BEFORE THE
RAILROAD COMMISSION OF TEXAS

RATE-SETTING PROCEEDING	§	
REGARDING WESTLAKE	§	**GAS UTILITIES DOCKET NO. 10358**
PIPELINE SEVERED FROM	§	
GUD NO. 10296	§	

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to TEX. GOV'T CODE ANN. Chapter 551, *et seq*. (Vernon 2008 & Supp. 2015). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Westlake Ethylene Pipeline Corporation (Westlake Pipeline or Westlake) is a 195 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.

2. Westlake Pipeline operates a pipeline pursuant to T-4 Permit No. 05253.

3. The pipeline runs from Mont Belvieu, Texas to Longview, Texas and traverses seven counties: Chambers, Liberty, Polk, Angelina, Nacogdoches, Rusk and Gregg.

4. The only product transported on the pipeline system is ethylene.

5. Westlake Pipeline is 100 percent owned by the Westlake Longview Corporation, which, in turn, is owned by Westlake Chemical Corporation.

6. Westlake Pipeline is an affiliate of Westlake Chemical Corporation.

7. The pipeline is currently operated by Buckeye Development & Logistics I LLC (Buckeye) on behalf of Westlake Pipeline.

8. Westlake Longview Corporation is the largest shipper on the pipeline.

9. Westlake Longview owns polyethylene and other manufacturing facilities that are located within Eastman's industrial complex in Longview, Texas.

10. 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.

11. Eastman retained ownership and operates chemical facilities in Longview including four olefin cracking units (crackers), which produce propylene and ethylene.

12. Eastman's Longview facility converts natural gas liquids (NGLs) feedstock, such as ethane and propane, to ethylene and propylene.

13. 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.

14. Eastman Chemical Company is currently the only significant shipper on the Westlake Pipeline that is not affiliated with Westlake Pipeline.

15. In 1997, Mustang Pipeline issued the original tariff for the pipeline, known as the *1997 Mustang Pipeline Tariff.*

16. The pipeline system was configured in 2002 to accept bidirectional flow.

17. In 2002, Mustang Pipeline revised its original *1997 Mustang Pipeline Tariff* by filing the *2002 Mustang Pipeline Tariff.*

18. The *2002 Mustang Pipeline Tariff* changed the 1997 rates and added exchanges and backhauls as services on the pipeline.

19. On November 10, 2006, Eastman and Westlake Chemical entered into an acquisition agreement. (Sales Agreement)

20. As part of the Sales Agreement, the Mustang Pipeline assets were transferred to Westlake Pipeline.

21. The overall Sales Agreement between Eastman and Westlake Chemical included the acquisition by Westlake Longview Corporation of three polyethylene units that are located within the Eastman's plant in Longview.

22. As part of the overall sale, on November 10, 2006, Eastman Chemical and Westlake Longview Corporation as a subsidiary of Westlake Chemical Corporation entered into the Ethylene Sales and Exchanges Contract (ESA).

23. Westlake Pipeline kept Mustang's 2002 Tariff in place approximately seven more years until Westlake Pipeline published and filed a new tariff in July 2013, the *Westlake Pipeline 2013 Tariff.*

24. The only cost-effective means for transporting ethylene between Longview and Mont Belvieu is the Westlake Pipeline.

25. Transportation costs for ethylene are a significant portion of the costs for most polyethylene processes.

26. Pipeline transport is among the most important factors that determine regional prices, supply, and demand for ethylene.

27. The *2002 Mustang Pipeline Tariff* provided for a declining block rate of $1.90 per 100 pounds for the first 320,000 pounds of ethylene transported or exchanged in a single day and $0.70 per 100 pounds for all remaining volumes transported or exchanged the same day.

28. Backhauls and exchanges were services specifically offered at the same rates in the *2002 Mustang Pipeline Tariff.*

29. The *2013 Westlake Pipeline Tariff* increased the rates on the pipeline to a flat $3.50 per hundred pounds from the previous declining block rate design.

30. The *2013 Westlake Pipeline Tariff* eliminated exchanges and backhauls as services on the Pipeline.

31. On July 29, 2013, Eastman filed a complaint against Westlake Pipeline alleging that a tariff published and filed by Westlake Pipeline in 2013 (*2013 Westlake Pipeline Tariff*) was unreasonably preferential, prejudicial, or discriminatory and that the rate increase was unjust and unreasonable.

32. Eastman's Complaint was docketed as GUD No. 10296, *Complaint Filed by Eastman Chemical Company Against Westlake Ethylene Pipeline Corp. Regarding Westlake Pipeline's System T-4 Permit No. 05253.*

33. On January 7, 2014, pursuant to Examiners' Letter No. 10 in GUD No. 10296, Westlake Pipeline's 2013 Tariff rate was suspended effective February 5, 2014, and the 2002 Tariff was reinstated pending resolution of these dockets.

34. A notice of hearing was issued on March 24, 2014, which bifurcated the issues into two hearing phases, with Phase I, GUD No. 10296, addressing all discrimination issues and Phase II, GUD No. 10358, addressing the rate issues.

35. On May 2, 2014, Westlake Pipeline filed an affidavit attesting that notice was served on the entity that operates the pipeline on behalf of Buckeye and all current customers of the pipeline that is the subject of this proceeding.

36. Phase II related to the rate issues were severed into this proceeding, docketed as GUD No. 10358, *Rate-Setting Proceeding Regarding Westlake Pipeline Severed from GUD No. 10296.*

37. The Commission issued a Final Order on December 9, 2014, in GUD No. 10296, adopting the Examiners' Recommendation finding discrimination and approving a Tariff that continues backhaul and exchanges services.

38. A Notice of the hearing in GUD No. 10358 was issued on July 25, 2014.

39. No additional party moved to intervene in GUD No. 10358.

40. The hearing in GUD No. 10358 commenced on August 6, 2014 and concluded on August 7, 2014.

41. The Commission considered the original Proposal for Decision in Public Meetings on February 10, 2015 and February 24, 2015.

42. On February 24, 2015, this docket was remanded for further evidence related to setting a market-based rate.

43. A Prehearing Conference for the Commission Remand hearing was held on March 23, 2015, setting out the scope of the remand hearing, and announcing the date and location of the remand hearing.

44. The hearing on the merits for the Commission Remand hearing was held on October 26-27, 2015.

45. Westlake Pipeline prepared and filed the *2013 Westlake Pipeline Tariff* soon after several Westlake Chemical employees saw the 2002 tariff in an on-line data room that Eastman Chemical had set up for prospective buyers of its Longview ethylene cracking facilities.

46. Westlake Pipeline 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.

47. The network of pipelines in the Gulf Coast area are not a competitive market with the Westlake Pipeline because none of these pipelines provide a competitive alternative for shippers on the Westlake Pipeline that transports ethylene north-south 195 miles back and forth between Longview and Mont Belvieu.

48. The relevant market is the market between the pair of the receipt and delivery points between Mont Belvieu and Longview.

49. The location of the facilities and receipt and delivery points of the other pipelines identified in this proceeding differ significantly from the location and receipt and delivery points of the Westlake Pipeline.

50. Westlake used six ethylene pipeline tariffs as benchmarks to support the reasonableness of its proposed rate, as follows: Chevron Phillips Chemical Pipeline Co. LLC, Concha Chemical, Enterprise TE Products Pipeline Co., LLC, ExxonMobil Pipeline Co., Koch Pipeline Co., LP, and SouthTex 66 Pipeline Co., Ltd.

51. Westlake presented no evidence related to any differences in the common carriers of the six tariffs, except for the distance of the pipelines.

52. Pipeline rates are driven by many factors other than the length of the pipeline or the distance of the haul, which include capacity, operating costs, location (urban v. rural and

underground v. underwater), pipe diameter, age, throughput, capital and operating costs, competition, and market conditions.

53. Westlake Pipeline failed to show by a preponderance of the credible evidence that the six pipelines compared are substantially similar to the Westlake Pipeline.

54. The regression analyses failed to conclusively demonstrate that distance is the primary variable affecting pipeline transportation rates.

55. The distance scaled rates produce rates that are unrealistic as they result in an average and median rate over 40% greater than the highest rate actually charged by any of the other six ethylene pipelines, including for hauls longer than 195 miles.

56. Of the six tariffs selected, only the Concha Chemical Pipeline has distances greater than 57 miles.

57. Other than the Concha Chemical Pipeline tariff, the pipelines used for a benchmark run distances ranging from eight to 57 miles.

58. The Concha Pipeline is an interstate ethylene pipeline that is regulated by the U.S. Surface Transportation Board and runs a distance of 230 miles.

59. Westlake Pipeline failed to provide sufficient justification for limiting analysis with data for distances of tariffs 75 miles or less.

60. Westlake Pipeline failed to provide sufficient justification for removing the "outliers" that range from approximately $16 to $40, while the same methodology that produced the "outliers" also produced distance scaled rates that were double and triple the actual rate.

61. Westlake Pipeline failed to provide sufficient justification for excluding two Concha Pipeline short hauls of 23 and 27 miles.

62. Westlake Pipeline failed to provide sufficient justification for excluding long term incentive rates within the Enterprise TE Products Pipeline Company, LLC tariff but continued to use the non-commitment rates.

63. Westlake Pipeline relied upon other pipeline rates to construct a mileage based rate even though none of the other six tariffs used in their analyses is mileage based and no credible evidence in the record establishes that any of the other ethylene pipeline tariff rates are mileage based.

64. Westlake Pipeline used these six tariffs as benchmarks even though it had no information about the capacity, operating costs, capital investment, or operating characteristics of those pipelines.

65. Westlake Pipeline failed to establish by a preponderance of the credible evidence that the weighted average rate charged to transport ethylene 195 miles in the Gulf Coast market is $5.19 per 100 pounds.

66. A market-based rate setting approach is not appropriate in this case because the preponderance of the credible evidence shows the following: (1) the market is not competitive; (2) the six pipelines compared are substantially similar; (3) distance is not the primary driver for a pipeline rate.

67. The preponderance of credible evidence does not demonstrate that Westlake's tariff based comparison is reliable to support a rate of $3.50 per hundred pounds rate as either competitive or market-based.

68. It is not proper to set a market-based rate in this docket; thus, a cost based, return on investment method is appropriate.

69. For determining a transportation rate and fair return that protects the rights of both the pipeline and the shipper, the preponderance of the credible evidence supports the methodology utilized by Dr. Bruce H. Fairchild, with adjustments for volumes, rate base and depreciation, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the original Proposal for Decision, which is incorporated by reference into this Final Order.

70. Eastman's evaluation of whether an unaffiliated company relying on the pipeline for ethylene supplies could pay the 2013 Tariff rate and make a profit was unpersuasive due to the hypothetical nature of the analysis and that under the analysis, there is no rate Westlake Pipeline could charge that would allow a hypothetical shipper to earn a 10% to 15% return.

71. Westlake Pipeline's simple cost of capital analysis assumed annual throughput volumes of ethylene of 140 million pounds, which is not a reasonable assumption.

72. Westlake Pipeline's expert witness, Dr. Daniel S. Arthur, assumed throughput volumes on the Westlake Pipeline that are substantially lower than a historical, representative level of throughput volumes.

73. Test-year evidence, adjusted for known and measurable changes, is relevant and generally the preferred historical period to collect rate making data as it is closest to the period of time upon which the carrier based its rates.

74. 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 during the time that the carrier was revising its rate in late June and early July 2013, and the subsequent publishing and filing of the *Westlake Pipeline 2013 Tariff*.

75. Test-Year data 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.

76. 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.

77. The evidence in the record shows that the original cost of the pipeline when completed by Mustang Pipeline in 1997 was approximately $54,042,000.

78. After reducing the original cost by depreciation and allowances for working capital and taxes, Westlake's net invested capital is $25,764,021 at 2013.

79. The preponderance of the credible evidence in the record supports a 35 year straight line depreciation for the pipeline asset.

80. Applying a 35 year straight line to the original 1997 cost of approximately $54 million yields an annual depreciation expense of $1,544,057 and an accumulated depreciation amount of approximately $25.5 million in 2013.

81. Computer equipment is assumed acquired in mid-2010 and it is reasonable to depreciate it over a 10 year life, resulting in an annual depreciation expense of $18,276, and a net value at 2013 of $118,794.

82. The preponderance of the credible evidence regarding the reasonable operating expenses under honest, efficient, and economical management is $2,135,000 contained in Westlake Pipeline's 2014 budget.

83. Westlake's proposed annual volume, or throughput, of 140,000,000 pounds of ethylene transported through the Westlake Pipeline, with known and measurable changes, is unreasonable and not supported by the preponderance of the credible evidence in the record.

84. Westlake failed to substantiate that the decline in volumes for 2013 is not just another variation in a system that has historically varied in annual volumes from approximately $25 million to $564 million from 2002 through 2013.

85. To the contrary, Westlake's proposed annual volume of 140,000,000 is inconsistent with past known and measurable volumes.

86. The preponderance of credible evidence supports a finding of known and measurable annual throughput of 278,000,000 pounds per year as these were the volumes that were available to Ms. Moore at the time she proposed the rate, which were Test-Year ending March 2013.

87. Calendar Year 2012 had annual volumes of approximately 278,000,000 pounds.

88. The total historical volumes on the system, including backhaul, also support the finding of annual volumes in the amount of 278,000,000 pounds, such as (a) the average volumes under Westlake ownership of the pipeline from 2006-2013 in the amount of 326,269,397 pounds and (b) the average volumes during the 2002 Tariff from 2002-2013 in the amount of 219,127,963 pounds.

89. Under Westlake ownership, historical volumes from 2007 through 2013, constitute median volumes of 278,000,000 pounds.

90. Westlake itself projected 200 million pounds of annual volumes in its 2014 Annual Budget.

91. The recent volume history indicates that backhaul occurred only in June 2013, at a volume of 103,158 pounds.

92. No other backhauls happened in the previous five years.

93. Under the 2002 tariff, no exchanges have occurred on the pipeline until February 2014.

94. Eastman has been exchanging on the Westlake Pipeline between one million to four million pounds of ethylene per month from March 2014 through July 2015.

95. 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.

96. It is unreasonable to assume a 100 percent equity ratio in the Westlake Pipeline.

97. It is reasonable to use a capital structure based on an industry average debt ratio of approximately 50% from the firms comprising the oil pipeline proxy group utilized by Dr. Fairchild resulting in an average embedded debt cost of 5.30%.

98. 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, competitive, or market-based.

99. 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.

100. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provides Westlake a fair return on equity capital of 12.03%, or $12,882,011, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the original Proposal for Decision, which is incorporated by reference into this Final Order.

101. A 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 preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, and also balances the needs of carriers with the needs of shippers.

102. The preponderance of the credible evidence shows that it is proper for Westlake Pipeline to set the same rate for exchanges as the transportation rate.

103. Requiring a lower rate for exchanges allows a shipper to avoid paying the pipeline transportation rate for physical transportation.

104. Private parties may negotiate an exchange on their own, however, the pipeline should not be required to facilitate an exchange at a lower rate for this service.

105. The preponderance of the credible evidence demonstrates no separate rate for exchanges of ethylene is warranted at this time as Westlake Pipeline did not perform any exchanges of ethylene under the 2002 Tariff during the period of December 2006 through the end of 2013, and is consistent with the 2002 *Mustang Pipeline Tariff.*

106. The adoption of a $2.45 per hundred pounds rate for all volumes of ethylene transported or exchanged is consistent with the 2002 *Mustang Pipeline Tariff's* same rate for transportation and exchange.

107. It is reasonable to require Westlake Pipeline to supplement Section II.(b) of the Tariff approved in GUD No. 10296 with the following Recommended Rate of the ALJ and Technical Examiner, as follows:

WESTLAKE ETHYLENE PIPELINE CORPORATION
T.R.R.C. No. ______
Mont Belvieu to Longview Pipeline

Section	GUD No. 10296 Approved	Recommended Rate of ALJ and Technical Examiner
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.

108. The evidence in this case supports the conclusion that the Westlake Pipeline is in a unique market position. The ratemaking approach of the Commission reflects the particular facts surrounding the Westlake Pipeline, and is not reflective of any other common carrier pipelines with different market positions.

CONCLUSIONS OF LAW

1. Westlake Pipeline is a "common carrier" as that term is defined under TEX. NAT. RES. CODE ANN. §§ 111.002 and 111.020(d) (Vernon 2001 & Supp. 2015) and is therefore subject to the jurisdiction of the Railroad Commission of Texas (Commission).

2. 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, including but 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.

3. This matter is in accordance with the requirements of the Common Carrier Act (TEX. NAT. RES. CODE ANN., Chapter 111) and the Administrative Procedures Act (TEX. GOV'T CODE ANN. Sections 2001.001-2001.902).

4. Adequate notice of this proceeding was properly provided to all interested parties.

5. As required by *TEX. NAT. RES. CODE ANN.* § 111.014, Westlake Pipeline shall make and publish their tariffs.

6. A common carrier's obligations to its customers cannot exceed its duties under a published tariff and published tariffs govern the relationship of the common carrier with its customers. Common carriers may not vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those included in properly published tariffs. The published tariffs and the constraints related to those tariffs provide predictability and certainty for all potential shippers and enable shippers to make decisions based upon the rates and services reflected in the published tariff. *CenterPoint Energy Entex v. R.R. Commn'n of Tex*, 208 S.W. 3d 608 (Tex. – Austin 2006, pet. dism'd).

7. The Commission has authority to set rates charged by pipeline common carriers pursuant to TEX. NAT. RES. CODE ANN. Chapters 81 and 111.

8. The Commission may set the rate of a common carrier pipeline from a cost-of-service method, pursuant to TEX. NAT. RES. CODE ANN. Sections 81.061(b) and 111.183 or a market-based method pursuant to TEX. NAT. RES. CODE ANN. Sections 81.061(b) and 111.184.

9. The Commission has ensured that the rates established in this docket are just and reasonable to the pipeline and to shippers.

10. The Commission has ensured that the rates established in this docket provide a fair return to the pipeline on the aggregate value of the property used and useful in the services that the common carrier preforms after providing reasonable allowance for

depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management in accordance with TEX. NAT. RES. CODE ANN. Section 111.183.

11. The Commission has discretion to use many factors to determine whether a common carrier pipeline's rate is just and reasonable as the Commission has reasonable latitude in determining a just and reasonable rate for a common carrier pipeline pursuant to TEX. NAT. RES. CODE ANN. Section 111.184.

12. 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, competitive, or market-based.

13. A rate of $2.45 per hundred pounds of ethylene transported or exchanged is just and reasonable.

14. The net income applied to the aggregate value of the property of the common carrier used and useful in the services performed, rate base, provides Westlake a fair return on equity capital of 12.03%, or $12,882,011, as reflected in Examiners' Recommended Rate Schedule – Exhibit A to the original Proposal for Decision, which is incorporated by reference into this Final Order.

15. A 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 preforms after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management, and also balances the needs of carriers with the needs of shippers.

16. Section II.(b) of the Tariff approved in GUD No. 10296 shall be supplemented with the Examiners' Recommended Rate, as reflected in Finding of Fact No. 107 of this Remand Proposal for Decision.

17. The Commission's determination of a just and reasonable rate in this docket is based on the particular evidence presented and circumstances of the Westlake Pipeline and is not precedential for any other common carrier pipeline proceeding with differing evidence.

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

IT IS FURTHER ORDERED that Westlake Pipeline publish and file with the Commission the Tariff approved in GUD No. 10296 with the revised Tariff Section II.(b), as reflected in Finding of Fact No. 107 to this Remand Proposal for Decision, establishing just and reasonable rates.

IT IS FURTHER ORDERED that, in accordance with TEX. NAT. RESOURCE CODE ANN. § 111.015, within 30 days of the date this Order is signed, Westlake Pipeline shall file the

approved tariff with the Director of the Oil and Gas Division. The tariff shall reflect the findings of fact and conclusions of law herein.

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

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

IT IS FURTHER ORDERED by the Commission that this order shall not be final and effective until 25 days after the Commission's order is signed, unless the time for filing a motion for rehearing has been extended under TEX. GOV'T CODE §2001.142, by agreement under TEX. GOV'T CODE §2001.147, or by written Commission Order issued pursuant to TEX. GOV'T CODE §2001.146(e). If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV'T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law is hereby extended until 90 days from the date Commission Order is signed.

SIGNED this 24th day of August, 2016.

RAILROAD COMMISSION OF TEXAS

____
CHAIRMAN DAVID PORTER

Christi Craddick
COMMISSIONER CHRISTI CRADDICK

Ryan Sitton
COMMISSIONER RYAN SITTON

ATTEST:

Kathy Way
SECRETARY

Commissioner Ryan Sitton Opinion: Concurring in Part, Dissenting in Part

GUD No. 10358: Rate-setting proceeding regarding Westlake Pipeline severed from GUD No. 10296

I concur with Commissioner Craddick's view that the appropriate net invested capital input for the Mustang pipeline, if a cost-of-service methodology is utilized, is $25,764,021 as originally calculated and recommended by the examiner.[1] I voted to approve the final order in this case to provide the parties certainty rather than allow this case to sit in limbo indefinitely.

However, I respectfully dissent from the approach the other two commissioners took to use a cost-of-service methodology to set the rate in this case.[2] In 2007, the Texas Legislature granted the Railroad Commission authority to set market-based rates for common carrier pipelines in Texas[3] – I believe that is what should have been done in this case.

The cost-of-service approach used in this particular case would seem to require identical "twin" pipelines in every case to derive a market-based rate. In other words, the commission could never adopt a market-based rate for common carrier pipelines because pipeline infrastructure is almost never constructed such that "twins" exist. Market-based rates for common carrier pipelines would incentivize necessary investment in our critical pipeline infrastructure and ensure that Texas remains a global energy leader. We missed an opportunity in this case to begin the process of setting market-based rates for common carrier pipelines. Fortunately, the Final Order has language limiting the precedential value of the decision.[4] I am hopeful that we can get it right and set a market-based rate the next time we are presented with this issue.

The Final Order declares that the relevant market, for purposes of this case, is "the market between the pair of the receipt and delivery points between Mont Belvieu and Longview."[5] The order makes this declaration in spite of the fact that both parties to the proceeding acknowledged that the "Gulf Coast Region" was the appropriate ethylene market comparison and that a market-based rate could be derived by appropriately examining other pipeline tariffs in that region.[6]

It is important to understand the limitations of the information that is going to be available to the commission when setting market-based common carrier rates. It would be extremely rare to see multiple pipelines running in parallel from point A to point B that carry the same products and volumes. Competitive alternatives also might not exist for transport from point A to point B in some situations. If we understand those facts, we can move on to an appropriate examination of what we should consider to set a market-based rate.

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[1] GUD Docket No. 10358, Final Order dated August 24, 2016, Finding of Fact 78

[2] The decision was made by the commission at its June 21, 2016 conference to only consider a cost-of-service approach.

[3] TEX. NAT. RES. CODE ANN. § 81.061(b)

[4] GUD Docket No. 10358, Final Order dated August 24, 2016, Conclusion of Law 17

[5] GUD Docket No. 10358, Final Order dated August 24, 2016, Finding of Fact 48.

[6] *See Eastman Chemical Company,* Exceptions to the Remand Proposal for Decision, Railroad Commission p. 16 (May 13, 2016); *Westlake Ethylene Pipeline Corporation,* Exceptions to the Proposal for Decision, Railroad Commission p. 4 (May 13, 2016).

In this case, the commission is distracted by the fact that there is only one ethylene pipeline carrying product from Longview to Mont Belvieu. The commission therefore concludes that the market is not competitive so a market-based rate cannot be set. I view the case, and the information necessary to set a market-based rate, differently.

In order to determine a "proxy" market-based rate for a pipeline that doesn't operate in a competitive market, the following criteria could be considered:

1. Whether the proxy rate was set by agreement between the parties
2. At the proxy origination point and termination point, there are a number of options to utilize or to transport the product or there is a reasonable basis to compare the different origination or termination points
3. There is at least one alternative method of transportation (rail, truck, etc.) to the proxy
4. The pipelines operate in similar markets

In the case before the commission today pipeline tariff rates were considered that met those criteria. In fact, the Concha Chemical Pipeline, originating in Napoleonville, LA, and terminating in Mont Belvieu, meets all of those criteria. It was established that:

1. The rates on the Concha pipeline were established in negotiation between the pipeline operator and its customers;
2. In the Napoleonville, LA area, there are a number of options to utilize to transport the product; and
3. There are other pipeline routes, albeit somewhat difficult to use, plus rail and truck, to use as alternatives to the Concha pipeline
4. The Concha and Mustang pipelines are in the same Gulf Coast market

Based on those criteria, it is clear that the Concha pipeline is charging a market-based rate. In other words, it must be worth it to the shipper to spend the money charged to move the product from the origination to termination points.

In addition to the Concha pipeline, at least five other ethylene pipeline tariffed rates were examined in this case.[7] Eastman argued that a sixth pipeline, the Evangeline Pipeline, should also have been considered.[8] It is clear though that the Concha pipeline is the best proxy for the Mustang Pipeline.

The termination point of the Concha and Mustang pipelines is the same - Mont Belvieu, TX.[9] However, their origination points are different; Napoleonville, LA and Longview, TX respectively. Therefore, in order to establish similarity between the pipelines for the sake of market comparison, a basis for comparing the origination points must first be established.

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[7] *See* Remand Proposal for Decision p. 12.

[8] Westlake claimed Evangeline was not used by either side's experts because that pipeline, "has suffered significant reliability issues and therefore is not appropriate for inclusion in setting a market-based rate," *Westlake Responses to Eastman's Exceptions* p. 6.

[9] *See* Appendix 3 to Remand Proposal for Decision, Labeled "Ethylene Tariffs in Effect July 2013".

Napoleonville, LA is an open market, with substantial processing facilities in the area, plus pipeline transportation, trucking, and rail transport options. In the case of Longview, TX, there are other limited transportation options, but less processing capabilities. Therefore, it could be assumed that the ethylene product would be "more valuable" if located in Napoleonville than in Longview, and therefore, the value in transporting the product from Longview to Mont Beliveu would be *at least* the same as the value in moving the product from Napoleonville to Mont Belvieu.

There was discussion in the record regarding the cost impacts distance has as a pipeline moves a product. While a valid consideration in identifying a cost basis (and relevant to cost of service), these distances actually have very little to do with the market value of moving product and wouldn't be considered in setting a market-based rate. I think the analysis described above is how we should develop future market-based common carrier rates.

Once we establish a competitive market-based "proxy" rate that is substantially similar as detailed above, which could have been effectively done based on the record in this case, I think the evidentiary review can end and a market-based rate should be set.

The crux of this case was fairly simple in my opinion. I previously voted to remand the case because I thought it was clear that setting a market-based rate was relatively simple and the right public policy direction. Unfortunately, the commission has continued down a path with predictable consequences that must be addressed.

First, once the commission's final order in this case is effective, the VERY NEXT DAY, either party could file for another ratemaking proceeding based on new test year information or other cost input data changes. What will have taken us three years to decide, if not appealed to the Travis County District Court, could immediately be back before us.

Next, the fact that two WIDELY DISPARATE rates in the two proposed final orders presented to the commission were based on simply one cost input change makes clear how subjective, and inappropriate, the cost-of-service approach can be. In one of the proposed final orders we were asked to apply a rate of $2.45 per hundred pounds of ethylene transported. The alternative final order proposed a rate of $1.55 per hundred pounds of ethylene transported. Changing one cost input (in this instance Westlake's net invested capital) in the cost-of-service model resulted in a 37 percent change in the rate. And there has been significant disagreement regarding the correct amount of that one cost input. This kind of variability would be avoided if the market-based approach were utilized.

Finally, it should be abundantly clear to everyone that Westlake wants to charge a higher rate and Eastman wants to pay the lowest possible rate. Both companies are in business to make money after all. It causes uncertainty for both companies when the commission takes an inordinately long amount of time to rule on these cases. I strongly believe that a market-based rate examination can and should be faster and more efficient to hear and decide than a cost-of-service ratemaking proceeding, if done properly. We will still have disagreements about the appropriate market and proxy rates, but there will be fewer arguments than there are in a cost-of-service situation where investment, depreciation, rate-of-return, allowances for operating capital, operating expenses, volumes, etc., are all vigorously debated. In the interest of regulatory efficiency, we should have a speedy process to hear evidence and set a market-based rate. If we move in that direction, my expectation will be that these cases will be decided much more quickly.

In conclusion, I appreciate the work our staff did on this case and I respect the other commissioners' views. I think it was the wrong decision for the reasons articulated above and I am hopeful that we will quickly move to set market-based rates for common carrier pipelines as the Legislature envisioned.