



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NO. 10358

RATE-SETTING PROCEEDING REGARDING WESTLAKE PIPELINE
SEVERED FROM GUD No. 10296

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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 or Westlake). The complaint was docketed as GUD No. 10296 and related to Westlake Pipeline's system operated pursuant to T-4 Permit No. 05253. Eastman's complaint centered on allegations of (1) discrimination and (2) unjust and unreasonable rates by the filing of Westlake Pipeline's 2013 Tariff. These issues were bifurcated with the discrimination claim remaining in GUD No. 10296 and the allegations related to rates severed into the instant docket, GUD No. 10358. In this case, the Commission is asked to consider whether the rate in Westlake Pipeline's July 2013 Tariff that increases the rate for all volumes of ethylene transported or exchanged from \$1.90 per 100 pounds for the first 320,000 pounds in a single day and \$0.70 per 100 pounds for each additional amount transported or exchanged in a single day to \$3.50 per 100 pounds of ethylene for all volumes transported, is just and reasonable.

The Examiners recommend that the Commission find that Westlake's 2013 Tariff rate of \$3.50 per 100 pounds for all volumes of ethylene transported or exchanged is not just and reasonable. Further, the Examiners recommend that the Commission adopt the Examiners' recommended rate of \$2.45 per 100 pounds of ethylene transported or exchanged as supported by the preponderance of the credible evidence in the record.

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PROPOSAL FOR DECISION

1. Background

Westlake Ethylene Pipeline Corporation (Westlake Pipeline or Westlake) is a 194 mile common carrier pipeline that was originally constructed in 1996 by Mustang Pipeline Company (Mustang Pipeline), a subsidiary of Eastman Chemical Company (Eastman) for the purpose of transporting ethylene from Mont Belvieu, Texas to the Eastman plant in Longview, Texas.¹ The pipeline traverses the following seven Texas counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg Counties. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.

Westlake Longview owns polyethylene and other manufacturing facilities that are located within Eastman's industrial complex in Longview, Texas. These manufacturing facilities were owned by Eastman until they were sold in 2006 as part of a broader transaction that included the sale of the common carrier pipeline to Westlake Pipeline by Mustang Pipeline. The pipeline is used to physically deliver ethylene to the pipeline's chemical company affiliate, Westlake Longview.

Eastman owns and operates chemical facilities in Longview including four olefin cracking units (crackers), which produce propylene and ethylene. Eastman consumes all propylene produced in these facilities as raw material on-site but consumes approximately 50% of the ethylene produced.

Ethylene is the largest volume petrochemical produced in the world. It is the starting material, or chemical feedstock, 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, and polyvinyl chloride. Many plastics including packaging, appliances, toys, automotive parts, and construction materials contain one or more derivatives of ethylene. Eastman produces large quantities of ethylene in Longview. Both Westlake Chemical and Eastman consume large quantities of ethylene in Longview. Westlake Chemical's principal use of ethylene in Longview is for the production of polyethylene.²

Compression was added to the Mustang Pipeline by Eastman in 2002 to allow the bi-directional flow of ethylene from Longview back to Mont Belvieu in instances where the Eastman facilities produced more ethylene than was being utilized in Longview by either Eastman, or Westlake's polyethylene production plants. The compression to move the ethylene bi-directionally remained in place after Westlake Chemical bought the pipeline and certain polyethylene facilities at Eastman's Longview plant in 2006.³ Eastman, however, retained the crackers, which produce ethylene. Westlake Chemical re-named the pipeline the Westlake Ethylene Pipeline and kept the tariff in place for approximately an additional seven years (2002 Tariff).⁴

¹ A map of the pipeline system is attached to this Proposal for Decision as "Exhibit C."

² Eastman Ex. 2, Direct of George M. Intille, pp. 4-5.

³ Eastman Ex. 101, Direct Testimony of J. Stephen Long, pp. 4-5 and Westlake Ex. 6 – Pipeline Purchase Agreement.

⁴ Eastman Ex. 101, Direct Testimony of J. Stephen Long, p. 5 and Westlake Ex. 2 – 2002 Tariff.

The dispute giving rise to this complaint started in July 2013, when Westlake filed a new tariff raising the rate for ethylene transportation. Eastman uses the pipeline as a shipper to sell its excess ethylene and continue operations of its facilities at the capacity required to satisfy its propylene requirements. Transportation costs for ethylene are a significant portion of the costs for most polyethylene processes. Under the 2002 Tariff, the declining block tariff rate for ethylene transported or exchanged by the common carrier pipeline was \$1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day and \$0.70 per 100 pounds for each additional amount transported or exchanged in a single day. The 2013 Tariff, that is the subject of this docket, increases the rate to \$3.50 per 100 pounds of ethylene transported. The 2013 Tariff also terminated the exchange services and backhaul (reverse flows) for ethylene, the subject of GUD No. 10296.⁵ On December 9, 2014, the Commission approved a Tariff in GUD No. 10296 that continues backhaul and exchange services.

Table 1.1 is a timeline of the key events related to the pipeline:

Table 1.1
Timeline of Key Events⁶

1995	Eastman began planning the pipeline
12/1996	Mustang Pipeline Company began construction on the pipeline
06/02/1997	Eastman issued the first Tariff
2002	Compression added to the pipeline system to enable backhaul
07/24/2002	Mustang issued the second Tariff
10/06/2006	Westlake Chemical purchased the pipeline from Eastman
07/03/2013	Westlake Pipeline issued its first Tariff
07/29/2013	Eastman files Complaint with Commission
02/05/2014	Westlake's 2013 Tariff suspended by Examiners in GUD No. 10296 and 2002 Tariff reinstated during pendency of proceedings

2. Procedural History

Complaint. On July 29, 2013, Eastman Chemical Company filed a complaint against Westlake Ethylene Pipeline Corporation relating to Westlake Pipeline's system operated pursuant to T-4 Permit No. 05253. Eastman's complaint alleged that changes to the Westlake Pipeline 2013 Tariff: (1) unlawfully terminated the ability of shippers to conduct exchanges on the Westlake Pipeline; (2) unlawfully terminated the ability of shippers to ship product from Longview, Texas to Mont Belvieu, Texas; and (3) resulted in an unreasonably preferential, prejudicial, or discriminatory tariff. 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, 2013.⁷

⁵ Westlake Ex. 3 – 2013 Tariff.

⁶ Timeline of Key Events Table is from companion case GUD No. 10296.

⁷ See GUD No. 10296, Transcript on Hearing on Jurisdictional Issues (Jurisdictional Hearing).

On November 19, 2013, the Examiners in GUD No. 10296 concluded that the scope of the hearing in this matter would be limited to allegations of discrimination raised in the complaint by stating that the Common Carrier Act did not provide the Railroad Commission of Texas (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 GUD No. 10296 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.

Bi-furcation of Proceeding. The hearing related to Eastman's complaint was divided into two phases. The Notice of Hearing was issued on March 23, 2014. The first phase (Phase I) would address the discrimination claims and the second phase (Phase II) would address all issues related to rates.

Phase I Hearing – Discrimination Claims. 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 be severed into separate dockets. Westlake Pipeline opposed severance. On May 14, 2014, after considering the arguments of the parties, the Examiners in GUD No. 10296 severed the proceedings and Phase II was docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296*. On December 9, 2014, the Commission issued a Final Order in GUD No. 10296 adopting the Examiners' Recommendation and approving a Tariff that continues backhaul and exchange services.⁸

Phase II Hearing – Rates. This proposal for decision is Phase II, GUD No. 10358, where the Commission is to consider whether the rate in Westlake Pipeline's July 2013 Tariff is just and reasonable. The rate portion went to evidentiary hearing on August 6 – 7, 2014. Closing Briefs were filed on September 5, 2014, and Replies to Closing Briefs were filed on September 19, 2014.

At the Phase II hearing, Westlake presented two witnesses: (1) Dr. Daniel S. Arthur, Principal of The Brattle Group, an economic and management consulting firm, who has over fifteen years of experience consulting with firms in the regulated energy industries on ratemaking, pricing, and antitrust issues; and (2) Amy Moore, Olefins Commercial Manager,

⁸ A copy of the Final Order in GUD No. 10296 issued by the Commission on December 9, 2014 is attached to this Proposal for Decision as "Exhibit F."

Westlake Chemical, who is responsible for commercial dealings for Westlake Chemical and its subsidiaries for ethylene or ethylene co-products, including the movement of those products.

Eastman presented the testimony of three witnesses: (1) Dr. Bruce Fairchild, Principal in Financial Concepts and Applications, Inc. (FINCAP), a firm engaged in financial, economic, and policy consulting to business and government; (2) Dr. George M. Intille, Principal at Nextan Inc. within its Energy and Chemical Consulting Group; and (3) J. Stephen Long, Eastman Chemical Company, Manager - Texas Global Indirect Procurement & Supply Chain, which includes supply and distribution responsibilities for the Texas region as well as the development of global sourcing strategies. Mr. Long is responsible for sourcing, procurement and supply chain activities associated with indirect materials and services for Eastman's Longview, Texas and Texas City, Texas sites.

On July 29, 2013, through Examiner Letter No. 6, the transcript of testimony and evidentiary record for companion case GUD No. 10296 was admitted into the record of the current docket, GUD No. 10358.

3. Jurisdiction

The Commission has jurisdiction over Westlake Pipeline, Eastman, associated affiliates, and the matters at issue in this proceeding pursuant to *TEX. NAT. RES. CODE ANN.* Title 3, Subtitles A, B, and D, Chapters 81, 85, 86, and 111. The statutes and rules involved in this proceeding include, but are not limited to the following: *TEX. NAT. RES. CODE ANN.* §§ 81.051, 81.061, 111.001 – 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* Chapters 3 and 7.

4. Burden of Proof

The instant case, GUD No. 10358, is the second phase of a bifurcated hearing. In GUD No. 10296 the complainant, Eastman, had the burden of proof to demonstrate that the exclusion of exchange and backhaul provisions in the 2013 Tariff were discriminatory. Whereas, in the current docket, GUD No. 10358, Westlake Pipeline, Respondent, has the burden to show that the 2013 Tariff rate is just and reasonable.⁹

5. Legal Standard

The Commission has specific and substantial authority over ratemaking for common carrier pipelines. The Commission has discretion to administer the state's oil and gas laws.¹⁰ It also has plenary jurisdiction over all pipelines in Texas.¹¹ The Legislature has directed the Commission to "adopt all necessary rules for governing and regulating" these pipelines.¹²

⁹ Transcript of Testimony, Vol. I, p. 8, Westlake's counsel confirming that Westlake Pipeline, the Respondent, has the burden of proof regarding the rates portion of the case.

¹⁰ *Stewart v. Humble Oil & Refining Co.*, 377 S.W.2d 830, 834 (Tex. 1964) (emphasizing that "the courts have consistently recognized that the Commission must be given discretion in administering the oil and gas statutes").

¹¹ *Bullock v. Shell Pipeline Corp.*, 671 S.W.2d 715, 719 (Tex. App.—Austin, 1984 writ ref'd n.r.e.).

¹² *TEX. NAT. RES CODE ANN.* § 81.052; see also *Bullock v. Shell Pipeline Corp.*, 671 S.W.2d 715, 719 (Ct. App.—Austin, writ ref'd n.r.e.) (finding that the Commission "has primary and plenary jurisdiction" over a common carrier pipeline).

In this case, an evaluation of pipeline transportation rates is governed by four relevant statutes authorizing the Commission to consider a number of factors, use varied methodologies, and use considerable latitude in their application. First, Section 111.183 of the Natural Resources Code is the statutory provision that governs the basis for the rate for common carriers. Section 111.184 of the Natural Resources Code goes on to authorize the Commission to use reasonable latitude in establishing and adjusting competitive rates. Third, Natural Resources Code Section 81.051 gives the Commission jurisdiction over common carriers. Lastly, 81.061(b) provides the Commission the power to use either a cost-of-service method or a market-based rate method when exercising its rate-setting authority.

A. Natural Resources Code Sections 111.183 and 111.184

Chapter 111 of the Natural Resources Code includes provisions specific to common carriers. Section 111.183 governs the Commission's process for common carrier ratemaking that outlines a method ensuring a fair return to the common carrier. Section 111.183 states:

The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

Similarly, Section 111.184, titled "Discretion of Commission," authorizes the Commission to use "reasonable latitude in establishing and adjusting competitive rates." This provision contemplates that the Commission might consider a range of factors to determine a common carrier's rates. For this reason, Sections 111.183 and 111.184 are used to guide the Commission in setting rates in this docket.

There is little precedent at the Commission for setting rates for common carriers under Sections 111.183 and 111.184. A common carrier case from 1997, however, did apply Sections 111.183 and 111.184.¹³ In *Weeks*, the pipeline (Chevron) sought to increase its rate from \$0.89 per barrel to \$1.44 per barrel, attributing the need for the increase to declining throughputs on the pipeline. The shipper, Weeks/Santos, protested the rate. The Examiner in *Weeks* employed a comparative approach using two sets of benchmarks. First, he utilized a cost-of-service analysis to derive the recommended rate and then found that a comparison of the recommended rate was within the range of rates reflected both in Chevron Pipeline Company FERC tariffs for transportation from offshore to land-based delivery points.¹⁴ He also explained that his recommendation was within "the sampling filed by Weeks/Santos of tariffs on file at the Railroad Commission for similar transportation by other entities."¹⁵ On July 22, 1997, the Commission adopted the rate that the Examiner recommended.¹⁶

¹³ Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997). GUD No. 8434 is attached to this Proposal for Decision as "Exhibit E."

¹⁴ Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 4.

¹⁵ *Id.*

¹⁶ Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997).

B. Natural Resources Code Sections 81.051 and 81.061

Subsequent to the *Weeks* docket, the Legislature enacted Natural Resources Code Section 81.061(b), relating to the Commission's general powers and authority to set market-based and cost-of service based rates. Thus, the applicability of Section 81.061(b) to the instant case is an issue of first impression for the Commission. After careful analysis, the Examiners find that the Commission has jurisdiction over Westlake as a common carrier pipeline under Section 81.051(a)(1)¹⁷ and in turn, Section 81.061(b).

Section 81.061(b) of the Natural Resources Code is under Chapter 81, Subtitle A, Subchapter C related to the Commission's "Jurisdiction, Powers and Duties" and gives the Commission the power to use a cost-of-service method or a market-based method in setting rates for common carrier pipelines, as follows:

The commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

In construing whether Section 81.061(b) applies to rate-setting for ethylene pipelines, as in this proceeding, the Examiners considered, among other things, both the legislative intent and the regulatory construction of Section 81.061(b).¹⁸

This analysis is supported by the Code Construction Act, which provides that: "In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy."¹⁹ The Act further states that, in construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters: (1) the legislative history; and (2) the administrative construction of the statute.²⁰

(1) Legislative Intent

The construction a statute is to be given depends upon the legislative intent, which is to be determined from the language used and purpose in enacting the law.²¹ "A court must look to the entire Act in determining the legislature's intent with respect to a specific provision."²² Furthermore, "the entire statute is intended to be effective and that public interest is favored over any private interest."²³ While Section 81.061(b) was enacted into law as part of a broader cluster of statutes related specifically to natural gas pipelines, the language of Section 81.061(b) does not expressly limit using a market-based rate method to only natural gas pipelines. Indeed,

¹⁷ TEX. NAT. RES CODE § 81.051(a)(1) gives the commission jurisdiction over all common carrier pipelines defined in TEX. NAT. RES CODE § 111.002.

¹⁸ See Tex. Gov't Code § 312.005 (Vernon 1998).

¹⁹ Tex. Gov't Code § 312.005 (Vernon 1998); *Garland v. Dallas Morning News*, 22 S.W.3d 351, 358 (Tex. 2000) (stating courts must take statutes as they find them and should not give strained readings to statutes).

²⁰ *Id.*

²¹ *Wilburn v. State*, 824 S.W.2d 755, 760 (Tex. App. – Austin 1992, no writ); citing *Ross Amigos Oil Co. v. State*, 138 S.W.2d 798, 800 (Tex. 1940).

²² *Wilburn*, 824 S.W.2d at 760; citing *Taylor v. Firemen's & Policemen's Civil Service*, 616 S.W.2d 187, 190 (Tex. 1981).

²³ *Wilburn*, 824 S.W.2d at 760; citing Tex. Gov't Code § 311.021(1), (5).

Section 81.061(a) limits the section's inapplicability to just a handful of Utilities Code rate-setting provisions, none of which apply to this case.²⁴

Where, as here, when specific exclusions to a statute are stated by the Legislature, the intent is usually clear that no other exclusions are to apply.²⁵ Section 81.061(b) expressly excludes rates established under Chapters 103 and 104 of the Utilities Code, however, it does not otherwise limit the Commission's authority to impose rates. Therefore, the Examiners find that the Legislature did not intend to prohibit the Commission from setting either a market-based rate or cost-of-service based rate in cases such as this one.²⁶

(2) Administrative Construction

After carefully considering the plain language of Section 81.061(b), along with the legislative intent analysis described above, the Examiners recommend that full consideration should be given to the plain language of Section 81.061(b).²⁷ The Examiners believe that, by specifically excluding only certain, specific rate-setting provisions, the Legislature purposefully intended to make Section 81.061(b) applicable to all others. The Examiners therefore recommend that statutory construction principles also support the applicability of Section 81.061(b) to the Commission's ratemaking authority in this docket to set market-based or cost-of-service based rates.

(3) Conclusion

Since Section 81.061(b) allows the Commission to set either a cost-of-service based rate or market-based rate, the Examiners note that a cost-of-service method has been used in Texas for gas and various other utilities for many years. On the other hand, a market-based rate has been less widely used by the Commission. A market-based rate is a rate that the market will accept or a rate that the market will bear. A market-based method is intended to produce rates that would exist in a competitive market. Analogous to the Commission's jurisdiction, the Federal Energy Regulatory Commission (FERC) not only uses cost-of-service based rates but also introduced a procedure for using market-based rates when Congress enacted the Energy Policy Act of 1992 (EPAAct).²⁸ In FERC cases, however, a pipeline may employ market-based rates if it is able to make an affirmative showing that the oil pipeline lacks significant market power in the relevant markets.²⁹

²⁴ Section 81.061(a) states: "This section does not apply to rates established under Chapter 103, Utilities Code, or Subchapter C or G, Chapter 104, of that code" (internal footnote omitted).

²⁵ *Crawford Family Farm Partnership v. TransCanada Keystone Pipeline, L.P.*, 409 S.W.3d 908, 918 (Tex. App. – Texarkana 2013, pet. denied) (The principle of *exclusion unius* recognizes that "[t]he inclusion of the specific limitation excludes all others."); *Unigard Security Insurance Co. v. Schaefer*, 572 S.W.2d 303, 307 (Tex. 1978).

²⁶ See also *Crawford Family Farm Partnership*, 409 S.W.3d at 918 (finding that if Legislature intended to limit Commission's authority over common carriers, it would have done so with an express limitation); Tex. Nat. Res. Code 81.051 (Commission has authority to regulate all common carrier pipelines in Texas).

²⁷ The Examiners also carefully reviewed the amicus letters filed in the GUD 10296 proceeding, in which several industry organizations expressed their opinions and analysis that the Commission has authority under the Natural Resources Code to exercise jurisdiction over ethylene pipelines. See Letter from Texas Chemical Council, Dec. 23, 2013, GUD 10296; Letter from Texas Pipeline Association, Dec. 30, 2013, GUD 10296; Letter from Texas Oil & Gas Association, Dec. 31, 2013, GUD 10296; and Letter from Gas Processors Association, Jan. 6, 2014, GUD 10296.

²⁸ *Ass'n of Oil Pipe Lines v. F.E.R.C.*, 83 F.3d 1424, 1429 (D.C. Cir. 1996) (quoting the legislative history of the EPAAct).

²⁹ *Ass'n of Oil Pipe Lines v. F.E.R.C.*, 83 F.3d 1424, 1431 (D.C. Cir. 1996) (quoting Order No. 572, at 31,181; see also 18 C.F.R. § 342.4(b)).

While there have been few common carrier rate setting cases before the Commission, the focus on competitive results has been apparent in Commission ratemaking for over a century. In *Railroad Commission of Texas v. Weld & Neville*, the Texas Supreme Court observed that the Commission was obligated to evaluate rates from both the perspective of the carrier and the shipper.³⁰ While the carrier was entitled to a fair return, the Commission also had to take into account the interests of the industry so that both the rights of the shipper and the rights of the carrier were evaluated in determining the reasonableness of rates.

In conclusion, the Examiners recommend that the Commission adopt the Examiners' findings that the Commission has jurisdiction over Westlake Pipeline under Section 81.051(a)(1) and further that the Commission may rely upon Section 81.061(b) to set either a cost-of-service based rate or market-based rate in this docket. With either approach, the Commission is to balance the interests of both the pipeline and the shipper.

6. Tariff – Rate

There are three tariffs relevant to this docket. These include: (1) the 1997 Mustang Tariff; (2) the 2002 Mustang Tariff, which is a two-tiered declining block rate structure charging \$1.90 per 100 pounds for the first 320,000 pounds shipped per day and \$0.70 per 100 pounds for all remaining volumes shipped the same day; and (3) the 2013 Westlake Pipeline Tariff that proposes to charge a rate of \$3.50 per 100 pounds for all volumes transported. The Commission in this case is being asked to determine whether the 2013 Westlake Pipeline Tariff is just and reasonable. Table 6.1 below summarizes the rates contained in the three tariffs.

Table 6.1
Tariff – Rate Summary Comparison

	Initial Tariff – 1997 Mustang Pipeline Tariff No. M-3	2002 Revised – Mustang Pipeline Tariff No. M-3	Filed 2013 Westlake Tariff Tariff No. 1.0.0
Tier 1	\$11.60 per 100 pounds for the first 275,000 pounds transported in a single day	\$ 1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day	\$ 3.50 per 100 pounds for all pounds transported in a single day from an Origin Point to the Delivery Point.
Tier 2	\$ 0.70 per 100 pounds for each additional amount transported in a single day	\$ 0.70 per 100 pounds for each additional amount transported or exchanged in a single day.	

The 1997 Mustang Tariff was the original tariff. In 2002, Mustang imposed the 2002 Tariff, which is the existing rate. As part of the initial complaint, GUD No. 10296, Eastman

³⁰ *R.R. Comm'n of Texas v. Weld & Neville*, 96 Tex. 394, 408, 73 S.W. 529, 533 (1903).

requested relief that the 2013 Westlake Tariff be immediately suspended and the prior 2002 Tariff be reinstated. Effective February 5, 2014, the Examiners in GUD No. 10296 granted Eastman's request that the Westlake Pipeline 2013 Tariff be suspended pending a resolution of this pursuant to Section 111.185 of the Natural Resources Code.

Finally, Natural Resources Code Section 111.014 requires that common carriers make and publish their tariffs under rules prescribed by the Commission. Regulated entities may not charge rates or provide services other than those properly filed with the appropriate regulatory authority.³¹ As a corollary to that regulatory construct, a common carrier's obligations to its customers cannot exceed its duties under a filed tariff.³² Filed tariffs govern the relationship of the common carrier with its customers.³³ 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.³⁴ 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.³⁵

7. Overall Position of the Parties

A. Westlake's Position

It is Westlake's position that the 2013 Tariff rate of \$3.50 per 100 pounds of ethylene transported was set using reasonable rate making methods. According to Westlake, the July 2013 rate was within a range of rates reflected in other tariffs for similar transportation by other entities and also consistent with the indexing methodology used by the FERC. Finally, Westlake maintains that the July 2013 Tariff rate provides Westlake no more than a fair return on their investment.

B. Eastman's Position

Eastman argues that Westlake failed to meet its burden of proof to show that the 2013 Tariff is just and reasonable, and consistent with statutory criteria for common carrier rates. Eastman requests that the Commission reject Westlake's rate increase and allow the prior 2002 Tariff to remain in effect. In the alternative, Eastman requests that the Commission adopt one of

³¹ *Entex v. R.R. Comm'n of Tex.*, 18 S.W.3rd 858, 862-63 (Tex. App., – Austin 2000, pet denied); *Southwestern Bell Tell. Co. v. Metro-Link Telecom, Inc.*, 919 S.W.2d 687, 692 (Tex. App. – Houston [14th Dist.] 1996, writ denied).

³² *Arkansas La. Gas Co. v. Hall*, 101 S. Ct. 2925 (1981); *Texaco, Inc. v. Central Power & Light Co.*, 955 S.W.3rd 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).

³³ *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.3rd 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).

³⁴ *See CenterPoint Energy Entex*, 208 S.W.3rd 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).

³⁵ *Id.*

Eastman's proposed rates that Eastman believes will protect both the shippers and Westlake. Overall, Eastman maintains that Westlake's 2013 Tariff rate is substantially too high and asserts that it is based neither on a cost-of-service nor market rate, but rather is an after the fact derived number. According to Eastman, the two tests that Westlake used to determine the reasonableness of the proposed rate, (1) simple cost of capital analysis, and (2) FERC escalation formula, were misapplied and not a reasonable basis for the proposed new rate.

8. Method to Set Rate

At the outset, the Examiners note that the method to set rates in this case is distinct from historical ratemaking methodologies contained in the Texas Utilities Code for natural gas utilities. As discussed in Section Five above, the legal standard for setting common carrier rates derives from Natural Resources Code Sections 81.061, 111.002, 111.181, 111.183 and 111.184. As a result, the basis for ratemaking focuses on a fair return by setting either a market-based rate or a cost-of-service based rate for the common carrier with consideration given to typical cost-of-service factors. In addition, other methods such as indexing have been utilized by the parties as a benchmark for the reasonableness of the rate proposed.

A. Westlake's Position

Westlake used a market-based tariff comparison to set its proposed rate at issue and then checked the reasonableness of that rate with a simple cost-of-service analysis and an indexing method. Westlake, therefore argues the pipeline used a combination of methods to set the July 2013 Tariff rate.

Amy Moore, Olefins Commercial Manager for Westlake Chemical, compared the 2002 Tariff rate to other tariffs rates that provide for the transportation of ethylene.³⁶ Ms. Moore primarily compared three tariffs and determined the Shell Concha tariff to be the most comparable to the Westlake Pipeline in terms of length. The Shell Concha tariff contains several different rates for the transportation of ethylene, depending on the location of where the shipper wants to ship the ethylene.³⁷

Ms. Moore testified that under the Shell Concha tariff, a shipper will pay \$0.78³⁸ per 100 pounds from Geismar, Louisiana to Napoleonville, Louisiana, a pipeline distance of less than 30 miles. A shipper will pay \$3.50 per 100 pounds to ship from Mont Belvieu, Texas to Lake Charles, Louisiana, a distance of approximately 115 miles. The Mont Belvieu to Lake Charles rate is the same \$3.50 selected as the July 2013 rate although it covers a distance of approximately 60% of the Westlake Pipeline's 194.7 miles.³⁹

Reviewing Ms. Moore's decision, Dr. Daniel S. Arthur, Principal of the Brattle Group, Economic and Management Consulting Firm, presented evidence comparing the rates offered in the Shell Concha tariff, the Enterprise TE Products tariff, the SouthTex 66 tariff, and others by

³⁶ Transcript of Testimony, Vol. I, Amy Moore, p. 22 and Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.

³⁷ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.

³⁸ In Westlake Ex. 101, Direct Testimony of Amy Moore, Exhibit A, this rate is represented as \$0.69.

³⁹ Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 2-3.

converting them to \$/pound-mile and by scaling them to a 195-mile length of transport, which is the length of the Westlake Pipeline.⁴⁰ Dr. Arthur testified that at \$0.000179/pound-mile, the July 2013 Tariff rate is approximately half of the \$0.000371/pound-mile rate in the Shell Concha tariff.⁴¹ Moreover, Dr. Arthur testified that the July 2013 Tariff rate's average rate per pound-mile is below the majority of the other pipelines' rates per pound-mile.⁴² Thus, Dr. Arthur believes this comparison shows that the July 2013 Tariff rate is one of the least expensive rates for the transportation of ethylene and when the rates on other ethylene pipelines were adjusted for the distance of transport, as advocated by Eastman's internal procedures, the July 2013 rate compares favorably.⁴³

B. Eastman's Position

Eastman claims that Westlake arbitrarily arrived at the \$3.50 per 100 pounds rate by an Internet search that looks only at a single, incomparable, ethylene pipeline rate. Ms. Moore testified that she did an Internet search for the tariffs of other ethylene pipelines, some of which were already known to her.⁴⁴ She testified further that she checked the reasonableness of the new rate by comparing the transportation distances of the Westlake Pipeline with the distance of other pipelines and decided that the Shell Concha tariff was the closest in distance.

Likewise, Dr. Arthur testified that Westlake compared its ethylene transportation rate for its 195 mile movement from Mont Belvieu, Texas to Longview, Texas with the \$3.49 or \$3.50 per 100 pounds ethylene transportation rates on the Shell Concha Chemical Pipeline for the approximately 100-mile to 200-mile movements from Mont Belvieu, Texas to destinations in Texas and Louisiana, including Lake Charles, Baton Rouge, and Napoleonville. Both Ms. Moore and Dr. Arthur concluded that since the longest distance movements on the two pipelines are approximately the same, it follows that the transportation rates per pound-mile are also approximately the same for any longer movements.⁴⁵

Conversely, Eastman argues that the Shell Concha Tariff is generally a "postage stamp"⁴⁶ rate tariff, with the rate of \$3.50 or \$3.49 per hundred charged for hauls of widely varying distances. On a pound-mile basis, a rate of \$3.50 per hundred over the 195-mile Westlake Pipeline is more expensive than the \$3.49 per hundred rate Concha charges for the estimated 250-mile haul between Napoleonville, Louisiana and Mont Belvieu, Texas.⁴⁷ Eastman adds that pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul. According to Eastman, some of these factors include capacity, operating costs, location (urban v. rural and underground v. underwater), pipe diameter, age, throughput, capital and operating costs, competition, and market conditions.⁴⁸

⁴⁰ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment H – "Comparison of Ethylene Pipeline Rates/Pound-mile," which is attached to this Proposal for Decision as "Exhibit D."

⁴¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 15.

⁴² *Id.*

⁴³ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment H.

⁴⁴ Transcript of Testimony, Vol. I, Amy Moore, pp. 40-42.

⁴⁵ Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 6; Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5; and Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 2-3 and Ex. A, WLP000503.

⁴⁶ A "postage stamp" rate means regardless of the distance of the haul, the rate is the same price, Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, p. 203.

⁴⁷ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 7.

⁴⁸ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 8.

Eastman asserts that none of these factors were known to either of the Westlake witnesses regarding either the Shell Concha tariff or the other two pipeline tariffs pulled from the Internet by Westlake witness Ms. Moore.⁴⁹ Likewise, Ms. Moore confirmed that at the time she selected the new \$3.50 rate, she was not in possession of basic budget or finance information about the Westlake Pipeline, nor had she ever been in contact with the controller for Westlake Pipeline for purposes of obtaining budget and finance information.⁵⁰ Ms. Moore also testified that she did not know that Westlake Pipeline was a common carrier with a tariff on file with the Commission and subject to regulation until late June 2013. She testified that she learned that the pipeline was a regulated common carrier when she visited an online virtual data room that Eastman had set up for potential investors in its cracking facilities.⁵¹ Ms. Moore filed the 2013 tariff with the Commission on July 3, 2013, with an effective date of July 4, 2013.

Eastman asserts that Westlake's rate of \$3.50 per hundred is the highest of any rate being charged for the transportation of ethylene in Texas or Louisiana identified by the Westlake witnesses in this case.⁵² Contrary to Westlake's position, Dr. Fairchild's tariff comparison analysis demonstrates that the average of the Texas intrastate ethylene pipeline rates identified in this case is approximately \$1.71 per hundred pounds.⁵³ Thus, Eastman argues that Ms. Moore's Internet search for other "comparable" ethylene pipeline tariffs was insufficient as a benchmark for Westlake's new rate as there has been no showing that the Concha Pipeline rate was comparable to the Westlake Pipeline or was itself just and reasonable.

Similarly Eastman argues that with the 2013 Tariff, Westlake arbitrarily eliminated the prior declining block rate structure, with no offsetting allowance and without knowing whether Concha Pipeline's rates were ceilings, or if they were fixed rates.⁵⁴ As previously discussed, the 2002 Tariff had a rate design of a declining block rate providing a base rate of \$1.90 per hundred pounds for the first 320,000 pounds transported or exchanged in a single day, with a rate of \$0.70 per hundred pounds for all remaining volumes transported or exchanged the same day.⁵⁵

Westlake's rate, however, eliminates the lower cost of the declining block rate and replaces it with a new single rate applicable to all volumes shipped, regardless of their size. Ms. Moore testified that Westlake decided that the Pipeline would no longer offer a volume discount and that not all common carrier pipelines offer volume discounts.⁵⁶ Eastman maintains that the new rate has a double impact to Westlake's rate because the base rate has more than doubled and there is no longer the opportunity for Eastman to benefit from the lower rate of the declining block.

⁴⁹ Transcript of Testimony, Vol. I, Amy Moore, p. 41.

⁵⁰ Transcript of Testimony, Vol. I, Amy Moore, pp. 20-21, 25, 28-32.

⁵¹ Transcript of Testimony, Vol. I, Amy Moore, pp. 16-17.

⁵² Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-2.

⁵³ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22.

⁵⁴ Transcript of Testimony, Vol. I, Amy Moore, p. 42.

⁵⁵ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 3-4 and Examiners' Ex. 1, 2002 Mustang Pipeline Company Tariff with parties' Red-lined changes to 2013 Westlake Ethylene Pipeline Corp. Tariff.

⁵⁶ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 2.

9. Verification of the 2013 Tariff Rate

Ms. Moore testified that after selecting the Concha Pipeline tariff as the most comparable in terms of pipeline length, Westlake performed two tests to verify the reasonableness of the \$3.50 rate.⁵⁷ These tests included a FERC escalation formula to the 2002 Tariff rate and a simple cost of capital analysis to confirm that the \$3.50 rate would give Westlake Pipeline a reasonable rate of return.⁵⁸

10. FERC Escalation Formula

A. Westlake's Position

Ms. Moore testified that once she selected the market-based tariff comparison of a \$3.50 rate, she then considered a FERC escalation formula as another data point to compare the rate.⁵⁹ Ms. Moore testified further that she is familiar with using the FERC escalator because the methodology is used in other Westlake pipeline agreements.⁶⁰ Applying the multiplier contained in the FERC oil pipeline index, Ms. Moore determined that the 2002 tariff rate, if escalated, would be \$3.01 per 100 pounds for 2013.⁶¹

Westlake points out that the Examiner in *Weeks* ultimately rejected the FERC method proposed in that case, because it was ill-suited under the circumstances and because of its complexities.⁶² Westlake contrasts the *Weeks* analysis, by arguing that the FERC escalator used by Ms. Moore is simple and well-suited for Westlake Pipeline's purpose, which adjusts the rate for 11 years of inflation.⁶³

B. Eastman's Position

To begin with, Eastman's argues that Westlake's application of the FERC escalator is incorrect. In order for a pipeline to use indexing to set a rate ceiling, the baseline rate that is being escalated must have been found to be reasonable at some prior point in time based on a cost-of-service rate.⁶⁴ This is because indexing is only a methodology for changing rates at FERC, not for setting an initial rate.⁶⁵ Here, Westlake Pipeline did nothing to ensure that the Pipeline's previous rate was reasonable.⁶⁶ Therefore, Westlake's FERC escalator is not a proper benchmark.

⁵⁷ Westlake Ex. 101, Direct Testimony of Amy Moore, pp. 3-4.

⁵⁸ *Id.*

⁵⁹ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3 and Ex. B.

⁶⁰ Transcript of Testimony, Vol. I, Amy Moore, p. 39.

⁶¹ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3.

⁶² Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 5.

⁶³ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 1.

⁶⁴ Transcript of Testimony, Vol. I, Amy Moore, p. 38.

⁶⁵ *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992*, Docket No. RM93-11-000, Order No. 561A, Order on Rehearing at 2, 59 Fed. Reg. 40243 (Aug. 8, 1994). Under the FERC's Order 561, indexing can be used only after a pipeline's initial rate has been shown to be just and reasonable, either through a cost-of-service showing or the agreement of at least one non-affiliated shipper.

⁶⁶ Transcript of Testimony, Vol. I, Amy Moore, p. 39.

Secondly, Eastman asserts that Ms. Moore's testimony and accompanying exhibit shows a spreadsheet with an application of the FERC escalators to both tiers of the 2002 rate, however, Dr. Fairchild states that upon review, Ms. Moore compared only the \$1.90 part of the 2002 rate with the new \$3.50 rate, while disregarding the \$0.70 rate entirely.⁶⁷ Dr. Fairchild believes that a meaningful application of the FERC index factors must consider both tiers of the declining block rate.⁶⁸

Dr. Fairchild testified that much of the ethylene shipped on the pipeline under the 2002 Tariff was shipped at the \$0.70 per hundred declining block rate. Dr. Fairchild's analysis utilized the historical 2006-2013 volumes from Dr. Arthur's direct testimony, Table 1, to calculate an effective FERC index rate. Applying the FERC escalator to both non-incentive and incentive volumes he calculated a weighted average rate for 2014 of \$2.22, \$2.07, and \$1.79 at the respective proposed annual volumes of 200, 230, and 326 million pounds which shows that at lower volumes the proper application of the FERC index results in a higher rate. Dr. Fairchild concludes that this range falls within the range of rates produced by his return on investment analysis.⁶⁹

Thirdly, it is Dr. Fairchild's opinion that a proper escalation of the 2002 rates indicates that the \$3.50 rate is grossly out of line and excessive. Dr. Fairchild reaches this conclusion by comparing his weighted average escalated rates of \$1.79 and \$2.22 to the proposed rate of \$3.50. His calculated range of rate differences vary between approximately 58% and 96%.⁷⁰ Eastman argues that Westlake erred in using the FERC escalator because after performing the analysis, Westlake selected a rate of \$3.50 per 100 pounds, which is 49 cents, or sixteen percent higher than the escalated rate of \$3.01 per hundred. Dr. Fairchild believes this deviation does not support Westlake Pipeline's 2013 rate of \$3.50 per hundred.⁷¹

C. Westlake's Response

Dr. Fairchild testified that the 2002 rate contained both an incentive and non-incentive rate and that the FERC escalator should be applied to both rates, then averaged.⁷² Westlake believes that Dr. Fairchild used high throughput estimates and too often uses the lower incentive rate, which skews his escalation analysis.⁷³ Moreover, Westlake Pipeline has eliminated the incentive rate in the 2013 Tariff, so Dr. Arthur concludes that the non-incentive rate is a more reasonable benchmark for estimating the impact of FERC Indexing than a weighted average of the incentive and non-incentive rates.⁷⁴

Likewise, Westlake maintains that the FERC escalation performed by Ms. Moore produced a rate that is actually too low. The \$3.01 escalated rate is based upon Eastman's 2002 tariff rate of \$1.90, which Westlake argues is unreasonably low because it rarely allowed

⁶⁷ Westlake Ex. 101, Direct Testimony of Amy Moore, Ex. B.

⁶⁸ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.

⁶⁹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.

⁷⁰ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 12-13.

⁷¹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 11-13.

⁷² Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 12.

⁷³ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 10.

⁷⁴ *Id.* at 11.

Mustang to receive a profit.⁷⁵ Dr. Fairchild testified that from 2002 through 2006, Mustang Pipeline had a negative rate of return.⁷⁶ In 2002, the \$1.90 rate produced \$916,112 in revenues,⁷⁷ but direct costs plus depreciation, insurance, taxes and other costs were \$4,663,660.⁷⁸ The \$1.90 rate was therefore generating a \$3.7 million loss in 2002. It is Westlake's response that since the 2002 rate did not allow Mustang Pipeline a return on investment, Westlake Pipeline's use of the 2002 rate as a starting point for indexing produces a conservatively low estimate of what a cost-justified rate would be in 2013 after FERC indexing.⁷⁹

11. Fair Return

A. Westlake's Position

As a final step in her approach to set a new 2012 Pipeline Tariff rate, Ms. Moore performed what she described as a simple cost of capital analysis to confirm whether the July 2013 Tariff rate would give Westlake Pipeline a reasonable rate of return.⁸⁰ Westlake maintains that the approach was consistent with Eastman's own rate-setting process, which considered the pipeline owner's return on capital,⁸¹ and with *Weeks*, in which the Examiner sought a rate that would provide the pipeline "a fair return."⁸² What is more, Westlake asserts that Eastman's expert witness Dr. Bruce Fairchild states that a fair return is consistent with a long line of cases, including at least three landmark decisions by the U.S. Supreme Court, holding that common carrier rates must provide a fair return, or they will be unconstitutionally confiscatory.⁸³

Ms. Moore testified that a 12% after-tax return on capital is considered a generally acceptable after-tax rate of return on capital for Westlake Pipeline.⁸⁴ Ms. Moore testified that she took the purchase price of the Pipeline, estimated annual operating costs, the current corporate tax rate, and the estimated amount of ethylene that will flow through the pipeline for 2013, to achieve a 12% after-tax rate of return.⁸⁵ Ms. Moore determined that Westlake Pipeline would need to charge approximately \$3.66 per 100 pounds transported.⁸⁶ Since the \$3.50 per 100 pounds market-based rate of tariff comparisons is close to the \$3.66 per 100 pounds transported, Ms. Moore concluded that the \$3.50 proposed rate was reasonable.⁸⁷

Westlake argues that it is reasonable for the Commission to allow considerable latitude in Westlake Pipeline's rate-setting approach in light of the uncertain legal framework for setting

⁷⁵ *Id.* at 11-12.

⁷⁶ Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, pp. 198-199.

⁷⁷ Westlake Ex. 104 at 4 (Eastman's Response to Interrogatory No. 3).

⁷⁸ Westlake Ex. 107 at Eastman 01593 (2002 cost data for Mustang Pipeline).

⁷⁹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 13.

⁸⁰ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 3.

⁸¹ Westlake Ex. 30, Eastman Chemical Co. Texas Operations, Utilities and Feedstocks Division, p. 2.

⁸² Tex. R.R. Comm'n., *Complaint of Weeks Exploration, Inc./Santos U.S.A. Against Chevron Pipeline Company*, GUD No. 8434, Final Order (July 22, 1997), p. 4.

⁸³ Transcript of Testimony, Vol. I, Dr. Bruce H. Fairchild, pp. 207-208 and *See Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989); *Federal Power Comm'n et al. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works & Improvement Co. v. Public Service Comm'n of the State of Virginia*, 262 U.S. 679 (1923).

⁸⁴ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 4 and Transcript of Testimony, Vol. I, Amy Moore, pp. 36-37.

⁸⁵ Westlake Ex. 101, Direct Testimony of Amy Moore, p. 4.

⁸⁶ *Id.*

⁸⁷ *Id.*

rates on an intrastate ethylene pipeline in Texas. It is Westlake's position that all of the elements that Ms. Moore utilized to determine the July 2013 Tariff rate were reasonable and that the tariff comparison when adjusted for the distance of transport is substantially lower than rates contained in other published tariffs for transportation of ethylene.

Table 11.1
Summary of Westlake Pipeline's Proposed 2013 Rate Analysis

Method	Rate per 100 pounds
Tariff Comparison	\$ 3.50
FERC Escalation Formula	\$ 3.01
Simple Cost-of-Service Analysis using 140,000,000 volumes and purchase price of \$ 18 million	\$ 3.66

B. Eastman's Position

It is Eastman's position that Westlake's simple cost-of-capital analysis is faulty. Eastman points out that Ms. Moore provided no work papers to demonstrate her analysis, making it difficult, if not impossible, to understand exactly how Ms. Moore calculated the rate of return that the new \$3.50 rate would provide. Eastman argues that it is unknown what numbers Ms. Moore used as the components of the pipeline's expenses, including operations and maintenance, depreciation, and property taxes. This lack of transparency also makes it difficult to understand her assumptions about the volumes of ethylene that would be transported on the pipeline. The only component that she makes clear is Westlake's investment using the purchase price of \$18,000,000.

According to Eastman, without Ms. Moore's workpapers or documents to demonstrate how she performed her analysis, the record is void of evidence to support her conclusions. Eastman argues that Westlake is after the fact attempting to explain this return with Dr. Arthur's analysis.⁸⁸ Eastman believes that Westlake used unreasonable assumptions engineered to yield a result that allegedly supports Westlake's proposed \$3.50 per hundred pound rate that came from the single, incomparable Concha Pipeline tariff. According to Eastman, some of those unreasonable assumptions include an assumed 100% equity ratio in the pipeline, a low assumption regarding volumes that are expected to be shipped over the pipeline and an assumed capital investment in the pipeline that exceeds the price Westlake paid for the pipeline.

On the other hand, Eastman's witness, Dr. Fairchild, utilized information obtained during legal discovery of this case to develop a conventional return on investment analysis.⁸⁹ Dr.

⁸⁸ For example, when Dr. Arthur attempts to explain Ms. Moore's process, he backs off of her use of the purchase price as an element and he uses an appraised value, Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 16-19.

⁸⁹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4. Eastman notes that, while Schedules BHF-4 and BHF-8 are presented as confidential exhibits, only the figures presented under the "Expenses" line are confidential. Those figures were provided to Eastman by Westlake as confidential protected materials provided pursuant to the protective

Fairchild demonstrated that using the volume and operating expense data from Westlake Pipeline's 2014 budget, as well as capital cost data using standard ratemaking methods, Westlake's proposed \$3.50 per hundred pound rate yields a more than 40% return on equity. Eastman argues that this proposed rate exceeds a reasonable return on investment to the owners of the Westlake Pipeline and is contrary to the Commission's requirements to review and set a pipeline rate for a common carrier pursuant to § 111.183 of the Natural Resources Code. It is Eastman's position that when reasonable assumptions are made in the return on investment analysis, using standard ratemaking methods, a reasonable range of pipeline rates of between \$1.30 per hundred pounds to \$2.11 per hundred pounds is produced.⁹⁰ To develop this range of rates for the Westlake Pipeline, Dr. Fairchild used three return on investment calculations, each with a different annual pipeline volume figure, to show a range of reasonable rates, as will be discussed in detail below in Section 13A.(1). of this Proposal for Decision.⁹¹

Eastman maintains that an examination of Dr. Arthur's Rebuttal Attachment F and Dr. Fairchild's Schedule BHF-8 reveal that the differences in the calculations for return on investment center on only two inputs: (1) the net investment made by Westlake in the Pipeline; and (2) the representative volumes that are reasonably expected over the pipeline. According to Eastman, the significant calculations for recovery of the reasonable operating expenses were provided by Westlake to Eastman in discovery and are identified in the Westlake Pipeline 2014 budget. Property tax information was also obtained from the 2014 budget, with Dr. Fairchild making an allowance for the Texas franchise tax in his calculations.⁹² The use of these expenses in Dr. Fairchild's return on investment calculations is not challenged in Westlake's rebuttal testimony and Westlake witness Dr. Arthur also used these same expenses in his Rebuttal Attachment F.⁹³

12. Elements for Fair Return

Natural Resources Code Section 111.183 provides that the basis of the rate shall be an amount that will provide a fair return on the aggregate value of used and useful investment value and then lists historical cost-of-service type rate making processes such as depreciation and reasonable operating expenses. The parties also broke down their arguments for a fair return on these typical ratemaking principles that include identifying an appropriate Test-Year, a rate base or investment value for the pipeline, depreciation expense, Test-Year operating expenses, and revenues demonstrated by volume or throughput, as discussed in detail in this section.

A. Test-Year

(1) Westlake's Position

It is Westlake's position that the proper Test-Year for this proceeding is the second quarter of 2012 through the first quarter of 2013, which is the most recent period available to

order adopted in this proceeding. In all other respects, the figures presented on Schedules BHF-4 and BHF-8 are non-confidential.

⁹⁰ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22 and Schedule BHF-8.

⁹¹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-8.

⁹² Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

⁹³ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment F.

Westlake Pipeline during the time that it was revising its rate in late June and early July 2013. Similarly, in the natural gas context, the Commission uses the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data is available.⁹⁴ Dr. Arthur testified that the historical Test-Year approach is common not only at the Commission, but also at FERC and at the Texas Public Utility Commission.⁹⁵ Thus, Dr. Arthur testified that either the calendar year 2012 or the 12 months ending March 2013, adjusted for known and measurable changes, would be an appropriate Test-Year for this proceeding.⁹⁶

(2) Eastman's Position

Eastman does not recommend the use of a specific Test-Year, instead, Eastman argues that adherence with the historical Test-Year standard is not required here because none of the statutes that guide the Commission in its review and setting of a rate for a common carrier require the application of the historical Test-Year standard. If, however, an historical Test-Year standard were applied to this proceeding, Eastman argues that Westlake failed to establish the required data for Test-Year end investment, Test-Year operating expenses, and Test-Year revenue necessary to meet its burden of proof.

With the caveat that the Commission's Rate Review Handbook for Gas Utilities is not applicable to this common carrier rate-setting proceeding, Eastman argues that the Handbook may provide a guide for the Commission's application of the Test-Year standard. With respect to rate base, the Handbook states that the "present practice of the Commission is to use asset balances as of the Test-Year end adjusted for known changes."⁹⁷ According to Eastman, Westlake has failed to establish not only its Test-Year end asset balance but also the pipeline's revenue deficiency and operating expenses.

B. Rate Base or Investment in the Pipeline

(1) Westlake's Position

According to Westlake, there are two reasonable ways to determine Westlake Pipeline's equity investment as of 2006. The first is to use the original cost of the pipeline and depreciate it to determine a 2006 value. Dr. Arthur testified that the original cost of the pipeline assets in mid-1997 was approximately \$54.0 million, which would be depreciated by approximately 9.5 years by the end of 2006.⁹⁸ Dr. Arthur testified that 30 to 35 years is a typical depreciation life for pipeline assets.⁹⁹ Westlake notes that Eastman's witness, Dr. Fairchild, testified that a shorter depreciation life might be appropriate in some circumstances, yet testified further that a 30 to 35 year period may also be reasonable.¹⁰⁰ Dr. Arthur testified that this method produces a 2006

⁹⁴ TEX. UTIL. CODE ANN. § 101.003(16) (West Supp. 2014).

⁹⁵ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 3-4.

⁹⁶ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5 and Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 91-92.

⁹⁷ Railroad Commission of Texas, Natural Gas Review Handbook ("Handbook") at 16 (Jan. 2013).

⁹⁸ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.

⁹⁹ *Id.*

¹⁰⁰ Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 26-28.

equity investment of \$39.4 million using a 35-year depreciation life or \$36.9 million using a 30-year depreciation life.¹⁰¹

Secondly, Westlake believes that the other method for determining the 2006 equity investment for the pipeline is at a minimum \$29.8 million, which is the value set by Ernst & Young in an independent assessment contemporaneous with the sale of the pipeline to Westlake in 2006. It is Westlake's position that the \$29.8 million value is the proper value to be used in this case, and points out that credibility lies in the fact that the assessment was performed before any dispute arose between Westlake Pipeline and Eastman.¹⁰² Dr. Arthur testified that use of an independent valuation instead of a purchase price would be reasonable where, as in this proceeding, the pipeline sale was part of a bundled transaction that involved both regulated and unregulated assets.¹⁰³

Westlake disagrees with Eastman's use of the \$18 million purchase price of the pipeline.¹⁰⁴ Dr. Arthur testified that even though Westlake witness Ms. Moore used the \$18,000,000 purchase price for capital investment, this figure is low based on industry norms.¹⁰⁵ Using an \$18 million value for Westlake Pipeline's 2006 equity investment would imply an average per-mile construction cost of only \$185,000, compared to industry norms of between \$554,000 and \$983,000 for 1996 and 1997 when the pipeline was built.¹⁰⁶ Westlake argues this supports the conclusion by Ernst & Young of a \$29.8 million 2006 equity investment and discredits the use of an \$18 million price assigned to the pipeline in the 2006 transaction, which understated the value of the pipeline and overstated the value of the non-regulated assets being sold.¹⁰⁷

(2) Eastman's Position

Dr. Fairchild used the \$18,000,000 actually paid by Westlake for the pipeline in 2006 as the capital investment.¹⁰⁸ Similarly, Westlake witness, Ms. Moore, also used \$18 million as Westlake's investment in the pipeline in her return on investment calculation.¹⁰⁹ When Dr. Arthur filed his direct testimony, he opined that Ms. Moore's calculation was reasonable.¹¹⁰ Yet, in his rebuttal testimony, Westlake witness Dr. Arthur changes his testimony and alleges that Westlake's investment in the pipeline was \$29.8 million, based on an estimate done by Ernst & Young at the request of Westlake Ethylene Pipeline Corporation's parent, Westlake Chemical Corporation, in 2007.¹¹¹

Eastman claims that no one at Westlake has ever told Dr. Arthur that the \$18 million paid by Westlake Ethylene Pipeline Corporation was an inaccurate representation of Westlake's

¹⁰¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18.

¹⁰² Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18.

¹⁰³ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 107-108.

¹⁰⁴ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 15.

¹⁰⁵ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 84-85.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 108-109.

¹⁰⁸ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

¹⁰⁹ Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 9.

¹¹⁰ Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 12.

¹¹¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.

investment in the pipeline or of the pipeline's value. Dr. Arthur testified that he has not spoken with anyone involved with the Pipeline Purchase Agreement where the \$18 million purchase price was set.¹¹² Eastman believes that Dr. Arthur's most recent position that Westlake invested more than \$18 million in the pipeline is another after-the-fact attempt to justify a proposed \$3.50 per hundred pound rate developed long before Dr. Arthur was retained for this case.

C. Depreciation Expense

(1) Westlake's Position

It is Westlake's position that the proper annual depreciation expense in this proceeding is a minimum of \$868,705. To support this conclusion, Dr. Arthur performed three calculations. First, Dr. Arthur used the Ernst & Young 2006 valuation of \$29.8 million to calculate an annual depreciation expense for the pipeline of \$850,429 using Dr. Fairchild's assumed 35-year remaining life beginning in 2006.¹¹³ Combining the annual depreciation expense of \$850,429 for the pipeline with an annual depreciation expense of \$18,276 for computer equipment produces a total annual depreciation expense of \$868,705.

Second, Dr. Arthur believes that if the 2006 valuation is used, a more reasonable remaining depreciation life as of the end of 2006 when the pipeline is approximately 10 years old would be 25 years, consistent with a 35-year depreciation life as of 1997 when the pipeline was placed in service.¹¹⁴ Depreciating the Ernst & Young 2006 valuation of \$29.8 million over 25 years yields an annual depreciation expense of \$1.2 million.¹¹⁵

Third, Dr. Arthur used Mustang's 1997 original cost of \$54.0 million and calculated an annual depreciation expense of \$1,544,057 based on an assumed 35-year depreciation life starting in 1997, with accumulated depreciation of \$14.7 million by the end of 2006.¹¹⁶ This results in a depreciated original cost value for the pipeline of \$39.4 million as of 2006.¹¹⁷ It is Westlake's position that the Ernst & Young 2006 valuation or Eastman's 1997 original cost provide far more reasonable starting values when combined with a reasonable assumed remaining life of 35 years from 1997, when the pipeline was placed in service.

(2) Eastman's Position

It is Eastman's position that the depreciation calculations of Dr. Arthur and Dr. Fairchild are substantially the same. Both Dr. Fairchild and Dr. Arthur agree that it is reasonable to use either a 30-year or 35-year service life depreciation period for the pipeline.¹¹⁸ They both, however, use a 35-year period in their calculations to depreciate Westlake's investment in the pipeline.¹¹⁹ The main difference between the two approaches is that the annual depreciation of

¹¹² Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 85-86.

¹¹³ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment F, n.(b).

¹¹⁴ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p.19, n.41.

¹¹⁵ $\$29,800,000/25 \text{ years} = \$1,192,000/\text{year}$.

¹¹⁶ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G, n.(b).

¹¹⁷ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G, n.(b).

¹¹⁸ Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 27-28.

¹¹⁹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachments F & G.

\$868,705 calculated by Westlake witness Dr. Arthur and the \$514,286 of depreciation calculated by Eastman witness Dr. Fairchild is that Dr. Fairchild started with Westlake's purchase price of \$18 million from Mustang¹²⁰ and Dr. Arthur started with the Ernst & Young 2006 estimated value of \$29.8 million. As an alternative, Dr. Arthur also used an alternative of a depreciated original cost of \$39.4 million.¹²¹

Eastman argues that Dr. Arthur's two investment values far exceed Westlake's actual investment in the pipeline and thus are not a reasonable basis on which to calculate rates. Eastman points out that Westlake's second depreciation calculation is based upon a 25-year period over which to depreciate Westlake's investment in the pipeline, which Dr. Arthur explained is the 25 years remaining on the life of the pipeline if the 35 year service life period begins in 1997 when Mustang built the pipeline. Dr. Fairchild believes that the 25-year assumption is contrary to the actual 35-year period over which Westlake is depreciating its investment in the pipeline.¹²²

D. Operating Expenses

(1) Westlake's Position

The next component for calculating a fair return for the common carrier pipeline is an operating expense figure for the reasonable operating expenses of the pipeline. Westlake asserts that the proper operating expenses (expenses other than depreciation) for this docket are at least as high as the \$2,135,000 from the 2014 Westlake Pipeline budget used by Eastman witness, Dr. Fairchild, in his return on investment analysis.¹²³

Westlake witness, Dr. Arthur, used the same operating expenses to perform his analysis.¹²⁴ Westlake notes that the budget numbers were projections and not actual Test-Year expenses, but the actual Test-Year expenses were comparable. At the hearing, Westlake Pipeline introduced accounting data for 2012 and 2013 to calculate expenses for the Test-Year ending March 2013. Using the same expense categories found in the 2014 budget, assuming expenses allocated evenly over the course of a year, and using 75% of the 2012 numbers and 25% of the 2013 numbers, Test-Year expenses were \$1,613,502.¹²⁵ Westlake maintains that this result is very close to the \$1.8 million used by Ms. Moore in July 2013.¹²⁶ The numbers are also close if one uses the 2012 or 2013 calendar year as the Test-Year.¹²⁷

Dr. Arthur testified that he had reviewed the Test-Year accounting data, but that it did not alter his opinions.¹²⁸ All other things being equal, using the Test-Year numbers rather than those used by Dr. Fairchild and adopted by Dr. Arthur would reduce expenses by roughly \$500,000 per

¹²⁰ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4, n.(b). Note that Dr. Fairchild also included \$18,276 in depreciation for computer equipment, so his total depreciation expense, \$532,562, was a bit higher.

¹²¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 17-18 and Rebuttal Attachment G, n (b) and (e).

¹²² Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

¹²³ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, at Schedule BHF-4, BHF-8, and Appendix C. Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 13.

¹²⁴ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 19 and Rebuttal Attachments F & G.

¹²⁵ Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836.

¹²⁶ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 9.

¹²⁷ Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836.

¹²⁸ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, 104-106.

year. If Westlake's historical test-year expenses of \$1,613,502 are used instead of the budgeted expenses, then Westlake argues that the historical test-year depreciation of \$1,125,506 should also be used.¹²⁹ Westlake believes, however, that any possible overstatement of expenses is more than balanced out because Westlake argues that Dr. Fairchild understated Westlake Pipeline's depreciation expense (\$300,000 to \$700,000) and overstated Westlake Pipeline's volume revenues.

(2) Eastman's Position

Eastman maintains that Westlake's operating expenses are best shown by the use of the \$2,135,000 figure contained in Westlake Pipeline's 2014 budget with an allowance for Texas franchise taxes.¹³⁰ The 2014 budget figure of \$2,135,000 is also the number utilized by Dr. Arthur in his rebuttal testimony and exhibits.¹³¹

Eastman believes that Westlake's "historical accounting data" should be viewed with skepticism as it was not supported by the pre-filed testimony of any Westlake witness. Instead, the data was first introduced at hearing through the redirect examination of Westlake witness Dr. Arthur. Eastman asserts that on cross-examination, Dr. Arthur appeared to know little about this data. Specifically, when questioned about one line item of the data containing amounts for "Intco Alloc Recd," Dr. Arthur stated that it was his understanding that these costs were overhead costs allocated from Westlake Pipeline's parent company, Westlake Chemical. Regarding this allocation, Dr. Arthur testified that in the case of a regulated entity, a reasonable allocation is required to arrive at a reasonable level of expenses for the regulated entity.¹³²

Yet, after testifying that a reasonable allocation is required, Dr. Arthur admitted that he knew nothing of how that allocation was made in this case.¹³³ Eastman argues that Dr. Arthur's lack of knowledge of how this overhead allocation was made is particularly troubling since it appears that this allocation in most cases amounted to no more than allocating a fixed amount of the parent's cost to Westlake Pipeline each month, with most monthly entries appearing to be exactly \$10,000.¹³⁴ Eastman asserts that if Westlake believed that actual accounting data was important in establishing the operating expenses of the pipeline for a return on investment calculation, it is unclear why it waited until the final day of hearing, on redirect of its expert witness, to introduce this data into the record and why their expert witness knew nothing about it.

E. Volume or Throughput

The issue of quantifying the annual pipeline volume, or throughput, is hotly contested in this case and the recommendations range from as low as 140,000,000 pounds per year to as high

¹²⁹ Westlake Ex. 106, Westlake Ethylene Pipeline SAP Expenses, WLP000835- WLP000836. (Westlake maintains that this is derived the same way as the actual cost figure, by taking 75% of the depreciation expense in 2012 and 25% of the depreciation expense in 2013 to arrive at the test-year number.)

¹³⁰ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

¹³¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Testimony and Attachments.

¹³² Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 112-113.

¹³³ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, p. 113.

¹³⁴ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 112-114.

as 326,000,000 pounds per year. The amount of annual volumes directly relate to the annual revenues calculated for the pipeline upon which a fair return is calculated.

(1) Westlake's Position

It is Westlake's position that the proper Test-Year volume or throughput for calculating revenues is 140 million pounds of ethylene after adjustments for known and measureable changes. Dr. Arthur testified that it is his opinion that a proper Test-Year for volumes would be either the calendar year 2012 or the 12 months ending March 2013, with adjustments for known and measureable conditions.¹³⁵ The historical volumes for 2012 calendar year were 278 million pounds.¹³⁶ Likewise, utilizing the Test-Year ending March 2013 results in an annual throughput of 278,000,000 pounds.¹³⁷

Westlake argues that the volumes for neither the 2012 calendar year, nor the Test-Year ending March 2013, take into account known and measurable conditions and therefore must be adjusted. Eastman's ethylene cracker production affects the volumes transported on the pipeline in any given year.¹³⁸ According to Dr. Arthur, the two are inversely proportional. As ethylene production in Longview increases, demand for ethylene from Mt. Belvieu and throughput on the pipeline decrease by a similar amount. Westlake shows that Eastman's level of ethylene production has changed over the period 2007 through 2013.¹³⁹ In 2007, Eastman began implementing a plan to phase out some of its ethylene producing facilities in Longview. In late 2007, Eastman idled one of its crackers, and it idled another in late 2008.¹⁴⁰ Eastman later changed its plans and restarted one of the idled crackers in late 2010 and completed a debottlenecking of its largest cracker in early 2013.¹⁴¹

According to Westlake, the throughput on the pipeline correlates with these events. As shown in Table 12.1 below, ethylene production rose from 110 million pounds in 2006 to over 300 million pounds in 2008 as the first cracker was idled and the second was preparing to be idled.¹⁴² Then in 2009 and 2010, with two crackers idled, volumes exceeded 500 million pounds.¹⁴³ After one cracker returned to service in late 2010, volumes on the pipeline declined to approximately 225 million and 275 million pounds per year in 2011 and 2012, respectively.¹⁴⁴ Finally, with the completion of the debottlenecking project in early 2013, throughput fell to slightly less than 134 million pounds per year.¹⁴⁵

¹³⁵ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 91-92.

¹³⁶ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 92-93 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment C.

¹³⁷ Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 93-94 and Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment C.

¹³⁸ Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 10-11; Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 5.

¹³⁹ *Id.*

¹⁴⁰ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Attachment A, (Eastman's 2010 SEC Form 10-K, page 12).

¹⁴¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Attachment B, (Eastman's 2012 SEC Form 10-K, pages 24, 47).

¹⁴² Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 6-7.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

Table 12.1
Historical Volumes on Pipeline from 2002 – 2013¹⁴⁶

Year	Amount (Pounds) Total Flow North to Longview	Amount (Pounds) Total Flow South to Mt. Belvieu	Total Volumes
(1)	(2)	(3)	(4)
Eastman Ownership			
2002	25,752,384		25,752,384
2003	42,132,689		42,132,689
2004	126,885,518		126,885,518
2005 ¹⁴⁷	41,755,471		41,755,471
2006 ¹⁴⁸	109,123,612		109,123,712 ¹⁴⁹
Westlake Ownership			
2007	197,634,891	8,548,594	206,183,485
2008	337,144,778	15,395,778	352,540,556
2009	525,376,000		525,376,000
2010	564,176,715		564,176,715
2011	224,092,000		224,092,000
2012	277,848,000		277,848,000
2013	133,565,868	103,158	133,669,026

¹⁴⁶ Sources & Notes: 2002-Nov 2006 data provided by Eastman in Response to Westlake Interrogatory No. 1, included in Rebuttal Attachment D to Dr. Arthur's Rebuttal testimony. Dec-2006 through 2013 data provided in the document, Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony.

¹⁴⁷ The evidence supports backhauls occurring during 2005, however, the quantity of the backhaul volumes are not quantified in this record. Eastman Ex. 6, Rebuttal Testimony of Thomas J. Mittler, pp. 11-12.

¹⁴⁸ The evidence supports backhauls occurring during 2006, however, the quantity of the backhaul volumes are not quantified in this record. Eastman Ex. 6, Rebuttal Testimony of Thomas J. Mittler, pp. 11-12

¹⁴⁹ Sources & Notes: 2002-Nov 2006 data provided by Eastman in Response to Westlake Interrogatory No. 1, included in Rebuttal Attachment D to Dr. Arthur's Rebuttal testimony. Dec-2006 through 2013 data provided in the document Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony. The 2006 total in Dr. Arthur's rebuttal was 109,123,612. However, when taking the Jan.-Nov. 2006 from attachment D, 84,212,912 and adding Dec. 2006 from Attachment C, 24,910,800, the corrected total is 109,123,712.

Table 12.2 below shows the test-year volumes totaling 277,943,000. No backhauls or exchanges occurred during the test-year.

Table 12.2
Test-Year Historical Volumes on Pipeline¹⁵⁰

Year	Amount (Pounds) Total Flow North to Longview	Amount (Pounds) Total Flow South to Mt. Belvieu	Total Volumes
(1)	(2)	(3)	(4)
Westlake Ownership – Test Year Volumes			
April – Dec 2012	232,483,000		232,483,000
Jan. – March 2013	45,460,000		45,460,000
TY Total	277,943,000		277,943,000

Westlake asserts that this inverse relationship between Eastman's Longview ethylene production and the throughput on the pipeline supports the use of 140 million pounds per year by Ms. Moore in July 2013 and by Dr. Arthur in his analysis as a reasonable volume with current operations in Longview. During the first six months of 2013, volumes on the pipeline had fallen to 53.5 million pounds or an annualized level of 107 million pounds.¹⁵¹ Similarly, Westlake argues that Ms. Moore's use of 140 million pounds as the annual throughput for setting rates in mid-2013 was consistent with the known and measurable change in Eastman's Longview production.¹⁵²

(2) Eastman's Position

Eastman argues that Westlake's volume assumption of 140 million pounds per year is mere speculation. Eastman points out that Westlake's own 2014 Pipeline budget, from which both parties have taken the estimated operating costs for the pipeline, projects 2014 tariff fees of \$7,000,000, which was based on 200 million pounds of ethylene being transported at Westlake's proposed rate of \$3.50 per hundred pounds shipped.¹⁵³ This volume amount was developed by Westlake's corporate controller for internal business purposes, not as a litigation position for either Eastman or Westlake.

Eastman asserts that not only is the 140,000,000 pounds per year of ethylene transported over the Westlake Pipeline an unreasonably low volume assertion, but when viewed by a

Sources & Notes: Dec-2006 through 2013 data provided in the document Bates stamped WPL00020-WPL00021, included in Rebuttal Attachment C to Dr. Arthur's Rebuttal testimony.

¹⁵¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 7.

¹⁵² Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 8.

¹⁵³ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14.

historical perspective the 200 million pounds per year assumption remains conservative. Below is a table contained in the direct testimony of Westlake witness, Dr. Arthur, showing the volumes experienced on the pipeline during each of the seven full calendar years of Westlake ownership of the pipeline.¹⁵⁴

Table 12.3
Westlake Pipeline's Estimated Revenues Under Prior Rate and 2013 Rate

Table 1: Westlake Pipeline's Estimated Revenue under Prior Rates & 2013 Rate

Year	Total Volumes (lbs.)	Non-Incentive Volumes (lbs.)	Incentive Volumes (lbs.)	Non-Incentive Rate (\$/lb.)	Incentive Rate (\$/lb.)	Estimated Total Revenue (\$)	Proposed Revenue (\$)
[1]	[2]	[3]	[4] = [2] - [3]	[5]	[6]	[7] = ([3] x [5]) + ([4] x [6])	[8]
2007	206,183,485	116,800,000	89,383,485	0.019	0.007	2,844,884	
2008	352,540,556	117,120,000	235,420,556	0.019	0.007	3,873,224	
2009	525,376,000	116,800,000	408,576,000	0.019	0.007	5,079,232	
2010	564,176,715	116,800,000	447,376,715	0.019	0.007	5,350,837	
2011	224,092,000	116,800,000	107,292,000	0.019	0.007	2,970,244	
2012	277,848,000	117,120,000	160,728,000	0.019	0.007	3,350,376	
2013	133,669,026	116,800,000	16,869,026	0.019	0.007	2,337,283	
Estimated Going-Forward Annual Volume, Rate & Revenue	140,000,000			0.035			4,900,000

Note that the non-incentive volumes under the 2002 tariff are estimated at a uniform 320,000 pounds per day.

Sources:

Volumes: WPL000020 - WPL000021

Tariffs: Mustang Pipeline Company Texas Local Tariff No. M-3; Westlake Ethylene Pipeline Corporation T.R.R.C. No. 1.0.0.

Eastman argues that the table above demonstrates that the pipeline experienced volumes in excess of 200 million pounds per year in six of those seven years. Only in year 2013 did the volumes fall below the 200 million pounds expected by Westlake for 2014. Eastman believes that the volumes in Dr. Arthur's Table 1 for 2013 are an outlier, exhibiting volumes more than 70 million pounds below the next lowest year during Westlake's ownership of the pipeline. According to Eastman, the average of the yearly volumes experienced during Westlake's ownership of the pipeline has been approximately 326 million pounds per year. Westlake's 140 million pounds is also significantly lower than the 200 million pounds included in Westlake's own budget for 2014.

Furthermore, Eastman claims that Westlake's 140 million pound per year volume assumption is inconsistent with Dr. Arthur's own statements about what a reasonable Test-Year would be in this proceeding if the traditional utility Test-Year concept were applied. Dr. Arthur's rebuttal attachment shows that the historically-experienced volumes for both calendar year 2012 and for the 12 months ending in March 2013 are approximately 278 million pounds. Eastman argues that this 278 million of historically experienced volumes is consistent with the analysis proposed by Dr. Fairchild and is nearly double the 140 million pound volume Westlake

¹⁵⁴ Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, p. 11 (Table 1).

advocates for the return on investment analysis for this case. Eastman believes that the Commission should not rely upon the 140 million pounds per year volume because Westlake has failed to establish that the 140 million pounds figure is reliable and reasonable.

(3) Westlake's Response

Westlake believes that Dr. Fairchild's reliance on the 200 million pounds per year estimate in the 2014 Westlake Pipeline budget is not reasonable. Westlake argues that the budget was created by the Westlake Controller for internal accounting purposes and without consulting Ms. Moore.¹⁵⁵ The Controller utilized only recent months toward the end of 2013, which support an estimate of 200 million pounds per year.¹⁵⁶ Westlake asserts that the Controller's estimate was created based on a few higher-than-average months in the latter part of 2013 without accounting for known and measurable changes in the underlying drivers of throughput on the pipeline.¹⁵⁷

13. Eastman's Proposed Rate and Competitive, Market-Based Verification

A. Eastman's Proposed Rate

(1) Eastman's Position

Eastman believes that the evidence is insufficient to determine that Westlake's \$3.50 rate is reasonable based on the Shell Concha Tariff and requests that the Commission reject Westlake's proposed 2013 Tariff as neither just nor reasonable. In the alternative, Eastman requests that the Commission adopt one of Eastman's proposed rates that Eastman believes will protect both the shippers and Westlake.

Eastman witness, Dr. Fairchild, demonstrated three different recommended rates that include three different volume assumptions. First, Dr. Fairchild uses the 2014 Westlake Pipeline budget volume assumption of 200 million pounds per year. Secondly, Dr. Fairchild uses a 230 million volume assumption. Finally, Dr. Fairchild shows his analysis using the historical average of 326 million pounds per year during the years that Westlake has owned the pipeline as the upper end of the volumes assumed in his return on investment analyses.¹⁵⁸ Eastman argues that the source of both ends of Dr. Fairchild's volume range is known, verifiable, and reasonable.

Dr. Fairchild offered the following alternative rates of return on common equity analysis that taken as a whole Dr. Fairchild believes show a "postage stamp" rate of \$1.86 per hundred pounds is just and reasonable. Alternatively, if the Commission declines to set a "postage stamp" rate of \$1.86 per hundred pounds, Eastman requests that the Commission set a separate rate for exchanges on the pipeline. Eastman argues that Dr. Fairchild's analyses taken as a whole

¹⁵⁵ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 8.

¹⁵⁶ *Id.*

¹⁵⁷ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 8-9.

¹⁵⁸ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 18.

supports an exchange rate of no more than \$0.96 per hundred and a rate of \$2.00 per hundred pounds for all other services on the pipeline.¹⁵⁹

This recommended rate results from the following range of rates using different volumes that have previously been asserted by the parties:

Table 13.1
Eastman's Recommended Rates

Description	200 Million Pounds	230 Million Pounds	326 Million Pounds
Average 2002 Tariff Rate	\$1.40	\$1.31	\$1.13
Average Intrastate Pipeline Rate	\$1.71	\$1.71	\$1.71
FERC Indexed Rate	\$2.22	\$2.07	\$1.79
Return on Investment Analysis	\$2.11	\$1.84	\$1.30
Return on Investment (Exchange at \$0.96)	N/A	\$1.97	\$1.33 ¹⁶⁰

Dr. Fairchild testified that since Ms. Moore did not provide any work papers on how she performed her analysis, his results are based on an independent analysis. Dr. Fairchild testified in detail about the method he utilized in his independent analysis. By taking revenue and operating expense data from the 2014 Westlake budget and capital cost data developed using standard ratemaking methods, Dr. Fairchild performed a return on investment capital.¹⁶¹ Dr. Fairchild then took the projected pipeline tariff fees of \$7,000,000 during 2014, which was based on 200 million pounds of ethylene being transported at \$3.50 per hundred. After accounting for operating expenses, depreciation expense on an \$18 million purchase price and a 35 year service life, property taxes and Texas franchise tax, he concluded that the pipeline would have \$4.3 million in earnings before interest and income taxes.¹⁶²

Next, Dr. Fairchild calculated interest expense by utilizing a synchronized interest method, where the net investment in assets is multiplied times the debt ratio in the capital structure and cost of debt. He determined net investment by using Westlake's 2006 purchase price, accounted for accumulated depreciation from 2007 through 2013 by multiplying annual depreciation expense by seven years. He also accounted for \$183,000 in computer equipment from 2010. He used a cash working capital allowance equal to 12.5% of O&M and A&G consistent with the Railroad Commission of Texas *Natural Gas Handbook*. Furthermore, Dr. Fairchild calculated accumulated deferred income taxes resulting in a net investment value of \$12.8 million.¹⁶³

Dr. Fairchild continued with his analysis by determining an appropriate debt ratio and cost of debt for the pipeline. The capital structure of Westlake Chemical Corporation at

¹⁵⁹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 23.

¹⁶⁰ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 22.

¹⁶¹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 13 and BHF-4.

¹⁶² Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 14 and BHF-4.

¹⁶³ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 14-15.

December 31, 2013, was approximately 24% debt and 75% equity. Dr. Fairchild testified that these ratios are not consistent with debt ratios by other companies primarily engaged in oil pipeline activities, so he utilized an industry average of debt ratio of approximately 50% based on proxy companies.¹⁶⁴ Likewise, he used the average embedded debt cost of the proxy companies of 5.3% as the cost of debt in his analysis.¹⁶⁵

Dr. Fairchild testified that he then multiplied the net investment in plant of \$12.8 million by a 50% debt ratio and a 5.30% cost of debt produced interest expense, which was subtracted from the \$4.3 million of earnings before interest and taxes to result in a taxable income. After applying a 35% marginal corporate income tax rate, Dr. Fairchild's analysis showed net income available for shareholders of \$2,563,718.¹⁶⁶ To arrive at a rate of return on equity, he multiplied the \$12.8 million net investment in the pipeline by a 50% equity ratio, which produced an equity investment in the pipeline of \$6,401,083. Dividing this investment into the \$2,563,718 of net income available for shareholders, Dr. Fairchild concluded that Westlake would produce a rate of return on equity of 40.1%.¹⁶⁷

(2) Westlake's Position

In response, Dr. Arthur took the return analysis that Dr. Fairchild conducted and made three adjustments: (1) Westlake Pipeline's investment at \$29.8 million dollar; (2) depreciation expense (which flows from investment); and (3) annual volumes of 1,400,000.¹⁶⁸ Dr. Arthur utilized the same figures for annual operating expenses, interest expenses, and taxes as Dr. Fairchild.¹⁶⁹

Westlake argues that Dr. Arthur's analysis demonstrates that the significant two numbers at issue in this proceeding are (1) Westlake Pipeline's investment in the pipeline and (2) the annual throughput on the pipeline. Dr. Arthur caveats this statement by noting that the depreciation expense, while also at issue, flows from the investment value, and for purposes of rebutting Dr. Fairchild's analysis, he used a conservatively low annual depreciation number based on the \$29.8 million investment, \$868,705.¹⁷⁰

Westlake asserts that the annual throughput suggested by Dr. Fairchild of 200 million or 230 million ignores both the annual flow for 2013 and the test-year flow adjusted for known and measurable changes. Westlake believes that \$29.8 million is the most reliable investment value because it is the one conducted for the 2006 sale. Dr. Arthur used the \$29.8 million in investment value and 140 million pounds of throughput, a \$3.50 rate per hundred pounds, results in an 8.1% return on equity. Dr. Arthur justifies Westlake's proposed \$3.50 rate by showing that it requires a rate of \$3.95 to generate a return on equity of 12% that Dr. Fairchild agrees is a reasonable return on equity to Westlake Pipeline.¹⁷¹

¹⁶⁴ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 15-16 and BHF-5.

¹⁶⁵ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, pp. 15-16 and BHF-6.

¹⁶⁶ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 16 and BHF-4.

¹⁶⁷ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 16 and BHF-4.

¹⁶⁸ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, pp. 19-20 and Attachment F.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at Attachment F.

¹⁷¹ *Id.*

B. Eastman's Competitive, Market-Based Verification of Reasonableness of Rate

(1) Eastman's Position

Eastman argues that a market-based rate is a rate that the market will accept or a rate that the market will bear. Eastman introduced evidence through expert witness, Dr. George Intille, Principal at Nexant Inc. with the Energy and Chemical Consulting Group, who conducted a market-based analysis. Eastman believes that Dr. Intille's analysis provides another means by which the Commission can test whether Westlake's new rate falls within the range of reasonableness.¹⁷² Based on Dr. Intille's analysis, Eastman asserts that Westlake's rate is neither market-based nor competitive because the rate is in excess of what the market can bear.

Eastman maintains that the economic production of polyethylene has narrow margins and depends on the price of ethylene.¹⁷³ This makes polyethylene production sensitive to transportation costs of ethylene. Dr. Intille evaluated the new Westlake rate from the perspective of a participant in the chemical industry producing LDPE and LLDPE, which are the same two types of polyethylene that Westlake Longview produces in its Longview plants.¹⁷⁴

Dr. Intille's testimony focuses on whether a polyethylene manufacturer that sources its ethylene from the Mont Belvieu ethylene market can produce polyethylene competitively if it pays the \$3.50 per hundred pounds transportation charge. He testified that a polyethylene manufacturer that is unaffiliated with the Westlake Pipeline could not profitably build and operate a polyethylene manufacturing facility if it had to pay \$3.50 rate source ethylene from Mont Belvieu. Margins and returns would be too low for the producer according to Dr. Intille. At this tariff rate, a polyethylene producer would achieve such low margins that he would not obtain a return on investment that would support the investment.¹⁷⁵ The economics of a \$3.50 per hundred pound rate would even make it difficult for a manufacturer to expand production of an existing plant.¹⁷⁶

Eastman argues that Dr. Intille's analysis shows that Westlake's July 2013 rate is unreasonable and anticompetitive in the marketplace.¹⁷⁷ Dr. Intille concluded that it is not possible to manufacture polyethylene competitively if a producer has to source its ethylene from Mont Belvieu via the Westlake Pipeline. According to Dr. Intille, for a polyethylene manufacturer in Longview to be profitable, the manufacturer must be affiliated with the Pipeline. This would allow the manufacturer to pay what he considers an unreasonable rate, knowing that ultimately the costs will come out at some affiliated entity.¹⁷⁸

¹⁷² Transcript of Testimony, Vol. I, Dr. George M. Intille, p. 120.

¹⁷³ Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 3.

¹⁷⁴ Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, pp. 2-6.

¹⁷⁵ Transcript of Testimony, Vol. I, Dr. George M. Intille, p. 167.

¹⁷⁶ *Id.*

¹⁷⁷ Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 12.

¹⁷⁸ Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 13.

(2) Westlake's Position

Westlake argues that Dr. Intille's analysis is not a competitive, market-based check on reasonableness because it is not based on any actual competitive market. Moreover, in Dr. Intille's analysis there is no reasonable rate for transportation on the pipeline. Westlake contrasts his analysis with their market-based rate demonstrating by actual tariff comparisons that shippers on the Concha Pipeline are currently willing and able to pay \$3.50 per 100 pounds to ship ethylene over distances similar to the Westlake Pipeline.

Dr. Intille is evaluating whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit. If not, he concludes that the 2013 Tariff rate is discriminatory in favor of Westlake Pipeline's affiliate. Westlake asserts that Dr. Intille's logic is flawed and that he looks at the returns earned by a hypothetical shipper without regard to the return earned by the common carrier. Westlake points out that it is undisputed that there is no rate Westlake Pipeline could charge that would meet Dr. Intille's test.¹⁷⁹ Finally, Westlake maintains that Dr. Intille's analysis is not relevant to any applicable legal standard in this case.

14. Exchange Rate

A. Eastman's Position

Exchanges are basically a swap of products that do not involve any physical transportation of ethylene. Westlake Pipeline regularly ships ethylene from Mont Belvieu to Longview for its affiliated shipper. In an exchange for Eastman, the pipeline offsets ethylene delivered to Mont Belvieu with ethylene that is already in the pipeline at the Longview end. The pipeline does not incur any costs for this transaction. Westlake Chemical gets the ethylene at Longview that it wanted delivered to its facilities in Longview, while Eastman gets ethylene it needs in Mont Belvieu. The result is that Eastman pays Westlake Pipeline the tariff rate for the exchange as if the Eastman product had been physically transported on the pipeline.¹⁸⁰

Under the 2002 Tariff, Westlake Pipeline is currently charging Eastman the same rate for exchange services as it does for actual physical transportation, even though no physical transportation of ethylene is required with an exchange. Eastman argues that exchanges are being used and that exchanges benefit the pipeline, so a lower rate for exchanges is warranted.

Eastman points out that the FERC has recognized the lower cost for a pipeline to perform exchanges and has recognized either low or zero rates for exchanges. Since, exchanges cost less to the pipeline than actual transportation of ethylene, it is Eastman's position that if the Commission adopts a new rate higher than \$1.86 per hundred pounds, that the Commission should then set an exchange rate of no more than \$0.96 per hundred pounds plus a rate of \$2.00

¹⁷⁹ Eastman Ex. 102, Direct Testimony of Dr. George M. Intille, p. 8.

¹⁸⁰ Eastman Ex. 1, Direct Testimony of Mark Bogle, p. 12.

per hundred pounds for the transportation rate on the pipeline.¹⁸¹ The \$0.96 per hundred pounds is also the negotiated rate for backhauls in the Ethylene Supply Agreement between Eastman and Westlake Chemical.¹⁸²

B. Westlake's Position

As for Eastman's request that the Commission establish a separate rate for exchange service, Dr. Arthur explained that a requirement to facilitate exchanges can impose significant commodity risks on a pipeline.¹⁸³ Also, Westlake maintains that exchanges do not necessarily lower a pipeline's costs, because the switch from physical transport to exchange does not alter the cost of the asset or a pipeline's fixed operating costs.¹⁸⁴ Dr. Arthur also testified that Dr. Fairchild's suggested use of the exchange rate in the Ethylene Sales Contract is unreasonable, because that rate was one element within a complex long-term ethylene sales agreement that undoubtedly involved negotiation over numerous elements, whereby each party gave on individual elements to reach an overall agreement.¹⁸⁵ Moreover, Dr. Arthur testified that imposing a separate charge for exchange service would provide the opportunity for a cross-subsidy between physical shippers and exchange shippers.¹⁸⁶

Westlake believes that the most compelling reason to reject Eastman's request for a separate exchange rate, is that the 2002 Tariff includes the same rates for transportation as exchanges.

15. Examiners' Recommendation

In this docket, the issue before the Commission is whether the 2013 Tariff rate of \$3.50 per hundred pounds of ethylene transported on the Westlake Pipeline is just and reasonable, and if not, for the Commission to set a just and reasonable common carrier pipeline rate for Westlake Pipeline.¹⁸⁷ Both parties agree that Westlake has the burden of proof in the rate portion of the complaint.

At the outset, the Examiners have carefully considered the applicable laws related to common carrier rates¹⁸⁸ and distinguished the method for common carrier ratemaking from the provisions of the Texas Utilities Code for gas utility ratemaking. The Commission's general powers under the Natural Resources Code provides that the Commission may use a cost-of-

¹⁸¹ Eastman Ex. 103, Direct Testimony of Dr. Bruce H. Fairchild, p. 20.

¹⁸² *Id.*

¹⁸³ Westlake Ex. 102, Direct Testimony of Dr. Daniel S. Arthur, pp. 13-15 and Transcript of Testimony, Vol. II, Dr. Daniel S. Arthur, pp. 124-125.

¹⁸⁴ *Id.*

¹⁸⁵ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 24.

¹⁸⁶ *Id.* at 23.

¹⁸⁷ This docket is the rate segment of a bifurcated case arising from the complaint filed by Eastman alleging in part that Westlake's proposed 2013 Tariff rate of \$3.50 per hundred pounds of ethylene transported on the Westlake Pipeline, is neither just nor reasonable. The Procedural History, Section 2 of this Proposal for Decision, contains a detailed discussion of the scope of this rate case, GUD No. 10358 and the companion case, GUD No. 10296, related to Eastman's allegations of discrimination by a common carrier.

¹⁸⁸ The applicable legal standard is discussed in detail in Section 5 of this Proposal for Decision.

service method or a market-based rate method to set rates.¹⁸⁹ Additionally, Subtitle D, Chapter 111 of Natural Resources Code authorizes setting a common carrier transportation rate. Section 111.183 outlines a return on investment method for common carriers that uses some of the same concepts from cost-of-service ratemaking similar to public utility ratemaking, as follows:

The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.¹⁹⁰

This provision emphasizes the concept of a fair return to the common carrier and sets out the elements for the Commission to consider in determining the fair return. Moreover, the Commission is authorized to use “reasonable latitude in establishing and adjusting competitive rates.”¹⁹¹

It follows that both of these ratemaking methodologies, cost-of-service or market-based, are authorized pursuant to the Natural Resources Code for setting rates for a common carrier. In the *Weeks* case, the Commission adopted the Examiner’s recommendation utilizing a cost-of-service method rate, which the Examiner had verified with a market-based, comparative benchmark.

In the case currently before the Commission, Westlake witness, Ms. Moore, is the employee who set the proposed rate of \$3.50 per hundred pounds transported from a combination of rate setting methods. Initially, Ms. Moore based the proposed rate on a market-based rate comparison of the Shell Concha interstate pipeline ethylene transportation tariff. According to Westlake, the Shell Concha Tariff provides a rate that Westlake believes is the rate that shippers expect to pay in a competitive market to transport a quantity of ethylene approximately 195 miles. Obvious distinctions in this comparison include the pipeline which is an interstate pipeline regulated by the U.S. Surface Transportation Board, not an intrastate pipeline like Westlake Pipeline which is regulated by the Commission. Just as critical, however, is that pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul. Westlake failed to produce evidence demonstrating that the Shell Concha Tariff rate was itself reasonable based upon its pipeline capacity, operating costs, capital investment, or operating characteristics.

As for Eastman’s market-based evidence presented by Dr. Intille, the Examiners carefully considered Dr. Intille’s effort to demonstrate that Westlake’s 2013 Tariff rate is not a competitive market-based rate. The examiners concur with Westlake that Dr. Intille’s testimony and analysis shed little light on the issues at hand. Dr. Intille attempted to evaluate whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit. The Examiners believe that the hypothetical nature of his analysis lacks credibility and thus the Examiners gave it little weight especially since he concluded that there is

¹⁸⁹ Section 81.061(1) of the Natural Resources Code.

¹⁹⁰ TEX. NAT. RES. CODE ANN. § 111.183.

¹⁹¹ TEX. NAT. RES. CODE ANN. § 111.184.

no rate Westlake Pipeline could charge that would still allow a hypothetical shipper to earn a 10% to 15% return. Likewise, the rate of \$1.86 per hundred pounds proposed by Eastman's expert witness, Dr. Fairchild, was also too high in Dr. Intille's analysis to permit the hypothetical shipper to earn a 10% to 15% return.¹⁹² The Examiners believe an analysis based on whether Eastman is able to earn a fair margin while paying the 2013 Tariff rate would have had more merit.

After the tariff comparison method, Ms. Moore uses a FERC indexing and "simple" cost-of-service as a benchmark for the proposed \$3.50 rate. As for Westlake Pipeline's application of the FERC escalation factors, the Examiners find that the application was an inadequate check on the reasonableness of the new rate because Westlake Pipeline eliminated the non-incentive rate and then applied the FERC escalator incorrectly by not escalating both tiers of the declining block rate structure in the 2002 Tariff.

The Commission may have authority to use a strict market-based rate as a primary method to set a just and reasonable rate in certain circumstances. In this case, however, given the scant evidence related to the manner that Ms. Moore set the rate and her apparent lack of evaluation of that information, the Examiners do not believe that a market-based rate setting approach is appropriate. A market-based approach may be useful in this docket as a benchmark or comparison much like the Commission utilized in the *Weeks* docket but not as the primary approach due to the lack of credibility of the evidence presented by Ms. Moore in her tariff comparison. Accordingly, the Examiners find that the preponderance of credible evidence in the record does not establish that Westlake's tariff based comparison is reliable to support a rate of \$3.50 per hundred pounds as either competitive or market-based.

Turning to the alleged "simple" cost-of-service as a benchmark for the proposed rate emphasizes concerns related to the credibility of Ms. Moore's testimony. The pre-filed direct testimony to support her process was so minimal that it produced more questions than it answered. Westlake witness, Dr. Arthur, testified from a back-end approach in an effort to explain and justify her conclusions.

For example, when Ms. Moore explained her analysis for achieving a 12% after-tax return on capital, she states, "I took the purchase price of the pipeline, estimated annual operating costs, the current corporate tax rate, and the estimated amount of ethylene that will flow through the pipeline for this year." Yet, Ms. Moore had no work papers or further testimony on direct examination about quantifying the amount of the purchase price, operating costs, volumes, and year. Ms. Moore did not file rebuttal testimony. At the hearing, Ms. Moore attempted to quantify these figures. Dr. Arthur's testimony did make an effort to clarify the methods and quantify the figures that Ms. Moore utilized, however, Ms. Moore's testimony lacked credibility. The evidence in the record of Ms. Moore's cost of capital analysis is inadequate to conclude that Westlake's rate should be \$3.66 per hundred pounds to achieve a 12% after-tax rate of return on common equity.

The Examiners believe that Eastman witness, Dr. Fairchild, presented highly credible methodology for determining a transportation rate and fair return that protects the rights of both

¹⁹² Transcript of Testimony, Vol. I, Dr. George M. Intille, pp. 169-170.

the pipeline and the shipper. Dr. Fairchild testified regarding his experience setting an overall rate of return for both the non-regulated competitive sector and the regulated sector.¹⁹³ He testified that due to the lack of transparency with Ms. Moore's process, he utilized documents produced in discovery to analyze the fair return and related pipeline costs. The Examiners find that Dr. Fairchild's methodology, described on pages 14-16 of his direct testimony and accompanying schedules and discussed in this Proposal for Decision Section 13, is a reasonable process and method to determine a fair return, with the caveat that the Examiners find that adjustments should be made to rate base, depreciation and volumes, as discussed below.

Test-Year. The guiding statutes do not specifically mention the use of a Test-Year in deriving a fair return for the common carrier pipeline in a rate setting case. Yet, § 81.061(b) of the Natural Resources Code does state that the Commission has authority to set a market-based rate and a cost-of-service based rate. Furthermore, Section 111.183 refers to cost-of-service type factors. A Test-Year is a standard component of cost-of-service based rate making.

The Examiners in the instant docket believe that Test-Year evidence adjusted for known and measurable changes is relevant and is generally the preferred historical period to collect rate making data as it is closest to the period of time upon which the carrier bases its rates. The Test-Year in this case is year end March 31, 2013, as this is the most recent year end historical data available to Westlake at the time that they proposed the 2013 Tariff in July 2013. The Examiners point out that the Test-Year data, however, may not always be the most persuasive evidence in each element to consider in calculating a rate for a common carrier, as other evidence may ultimately be more credible given the specific circumstances. The Examiners note that in *Weeks*, a Test-Year was identified, yet the Examiner did not use Test-Year data in findings related to the credibility of the evidence for operating expenses or volumes.

Rate Base. Natural Resources Code § 111.183, in part, provides that the basis of rates shall provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed. In determining the aggregate value of Westlake Pipeline's property, Westlake asserts the use of the \$29.8 million Ernst and Young valuation performed in 2006 in conjunction with the purchase of several assets from Eastman. In the alternative, Westlake believes the Commission should use a form of original cost less depreciation that accounts for working capital and taxes. Conversely, Eastman asks the Commission to use the \$18,000,000 purchase price that Westlake paid for the pipeline assets in 2006.

The use of the purchase price or current valuations of a pipeline are contrary to standard ratemaking methodologies used at the Commission for rate base. This is demonstrated by the Commission adopting the Examiner's recommendation in *Weeks* utilizing an original cost capital investment approach to the rate base component of a fair return calculation of the rate.

The Examiners believe that the preponderance of the credible evidence related to Westlake's capital investment is the use of original cost less depreciation with allowance for working capital and taxes. The evidence in the record shows that the original cost of the pipeline when completed by Mustang in 1997 was \$54,042,000.¹⁹⁴ In order to assess Westlake's net

¹⁹³ Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, pp. 56-57.

¹⁹⁴ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, Rebuttal Attachment G.

invested capital, this amount must be reduced by depreciation and allowances for working capital and taxes taken into account for rate base amount of \$25,764,021.¹⁹⁵

Depreciation Expense. Westlake did not provide a depreciation study to support its assertions related to depreciation of the pipeline. Dr. Arthur testified that while an appropriate depreciation life for the assets could be determined by a full depreciation study, pipeline depreciation lifetimes that he is familiar with for ratemaking are approximately 30 to 35 years.¹⁹⁶ Dr. Fairchild acknowledged that a 30 to 35 year period can be reasonable and he also applied a 35 year life to his analysis.¹⁹⁷

The Examiners find that the preponderance of the credible evidence in the record supports a 35 year life for the pipeline asset. Applying a 35 year life to the original 1997 cost of \$54 million yields an annual depreciation expense of \$1,544,057. The 2006 value is \$39.4 million with accumulated depreciation of \$14.7 million. This result is a reasonable estimate of the depreciated original cost at the end of 2006 when Westlake acquired the assets. At 2013, the net investment is approximately \$28.5 million with accumulated depreciation of approximately \$25.5 million.

Computer equipment is assumed acquired in mid-2010 and has been depreciated over a 10 year life. The result is an annual depreciation expense of \$18,276 and a net value at 2013 of \$118,794.

Operating Expenses. Natural Resources Code § 111.183 provides that reasonable operating expenses under honest, efficient, and economical management should be considered in the basis of the rate. There is little dispute among the parties that \$2,135,000 in operating expenses from the 2014 Westlake budget is reasonable and both experts use this figure in their respective return on investment calculations. While historical operating expenses may be preferable in many cases, in this docket, as pointed out by Eastman, some credibility of evidence issues exist with the historical data presented by Dr. Arthur at the hearing. Thus, the Examiners find that the preponderance of the credible evidence regarding the reasonable operating expenses under honest, efficient, and economical management are \$2,135,000.

Volume or Throughput. The Examiners have carefully considered all of the evidence presented regarding what amount of annual volume, or throughput, of pounds of ethylene transported through the Westlake Pipeline, with known and measurable changes, is reasonable. The Examiners are not persuaded by Westlake's argument of the use of a decline in volumes in the amount of 140,000,000 pounds per year.

The Examiners believe that the preponderance of credible evidence supports a finding of throughput of 278,000,000 pounds per year. Westlake filed their 2013 Tariff in July 2013. The methodology that supports the 2013 Tariff rate should be based upon actual historical volumes, with known and measurable changes. June 2013 and early July 2013 was the time period that Ms. Moore was preparing the proposed tariff. The most recent volumes available to her at that

¹⁹⁵ Shown on Examiners' Schedule Recommended Rate, attached to this Proposal for Decision as "Exhibit A."

¹⁹⁶ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 17.

¹⁹⁷ Transcript of Testimony, Vol. II, Dr. Bruce H. Fairchild, p. 26.

time were Test-Year volumes ending March 2013 of approximately 278,000,000 pounds. Similarly, Dr. Arthur testified that the Test-Year in this case should either be Calendar Year 2012 or March 2013 year end. Westlake volumes are 278,000,000 for both year end March 2013 and Calendar Year 2012.

Yet, Westlake argues that the subsequent 2013 annual year volumes of 133,565,867 (133,669,026 including backhaul volumes) are more representative of the volumes going forward and that circumstances related to Eastman's cracker facilities have caused an inverse relationship in variations in the annual throughput. Westlake asks the Commission to find that due to this "known and measurable" change that 140,000,000 pounds per year is the amount of throughput per year going forward.

The Examiners do not believe that the preponderance of credible evidence supports Westlake's position. While there was a decline in volumes in 2013, Westlake has failed to substantiate that the decline is not just another variation in the system. Westlake has admitted that the volumes have varied widely since the 2002 Tariff has been in place. Volumes have spiked during two separate years over 500,000,000 and gone as low as approximately 25,000,000. The evidence was unpersuasive that the significantly lower 2013 volumes represent a going forward annual amount of volumes particularly in light of the historical averages.

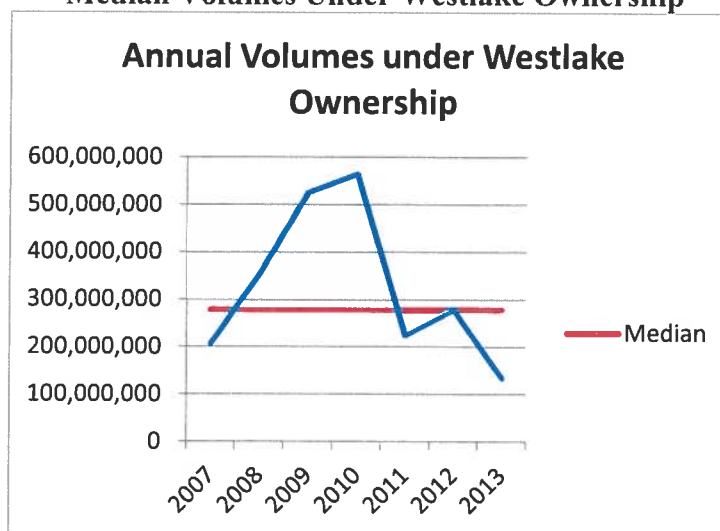
Again, the Examiners believe that the volumes that were available to Ms. Moore at the time she proposed the rate, which were Test-Year ending March 2013 of 278,000,000 pounds is highly credible evidence to base a determination on annual volumes in this docket. The total historical volumes on the system, including backhaul, also support this finding, as follows:

277,943,000	Test-Year ending March 2013
277,848,000	Calendar Year 2012
326,269,397	Average under Westlake ownership from 2006-2013
224,029,000	Calendar Year 2011
219,127,963	Average during 2002 Tariff from 2002-2013
205,758,513	Average Past Two Calendar Years 2012-2013
200,000,000	2014 Westlake Pipeline Budget Projected Volumes
133,669,026	2013 Calendar Year

The historical averages of 326,269,397 under Westlake ownership, and 219,127,963 during the 11 year period for the 2002 Tariff, account for variations by the nature of averages. The throughput figure proposed by Westlake is out of step with the experience of the last several years and does not include revenues from backhaul and exchange services.

Under Westlake ownership, historical volumes from 2007 through 2013, constitute median volumes of 278,000,000, which is also the test-year volumes. Below is a graphical representation of Westlake historical volumes on the system:

Figure 15.1
Median Volumes Under Westlake Ownership



The Examiners do not consider annual variations in volumes as a known and measurable change. The Examiners calculated the median volumes, under Westlake ownership, 2007-2013, as 278 million. The use of the median volumes of 278 million takes into consideration normal variations. A known and measurable change is a fixed change to plant or O&M.

The Examiners have considered the fact that Eastman currently has two cracker units up for sale. However, the Examiners are not convinced that “forecasted” changes in the system such as the pipeline demands of a potential new cracker owner as discussed by Eastman witness, Mr. Long, constitute a known and measurable change.¹⁹⁸ Mr. Long forecasts potential volumes to increase by 650 million pounds per year after the sale of the crackers. The Examiners do not consider potential volume increases from a potential sale and potential demands of a new owner to be a known and measurable change and do not recommend any additional volume adjustment at this time. Currently, there is not a buyer or date for the sale of the crackers. In order for an adjustment to be considered there should be a reasonably effective date and amount of the change.

The 278 million test-year volumes recommended by the Examiners do not include backhaul of exchange volumes. The Examiners have taken those volumes into consideration. The recent volume history indicates that backhaul occurred only in June 2013, at a volume of 103,158. No other backhauls happened in the previous five years. Under the 2002 tariff, no exchanges have occurred on the pipeline until February 2014.¹⁹⁹ If significant backhauls and exchanges begin to occur and Eastman believes that Westlake is over-earning, Eastman may avail itself of the Commission’s rate setting procedures.

¹⁹⁸ Eastman Ex. 101, Direct Testimony of J. Stephen Long, pp. 6-8.

¹⁹⁹ Transcript of Testimony, Vol. I, J. Stephen Long, pp. 70-71.

Thus, the record does not support a finding that 140,000,000 in volumes is representative going forward based upon known and measurable changes. To the contrary, it is inconsistent with past known and measurable volumes. Instead, the preponderance of the credible evidence supports a finding of annual volumes of 278,000,000 reflected in both the test-year and median annual volumes during Westlake's ownership of the pipeline. Under standard ratemaking theory, if Westlake's decline in volumes continues, the common carrier may return to the Commission for additional relief in the future once the level of that decline is known and measurable with the data supporting Westlake's ongoing operations.

Overall Recommendation. As a result, the Examiners' find that Westlake failed to meet its burden of proof to establish that its 2013 Tariff rate of \$3.50 per hundred pounds of ethylene transported is just and reasonable. The Examiners find that Dr. Fairchild's method for determining the rate, with adjustments, is credible. The Examiners find that the preponderance of the credible evidence in the record demonstrates that a rate of \$2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

The rate recommended by the Examiners is derived²⁰⁰ from Test-Year approximate annual volumes of 278,000,000, which produce annual revenues for Westlake Pipeline of approximately \$6,811,000. Expenses are deducted in the amount of approximately \$3,745,010 million. This includes approximately \$2,135,000, for operations and maintenance, administrative, and general expenses under honest, efficient, and economical management. Also deducted are expenses for pipeline annual depreciation in the amount of approximately \$1,544,057. The pipeline annual depreciation is calculated using a 35-year straight line depreciation based upon the original cost of the pipeline. Next, deductions for the depreciation expense for computer equipment in the amount of \$18,276 are taken based on 10-year life. Another reduction to revenue includes allowance for Texas franchise taxes in the amount of \$47,677. This calculates to total expenses of \$3,745,010.

Taking the total expenses of \$3,745,010 and deducting them from annual revenues of \$6,811,000 results in earnings before interest and tax (EBIT) of \$3,065,990. After considering the interest on debt expense of \$682,747, an earnings before taxes of \$2,383,243 remains. Applying a 35% Federal Income Tax rate, calculates to \$834,135 in federal incomes taxes that reduce Westlake's net income to \$1,549,108.

Net investment of the Westlake Pipeline was calculated using the method presented by Dr. Fairchild. Changes were made to use the original pipeline cost of \$54 million in 1997. Depreciation was calculated using straight line over a 35 year life with no salvage value. This results in an annual depreciation expense of \$1,544,057 for the pipeline asset. Accumulated depreciation in 2013 of \$25,476,943 is the result of multiplying annual depreciation expense by 16.5 years from 1997 to 2013. These calculations leave a remaining pipeline investment in 2013 of \$28.5 million. Similarly, as presented by Dr. Fairchild, \$183,000 in computer equipment, acquired in mid-2010, with an estimated 10-year life, resulted in annual depreciation expense of \$18,276.

²⁰⁰ Shown on Examiners' Schedule Recommended Rate, attached to this Proposal for Decision as "Exhibit A."

Accumulated depreciation in 2013 of \$63,966 is the result of multiplying annual depreciation expense by 3.5 years. A cash working capital allowance was included equal to 12.5% of O&M and A&G, similar to that described in the Commission's *Natural Gas Rate Review Handbook*. Also included was a calculation for accumulated deferred income taxes (ADIT). ADIT was derived by multiplying the timing difference between accumulated book and tax depreciation by the federal corporate income tax rate of 35%. ADIT was calculated following Dr. Arthur's methodology using the estimated original cost of \$39.4 million dollars as of December 2006. Dr. Arthur's calculation of ADIT was based on his understanding that deferred income taxes on the books of Eastman, as of the date of the sale, would not be transferred to Westlake Pipeline. Westlake would begin to accumulate its own accumulated deferred income tax balance.²⁰¹ As shown in footnote (d) to the Examiners Schedule, this resulted in a net investment in the Westlake Pipeline of approximately \$25.7 million.

The Examiners' recommendation also adopts Dr. Fairchild's recommended capital structure based on an industry average debt ratio of approximately 50% and the average embedded debt cost of the firms comprising the oil pipeline proxy group of 5.30%. Multiplying the net investment in plant of \$25.7 million by a 50% debt ratio and a 5.30% cost of debt produced interest expense of \$682,747, which was subtracted from the \$3 million of earnings before interest and taxes to arrive at taxable income of \$2.3 million. From this, income taxes calculated at the marginal corporate rate of 35% were subtracted to arrive at net income available for shareholders of \$1,549,108.

Multiplying the \$25.7 million net investment in the Westlake Pipeline by a 50% equity ratio produced an equity investment in the Westlake Pipeline of \$12,882,011. Dividing this investment into the \$1,549,108 of net income available for shareholders produces a rate of return on common equity of 12.03%. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provide Westlake a return on equity capital of 12.03%, or \$12,882,011.

The Examiners' recommendation requires \$6.8 million in annual revenue to provide Westlake a 12% return on equity. At the 278 million pound annual volumes recommended by the Examiners, a rate of \$2.45 per hundred pounds is the rate required to produce \$6.8 million in revenue and a 12% return on equity. Both parties agree that a 12% return on equity is reasonable. The Examiners find that the resulting return on equity capital of 12.03% is a fair return on the aggregate value of the property used and useful in the services that the common carrier performs after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

The Examiners further find that the preponderance of the credible evidence demonstrates that weighing the above-referenced findings of the elements comprising the rate, that no separate rate for exchanges of ethylene is warranted at this time. Westlake Pipeline did not perform any exchanges of ethylene under the 2002 Tariff during the period of December 2006 through the end of 2013. Similar to the Examiners' recommendation on Westlake's proposed decline in volumes, the Examiners do not believe that the test-year evidence supports a finding of

²⁰¹ Westlake Ex. 103, Rebuttal Testimony of Dr. Daniel S. Arthur, p. 20.

30,000,000 in exchanges going forward. The Examiners recommend keeping exchanges in the 2013 Tariff at the same rate of \$2.45 per hundred pounds as other volumes. This finding is also consistent with the current 2002 Tariff that provides the same rate for exchanges as throughput. As a result, the Examiners recommend the adoption of a rate of \$2.45 per hundred pounds for all volumes transported or exchanged.

The Examiners' recommendation impacts only Section II(b) of the tariff approved in GUD No. 10296. The Examiners have updated Section II(b) of the tariff to include the rate of \$2.45 per 100 pounds for all volumes transported or exchanged, as recommended in this docket. The changes to Section II(b) are below. The Examiners also recommend that within 30 days of the date this Order is signed, Westlake Pipeline shall file the tariff with the Commission.²⁰²


Table 15.1
Summary of Changes to Section II(b) - Rate
WESTLAKE ETHYLENE PIPELINE CORPORATION
T.R.R.C. No. _____
Mont Belvieu to Longview Pipeline

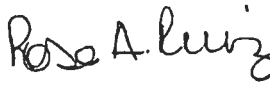
Section	GUD No. 10296 Approved	Examiners' Recommended
II. (b) Product Specifications and Local Rates	Rate: a. \$1.90 per 100 pounds for the first 320,000 pounds transported or exchanged in a single day. b. \$0.70 per 100 pounds for each additional amount transported or exchanged in a single day.	Rate: \$2.45 per 100 pounds for all pounds transported or exchanged in a single day.

16. Conclusion

In conclusion, the Examiners recommend that the Commission reject Westlake's 2013 Tariff rate of \$3.50 per hundred pounds of ethylene transported and adopt the Examiners' proposed rate of \$2.45 per 100 pounds for all volumes transported or exchanged.

Respectfully submitted,


Cecile Hanna
Hearings Examiner
Hearings Division


Rose Ruiz
Technical Examiner
Hearings Division

²⁰² The tariff that the Examiners' recommend adopting is attached to this Proposal for Decision as "Exhibit B." This tariff includes the tariff adopted by the Commission on December 9, 2014, with the addition of the rate recommended in this docket shown in Table 15.1.