries into the Access Area increased in relation to receipts, and that at times deliveries even exceeded receipts.[29] The increase in deliveries in the Access Area indicates that more gas is flowing in a non-traditional north to south direction. While, as Indicated Shippers note, that data does not show that deliveries exceeded receipts for the entire period in each separate rate zone in the Access Area, Texas Eastern explains that its Access Area facilities work as a system such that gas had to be diverted from certain zones to others to ensure that Texas Eastern could meet the increased delivery obligations.[30] Moreover, as Texas Eastern points out, the receipt and delivery data charts must be considered in conjunction with the daily flow data submitted, which demonstrates that flows in the Access Area are bi-directional. Texas Eastern provided daily gas flow data for twelve compressor stations in the Access Areas showing that there were both traditional and

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[27] *Northern Natural Gas Co.*, 82 FERC ¶ 61, 270, at 62,062 (1998).

[28] As noted, the definition of Applicable Shrinkage in Part 6, General Terms and Conditions, Definitions, 4.0.0, of Texas Eastern's tariff states, "Applicable shrinkage for transportation transactions consisting solely of backhaul transportation shall be zero."

[29] *See, e.g.*, "Access Area Monthly Receipt and Deliveries," Slide No. 7 of Texas Eastern's Technical Conference Presentation.

[30] *See* Texas Eastern Reply Comments at 12-15.

reverse flow volumes at each of the compressor stations during the relevant time period.[31] This data demonstrates that flows in all four zones of the Access Area are bi-directional.

40. We find unpersuasive the arguments that Texas Eastern's data is lacking or sporadic. Texas Eastern provided data for a 26-month period for 16 out of the 21 compressor stations operating in the Access Area during the relevant time period, which represent 100 percent of the gas driven compressors operating in that area.[32] The fact that reverse flows may have been sporadic during certain months does not mean that Texas Eastern is not entitled to charge fuel for such transactions. Texas Eastern's tariff only exempts from fuel charges "transportation transactions consisting *solely* of backhaul transportation." Thus, Texas Eastern is not required to show that flow is always counter to traditional flows in order to show that north-to-south transactions in the Access Area are no longer entitled to the tariff exemption from fuel charges – rather it need only demonstrate that such transactions no longer consist entirely of a backhaul. Thus arguments as for the reasons behind the change in flows or that some of the data shows "mainly forward hauls" are irrelevant to the issue of whether north-to-south transactions in the Access Area no longer qualify for the tariff exemption from fuel charges.

41. We also reject the claim that Texas Eastern is required to continue to exempt north-to-south transactions in the Access Area based on past established practice or tariff interpretation. As noted, Texas Eastern states that while previously certain transportation transactions in the Access Area were solely backhauls, it can no longer determine that any transactions in the Access Area are conducted by displacement, and thus it is enforcing its tariff by assessing a fuel charge on all transactions in that part of its system. Aside from bald assertions that the contract paths that Texas Eastern previously determined were exempt from fuel charges "experienced reverse flows" from time to time in the past, the protesters have not presented any data to indicate that those paths remain purely backhauls. Texas Eastern is required to enforce its tariff, and no party has

[31] See Texas Eastern's Technical Conference Presentation, Slide Nos. 12, 13, 14, 15, and 16. While the data for the Charco, Thomaston, Monroe and Yazoo City stations show only traditional forward haul flow, according to Texas Eastern those compressors serve supply laterals with no delivery markets, and any backhauls on those laterals require mainline compression.

[32] Texas Eastern Reply Comments at 10 & n.10. As Texas Eastern points out, the five stations omitted were 2 electric driven stations and 3 that did not operate during the time period for which the data was presented.

argued that the relevant tariff provision is ambiguous.[33] Texas Eastern's proposal to charge fuel on all transactions in the access area is consistent with the tariff provision allowing a fuel exemption only for transactions consisting solely of backhaul transportation.[34]

42. Moreover, we find it is just and reasonable to assess a fuel charge on contract paths that may experience reverse flows from time to time and thus consume fuel only on certain days. Historically the Commission has allowed a pipeline to provide a fuel exemption for certain backhaul transactions that are completed solely by displacement because such transactions do not require the pipeline to expend any additional fuel to make the backhaul delivery. Nevertheless, the fuel used for transportation and other services on a pipeline benefits all the pipeline's shippers, even those who rely on backhaul deliveries, because a pipeline cannot physically deliver gas by displacement absent a corresponding forward haul. Accordingly, it is just and reasonable for Texas Eastern to assess a fuel charge on transportation flows that use fuel on certain days but may not use fuel on others. In such a situation, it is impractical for Texas Eastern to identify which specific transactions consume fuel and which do not.

43. The Commission also rejects Southwest's arguments regarding its "reasonable expectation" based on past practices that it would not be charged fuel on its contracts. While Southwest does not specify the rate schedule under which it receives service for those agreements, all of Texas Eastern's rate schedules make clear that the rates "are subject to adjustment pursuant to Section 15 of the Pipeline's General Terms and Conditions," which section includes the ACA Surcharge.[35] Moreover, Texas Eastern's forms of service agreements provide that the pipeline may seek authorization to change the rates and terms and conditions of its tariff at any time.[36] Thus, it is not reasonable for

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[33] The Joint Commenters reliance on *Transco* and *Questar* is thus misplaced. In those cases the Commission found that its respective rulings were in concert with the pipeline's past practices and tariff interpretation. Those rulings did not require that the pipelines adhere to past practices that would be contrary to those tariff interpretations.

[34] Texas Eastern notes that it will continue to apply its tariff as written and to exempt solely backhaul transactions in the market area. October 2012 Filing at 2 & n.5.

[35] *See, e*.g., Texas Eastern's Rate Schedule FT-1, section 3.1.

[36] *See, e.g*. Texas Eastern's Form of Agreement for Rate Schedule FT-1, section 4 ("Pipeline may seek authorization from the Commission and/or other appropriate body at any time and from time to time to change any rates, charges or other provisions in the applicable Rate Schedule and General Terms and Conditions of Pipeline's Tariff, and Pipeline shall have the right to place such changes in effect in accordance with the Natural Gas Act.").

Southwest to expect that its rate would not change or that or that it was guaranteed a zero fuel rate.

44. Similarly, arguments regarding subsidization fail. By charging fuel on all transactions in the Access Area, Texas Eastern will not provide a benefit to forward haul shippers to the detriment of the historical "backhaul" shippers. As Texas Eastern has noted, it is not changing its fuel retention mechanism, it is merely enforcing its tariff to assess fuel on transactions that it can no longer demonstrate are solely backhaul transactions. The shifting flows on Texas Eastern's system require Texas Eastern to charge fuel on some routes it may not have historically and to grant exemptions on others but its proposal to assess fuel on all transactions it cannot now demonstrate are purely backhauls would not subsidize one set of shippers to the detriment of another. The claims that Texas Eastern's data is not transaction specific and that it must perform transaction specific analysis to assess a fuel charge are also unavailing. As we stated in *El Paso*, "all transportation service transactions should be assessed a fuel charge unless the pipeline can demonstrate that a particular transaction *does not* consume fuel. Because the presumption is that all transactions consume fuel, pipelines *are not required* to demonstrate that specific transactions consume fuel."[37]

The Commission orders:

(A) The protests to Texas Eastern's proposed ASA are rejected.

(B) The suspension placed on the Tariff Records listed in the Appendix of the November 2012 Order are lifted.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[37] *El Paso*, 129 FERC ¶ 61,280 at P 26 (emphasis added).