

144 FERC ¶ 61,220
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.

Missouri Interstate Gas, LLC
Missouri Gas Company, LLC
Missouri Pipeline Company, LLC

Docket No. CP06-407-008

OPINION NO. 525-A
ORDER DENYING REHEARING

(Issued September 19, 2013)

1. On March 21, 2013, the Commission issued Opinion No. 525¹ that affirmed in part and reversed in part the Initial Decision issued in this proceeding on November 28, 2011.² In Opinion No. 525, the Commission found that MoGas Pipeline LLC (MoGas) can continue to include the full purchase price of certain pipeline assets in rate base because the record demonstrates that the acquisition of these facilities at more than their net book value results in substantial benefits to ratepayers. The State of Missouri (Missouri)³ filed a timely request for rehearing of Opinion No. 525.⁴ As discussed below, the Commission denies rehearing.

¹ *Missouri Interstate Gas, LLC*, 142 FERC ¶ 61,195 (2013) (Opinion No. 525). This case is before the Commission on remand by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *Missouri Public Service Commission v. FERC*, 601 F.3d 581 (D.C. Cir. 2010) (*Mo. PSC*).

² *Missouri Interstate Gas, LLC*, 137 FERC ¶ 63,014 (2011) (Initial Decision).

³ In Opinion No. 525, the Commission accepted Missouri's request to substitute as a party in the place of the Missouri Public Service Commission (MoPSC) in this proceeding. 142 FERC ¶ 61,195 at PP 38-42. On August 30, 2013, the MoPSC filed a notice substituting the MoPSC for the State of Missouri as a party of interest in this

(continued...)

I. Background

2. The lengthy procedural and factual history of this case is explained in detail in Order No. 525.⁵ We provide a more concise summary here, as relevant to the issues raised on rehearing.

3. In 1987, Amoco Pipeline Company (Amoco) sold approximately 70 miles of idle oil pipeline, including 5.6 miles of pipeline connecting Missouri and Illinois under the Mississippi River, referred to as the TransMississippi Pipeline (TMP), to a wholly-owned subsidiary of Edisto Resources Corporation (Edisto).⁶ Edisto formed Missouri Pipeline Company (MPC) as a wholly-owned subsidiary to own and operate the acquired pipeline.

4. In 1989, MPC filed for a certificate of public convenience and necessity to operate approximately 85 miles of natural gas pipeline in Missouri and offer intrastate natural gas service.⁷ Approximately 70 miles of the proposed 85-mile pipeline system were part of the former Amoco oil pipeline system; the remaining portion of the pipeline was new construction. The certificate authorization from MoPSC was conditioned on the requirement that MPC physically sever the new intrastate pipeline from the 5.6 miles of the TMP facilities that crossed under the Mississippi River into Illinois.⁸ In 1991, MoPSC authorized MPC to extend its system, and authorized a new pipeline affiliate,

proceeding. The MoPSC explains that under new state legislation that became effective on August 28, 2013, it now has the authority to intervene in this proceeding. Based on the MoPSC statement that it adopts the record as it now stands, we accept the MoPSC's substitution as a party of record in the place of the State of Missouri.

⁴ On April 22, 2013, the Cities of St. Robert and Waynesville, Missouri filed a letter in support of Missouri's request for rehearing.

⁵ Opinion No. 525, 142 FERC ¶ 61,195 (2013) at PP 3-23.

⁶ Exh. Nos. MGP-1 at 6, PSC-1 at 16, and PSC-3 at 10. The purchaser was Omega Pipeline Company which was a wholly-owned subsidiary of Vesta Natural Gas which in turn was a wholly-owned subsidiary of Edisto. Exh. No. PSC-1 at 16. The purchaser will be referred to hereafter as "Edisto."

⁷ Exh. No. MGP-16.

⁸ *Id.*

Missouri Gas Company (MGC), to construct 66 miles of new pipeline that extended southward from the MPC terminus.⁹

5. In 1994, Edisto negotiated a sale of MPC, MGC, and the TMP facilities to UtiliCorp United Inc. (UtiliCorp).¹⁰ The facilities were sold in two separate transactions that were dated February 14, 1994, and both deals closed simultaneously in January 1995.¹¹ In one agreement, called the Missouri System Agreement, Edisto sold the Missouri-regulated assets, MPC and MGC, to UtiliCorp for \$55.4 million, as adjusted at closing.¹² The second transaction, the Omega System Agreement, concerned assets not regulated by Missouri, specifically the TMP facilities and Omega Pipeline Company (Omega Pipeline), a local distribution company servicing the U.S. Army base at Ft. Leonard Wood. UtiliCorp purchased Omega Pipeline and the TMP facilities in this transaction for approximately \$22 million.¹³

6. In proceedings before the MoPSC in 2001,¹⁴ an UtiliCorp representative stated that UtiliCorp paid Edisto approximately \$12.6 million for the TMP facilities, including a \$10.6 million acquisition adjustment/premium.¹⁵ UtiliCorp representatives also stated that on December 31, 1995, UtiliCorp adjusted the books of MPC and MGC to transfer and allocate this approximately \$10.6 million cost related to the TMP facilities to MPC and MGC.¹⁶ Both MPC and MGC recorded their share of the \$10.6 million cost in FERC

⁹ Exh. No. MGP-1 at 6.

¹⁰ *Id.* at 7.

¹¹ After the sale, MPC, MGC, and the TMP facilities were owned by a subsidiary of UtiliCorp, UtiliCorp Pipeline Systems, Inc. (UtiliCorp Pipeline).

¹² Exh. Nos. MGP-1 at 7; MGP-3 at 17.

¹³ Exh. Nos. MGP-1 at 7; MGP-3 at 16.

¹⁴ These proceedings involved UtiliCorp's proposed sale of its Missouri-regulated assets to Gateway Pipeline Company (Gateway).

¹⁵ Exh. No. MGP-4 (data response from Denny Williams to MoPSC). Richard Krueel, Vice President of UtiliCorp, also testified in the MoPSC proceeding that the acquisition adjustment was attributable to the TMP. Exh. No. PSC-4; Tr. at 235.

¹⁶ Exh. Nos. MGP-4; MGP-18 at 8-9.

Account 114, Gas Plant Acquisition Adjustments, in the amount of \$7,019,131 and \$3,608,679, respectively.¹⁷ MoGas asserts that the reason for the transfer may have been for MPC and MGC to amortize these costs for tax purposes because they were operating companies and the TMP was not.¹⁸

7. In 1998, UtiliCorp made other accounting entries related to the TMP facilities. MPC's 1998 Annual Report filed with the MoPSC indicates that it transferred \$1,133,857 related to property located in St. Charles County, Missouri to Account No. 105, Gas Plant Held For Future Use.¹⁹ MoGas points out that an explanatory note in that report states that these assets were "transferred from TransMississippi Pipeline in 1998." MoGas President and witness, David J. Ries, testified that these amounts are related to approximately 4 miles of the TMP facilities originating where MPC was severed in West Alton, Missouri and running to the west bank of the Mississippi River in St. Charles County, Missouri.²⁰ Continuing Property Records maintained by UtiliCorp for MPC, MGC, and TMP, last dated August 1, 2000, also assigned a \$1,133,857 cost to Account 105 on the books of MPC and assigned costs of \$1,432,913.80 to TMP, totaling \$2,566,770.89. MoGas claims that these entries are believed to have been related to capital costs incurred by Edisto in 1994 as a condition of the Edisto/UtiliCorp transaction, to pressure test, inspect, purge, and seal the TMP facilities in order to verify that they were capable of being converted to natural gas use.²¹

8. In 2000, UtiliCorp, the owner of all the shares of UtiliCorp Pipeline, entered into negotiations with Gateway Pipeline Company (Gateway), for the sale of MPC, MGC, and the TMP facilities. The parties entered into a Stock Purchase Agreement on February 1, 2001, to sell all of the shares of UtiliCorp Pipeline to Gateway at a share price equal to the "net book value of the property, plant and equipment of the company and its subsidiaries (other than the Omega Pipeline Company) as of the Closing Date as

¹⁷ The MoPSC required MPC and MGC to follow the FERC Uniform System of Accounts.

¹⁸ Exh. No. MGP-1 at 8.

¹⁹ Exh. No. PSC-70 at 42.

²⁰ Tr. at 174.

²¹ *Id.* at 173.

determined in accordance with GAAP [Generally Accepted Accounting Principles] . . .”²² As MoGas’s president, Mr. Ries participated in the due diligence and negotiated the acquisition from UtiliCorp. Mr. Ries testified in this proceeding that prior to the consummation of the Stock Purchase Agreement, UtiliCorp reversed its December 1995 accounting entries and returned the unamortized amounts recorded in Account No. 114 on the books of MPC and MGC back to the books of its subsidiary, UtiliCorp Pipeline, the owner of the TMP facilities. UtiliCorp made this transfer at the request of Mr. Ries and this transfer was approved by UtiliCorp’s corporate accounting department.²³

9. While the transaction between UtiliCorp and Gateway was a stock sale of all of UtiliCorp Pipeline’s stock, the parties made an election pursuant to the Internal Revenue Code section 338(h)(10) (26 U.S.C. § 338(h)(10) (2006)), under which the transaction is deemed to be an asset sale. Based on December 31, 2000 valuations, the purchase price in the Stock Purchase Agreement was estimated to be \$63.4 million, and allocated as follows: (i) \$32.7 million was attributed to the assets of MPC; (ii) \$20.4 million was attributed to the assets of MGC; and (iii) \$10.3 million was attributed to “the Company” (referencing UtiliCorp Pipeline).²⁴ At closing, the final purchase price was \$62.4 million and the amount of the sale price attributable to the Company was \$10,088,925.²⁵

10. Schedule 5.2 of the Stock Purchase Agreement sets out the estimated “Net Value” of the assets on the books of MPC, MGC, and the Company by subtracting the “Allocated Reserve” for each asset from its “Accumulated Costs.”²⁶ The \$10.6 million acquisition adjustment that was transferred back to the TMP facilities is included in the “Accumulated Cost” column on the books of the Company. In addition, there were other expenditures totaling \$2,566,770.89 that MoGas claimed were related to capital costs expended to pressure test, inspect, purge, and seal the TMP facilities in 1994, prior to UtiliCorp’s acquisition, that were included as follows: the \$1,133,857 amount that was placed in Account 105 on the books of MPC in 1998, remains on the books of MPC in the “Allocated Cost” column, and the \$1,432,913.80 figure that was on the books of TMP

²² Exh. No. MGP-9 at 1 (Stock Purchase Agreement, paragraph 1.2).

²³ Exh. Nos. MGP-1 at 11 and MGP-21 at 21-22; Tr. at 178.

²⁴ Exh. No. MGP-9 at 5-6; 269-272.

²⁵ Exh. No. MGP-1 at 10.

²⁶ Exh. No. MGP-9 at 269-272.

is included on the books of the Company in the “Allocated Cost” column, in addition to the \$10.6 million acquisition adjustment.

11. After the Stock Purchase Agreement closed, Gateway changed the name of UtiliCorp Pipeline to United Pipeline Systems, Inc. (United) and formed Missouri Interstate as a wholly owned subsidiary of United to own and operate the TMP facilities. In 2002, Missouri Interstate filed an application for an NGA section 7 certificate with the Commission to interconnect the TMP facilities with MPC in West Alton, Charles County, Missouri, to construct an approximately one-mile extension to interconnect the TMP facilities with Mississippi River Transmission Corporation in Illinois, and to operate the TMP and new extension facilities in interstate commerce. In its order issuing the certificate, the Commission authorized Missouri Interstate to include \$10,088,925 in rate base for the TMP facilities, represented as the depreciated net book value of the TMP facilities at the time of the sale by UtiliCorp.²⁷

12. In 2006, in the subject proceeding, the Commission approved the merger of MPC, MGC, and Missouri Interstate and authorized initial rates for service on the combined facilities of the new Commission-regulated interstate pipeline. The Commission dismissed the protest of MoPSC alleging that MoGas’s initial rates contained an unlawful acquisition premium carried over from Missouri Interstate and deferred consideration of this issue to a future rate proceeding. In *Mo. PSC*, the D.C. Circuit held that the Commission erred by deferring consideration of a disputed acquisition premium to an NGA section 4 proceeding.²⁸ The court found, among other things, that the Commission’s action was inconsistent with its own precedent which establishes that such premiums are disallowed unless the Commission applies the so-called “benefits exception.”²⁹ In response to the court’s ruling, the Commission established hearing procedures to develop a record on the remanded issue.

II. Summary of Opinion No. 525

13. In Opinion No. 525, the Commission affirmed the Presiding Judge’s ruling that original cost is to the person first devoting a facility to *public service*, not *gas utility*

²⁷ *Missouri Interstate Gas, LLC*, 100 FERC ¶ 61,312, at P 26 (2002).

²⁸ *Mo. PSC*, 601 F.3d at 586.

²⁹ *Id.* at 582 (citing *RioGrande Pipeline Co. v. FERC*, 178 F.3d 533, 536-37 (D.C. Cir. 1999); *Kansas Pipeline Co.*, 81 FERC ¶ 61,005 (1997)).

service.³⁰ Because the TMP facilities were first devoted to public service as an oil pipeline by Amoco in the 1940s, the Commission found that its conversion to a gas pipeline alone did not entitle it to a new original cost without meeting the substantial benefits or benefits exception test.

14. The Commission addressed several disputed transactional issues and found that MoGas's predecessor, Gateway, had purchased all 5.6 miles of the TMP facilities from UtiliCorp in the 2001 Stock Purchase Agreement for a final purchase price at closing of \$10,088,925.³¹ The Commission also found that the purchase price contained the unamortized portion of the \$10.6 million acquisition adjustment carried over from UtiliCorp's purchase of these facilities from Edisto in 1994 and overturned the Presiding Judge's finding that the acquisition adjustment was attributable to the Omega facilities, not the TMP.³²

15. Next, the Commission applied the substantial benefits or benefits exception test set forth in *Longhorn Partners Pipeline*,³³ to determine whether MoGas could continue to include the full purchase price, including the portion above depreciated original cost, of the TMP assets in rate base, as directed by the court in *Mo. PSC*. The Commission summarily affirmed the Presiding Judge's finding that the conversion of the TMP facilities from oil to gas met the first prong of the *Longhorn* test, or new use requirement of the substantial benefits test.³⁴ We reversed the Presiding Judge's ruling that MoGas had not met the second prong of the *Longhorn* test.³⁵ The Commission explained that in conversion cases involving non-affiliates, the Commission has consistently allowed the full purchase price in rate base when the record supports a finding that the purchase price is less than the cost to construct comparable facilities.³⁶ Based on the record, the

³⁰ Opinion No. 525, 142 FERC ¶ 61,195 at PP 59-64.

³¹ *Id.* PP 85-87.

³² Opinion No. 525, 142 FERC ¶ 61,195 at PP 75-78.

³³ 73 FERC ¶ 61,355, at 61,112 (1995) (*Longhorn*).

³⁴ Opinion No. 525, 142 FERC ¶ 61,195 at P 95.

³⁵ *Id.* PP 109-113.

³⁶ *Id.* P 113 (citing *Crossroads Pipeline Co.*, 71 FERC ¶61,176, at 61,262-263 (1995) (*Crossroads*); *Cities Service Gas Co.*, 4 FERC ¶ 61,268, at 61,596 (1978) (*Cities*);

(continued...)

Commission found that MoGas had demonstrated specific dollar benefits associated with the acquisition of the TMP facilities because the cost to construct comparable facilities is more than the purchase price of the TMP facilities.

Finally, the Commission rejected the Presiding Judge's finding that the UtiliCorp/Gateway transaction had not been shown to be an arms-length sale between unaffiliated parties.³⁷

III. Discussion

A. What Was the Purchase Price of the TMP Facilities in the UtiliCorp/Gateway Transaction and Did the Purchase Price Contain an Acquisition Adjustment Attributable to the TMP Facilities?

16. As explained above, on February 1, 2001, UtiliCorp entered into a Stock Purchase Agreement to sell all of the shares of UtiliCorp Pipeline to Gateway at a share price equal to the "net book value of the property, plant and equipment of the Company and its Subsidiaries (other than Omega Pipeline Company) as of the Closing Date as determined in accordance with GAAP . . ."³⁸ The Stock Purchase Agreement allocated the purchase price as follows: (i) \$32.7 million was attributed to the assets of MPC; (ii) \$20.4 million was attributed to the assets of MGC; and (iii) \$10.3 million was attributed to "the Company."³⁹ At closing, the amount of the purchase price attributable to the Company was \$10,088,925.⁴⁰

17. In Opinion No. 525, the Commission found that the record supported a finding that all 5.6 miles of the TMP facilities were held by UtiliCorp Pipeline (referenced in the agreement as the Company) at the time the Stock Purchase Agreement became

Natural Gas Pipeline Company of America, 29 FERC ¶ 61,073, at 61,150 (1984) (*Natural*)).

³⁷ Opinion No. 525, 142 FERC ¶ 61,195 at PP 125-126.

³⁸ Exh. No. MGP-9 at 1.

³⁹ *Id.* at 5-6.

⁴⁰ Exh. No. MGP-1 at 10.

effective.⁴¹ Thus, we found that the estimated purchase price for the TMP facilities in the Stock Purchase Agreement was \$10.3 million, and the final purchase price for the TMP facilities at closing was \$10,088,925. The Commission found that the purchase price included an acquisition adjustment carried over from the purchase of the TMP assets by UtiliCorp from Edisto.

18. The Commission rejected the Presiding Judge's ruling that the \$10.6 million acquisition premium was not associated with the TMP facilities, but with Omega Pipeline.⁴² Among other things, the Commission rejected the Presiding Judge's determination that the option clause in paragraph 9.1 of the Stock Purchase Agreement cannot be squared with Mr. Williams' position that the purchase price of the TMP facilities includes a \$10.6 million acquisition adjustment. We found that the Presiding Judge's assumption that the \$2.4 million figure in paragraph 9.1 represented the fair market value of the TMP facilities was not supported.

19. The Commission also found that the Presiding Judge's finding that a purchaser of an asset can allocate the purchase price in any manner it chooses was not entirely correct.⁴³ We explained that an acquisition premium cannot be transferred between affiliates unless the underlying asset itself is transferred. Therefore, we stated that if the Initial Decision was correct that the acquisition adjustment in the Omega System Agreement was attributable to Omega Pipeline, it would not be appropriate to allocate these dollars to the TMP facilities and there would be no need to address the substantial benefits test in this proceeding.

20. The Commission also rejected the Presiding Judge's determination that at the time UtiliCorp entered into the Stock Purchase Agreement with Gateway, 1.2 miles of the TMP was held by the Company while the other 4.4 mile segment was held by MPC.⁴⁴ We found that the record supported a finding that all 5.6 miles of the TMP facilities were held by the Company at the time of the UtiliCorp/Gateway Stock Purchase Agreement.

⁴¹ Opinion No. 525, 142 FERC ¶ 61,195 at PP 85-87.

⁴² *Id.* PP 75-78.

⁴³ *Id.* P 78.

⁴⁴ *Id.* PP 85-87.

1. Missouri's Request for Rehearing

21. Missouri asserts that the Commission erred in finding that that the acquisition premium at issue in this proceeding was associated with the TMP facilities.⁴⁵ According to Missouri, when UtiliCorp purchased the TMP facilities from Edisto in 1995, the acquisition premium in that transaction was paid entirely in connection with UtiliCorp's acquisition of other non FERC-jurisdictional facilities, namely, the Omega Pipeline Company which owned and operated distribution facilities. Missouri claims that by attributing the acquisition premium to TMP, the Commission improperly allowed MoGas to manipulate its accounting to create an acquisition premium for the TMP facilities.

22. Missouri asserts that the Commission erred by rejecting the Presiding Judge's finding that the record demonstrates that when UtiliCorp purchased the TMP facilities from Edisto in 1995, the acquisition price was \$2.4 million.⁴⁶ Missouri claims that the Presiding Judge's finding is supported by Schedule 9.1 of the 1995 Purchase and Sales Agreement which it states provides documentary evidence that "the value of the TMP facilities was \$2.4 million." Missouri contends that the Commission misread the Initial Decision in assuming that the Presiding Judge somehow made an inference of fair market value to the \$2.4 million option price in Schedule 9.1.

23. Missouri further contends that the record includes a 10-Q filing made by Edisto that identifies the \$2.4 million option price and a document that UtiliCorp provided Gateway which it asserts indicates that the TMP properties were purchased for \$2.5 million.⁴⁷

24. Missouri also faults the Commission for concluding that the \$2.4 million represents the salvage value of the TMP facilities in reliance on the testimony of Mr. Ries. Missouri states that Mr. Ries lacked expertise on the salvage value issue and that his testimony is illogical because a pipeline underneath a river would not be removed. While Missouri acknowledges that the record contains evidence from a data response from Denny Williams, a representative of UtiliCorp, that appears to contradict

⁴⁵ Missouri Request for Rehearing at 10-15.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 12 (citing Exh. No. PSC-6 and Exh. No. PSC-26, respectively).

its position regarding the acquisition price of the TMP facilities, Missouri contends that this representative did not participate in the transaction.⁴⁸

25. In this same section of its rehearing request, Missouri also argues that the Presiding Judge correctly concluded that the \$10,088,344 purchase price at closing of the UtiliCorp/Gateway transaction was attributable solely to the 1.2 miles segment of the TMP, and the 4.4 mile segment on the books of MPC was purchased for an additional \$1,084,636.⁴⁹ Missouri asserts that this finding was supported by Mr. Ries's testimony that 4 miles of the pipeline was transferred to MPC and the 1.2 mile segment was held as a TMP asset until 1998. It also refers to Annual Reports filed at the MoPSC prior to 2001 that showed, among other things, that the amount of \$1,133,857 that Mr. Ries testified was associated with the 4.4 mile segment of the TMP was included in MPC's rate base. Missouri claims that the Commission disregarded all of this evidence and incorrectly concluded that the Presiding Judge's finding is without merit.⁵⁰

26. Missouri claims that while the Commission correctly recognized that an acquisition premium cannot be transferred between affiliates unless the underlying assets itself is transferred, the Commission failed to find that the acquisition premium was improperly transferred. Even if the Commission rejects the Presiding Judge's finding that the entire premium was paid for those non-jurisdictional assets, Missouri contends that applying the entire \$10.6 million acquisition premium to the TMP (or the Company as described in the Stock Purchase Agreement) would not follow, since 4.4 mile of the TMP pipeline is recorded as a MPC plant asset. On this basis, Missouri asserts that 78.5 percent of the \$10.6 million acquisition premium should be recorded on the books of MPC because the underlying asset was never transferred.⁵¹

⁴⁸ *Id.* at 11 (citing Tr. at 209).

⁴⁹ *Id.* at 13-14. The \$1,084,636 amount is the unamortized portion of the \$1,133,857.09 figure as reflected in the Net Value column of Schedule 5.2 of the Stock Purchase Agreement.

⁵⁰ *Id.* at 13-15.

⁵¹ *Id.* at 16-17.

2. Commission Determination

27. The Commission denies rehearing. Missouri's claim that that acquisition adjustment in the UtiliCorp/Gateway transaction that was carried over from the prior Edisto/UtiliCorp transaction was attributable to Omega Pipeline, not the TMP facilities, is not supported by the record. Thus, we reject Missouri's claim that by attributing the acquisition adjustment to the TMP, we have improperly allowed MoGas to manipulate its accounting to create an acquisition adjustment for the TMP facilities.

28. As explained in Opinion No. 525, in the Omega System Agreement, Edisto sold the TMP facilities and Omega Pipeline to UtiliCorp for approximately \$22 million.⁵² The agreement did not break out the price between the two sets of facilities. In proceedings before the MoPSC in 2001, an UtiliCorp representative (Denny Williams) stated in a discovery response that the TMP facilities were acquired at an approximate cost of \$12.6 million, including an approximate \$10.6 million acquisition premium.⁵³ In the same proceeding, UtiliCorp Vice President Mr. Krueel explained "UtiliCorp bought

⁵² Exh. Nos. MGP-1 at 7; MGP-3 at 16.

⁵³ Exh. No. MGP-4. Missouri has not supported its assertion that we gave inappropriate weight to Mr. Williams' data response because he did not participate in the negotiations of the Edisto/UtiliCorp Agreements. Under Rule 509(a) of the Commission's Rules of Practice and Procedure, the basic test as to the admissibility of evidence is whether the evidence is of the "kind that would affect reasonable and fair minded persons in the conduct of their daily affairs." 18 C.F.R. § 385.509 (a) (2013). Moreover, the Commission has found that in an administrative proceeding, the issue is not whether evidence is hearsay, but whether it is probative. *Old Dominion Elec. Coop.*, 119 FERC ¶ 61,253, at 62,426 (2007). Mr. Williams submitted the subject data response (Exhibit No. MGP-1) in the proceeding before the MoPSC in 2001 on behalf of his employer, UtiliCorp, one of the parties to the Edisto/UtiliCorp Agreements. As such, we find such evidence is probative. In addition, as explained above, Mr. Williams' statement is corroborated by the testimony of Mr. Krueel, as well as the agreement of the parties in the UtiliCorp/Gateway Stock Purchase Agreement. (We note that the cite provided in Missouri's rehearing request (Tr. 209) relates to the testimony of MoPSC's witness Janis E. Fischer where she stated that *she* did not have any role in the subject transactions. Ms. Fischer testified that Mr. Williams told her that he was not involved in the subject transactions at Tr. 347).

Trans-Mississippi back in '95 and there was a premium in it"⁵⁴ which corroborates Mr. Williams' position. Moreover, the record shows that in the UtiliCorp/Gateway Stock Purchase Agreement the two parties agreed that the acquisition adjustment was attributable to the TMP facilities and included the \$10.6 million figure in the book value of the Company (UtiliCorp Pipeline), which held the TMP facilities at the time of the agreement. In Opinion No. 525, we found that the Stock Purchase Agreement was an arms-length transaction between two non-affiliated parties.⁵⁵ Missouri has not sought rehearing of this ruling.

29. On rehearing, Missouri claims that this record evidence regarding the acquisition adjustment in the Edisto/UtiliCorp transaction should be disregarded because it is inconsistent with Schedule 9.1 of Omega Agreement. According to Missouri, this schedule provides evidence that the acquisition price or "value of the TMP facilities" was \$2.4 million.⁵⁶ We disagree. Schedule 9.1 is entitled "Option" and provides that the purchaser shall have the option to exclude the TMP assets and "reduce the Cash Closing Payment by \$2.4 million."⁵⁷ On its face, Schedule 9.1 does not establish the acquisition or purchase price of the TMP facilities or otherwise explain the meaning of the \$2.4 million figure. Despite Missouri's contention to the contrary, the Presiding Judge's finding that the acquisition adjustment could not be associated with TMP was predicated on an assumption that the \$2.4 million was the fair market value or purchase price of the TMP facilities. The Presiding Judge found:

If the Omega System Agreement's TMP option in Paragraph 9.1 valued the TMP assets at only \$2.4 million, why would the same Agreement further charge UtiliCorp an additional \$10.6 million as an "acquisition premium" *just* for the TMP? There is no evidence that Edisto would have forgiven UtiliCorp from paying the acquisition premium as well as reducing the total price by \$2.4 million if UtiliCorp had decided to forego acquiring the TMP. Why would UtiliCorp pay Edisto a net cost of \$8.2 million (i.e.,

⁵⁴ Exh. No. PSC-4 at 2.

⁵⁵ Opinion No. 525, 142 FERC ¶ 61,195 at PP 125-126.

⁵⁶ Missouri Rehearing Request at 10.

⁵⁷ Exh. No. PSC-44.

\$10.6 million - \$2.4 million = \$8.2 million), essentially for *nothing*, if UtiliCorp decided not to acquire the TMP?⁵⁸

It is also worth noting that MoPSC, who Missouri substituted for as a party in this proceeding, adopted a similar position before the Presiding Judge, asserting that the “fair market price of the ‘Mississippi Crossing’ is \$2.4 million.”⁵⁹ If Missouri is now asserting on rehearing that the \$2.4 million figure represents a value other than the fair market value of the TMP facilities, it has not sufficiently explained, much less supported, its position.⁶⁰

30. Missouri contends that other record evidence supports a finding that the purchase price of the TMP facilities in the Omega System Agreement was \$2.4 million is equally unavailing. The Securities and Exchange Commission report filed by Edisto merely references the option clause stating “UtiliCorp will test the presently unused 6-mile pipeline across the Mississippi River and may elect not to purchase this asset. If this portion of the pipeline is not purchased, the purchase price will be reduced by \$2.4 million.”⁶¹ The other document relied on by Missouri, Exhibit No. PSC-26, does

⁵⁸ Initial Decision, 137 FERC ¶ 63,014 at P 141.

⁵⁹ September 16, 2011 Reply Post-Hearing Brief of MoPSC at 22 (citing Exh. No. PSC-44).

⁶⁰ Contrary to Missouri’s assertion, we did not hold that the \$2.4 million figure in Schedule 9.1 represented the salvage value of the TMP facilities based on Mr. Ries testimony. In fact, Mr. Ries only testified that “it is far more likely that the \$2.4 million discussed in Section 9.1 refers to the TMP Facilities’ salvage value if the facilities were incapable of providing natural gas service.” Exh. No. MGP-21 at 15-16. What we did find is that the Presiding Judge’s interpretation of the \$2.4 million as the market value of the TMP facilities was not supported by any record evidence and failed to consider that there was at least one alternate interpretation of the meaning of the \$2.4 million figure that was consistent with a purchase price that included a \$10.6 million acquisition adjustment. We concluded that based on the state of the record, the Presiding Judge’s interpretation of the option clause in such a way as to create an inconsistency between the option clause and the sworn statements of the two UtiliCorp representatives regarding the purchase price of the TMP facilities in the Omega System Agreement was not reasonable. Opinion No. 525, 142 FERC ¶ 61,195 at P 77.

⁶¹ Exh. No. PSC-6 at 12.

not reference the \$2.4 million figure nor does it appear to address the purchase price of the TMP facilities in the Omega System Agreement that closed in 1995. That document is entitled “General Description and History of UtiliCorp Pipeline Systems” and under the heading “TMP” states “[t]his segment of pipe was acquired in 1989 at approximately \$2.5 MM.”⁶²

31. We also reject Missouri’s alternative argument that 78.5 percent of the \$10.6 million acquisition premium should be allocated to MPC because that entity still held 4.4 miles of the TMP facilities at the time the Stock Purchase Agreement was signed. As explained in Opinion No. 525, Missouri’s position is inconsistent with the Stock Purchase Agreement which states “TransMississippi Pipeline Company (‘TMP’) was merged with and into the Company as of June 30, 1999.”⁶³ To the extent that this language was ambiguous as to whether all 5.6 miles or some portion of the TMP was held by the Company/UtiliCorp Pipeline, the Commission found that other record evidence supported a determination that all 5.6 miles of the TMP was held by the Company.⁶⁴ This evidence included statements from the principles that negotiated the Stock Purchase Agreement that indicated that the 5.6 miles of the TMP facilities were held by UtiliCorp Pipeline and purchased for an estimated price of \$10.3 million, or \$10,088,925, at closing. We also relied on the fact that the parties agreed to transfer the \$10.6 million acquisition adjustment, which we found was attributable to all 5.6 miles of the TMP facilities, to the books of UtiliCorp Pipeline, and the seller’s opinion of counsel letters attached to the Stock Purchase Agreement that state that “[UtiliCorp Pipeline] owns a dormant interstate transmission pipeline running under the Mississippi River.”⁶⁵

⁶² Exh. No. PSC-26 at 3.

⁶³ Opinion No. 525, 142 FERC ¶ 61,195 at P 86 (citing Exh. No. MGP-9 at 16). A copy of the Certificate of Ownership and Merger that was filed with the State of Delaware certifying the merger of TransMississippi Pipeline Company with and into UtiliCorp Pipeline (referenced in the agreement as “the Company) effective June 30, 1999, is included as an attachment to the Stock Purchase Agreement.

⁶⁴ Opinion No. 525, 142 FERC ¶ 61,195 at P 86.

⁶⁵ Opinion No. 525, 142 FERC ¶ 61,195 at P 86 (citing Exh. No. MGP-9 at 443, 445).

32. On rehearing, Missouri does not address this evidence except to point out that the amount of \$1,133,857 that MoGas's witness Mr. Ries testified was associated with the 4.4 mile segment of the TMP that was transferred to MPC in 1998 was not removed from MPC's rate base in the Stock Purchase Agreement. Contrary to Missouri's assertion, we did not disregard this evidence in Opinion No. 525; rather, we explained that while this fact raises an accounting issue as to whether these dollars were appropriately booked to MPC in the Stock Purchase Agreement, it does not establish that MPC owned 4.4 miles of the TMP facilities at the time of the Stock Purchase Agreement in light of the other record evidence discussed above.⁶⁶ Moreover, we found that it was not clear from the record whether or not these amounts are attributable to the TMP.⁶⁷ Accordingly, we affirm our finding in Opinion No. 525 that the Company/UtiliCorp Pipeline owned all 5.6 miles of the TMP at the time the Stock Purchase Agreement was entered into.

33. Finally, we disagree with Missouri's claim that the Presiding Judge correctly concluded that the \$10,088,344 purchase price at closing of the UtiliCorp/Gateway transaction was attributable solely to the 1.2 miles segment of the TMP and that an additional \$1,084,636 was attributable to the 4.4 mile segment on the books of MPC. As explained in Opinion No. 525 and herein, the record supports a finding that all 5.6 miles of the TMP were held by the Company at the time of the transaction and the purchase price at closing for the entire 5.6 miles was \$10,088,925.⁶⁸

B. Application of the Substantial Benefits Test

34. As explained in Opinion No. 525, the Commission's general policy is to use original cost principles in establishing the cost of service upon which a pipeline's regulated rates are based.⁶⁹ This policy limits a pipeline to including no more than the facilities' depreciated original cost (alternatively, referred to as net book value) in rate

⁶⁶ *Id.* at P 87.

⁶⁷ We noted that since MoGas did not claim that the unamortized portion of the \$1,133,857.09 amount was part of the purchase price for the TMP, we did not need to address the accounting issue of whether this amount was properly booked to MPC in this proceeding. Opinion No. 525, 142 FERC ¶ 61,195 at n.125.

⁶⁸ Opinion No. 525, 142 FERC ¶ 61,195 at PP 85-87.

⁶⁹ *Id.* PP 43-44.

base.⁷⁰ The Commission makes exceptions only when a pipeline can show that its acquisition of existing facilities at more than their net book value will result in substantial benefits to ratepayers. As set out in *Longhorn*,⁷¹ the “substantial benefits” test requires a pipeline seeking rate base treatment for an acquisition premium to meet a two-prong test. First, the pipeline must show that the facilities will be converted from one public use to a different public use or that the assets will be placed in FERC-jurisdictional service for the first time. Second, the pipeline must show clear and convincing evidence that its acquisition of the facilities will provide substantial, quantifiable benefits to ratepayers even if the full purchase price, including the portion above depreciated original cost, is included in rate base.

35. In Opinion No. 525, the Commission summarily affirmed the Presiding Judge’s finding that the conversion of the TMP facilities from oil to gas met the first prong or the new use requirement of the substantial benefits test.⁷² As to the second *Longhorn* prong, Opinion No. 525 found that MoGas had met its burden of showing specific dollar benefits associated with the acquisition of the TMP facilities because the cost to construct comparable facilities is more than the purchase price of the TMP facilities.⁷³

1. Missouri’s Request for Rehearing

36. Missouri asserts that the Commission’s finding that MoGas had demonstrated specific dollar benefits under the second prong of the *Longhorn* test is not supported by the record. First, Missouri asserts that a finding of specific benefits requires more than a finding that it would cost more to construct new facilities.⁷⁴ It states that in the prior appeal of this proceeding, the D.C. Circuit identified four elements which govern whether an acquisition adjustment can be recovered in rates, including element two, whether the pipeline identified specific benefits and element four, whether the purchase price of the acquired asset was less than the cost to construct comparable facilities. According to Missouri, these are two unique elements that must be met and by improperly combining

⁷⁰ See, e.g., *United Gas Pipe Line Co.*, 25 FPC 26, at 64 (1961).

⁷¹ 73 FERC ¶ 61,355 at 61,112 (1995).

⁷² Opinion No. 525, 142 FERC ¶ 61,195 at P 95.

⁷³ *Id.* PP 109-113.

⁷⁴ Missouri Request for Rehearing at 24-26.

these two elements, the Commission's order constitutes an improper collateral attack on the D.C.'s Circuit's order. Thus, Missouri concludes that the Commission is required to make a finding of substantial and specific dollar benefits to customers in addition to its finding that it would cost more to construct new comparable facilities.

37. Missouri also maintains that the Commission's own precedent requires that both of these elements be met. Missouri asserts that the cases cited in Opinion No. 525, namely, *Cities*, *Crossroads*, and *Natural*, do not establish a rule that an acquisition adjustment may be included in rate base when the total acquisition price is less than the cost of construction.⁷⁵ According to Missouri, in each of those cases there were specific additional benefits to customers beyond an acquisition price that was less than the cost of construction. Missouri points out that in *Crossroads* the filing was not contested and the pipeline converted an entire pipeline to natural gas use and shippers had the opportunity to review the service on the pipeline and elected to take service. According to Missouri, this is in contrast to the situation here where it alleges MoGas is imposing the cost of the TMP facilities on captive customers. It also points out that in *Cities* the pipeline's proposal was not contested by customers and states "the customers' silence suggests that the pipeline would benefit them."⁷⁶

38. Missouri also contends that *Natural* is inapposite because the proposal was unopposed and in that case the Commission recognized that "Natural's general system customers will not at present be paying for this pipeline, since Natural is not proposing to include the cost of this segment in its general system rate base." Missouri asserts that "[c]learly, there are benefits to customers when facilities are added *for free*," which is not the situation in this proceeding.⁷⁷

39. In addition Missouri asserts that in *Enbridge Energy*, approval of an acquisition adjustment was based on a finding the new facilities would cost more than the purchase price and conversion of the acquired pipe, as well as customer support for the pipeline's proposal.⁷⁸ According to Missouri, the Commission noted that a customer of the pipeline

⁷⁵ *Id.* at 27-36.

⁷⁶ *Id.* at 33.

⁷⁷ *Id.*

⁷⁸ *Id.* at 29 (citing *Enbridge Energy Co.*, 110 FERC ¶ 61,211, at P 47 (2005) (*Enbridge Energy*)).

fully supported the pipeline's proposal and "the Commission relied on this 'full support' to justify the uncommitted rate of the pipeline."

40. Missouri also maintains that the Commission erred in its analysis because it did not consider the principles in *United Gas*, a decision that predates the *Longhorn* decision. According to Missouri, in that case the pipeline was unable to demonstrate "measurable consumer benefits in the way of rate reductions or otherwise which occurred by reason of payments over original cost."⁷⁹ Missouri asserts that in *Kansas Pipeline Company*,⁸⁰ the Commission explained that "benefits must be tangible, non-speculative, and quantifiable in monetary terms" and the Commission held that the state regulators' finding of competitive benefits and benefits to its state as a whole was insufficient.

41. Additionally, Missouri contends that the Commission's finding that the cost of constructing new facilities was greater than the acquisition cost of the TMP facilities is not supported. According to Missouri, the Commission accepted an estimate of the cost of construction of approximately \$11.5 million, and ignored without explanation other lower estimates from MoGas as to the cost of construction. Specifically, Missouri states that Mr. Ries testified in a MoPSC proceeding in 2001 that a 10-mile pipeline constructed to connect to Natural Gas Pipeline Company of America would cost approximately \$2 to \$2.5 million, or approximately one-quarter of the cost estimate the Commission relied upon here, and that the estimate was for a significantly longer pipe than the TMP facilities. Additionally, Missouri refers to an engineering study performed by Purvin & Gertz which estimated the installation costs of one mile of 12-inch pipeline to be \$750,000. Missouri explains that this "cost estimate cannot be perfectly extrapolated (i.e., 5.6 miles X \$750,000 + 1 meter station at \$550,000 = \$4.75 million)" because the estimate understates the costs to construct facilities under the Mississippi River. However, Missouri concludes that the \$4.75 million from the Purvin & Gertz study shows that Mr. Ries's \$2 to \$2.5 million estimate is in the ballpark and the \$11.5 million estimate is too high.

42. Missouri also asserts that the Commission erroneously concluded that the \$10.1 million was the purchase price for all 5.6 miles of the TMP facilities. It claims that the Commission did not explain why it rejected the Presiding Judge's conclusion that the \$10.1 million was the purchase price of the 1.2 mile segment under the Mississippi River.

⁷⁹ *Id.* at 28 (citing *United Gas Pipe Line Co.*, 25 FPC 26, 29-30 (1960) (*United Gas*)).

⁸⁰ 81 FERC ¶ 61,005, at 61,018 (1997) (*Kansas Pipeline*).

Missouri claims that the Presiding Judge did not just consider one part of the record as the Commission claimed and asserts that the Commission confused the Presiding Judge's discussion of the \$1.1 million figure with the \$12.1 million figure. Therefore, Missouri claims that even assuming that the Commission was correct in using a construction cost estimate of \$11.5 million, it erred by not reducing that amount to reflect the costs of only the 1.2 mile segment, which by Missouri's calculations would be less than \$3 million. Using this estimate, Missouri maintains that the purchase price of the 1.2 mile segment of \$10.1 million is greater than the cost of construction.

43. Missouri also maintains that the Commission's finding that "the recourse rates will be no higher, if not somewhat lower than if the pipeline built new facilities even though the rates include an acquisition adjustment" is without record support. Assuming that the Commission's claim is correct, Missouri argues that the Commission ignored the fact that the rates would be lower still if the TMP facilities were excluded altogether.

44. Missouri claims that the Commission ignored, without explanation, Ameren's uncontroverted testimony that, as a customer, it has not received any benefits commensurate with the inclusion of the acquisition premium in rates. Missouri explains that Ameren's witness disputed the benefits claimed by MoGas of demand charge credits to shippers and access to flexible point rights being the result of paying an acquisition premium for TMP. In addition, Missouri asserts that the facilities are not a benefit because customers did not request the addition of the TMP facilities and customers do not use these facilities because their supply contracts deliver gas at the other end of MoGas's system.⁸¹

45. Finally, Missouri claims that the Commission's decision reverses long standing Commission policy without explanation. It argues that, until this case, the Commission had established a rigorous test for including an acquisition adjustment in rate base and required a pipeline to establish substantial and quantifiable benefits to ratepayers by clear and convincing evidence. It also points out that the Commission has characterized the burden as "practically impossible to meet."⁸² Missouri maintains that because new facilities generally cost much more than the depreciated cost of an existing facility, rather than excluding virtually all acquisition adjustment from rate base, the Commission's policy enunciated in Opinion No. 525 will permit, if not encourage "a pipeline used for oil transport to be sold, with an acquisition premium includable in rate base, converted to

⁸¹ Missouri Request for Rehearing at 31.

⁸² *Id.* at 36 (citing *Enbridge Pipelines (KPC)*, 109 FERC ¶ 61,042, at P 30 (2004)).

natural gas use, sold again with a new acquisition premium included in rate base, converted back to oil use, sold again with still another acquisition premium includable in rate base in a cycle that wouldn't end until the American public's wallet was completely emptied."⁸³

2. Commission Determination

46. We affirm our finding that MoGas has met its burden of demonstrating specific benefits under the second prong of the *Longhorn* test by demonstrating that the purchase price is less than the cost of constructing a comparable new facility.

47. Missouri's argument that our policy under the second prong of the *Longhorn* test requires a finding of specific benefits in addition to a finding that the costs of acquiring the existing pipeline is less than cost of constructing comparable facilities is without support. We disagree that the court in *Mo. PSC* required the Commission apply this test in the manner urged by Missouri in order to make a finding of specific benefits. Rather, the court explained that the substantial benefits test:

takes into account (1) whether the acquired facility is being put to a new use [citations omitted]; and (2) whether "the purchaser has demonstrated specific dollar benefits resulting directly from the sale." [citation omitted] FERC has also considered (3) whether the transaction at issue is an "arms length" sale between unaffiliated parties [citation omitted]; and (4) whether the purchase price of the asset at issue is less than the cost of constructing a comparable facility [citation omitted].⁸⁴

We do not interpret this language in the remand order to require that both elements two and four must be separately met in order to demonstrate specific dollar benefits, nor did the Presiding Judge.⁸⁵ As explained below, this interpretation is at odds with Commission precedent.

⁸³ *Id.* at 38.

⁸⁴ *Mo. PSC*, 601 F.3d at 586.

⁸⁵ Initial Decision, 137 FERC ¶ 63,014 at P 113 ("[T]he 'substantial quantifiable benefits' prong may be demonstrated by one or more disjunctive factors, including: (a) whether the transaction at issue is an 'arm's-length' sale between unaffiliated parties; *or*

48. We find that the Commission, in its decision to issue a certificate of public convenience and necessity placing the TMP facilities into interstate service, already addressed the initial question as to whether there are benefits to including the cost of the TMP facilities in initial rates.⁸⁶ On remand in this proceeding, the Commission appropriately applied the *Longhorn* test to determine the exact level of costs of the TMP facilities to include in rates by evaluating whether it would cost more to construct new comparable facilities.

49. The Commission case law does not support Missouri's claim that in order to demonstrate "specific dollar benefits resulting directly from the sale," a pipeline must make a two part showing; namely, specific benefits in addition to demonstrating that the purchase price is less than the costs to construct comparable facilities. Missouri further contends in essence that the Commission can only make a finding of specific benefits if the pipeline's rate proposal is supported, or at least not opposed, by customers. There is no language in the Commission orders in *Cities*, *Natural*, or *Crossroads* that suggests that customer support or a lack of customer opposition was an essential factor in the Commission's findings in those proceedings.⁸⁷ Moreover, the Commission has an

(b) whether the purchase price of the acquired facility is less than the cost of constructing a comparable facility.").

⁸⁶ *Missouri Interstate Gas, LLC*, 100 FERC ¶ 61,312 at P 18 (finding that the proposed project will increase competition and offer new sources of gas supply and transportation to Missouri customers served by MPC).

⁸⁷ Contrary to Missouri's claim, in *Enbridge Energy*, the Commission did not cite to customer support as a basis for approving the inclusion of an acquisition adjustment in rate base. Rather, the Commission found that the company met the second prong of the *Longhorn* test because "a new 'greenfield' pipeline traversing the same route would cost approximately \$179 million more than the purchase and conversion of the Spearhead line. This benefit supports use of the purchase price in calculating the Spearhead rate base." (citation omitted) *Enbridge Energy*, 110 FERC ¶ 61,211 at P 31. The language cited by Missouri regarding customer support relates to a different issue, namely, the uncommitted rate of the pipeline. After finding that the pipeline had not supported its proposed initial rate because it had not designed the rate based on design capacity, the Commission found it could accept the rate under an alternate method, namely, section 342.2(b) of the regulations for oil pipelines that provides that a carrier may justify an initial rate for new service by filing a sworn affidavit that the rate is agreed to by at least one non-affiliated person who intends to use the service in question and that the initial

(continued...)

independent obligation under NGA section 7 to ensure that initial rates are in the public interest.⁸⁸ Permitting a single customer the right to veto the inclusion of an acquisition adjustment or premium in rates, regardless of the pipeline's showing of specific benefits, is at odds with this statutory requirement.

50. Missouri's attempt to distinguish these cases on other grounds is equally unavailing. While Missouri is correct that here, unlike the situation in *Crossroads*, there were existing customers on the merged pipeline, we fail to see how this fact alone renders the Commission's decision in *Crossroads* regarding a showing of specific benefits under the *Longhorn* test inapposite. In the circumstances here, the Commission addressed customers' subsidization concerns in designing MoGas's initial rates.⁸⁹

51. We also find that Missouri misreads the *Natural* decision in asserting that in that case the pipeline acquired facilities and proposed to provide service on these expansion facilities for free. In that case, the costs of the facilities, including the acquisition adjustment, were borne by the new shippers signing-up for service on the new facilities who paid an incremental rate for the service.⁹⁰

52. We also find that Missouri's claim that our decision here is at odds with the Commission holdings in *United Gas* and *Kansas Pipeline* is without support. The Commission denied rate base treatment for acquisition adjustments in those proceedings based on the records developed and on grounds not relevant here. In *Kansas Pipeline*, the Commission found that the fact that the state had allowed the inclusion of these costs in state regulated rates was insufficient to demonstrate specific dollar benefits resulting

rate is not protested. *Enbridge Energy*, 110 FERC ¶ 61,211 at P 47. In this regard, the Commission noted that the uncommitted rate was supported by a customer and not protested by others.

⁸⁸ See, e.g., *Missouri Pub. Service Comm. v. FERC*, 337 F.3d 1066, 1076 (D.C. Cir. 2003) ("Section 7 imposes a duty on FERC to determine for itself whether the rates it approves are in the public interest.").

⁸⁹ See *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,136, at PP 67-75 (2008).

⁹⁰ *Natural*, 29 FERC ¶ 61,073 at 61,151-152 ("So long as the service provided by the 39-mile segment is priced on an incremental basis, the system supply customers of *Natural* will not be required to bear the risk of project failure or insufficient throughput.").

from the sale.⁹¹ Similarly, in *United Gas*, the Commission found that there was no showing that any rate reductions had any relationship to the payment of amounts in excess of the original cost.⁹² In contrast, here we found that MoGas had demonstrated specific dollar benefits because the purchase price of the TMP facilities is less than the cost of constructing comparable facilities.

53. Missouri's claim that we inappropriately disregarded the position of Ameren's witness in our determination in Opinion No. 525 is unfounded. Ameren filed testimony in this proceeding challenging MoGas's claim that the integration of the TMP facilities into MoGas in 2006 provided specific dollar benefits resulting from demand charge credits to shippers, access to flexible point rights, and lower initial rates justifying the inclusion of the acquisition adjustment in rate base. In Opinion No. 525, we found that there was no reason to address these alternative arguments since MoGas had demonstrated that it met the second prong of the *Longhorn* test, i.e., that the pipeline show quantifiable benefits to ratepayers associated with the acquisition, because the purchase price of the TMP facilities in 2002 is less than the cost of constructing comparable facilities. Having found that to be the case, even if we were to accept Ameren's claim that it received insufficient quantifiable benefits resulting from demand charge credits, flexible point rights, and lower initial rates after MoGas went into service in 2006, we still find that MoGas meets the second prong of the *Longhorn* test.

54. We disagree with Missouri's contention that the Commission's finding that the cost of constructing new facilities was greater than the acquisition cost of the TMP facilities is not supported.⁹³ As to Missouri's claim that the Commission inappropriately

⁹¹ *Kansas Pipeline*, 81 FERC ¶ 61,005 at 61,018. The Commission also found there was affiliate involvement.

⁹² *United Gas*, 25 FPC 26, 78 (“[I]t appears that the rate reductions that took place occurred at times remote from the dates when the payments of amounts in excess of original costs were made.”).

⁹³ Contrary to Missouri's contention, the Commission's finding that the recourse rates will be no higher, if not somewhat lower, than if the pipeline built new facilities even though the rates include an acquisition adjustment is supported because the rate base on which the rates are calculated will be lower than if a comparable pipeline was constructed. Missouri's further assertion that the Commission ignored the “fact that rates would be lower still if the TMP facilities were excluded altogether” appears to challenge the Commission's issuance of a certificate of public convenience and necessity to place the TMP facilities in interstate service, an issue not before us in this proceeding.

disregarded other lower construction cost estimates, section 385.711(d) of the Commission's Rules of Practice and Procedure provides that if a participant does not object to a part of an initial decision in a brief on exceptions, any objection to that part is waived and the participant may not raise such objection on rehearing unless ordered by the Commission for good cause. The Initial Decision in this proceeding specifically rejected MoPSC's contention that the construction cost estimate should be based on an alternative report that was performed in 2002 by Purvin & Gertz⁹⁴ and did not directly address the other construction cost estimate that Missouri refers to in its rehearing petition. Missouri did not file a brief on exceptions on either of these matters, and thus is barred from raising these objections on rehearing. In any event, Opinion No. 525 specifically agreed with the Presiding Judge's rejection of the Purvin & Gertz study⁹⁵ and we affirm that finding here. The other construction estimate is readily dismissed because it is not a cost estimate for replacing the 5.6 miles of pipeline that was acquired but rather an estimate for a 10-mile alternative pipeline that would connect to Natural Gas Pipeline Company of America.⁹⁶

55. Contrary to Missouri's claim, we fully explained in Opinion No. 525⁹⁷ and herein, why we rejected the Presiding Judge's conclusion that the \$10.1 million figure was the purchase price of only the 1.2-mile segment of the TMP under the Mississippi River.⁹⁸ We found that the record supports a finding that all 5.6 miles, not just 1.2 miles, of the TMP facilities were held by UtiliCorp Pipeline (referenced in the agreement as the

⁹⁴ Initial Decision, 137 FERC ¶ 63,014 at PP 317-319.

⁹⁵ Opinion No. 525, 142 FERC ¶ 61,195 at P 102.

⁹⁶ Exh. No. PSC-57 at 4-5.

⁹⁷ Opinion No. 525, 142 FERC ¶ 61,195 at PP 85-87.

⁹⁸ We don't dispute Missouri's contention that in the Initial Decision the Presiding Judge traced the history of the accounting treatment of certain costs associated with the TMP facilities, including the \$1,133,857.09 figure, prior to 2001 when the Stock Purchase Agreement was entered into. However, the relevant inquiry to address the purchase price issue is who held the TMP assets in 2001 when the Stock Purchase Agreement was signed. The Presiding Judge's finding that MPC held 4.4 miles of the TMP facilities at the time of the Stock Purchase Agreement was based on the fact that the \$1,133,857.09 amount was still on the books of MPC in Schedule 5.2 of that agreement. *See* Initial Decision, 137 FERC ¶ 63,014 at PP 152-159.

Company) at the time the Stock Purchase Agreement became effective.⁹⁹ On this basis we found that the estimated purchase price for all 5.6 miles of the TMP facilities in the Stock Purchase Agreement was \$10.3 million, and the final purchase price for the TMP facilities at closing was \$10,088,925. For these reasons, we reject Missouri's claim that even if the Commission was correct in using a construction cost estimate of \$11.5 million, it erred by not reducing the construction amount to reflect the costs of only the 1.2-mile segment.

56. Finally, Missouri's argument the Commission's decision reverses long standing Commission policy without explanation is without merit. As we fully explained in Opinion No. 525 and herein, we have applied the substantial benefits test to the facts in this proceeding consistent with our case precedent. While Missouri is correct that the Commission stated in *Enbridge Pipelines (KPC)* that proving substantial benefits under the *Longhorn* test is a heavy burden that may be practically impossible to meet, that case did not involve the conversion of the pipeline from one utility service to another, e.g., oil to gas. We have also found that our strong policy against the inclusion of acquisition adjustments in rate base "is not inflexible."¹⁰⁰ Significantly, we have approved rate base treatment for acquisition adjustments under the substantial benefits test in a number of conversion cases including *Cities, Natural*, and *Crossroads*.¹⁰¹ Our decision here to permit rate base treatment for the full purchase price of the TMP facilities is in accord with these decisions.¹⁰² Additionally, Missouri's claim that our ruling here will permit a

⁹⁹ There is no support for Missouri's contention that we confused the Presiding Judge's discussion of the \$1.1 million figure (Initial Decision at P 154) with the \$12.1 million figure (Initial Decision at P 155). The Commission accurately set forth the Presiding Judge's finding that the \$1,133,857.09 amount was the accumulated costs attributable to the 4.4-mile segment of the TMP and the \$12,060,723.80 amount was the total accumulated costs for the 1.2-mile segment of the TMP. Opinion No. 525, 142 FERC ¶ 61,195 at PP 80-81.

¹⁰⁰ *Cities*, 4 FERC ¶ 61,268 at 61,596.

¹⁰¹ See also *KN Interstate Gas Transmission Co.*, 79 FERC ¶ 61,268, at 62,151 (1997); *Questar Southern Trails Pipeline Co.*, 89 FERC ¶ 61,050, at 61,146-61,147 (1999).

¹⁰² We agree with Missouri that new pipeline construction will generally cost more than the net book value of an existing pipeline. However, in a given case, a company may need to expend significant capital costs to convert a pipeline from oil to natural gas service and meet relevant engineering and safety requirements for interstate pipelines. In

(continued...)

pipeline to be converted from oil to gas with an acquisition adjustment in rate base, sold again and converted back to oil use with a new acquisition premium, in a cycle that wouldn't end is mere speculation and not an issue before us in this proceeding. In addition, a pipeline seeking rate recovery in a subsequent conversion back to oil or gas would have to satisfy the first, or new use prong, of the *Longhorn* test.

57. For these reasons, we affirm our finding in Opinion No. 525 that allowing the full purchase price of the TMP facilities in rate base in these circumstances provides specific benefits to MoGas's ratepayers because the approved recourse rates will be no higher, if not somewhat lower, than if the pipeline built new facilities. This ruling also provides jurisdictional companies appropriate incentives to purchase and utilize existing facilities in lieu of constructing new facilities, thereby avoiding unnecessary construction and the attendant environmental impacts.¹⁰³

The Commission orders:

- (A) The request for rehearing of Opinion No. 525 is denied.
- (B) The MoPSC's notice of substitution as a party of record is accepted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

such a case, the Commission will compare the cost to construct to the purchase price plus conversion costs. *See Natural*, 29 FERC ¶ 61,073 at 61,151 (where *Natural* had to expend an additional \$8 million above the purchase price to convert the pipeline from oil to gas service).

¹⁰³ Opinion No. 525, 142 FERC ¶ 61,195 at P 113.