



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NO. 10296

**COMPLAINT FILED BY EASTMAN CHEMICAL COMPANY
AGAINST WESTLAKE ETHYLENE PIPELINE CORPORATION (WESTLAKE
PIPELINE) REGARDING WESTLAKE PIPELINE'S SYSTEM OPERATED
PURSUANT TO T-4 PERMIT NO. 05253**

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PROCEDURAL HISTORY:

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STATEMENT OF THE CASE

On July 29, 2013, Eastman Chemical Company (Eastman) filed a complaint against Westlake Ethylene Pipeline Corporation (Westlake Pipeline). The complaint relates to Westlake Pipeline's system operated pursuant to T-4 Permit No. 05253. The pipeline is currently operated by Buckeye Development & Logistics I LLC on behalf of Westlake Pipeline. The product transported on the pipeline system is ethylene. The pipeline at issue in the case was originally operated by Mustang Pipeline Company (Mustang), an affiliate of Eastman. On July 26, 2002, Mustang published and filed with the Railroad Commission of Texas (Commission) a tariff applicable to shipments on the pipeline system (*2002 Mustang Tariff*). The *2002 Mustang Tariff* replaced an earlier tariff that Eastman published and filed with the Commission (*1997 Mustang Tariff*). Westlake Pipeline acquired the pipeline on November 10, 2006. On July 3, 2013, Westlake Pipeline published and filed with the Commission a tariff intended to replace the 2002 Mustang Tariff (*2013 Westlake Pipeline Tariff*).

Eastman's complaint centers on three proposed changes Westlake Pipeline intended to implement. First, the *2013 Westlake Pipeline Tariff* included changes of terms related to pre-existing backhaul service. Second, the *2013 Westlake Pipeline Tariff* proposed to eliminate exchange service, a pre-existing service offered by Mustang and available to Eastman until 2013. Third, the *2013 Westlake Tariff* proposed the implementation of new transportation rates. The issues in the proceeding were bifurcated and issues related to the proposed rates were severed into a separate docket. In this case, the Commission is asked to consider proposed tariff changes related to backhaul and exchange service.

First, Westlake Pipeline altered certain provisions related to backhaul service. As originally constructed, the pipeline was intended to deliver ethylene to consumers in Longview, Texas. Thus, the line was intended to flow from Mont Belvieu to Longview. Backhaul service is transmission from Longview to Mont Belvieu. After construction of the pipeline, while the pipeline was operated by Mustang, Eastman's ethylene production in Longview sometimes exceeded the ethylene requirements of the Longview market. New connections were added to allow backhaul service. In 2002, the *1997 Mustang Tariff* was revised to reflect backhaul service. Namely, the reference to the origin and delivery point was changed. The *2002 Mustang Tariff* reflected that Mont Belvieu was both an origin and delivery point. Similarly, the *2002 Mustang Tariff* reflected that Longview was both an origin and delivery point. The *2013 Westlake Pipeline Tariff* altered those provisions and designated Mont Belvieu as the origin point and Longview as the delivery point. The removal of those terms eliminated backhaul service from the list of services offered by Westlake Pipeline.

Second, Westlake Pipeline removed all references to exchange service. At the time that Mustang revised its *1997 Mustang Tariff*, Mustang added exchange service to the range of services offered by the common carrier pipeline operator. All references to exchange service were removed by Westlake Pipeline in the *2013 Westlake Pipeline Tariff*.

As set forth in detail below, the removal of the terms that specifically allowed backhaul service physically shut Eastman out of the ability to ship on the pipeline operated by Westlake Pipeline. Thus, Eastman's market for consumption of its produced ethylene is limited to

Longview. In Longview the only significant market participant for the ethylene produced by Eastman is the affiliate of Westlake Pipeline, Westlake Longview Corporation (Westlake Longview). Removal of the exchange service provisions similarly limited Eastman's ability to market its ethylene. The overall effect is to discriminate against Eastman, a shipper that is similarly situated to Westlake Longview, in favor of the common carrier's affiliate – Westlake Longview.

The Examiners recommend that the proposed *2013 Westlake Pipeline Tariff* be rejected as it relates to the elimination of the pre-existing backhaul and exchange services. The proposed tariff changes result in a tariff that discriminates against Eastman in favor of Westlake Longview, an affiliate of Westlake Pipeline. The *2013 Westlake Pipeline Tariff* proposed other changes that were not challenged. The Examiners recommend that Westlake Pipeline be allowed to implement those changes. The Examiners recommend that two additional paragraphs be added to address concerns raised by Westlake Pipeline.

Westlake Pipeline argued that the backhaul services should be removed because Westlake Pipeline does not own or operate compression equipment necessary to alter the flow on the pipeline. The *2002 Mustang Tariff* already includes language that requires the shippers to deliver and receive product at the necessary pressures at the origin points, whether those origin points are at Longview or Mont Belvieu. Out of abundance of caution, and in order to remove any lingering concerns about the meaning of the existing language, the Examiners recommend that the following language be added:

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or services to effectuate the entry of the product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at a Delivery Point.

Westlake Pipeline argued that exchange services expose the common carrier pipeline operator to additional risk. Namely, the third-party to the exchange transaction may fail to perform its obligation. The *2002 Mustang Tariff* already includes language that protects the common carrier. Again, out of abundance of caution, and in order to address any lingering concerns about the meaning of the existing language, the Examiners recommend that the following language be included:

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to the Pipeline customers.

The recommended changes to the tariff ensure that the tariff applicable to the pipeline operated by Westlake Pipeline is operated in a non-discriminatory manner. This is consistent with the common law standards applicable to common carriers, the sections of the Common Carrier Act that prohibiting discrimination and the policy of the Commission.

TABLE OF CONTENTS

1. Procedural History	1
2. Jurisdiction	3
3. Legal Standard	3
4. Factual Background	4
a. <i>General Description of Pipeline Characteristics, Product Transported, and Parties..</i>	4
b. <i>Construction of the Pipeline.....</i>	6
c. <i>The 1997 Mustang Tariff.....</i>	8
d. <i>The 2002 Mustang Tariff.....</i>	8
e. <i>Eastman Sale of Facilities to Westlake Chemical and Westlake Pipeline</i>	9
f. <i>The 2013 Westlake Pipeline Tariff.....</i>	10
g. <i>Timeline Summarizing Key Event, Parties and Affiliates, and Tariffs.....</i>	11
5. Eastman's Requirements for Produced Ethylene.....	12
6. Effect of the 2013 Westlake Pipeline Tariff Regarding Bidirectional Service	14
a. <i>Mechanics and Risks of Backhaul Service</i>	15
b. <i>Whether Bidirectional Service was Terminated.....</i>	16
7. Effect of the 2013 Westlake Pipeline Tariff Regarding Exchange Service	18
a. <i>Mechanics and Risks of Exchanges.....</i>	18
b. <i>Whether Exchange Service is Required by Eastman from Westlake Pipeline.....</i>	20
8. Discriminatory effect of Failure to Provide Backhaul or Exchange Service	26
9. Conclusion.....	26

PROPOSAL FOR DECISION

1. Procedural History

On July 29, 2013, Eastman Chemical Company (Eastman) filed a complaint against Westlake Ethylene Pipeline Corporation (Westlake Pipeline). The complaint relates to Westlake Pipeline's pipeline system operated pursuant to T-4 Permit No. 05253. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline. The product transported on the pipeline system is ethylene. A response to the complaint was filed by Westlake Pipeline on August 16, 2013. On August 29, 2013, the complaint was docketed as Gas Utilities Docket No. 10296. A hearing on jurisdictional issues and the scope of this proceeding was held on September 27, 2013.¹ Ray Stroud, a chemical engineer for Eastman Chemical Company testified on behalf of Eastman at the hearing on jurisdictional issues.

On November 19, 2013, the Examiners concluded that the scope of the hearing in this matter would be limited to allegations of discrimination raised in the complaint. The Examiners' concluded that the Common Carrier Act did not provide the Railroad Commission (Commission) authority to set the rate for transportation of ethylene on the pipeline. An interim appeal of the Examiners' ruling was filed by Eastman. Eastman contended that the Commission's jurisdiction included the discrimination issues encompassed by the Common Carrier Act and provided the Commission the authority to set rates for the transportation of ethylene. Westlake Pipeline agreed that the Commission had jurisdiction to consider the discrimination claims raised by Eastman. Westlake Pipeline, argued, however, that the Common Carrier Act did not provide jurisdiction for the Commission to establish rates. On January 7, 2014, the Commission reversed the Examiners' ruling and determined that the Commission had jurisdiction to consider the discrimination claim and to set rates pursuant to the Common Carrier Act. The Commission clarified the applicability of the Common Carrier Act and concluded that all provisions of the Common Carrier Act applied to all common carrier pipelines regardless of the product transported.

Subsequently, the hearing in this case was divided into two phases. The Notice of Hearing was issued on March 23, 2014. On May 2, 2014, Westlake Pipeline filed an affidavit attesting that notice was served on the entity that operates the pipeline on behalf of Westlake Pipeline, Buckeye and all current customers of the pipeline that is the subject of this proceeding. The first phase (Phase I) would address the discrimination claims and the second phase (Phase II) would address all issues related to rates. Namely, as set out in the Notice of Hearing, the Phase I hearing would consider the following issues:

- Whether the changes to the Westlake Pipeline tariff unlawfully terminated the ability of shippers to conduct exchanges on the Westlake Pipeline and whether the prior tariff language should be restored;
- Whether the changes to the Westlake Pipeline tariff unlawfully terminated the ability of shippers to ship product from Longview, Texas to Mont Belvieu, Texas, and whether the prior language should be restored;
- Whether the changes in the terms of the Westlake Pipeline's July 2013 Tariff are unreasonably preferential, prejudicial, or discriminatory;

¹ See, Transcript on Hearing on Jurisdictional Issues ("Jurisdictional Hearing").

- Whether the changes in the terms of the Westlake Pipeline's July 2013 Tariff discriminate in favor of affiliates of Westlake Pipeline;
- Any and all other non-rate issues raised in the pleadings, evidence or argument that are necessary for the Commission to render a final decision on the merits.

As set forth in the Notice of Hearing Phase II would consider all rate related issues:

- Whether the rate in Westlake Pipeline's July, 2013 Tariff are just and reasonable.
- Any and all other rate issues raised in the pleadings, evidence, or argument that are necessary for the Commission to establish just and reasonable rates.

The Phase I hearing was held on May 6, 2014. At the conclusion of the Phase I hearing the Examiners requested that the parties clarify their position regarding whether the Phase II hearing should be bifurcated. Eastman argued that the phases should, in fact, be severed into separate dockets. Westlake Pipeline opposed severance. On May 14, 2014, after considering the arguments of the parties, the Examiners severed the proceedings and Phase II was docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296*.

Eastman presented three witnesses for its direct case at the May 6, 2014, hearing. Mark Bogle, testified on behalf of Eastman. He is the Vice President and General Manager of Texas Operations for Eastman. Mr. Bogle's position as Vice President and General Manager of Eastman's Texas Operations included the following positions: Manager for Eastman Cogeneration, LLC, President of Mustang Pipeline Company, and Vice-President of Eastman Chemical Texas City Inc. Thomas J. Mittler, also testified on behalf of Eastman. He is a retired engineer of Eastman Chemical's Texas Operations. Finally, George M. Intille, PhD presented testimony for Eastman. Mr. Intille is a Principal at Nextan Inc. within its Energy and Chemical Consulting group. The following witnesses presented the direct case of Westlake Pipeline: Amy Moore, an employee of Westlake Chemical, the parent company of Westlake Pipeline, responsible for commercial dealings of Westlake Chemical and its subsidiaries; and, David B. Lerman, Managing Director in the Economic Consulting Practice of FTI Consulting, Inc. Eastman's rebuttal case was presented by Mr. Bogle, Mr. Mittler, and Mr. Intille.

Several exhibits presented at the hearing are attached to this *Proposal for Decision*. A map describing the location of the pipeline is attached as Exhibit A.² A block diagram that illustrates the primary components of the pipeline connections in Mont Belvieu, Longview and Tyler is attached as Exhibit B.³ Reference is made to the block diagram throughout the *Proposal for Decision*. Exhibit C is a comparison, prepared by the Examiners, of the 2002 Mustang Tariff⁴ and the 2013 Westlake Pipeline Tariff. The Examiners have also attached as Exhibit D a recommended Tariff that reflects the findings and recommendations of the Examiners.

² Westlake Ex. 27, Pipeline Diagram.

³ Eastman Ex. 3, Mittler Direct, TJM -2 & Eastman Ex. 4, Bogle Rebuttal, MB-R-2.

⁴ Eastman Ex. 1, Bogle Direct, MB - 1 & MB - 2.

2. Jurisdiction

The Commission has jurisdiction over Westlake Pipeline, associated affiliates, and the matters at issue in this proceeding pursuant to *TEX. NAT. RES. CODE ANN.* §§ 81.051 and 111.020. The statutes and rules involved in this proceeding include, but are not limited to the following: *TEX. NAT. RES. CODE ANN.* §§ 111.002, 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262; and 16 *TEX. ADMIN. CODE* Chapter 7.

3. Legal Standard

In a complaint filed with the Commission, the burden of proof rests upon the complainant.⁵ Thus, as the complainant, Eastman carries the burden of proof in this proceeding.⁶ The Commission has exclusive original jurisdiction to consider complaints of discrimination by common carriers.⁷

It is well settled that common carriers must perform their obligations without discrimination.⁸ Section 111.015 of the Texas Natural Resources Code codifies the common law obligation:

Subject to the law and the rules prescribed by the Commission, a common carrier shall receive and transport crude petroleum delivered to it for transportation and perform its other related duties without discrimination.⁹

Section 111.016 provides further that a common carrier shall not discriminate between or against shippers with regards to facilities furnished, services rendered, or rates charged under the same or similar circumstances.¹⁰ A common carrier must not discriminate in the transportation of product produced or purchased by the common carrier itself.¹¹

Section 111.014 requires that common carriers make and publish their tariffs under rules prescribed by the Commission. The legal effect of a filed tariff in the context of other regulated entities, such as electric, natural gas, and telephone service, is well settled.¹² Regulated entities may not charge rates or provide services other than those properly filed with the appropriate regulatory authority.¹³ As a corollary to that regulatory construct, a common carrier's

⁵ *Texas & N.O.R. Co. v. R.R. Comm'n of Tex.*, 155 Tex. 323, 286 S.W.2d 112, 125 (Tex. 1956)

⁶ *See*, 16 TX ADC § 1.2(15), 1.128, & 22.203.

⁷ *State v. Crown Central Petroleum Corp.*, 369 S.W.2d 458, 462 (Tex. Civ. App. – Austin 1963, writ ref'd n.r.e.).

⁸ *United Gas Corp. v. Shepherd Laundries Co.*, 189 S.W.2d 485, 487 – 489 (Tex. 1945) (Discussing the common law rule that a common carrier of goods is bound to accept and carry for all, upon being paid a reasonable compensation.)

⁹ *TEX. NAT. RES. CODE ANN.* § 111.015. (As noted above, the Commission has determined that the provisions of the Common Carrier Act apply to all common carriers regardless of the product transported.)

¹⁰ *Id.* § 111.016.

¹¹ *Id.* § 111.016(b).

¹² *CenterPoint Energy Entex v. R.R. Comm'n of Tex.*, 208 S.W.3d 608 (Tex. App. – Austin 2006, pet. dismiss'd)

¹³ *Entex v. R.R. Comm'n of Tex.*, 18 S.W.3d 858, 862-63 (Tex. App., – Austin 2000, pet denied); *Southwestern Bell Tel. Co. v. Metro-Link Telecom, Inc.*, 919 S.W.2d 687, 692 (Tex. App. – Houston [14th Dist.] 1996, writ denied).

obligations to its customers cannot exceed its duties under a filed tariff.¹⁴ Filed tariffs govern the relationship of the common carrier with its customers.¹⁵ Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly filed tariffs.¹⁶ The filed tariff and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the filed tariff.¹⁷ As summarized by Eastman's witness at the hearing, filings at the Commission must mirror the actual use of the facilities.¹⁸

4. Factual Background

To a great extent the parties agree upon the general factual background of the case. As explained in greater detail herein those facts include the general description of the pipeline itself, the characteristics of the product transported, and the timeline regarding construction of the pipeline. As noted below, there appears to be some discrepancy among the parties regarding the bidirectional nature of the initial construction. The term "bidirectional flow" means the ability to physically reverse flow of a pipeline system to move gas in different directions. In this case bidirectional flow is simply the physical ability to flow product from Mont Belvieu to Longview, south to north, and from Longview to Mont Belvieu, north to south. On the other hand, the parties appear to agree upon the fact that three tariffs have been applicable to the pipeline operations, the overall facts regarding the sale of certain facilities to Westlake Chemical, and the sale of the pipeline to Westlake Pipeline.

a. General Description of Pipeline Characteristics, Product Transported, and Parties.

There is no dispute among the parties regarding the general description of the pipeline, the product transported and the activities of the parties.¹⁹ As noted above, the ethylene transportation pipeline at issue in this proceeding is ten inches in diameter and is nearly two hundred miles long. The pipeline runs from Mont Belvieu, Texas to Longview, Texas and traverses seven counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg, Counties. There are other shorter pipeline segments, that are not part of the Westlake Pipeline system, that tie the Eastman and Westlake Chemical manufacturing sites in Longview to nearby

¹⁴ *Arkansas La. Gas Co. v. Hall*, 101 S. Ct. 2925 (1981); *Texaco, Inc. v. Central Power & Light Co.*, 955 S.W.3d 373, 377 (Tex. App. – San Antonio 1997, pet. denied); *Central Power & Light Co., v. Romero*, 948 S.W. 2d 764, 767 (Tex. App. – San Antonio 1996, writ denied).

¹⁵ *See, Keogh v. Chicago & Northwestern Ry.*, 43 S. Ct. 47 (1922) (Holding that the legal right of shipper as against carrier in respect to a rate are measured by the published tariff. Unless and until suspended or set aside, this rate is made, for all purposes, the legal rate as between carrier and shipper. The rights as defined by the tariff cannot be varied or enlarged by either contract or tort of the carrier.); *Carter v. AT & T Co.*, 365 F.2d 486, 496 (5th Cir. 1966) (Holding that a tariff, required by law to be filed, is not a mere contract – it is the law.); *Southern Elec. Power Co. v. Grant*, 73 S.W.3d 211, 217. (Tex. 2002) (Discussing the *filed rate doctrine* and holding that filed tariffs govern a utility's relationship with its customers and have the force and effect of law until suspended or set aside.); *Southwestern Bell Tell. Co.*, at 692 (Discussing the *filed rate doctrine*, noting that the doctrine was created because of the unique nature of tariffs filed with the appropriate agency, and holding that filed tariffs govern a utility's relationship with its customers.).

¹⁶ *See, CenterPoint Energy Entex*, 208 S.W.3d at 622 (Holding that regulated utilities may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those properly filed with the appropriate regulatory authority).

¹⁷ *Id.*

¹⁸ Phase I Hr. Tr. p. 31, ln. 7 – p. 35, ln. 6.

¹⁹ *Proposal for Decision* Exhibit A provides a map generally describing the location of the pipeline.

storage in the Tyler area.²⁰ Mont Belvieu is a substantial hub for many light hydrocarbon products including ethylene.²¹

Product arriving at Mont Belvieu may ultimately connect to other widespread destinations.²² The ethylene that is transported on the pipeline is one product among several large volumes of chemicals or fuels transported by pipeline. Petroleum, refined fuels, gasoline, jet and diesel fuels, heating oils, natural gas, LPGs, ammonia, NGLs, benzene, other olefins and a variety of other gaseous or liquid chemicals are the main products that are moved by pipeline in the United States.²³

Ethylene is an olefin. Olefins are petrochemical products derived from petroleum and are manufactured. The feedstock necessary for ethylene production are natural gas liquids (NGLs), particularly ethane and propane, that are processed at gas plants and then delivered to petrochemical facilities, such as the facilities operated by Eastman in Longview.²⁴ As is well known shale gas production has caused significant changes in the oil and gas industry. Shale gas production has also caused significant changes in the petrochemical industry. It has substantially increased the availability of feedstock for olefin production and correspondingly reduced its expense.²⁵

Ethylene is the largest volume petrochemical produced in the world and is one of the most significant base chemicals in the world. It is the starting material for the manufacture of many different chemical products that are used in almost every sector of the economy. The most important derivatives are polymers, such as polyethylene, polystyrene, polyvinyl chloride, and others. Most plastics contain one or more derivatives of ethylene.²⁶ Currently, there is a significant demand for ethylene in the State of Texas.²⁷

Westlake Pipeline is a subsidiary of Westlake Chemical. Another Westlake Chemical subsidiary, Westlake Longview is located in Longview. Westlake Chemical and its manufacturing subsidiaries are engaged in the production of olefins, which include ethylene and its associated co-products, ethylene derivatives (polyethylene, styrene, and vinyl) and PVC fabricated products. The facilities of Westlake Longview are connected to ethylene supplies at Mt. Belvieu by the pipeline system that is the subject of this proceeding. Some of the facilities operated by Westlake Longview were purchased from Eastman.²⁸ Westlake Longview consumes large quantities of ethylene in Longview.²⁹ Westlake Longview, or its ethylene supplier, is a shipper on Westlake Pipeline.

²⁰ Eastman Ex. 2, Intille Direct, p. 7, lns. 9 – 12.

²¹ Eastman Ex. 2, Intille Direct, p. 7, lns. 15 – 17.

²² *Id.*

²³ Eastman Ex. 2, Intille Direct, p. 4, lns. 4 – 13.

²⁴ See, *R.R. Comm'n of Tex., Rule 73 Application filed by TGG Pipeline, Ltd. to Disconnect and Cease Providing Services to Sabine Oil & Gas LLC*, O&G Docket No. 06-0279915 (Sept. 10, 2013) (Proposal for Decision) (Discussing generally NGLs treatment at gas processing plants.)

²⁵ Eastman Ex. 4, Bogle Rebuttal, p. 7, lns. 16 – 23 & Westlake Ex. 60, Lerman Direct, p. 20, lns. 9 – 14.

²⁶ Eastman Ex. 2, Intille Direct, p. 2, lns. 1 – 10 & Westlake Ex. 51, Moore Direct, p. 1, ln. 12; *Tr. Hearing on Jurisdictional Issues*, pp. 48 – 64.

²⁷ *Tr. Hearing on Jurisdictional Issues*, p. 63, lns. 1 – 3.

²⁸ Westlake Ex. 51, Moore Direct, p. 1, lns. 7 – 18 & Eastman Ex. 1, Bogle Direct, p. 3, lns. 1 – 17.

²⁹ Eastman Ex. 2, Intille Direct, p. 2, lns. 13 – 14.

Eastman operates forty-four manufacturing sites.³⁰ Eastman's Longview facility converts typical oil and gas feedstock, like ethane and propane, to ethylene and propylene. The facilities that accomplish that task are referred to as hydrocarbon cracking facilities, referred to as "crackers."³¹ These, in turn, are used as feedstock for a variety of downstream olefin derivative plants which produce approximately 40 different chemicals, solvents, resins and adhesives.³² The ethylene is produced by subjecting petroleum products to high temperatures and separating the mixture that is produced from the heating process into the various components. The petroleum product from which the ethylene is derived, the feedstock, is natural gas liquids (NGLs). As noted, the ethylene that is produced by Eastman is used to make other chemical products. The ethylene that is not used in production is sold.³³ Eastman is a potential shipper on the pipeline operated by Westlake Pipeline.

Eastman currently produces about 1,400 million pounds of ethylene annually from its crackers at Longview.³⁴ Eastman uses about 600 million pounds of ethylene annually at Longview, leaving about 800 million pounds of ethylene that must either be sold in Longview or transported to, or exchanged at, Mont Belvieu each year.³⁵ The only substantial market for ethylene in Longview is Westlake Pipeline. The amount of ethylene used by the other ethylene consumer in Longview, Flint Hills Resources, equals less than one percent of the ethylene produced by the Eastman crackers.

b. Construction of the Pipeline.

In 1995, Eastman began planning a "common carrier"³⁶ pipeline to provide ethylene to their Longview plant.³⁷ In December 1996, Mustang, an Eastman subsidiary, started construction on the pipeline at issue in this case.³⁸ The initial business objective of the pipeline was to provide ethylene to the Longview ethylene consuming market and to provide ethylene during hydrocarbon cracking plant turnarounds.³⁹

The pipeline was designed to transport 1.3 billion pounds of ethylene per year (BPY).⁴⁰ The ten-inch line contains 30 valve-stations, and launching/receiver traps on each end and at the mid-point.⁴¹ In addition, most of the valve stations include controls to remotely monitor pipeline pressure and temperature and valve position as well as the ability to remotely open and close the valves.⁴² Eastman also installed meters, piping, and controls at the Mont Belvieu supplier and

³⁰ Eastman Ex. 1, Bogle Direct, p. 2, lns. 1 – 4.

³¹ The cracking units appear on Exhibit B and are identified on the block diagram as Cracking Plant 3, Cracking Plant 3A, and Cracking Plant 4. These units are designed to literally crack the molecule in the feedstock, such as ethane (C₂H₆), and create a molecule with a double carbon bond, ethylene (H₂C=CH₂). *Tr. Hearing on Jurisdictional Issues*, pp. 48 – 64.

³² Eastman Ex. 1, Bogle Direct, p. 2, lns. 1 – 10.

³³ *Tr. Hearing on Jurisdictional Issues*, pp. 49 – 61.

³⁴ Eastman Ex. 4, Bogle Rebuttal, p. 8, lns. 4 – 8.

³⁵ Eastman Ex. 4, Bogle Rebuttal, p. 8.

³⁶ Eastman Ex. 3, Mittler Direct, p. 10, lns. 6 – 7.

³⁷ *Id.* at p. 5, lns. 18 – 19.

³⁸ *Id.* at p. 2, lns. 6 – 11.

³⁹ Eastman Ex. 3, Mittler Direct, p. 9, lns. 5 – 14.

⁴⁰ *Id.* at p. 9, lns. 12 – 13.

⁴¹ *Id.* at p. 6, lns. 10 – 11.

⁴² *Id.* at p. 6, lns. 11 – 13.

the Longview plant to connect the pipeline to the existing distribution system at each end.⁴³ Eastman designed the pipeline as simply a conduit with terminals on both ends.⁴⁴ Consequently, Eastman asserted that it was designed to allow bidirectional flow.⁴⁵

Testimony proffered by Ms. Moore, on behalf of Westlake Pipeline, suggested that as originally designed the pipeline was not intended to be bidirectional. She and Mr. Lerman pointed out that there are currently three pipeline connections in Mont Belvieu. The Equistar connection was established first, when Eastman originally built the pipeline to move ethylene from Mont Belvieu to Longview. The Equistar connection is a unidirectional connection which means it can only deliver ethylene into the pipeline. She concurred, however, that the second connection, the Williams connection, established in 2001 had the ability to flow both ways. The Williams connection has compression facilities and appropriate metering equipment such that it has the ability to deliver ethylene into the pipeline for flow north. A third unidirectional connection was added in 2009 by Westlake Pipeline entitled the Flint Hills connection.⁴⁶

Eastman concurred that originally the pipeline did not include all of the facilities necessary to ship ethylene south from Longview to Mont Belvieu.⁴⁷ Accordingly, in 2002, Eastman constructed the "Williams Connection."⁴⁸ This connected Eastman's Mont Belvieu terminal to contracted storage owned by the Williams Company, the first fungible ethylene storage facility in Mont Belvieu.⁴⁹ In doing so, Eastman added the compression necessary to ship ethylene south to Mont Belvieu.⁵⁰ In fact, Eastman constructed the Williams Connection for two main reasons. First, they wanted to be able to sell surplus ethylene produced in Longview to customers on the Gulf Coast through the fungible storage system in Mont Belvieu.⁵¹ Second, they wanted to be able to keep the Eastman crackers operating when ethylene-consuming facilities in Longview were down for maintenance.⁵²

The Examiners find that as originally constructed, the pipeline was not intended to flow from Longview to Mont Belvieu. This is evident from the testimony of Mr. Bogle who unequivocally stated that Eastman "originally built the common carrier pipeline now known as the Westlake Pipeline for the purpose of transporting ethylene from Mont Belvieu to the Eastman plant in Longview."⁵³ It was nearly a two hundred mile pipe with no impediment to bidirectional flow. The original construction, however, did not include facilities that would permit flow from Longview to Mont Belvieu. As the requirements of Eastman changed over time, Eastman reconfigured the compression systems that control the flow on the pipeline. Thus, by 2002, the pipeline was configured to accommodate bidirectional flow between Longview and Mont Belvieu.

⁴³ *Id.* at p. 6, lns. 14 – 16.

⁴⁴ *Id.* at p. 10, lns. 12 – 13.

⁴⁵ *Id.* at p. 10, ln. 12.

⁴⁶ Westlake Ex. 59, Moore Direct, p. 4, lns. 1 – 16 & p. 5, lns. 5 – 6. & Westlake Ex. 60, Lerman Direct p. 7, ln. 18 – p. 8, ln. 8. All three connections are noted on the block diagram attached as Exhibit B.

⁴⁷ Eastman Ex. 3, Mittler Direct, p. 10, lns. 14 – 16.

⁴⁸ *Id.* at ps. 10 – 11, lns. 22 – 3.

⁴⁹ *Id.* at p. 11, lns. 1 – 4.

⁵⁰ Eastman Ex. 1, Bogle Direct, p. 4, lns. 6 – 8.

⁵¹ Eastman Ex. 3 Mittler Direct, p. 11, lns. 9 – 11.

⁵² *Id.* at p. 11, lns. 12 – 15.

⁵³ Eastman Ex. 1, Bogle Direct p. 4, lns. 3 – 5.

c. The 1997 Mustang Tariff

In 1997, Mustang Pipeline issued the original tariff for the pipeline (*1997 Mustang Tariff*).⁵⁴ Pursuant to the original *1997 Mustang Tariff*, the pipeline's origin and delivery points are defined separately.⁵⁵ Specifically, the origin points are the "Carrier's stations located at . . . Mont Belvieu, Texas."⁵⁶ Whereas, the delivery points are the "Carrier's stations in Gregg County, Texas, located adjacent to the Texas Eastman Division facility (Harrison County, Texas) of Eastman Chemical Company."⁵⁷ Thus, under the original tariff, the only available origin point was Mont Belvieu and the only available delivery point was Longview.⁵⁸ Additionally, unlike both the 2002 and 2013 tariffs, discussed below, the original tariff did not include a "Direction of Flow" section.⁵⁹ Consequently, the original tariff did not explicitly provide for backhaul services.⁶⁰ The movement of ethylene from Longview to Mont Belvieu is sometimes referred to as "backhaul" to distinguish that movement from the Mont Belvieu to Longview movements.⁶¹

Furthermore, in the original tariff, Mustang referred only to the transportation and not the exchange of ethylene in the heading and payment sections.⁶² Therefore, the original tariff also did not explicitly provide for exchange services.⁶³ The term "exchange" refers to a virtual exchange of product. Exchanges are a commercial arrangement in which two companies in different locations "swap" a fungible product in order to avoid physical movement of materials.⁶⁴

The parties do not appear to dispute that the first tariff published for the pipeline was not designed to offer backhaul or exchange service. There is no serious dispute that explicit language was not included addressing those services as the document itself does not address either service. Due to the legal effect of the tariff an omitted is a service that is not offered.

d. The 2002 Mustang Tariff

In 2002, after adding the compression necessary to backhaul ethylene, Eastman issued a new tariff for the pipeline (*2002 Mustang Tariff*).⁶⁵ It does not appear to be disputed that this tariff included explicit language regarding bidirectional service and exchange service. Contrary to the original tariff, the *2002 Mustang Tariff* did not define the pipeline's origin and delivery points separately.⁶⁶ Specifically, they were combined into a single term, "Origin/Delivery Point," which referred to both the "Carrier's station located at . . . Mont Belvieu, Texas," and the

⁵⁴ Hearing Transcript at p. 26, lns. 19 – 22.

⁵⁵ Westlake Pipeline Ex. 1, 1997 Tariff, p. 2.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Hearing Transcript at p. 27, lns. 3 – 7.

⁵⁹ Westlake Pipeline Ex. 1 (1997 Tariff) at p. 7; Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit B at p. 9; Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit C at p. 9.

⁶⁰ Hearing Transcript at p. 27, lns. 3 – 7.

⁶¹ Eastman Ex. 1, Bogle Direct, p. 4, lns. 18 – 21.

⁶² Westlake Pipeline Ex. 1, 1997 Tariff, p. 1, 5.

⁶³ Hearing Transcript at p. 27, lns. 8 – 11.

⁶⁴ Eastman Ex. 2, Intille Direct, p. 11, lns. 14 – 17.

⁶⁵ *Id.* at p. 59, lns. 12 – 22.

⁶⁶ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit B at p. 3.

“Carrier’s station in Gregg County, Texas, located adjacent to Texas Operations Eastman Chemical Company facility.”⁶⁷ Thus, under the *2002 Mustang Tariff*, both Mont Belvieu and Longview could be used as either the origin or the delivery point.⁶⁸ The definition went on to clarify, however, that the location chosen for the origin and delivery points depended upon which was more “practicable and consistent with the operations of the pipeline.”⁶⁹ Additionally, unlike the original *1997 Mustang Tariff*, the *2002 Mustang Tariff* contained a “Direction of Flow” section which stated that the “Carrier at its sole discretion will choose the direction of flow.”⁷⁰ However, the section went on to state that while the Carrier had this discretion, it would reasonably attempt to accommodate shippers through exchanges.⁷¹ Accordingly, the *2002 Mustang Tariff*, unlike the *1997 Mustang Tariff*, explicitly provided for backhaul services.⁷²

Furthermore, the *2002 Mustang Tariff*, referred to both the transportation and exchange of ethylene in the heading and payment sections.⁷³ Mustang Pipeline offered to reasonably attempt to accommodate shippers through exchanges when they were trying to go opposite the pipeline.⁷⁴ Accordingly, the *2002 Mustang Tariff*, unlike the *1997 Mustang Tariff*, also explicitly provided for exchange services.⁷⁵

e. Eastman Sale of Facilities to Westlake Chemical and Westlake Pipeline

On November 10, 2006, Eastman and Westlake Chemical entered into a sales agreement that included three components. First, the pipeline was sold to Westlake Pipeline. Second, certain facilities within Eastman’s plant in Longview were transferred to Westlake Longview. Third, Eastman Chemical and Westlake Longview entered into an ethylene sales agreement (ESA).

As to the pipeline assets, Mustang Pipeline entered into an agreement for the sale of the pipeline at issue with Westlake Pipeline.⁷⁶ Specifically, the agreement, referred to as the Pipeline Purchase Agreement (PPA), was a “component of the overall acquisition by Westlake Chemical Corporation of the polyethylene business from Eastman Chemical.”⁷⁷ The PPA essentially encompasses the pipeline conduit. Westlake Pipeline’s ownership of the pipeline at the southern end begins just outside the two meters belonging to Equistar and Williams and a check meter and pipeline belonging to Eastman. The pipeline extends from that ownership point at Mont Belvieu to a point that connects the Eastman plant to distribution facilities in Longview. The pipelines’ connection at Longview is on property that is owned by Eastman.⁷⁸ Mustang

⁶⁷ *Id.*

⁶⁸ Eastman Ex. 2 (Intille Direct) at p. 8, lns. 10 – 14.

⁶⁹ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit B at p. 3.

⁷⁰ *Id.* at p. 9.

⁷¹ *Id.*

⁷² Eastman Ex. 2, Intille Direct, p. 8, lns. 10 – 14.

⁷³ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit B at p. 2, 6.

⁷⁴ *Id.* at p. 9.

⁷⁵ Phase I Hearing, Tr. p. 176, lns. 6 – 10.

⁷⁶ Eastman Ex. 3, Mittler Direct, TJM-3 at p. 1.

⁷⁷ *Id.* at p. 14 lns. 23 – p. 15, ln. 2.

⁷⁸ Eastman Ex. 3, Mittler Direct, p. 15, lns. 6 – 14.

Pipeline continued to operate the pipeline for approximately six months after the sale.⁷⁹ Eventually, Buckeye, took over operation of the pipeline on behalf of Westlake Pipeline.

Pursuant to the PPA, two assets were transferred in the sale: (1) “the ten inch pipeline . . . and all other equipment primarily used in the operation of or constituting such pipeline,” and (2) “all rights of way, easements, privileges and grants . . . upon and under which Pipeline System[s] are now laid and installed.”⁸⁰ Specifically, PPA Exhibit A, which describes the physical components of the pipeline transferred in the sale, states that the change of ownership point is the trap located on each end of the pipeline conduit.⁸¹ Consequently, Westlake Pipeline did not acquire any terminals in the sale, because the pipeline conduit was essentially the only physical item transferred in the sale.⁸² Nor did Westlake Pipeline acquire any of the pipeline terminals.⁸³ Accordingly, the distribution systems used to move ethylene along the line were not transferred,⁸⁴ and Eastman Chemical continues to own and operate the piping, meters, compressors and controls that connect the pipeline to its Longview plant site.⁸⁵

As to other assets included in the sale, the overall sales agreement between Eastman and Westlake Chemical included the acquisition of three polyethylene units. Specifically, these units were acquired by Westlake Longview and the units are located within the Eastman’s plant in Longview.⁸⁶ These units are identified as PE-1, PE-2, and PE-3 and are illustrated on Exhibit B to this *Proposal for Decision*.⁸⁷

As part of the overall sale, on November 10, 2006, Eastman and Westlake Chemical Corporation entered into the ESA.⁸⁸ The ESA is a ninety-nine year ethylene contract that sets a market price using a pre-determined formula agreed to by both parties to the contract.⁸⁹ Notably, under the ESA, Eastman secured a guaranteed market for ethylene, and Westlake Longview secured an ethylene supplier.⁹⁰ The ESA also provided Eastman with the ability to exchange any excess ethylene that Westlake Longview did not purchase from Eastman.⁹¹ Those exchanges would occur exclusively through Westlake Longview.

f. The 2013 Westlake Pipeline Tariff

In 2013, Westlake Pipeline issued a new tariff for the pipeline (*2013 Westlake Pipeline Tariff*).⁹² Notably, unlike the *2002 Mustang Tariff* and similar to the original *1997 Mustang Tariff*, the *2013 Westlake Pipeline Tariff* defines the pipeline’s origin and delivery points separately.⁹³ Specifically, under the *2013 Westlake Pipeline Tariff*, the origin points are the

⁷⁹ *Id.* at p. 17, lns. 12 – 14.

⁸⁰ Eastman Ex. 3, Mittler Direct, TJM-3 at p. 1 – 2.

⁸¹ Eastman Ex. 3, Mittler Direct, p. 15, ln. 23 – 16, ln. 1.

⁸² *Id.* at p. 16, lns. 9 – 10.

⁸³ Eastman Ex. 3, Mittler Direct, p. 16, lns. 7 – 10.

⁸⁴ *Id.* at ps. 6 – 7, lns. 21 – 1.

⁸⁵ *Id.* at p. 18, lns. 12 – 14.

⁸⁶ Westlake Ex. 60, Lerman, p. 9, lns. 21 – 24 & Eastman Ex. 2, Intille Direct, p. 6, ln. 15

⁸⁷ Eastman Ex. 3, Mittler Direct, p. 8, lns. 15 – 17 & Block Diagram – Ethylene System Overview, Exhibit TJM-2.

⁸⁸ Eastman Ex. 1, Bogle Direct, p. 7, lns. 19 – 20.

⁸⁹ Phase I, Tr. p. 42, ln. 22 – 43, ln. 2.

⁹⁰ Westlake Pipeline Ex. 59, Moore Direct, p. 10, lns. 7 – 11.

⁹¹ Westlake Ex. 60, Lerman, p. 9, ln. 25 – p. 10, ln. 7.

⁹² *Id.* at p. 12, lns. 10 – 18.

⁹³ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit C at p. 3.

“Carrier’s stations located at . . . Mont Belvieu, Texas, . . . or such other points as the Carrier may designate from time to time.”⁹⁴ Whereas, the delivery point is the “Carrier’s station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), . . . or such other points as the Carrier may designate and publish from time to time.”⁹⁵ Thus, unless the carrier designates a new origin or delivery point, the only available origin point is Mont Belvieu and the only available delivery point is Longview.⁹⁶ Nevertheless, similar to the *2002 Mustang Tariff*, the *2013 Westlake Pipeline Tariff* contains a “Direction of Flow” section which states that the “Carrier at its sole discretion will choose the direction of flow.”⁹⁷ However, the *2013 Westlake Pipeline Tariff* ends there, and does not go on to state that the Carrier will reasonably attempt to accommodate exchanges if the shipper seeks to move from Longview to Mont Belvieu.⁹⁸ Consequently, there is a dispute between the parties as to whether the *2013 Westlake Pipeline Tariff* provides for backhaul services.⁹⁹

Furthermore, in the *2013 Westlake Pipeline Tariff*, similar to in the original *1997 Mustang Tariff*, Westlake Pipeline refers only to the transportation and not the exchange of ethylene in the heading and payment sections.¹⁰⁰ Moreover, as stated above, the *2013 Westlake Pipeline Tariff* does not claim that Westlake Pipeline will reasonably attempt to accommodate shippers through exchanges.¹⁰¹ Accordingly, the *2013 Westlake Pipeline Tariff*, similar to the original, plainly omits exchange services.¹⁰² This fact is not disputed.

g. Timeline of Key Event, Summary of Parties and Affiliates, and Tariff Summaries

Table 1 below sets forth a timeline with the key events discussed in this section of the *Proposal for Decision* related to the background of the case.

Table 1
Timeline of Key Events

1995	Eastman began planning the pipeline ¹⁰³
12/1996	Mustang Pipeline Company began construction on the pipeline. ¹⁰⁴
06/02/1997	Eastman issued the first Tariff (<i>1997 Mustang Tariff</i>) ¹⁰⁵
2002	Compression added to the pipeline system to enable backhaul ¹⁰⁶
07/24/2002	Mustang issued the second Tariff (<i>2002 Mustang Tariff</i>) ¹⁰⁷
10/06/2006	Westlake Chemical purchased the pipeline from Eastman ¹⁰⁸
2009	Flint Hills connection was added in Mont Belvieu. ¹⁰⁹
07/03/2013	Westlake Pipeline issued its first Tariff (<i>2013 Westlake Pipeline Tariff</i>) ¹¹⁰

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Eastman Ex. 2 (Intille Direct) at p. 8, Ins. 14 – 19.

⁹⁷ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit C at p. 9.

⁹⁸ *Id.* at p. 3.

⁹⁹ Eastman Ex. 2, Intille Direct, p. 8, Ins. 14 - 19; Westlake Pipeline Ex. 59 (Moore Direct) at p. 13, ln. 5.

¹⁰⁰ Westlake Pipeline Ex. 10 (Westlake Brief) Exhibit C at p. 2, 5 - 6.

¹⁰¹ *Id.* at p. 9.

¹⁰² Westlake Pipeline Ex. 59, Moore Direct, p. 13, Ins. 14 – 17.

¹⁰³ Eastman Ex. 2, Mittler Direct, p. 5, Ins. 18-19.

¹⁰⁴ Eastman Ex. 2, Mittler Direct, p. 5, ln. 19.

¹⁰⁵ Westlake Ex. 4, *1997 Mustang Tariff*.

¹⁰⁶ Eastman Ex. 2, Mittler Direct, p. 10, ln. 19 – p. 11, ln. 4.

¹⁰⁷ Eastman Ex. 2, Mittler Direct, Ex. MB -1, *2002 Mustang Tariff*.

¹⁰⁸ *Id.* at p. 6, ln. 18 – p. 7, ln. 2.

¹⁰⁹ Westlake Pipeline Ex. 59, Moore Direct, p. 4, Ins. 10 – 16.

Table 2 summarizes the key parties and corresponding affiliates that were introduced in this section.

Table 2
Summary of Parties and Affiliates

Party	Affiliate
Eastman	Mustang Pipeline Company – entity that constructed the pipeline and operated the pipeline from 1997 – 2007.
Westlake Pipeline	Westlake Chemical Corporation – Parent to Westlake Pipeline and Westlake Longview Westlake Longview – Affiliate of Westlake Pipeline and consumer of ethylene in Longview

Table 3 summarizes the status of services offered, as it relates to backhaul and exchange services, reflected in the three tariffs discussed in this section. The parties do not dispute that backhaul and exchange services were not referenced in the *1997 Mustang Tariff*. The parties do not dispute that backhaul and exchange services are specifically referenced in the *2002 Mustang Tariff*. The parties do not dispute that exchange service was not specifically referenced in the *2013 Westlake Pipeline Tariff*. The parties dispute whether backhaul service is somehow reflected in the *2013 Westlake Pipeline Tariff*.

Table 3
Summary of Services Referenced in Three Tariffs

Tariff/Service	1997 Mustang Tariff	2002 Mustang Tariff	2013 Westlake Pipeline Tariff
Backhaul	Not offered	Offered	Disputed
Exchange	Not offered	Offered	Offered

5. Eastman's Requirements for Moving Produced Ethylene

A factual dispute among the parties exists regarding Eastman's transportation and exchange requirements. Westlake Pipeline contends that Eastman does not have a substantial need for transportation from Longview to Mont Belvieu. Furthermore, Westlake Pipeline argues that any exchange requirements may be satisfied by engaging in exchanges with ethylene consumers in Longview. As set out below, the Examiners find that Eastman has established a demand for physical and virtual movement of ethylene to Longview.

a. Eastman's Position

Eastman currently produces about 1,400 million pounds of ethylene annually from its crackers at Longview.¹¹⁰ Eastman uses about 600 million pounds of ethylene annually at Longview, leaving about 800 million pounds of ethylene that must either be sold in Longview or transported to or exchanged at Mont Belvieu each year.¹¹² Thus, when the ethylene consumers in Longview have insufficient demand for all the ethylene, the ethylene not being consumed

¹¹⁰ Eastman Ex. 2, Mittler Direct, Ex. MB -2, *2013 Westlake Pipeline Tariff*.

¹¹¹ Eastman Ex. 4, Bogle Rebuttal, p. 8, Ins. 4 – 8.

¹¹² *Id.* at p. 8.

must have a way to leave Longview and go to Mont Belvieu.¹¹³ If Eastman cannot move ethylene to Mont Belvieu or exchange it at Mont Belvieu, then, aside from Westlake Longview, Eastman has no substantial market for its ethylene.¹¹⁴ If any of the Longview plants that use ethylene at Longview were to curtail ethylene purchases from Eastman, Eastman ethylene production would be shut-in in Longview.¹¹⁵ A small amount can move by truck or rail, but not nearly enough to accommodate the ethylene Eastman produces at Longview.¹¹⁶ Due to costs constraints movement by truck or rail is not feasible. The storage capacity is not sufficient for the ethylene produced in Longview. Furthermore, safety and maintenance issues may require the removal of ethylene from the Eastman site in Longview.¹¹⁷

b. Westlake Pipeline's Position

Westlake takes the position that Eastman does not require bidirectional service or exchanges. Ms. Moore noted that until 2014, Eastman had never requested exchange service under the tariff while Westlake Pipeline owned and operated the pipeline.¹¹⁸ In the time that Westlake Pipeline operated the system, backhaul service was only provided on three occasions during the following years: 2008, 2009, and 2013.¹¹⁹ Prior to Westlake Pipeline's operation of the system, Ms. Moore acknowledged transportation occurred from Longview to Mont Belvieu in 2007.¹²⁰

Mr. Lerman contended that part of the reason Eastman professed to have a need to engage in exchanges on the system was because Eastman has changed its business strategy. Mr. Lerman noted that in 2006 Eastman had planned a "staged phase-out" of its older Longview cracking units. In 2011, he noted, Eastman changed its plan for the cracking units in Longview and decided to restart a previously-idled cracking unit. He concluded that while Eastman's strategies have changed the operations of the pipeline remain constant. The pipeline transportation is almost exclusively northbound and Eastman has not requested exchange service pursuant to the tariff until this dispute arose.¹²¹ Westlake Pipeline takes the position that the exchange request was manufactured as part of this dispute.¹²²

c. Examiners' Findings

Eastman has demonstrated a physical necessity to move ethylene to Mont Belvieu. Mont Belvieu is the largest market for ethylene producers in the United States.¹²³ Pipeline transport is among the most important factors that determine regional prices, supply and demand.¹²⁴ It is

¹¹³ *Id.* at p. 5, lns. 8 – 10.

¹¹⁴ Eastman Ex. 1, Bogle Direct, p. 5, lns. 14 – 18.

¹¹⁵ Eastman Ex. 2, Intille Direct, p. 11, lns. 6 – 9 & p. 16, lns. 7 – 13,

¹¹⁶ Eastman Ex. 1, Bogle Direct, p. 5, lns. 18 – 19.

¹¹⁷ Eastman Ex. 2, Intille Direct, p. 15, ln. 11 – p. 16, ln. 14.

¹¹⁸ Westlake Ex. 59, Moore Direct, p. 3, lns. 7 – 8.

¹¹⁹ *Id.* at p. 6, lns. 8 – 16.

¹²⁰ *Id.* at p. 7, lns. 17 – 23.

¹²¹ Westlake Ex. 60, Lerman Direct, p. 19, ln. 1 – p. 22, ln. 7.

¹²² Post-Hearing Brief of Westlake, p. 9. ("In fact, until Eastman manufactured a reason to request an exchange in February 2014 (1) Eastman had never requested an exchange under any tariff in Texas and (2) no party had ever requested an exchange from Westlake Pipeline under any tariff.")

¹²³ Eastman Ex. 4, Bogle Rebuttal, p. 12.

¹²⁴ Eastman Ex. 2, Intille Direct, p. 2, lns. 12 – 14.

reasonable to conclude that the ethylene producers in Longview would require access to that market. Further, it is reasonable to conclude that ethylene consumers that engage in transactions in Mont Belvieu would desire access to ethylene produced in Longview.

The necessity for southbound flow predates the purchase of the system by Westlake Pipeline. Compression was added in 2002 to allow backhaul service and permit Eastman to sell surplus ethylene that it produced in Longview to customers on the Gulf Coast.¹²⁵ Westlake Pipeline conceded that ethylene was transported from Longview to Mont Belvieu on several occasions in the following years: 2007, 2008, 2009, and 2013. Additionally, Eastman provided testimony that backhaul service was provided in 2005 and 2006.¹²⁶

Additionally, Eastman has demonstrated a demand for exchanges. Indeed, Ms. Moore acknowledged that in the past several years, Eastman has exercised its exchange rights pursuant to the ESA with Westlake Longview on an almost monthly basis.¹²⁷ Those exchanges have not been accomplished with Westlake Pipeline. They have, however, been accomplished with Westlake Pipeline's affiliate Westlake Longview.¹²⁸ Regardless of the parties involved, Eastman has established that a market demand exists in Longview for exchange service.

6. Effect of the 2013 Westlake Tariff Regarding Bidirectional Service

Apart from the need to provide additional compression equipment, the parties agree that there are no mechanical impediments to moving ethylene in either direction, north to south or south to north, on the pipeline.

a. Mechanics and Risks of Backhaul Service

The direction of flow along a pipeline is a result of the pressure profile of the pipe.¹²⁹ It is undisputed that the pipeline in this case is able to flow north, Mont Belvieu to Longview, off of supply pressure.¹³⁰ In order to flow south, however, all parties agree that additional sources of compression must be engaged.¹³¹ Eastman takes the position that Westlake Pipeline may accomplish backhaul service relatively easily. Westlake countered that it does not own the compression equipment to accomplish the task and that it requires a significant operational effort to accomplish flows from Longview to Mont Belvieu. As set forth below, the Examiners find that backhaul service has been previously provided without significant disruption. Further, the lack of compression equipment is not an impediment if the shipper is required to provide delivery of the product to be shipped along with the necessary compression.

¹²⁵ Eastman Ex. 3, Mittler Direct, p. 11, lns. 6 – 15.

¹²⁶ Eastman Ex. 6, Mittler Rebuttal, p. 11, ln. 19 – p. 12, ln. 3.

¹²⁷ See also, Eastman Ex. 5, Intille Rebuttal, p. 15, ln. 14 – p. 17, ln. 2 & Exhibit GMR-R-2.

¹²⁸ Westlake Ex. 59, Moore Direct, p. 11, lns. 7 – 23.

¹²⁹ Eastman Ex. 3, Mittler Direct, p. 9, lns. 16 – p. 10, ln. 2.

¹³⁰ Westlake Ex. 59, Moore Direct, p. 6, lns. 1 – 7 & Eastman Ex. 3, Mittler Direct p. 10, lns. 14 – 16 (“[A]fter its initial construction [the pipeline] did not include all of the facilities need to send product from Longview south to Mont Belvieu.”)

¹³¹ *Id.* & Phase I Hr. Tr. p. 29, ln. 10 – 11.

i. *Eastman's Position*

Eastman maintains that reversing the flow in a pipeline is simply a matter of changing the pressure profile in a pipeline. There are compressors at either end of the pipeline that adjust the pressure in the pipeline. The pressure determines the direction of flow. Dr. Intille argued that this was a relatively simple task to accomplish for materials in gaseous form. Namely, he argued that a few valves are opened or closed and the compressor at the intake end is run harder.¹³² He argued that bidirectional flow and bidirectional operations are common in the gas pipeline industry.¹³³

ii. *Westlake Pipeline's Position*

Westlake Pipeline's key concern regarding backhaul service is that it does not own the compression facilities necessary to reverse the flow of product.¹³⁴ Ms. Moore explained that there are three pipeline connections in Mont Belvieu: Equistar, Williams, and Flint Hills.¹³⁵ The Williams connection is the only connection that has the equipment that can allow the pipeline to flow in both directions.¹³⁶ Ms. Moore contended that operational difficulties at the Williams connection precluded southbound deliveries for several years.¹³⁷ All compression in Longview is owned by Eastman which must be engaged to allow ethylene to flow south on the pipeline.¹³⁸

Mr. Lerman asserted that reversing the normal pressure profile of the pipeline was complicated because the ownership of compression equipment is necessary to accomplish that task. Physically reversing the pipeline flow requires the coordination and cooperation of at least three parties: the shipper, the operator of compression equipment owned by Eastman; the operator of equipment at the Williams connection; and Westlake Pipeline.¹³⁹ From Mr. Lerman's perspective reversing the flow on the pipeline may also impact a shipper's willingness to transport on a pipeline as flow reversals pose the risk of disrupting the shipper's transportation.¹⁴⁰ Furthermore, flow reversals may impact the transportation planning process of the pipeline owners.¹⁴¹ Finally, Mr. Lerman argues that operating and maintaining a pipeline that is unidirectional imposes a lesser burden on the pipeline operator than maintaining a bidirectional pipeline.¹⁴²

¹³² Eastman Ex. 2, Intille Direct, p. 9, lns. 12 – p. 10, lns. 12.

¹³³ *Id.* p. 10, lns. 13 – 14

¹³⁴ Phase I Hr. Tr. p. 29, ln. 22 – p. 31, ln. 6.

¹³⁵ Westlake Ex. 59, Moore Direct, p. 4, lns. 1 – 16; see PFD Exhibit B connections shown as Equistar, Lonestar (Williams), and Flint Hills.

¹³⁶ *Id.* at p. 4, lns. 18 – 10 & p. 5, lns. 4 – 7.

¹³⁷ *Id.* at p. 6, ln. 8 – p. 7, ln. 7.

¹³⁸ *Id.* at p. 5, lns. 17 – 20; see PFD Exhibit B, “[t]he compressor shown on the exhibit as ‘Compr602’ is the compressor that is used to move the ethylene from Longview to Mont Belvieu” Eastman Ex. 4, Bogle Rebuttal, p. 10, lns. 16 – 19.

¹³⁹ Westlake Ex. 60, Lerman Direct, p. 22, lns. 12 – 20.

¹⁴⁰ *Id.* at p. 23, lns. 15 – 19.

¹⁴¹ *Id.* at p. 23, ln. 20 – p. 24, ln. 13.

¹⁴² *Id.* at p. 24, ln. 14 – p. 26, ln. 3.

iii. *Examiners' Finding*

The Examiners find that Eastman has established that backhaul service is physically possible. First, Eastman configured the pipeline system to allow backhaul service in 2002.¹⁴³ Second, there was southward flow in 2005, 2006, and 2007, when Mustang operated the pipeline system.¹⁴⁴ Third, Westlake Pipeline acknowledged that in 2008 more than 15 million pounds was shipped from north to south.¹⁴⁵ Additional backhaul service was provided in 2009 and 2013. Thus, there is ample evidence to establish that backhaul may be accomplished to the extent that the shipper provides the operational compression necessary to accomplish the southward flow.

b. *Whether Bidirectional Service was Terminated*

Eastman contends that backhaul service was eliminated by the *2013 Westlake Pipeline Tariff*. Westlake Pipeline responded that the essential bidirectional nature of the pipeline was not eliminated in the *2013 Westlake Pipeline Tariff* and the ability to deliver product from Longview to Mont Belvieu is still reflected in that tariff. As set forth below, the Examiners find that the revised tariff removed backhaul service. Namely, the language that explicitly provided for that service was eliminated.

i. *Eastman's Position*

Eastman argues that Westlake Pipeline eliminated backhaul service from the pipeline when they altered the origin and delivery point definitions in the *2013 Westlake Pipeline Tariff*.¹⁴⁶ The result asserted is that it eliminated transportation on the pipeline from north to south, Longview to Mont Belvieu.¹⁴⁷ Specifically, under the *2013 Westlake Pipeline Tariff*, the only origin point is Mont Belvieu and the only delivery point is Longview; whereas, under the *2002 Mustang Tariff*, both Mont Belvieu and Longview are referred to as origin and delivery points.¹⁴⁸ Consequently, Eastman is of the opinion that the pipeline only transports ethylene from Mont Belvieu to Longview.

In response to arguments raised by Westlake Pipeline, Eastman argues that Westlake Pipeline was incorrect for three reasons. First, while the *2013 Westlake Pipeline Tariff* provides the carrier the right to designate new origin and delivery points, it does not grant the shipper an enforceable right to move ethylene from Longview to Mont Belvieu.¹⁴⁹ Second, any arguments based upon the *1997 Mustang Tariff* are irrelevant because the compression equipment necessary to backhaul ethylene was not installed until 2002.¹⁵⁰ Furthermore, as soon as the equipment was installed, Eastman issued a new tariff that provided backhaul services.¹⁵¹ Third, the caveat from the *2002 Mustang Tariff*, "when such point of delivery/origin is practicable and consistent with the operation of the pipeline," does not change the fact that Longview is no longer listed as an

¹⁴³ Eastman Ex. 3, Mittler Direct, p. 10, ln. 19 – p. 11, ln. 4

¹⁴⁴ Eastman Ex. 5, Intille Rebuttal, p. 5, ln. 12 – p. 6, ln. 2 & Eastman Ex. 6, Mittler Rebuttal, p. 11, ln. 19 – p. 12, ln. 3.

¹⁴⁵ Westlake Ex. 59, Moore Direct, p. 6, lns. 10 -11 Eastman Ex. 5, Intille Rebuttal, p. 5, lns. 17 – 19.

¹⁴⁶ Eastman Ex. 2, Intille Direct, p. 8, lns. 7 – 19.

¹⁴⁷ Id.

¹⁴⁸ Id.

¹⁴⁹ Eastman Ex. 5, Intille Rebuttal, p. 11, lns. 9 – 11.

¹⁵⁰ Phase I, Tr., p. 59, lns. 12 – 22.

¹⁵¹ Id.

origin point and Mont Belvieu is no longer listed as a delivery point.¹⁵² Specifically, “delivery to Mont Belvieu is in fact ‘practicable and consistent’ as shown by the history of Longview to Mont Belvieu ethylene flows.”¹⁵³ Moreover, according to Eastman, it is “preposterous” to claim that the “Direction of Flow” section did not change between the *2002 Mustang Tariff* and *2013 Westlake Pipeline Tariff*, because Westlake Pipeline deleted approximately two-thirds of the language from that section.¹⁵⁴ Namely, the language deleted states that if the “[p]ipeline cannot make backhauls, it will facilitate the shipper’s desired outcome by facilitating an exchange.”¹⁵⁵ Consequently, by omitting this language “Westlake Pipeline makes clear not only that it will not provide backhauls unless at its sole discretion it chooses to do so, it will also not assist shippers when those backhauls are unavailable.”¹⁵⁶ Accordingly, Eastman believes that the *2013 Westlake Pipeline Tariff* does not provide for backhauls.¹⁵⁷

ii. Westlake’s Position

By contrast, Westlake Pipeline argues that the changes to the origin and delivery point definitions in the *2013 Westlake Pipeline Tariff* did not eliminate backhaul services for three reasons. First, Westlake Pipeline only changed the language to clarify the pipeline’s origin and delivery points, not to eliminate backhaul service.¹⁵⁸ Second, both definitions from the *2013 Westlake Pipeline Tariff* go on to say “or such other points as the Carrier may designate and publish from time to time.”¹⁵⁹ Consequently, Westlake Pipeline can designate locations not listed in the tariff as origin and delivery points.¹⁶⁰ Third, Westlake Pipeline asserts that the *2013 Westlake Pipeline Tariff* is consistent with both the *1997 Mustang Tariff* and the *2002 Mustang Tariff*.¹⁶¹ Notably, the *1997 Mustang Tariff* “only listed Longview as a delivery point and Mont Belvieu as an origin point.”¹⁶² And the *2002 Mustang Tariff* “listed Longview and Mont Belvieu as both origin and delivery points, but subject to the caveat, ‘when such point of delivery/origin is practicable and consistent with the operations of the pipeline.’”¹⁶³ Moreover, Westlake Pipeline argued that the “Direction of Flow” section in the *2013 Westlake Pipeline Tariff* used approximately the same language as the *2002 Mustang Tariff*, and both tariffs gave the carrier the sole discretion to choose the direction of flow.¹⁶⁴ Accordingly, Westlake Pipeline believes that the *2013 Westlake Pipeline Tariff* continues to provide backhaul service.¹⁶⁵

iii. Examiners’ Findings

The Examiners find that the specific language regarding backhaul service was removed from the *2002 Mustang Tariff* and not included in the *2013 Westlake Pipeline Tariff*. It is incongruous for Westlake Pipeline to argue that the changed language had no effect. If this

¹⁵² Eastman Ex. 5, Intille Rebuttal, p. 11, Ins. 1 – 4.

¹⁵³ *Id.* at p. 11, Ins. 4 – 8.

¹⁵⁴ *Id.* at p. 12, Ins. 7 – 9.

¹⁵⁵ *Id.* at p. 13, Ins. 4 – 7.

¹⁵⁶ *Id.* at p. 13, Ins. 7 – 10.

¹⁵⁷ Eastman Ex. 1, Bogle Direct, p. 5, Ins. 8 – 11.

¹⁵⁸ Westlake Pipeline Ex. 59, Moore Direct, p. 13, Ins. 9 – 13.

¹⁵⁹ *Id.* at p. 13, Ins. 5 – 8.

¹⁶⁰ *Id.*

¹⁶¹ Westlake Pipeline Ex. 60, Lerman Direct, p. 15, ln. 20 – p. 16, ln. 5.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at p. 14, Ins. 2 – 8.

¹⁶⁵ Westlake Pipeline Ex. 59, Moore Direct, p. 13, ln. 5.

position is correct, then reincorporating the language has no effect. Yet, Westlake Pipeline has vigorously litigated against this result. A comparison of the two tariffs reflects the changed language. The *2002 Mustang Tariff* reflected that Mont Belvieu was both an origin and delivery point. Similarly, the *2002 Mustang Tariff* reflected that Longview was both an origin and delivery point. The *2013 Westlake Pipeline Tariff* altered those provisions and designated Mont Belvieu as the origin point and Longview as the delivery point. The removal of those terms eliminated backhaul service from the list of services offered by Westlake Pipeline. As noted a side-by-side comparison of the *2002 Mustang Tariff* and the *2013 Westlake Pipeline Tariff* is attached as Exhibit C to this *Proposal for Decision*.

7. Effect of the 2013 Westlake Tariff Regarding Exchanges

All parties agree that exchanges are a commercial arrangement in which two companies in different locations trade like materials in order to avoid physical movement of the material.¹⁶⁶ There does not appear to be any dispute that an exchange must take place along a particular pipeline.¹⁶⁷ In other words, an exchange may occur without a pipeline. The parties also agree that all references to exchanges in the *2002 Mustang Tariff* were removed and have not been included in the *2013 Westlake Pipeline Tariff*.

a. Mechanics and Risks of an Exchange

The parties do not appear to dispute the particular mechanics of an exchange. The parties dispute centers around the risk associated with a pipeline acting as a facilitator to the exchange.

i. Eastman's Position

Eastman contended that exchanges are common in the pipeline business.¹⁶⁸ Mr. Bogle and Mr. Intille each provide hypothetical examples of an exchange.¹⁶⁹ Mr. Bogle described the process as follows. Westlake Longview would order a volume, for example 8,000,000 pounds of ethylene, to be delivered into Westlake Pipeline at Mont Belvieu and redelivered at Longview. To the extent contemplated by the applicable tariff, Eastman might exercise the exchange for 4,000,000 pounds. Westlake Pipeline would take 4,000,000 pounds into its pipeline at Mont Belvieu and transport it to Longview. The other 4,000,000 pounds would be turned over to Eastman at Mont Belvieu. Eastman in turn would turn over 4,000,000 pounds to Westlake Pipeline at Longview and Westlake Pipeline would deliver 4,000,000 pounds along the pipeline. Thus, Westlake Pipeline would have supplied 8,000,000 pounds to Westlake Longview. Eastman would have 4,000,000 to market or trade at Mont Belvieu. The result is that Westlake Longview receives ethylene at Longview that it required in its facilities there. Eastman would compensate Westlake Pipeline the tariffed rate for the exchange.¹⁷⁰ In Mr. Bogle's view, Westlake Longview is not disadvantaged by this process as it receives the product it requires.¹⁷¹ In response to arguments raised by Westlake, Eastman contends that the risks to Westlake Pipeline may be mitigated through the tariff terms. Furthermore, Eastman is of the opinion that

¹⁶⁶ Eastman Ex. 2, Intille Direct, p. 11, Ins. 14 -16; Westlake Ex. 60, Lerman Direct, p. 25, Ins. 9 - 11.

¹⁶⁷ Westlake Ex. 60, Lerman Direct, p. 25, Ins. 11 - 14; Hearing on Jurisdictional Issues, Tr. p. 13, Ins. 8 - 10.

¹⁶⁸ Eastman Ex. 1, Bogle Direct, p. 15, Ins. 1 - 6.

¹⁶⁹ *Id.* at p. 11 - 12; Eastman Ex. 2, Intille Direct, pp. 11 - 13; and Eastman Ex. 5, Intille Rebuttal, pp. 17 - 19.

¹⁷⁰ Eastman Ex. 1, Bogle Direct, p. 11, ln. 20 - p. 12, ln. 11 & Intille Rebuttal, p. 17, ln. 4 - p. 19, ln. 12.

¹⁷¹ *Id.* at p. 13, ln. 1 - p. 14, ln. 11.

Westlake Pipeline should, in fact, hold title to a certain amount of ethylene as part of its pipeline operations.¹⁷²

ii. Westlake's Position

Westlake Pipeline does not challenge the basic mechanics of an exchange. Westlake Pipeline argues that Eastman fails to consider the risks associated with engaging in exchanges. Risks, that in Westlake Pipeline's view, would deter a pipeline from participating in exchanges. First, Ms. Moore contended that without its own ethylene supply Westlake Pipeline is unable to engage in exchanges.¹⁷³ Second, Mr. Lerman explained that there is a certain amount of risk associated with exchanges. Namely, if a pipeline owner is forced to function as an intermediary or a market maker in an exchange between one or more counterparties, where the pipeline owner does not have title to any material, the pipeline owner faces additional financial risk if counterparty does not perform as expected.¹⁷⁴ Ms. Moore concurred and noted that Westlake Pipeline is not interested in undertaking that risk.¹⁷⁵

iii. Examiner's Findings

Aside from assertions made by Eastman's witnesses no evidence was submitted that common carrier pipelines routinely engage in exchanges. The assertions were rebutted by Westlake Pipeline's expert witness. Approximately twenty sample tariffs were reviewed by the expert witnesses and discussed at the hearing. Except for the *2002 Mustang Tariff* no sample tariff was presented that explicitly included language authorizing exchanges. As required by law, a common carrier tariff must reflect the services offered. In as much as the sample tariffs reflect the services offered by a common carrier, those tariffs do not support the assertion that pipeline exchanges among common carriers are a customary industry practice.

The Examiners find, however, that there is no structural or other physical impediment for a pipeline to provide exchange service. Any risks associated with exchange service, based upon a third party's failure to perform in an exchange transaction, may be mitigated by appropriate language in the tariff. The *2002 Mustang Pipeline Tariff* contained language that protected the pipeline operator. That same language was included in the *2013 Westlake Pipeline Tariff*. The language in Paragraphs 13 and 16 of the two tariffs protect the pipeline operator. Paragraph 13 provides language that indemnifies the pipeline operator. Paragraph 16 imposes an imbalance charge on the shipper.¹⁷⁶

In order to remove any lingering concern of Westlake Pipeline that it is not sufficiently protected by the existing tariff language, Eastman suggested adding additional language. Such language may provide additional clarification in the tariff. Westlake Pipeline may include the following additional language:

¹⁷² Eastman Ex. 2, Intille Direct, p. 17, lns. 1 – 10.

¹⁷³ Westlake Ex. 59, Moore Direct, p. 11, lns. 21 – 23.

¹⁷⁴ Westlake Ex. 60, Lerman Direct, p. 23, ln. 8 – 11; p. 25, ln. 7 – p. 26, ln. 11.

¹⁷⁵ Westlake Ex. 59, Moore Direct, p. 13, lns. 18 – 21.

¹⁷⁶ A pipeline imbalance is a discrepancy between a pipeline operator's receipts and deliveries for a shipper. For example, more gas is taken out of the pipeline than is put in, or vice versa.

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes to the common stream out of which deliveries are made to Pipeline Customers.¹⁷⁷

The proposed language provides additional protection in the context of exchange and backhaul services.

The Examiners recognize that a certain amount of product must remain in the pipeline to ensure proper operating pressure. This is sometimes referred to as line pack. No evidence has been presented that exchanges threaten the operational integrity of the system based upon an exchange's impact on line pack. To the extent this occurs, Westlake Pipeline is not precluded from seeking additional modifications to the tariff.

b. Whether Exchange Service was Required from Westlake Pipeline

As noted above, the parties do not dispute whether references to the exchange service have been removed and is not reflected in the *2013 Westlake Pipeline Tariff*. In this context, the dispute centers on three points. The first point is whether Eastman has a demand for exchange service and the issue was addressed in Section 5, above. The second point is whether there is a necessity for Eastman to engage in exchanges with Westlake Pipeline. That issue is addressed here. The third point is whether there is a regulatory basis for requiring Westlake Pipeline to maintain exchange service in its tariff. That issue is addressed in Section 8, below.

i. Eastman's Position

Simply stated, Eastman's position is that without exchanges involving Westlake Pipeline, Eastman's only avenue to an alternative market, via an exchange, is through Westlake Pipeline's affiliate Westlake Chemical:

While that affiliate might be an acceptable business partner to Eastman some of the time, or even most of the time, when Eastman does not sell or exchange its ethylene with the Pipeline's affiliate, it must use the Pipeline backhaul or exchange mechanism in order to use its ethylene in another location. While Westlake Pipeline may think that its affiliated chemical company is the only market Eastman needs, it is Eastman's position that a common carrier pipeline cannot be used to manipulate an independent market participant to doing business solely with the pipeline's affiliate.¹⁷⁸

This assertion is repeated throughout Eastman's testimony and in the *Post-Hearing Brief of Eastman Chemical Company*.¹⁷⁹

ii. Westlake's Position

While Eastman's affiliate, Mustang Pipeline, operated the pipeline, from 1997 to 2006, no exchanges were ever made.¹⁸⁰ A point conceded by Eastman.¹⁸¹ No exchanges were made

¹⁷⁷ *Post-Hearing Brief of Eastman Chemical Company*, p. 26.

¹⁷⁸ Eastman Ex. 4, Bogle Rebuttal, p. 2, Ins. 11 – 20.

¹⁷⁹ *Id.* at p. 7, Ins. 11 – 15; p. 9, Ins. 3 – 4; p. 14, Ins. 10 – 22; p. 15, ln. 19 – p. 16, ln. 15; Eastman Ex. 5, Intille Rebuttal, p. 16, Ins. 7 – 15; and, *Post-Hearing Brief of Eastman Chemical*, pp. 16 – 22.

¹⁸⁰ Westlake Ex. 60, Lerman Direct, p. 10, Ins. 13 – 15.

¹⁸¹ Phase I Hrg., Tr. p. 28, Ins. 6 – 8.

with Westlake Pipeline from 2006 to February of 2014.¹⁸² Westlake Pipeline explained that Eastman has been able to engage in exchanges with Westlake Longview. In fact, Ms. Moore noted that Eastman has exercised its exchange rights pursuant to the ESA almost monthly in recent years.¹⁸³

iii. Examiners' Findings

The Examiners find that due to the unique circumstances of the ethylene market in Longview, without an exchange provision in the applicable pipeline tariff the only alternative for Eastman is to engage in exchanges with the pipeline operator's affiliate, Westlake Longview. Eastman's ability to dictate the terms of the exchange are limited under those circumstances. On the other hand, if exchange service is restored to the pipeline, and if Eastman is willing to pay the transportation charges, Eastman may engage in exchanges with market participants in Mont Belvieu.

8. Discriminatory Effect of Failure to Provide Backhaul or Exchange Services.

As stated in its original complaint filed by Eastman, Eastman takes the position that the tariff changes eliminate the ability of Eastman to engage in the sale or transportation of produced ethylene with anyone other than a Westlake Pipeline affiliate. Eastman asserted that those changes are discriminatory and unreasonably preferential to Westlake Pipeline affiliates.¹⁸⁴ The arguments related to discrimination are, of course, related to the above analyzed facts and are primarily legal arguments applied to those specific facts. Although the witnesses submitted testimony regarding the legal position of the parties, the parties legal position related to discrimination were set out in the pleadings, arguments of counsel and closing briefs.

i. Eastman's Position

Eastman asserted in its closing brief that prohibitions related to discrimination, as related to a common carrier pipeline, are set out in the common law and reflected in the Texas Natural Resources Code and referred to various provisions of that code including §§ 111.015, 111.016 and 111.025. Eastman also referred to the general policy of the Commission to protect shippers from discrimination. This policy is reflected in 16 *TEX. ADMIN. CODE* § 7.7001 which sets out a *Code of Conduct* applicable to natural gas pipelines. Eastman also argued that prohibitions related to discrimination may be found in the Public Utility Regulatory Act (PURA)¹⁸⁵ and in the regulations of the Federal Energy Regulatory Commission (FERC).¹⁸⁶

Eastman noted that the term "discrimination" is not defined in the Natural Resources Code. Eastman relied on a definition of the term found in Black's Law Dictionary and argued that the term may be defined as "a breach of the carrier's duty to treat all shippers alike and

¹⁸² Westlake Ex. 60, Lerman Direct, p. 10, Ins. 15 – 17.

¹⁸³ Westlake Ex. 59, Moore Direct, p. 11, Ins. 7 – 14.

¹⁸⁴ Complaint File No. 2013-084, Complaint filed by James E. Mann, on behalf of Eastman Chemical Company against Westlake Ethylene Pipeline Corporation Regarding Westlake Pipeline's discriminatory and illegal tariff change. Letter dated July 29, 2013, p. 4.

¹⁸⁵ TEX. UTIL. CODE ANN. § 39.157.

¹⁸⁶ See, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, FERC Stats. & Regs. ¶ 30,820 at 31,127 (1988), order on reh'g., Order No. 497-A, FERC Stats. & Regs. ¶ 30,868, (1989).

afford them equal opportunity to market their product.”¹⁸⁷ Eastman augmented that definition by arguing that providing one shipper an unreasonable preference or advantage is equivalent to discrimination.¹⁸⁸

In support of its position that discrimination may include a situation where a shipper abuses its monopoly power to grant a preference or advantage to its affiliate or another shipper Eastman also referred to the Commission’s comments in adopting the *Code of Conduct* applicable to natural gas carriers:

[T]his standard, along with the definition of the term ‘preference,’ which includes the dissemination or providing of information, is intended, in part, to prohibit favoring an affiliate in the availability of information that results in a preference in the provision of transportation services.¹⁸⁹

The term “preference” in the *Code of Conduct* is defined as “[a]ny material difference in rates, service, rules and regulations, conditions of service, or the dissemination or providing of service, or the dissemination or providing of information concerning transportation services which unreasonably advantages or favors similarly-situated shippers.”¹⁹⁰ Eastman also refers to the Commission’s decision in *CIMA Energy, Ltd* wherein the Commission held that preferential treatment of a pipeline’s affiliate is discrimination.¹⁹¹ Eastman also cited to a series of cases wherein the FERC opined that the potential for abuse and discrimination exists where there are dealings involving affiliated companies.¹⁹²

As summarized by Mr. Intille, Eastman’s expert witness, a major objective of common carrier regulations regarding fair and open access is the prevention of predatory anti-competitive exploitation. Discriminatory practices that create unfair advantage to the pipeline or its affiliate are not in the public’s interest. Elimination of the previously allowed bidirectional transport and exchanges places severe restrictions on Eastman’s ability to market its product by stranding product at Eastman’s Longview location where potential customers are limited.¹⁹³

Applying this view of the legal standard to the facts of this case Eastman concluded that the elimination of Eastman’s ability to access Mont Belvieu through backhauls and exchanges on the pipeline discriminates against Eastman in two different ways. First, the pipeline owned by Westlake Pipeline is being used to protect the affiliated shipper’s business interest at the expense of Eastman’s interests. All exchange transactions must be accomplished through Westlake

¹⁸⁷ *Post-Hearing Brief of Eastman Chemical Company*, p. 12, fn. 50. (Eastman cites to Black’s Law Dictionary, 6th Ed. West 1990).

¹⁸⁸ *Id.* at fn. 51, citing *Ft. Worth & D.C. Ry. Co. v. Frazier*, 191 S.W. 808 at 811-12 (Tex. Civ. App.-Fort Worth Dec 09, 1916) (explain that “unreasonable preferences or advantages and unreasonable discrimination are used interchangeably as having the same meaning”).

¹⁸⁹ 22 Tex. Reg. 8617, 8618 (1997).

¹⁹⁰ 16 TEX. ADMIN. CODE § 7.115(28).

¹⁹¹ *Complaint Filed by CIMA Energy, Ltd. Against TEPPCO Crude Oil Pipeline, L.P. and Request for Order Granting Access to Transport Crude Oil, Gas Utilities Docket No. 9684*, Final Order (May 15, 2007). Note that after the respondent, TEPPCO, filed a timely motion for rehearing in this case, the parties settled the complaint and jointly moved to dismiss the complaint. The Commission issued an Order of Dismissal on Oct. 9, 2007.

¹⁹² *Tenneco Oil Co., et al.*, 37 FERC ¶ 61,352 (Dec. 29, 1986); *Tenngasco Corp. & Tenngasco Exch. Corp.*, 36 FERC ¶ 61,279 (Sept. 11, 1986); *United Gas Pipeline Co.*, 36 FERC ¶ 61,368 (Sept. 11, 1996).

¹⁹³ *Eastman Ex. 2*, Intille Direct, p. 17, Ins. 12 – 23.

Pipeline's affiliated shipper. Second, Westlake Pipeline's affiliate, Westlake Longview, an ethylene consumer, can use the pipeline to access the market at Mont Belvieu for its ethylene supply requirements, but Eastman and other ethylene producers at Longview are not able to access the market at Mont Belvieu for their needs.¹⁹⁴

ii. Westlake's Position

Westlake Pipeline argued that the entire complaint is based upon § 111.016's general prohibition against discrimination. Section 111.016 provides as follows:

A common carrier in its operations as a common carrier shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances.¹⁹⁵

Westlake Pipeline opines that discrimination requires disparate treatment between parties.¹⁹⁶ Thus, Westlake Pipeline asserts that where all shippers are treated exactly the same there is no discrimination. Citing well settled law, Westlake Pipeline pointed out that even disparate treatment is permitted if there is a legitimate basis of the difference.¹⁹⁷

Westlake Pipeline also argued that Texas law provides that as against a charge of unjust discrimination in a particular order or rate, it is clearly permissible for the Commission to negate such charge by showing that the challenged rate was in accord with other rates, conclusively presumed to be valid.¹⁹⁸

Applying the discrimination standard articulated by Westlake Pipeline to the facts of this case Westlake Pipeline argued that to establish discrimination Eastman must establish; (1) that Westlake Pipeline offers another shipper different facilities, services or rates than it offers Eastman; and (2) that any unequal treatment was not justified by different circumstances. Westlake Pipeline concludes that Eastman has been unable to establish that the pipeline operator offers another shipper different facilities, services, or rates. First, the tariff changes did not substantively alter the terms for providing bidirectional service. Second, Westlake Pipeline argues that until Eastman "manufactured," a reason to request an exchange in February 2014, Westlake Pipeline never offered exchange service to any party.

Westlake Pipeline explained that, independent of the discrimination claim asserted by Eastman, there is no regulatory requirement to provide the demanded services. Westlake Pipeline specifically pointed out that there is no regulatory requirement that a pipeline offer bidirectional flow and there is no requirement that a pipeline offer exchanges. Westlake Pipeline noted that, absent discrimination and absent specific regulatory requirements to provide the services demanded, common carriers will not know which rules apply to them. Westlake Pipeline concludes that Eastman's requested relief subjects every common carrier to an *ad hoc* test; it ignores the plain requirements of the Texas Natural Resources Code, and replaces them

¹⁹⁴ Post-Hearing Brief of Eastman Chemical Company, p. 11.

¹⁹⁵ Tex. Nat. Res. Code Ann. § 111.016.

¹⁹⁶ Post-Hearing Brief of Westlake Pipeline, p. 14.

¹⁹⁷ *City of Plano v. P.U.C.*, 953 S.W.2d 416, 422 (Tex. App. – Austin 1997, no pet.).

¹⁹⁸ *Southwest Stone Co. v. R.R. Comm'n of Tex.*, 184 S.W.2d 691, 695 (Tex. Civ. App. – Austin 1944, writ ref'd. w.o.m.).

with an unworkable, ill-defined, and *ad hoc* test that allows any shipper to haul any common carrier in front of the Commission at any time without any clear basis in law.

iii. Amicus Letters

Three entities filed *amicus* letters while this case was pending: Kinder Morgan Energy Partners, L.P. (KMEP), Williams Companies, Inc. (Williams), and Seminole Pipeline Company LLC (Seminole). Each argue that Eastman seeks to impose duties upon Westlake Pipeline that exceed the duties imposed by applicable statutes, regulations, and case law. All three contend that Eastman seeks to compel a common carrier to provide services it is not willing, or able, to provide.

KMEP and Seminole also assert that Eastman's position as to the doctrine of discrimination improperly expands that doctrine. As summarized by those entities, the doctrine of discrimination has always precluded common carrier pipeline operators from offering services and prices to one shipper and at the same time refusing to offer those same services and prices to another similarly-situated shipper. They note that disparate treatment has always been a necessary ground for a discrimination claim. They emphasize, however, that disparate treatment may be insufficient to establish discrimination as disparate treatment may be allowed if a reasonable justification exists for such disparate treatment.

In response to these letters Eastman argues that Eastman has not taken the position that there is a general obligation to provide backhaul and exchange services. Eastman maintains that under the specific facts of this case, however, Westlake Pipeline has violated a long-standing statutory prohibit against discrimination by abandoning backhaul and exchange services that were previously available. Eastman maintains that it merely seeks to re-establish a service that was offered pursuant to the preexisting tariffs applicable to this pipeline.

iv. Examiners' Findings

It is axiomatic that a common carrier pipeline operator may not discriminate among shippers. The parties correctly note that the term "discrimination" is not defined. Nevertheless, it is well settled that discrimination requires disparate treatment among similarly-situated shippers. Courts have also found discrimination where an unreasonable preference or advantage is granted to one shipper over another. As explained by the court in *Ft. Worth & D.C. Ry. Co. v. Frazier*, *Ft. Worth & D.C. Ry. Co. v. Frazier*, in the context of that opinion, "unreasonable preferences or advantages and unreasonable discrimination are used interchangeably as having the same meaning."¹⁹⁹

Section 111.014 requires that common carriers make and publish their tariffs under rules prescribed by the Commission. As noted above, regulated entities may not charge rates or provide services other than those properly filed with the appropriate regulatory authority. Furthermore, a common carrier's obligations to its customers cannot exceed its duties under a filed tariff. Filed tariffs govern the relationship of the common carrier with its customers.

¹⁹⁹ *Ft. Worth & D.C. Ry. Co. v. Frazier*, at 811 – 812.

Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly filed tariffs.²⁰⁰

Eastman, Westlake Longview, and Westlake Longview's ethylene suppliers (other than Eastman), are potential shippers on the pipeline operated by Westlake Pipeline. Eastman and Westlake Longview are located in Longview. Eastman and Westlake Longview each require movement of ethylene. Eastman and Westlake Longview require access to the ethylene market in Mont Belvieu and the ethylene market in Longview. They are, therefore, similarly-situated shippers. The only difference is the direction of service: Eastman requires deliveries from Longview to Mont Belvieu and Westlake Longview requires deliveries from Mont Belvieu to Longview.

The proposed tariff changes in the *2013 Westlake Pipeline Tariff* related to backhauling physically shuts Eastman out of the pipeline. Mont Belvieu may no longer be designated as an "Origin Point" and Longview may no longer be designated as a "Delivery Point." Because of the operation of the filed tariff, Eastman would be unable to enforce its right to treat those points as Origin and Delivery points. The legal effect of the revised tariff is to deny Eastman access to the physical services of the pipeline. On the other hand, Westlake Longview will continue to have access to the pipeline. Westlake Pipeline has offered no reasonable basis for the disparate treatment as regards to physical deliveries on the pipeline. The disparate treatment that would result from the proposed tariff changes as related to backhauling would be discriminatory.

Additionally, the *2013 Westlake Pipeline Tariff* reduces the value of an investment Eastman made while Mustang operated the pipeline. Eastman added the Williams Connection in 2002. That connection was specifically designed to take advantage of southbound deliveries of ethylene. The termination of backhaul service not only shuts Eastman out of the pipeline but reduces the value of an investment Eastman made while backhaul service was offered on the same pipeline.

The proposed tariff change in the *2013 Westlake Pipeline Tariff* related to exchanges eliminates a pre-existing service offered by the pipeline operator. Once that service is eliminated, Eastman must engage in exchanges with Westlake Longview, an affiliate of the pipeline operator. The removal of exchange service further limits Eastman's access to the Mont Belvieu market through the pipeline. The elimination of an existing service by the common carrier provides an unreasonable preference in favor of Westlake Longview.

In briefing, Eastman suggested that § 111.025, which relates to abandoning connections, applies in this case.²⁰¹ The Commission's previous jurisdictional determination in this case holds that all obligations of a Common Carrier Act apply to common carriers, regardless of the product transported. Section 111.025 specifically applies to a pipeline that is connected to a well:

²⁰⁰ See *supra* notes 12 – 18 and accompanying text.

²⁰¹ *Post-Hearing Brief of Eastman Chemical*, p. 12, fn. 48.

No common carrier may abandon any of its connections or lines except under authority of a permit granted by the Commission or with written consent of the owner or duly authorized agent of the *wells to which connections are made*.²⁰²

The Examiners find that the Commission's prior jurisdictional determination was not intended to extend the application of § 111.025 to a common carrier that is not connected to a well.

Similarly, Eastman previously contended that § 111.023 requires that the common carrier engage in an exchange. As noted by Westlake Pipeline, it appears that Eastman has abandoned this assertion. In any event, § 111.023(a) requires that a common carrier exchange "crude petroleum tonnage with each like common carrier." As this case does not involve two common carriers that provision does not apply. Likewise, § 111.023(b) does not apply because it relates to situations involving two separate pipelines:

When a necessity exists, the Commission may require connections and facilities for the interchange of crude petroleum tonnage to be made at every locality reached by both pipelines, subject to the rules and rates made by the Commission.²⁰³

Westlake Pipeline argued that the Commission may not order Westlake Pipeline to provide backhaul service or exchanges. The issue of whether the Commission may order that those services be provided is not reached here. The issue here is whether the Commission may reject a tariff, filed pursuant to § 111.015, that alters an existing tariff in such a manner as to allow for discrimination among shippers and provides an unreasonable preference to the common carrier's affiliates. The Examiners find that the proposed *2013 Westlake Pipeline Tariff* is discriminatory and should be rejected.

9. Conclusion

The *2013 Westlake Pipeline Tariff* proposed other changes that were not challenged. The Examiners recommend that Westlake Pipeline be allowed to implement those changes. The Examiners note that Westlake Pipeline's proposed changes relating the rates have been challenged and are the subject of a separate proceeding, GUD No. 10358. Thus, Westlake Pipeline may not implement any changes to the rate and must continue charging the rates set out in the *2002 Mustang Tariff*.

The Examiners recommend that the proposed *2013 Westlake Pipeline Tariff* be rejected as it relates to the changes made to pre-existing backhaul and exchange services. The proposed tariff changes result in a tariff that discriminates against Eastman in favor of Westlake Longview, an affiliate of Westlake Pipeline. The Examiners recommend that two additional paragraphs be added to address concerns raised by Westlake Pipeline.

²⁰² TEX. NAT. RES. CODE ANN. § 111.025 (Emphasis added).

²⁰³ TEX. NAT. RES. CODE ANN. § 111.023(b).

Westlake Pipeline argued that the backhaul services should be removed because Westlake Pipeline does not own or operate compression equipment necessary to alter the flow on the pipeline. The *2002 Mustang Tariff* already includes language that requires the shippers to deliver and receive product at the necessary pressures at the origin points, whether those origin points are at Longview or Mont Belvieu. Out of abundance of caution, and in order to remove any lingering concerns about the meaning of the existing language, the Examiners recommend that the following language be added:

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or services to effectuate the entry of the product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at a Delivery Point.

Westlake Pipeline argued that exchange services expose the common carrier pipeline operator to additional risk. Namely, the third-party to the exchange transaction may fail to perform its obligation. The *2002 Mustang Tariff* already includes language that protects the common carrier. Again, out of abundance of caution, and in order to address any lingering concerns about the meaning of the existing language, the Examiners recommend that the following language be added:

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to the Pipeline customers.

The recommended changes to the tariff ensure that the tariff applicable to the pipeline operated by Westlake Pipeline is operated in a non-discriminatory manner. This is consistent with the common law standards applicable to common carriers, the sections of the Common Carrier Act that prohibiting discrimination and the policy of the Commission. The anti-discrimination policy of the Commission, as it relates to pipeline operators is reflected in various provisions of the Commission's regulations and in prior decisions of the Commission.

Respectfully submitted,



Gene Montes, Hearings Examiner
Hearings Division



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Hearings Division

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

**COMPLAINT FILED BY EASTMAN §
CHEMICAL COMPANY AGAINST §
WESTLAKE ETHYLENE CORP., § GAS UTILITIES DOCKET NO. 10296
(WESTLAKE PIPELINE) REGARDING §
WESTLAKE PIPELINE'S SYSTEM T-4 §
PERMIT NO. 05253 §**

PROPOSED ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, *et seq.* (Vernon 2008 & Supp. 2014). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Westlake Ethylene Pipeline Corporation operates a pipeline pursuant to T-4 Permit No. 05253.
2. The pipeline that is subject to T-4 Permit No. 05253 runs from Mont Belvieu, Texas to Longview, Texas and traverses seven counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg, Counties.
3. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.
4. On July 29, 2013, Eastman Chemical Company (Eastman) filed a complaint against Westlake Ethylene Pipeline Corporation (Westlake Pipeline) alleging that a tariff proposed by Westlake in 2013 (*2013 Westlake Pipeline Tariff*) was discriminatory.
5. A notice of hearing on jurisdictional issues was issued on September 13, 2013, and a hearing on jurisdictional issues was held on September 27, 2013.
6. A notice of hearing on the merits was issued on March 24, 2014. The notice of hearing bifurcated the hearing in this matter into two phases. Phase 1 addressed all discrimination and non-rate issues. All rate issues have been severed into Phase II.
7. Phase II was severed into a separate proceedings docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296*.

8. On May 2, 2014, Westlake Pipeline filed an affidavit attesting that notice was served on the entity that operates the pipeline on behalf of Buckeye and all current customers of the pipeline that is the subject of this proceeding.
9. The hearing on Phase I, GUD No. 10296, was held on May 6, 2014.
10. Westlake Pipeline is subsidiary of Westlake Chemical Corporation (Westlake Chemical). Another Westlake Chemical subsidiary, Westlake Longview Corporation (Westlake Longview) is located in Longview.
11. The facilities of Westlake Longview are connected to ethylene supplies at Mt. Belvieu by the pipeline system.
12. Westlake Longview consumes large quantities of ethylene in Longview.
13. Westlake Longview, or its ethylene supplier, is a shipper on the pipeline operated by Westlake Pipeline.
14. Eastman owns and operates ethylene producing facilities in Longview.
15. Eastman's Longview facility converts natural gas liquids (NGLs) feedstock, such as ethane and propane, to ethylene and propylene.
16. Eastman currently produces about 1,400 million pounds of ethylene annually from its crackers at Longview.
17. Eastman uses about 600 million pounds of ethylene annually at Longview, leaving about 800 million pounds of ethylene that must either be sold in Longview or transported to, or exchanged at, Mont Belvieu each year.
18. The only substantial market for ethylene in Longview is Westlake Longview.
19. Eastman is a shipper on the pipeline operated by Westlake Pipeline.
20. In 1995, Eastman began planning a "common carrier" pipeline to provide ethylene to its Longview plant and construction began in December 1996.
21. Mustang Pipeline Company (Mustang), an Eastman subsidiary, started construction on the pipeline.
22. In 2002, Eastman constructed the "Williams Connection."
23. The Williams Connection connected Eastman's Mont Belvieu terminal to contracted storage owned by the Williams Company, the first fungible ethylene storage facility in Mont Belvieu, and added the compression necessary to ship ethylene south to Mont Belvieu.

24. At the time of the construction of the Williams Connection, Eastman sought the ability to sell surplus ethylene produced in Longview and allow Eastman to maintain ethylene production when ethylene-consuming facilities were down in Longview.
25. In 1997, Mustang Pipeline issued the original tariff for the pipeline (*1997 Mustang Tariff*).
26. The *1997 Mustang Tariff* identified the “origin point” as Mont Belvieu and the “delivery point” as Longview.
27. The *1997 Mustang Tariff* did not include provisions for the exchange of ethylene.
28. In 2002, after adding compression necessary to deliver ethylene from Longview to Mont Belvieu, Mustang Pipeline issued a revised tariff (*2002 Mustang Tariff*).
29. The *2002 Mustang Tariff* identified Mont Belvieu as both an origin and delivery point.
30. The *2002 Mustang Tariff* identified Longview as both an origin and delivery point.
31. The *2002 Mustang Tariff* also indicated that Mustang, the operator of the pipeline, would, in addition to physical deliveries of ethylene, offer exchange services.
32. On November 10, 2006, Eastman and Westlake Chemical entered into a sales agreement.
33. As part of the sales agreement the Mustang pipeline assets were transferred to Westlake Pipeline.
34. As part of the sales agreement certain ethylene-consuming facilities owned by Eastman were sold to Westlake Longview.
35. The purchase agreement between Mustang Pipeline and Westlake Pipeline included the sale of the pipeline conduit.
36. Westlake Pipeline’s ownership of the pipeline at the southern end begins just outside the two meters belonging to Equistar and Williams and a check meter and pipeline belonging to Eastman. The pipeline extends from that ownership point at Mont Belvieu to a point that connects the Eastman plant to distribution facilities in Longview. The pipelines’ connection at Longview is on property that is owned by Eastman.
37. The sales agreement also included all right of ways, easements, privileges and grants upon and under which the pipeline system was laid and installed.
38. Westlake Pipeline did not acquire any terminals in the sale, the pipeline terminals, nor any of the compression necessary to operate the pipeline.

39. The overall sales agreement between Eastman and Westlake Chemical included the acquisition, by Westlake Longview, of three polyethylene units that are located within the Eastman's plant in Longview.
40. As part of the overall sale, on November 10, 2006, Eastman Chemical and Westlake Chemical Corporation entered into the Ethylene Sales and Exchanges Contract (ESA).
41. The ESA is a ninety-nine year ethylene contract that sets a market price using a pre-determined formula agreed to by both parties in the contract.
42. Pursuant to the ESA, Eastman Chemical secured a guaranteed market for ethylene, and Westlake Longview Corporation secured an ethylene supplier.
43. The ESA also provided Eastman with the ability to exchange any excess ethylene that Westlake Longview did not purchase from Eastman.
44. In 2013, Westlake Pipeline issued a new tariff for the pipeline (*2013 Westlake Tariff*).
45. Pursuant to the *2013 Westlake Pipeline Tariff*, Mont Belvieu was no longer designated as both an origin and delivery point. Mont Belvieu was designated as an origin point.
46. Pursuant to the *2013 Westlake Pipeline Tariff*, Longview was no longer designated as both an origin and delivery point. Longview was designated as a delivery point.
47. The *2013 Westlake Pipeline Tariff* removed all references to ethylene exchange as Westlake Pipeline determined that exchange services would no longer be offered.
48. Mont Belvieu is the largest market for ethylene producers in the United States.
49. Pipeline transport is among the most important factors that determine regional prices, supply, and demand.
50. It is reasonable to conclude that the ethylene producers in Longview would require access to the ethylene market in Mont Belvieu.
51. It is reasonable to conclude that ethylene consumers that engage in transactions in Mont Belvieu would desire access to ethylene produced in Longview
52. Eastman produces large quantities of ethylene in Longview and has a physical necessity to move ethylene to Mont Belvieu.
53. Ethylene was transported from Longview to Mont Belvieu on several occasions in the following years: 2005, 2006, 2007, 2008, 2009, and 2013.

54. The necessity for southbound flow predates the purchase of the system by Westlake Pipeline. It is the reason that compression was added in 2002 to allow backhaul and to permit Eastman to sell surplus ethylene that it produced in Longview to customers on the Gulf Coast.
55. Eastman has demonstrated a demand for exchanges as Eastman has engaged in exchanges with Westlake Pipeline's affiliate, Westlake Longview since entering into the ESA.
56. Backhaul service is physically possible on the pipeline operated by Westlake Pipeline.
57. The pipeline system was configured in 2002 to accept bidirectional flow.
58. Backhaul on the pipeline occurred in n 2005, 2006, 2007, 2008, 2009, and 2013.
59. The proposed 2013 *Westlake Pipeline Tariff* removed ability to provide backhaul service was removed from the 2002 *Mustang Tariff*.
60. The record in this case does not provide evidence of the impediment to the continued provisions of backhaul service.
61. Any concern that this operator lacks the compression necessary to provide backhaul service is addressed by the language in the preexisting 2002 *Mustang Tariff*, which requires shippers to deliver and receive product at the necessary pressures.
62. Additional language may be added to further protect the common carrier;

The paragraph means that a shipper is responsible for providing or arranging sufficient compression or services to effectuate the entry of the product into the pipeline at an Origin Point and delivery of the Product out of the Pipeline at a Delivery Point.

63. There is no impediment for a pipeline to provide exchange service and the risks associated with that service may be mitigated by appropriate language in the tariff.
64. The 2002 *Mustang Tariff* contained language that protected the pipeline operator and is included in the 2013 *Westlake Pipeline Tariff*. Additional language may be added to protect the operator as follows:

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes to the common stream out of which deliveries are made to Pipeline Customers.

65. Due to the unique circumstances of the ethylene market in Longview, without an exchange provision in the applicable pipeline tariff the only alternative for Eastman is to engage in exchanges with Westlake Longview, the pipeline operator's affiliate.

66. If exchange service is included in the applicable pipeline tariff Eastman may engage in exchanges with market participants in Mont Belvieu and will no longer be a captive to Westlake Longview.
67. Eastman, Westlake Longview, and Westlake Longview's ethylene suppliers (other than Eastman), are potential shippers on the pipeline operated by Westlake Pipeline.
68. Eastman and Westlake Longview are located in Longview.
69. Eastman and Westlake Longview each require movement of ethylene between Mont Belvieu and Longview.
70. Eastman and Westlake Longview require access to the ethylene market in Mont Belvieu and the ethylene market in Longview.
71. The only difference is that Eastman requires deliveries from Longview to Mont Belvieu and Westlake Longview requires deliveries from Mont Belvieu to Longview.
72. Eastman and Westlake Longview, or its other potential suppliers of ethylene, are similarly-situated shippers.
73. The proposed tariff changes in the *2013 Westlake Pipeline Tariff* related to backhaul eliminated a service that was previously provided to Eastman on this pipeline.
74. The proposed tariff changes in the *2013 Westlake Pipeline Tariff* related to backhaul physically shut Eastman out of the pipeline.
75. Mont Belvieu may no longer be designated as an "Origin Point" and Longview may no longer be designated as a "Delivery Point."
76. Due to the operation of the filed tariff Eastman would no longer be able to demand backhaul service
77. Due to the operation of the filed tariff, Westlake Pipeline would be unable to treat those points as Origin and Delivery points.
78. Westlake Longview will continue to have access to the pipeline and the Mont Belvieu ethylene market.
79. Eastman would be shut out of the Mont Belvieu market by the changes in the *2013 Westlake Pipeline Tariff*.
80. Westlake Pipeline has offered no reasonable basis for the disparate treatment as regards to physical deliveries on the pipeline.

81. The proposed tariff change in the *2013 Westlake Pipeline Tariff* related to exchanges eliminates a pre-existing service offered by the pipeline operator.
82. Once that service is eliminated, Eastman must engage in exchanges with Westlake Longview, an affiliate of the pipeline operator.
83. The removal of exchange service further limits Eastman's access to the Mont Belvieu market through the pipeline.
84. The elimination of backhaul and exchanges, pre-existing service offered by the common carriers of this pipeline, provides an unreasonable preference in favor of Westlake Longview.

CONCLUSIONS OF LAW

1. Westlake Pipeline is a "common carrier" as that term is defined under TEX. NAT. RES. CODE ANN. § 111.020(d) (Vernon 2001 & Supp. 2014) and is therefore subject to the jurisdiction of the Railroad Commission of Texas (Commission).
2. As a common carrier Westlake Pipeline is subject to all provisions of the Common Carrier Act, TEX. NAT. RES. CODE ANN. §§ 111.002, 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262.
3. In addition to the powers provided by other sections of Chapter 2, Subchapter B of the Business Organization Act, TEX. BUSINESS CORP. ACT ANN. § 2.105 provides that a corporation, such as Westlake Pipeline engaged as a common carrier in the pipeline business for the purpose of transporting oil products has all of the rights and powers conferred on a common carrier by Sections 111.019 – 111.022.
4. The Commission has jurisdiction over Westlake Pipeline, associated affiliates, and the matters at issue in this proceeding pursuant to TEX. NAT. RES. CODE ANN. §§ 81.051 and §§ 111.002, 111.003, 111.011 – 111.025, 111.131, 111.133 – 111.142, 111.181 – 111.190, 111.221 – 111.227, & 111.261 – 111.262.
5. As required by TEX. NAT. RES. CODE ANN. § 111.014 Westlake Pipeline shall make and publish their tariffs.
6. A common carrier's obligations to its customers cannot exceed its duties under a published tariff and published tariffs govern the relationship of the common carrier with its customers. Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly published tariffs. The published tariffs and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the published tariff. *CenterPoint*

Energy Entex v. R.R. Comm'n of Tex, 208 S.W. 3rd 608 (Tex. – Austin 2006, pet. dism'd)

7. Westlake Pipeline, as a common carrier, is required to receive and transport ethylene delivered to it for transportation and perform its other related duties without discrimination as required by *TEX. NAT. RES. CODE ANN.* § 111.015.
8. Westlake Pipeline, as a common carrier, shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstance in the transportation of ethylene as required by *TEX. NAT. RES. CODE ANN.* § 111.015.
9. Westlake Pipeline, as a common carrier, may not charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from another for a like and contemporaneous service.
10. Westlake Pipeline's 2013 tariff terminated pre-existing backhaul and exchange services and provided an unreasonable preference and advantage to its affiliate, Westlake Longview.
11. The Commission has the authority to require that tariffs published by a common carrier and filed with the Commission are not discriminatory.
12. Tariffs that provide disparate treatment to similarly-situated shippers or provide an unreasonable preference or advantage to an affiliate at the expense of other shippers are discriminatory.

IT IS THEREFORE ORDERED that the *2013 Westlake Pipeline Tariff* is rejected and may not be enforced by Westlake Pipeline.

IT IS FURTHER ORDERED that Westlake Pipeline publish and file with the Commission a revised tariff that is not discriminatory and conforms to the tariff attached to this Final Order as Exhibit A.

IT IS FURTHER ORDERED that, in accordance with *TEX. NAT. RESOURCE CODE ANN.* § 111.015, within 30 days of the date this Order is signed, Westlake Pipeline shall file the approved tariff with the Director of the Oil and Gas Division. The tariffs shall incorporate the findings of fact and conclusions of law herein.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**.

IT IS ALSO ORDERED that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE ANN. § 2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

SIGNED this ____ day of December 2, 2014.

RAILROAD COMMISSION OF TEXAS

COMMISSIONER CHRISTI CRADDICK

COMMISSIONER DAVID PORTER

CHAIRMAN BARRY T. SMITHERMAN

ATTEST:

SECRETARY

Westlake Ethylene Pipeline Corporation-T.R.R.C. No. _____
[Cancels Mustang Pipeline Company – Texas Local Tariff. -3]

WESTLAKE ETHYLENE PIPELINE CORPORATION
Mont Belvieu to Longview Pipeline

LOCAL TARIFF
Applying on

PETROLEUM PRODUCTS
As Defined in This Tariff

TRANSPORTED OR EXCHANGED BY PIPELINE
Between Points Within the State of Texas
Subject to the Regulations
Set Forth Herein

ISSUED: _____

EFFECTIVE: _____

Filed with the Railroad Commission

DATE: _____

Issued and Compiled By:

WESTLAKE ETHYLENE PIPELINE CORPORATION
2801 Post Oak Boulevard, Suite 600
Houston, Texas 77056

WESTLAKE ETHYLENE PIPELINE CORPORATION, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below in Section III, "Rules and Regulations," at the rates set forth in Section II, "Product Specifications and Local Rates."

I. DEFINITIONS

- a) The term "barrel" as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60° F).
- b) The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in questions) and extending until 7:00 a.m. on the following calendar day.
- c) The term "Delivery Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for delivery of Product by Carrier to Shipper.
- d) The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60° F).
- e) The term "Origin Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for introducing Product into the respective pipelines.
- f) The term "pound," as used herein, means one (1) pound avoirdupois.
- g) The term "Product" as used herein, means the liquid petroleum gas products defined in Section II, "Product Specifications and Local Rates," for the respective pipelines.
- h) The term "Shipper," as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.

As the context may require, the plural form shall be construed to include the singular, and the singular form shall be construed to include the plural.

II. PRODUCT SPECIFICATIONS AND LOCAL RATES

- a) The rates published in this tariff are for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such transportation or exchange is subject to the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.
- b) Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at points named below.

Product: Liquefied petroleum gas meeting the following specifications:

Components	Specifications	Test Method
Ethylene (Minimum)	99.90 mol %	ASTM D 2505
Methane	350 ppmV	ASTM D 2505
Ethane	465 ppmV	ASTM D 2505
Acetylene	1.5 ppmV	ASTM D 2505
Propylene & Heavier	5 ppmV	ASTM D 2505
Carbon Dioxide	1 ppmV	ASTM D 2505
Carbon Monoxide	0.15 ppmV	ASTM D 2504
Water	2 ppm wt	Panametrics
Total Sulfur	1 ppm wt	ASTM D 3246
Oxygen	4 ppm wt	ASTM D 2504
Hydrogen	5 ppmV	ASTM D 2504
Ammonia	1 ppm wt	ASTM D 5234
Methanol	1 ppm wt	ASTM D 5234

Origin/Delivery Point: Carrier's stations located at or adjacent to the terminals of Equistar Chemicals, Williams Storage, and Flint Hills Resources at Mont Belvieu, Texas, when such points of origin are practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Origin/Delivery Point: Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery is practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

- Rate: a. \$1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day.
- b. \$0.70 per 100 pounds for each additional amount transported or exchanged in a sing day.

III. RULES AND REGULATIONS

1. Testing

Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate.

Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. In the event that any test indicates that the Product offered for transportation or exchange does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to case delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.

2. Measurement

Carrier will utilize meters located at the Origin Point and Delivery Point whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with the standard procedures utilized by the owner or operator of such meters.

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

- a. By using the registration of any check measuring equipment of Carrier.
- b. By using any measurement equipment which Carrier may have in the flowing stream.
- c. By any independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, inspection, or test.

Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60° F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.

Physical and legal transfer of custody of the Product from Shipper to Carrier shall be at the point immediately downstream of applicable measuring and metering facilities at the Origin Point. Physical and legal transfer of custody of the Product from Carrier to Shipper shall be at the point immediately downstream of applicable measuring and metering facilities at the Delivery Point.

3. Facilities at Origin and Delivery Point

Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:

- a. When Shipper has provided facilities satisfactory to Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and
- b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or other services to effectuate the entry of the Product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at the Delivery Point.

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to Pipeline's customers.

Separate pipage contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.

4. Minimum and Maximum Shipments

The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its sole election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.

5. Tender Deductions

A tender deduction of 1/2 percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.

6. Payment of Transport or Exchange

The charges for transportation or exchange of Product accepted for shipment shall be based on the applicable rate set forth above in Section II before tender deduction, if any, is made. Shipments accepted for transportation or exchange shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation or exchange charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days of receipt of invoice. Carrier may require that charges:

- a. be prepaid at time of acceptance, or
- b. on demand be paid before release of Product from custody of Carrier. Carrier may charge Shipper interest of 1½ percent per month (18 percent per annum) for overdue transportation or exchange charges.

Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the sale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation or exchange and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for whomsoever may be lawfully entitled thereto. The remedies set forth in this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. Clear Title

Shipper shall notify Carrier when any Product tendered for transportation or exchange is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation or exchange, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

8. Tenders

All Shippers desiring to tender Product for transportation or exchange on Carrier's facilities shall furnish a written nomination to Carrier by the fifteenth (15th) day (excluding Carrier holidays) of the month prior to the month Shipper desires transportation or exchange. Nominations shall specify the quantity of Product to be transported or exchanged, the Origin Point, the Delivery Point, and any other information required by Carrier. If Shipper does not furnish such written nomination, Carrier shall be under no obligation to accept such Product for transportation or exchange.

Nominations shall be transmitted to Carrier to the attention of Westlake Ethylene Pipeline Corporation Scheduler as follows:

- a. by facsimile to the Westlake Ethylene Manager at (713) 960-8761, or
- b. by electronic mail, as arranged between Carrier and Shipper.

Any nominations accepted by Carrier will be delivered on a ratable basis.

9. Identity of Shipments

In view of the impracticability of maintaining the identity of shipments, shipments will not be segregated, but will be commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.

10. Disposition of Shipments

In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at the Delivery Point in accordance with Carrier's schedules, Carrier may make whatever disposition of such undelivered shipment which is necessary to order to free its pipeline. Carrier shall not be liable to Shipper because of

such disposition, and Shipper shall pay for all costs and fees thereof the same as if Shipper had requested or authorized such disposition.

11. Apportionment of Tenders and Withdrawals

In the event Shipper's tenders at Origin Point or Shipper's withdrawal requirements at the Delivery Point are greater than can be currently handled by Carrier, Carrier may restrict or suspend tenders or withdrawals in order to apportion deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.

12. Transit Privileges

Carrier may not be required by Shipper to stop Product in transit for any reason.

13. Liability of Carrier and Indemnity

Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public enemy, quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, riots, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause outside of the reasonable control of the Carrier, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof involved in such loss in the proportion that such shipment or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation or exchange services and not as an owner, manufacturer, or seller of Product transported or exchanged hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

FOR ALL SERVICES PROVIDED FOR AND RECEIVED UNDER THIS TARIFF, SHIPPER SHALL INDEMNIFY AND DEFEND CARRIER FROM ANY CLAIMS, LIABILITIES, OR LOSSES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES), INCLUDING CLAIMS FOR PERSONAL

INJURY, DEATH OR PROPERTY DAMAGE INVOLVING THE CARRIER, SHIPPER, CONSIGNEES, OR THIRD PARTIES BASED ON OR ARISING OUT OF CARRIER'S PERFORMANCE OF SUCH SERVICES. THIS INDEMNIFICATION SHALL INCLUDE CLAIMS OF ANY NATURE, LEGAL, CONTRACTUAL OR EQUITABLE, WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSES OF ACTION. THE INDEMNITY PROVIDED IN THIS TARIFF IS INTENDED TO BE APPLICABLE TO THE FULL EXTENT ALLOWED BY LAW AND IS LIMITED ONLY IN ACCORDANCE WITH STATUTORY OR COMMON LAW. TO THE EXTENT NOT PROHIBITED BY LAW, THIS INDEMNITY APPLIES TO ANY ACT OR OMISSION, WHETHER NEGLIGENT OR NOT, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF SERVICE BY CARRIER PURSUANT TO THIS TARIFF, INCLUDING THE SOLE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF CARRIER.

14. Claims

Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.

15. Additives, Dyes, and Odorization

- a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at Delivery Point containing portions of corrosion inhibitor.
- b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported or exchanged, unless negligent conduct by Carrier is determined to be the sole, proximate cause of the cost, expense, damage or liability incurred by Shipper.
- c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:
 - (1) Will furnish the dye to be injected and/or the malodorant to be added and
 - (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing.

16. Imbalance Charges

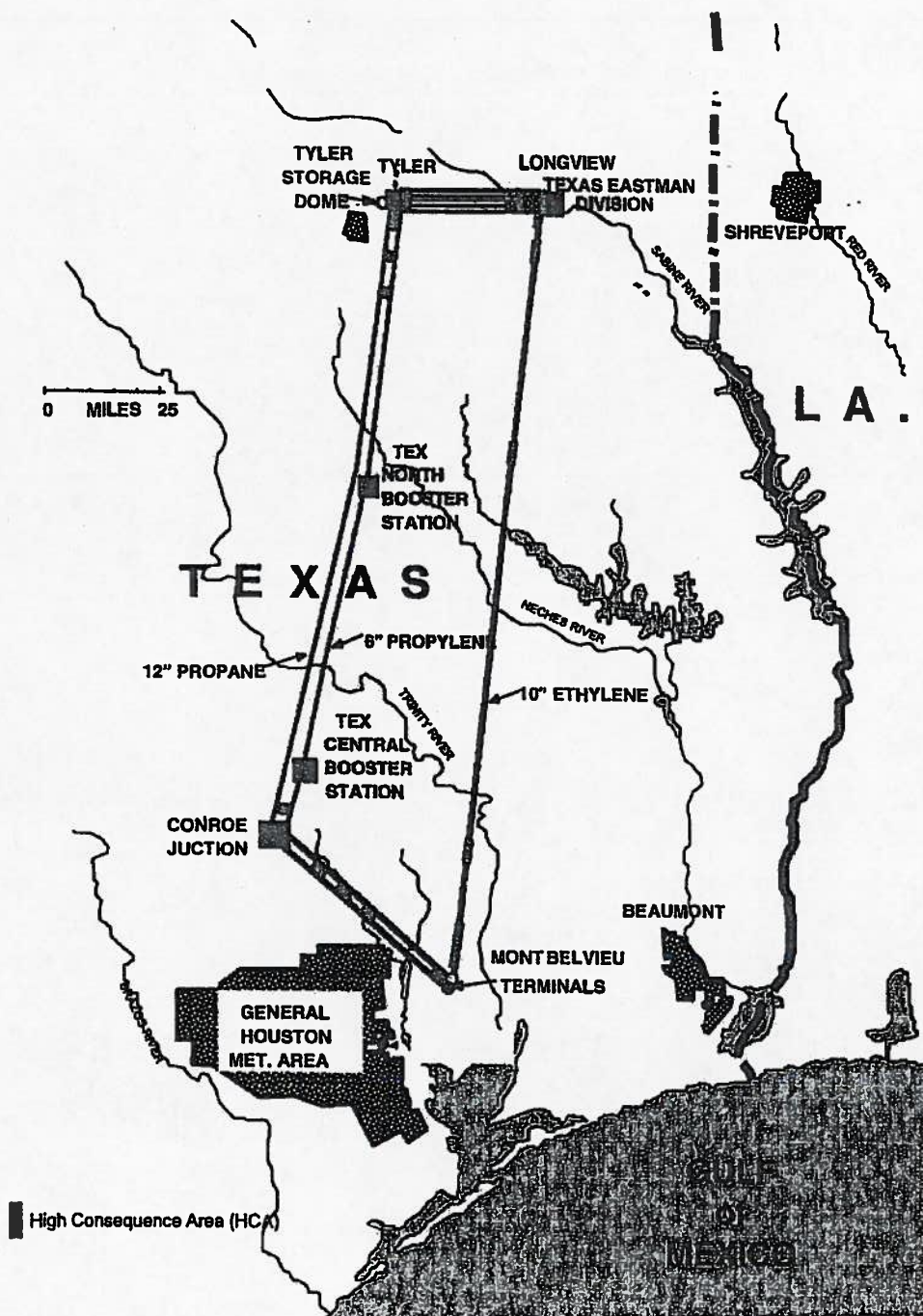
In the event that Shipper fails to deliver to Carrier at the Origin Point the equivalent volumes of Product which Carrier redelivers to Shipper at the Delivery Point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for any particular imbalance period is not to be construed as a waiver of such charges for any other imbalance and Carrier maintains the right to collect such charges from Shipper for any imbalance not the subject of a written waiver.

17. Direction of Flow

In the event the pipeline is configured and equipped so that it is physically capable of bi-directional flow, Carrier at its sole discretion will choose the direction of flow between the Origin Point and Delivery Point. Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.

END OF DOCUMENT

Exhibit A

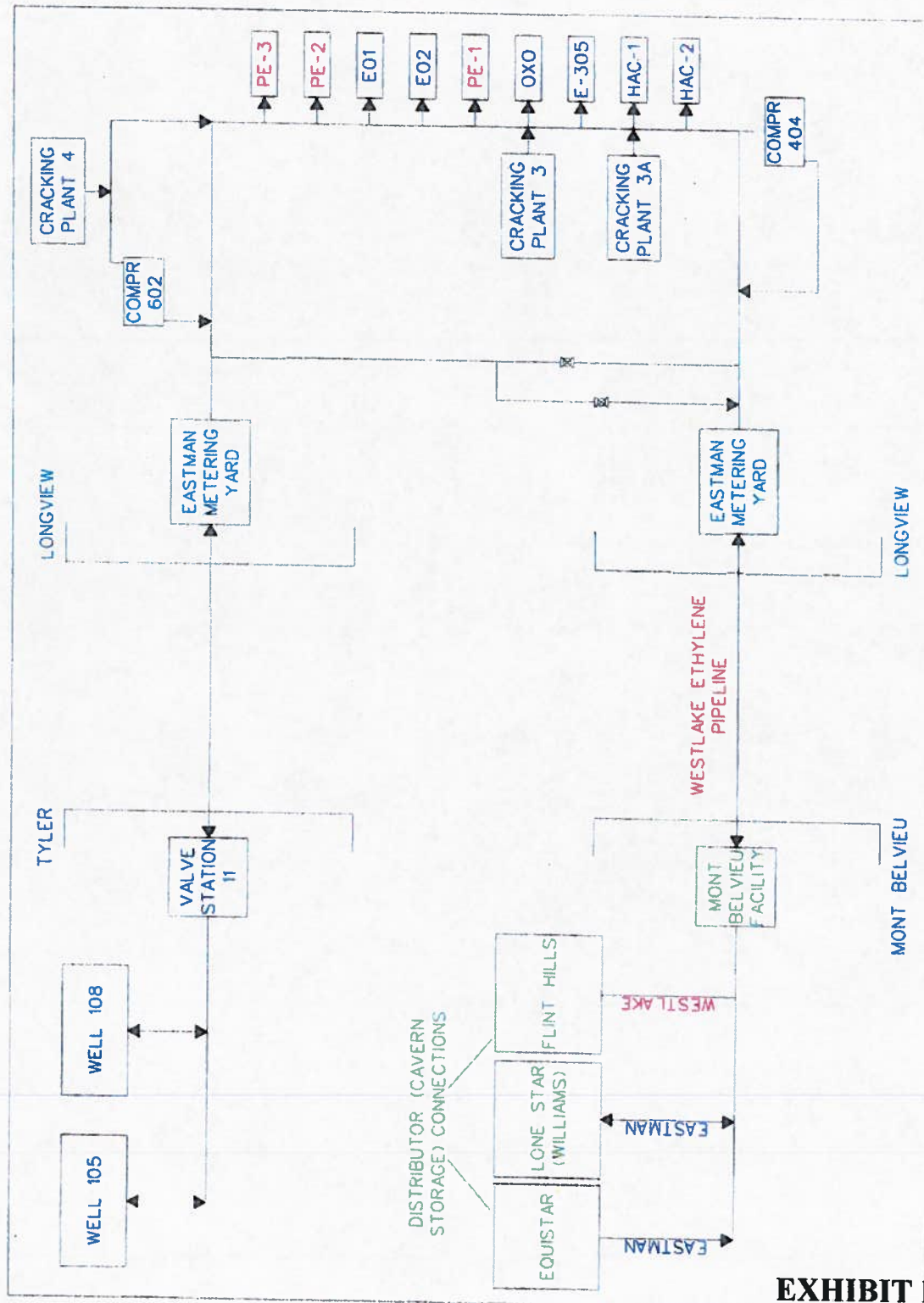


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Eastman 0209

EXHIBIT A

Exhibit B



ETHYLENE SYSTEM OVERVIEW

EXHIBIT B

Exhibit C

2002 Mustang Pipeline Tariff	2003 Westlake Pipeline Tariff
<p>Mustang Pipeline Company, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below under the heading, "Rules and Regulations," at the rates set forth under the heading, "Product Specifications and Local Rates."</p>	<p>Mustang Pipeline Company WESTLAKE ETHYLENE PIPELINE CORPORATION, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below under the heading in Section III, "Rules and Regulations," at the rates set forth under the heading in Section II, "Product Specifications and Local Rates."</p>
<p><u>1. Definitions</u></p> <ul style="list-style-type: none"> a. The term "barrel," as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60°F). b. The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in question) and extending until 7:00 a.m. on the following calendar day. c. The term "Delivery Point," as used herein, means one of the locations defined in Section 2, "Product Specification and Local Rates," for delivery of Product by Carrier to Shipper. d. The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60°F). e. The term "Origin Point," as used herein, means one of the locations defined in Section 2, "Product Specification and Local Rates" for introducing Product into the respective pipelines. f. The term "pound," as used herein, means one (1) pound avoirdupois. g. The term "Product," as used herein, means the liquid petroleum gas product defined in Section 2, "Product Specifications and Local Rates," for the respective pipelines. 	<p><u>1. Definitions</u></p> <ul style="list-style-type: none"> a. The term "barrel," as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60°F). b. The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in question) and extending until 7:00 a.m. on the following calendar day. c. The term "Delivery Point," as used herein, means one of the locations defined in Section 2 II, "Product Specification and Local Rates," for delivery of Product by Carrier to Shipper. d. The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60°F). e. The term "Origin Point," as used herein, means one of the locations defined in Section 2 II, "Product Specification and Local Rates" for introducing Product into the respective pipelines. f. The term "pound," as used herein, means one (1) pound avoirdupois. g. The term "Product," as used herein, means the liquid petroleum gas product defined in Section 2 II, "Product Specifications and Local Rates," for the

<p>h. The term “Shipper,” as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.</p> <p>As the context may require, the plural form shall be construed to include singular, and the singular form shall be construed to include the plural.</p>	<p>h. The term “Shipper,” as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.</p> <p>As the context may require, the plural form shall be construed to include singular, and the singular form shall be construed to include the plural.</p>																																	
<p><u>2.Product Specifications and Local Rates</u></p> <p>a. The rates published in this tariff for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such transportation or exchange is subject to the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.</p> <p>b. Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at point named below.</p>	<p><u>2II. PRODUCT SPECIFICATIONS AND LOCAL RATES</u></p> <p>a. The rates published in this tariff for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such Transportation or exchange is subject <u>to</u> the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.</p> <p>b. Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at points named below.</p>																																	
<p><u>Product:</u> Liquified petroleum gas meeting the following specifications:</p> <table><tr><td>Ethylene (mol %)</td><td>99.90%Minimum</td><td>ASTM D 2505</td></tr><tr><td>Ethane (mol %)</td><td>0.0400Maximum</td><td>ASTM D 2505</td></tr><tr><td>Methane (mol %)</td><td>0.0350Maximum</td><td>ASTM D 2505</td></tr><tr><td>Propylene (PPM by Volume)</td><td>5 Maximum</td><td>ASTM D 2505</td></tr><tr><td>Methanol (PPM by Weight)</td><td>1.0 Maximum</td><td>TXAL-A-XX-2006-GC-3-1 *</td></tr><tr><td>Acetylene (PPM by</td><td>1.5 Maximum</td><td>ASTM D 2505</td></tr></table>	Ethylene (mol %)	99.90%Minimum	ASTM D 2505	Ethane (mol %)	0.0400Maximum	ASTM D 2505	Methane (mol %)	0.0350Maximum	ASTM D 2505	Propylene (PPM by Volume)	5 Maximum	ASTM D 2505	Methanol (PPM by Weight)	1.0 Maximum	TXAL-A-XX-2006-GC-3-1 *	Acetylene (PPM by	1.5 Maximum	ASTM D 2505	<p><u>Product:</u> Liquified petroleum gas meeting the following specifications:</p> <table><tr><td><u>Components</u></td><td><u>Specifications</u></td><td><u>Test</u></td></tr><tr><td>Ethylene (Minimum)</td><td>99.90%Minimum</td><td>ASTM D 2505</td></tr><tr><td>Ethane (mol %)</td><td>0.0400Maximum 465 ppm V</td><td>ASTM D 2505</td></tr><tr><td>Methane (mol %)</td><td>0.0350Maximum 350 ppm V</td><td>ASTM D 2505</td></tr><tr><td>Propylene (PPM by Volume) & Heavier</td><td>5 Maximumppm V</td><td>ASTM D 2505</td></tr></table>	<u>Components</u>	<u>Specifications</u>	<u>Test</u>	Ethylene (Minimum)	99.90%Minimum	ASTM D 2505	Ethane (mol %)	0.0400Maximum 465 ppm V	ASTM D 2505	Methane (mol %)	0.0350Maximum 350 ppm V	ASTM D 2505	Propylene (PPM by Volume) & Heavier	5 Maximumppm V	ASTM D 2505
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Propylene (PPM by Volume) & Heavier	5 Maximumppm V	ASTM D 2505																																

EXHIBIT C

Page 3 of 16

Volume)		
Hydrogen (PPM by Volume)	2.0 Maximum	ASTM D2504
Carbon Dioxide (PPM by Volume)	1.0 Maximum	ASTM D 2505
Carbon Monoxide (PPM by Volume)	0.10 Maximum	ASTM D 2504
Oxygen (PPM by Volume)	2.0 Maximum	ASTM D 2504
Sulfur (PPM by Weight)	0.02 Maximum	ASTM D 3246
Water (PPM by Weight)	1.0 Maximum	TXAL-A-XX-G-PTM-2-1*
Ammonia (PPM by Weight)	0.5 Maximum	*
Carbonyls as Acetone (PPB)	25 Maximum	*

*Procedures are available from the Analytical Laboratory of Texas Operations, Eastman Chemical Company, Longview, Texas.

Origin/Delivery Point: Carrier's station located at or adjacent to the terminals of Equistar Chemicals at Mont Belvieu, Texas, when such point of delivery/origin is practicable and consistent with the operation of the pipeline.

Methanol (PPM by Weight)	1.0 Maximum	TXAL-A-XX-2006-GC-3-1*
Acetylene (PPM by Volume)	1.5 Maximum ppm V	ASTM D 2505
Hydrogen (PPM by Volume)	2.0 Maximum ppm V	ASTM D2504
Carbon Dioxide (PPM by Volume)	1.0 Maximum ppm V	ASTM D 2505
Carbon Monoxide (PPM by Volume)	0.10 Maximum 0.15 ppm V	ASTM D 2504
Oxygen (PPM by Volume)	2.0 Maximum ppm wt	ASTM D 2504
Total Sulfur (PPM by Weight)	0.02 Maximum ppm wt	ASTM D 3246
Water (PPM by Weight)	1.0 Maximum pm wt	TXAL-A-XX-G-PTM-2-1*Panametrics
Ammonia (PPM by Weight)	0.5 Maximum ppm wt	*ASTM D 5234
Carbonyls as Acetone (PPB)	25 Maximum	*
Methanol	1 ppm wt	ASTM D 5234

*Procedures are available from the Analytical Laboratory of Texas Operations, Eastman Chemical company, Longview, Texas.

Origin/Delivery-Origin Points: Carrier's station located at or adjacent to the terminals of Equistar Chemicals, Williams Storage, and Flint Hills Resources at Resources at Mont Belvieu, Texas, when such point-points of delivery/origin is are practicable and consistent with the operation of the pipeline-;

<p><u>Origin/Delivery Point:</u> Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery/origin is practicable and consistent with the operation of the pipeline.</p> <p>Rate:</p> <p>a. \$1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day.</p> <p>b. \$0.70 per 100 pounds for each additional amount transported or exchanged in a single day.</p>	<p><u>such other points as the Carrier may designate and publish from time to time.</u></p> <p><u>Origin/Delivery Point:</u> Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery/origin <u>delivery</u> is practicable and consistent with the operation of the pipeline. <u>or such other points as the Carrier may designate and publish from time to time.</u></p> <p>Rate:</p> <p>a. \$1.90 <u>\$3.50</u> per 100 pounds for the first 320,000 <u>320,000</u> pounds <u>all the pounds transported or exchanged in a single day from an Origin Point to the Delivery Point.</u></p> <p>b. \$0.70 <u>\$0.70</u> per 100 pounds for each additional amount <u>transported or exchanged in a single day.</u></p>
<p><u>RULES AND REGULATIONS</u></p> <p>1. <u>Testing</u></p> <p>Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate. Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event that any test</p>	<p><u>III. RULES AND REGULATIONS</u></p> <p>1. <u>Testing</u></p> <p>Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate. Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. In the event that any test</p>

<p>indicates that the Product offered for transportation or exchange does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to cease delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.</p> <p>2. <u>Measurement</u></p> <p>Shipper shall install and operate (a) meter(s) whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. Shipper shall pay the cost of such equipment (including installation cost) and will be the owner of such equipment. The equipment and the installation of such equipment must be approved by Carrier or its representative. Shipper shall be solely responsible for the maintenance of such equipment, the necessary electronic access to the metering facilities to allow Carrier to continuously monitor metered flow rates of Product into the line. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with procedures set forth below.</p> <p>Shipper shall calibrate flow meters, pressure recorders, and temperature recorders at least once a month and at other</p>	<p>certificate and Carrier's test, Carrier's test shall prevail. In the event that any test indicates that the Product offered for transportation or exchange does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to cease delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.</p> <p>2. <u>Measurement</u></p> <p>Shipper shall install and operate (a) meter(s). Carrier will utilize meters located at the Origin Points and Delivery Point whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. Shipper shall pay the cost of such equipment (including installation cost) and will be the owner of such equipment. The equipment and the installation of such equipment must be approved by Carrier or its representative. Shipper shall be solely responsible for the maintenance of such equipment. Shipper shall provide, at its cost, the necessary electronic access to the metering facilities to allow Carrier to continuously monitor metered flow rates of Product into the line. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with standard procedures set forth below utilized by the owner or operator of such meters.</p> <p>Shipper shall calibrate flow meters, pressure recorders, and temperature recorders at least once a month and at</p>
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times as many be reasonably required by Carrier. Carrier will have the right to witness the calibrations. Such calibrations must be acceptable to Carrier or Carrier will have no obligation to transport or exchange Product for Shipper.

Following such calibrations, any equipment found to be inaccurate to any degree will be adjusted immediately to measure accurately. If, following a calibration, any metering equipment is found to be inaccurate by one-half percent (0.5%) or more, then the quantity of Product previously delivered will be retroactively adjusted at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in one-half (1/2) of the number of days from the last previous calibration until the correction, not exceeding, however, fifteen days.

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

- a. By using the registration of any check measuring equipment of Carrier.
- b. By using any measurement equipment which Carrier may have in the flowing stream.
- c. By an independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

~~other times as many be reasonably required by Carrier. Carrier will have the right to witness the calibrations. Such calibrations must be acceptable to Carrier or Carrier will have no obligation to transport or exchange Product for Shipper.~~

~~Following such calibrations, any equipment found to be inaccurate to any degree will be adjusted immediately to measure accurately. If, following a calibration, any metering equipment is found to be inaccurate by one-half percent (0.5%) or more, then the quantity of Product previously delivered will be retroactively adjusted at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, but in one-half (1/2) of the number of days from the last previous calibration until the correction, not exceeding, however, fifteen days.~~

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

- a. By using the registration of any check measuring equipment of Carrier.
- b. By using any measurement equipment which Carrier may have in the flowing stream.
- c. By an independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

<p>Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, or test.</p> <p>Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60°F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.</p> <p>Physical and legal transfer of custody of the Product to Carrier shall be at the point immediately downstream of Shipper's measuring and metering facilities.</p>	<p>Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, inspection, or test.</p> <p>Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60°F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.</p> <p>Physical and legal transfer of custody of the Product to Carrier shall be at the point immediately downstream of Shipper's measuring and metering facilities.</p>
<p>Physical and legal transfer of custody of the Product to Carrier shall be at the point immediately downstream of <u>applicable Shipper's measuring and metering facilities at the Origin Point. Physical and legal transfer of custody of the Product from Carrier to Shipper shall be at the point immediately downstream of applicable measuring and metering facilities at the Delivery Point.</u></p> <p>3. <u>Facilities at Origin Point and Destination Point</u> Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:</p> <p>a. When Shipper has provided facilities satisfactory</p>	<p>3. <u>Facilities at Origin Point and Destination Point</u> Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:</p> <p>a. When Shipper has provided facilities satisfactory to</p>

<p>Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and</p> <p>b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.</p> <p>Separate pipeline contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.</p>	<p>to Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and</p> <p>b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.</p> <p>Separate pipeline contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.</p>
<p>4. <u>Minimum and Maximum Shipments</u> The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.</p>	<p>4. <u>Minimum and Maximum Shipments</u> The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its sole election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.</p>
<p>5. <u>Tender Deductions</u> A tender deduction of ½ percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.</p>	<p>5. <u>Tender Deductions</u> A tender deduction of ½ percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.</p>
<p>6. <u>Payment of Transport or Exchange</u> The charges for transportation or exchange or Product</p>	<p>6. <u>Payment of Transport or Exchange</u> The charges for transportation or exchange or Product</p>

accepted for shipment shall be based on the applicable rate set forth above in Section 2 before tender deduction, if any, is made. Shipments accepted for transportation or exchange shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation or exchange charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days or receipt of invoice. Carrier may require that charges:

- a. Be prepaid a time of acceptance, or
- b. On demand be paid before release of Product from custody of Carrier. Carrier may charge Shipper interest of 1 ½ percent per month (18 percent per annum) for overdue transportation or exchange charges.

Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the sale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation or exchange and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for whomsoever may be lawfully entitled thereto. The remedies set forth in

accepted for shipment shall be based on the applicable rate set forth above in Section 2 before tender deduction, if any, is made. Shipments accepted for transportation ~~or exchange~~ shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation or exchange charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days or receipt of invoice. Carrier may require that charges:

- a. Be prepaid a time of acceptance, or
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Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the sale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation ~~or exchange~~ and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for

this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. Clear Title

Shipper shall notify Carrier when any Product for transportation or exchange is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation or exchange, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

8. Tenders

Any Shipper desiring to tender a Product for shipment shall prepare and forward to Carrier a tender form covering such proposed movement. Such form shall be supplied by Carrier on request. Shipper shall establish the ability to meet the minimum tender requirements to satisfaction of Carrier before any duty of transportation or exchange shall arise. If requested by Carrier, Shipper shall furnish Carrier with a schedule of the expected tenders at Origin Point(s) and withdrawals at Delivery Point(s) setting forth Shipper's best estimate of daily rate of tenders and withdrawals and dates on which such deliveries and withdrawals shall commence. Acceptance of such schedule shall not constitute an

whomsoever may be lawfully entitled thereto. The remedies set forth in this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. Clear Title

Shipper shall notify Carrier when any Product for transportation ~~or exchange~~ is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation ~~or exchange~~, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

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<p>obligation on the part of Carrier to meet such schedule. Carrier shall not be obligated to accept tenders for transportation or exchange during any calendar month, unless the Shipper shall, on or before the first day of the preceding calendar month, notify Carrier in writing of the quantity Product which Shipper desires to tender to Carrier at Origin Point(s).</p>	<p>of such schedule shall not constitute an obligation on the part of Carrier to meet such schedule. Carrier shall not be obligated to accept tenders for transportation or exchange during any calendar month, unless the Shipper shall, on or before the first day of the preceding calendar month, notify Carrier in writing of the quantity Product which Shipper desires to tender to Carrier at Origin Point(s).</p> <p><u>All Shippers desiring to tender Product for transportation on Carrier's facilities shall furnish a written nomination to Carrier by the fifteenth (15th) day (excluding Carrier holidays) of the month prior to the month Shipper desires transportation. Nominations shall specify the quantity of Product to be transported, the Origin Point, the Delivery Point, and any other information required by Carrier. If Shipper does not furnish such written nomination, Carrier shall be under no obligation to accept such Product for transportation.</u></p> <p><u>Nominations shall be transmitted to Carrier to the attention of Westlake Ethylene Pipeline Corporation Scheduler as follows:</u></p> <p><u>a. by facsimile to the Westlake Ethylene Manager at (713) 960-8761, or</u></p> <p><u>b. by electronic mail, as arranged between Carrier and Shipper.</u></p> <p><u>Any nominations accepted by Carrier will be delivered on a ratable basis.</u></p> <p>9. <u>Identity of Shipments</u> In view of the impracticability of maintaining the identity of shipments, shipments will not be segregated, but will be</p>
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<p>commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.</p> <p>10. <u>Disposition of Shipments</u> In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at Delivery Point(s) in accordance with Carrier's schedules, Carrier may make whatever undelivered shipment which is necessary in order to free its pipeline. Carrier shall not be liable to Shipper because of such disposition, and thereof the same as if Shipper had requested or authorized such disposition.</p> <p>11. <u>Apportionment of Tenders and Withdrawals</u> In the event Shipper's tenders at Origin Points or withdrawal requirements at Delivery Points are greater than suspend tenders or withdrawals in order to deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.</p> <p>12. <u>Transit Privilege</u> Carrier may not be required by Shipper to stop Product in transit for any reason.</p> <p>13. <u>Liability of Carrier and Indemnity</u> Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public</p>	<p>be commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.</p> <p>10. <u>Disposition of Shipments</u> In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at Delivery Point^(s) in accordance with Carrier's schedules, Carrier may make whatever disposition of such undelivered shipment which is necessary in order to free its pipeline. Carrier shall not be liable to Shipper because of such disposition, and Shipper shall pay for all costs and fees thereof the same as if Shipper had requested or authorized such disposition.</p> <p>11. <u>Apportionment of Tenders and Withdrawals</u> In the event Shipper's tenders at Origin Points or Shipper's withdrawal requirements at Delivery Points are greater than can be currently handled by Carrier, Carrier may restrict or suspend tenders or withdrawals in order to apportion deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.</p> <p>12. <u>Transit Privilege</u> Carrier may not be required by Shipper to stop Product in transit for any reason.</p> <p>13. <u>Liability of Carrier and Indemnity</u> Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public enemy,</p>
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quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation or exchange services and not as an owner, manufacturer, or seller of Product transported or exchanged hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

For all services provided for an received under this tariff, Shipper shall indemnify and defend Carrier from any claims, liabilities, or losses (including costs of defense and reasonable attorney's fees), including claims for personal injury, death or property damage involving the Carrier, Shipper, Consignees, or third parties based on a arising out of Carrier's performance of such services. This indemnification shall include claims of any nature, legal,

enemy, quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, riots, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause outside of the reasonable control of the Carrier, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof involved in such loss in the proportion that such shipment or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation ~~or exchange~~ services and not as an owner, manufacturer, or seller of Product transported ~~or exchanged~~ hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

FOR ALL SERVICES PROVIDED FOR AN RECEIVED UNDER THIS TARIFF, SHIPPER SHALL INDEMNIFY AND DEFEND CARRIER FROM ANY CLAIMS, LIABILITIES, OR LOSSES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES), INCLUDING CLAIMS FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE INVOLVING THE CARRIER, SHIPPER,

<p>contractual or equitable, whether based on strict liability, negligence, breach of warranty, or any other causes of action. The indemnity provided in this tariff is intended to be applicable to the full extent allowed by law and is limited only in accordance with statutory or common law. To the extent not prohibited by law, this indemnity applies to any act or omission, whether negligent or not, arising out of or relating to the performance of service by Carrier pursuant to this tariff, including the sole or concurrent negligence or gross negligence or Carrier.</p>	<p>CONSIGNEES, OR THIRD PARTIES BASED ON A ARISING OUT OF CARRIER'S PERFORMANCE OF SUCH SERVICES. THIS INDEMNIFICATION SHALL INCLUDE CLAIMS OF ANY NATURE, LEGAL, CONTRACTUAL OR EQUITABLE, WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSES OF ACTION. THE INDEMNITY PROVIDED IN THIS TARIFF IS INTENDED TO BE APPLICABLE TO THE FULL EXTENT ALLOWED BY ALLOW AND IS LIMITED ONLY IN ACCORDANCE WITH STATUTORY OR COMMON LAW. TO THE EXTENT NOT PROHIBITED BY LAW, THIS INDEMNITY APPLIES TO ANY ACT OR OMISSION, WHETHER NEGLIGENT OR NOT, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF SERVICE BY CARRIER PURSUANT TO THIS TARIFF, INCLUDING THE SOLE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OR CARRIER.</p>
<p>14. <u>Claims</u> Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.</p> <p>15. <u>Additives, Dyes, and Odorization</u> a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at</p>	<p>14. <u>Claims</u> Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.</p> <p>15. <u>Additives, Dyes, and Odorization</u> a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at</p>

<p>Destination Point containing portions of corrosion inhibitor.</p> <p>b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported or exchanged unless resulting from negligence of the Carrier.</p> <p>c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:</p> <ol style="list-style-type: none"> (1) Will furnish the dye to be injected and/or the malodorant to be added and (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing. 	<p>Destination Point containing portions of corrosion inhibitor.</p> <p>b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported, or exchanged unless resulting from negligence of the Carrier.</p> <p>c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:</p> <ol style="list-style-type: none"> (1) Will furnish the dye to be injected and/or the malodorant to be added and (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing.
<p>16. <u>Imbalance Charges</u></p> <p>In the event that Shipper fails to deliver to Carrier at the Origin Point the equivalent volumes of Product which Carrier redelivers to Shipper at the destination-delivery point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for</p>	<p>16. <u>Imbalance Charges</u></p> <p>In the event that Shipper fails to deliver to Carrier at the origin point the equivalent volumes of Product which Carrier redelivers to Shipper at the destination point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for any particular imbalance period</p>

is not to be construed as a waiver of such charges for any other imbalance and Carrier maintains the right to collect such charges from Shipper for any imbalance not the subject of a written waiver.

17. Direction of Flow

In the event the pipeline is configured and equipped so that it is physically capable of bidirectional flow, Carrier at its sole discretion will choose the direction of flow between Point of Origin and Point of Delivery. Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.

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In the event the pipeline is configured and equipped so that it is physically capable of bidirectional flow, Carrier at its sole discretion will choose the direction of flow between ~~Point of Origin~~ Point of Origin ~~Point of~~ Point of ~~Delivery~~ Point. ~~Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.~~

Exhibit D

Westlake Ethylene Pipeline Corporation-T.R.R.C. No. _____
[Cancels Mustang Pipeline Company – Texas Local Tariff. -3]

WESTLAKE ETHYLENE PIPELINE CORPORATION
Mont Belvieu to Longview Pipeline

LOCAL TARIFF
Applying on

PETROLEUM PRODUCTS
As Defined in This Tariff

TRANSPORTED OR EXCHANGED BY PIPELINE
Between Points Within the State of Texas
Subject to the Regulations
Set Forth Herein

ISSUED: _____

EFFECTIVE: _____

Filed with the Railroad Commission

DATE: _____

Issued and Compiled By:

WESTLAKE ETHYLENE PIPELINE CORPORATION
2801 Post Oak Boulevard, Suite 600
Houston, Texas 77056

WESTLAKE ETHYLENE PIPELINE CORPORATION, hereinafter called "Carrier," will receive Product, as hereinafter defined, for its Mont Belvieu to Longview pipeline, for transportation or exchange under the conditions set forth below in Section III, "Rules and Regulations," at the rates set forth in Section II, "Product Specifications and Local Rates."

I. DEFINITIONS

- a) The term "barrel" as used herein, means forty-two (42) United States gallons at sixty degrees Fahrenheit (60° F).
- b) The term "day," as used herein, means a period of twenty-four (24) hours, commencing at 7:00 a.m. on one calendar day (the date of which shall be taken as the date of the day in questions) and extending until 7:00 a.m. on the following calendar day.
- c) The term "Delivery Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for delivery of Product by Carrier to Shipper.
- d) The term "gallon," as used herein, shall mean one (1) United States gallon at sixty degrees Fahrenheit (60° F).
- e) The term "Origin Point," as used herein, means one of the locations defined in Section II, "Product Specifications and Local Rates," for introducing Product into the respective pipelines.
- f) The term "pound," as used herein, means one (1) pound avoirdupois.
- g) The term "Product" as used herein, means the liquid petroleum gas products defined in Section II, "Product Specifications and Local Rates," for the respective pipelines.
- h) The term "Shipper," as used herein, means the party or parties who contract with Carrier for the transportation or exchange of Product under the terms of this tariff.

As the context may require, the plural form shall be construed to include the singular, and the singular form shall be construed to include the plural.

II. PRODUCT SPECIFICATIONS AND LOCAL RATES

- a) The rates published in this tariff are for transportation or exchange within the State of Texas through Carrier's Mont Belvieu to Longview pipeline and such transportation or exchange is subject to the rules and regulations contained herein and to all applicable rules, regulations, and orders of the Railroad Commission of Texas and other governmental authorities having jurisdiction.
- b) Rates apply to specified petroleum products from the established receiving facilities to the established delivery facilities at points named below.

EXHIBIT D

Product: Liquefied petroleum gas meeting the following specifications:

Components	Specifications	Test Method
Ethylene (Minimum)	99.90 mol %	ASTM D 2505
Methane	350 ppmV	ASTM D 2505
Ethane	465 ppmV	ASTM D 2505
Acetylene	1.5 ppmV	ASTM D 2505
Propylene & Heavier	5 ppmV	ASTM D 2505
Carbon Dioxide	1 ppmV	ASTM D 2505
Carbon Monoxide	0.15 ppmV	ASTM D 2504
Water	2 ppm wt	Panametrics
Total Sulfur	1 ppm wt	ASTM D 3246
Oxygen	4 ppm wt	ASTM D 2504
Hydrogen	5 ppmV	ASTM D 2504
Ammonia	1 ppm wt	ASTM D 5234
Methanol	1 ppm wt	ASTM D 5234

Origin/Delivery Point: Carrier's stations located at or adjacent to the terminals of Equistar Chemicals, Williams Storage, and Flint Hills Resources at Mont Belvieu, Texas, when such points of origin are practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

Origin/Delivery Point: Carrier's station in Gregg County, Texas, located adjacent to the Texas Operations Eastman Chemical Company facility (in Gregg and Harrison Counties, Texas), when such point of delivery is practicable and consistent with the operation of the pipeline, or such other points as the Carrier may designate and publish from time to time.

- Rate: a. \$1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day.
- b. \$0.70 per 100 pounds for each additional amount transported or exchanged in a single day.

III. RULES AND REGULATIONS

1. Testing

Product accepted for transportation or exchange under this tariff shall be delivered to Origin Point by Shipper and shall conform to the applicable Product definition. Shipper may be required to furnish Carrier with a certificate setting forth in detail specifications of each shipment offered for transportation or exchange hereunder, and Shipper shall be liable for any contamination or damage to other Product in Carrier's custody or to Carrier's pipeline or other facilities caused by failure of the shipment tendered to meet the specifications stated in Shipper's certificate.

Carrier may, but shall not be required to, sample and/or test any shipment prior to acceptance or during receipt of shipment and, in the event of variance between said certificate and Carrier's test, Carrier's test shall prevail. In the event that any test indicates that the Product offered for transportation or exchange does not conform to applicable Product definition, Shipper agrees, either voluntarily or upon notification by Carrier, to case delivery of off-specification Product to Carrier until such time as it is determined by additional testing that the Product conforms to the applicable Product definition.

2. Measurement

Carrier will utilize meters located at the Origin Point and Delivery Point whereby the quantities of Product tendered by Shipper to Carrier will be measured and the temperature and pressure of such Product be recorded. The volume of Product delivered each day will be determined by reference to daily readings of such meters. Correction factors and calculations from such meter readings for the purpose of determining the daily quantities of Product delivered will conform with the standard procedures utilized by the owner or operator of such meters.

If for any reason the custody transfer meters are out of service so that the quantity of material delivered through such meters cannot be ascertained, the quantity of material delivered during the period the meters are out of service will be estimated by Carrier based upon the best available data, using in order of preference the following methods:

- a. By using the registration of any check measuring equipment of Carrier.
- b. By using any measurement equipment which Carrier may have in the flowing stream.
- c. By any independent third party chosen by Carrier and generally recognized in the industry as competent to perform such estimate.

Carrier shall have the right to go upon the premises where Shipper's Product is metered and tested for quality assurance before delivery to Carrier's pipeline. Carrier shall have access to any and all such metering and testing equipment for the purpose of making any examination, inspection, or test.

Product will be received and delivered on the basis of volume corrections from observed temperatures to temperatures on the basis of sixty degrees Fahrenheit (60° F) using gravities, correction factors, and volume corrections for compressibility appearing in American Petroleum Institute (API) Manual of Petroleum Measurement Standards (latest edition) or other method agreed to by Shipper and Carrier.

Physical and legal transfer of custody of the Product from Shipper to Carrier shall be at the point immediately downstream of applicable measuring and metering facilities at the Origin Point. Physical and legal transfer of custody of the Product from Carrier to Shipper shall be at the point immediately downstream of applicable measuring and metering facilities at the Delivery Point.

3. Facilities at Origin and Delivery Point

Carrier will provide such facilities at Origin Point and at Delivery Point as it deems necessary for the operation of the pipeline. Carrier will not provide tankage or storage facilities or receiving, loading, or unloading facilities at either the Origin Point or the Delivery Point. Shipments will be accepted for transportation or exchange hereunder only:

- a. When Shipper has provided facilities satisfactory to Carrier capable of delivering shipments at Origin Point at pressures and at pumping rates required by Carrier; and
- b. When Shipper is capable of receiving shipments at Delivery Point by pipeline at pressures and at pumping rates required by Carrier.

This paragraph means that a shipper is responsible for providing or arranging sufficient compression or other services to effectuate the entry of the Product into the pipeline at an Origin Point and the delivery of the Product out of the Pipeline at the Delivery Point.

Carrier is not obligated to transport or exchange any volumes of ethylene unless Shipper delivers those volumes into the common stream out of which deliveries are made to Pipeline's customers.

Separate pipeline contracts in accordance with this tariff and these Rules and Regulations covering further details may be required of the proposed Shipper before any duty of transportation or exchange shall arise.

4. Minimum and Maximum Shipments

The quantity of a Product which Carrier may be obligated to accept at Origin Point shall be no less than 320,000 pounds delivered over a single day. Carrier may, at its sole election, accept a lesser quantity tender upon Shipper's agreement to pay Carrier, for said day, charges equal to those which would have resulted from transportation or exchange of said 320,000 pounds at the local rates provided herein.

5. Tender Deductions

A tender deduction of 1/2 percent by weight may be made on the quantity of Product received at Origin Point. Except as otherwise provided in this tariff (including, but not limited to, adjustments as provided in Paragraph 2, "Measurement"), Carrier will be accountable for delivery at Delivery Point of the quantity remaining after deduction of said tender deduction.

6. Payment of Transport or Exchange

The charges for transportation or exchange of Product accepted for shipment shall be based on the applicable rate set forth above in Section II before tender deduction, if any, is made. Shipments accepted for transportation or exchange shall be subject to a lien in favor of Carrier for all lawful charges hereunder.

Transportation or exchange charges incurred during any month will be invoiced about the 10th day of the succeeding month and shall be paid within 10 days of receipt of invoice. Carrier may require that charges:

- a. be prepaid at time of acceptance, or
- b. on demand be paid before release of Product from custody of Carrier. Carrier may charge Shipper interest of 1½ percent per month (18 percent per annum) for overdue transportation or exchange charges.

Carrier shall have a lien on all Product until the charges are paid. If the charges shall remain unpaid for more than five (5) days after notice of readiness to deliver, the Carrier may sell the Product at public auction at the general office of the Carrier on any day not a legal holiday. The date for the sale shall be not less than 48 hours after publication of notice in a daily newspaper of general circulation published in the city where the general office of the Carrier is located. The notice shall give the time and place of the sale and the quantity of the Product to be sold. At said sale, Carrier shall have the right to bid, and if the highest bidder, to become the purchaser. From the proceeds of such sale, Carrier will pay itself the transportation or exchange and all other lawful charges, including expenses incident to said sale, and the balance remaining, if any, shall be held for whomsoever may be lawfully entitled thereto. The remedies set forth in this tariff are in addition to, and not in limitation of, any statutory or common law remedy available to Carrier pursuant to the laws of the State of Texas. Shipper agrees that the venue of any suit regarding shipments shall be Gregg County, Texas.

7. Clear Title

Shipper shall notify Carrier when any Product tendered for transportation or exchange is involved in litigation or is the subject of disputed ownership or is encumbered by lien or charge of any kind. Carrier shall have the right to reject any shipment, when offered for transportation or exchange, which may be involved in litigation or the title of which may be in dispute or which may be encumbered by lien or charge of any kind, and Carrier may require of the Shipper satisfactory evidence of his perfect and unencumbered title or satisfactory indemnity bond to protect Carrier against any and all loss.

8. Tenders

All Shippers desiring to tender Product for transportation or exchange on Carrier's facilities shall furnish a written nomination to Carrier by the fifteenth (15th) day (excluding Carrier holidays) of the month prior to the month Shipper desires transportation or exchange. Nominations shall specify the quantity of Product to be transported or exchanged, the Origin Point, the Delivery Point, and any other information required by Carrier. If Shipper does not furnish such written nomination, Carrier shall be under no obligation to accept such Product for transportation or exchange.

Nominations shall be transmitted to Carrier to the attention of Westlake Ethylene Pipeline Corporation Scheduler as follows:

- a. by facsimile to the Westlake Ethylene Manager at (713) 960-8761, or
- b. by electronic mail, as arranged between Carrier and Shipper.

Any nominations accepted by Carrier will be delivered on a ratable basis.

9. Identity of Shipments

In view of the impracticability of maintaining the identity of shipments, shipments will not be segregated, but will be commingled and deliveries will be made at Delivery Point from Carrier's common Product streams.

10. Disposition of Shipments

In the event that Shipper does not have adequate facilities available to receive or is not capable of receiving any shipment at the Delivery Point in accordance with Carrier's schedules, Carrier may make whatever disposition of such undelivered shipment which is necessary to order to free its pipeline. Carrier shall not be liable to Shipper because of

such disposition, and Shipper shall pay for all costs and fees thereof the same as if Shipper had requested or authorized such disposition.

11. Apportionment of Tenders and Withdrawals

In the event Shipper's tenders at Origin Point or Shipper's withdrawal requirements at the Delivery Point are greater than can be currently handled by Carrier, Carrier may restrict or suspend tenders or withdrawals in order to apportion deliveries among all Shippers on an equitable basis. The Carrier shall be considered as a Shipper of Product produced or purchased by itself and held for shipment through its line and its product shall be entitled to participate in such apportionment.

12. Transit Privileges

Carrier may not be required by Shipper to stop Product in transit for any reason.

13. Liability of Carrier and Indemnity

Carrier shall not be liable for any delay in delivery or for any loss of Product caused by an act of God, public enemy, quarantine, authority of law, order, rule or regulation of federal, state or local government, strikes, riots, fire, explosion, equipment breakage, floods or by act of default of Shipper, or resulting from any other cause outside of the reasonable control of the Carrier, whether similar or dissimilar to the causes herein enumerated. Any such loss shall be apportioned by Carrier to each shipment of Product or portion thereof involved in such loss in the proportion that such shipment or portion thereof bears to the total of all product in the loss, and each Shipper shall be entitled to receive only that portion of its shipment remaining after deducting its proportion as above determined of such loss. Carrier shall prepare and submit a statement to Shippers showing the apportionment of any such loss.

The Carrier operates under this tariff solely as a provider of transportation or exchange services and not as an owner, manufacturer, or seller of Product transported or exchanged hereunder, and the Carrier expressly disclaims any liability for any expressed or implied warranty for Product transported or exchanged hereunder including any warranties of merchantability or fitness for intended use.

FOR ALL SERVICES PROVIDED FOR AND RECEIVED UNDER THIS TARIFF, SHIPPER SHALL INDEMNIFY AND DEFEND CARRIER FROM ANY CLAIMS, LIABILITIES, OR LOSSES (INCLUDING COSTS OF DEFENSE AND REASONABLE ATTORNEY'S FEES), INCLUDING CLAIMS FOR PERSONAL

INJURY, DEATH OR PROPERTY DAMAGE INVOLVING THE CARRIER, SHIPPER, CONSIGNEES, OR THIRD PARTIES BASED ON OR ARISING OUT OF CARRIER'S PERFORMANCE OF SUCH SERVICES. THIS INDEMNIFICATION SHALL INCLUDE CLAIMS OF ANY NATURE, LEGAL, CONTRACTUAL OR EQUITABLE, WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSES OF ACTION. THE INDEMNITY PROVIDED IN THIS TARIFF IS INTENDED TO BE APPLICABLE TO THE FULL EXTENT ALLOWED BY LAW AND IS LIMITED ONLY IN ACCORDANCE WITH STATUTORY OR COMMON LAW. TO THE EXTENT NOT PROHIBITED BY LAW, THIS INDEMNITY APPLIES TO ANY ACT OR OMISSION, WHETHER NEGLIGENT OR NOT, ARISING OUT OF OR RELATING TO THE PERFORMANCE OF SERVICE BY CARRIER PURSUANT TO THIS TARIFF, INCLUDING THE SOLE OR CONCURRENT NEGLIGENCE OR GROSS NEGLIGENCE OF CARRIER.

14. Claims

Notice of claims for loss, damage, or delay in connection with the shipment of Product must be made in writing to Carrier within 45 days after the damage, loss, or delay occurred. If the claim is for failure to make delivery, the claim must be made within 15 days after a reasonable time for delivery has elapsed.

15. Additives, Dyes, and Odorization

- a. Carrier may inject corrosion inhibitor compound in the Product to be transported or exchanged, and Shipper will accept delivery of Product at Delivery Point containing portions of corrosion inhibitor.
- b. Carrier will assume no liability for discoloration, contamination, or deterioration of Product transported or exchanged, unless negligent conduct by Carrier is determined to be the sole, proximate cause of the cost, expense, damage or liability incurred by Shipper.
- c. Except where required by law, Carrier will not inject dyes nor odorize any Product tendered. Should Carrier be required by law to inject dyes or to odorize any Product tendered, Shipper:
 - (1) Will furnish the dye to be injected and/or the malodorant to be added and
 - (2) May be required by Carrier to provide and/or install satisfactory equipment to effect such injection and/or odorizing.

16. Imbalance Charges

In the event that Shipper fails to deliver to Carrier at the Origin Point the equivalent volumes of Product which Carrier redelivers to Shipper at the Delivery Point during a calendar month, then Shipper will pay Carrier an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. If Shipper delivers volumes to Carrier in excess of those volumes which Carrier redelivers to Shipper in any calendar month, then Shipper will pay an imbalance charge of one cent (1¢) per pound per day for each day the imbalance continues. Carrier may waive such imbalance charges if Carrier, in its sole discretion, determines that the imbalance is immaterial. The waiver of such charges for any particular imbalance period is not to be construed as a waiver of such charges for any other imbalance and Carrier maintains the right to collect such charges from Shipper for any imbalance not the subject of a written waiver.

17. Direction of Flow

In the event the pipeline is configured and equipped so that it is physically capable of bi-directional flow, Carrier at its sole discretion will choose the direction of flow between the Origin Point and Delivery Point. Carrier will make a reasonable attempt to accommodate Shippers through the exchange of product at Origin and Delivery Points. Any exchanges will be subject to the same terms and conditions applicable to shipments pursuant to this tariff, including the rate charged for such exchanges. The provisions of this tariff apply to all shipments or exchanges regardless of the direction of flow or whether the product shipped or received is physically moved from one point to another.

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