



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD NO. 10455, *consolidated*
Proposal for Decision

CONSOLIDATED COMPLAINTS OF
TARGA LIQUIDS MARKETING AND TRADE, LLC (TARGA), PIONEER NATURAL RESOURCES
USA, INC. (PIONEER), CONOCOPHILLIPS COMPANY (CONOCOPHILLIPS), AND ELTM,
LP, F/K/A ENBRIDGE LIQUIDS TRANSPORTATION MARKETING, LP (ELTM)
TO ESTABLISH COMMON CARRIER RATES FOR
WEST TEXAS LPG PIPELINE LIMITED PARTNERSHIP (WTXP)

Administrative Law Judge John Dodson

Technical Examiner Rose Ruiz

PARTIES

RESPONDENT: West Texas LPG Pipeline Limited Partnership (WTXP)
James Barkley, Meghan McElvy, and Kevin Jacobs
Baker Botts LLP
Counsel for WTXP

COMPLAINANTS: Targa Liquids Marketing and Trade, LLC (Targa)
-and-
ELTM, LP (ELTM)
James Mann, J.D. Munn, Leslie Padilla, William Johnson,
and Laura Kennedy
Duggins Wren Mann & Romero, LLP
Counsel for Targa and ELTM

Pioneer Natural Resources USA, Inc. (Pioneer)
John Hays, Jr., and Alicia French
Jackson Walker LLP
John Camp
Scott, Douglass & McConnico, LLP
Counsel for Pioneer

ConocoPhillips Company (ConocoPhillips)
Clark Jobe
McElroy, Sullivan, Miller, Weber & Olmstead, LLP
Counsel for ConocoPhillips

INTERVENORS: Occidental Energy Marketing, Inc. (OEMI)
Phillip Oldham, Katherine Coleman, and Benjamin Hallmark
Thompson & Knight LLP
Counsel for OEMI

DCP NGL Services, LLC (DCP)
Phil Gamble
Law Office of Phil Gamble
Counsel for DCP

PROCEDURAL HISTORY:

| | |
|--|--|
| WTXP Filed Rates with Commission: | June 18, 2015 |
| WTXP Began Charging Filed Rates: | July 1, 2015 |
| Targa Complaint Filed: | August 11, 2015 |
| Pioneer Complaint Filed: | August 13, 2015 |
| CononcoPhilips Complaint Filed: | September 1, 2015 |
| ELTM Complaint Filed: | September 1, 2015 |
| Commission Reduced Rates to pre-July 1, 2015 amounts for Duration of Proceeding: | March 8, 2016 |
| Hearing on the Merits: | March 27-30, 2017 |
| Heard By: | John Dodson, Administrative Law Judge Rose Ruiz, Technical Examiner |
| Evidentiary Record Closed: | April 17, 2017 |
| PFD Issued: | September 29, 2017 |
| Deadline for Commission Action: | N/A |

STATEMENT OF THE CASE

On July 1, 2015, West Texas Pipeline LPG Limited Partnership (WTPX) began charging increased common carrier rates under a tariff on file with the Commission. Subsequently, several affected shippers filed complaints challenging rate amounts contained in the filed tariff. The Commission's task is to determine whether WTPX's rate amounts were proper for July 1, 2015, and—if necessary—make adjustments.

Common carrier ratemaking is very different from gas utility ratemaking. Unlike typical gas utility rate cases, which set future rates, complaint-initiated common carrier proceedings establish past rates. Here, the rates established by the Commission will not be WTPX's future rates; rather, they will become WTPX's past rates dating back to August 11, 2015—when the first complaint was filed.

This docket is very complex in terms of procedure, scope, and substance. There are seven parties (a common carrier pipeline, four shipper complainants, and two shipper intervenors), four challenged rate amounts (304.91, 172.22, 119.09, and 156.91 cents per barrel) governing 44 origin points spanning three different production markets (Permian Basin, Barnett Shale, and Haynesville Shale), and numerous issues of first impression and legal treatment. The central issue is whether and how the Commission should exercise its authority to establish market-based common carrier rates—something the Commission has never done.

There is no deadline for Commission action.

SUMMARY OF RECOMMENDATIONS

The Administrative Law Judge and Technical Examiner recommend that the Commission partially sustain the complaints. Recommendations include:

- Adjustments to WTPX's rates are necessary, and a market-based (competitive) method is appropriate;
- For the 21 Permian Basin origin points, challenged rate 304.91 should be adjusted to 153.93, effective from August 11, 2015;
- For the 17 Barnett Shale origin points, challenged rates 119.09, 172.22, and 304.91 all should be adjusted to 115.24, effective from August 11, 2015;
- For the six Haynesville Shale origin points, challenged rate 156.91 should be adjusted to 131.90, effective from August 11, 2015;
- Affected shippers are entitled to reimbursement of all excess charges made after August 11, 2015;
- Underrecovery by WTPX after March 8, 2016, that is below the amounts established by the Commission, is the lawful property of WTPX; and
- Complainants did not prove that challenged tariff terms are improper.

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PROPOSAL FOR DECISION

I. INTRODUCTION

On July 1, 2015, West Texas LPG Pipeline Limited Partnership (“WTP”), owner of a common carrier pipeline that transports Y-grade natural gas liquids (“NGLs”), began charging increased rates from 44 intrastate origin points within, or near, three separate production markets—Permian Basin, Barnett Shale, and Haynesville Shale—to Mont Belvieu, Texas. Rates for all 44 origin points were contained in a single tariff (“Tariff 2.6.0”), which WTP filed with the Commission. Four rate amounts, in cents per barrel, apply to all 44 origin points:

- 304.91 (Permian Basin), charged for 21 origin points;
- 304.91 (Barnett Shale), charged for two origin points;
- 172.22 (Barnett Shale), charged for eight origin points;
- 119.09 (Barnett Shale), charged seven origin points; and
- 156.91 (Haynesville Shale), charged for six origin points.

This PFD refers to these four amounts, collectively, as the “Challenged Rates.”

Beginning on August 11, 2015, several shippers filed formal complaints with the Commission, challenging these increased rate amounts:

- Targa Liquids Marketing and Trade, LLC (“Targa”);
- Pioneer Natural Resources USA, Inc. (“Pioneer”);
- ConocoPhillips Company (“ConocoPhillips”); and
- ELTM, LP, f/k/a Enbridge Liquids Transportation Marketing, LP (“ELTM”).

According to these shippers, the rate increases constitute sharp increases over previous amounts without justification. WTP defends the challenged rate amounts as market-based, rather than based on the common—but not required—practice by Texas pipelines of incrementally increasing rates annually based on Federal Energy Regulatory Commission (“FERC”) indexing.

The Commission’s Task

The Commission’s task here is to determine whether WTP’s rate amounts were proper for July 1, 2015, and, if necessary, make adjustments. The rates ultimately established by the Commission will not be WTP’s future rates; rather, they will be past rates effective from August 11, 2015—when the first complaint was filed. The central issue is whether and how the Commission should exercise its authority to establish market-based common carrier rates—something the Commission has never done.

There is no deadline for Commission action.

II. PARTIES

WTPX is a common carrier under Texas law.¹ The current owners of the WTPX pipeline acquired their interests in 2014.² Martin Midstream Partners, LP (“Martin Midstream”) acquired a 20-percent interest in April 2014.³ ONEOK Partners, LP (“ONEOK”) acquired an 80-percent interest in December 2014.⁴ ONEOK NGL Pipeline, LLC (“ONEOK NGL”) operates the pipeline.⁵ WTPX transports intrastate Y-grade NGLs on its pipeline from numerous origin points within, or near, the Permian Basin, Barnett Shale, and Haynesville Shale production areas to Mont Belvieu, Texas. The intrastate portion of the WTPX pipeline system includes approximately 240,000 barrels per day (“bpd”) of capacity to transport NGLs to fractionators in Mont Belvieu from natural gas processing plants and other sources of NGLs (“origin points”).⁶

Targa is a shipper on WTPX’s pipeline. Targa filed the first complaint on August 11, 2015. At the time of its complaint, Targa shipped NGLs to Mont Belvieu under Tariff 2.6.0 from at least one origin point in each of the Permian Basin, Barnett Shale, and Haynesville Shale production areas.

Pioneer is a shipper on WTPX’s pipeline. Pioneer filed its original complaint on August 13, 2015. At the time of its complaint, Pioneer shipped NGLs to Mont Belvieu under Tariff 2.6.0.

ConocoPhillips is a shipper on WTPX’s pipeline. ConocoPhillips filed its original complaint on September 1, 2015. At the time of its complaint, ConocoPhillips shipped NGLs to Mont Belvieu under Tariff 2.6.0.

ELTM is a shipper on WTPX’s pipeline. ELTM filed its complaint on September 1, 2015. At the time of its complaint, ELTM shipped NGLs to Mont Belvieu under Tariff 2.6.0.

DCP NGL Services, LLC (“DCP”) is a shipper on WTPX’s pipeline. DCP moved to intervene on April 28, 2016.

Occidental Energy Marketing, Inc. (“OEMI”) is a shipper on WTPX’s pipeline. OEMI moved to intervene on April 29, 2016.

¹ See Tex. Nat. Res. Code § 111.002 (Common Carriers Under Chapter).

² WTPX’s Trial Brief, filed March 17, 2017 (“WTPX Trial Br.”), at 1.

³ *Id.*

⁴ *Id.*

⁵ WTPX’s Response, filed October 9, 2015 (“WTPX Response”), at 2.

⁶ WTPX Ex. 01 (King Test.) at 5.

III. JURISDICTION, BURDEN OF PROOF, AND NOTICE

Jurisdiction

The Commission has jurisdiction over WTXP and all matters in this proceeding pursuant to Chapters 81 (Railroad Commission of Texas)⁷ and 111 (Common Carriers, Public Utilities, and Common Purchasers)⁸ ("Common Carrier Act") of the Texas Natural Resources Code ("TNRC"). WTXP is a common carrier as defined in Section 111.002 (Common Carriers Under Chapter).⁹ As a common carrier, WTXP is subject to all provisions of the Common Carrier Act.¹⁰

Burden of Proof

WTXP carries the burden of proof to justify its rate amounts. The Common Carrier Act and Commission rules are silent on burden of proof for complaint-initiated common carrier rate proceedings. Early in this docket, after briefing from the parties on this issue, the ALJ ruled that "WTXP alone will carry the ultimate burden of proof in the adjustment hearing."¹¹ This interim ruling was not appealed.

Notice

Proper notice has been issued in this proceeding in accordance with all applicable statutory and regulatory requirements.

On September 9, 2015, copies of all complaints were provided to WTXP.¹² On March 24, 2016, the ALJ directed WTXP to provide notice of this proceeding to affected shippers by facsimile and first-class mail (the "Notice of Rate Proceeding").¹³ On April 8, 2016, WTXP filed a certification of compliance, attesting that the Notice of Rate Proceeding was provided timely to all affected shippers.¹⁴

On January 5, 2017, the Administrative Law Judge ("ALJ") issued the Notice of Hearing, which complied with Chapter 2001 (Administrative Procedure) of the Texas Government Code, Part 1 (Railroad Commission of Texas) of Title 16 (Economic

⁷ See Tex. Nat. Res. Code § 81.051 (Jurisdiction of Commission) ("The commission has jurisdiction over all...common carrier pipelines defined in Section 111.002 of this code in Texas").

⁸ See *id.* § 111.181 (Establishing and Promulgating Rates) ("The commission shall establish and promulgate rates of charges for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation.").

⁹ *Id.* § 111.002 (Common Carriers Under Chapter).

¹⁰ Final Order, Docket No. 20-0292777, at Conclusion of Law No. 2 ("As a common carrier, the WTXP Pipeline is subject to all provisions of the Common Carrier Act").

¹¹ Examiners' Letter No. 11 (Rulings on Preliminary Issues and Pending Motions), issued January 22, 2016, at pp. 7-9 (Ruling No. 4: Burden of Proof).

¹² Examiners' Letter No. 01, issued September 9, 2015.

¹³ Examiners' Letter No. 16 (Notice of Rate Proceeding to Shippers), issued March 24, 2016.

¹⁴ WTXP's Certification of Compliance, filed on April 8, 2016.

Regulation) of the Texas Administrative Code, and all other applicable requirements. On March 15, 2017, the Commission published the Notice of Hearing in *Gas Utilities Information Bulletin No. 1055*, in compliance with Commission Rule § 7.235 (Publication and Service of Notice).¹⁵

IV. BACKGROUND AND PROCEDURAL HISTORY

WTXP started out as a crude oil line in 1904, converted to refined products service around 1953, and then converted once again to raw mix or Y-grade NGLs around 1957.¹⁶ Prior to 2014, the WTXP pipeline had different owners.¹⁷ In 2014, Martin Midstream purchased a 20-percent interest in WTXP and ONEOK purchased the remaining 80-percent interest.¹⁸

In June 2015, WTXP filed with the Commission Tariff 2.6.0, which contained rates for the intrastate transportation of Y-grade NGLs from 44 origin points throughout Texas to Mont Belvieu.¹⁹ According to its terms, Tariff 2.6.0 canceled the previous tariff version²⁰—which contained prior rates for some of the 44 origin points—and became effective on July 1, 2015.²¹ Along with Tariff 2.6.0, WTXP filed a cancellation notice for a related tariff that contained rates for the remainder of the 44 origin points.²² According to its terms, the cancellation notice also became effective on July 1, 2015.²³ Along with Tariff 2.6.0 and the cancellation notice, WTXP filed a cover letter explaining to the Commission that Tariff 2.6.0 consolidates the rates contained in the two then-current tariffs, and that Tariff 2.6.0 “reflects an increase in rates effective July 1, 2015.”²⁴ A copy of WTXP’s June 2015 filing is attached to this PFD as Attachment 1.

On July 1, 2015, WTXP began charging its shippers the rates under Tariff 2.6.0. On August 11, 2015, Targa filed a complaint challenging the rate amounts contained

¹⁵ *Gas Utilities Information Bulletin No. 1055*, published by the Oversight and Safety Division on March 15, 2017 (“Bulletin”), pp. 3-5 (containing the full Notice of Hearing); see also 16 Tex. Admin. Code § 7.235(a)(1)(A) (Publication and Service of Notice) (“The Commission shall publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing.”).

¹⁶ Targa Ex. 01 (Heim Test.) at 9.

¹⁷ Atlas Pipeline Partners (20 percent) and Chevron Pipeline (80 percent). See WTXP’s Post-Hearing Reply Brief, filed June 2, 2017 (“WTXP Reply Br.”), at 1.

¹⁸ WTXP Reply Br. at 1.

¹⁹ See Complaint by Targa, filed on August 11, 2015 (“Targa Compl.”), Exhibit 1 (Letter from ONEOK to the Commission, dated June 18, 2015, attaching Tariff 2.6.0 and Tariff 3.7.0 Cancellation Notice); see also Joint Ex. 01 (Watson Test.), Exhibit JLW-20 (same).

²⁰ *Id.* at p. 1 of Tariff 2.6.0 (“Cancels Texas Common Carrier No. 2.5.0”).

²¹ *Id.* (“**Effective:** July 1, 2015”) (emphasis in original).

²² Targa Compl., Exhibit 1 (WTXP June 2015 filing), at 9-10 (Tariff 3.7.0 Cancellation Notice).

²³ *Id.* (“**Effective:** July 1, 2015”) (emphasis in original).

²⁴ Targa Compl., Exhibit 1 (WTXP June 2015 filing), at 1 (Letter from ONEOK to the Commission, dated June 18, 2015) (“[WTXP] is consolidating its two currently effective Rate Sheets and submitting one intrastate Rate Sheet, Texas Common Carrier 2.6.0. [Tariff 2.6.0] reflects an increase in rates effective July 1, 2015 and [Tariff 3.7.0] cancels No. 3.6.0 in its entirety.”); see also Joint Ex. 01 (Watson Test.), Exhibit JLW-20 (same).

in Tariff 2.6.0. Targa's complaint was docketed as GUD No. 10455. On August 13, 2015, Pioneer filed a complaint, docketed as GUD No. 10456. On September 1, 2015, ConocoPhillips and ELTM filed complaints, docketed as GUD No. 10464 and GUD No. 10465, respectively. At a joint prehearing conference held on October 19, 2015, the complaints of Pioneer, ConocoPhillips, and ELTM were consolidated with Targa's complaint—GUD No. 10455.²⁵

All rates being challenged by the complainants were on file with the Commission when the Commission first acquired jurisdiction over the issues in this consolidated complaint proceeding.²⁶

On November 30, 2015, each complainant was asked to clarify, for each Tariff 2.6.0 rate it was challenging, the "rate paid for the same service on the same pipeline for the past three years."²⁷ In response, the complainants provided the requested data for four Tariff 2.6.0 rates—304.91, 172.22, 119.09, and 156.91.²⁸

In December 2015, WTXP filed with the Commission Tariff 2.7.0²⁹—canceling Tariff 2.6.0³⁰ and modifying certain terms, but not changing the amounts of the Challenged Rates. According to its terms, Tariff 2.7.0 became effective on January 1, 2016.³¹ Included in Tariff 2.7.0 was the following new term:

Item No. 100 – Incentive Programs

Carrier reserves the right, but does not have the obligation, to enter into negotiated rates, terms and conditions with Shipper. Such rates, terms and conditions may be determined by, but are not limited to, such factors as rate, duration, volumes, points of origin, points of delivery, available capacity, minimum quantities, creditworthiness and ship or pay commitments. Any agreement reached between the Carrier and Shipper will be contained in an executed transportation agreement and will not be included as part of the Rate Sheet herein.³²

A copy of WTXP's December 2015 filing is attached to this PFD as Attachment 2.

²⁵ See Examiners' Letter No. 04, issued October 21, 2015 (memorializing action taken during the October 19, 2015 prehearing conference).

²⁶ See Examiners' Letter No. 06 (Evidentiary Ruling – Official Notice), issued November 30, 2015 (taking official notice of this fact).

²⁷ See Examiners' Letter No. 07 (Request for Clarification), issued November 30, 2015.

²⁸ See Targa's Response to Examiners' Letter 7, filed December 4, 2015 (providing data for Tariff 2.6.0 rates 304.91, 172.22, 119.09, and 156.91); Letter from ELTM, filed December 4, 2015 (providing data for Tariff 2.6.0 rates 156.91, 172.22, and 119.09); Pioneer Natural Resources USA, Inc.'s Response to Examiners' Letter No. 7, filed December 4, 2015 (stating that "Pioneer is challenging all rates covered by [Tariff 2.6.0]" but providing data only for Tariff 2.6.0 rate 304.91); and ConocoPhillips Company's Response to Examiners' Letter No. 7, filed December 4, 2015 (providing data for Tariff 2.6.0 rate 172.22).

²⁹ See Pioneer's First Supplement to Complaint, filed on January 7, 2016 ("Pioneer First Supp. Compl."), Exhibit A (Letter from ONEOK to the Commission, dated December 30, 2015, attaching Tariff 2.7.0).

³⁰ *Id.* at p. 1 of Tariff 2.7.0 ("Cancels Texas Common Carrier 2.6.0").

³¹ *Id.* ("Effective: January 1, 2016") (emphasis in original).

³² *Id.* at p. 3 of Tariff 2.7.0.

On January 7, 2016, Pioneer filed a supplement to its complaint, specifically challenging the lawfulness of this new tariff term, adding Tariff 2.7.0 as a subject of its complaint, and requesting that this proceeding include both a determination of rates and “a review and examination of all terms of service.”³³ On January 8, 2016, ConocoPhillips also supplemented its complaint to “include the rates charged or demanded under [Tariff 2.7.0].”³⁴

On January 22, 2016, the ALJ made several prehearing interim rulings.³⁵ Among other things, the ALJ ruled:

- Common Carrier Act Section 111.190 (Hearings to Adjust Rates) is the governing hearing statute;³⁶
- there is reason to believe that four rates—304.91, 172.22, 119.09, and 156.91—may be improper, regardless of origin point, and so an evidentiary hearing is necessary to review those amounts;³⁷
- WTXP will carry the burden of proof to justify its rate amounts;³⁸
- WTXP’s challenged rate amounts should not be reduced during the proceeding;³⁹ and
- WTXP may modify tariff terms during the proceeding but may not increase the challenged rate amounts.⁴⁰

Subsequently, several parties filed interim appeals. On March 8, 2016, the Commission issued an interim order stating that “WTXP’s rates in effect prior to July 1, 2015, are lawful rates for the duration of this docket unless changed by Commission order.”⁴¹ A copy of the Commission’s March 8, 2016 interim order is attached to this PFD as Attachment 3.

In March 2016, WTXP filed with the Commission revised tariff version—Tariff 2.8.0⁴²—which canceled the previous tariff version⁴³ and lowered rates to amounts in effect prior to July 1, 2015. According to its terms, Tariff 2.8.0 became effective on March 8, 2016.⁴⁴ Included in Tariff 2.8.0 was the following notice to shippers:

³³ Pioneer First Supp. Compl., pp. 1-4.

³⁴ See ConocoPhillips’s First Supplemental Complaint, filed on January 8, 2016 (“ConocoPhillips First Supp. Compl.”), p. 2.

³⁵ See Examiners’ Letter No. 11 (Rulings on Preliminary Issues and Pending Motions), issued January 22, 2016.

³⁶ *Id.*, p. 2.

³⁷ *Id.*, pp. 5-6 (Ruling No. 3: Section 111.190 Determination).

³⁸ *Id.*, pp. 7-9 (Ruling No. 4: Burden of Proof).

³⁹ *Id.*, pp. 10-13 (Ruling No. 5: Ruling on Motions to Set Aside the Challenged Rates).

⁴⁰ *Id.*, pp. 13-14 (Ruling No. 7: Motion on TCC 2.7.0).

⁴¹ Order on Interim Appeals, signed by the Commissioners on March 8, 2016.

⁴² See Pioneer’s Second Supplement to Complaint and Protest, filed on March 23, 2016 (“Pioneer Second Supp. Compl.”), Appendix A (Letter from ONEOK to the Commission, dated March 14, 2016, attaching Tariff 2.8.0).

⁴³ *Id.* at p. 1 of Tariff 2.8.0 (“Cancels Common Carrier No. 2.7.0”).

⁴⁴ *Id.* (“**Effective:** March 8, 2016”) (emphasis in original).

Pursuant to the Texas Railroad Commission's Order on Interim Appeals issued March 8, 2016, in consolidated Gas Utilities Docket No. 10455, the "rates in effect prior to July 1, 2015, are lawful rates for the duration of this docket unless changed by Commission order" (Ordered Rates). If the Commission establishes new higher rates in the docket, either by approving the rates filed on July 1, 2015 or establishing other higher rates (New Rates), WTXP will collect from each shipper the difference between the applicable Ordered Rates and New Rates for each barrel shipped during the period March 8, 2016 through the effective date of the New Rates.⁴⁵

A copy of WTXP's March 2016 filing is attached to this PFD as Attachment 4. On March 15, 2016, the ALJ took official notice of Tariff 2.8.0 and its inclusion within the scope of this proceeding.⁴⁶ On March 23, 2016, Pioneer filed a second supplement to its complaint, alleging that the above notice is improper and reiterating its challenge to the properness of the "Item No. 100 – Incentives Programs" tariff term, excerpted above.⁴⁷

On March 24, 2016, the ALJ directed WTXP to provide notice of this proceeding to affected shippers (the "Notice of Rate Proceeding").⁴⁸ A copy of the Notice of Rate Proceeding is attached to this PFD as Attachment 5. On April 8, 2016, WTXP filed a certification of compliance, attesting that the Notice of Rate Proceeding was provided to all affected shippers not later than April 1, 2016.⁴⁹ The Notice of Rate Proceeding provided that the deadline for an affected/interested person to intervene was May 2, 2016. By this deadline, two shippers timely moved to intervene—DCP and OEMI.

On May 2, 2016, WTXP filed an updated tariff version—Tariff 2.9.0—with the Commission. On May 5, 2016, the ALJ took official notice of Tariff 2.9.0 and its inclusion within the scope of this proceeding.⁵⁰

On August 23, 2016, WTXP filed a motion to strike or, in the alternative, temporarily set aside all pre-filed cost-of-service testimony jointly filed by Pioneer, ConocoPhillips, and OEMI on August 19, 2016. On August 26, 2016, the ALJ denied WTXP's motion to strike as premature and clarified that the scope of the merits hearing would be limited to "whichever type of evidence WTXP—as the party carrying the burden of proof—presents in its direct case."⁵¹ On September 2 and 6, 2016,

⁴⁵ *Id.* at p. 3 of Tariff 2.8.0.

⁴⁶ Examiners' Letter No. 14 (Official Notice of TCC 2.8.0), issued March 15, 2016.

⁴⁷ Pioneer Second Supp. Compl., pp. 1-6.

⁴⁸ Examiners' Letter No. 16 (Notice of Rate Proceeding to Shippers), issued March 24, 2016.

⁴⁹ WTXP's Certification of Compliance, filed on April 8, 2016.

⁵⁰ Examiners' Letter No. 21 (Official Notice of TCC 2.9.0), issued May 5, 2016.

⁵¹ Examiners's Letter No. 28 (Ruling on WTXP's Motion to Strike), at 3 ("To give WTXP its requested advance clarification on the expected content of the Notice of Hearing and scope of the October 2016 merits hearing, the ALJ intends to limit the scope of the October 2016 merits hearing to whichever type of evidence WTXP—as the party carrying the burden of proof—presents in its direct case. For a proceeding with the size and complexity as

Pioneer, ConocoPhillips, Targa, ELTM, and OEMI appealed this ALJ statement. On September 27, 2016, the Commission issued an interim order requiring that “all relevant evidence, including both market-based rate evidence and cost-of-service evidence, shall be taken at a single hearing.”⁵² A copy of the Commission’s September 27, 2016 interim order is attached to this PFD as Attachment 6.

On October 5, 2016, WTXP filed an updated tariff version—Tariff 2.10.0—with the Commission. On October 7, 2016, the ALJ took official notice of Tariff 2.10.0 and its inclusion within the scope of this proceeding.⁵³ On December 21, 2016, WTXP filed an updated tariff version—Tariff 2.11.0—with the Commission. On January 4, 2017, the ALJ took official notice of Tariff 2.11.0 and its inclusion within the scope of this proceeding.⁵⁴

On December 5, 2016, WTXP filed a motion requesting that the shipper parties—Targa, Pioneer, ConocoPhillips, ELTM, DCP, and OEMI—be ordered to establish and fund an escrow account in an amount equal to the difference between (a) the amounts that would have been charged under WTXP’s July 1, 2015 rates, and (b) the reduced amounts set by the Commission in its March 8, 2016 interim order. Subsequently, OEMI, ConocoPhillips, Targa, ELTM, DCP, and Pioneer filed oppositions. On January 4, 2017, the ALJ denied WTXP’s request, reasoning that an escrow requirement on just the shipper parties would not give WTXP the full financial protections it seeks and could prejudice the participating shipper parties by imposing a financial obligation that is avoided by similarly-situated nonparty shippers.⁵⁵

On January 5, 2017, the ALJ issued the Notice of Hearing, setting the merits hearing to commence on March 27, 2017 (the “Notice of Hearing”).⁵⁶ The Notice of Hearing stated that the scope of the merits hearing would include (1) the properness of WTXP’s common carrier rates and related terms, (2) the proper construction and application of relevant Texas law, and (3) all other issues that are necessary for the Commission to render a final decision.⁵⁷ On March 15, 2017, the Notice of Hearing was published in *Gas Utilities Information Bulletin No. 1055*, available on the Commission’s website.⁵⁸

this one, this allows for the possibility of simplifying and reducing administrative burdens on all parties and on the Commission. WTXP, as the party with the burden of proof, will be afforded an opportunity to meet its burden with respect to its challenged rates with whichever type of evidence it deems sufficient and appropriate. If the Commission ultimately finds that the record is insufficient to establish appropriate rates, then other types of evidence will be considered subsequently.”).

⁵² Order on Interim Appeals, signed by Commissioner Porter and Commissioner Craddick on September 27, 2016.

⁵³ Examiners’ Letter No. 32 (Official Notice of TCC 2.10.0), issued October 7, 2016.

⁵⁴ Examiners’ Letter No. 42 (Official Notice of TCC 2.11.0), issued January 4, 2017.

⁵⁵ Examiners’s Letter No. 43 (Ruling on WTXP’s Requet for Escrow Protection), issued January 4, 2017, at 3.

⁵⁶ See Examiners’ Letter No. 44 (Notice of Hearing), issued January 5, 2017 (attaching the Notice of Hearing).

⁵⁷ *Id.* at p. 2 of Notice of Hearing.

⁵⁸ Bulletin, pp. 3-5 (containing the full Notice of Hearing).

The merits hearing was held from March 27-30, 2017 (the “Hearing”). Per the Commission’s September 27, 2016 interim order, all relevant evidence, including both market-based rate evidence and cost-of-service evidence, was admitted into evidentiary record. Lists of the parties’ exhibits admitted into the evidentiary record are attached to this PFD as Attachment 7.

On April 17, 2017, the ALJ made legal findings that certain exhibits and portions of the hearing transcript contain highly-sensitive, confidential information under Chapter 552 (Public Information) of the Texas Government Code, and ruled that these materials shall remain sealed permanently in Commission records.⁵⁹ A copy of this ALJ ruling is attached to this PFD as Attachment 8. The evidentiary record then closed.

From May 4 to June 2, 2017, the parties submitted post-hearing briefs.

On June 1, 2017, after the merits hearing adjourned and evidentiary record closed, OEMI, Targa, and Pioneer jointly filed a motion to re-open the hearing. In the motion, termed a “complaint and protest,” the movants made new discrimination allegations against WTXP related to curtailment terms contained in new tariff versions.⁶⁰ Separately, the movants also alleged that WTXP’s new curtailment terms may lower the value of service for shippers affected by the lowered GUD No. 10455 rates by reducing shipper volumes while the Commission-set rates remain frozen for the duration of this docket. ConocoPhillips subsequently joined the motion and ELTM supported the motion. On July 21, 2017, Targa filed a related “Notice of WTXP’s Unlawful Curtailment,” in which Targa alleged that its expected shipment volumes for July 2017 were at risk of curtailment, perhaps in favor of WTXP’s new committed shipper class.⁶¹ On August 29, 2017, after considering WTXP’s responses,⁶² the ALJ issued three rulings: (1) requiring WTXP to provide service to affected shippers that is substantially the same as service provided at the time of the Commission’s March 8, 2016 interim order, for as long as that interim order is effective; (2) denying the motion to re-open the hearing; and (3) rejecting the new discrimination allegations based on improper filing.⁶³

⁵⁹ Examiners’ Letter No. 47 (Sealing of Administrative Record), issued April 17, 2017.

⁶⁰ Motion to Re-Open Gas Utilities Docket No. 10455, jointly filed by OEMI, Targa, and Pioneer on June 1, 2017.

⁶¹ Targa’s Notice of WTXP’s Unlawful Curtailment Pursuant to WTXP’s Revised Tariff 1.4.0 and Request for Hearing, filed by Targa on July 21, 2017.

⁶² WTXP’s Response to Shippers’ Motion to Re-Open Gas Utilities Docket No. 10455, filed by WTXP on June 7, 2017; and WTXP’s Response to Targa’s Notice of Unlawful Curtailment Pursuant to WTXP’s Revised Tariff 1.4.0 and Request for Hearing, filed by WTXP on July 26, 2017.

⁶³ See Examiners’ Letter No. 51 (ALJ Rulings), issued August 29, 2017 (attaching ALJ Rulings Related to Motion to Re-Open Hearing and Notice of Unlawful Curtailment).

V. GOVERNING HEARING STATUTE

The Common Carrier Act contains two separate rate hearing statutes—Section 111.189 (Hearing and Determination of Rates) and Section 111.190 (Hearings to Adjust Rates). The first step in any common carrier ratemaking proceeding is to determine which hearing statute governs. While both contemplate rate hearings, they contain key inconsistencies and are not interchangeable. Depending on the type, common carrier ratemaking proceedings take different procedural paths, require different refund amounts to shippers, and significantly limit a pipeline's ability to avoid the Commission's interim oversight during a rate case. Here, the ALJ ruled early in this case that Section 111.190 governs.⁶⁴

Section 111.189 vs. Section 111.190

Section 111.189 (Hearing and Determination of Rates) applies to applications by pipelines requesting that the Commission establish their new rates for them. Section 111.189 provides:

If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the basis provided in this subchapter.⁶⁵

Section 111.190 (Hearings to Adjust Rates) applies when the properness of current, already-implemented rates is challenged either by the Commission or by shippers. Section 111.190 provides:

On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the basis provided in this subchapter.⁶⁶

A key inconsistency is that a rate hearing is mandatory under Section 111.189 upon the mere filing of an "application for a change in a rate or rates," whereas the necessity of a rate hearing under Section 111.190 is contingent upon the Commission first making a threshold determination that it has "reason to believe" that current rates are not proper. Another key inconsistency is that Section 111.190—both in its title and text—contains the word "adjust," whereas Section 111.189 does not. The term "adjust" implies an already-increased rate, not a prospective or proposed rate.

⁶⁴ Examiners' Letter No. 11 (Rulings on Preliminary Issues and Pending Motions), issued January 22, 2016, at 2 ("Section 111.190 Applicable").

⁶⁵ Tex. Nat. Res. Code § 111.189 (Hearing and Determination of Rates).

⁶⁶ *Id.* § 111.190 (Hearings to Adjust Rates).

Read alone, Section 111.189 (Hearing and Determination of Rates) could be construed to apply to complaints since complainants seek to “change” rates by lowering them. However, Section 111.190 (Hearings to Adjust Rates) more aptly applies to complaint-initiated proceedings because it requires more than just the filing of a pleading to trigger a mandatory rate hearing. The inclusion of the term “interested person” in Section 111.190, and the threshold determination therein as it applies to such persons, is superfluous if aggrieved complainants instead could challenge rates under the more lenient Section 111.189 and be guaranteed a hearing to review the challenged rates.

In sum, if a pipeline requests a hearing so that the Commission can establish its new rates, then Section 111.189 (Hearing and Determination of Rates) applies. If a pipeline’s current rates are being challenged either by the Commission or by shippers, then Section 111.190 (Hearings to Adjust Rates) applies.

Section 111.190 Governs Here

Here, Section 111.190 (Hearings to Adjust Rates) governs. WTXP properly increased its rates on July 1, 2015—when WTXP began charging rates under Tariff 2.6.0. Prior to July 1, 2015, WTXP filed Tariff 2.6.0 with the Commission and also filed cancellation notices with the Commission to cancel the prior tariffs. The Commission already has determined that filing cancellation notices properly cancels prior tariffs,⁶⁷ and new common carrier rates are increased when pipelines begin charging them.⁶⁸ On July 1, 2015, WTXP began charging the Tariff 2.6.0 rates, which were the only operative rates for the 44 origin points at issue in this proceeding. By law, WTXP’s old rates no longer existed. Therefore, these rates were properly increased on July 1, 2015.

Some complainants argue that the Commission should view WTXP’s filed Tariff 2.6.0 as an “application” under Section 111.189 and treat WTXP as an applicant. This argument fails logically almost immediately. WTXP’s Tariff 2.6.0 filing and WTXP’s conduct after July 1, 2015, demonstrate that WTXP never asked—or wanted—the Commission to hold a hearing to establish WTXP’s rates. WTXP’s June 2015 filing

⁶⁷ See Final Order in Docket No. 20-0292777, signed December 15, 2015, at Finding of Fact Nos. 12 (“On December 19, 2013, WTXP filed cancellation notices with the Commission for the Cancelled Tariffs, with cancellation effective as of January 1, 2014.”), 13 (“The Cancelled Tariffs were properly cancelled by WTXP effective January 1, 2014.”), 14 (“The process by which WTXP cancelled its Cancelled Tariffs was not improper.”), and 28 (“From January 1, 2014, when the Cancelled Tariffs were properly cancelled by WTXP...”), and at Conclusion of Law No. 8 (“The filed-rate doctrine is inapplicable here because WTXP properly cancelled its Cancelled Tariffs before it began charging new rates under the New Tariffs.”); see *also* Targa Ex. 1 (Heim Test.), Exhibit MAH-2 (attaching the same).

⁶⁸ See Final Order in Docket No. 20-0292777, signed December 15, 2015, at Finding of Fact Nos. 18 (“On January 1, 2014, WTXP increased its intrastate pipeline rates under the New Tariffs above what those rates had been in the Cancelled Tariffs...”) and 19 (“On July 1, 2014, WTXP increased certain rates under one of the New Tariffs...”); see *also* Targa Ex. 01 (Heim Test.), Exhibit MAH-2 (attaching the same).

(cover letter, cancellation notice, and Tariff 2.6.0) did not ask the Commission to create a docket number or hold a rate hearing. The filing did not ask the Commission to do anything. After July 1, 2015, WTXP began charging shippers the rates in Tariff 2.6.0 rather than waiting for approval from the Commission. After the shippers filed their complaints, WTXP asked the Commission not to docket the complaints and moved for their dismissal. Put simply, WTXP never demonstrated any intent to involve the Commission in setting its rates, and therefore WTXP is not an applicant.

Texas law requires that the Commission consider the consequences of a particular construction of a Common Carrier Act statute.⁶⁹ Labeling any pipeline an “applicant” in a proceeding where its rates are being challenged allows the pipeline to avoid the Commission’s interim oversight during the case. Applicants are free to withdraw their applications at any time, for any reason. The consequence of giving this freedom to a reluctant litigant such as WTXP is obvious—the reluctant litigant can leave the case. Here, *Applicant* WTXP would be able to cancel/withdraw its tariff/application whenever it wants, avoiding any unfavorable interim decisions in the docket—such as the Commission’s March 8, 2016 interim order reducing WTXP’s rates to pre-July 2015 amounts.⁷⁰ After withdrawing its challenged tariff application, WTXP then could file a new tariff and begin charging the rates it wants, forcing all shippers to repeat the litigation cycle. By contrast, *Respondent* WTXP is not free to leave a rate proceeding on its own. The Commission, rather than the pipeline, controls the docket.

In sum, WTXP increased its Tariff 2.6.0 rates on July 1, 2015—when WTXP began charging them. This docket was initiated by complaint pleadings, not by WTXP’s tariff. WTXP has been a reluctant litigant throughout this docket, and the shippers—not WTXP—are asking the Commission to establish WTXP’s rates. Therefore, WTXP is a respondent, not an applicant, and Section 111.190 (Hearings to Adjust Rates) governs.

⁶⁹ Tex. Nat. Res. Code § 1.002 (Construction of Code) (“The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code...”); Tex. Gov’t Code § 311.023 (Statute Construction Aids) (“In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the...consequences of a particular construction.”).

⁷⁰ Order on Interim Appeals, signed by the Commissioners on March 8, 2016 (ordering that “WTXP’s rates in effect prior to July 1, 2015, are lawful rates for the duration of this docket unless changed by Commission order.”).

VI. LEGAL STANDARDS FOR COMMON CARRIER RATES IN TEXAS

Paramount in this case—and all cases—is to identify the proper legal standard. To understand and weigh evidence properly, the Commission first must understand exactly what the Legislature instructs. Here, three different Texas statutes spanning 30 years peripherally speak to the legal standard for market-based common carrier rates, with no unifying guidance or treatment to date from the Legislature, Texas courts, or the Commission. The legal standard is not obvious but is knowable.

The Code Construction Act applies to the entire Natural Resources Code and aids in situations where, as here, the proper legal standard is found in multiple statutes each providing part of the answer.⁷¹ Two rate statutes specific to common carrier rates—Section 111.183 (Basis for Rate) and Section 111.184 (Discretion of Commission) both were enacted in 1977. In 2007, the Legislature enacted a new statute, Section 81.061 (Authority to Establish Market-Based Rates), which broadens the Commission’s general ratemaking authority and is located outside the Common Carrier Act among statutes speaking to the Commission’s general powers. Knowing the current legal standard requires knowing (1) what the specific 1977 statutes instruct, (2) what the general 2007 statute instructs, and (3) resolving them.

1. Specific Common Carrier Ratemaking Statutes (Enacted in 1977)

The terms “cost of service” and “market based” do not appear anywhere in the Common Carrier Act. All nine statutes in Subchapter F (Rates) are reprinted on a single page, attached to this PFD as Attachment 9.

In either hearing type—application proceedings under Section 111.189 or complaint proceedings under 111.190—common carrier rates must conform to the “**basis** provided in [Subchapter F (Rates)].”⁷² The Code Construction Act provides that “the singular includes the plural and the plural includes the singular.”⁷³ Therefore, the singular “basis” used in each hearing statute includes the plural *bases*. Within Subchapter F (Rates) are two statutes providing for different rate methods. One of the statutes, Section 111.183 (Basis for Rate), 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

⁷¹ See Tex. Nat. Res. Code § 1.002 (Construction of Code).

⁷² *Id.* §§ 111.189 (Hearing and Determination of Rates) (“If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the **basis provided in this subchapter.**”) (emphasis added), and 111.190 (Hearings to Adjust Rates) (“On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the **basis provided in this subchapter.**”) (emphasis added).

⁷³ Tex. Gov’t Code § 311.012 (Tense, Number, and Gender).

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.⁷⁴

The other statute, Section 111.184 (Discretion of Commission), states:

The commission has reasonable latitude in establishing and adjusting competitive rates.⁷⁵

The Common Carrier Act, then, provides for two different ratesetting methods: a “fair return” method (Section 111.183) and a “competitive” method (Section 111.184). Looking only at Subchapter F (Rates), the authority to establish competitive rates is not absolute, however—the Commission has “reasonable latitude” to do so. Every word in a statute should be read as if it were deliberately chosen.⁷⁶ The “reasonable latitude” restriction, then, may mean that rates may be “competitive” but still should be tethered in some way to the “fair return” elements contained in Section 111.183. Or, the “reasonable latitude” restriction instead may refer to the frequency that this method should be used. Regardless the construction, the Commission’s authority to establish competitive rates under the Common Carrier Act is measured and not absolute.

2. General Authority to Establish Market-Based Rates (Enacted in 2007)

In 2007, the Legislature enacted Section 81.061 (Authority to Establish Market-Based Rates), which says the Commission “may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.”⁷⁷ Though the legislative history of this statute indicates it may have been intended for natural gas discrimination cases,⁷⁸ the Legislature installed it among statutes speaking to the Commission’s general powers⁷⁹ and did not mention discrimination in the applicable subpart. When construing a statute, the words the Legislature chooses are the surest guide to legislative intent⁸⁰ and omitted words are presumed excluded

⁷⁴ Tex. Nat. Res. Code § 111.183 (Basis for Rate).

⁷⁵ *Id.* § 111.184 (Discretion of Commission).

⁷⁶ *Prop. Cas. Insurers Ass’n of Am. v. Texas Dept. of Ins.*, No. 07-07-0057-CV, 2008 WL 4425520, at *2 (Tex. App.—Amarillo Sept. 30, 2008, no pet.) (citing *Cornyn v. Universe Life Ins. Co.*, 988 S.W.2d 376, 379 (Tex. App.—Austin 1999, pet. denied)).

⁷⁷ Tex. Nat. Res. Code § 81.061(b) (Authority to Establish Market-Based Rates).

⁷⁸ See C.S.H.B. 3273 Bill Analysis, p. 1 (“Through a rider to the 2006-2007 appropriations act, the Texas Legislature required the Railroad Commission of Texas to conduct a study that examined and determined the extent to which viable competition exists in the Texas natural gas pipeline industry from wellhead to burner tip.”) and p. 2 (“The bill also adds a section entitled ‘Authority to Establish Market-Based Rates.’ This bill allows the commission the option of using cost-of-service method or market-based rates in a formal proceeding against a gatherer whether the gatherer is classified as a utility or not if the commission determines that the rate is necessary to remedy discrimination in transportation or gathering services.”).

⁷⁹ Tex. Nat. Res. Code Chapter 81 (Railroad Commission of Texas), Subchapter C (Jurisdiction, Powers, and Duties).

⁸⁰ *Valley Baptist Med. Ctr. v. Morales*, 295 S.W.3d 408, 410 (Tex. App.—Corpus Christi 2009, no pet.) (quoting *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009)).

purposefully.⁸¹ Therefore, Section 81.061 applies to common carrier ratemaking, even where discrimination is not involved.

The apparent intent of Section 81.061 was to expand the Commission's ratemaking authority, not restrict it.⁸² Therefore, as applied to common carrier ratemaking, the Commission has at least the same authority under Section 81.061 that it had previously under the specific Common Carrier Act statutes.

3. Resolving Section 81.061 with Sections 111.183 and 111.184

If a general provision conflicts with special or local provision, the provisions shall be construed, if possible, so that effect is given to both.⁸³ If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.⁸⁴

Here, Section 81.061 (Authority to Establish Market-Based Rates), enacted in 2007 and speaking to the Commission's general ratemaking authority, states that the Commission "may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding." Sections 111.183 (Basis for Rate) and 111.184 (Discretion of Commission, both enacted in 1977 and applying specifically to common carrier ratemaking, speak to a "fair return" method (Section 111.183) and a measured "competitive" method (Section 111.184). As treated separately below, reconcilable conflict exists with the cost-of-service method, and partially irreconcilable conflict exists with the market-based rate method.

For the cost-of-service method, the general provision (Section 81.061) does not define "cost-of-service method," whereas the local provision (Section 111.183) speaks in detail to certain cost-of-service elements specific to common carriers.⁸⁵

⁸¹ *Prop. Cas. Insurers*, 2008 WL 4425520, at *2 (citing *Cornyn*, 988 S.W.2d at 379).

⁸² See Natural Gas Pipeline Competition Study, published on July 1, 2006, and submitted to the Governor and Legislative Budget Board on October 30, 2016, p. v ("The Texas Legislature, by inclusion of a rider to the 2006-2007 appropriations bill, required the Railroad Commission of Texas to 'conduct a study that examines and determines the extent to which viable competition exists in the Texas natural gas pipeline industry from wellhead to burner tip.'") and p. 21 ("The one area in which the Committee believes additional statutory authority—not regulation—will benefit the Commission's oversight of the natural gas value chain is in regard to the standard for setting rates when a formal complaint is filed... [Gatherers and transporters] are market-based businesses that simply do not keep books with cost-of-service regulation in mind.").

⁸³ Tex. Gov't Code § 311.026(a) (Special or Local Provision Prevails Over General).

⁸⁴ *Id.* § 311.026(b).

⁸⁵ Tex. Nat. Res. Code § 111.183 (Basis for Rate) ("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.").

Giving effect to both statutes, the legal standard for the cost-of-service method, as applied to common carrier rates, is a “fair return” considering the elements contained in Section 111.183.

For the market-based method, the general provision (Section 81.061) does not define “market-based rate method,” nor does it speak to any restrictions or measured authority to use this method. The local provision (Section 111.184) states that the Commission “has reasonable latitude in establishing and adjusting competitive rates.”⁸⁶ Giving effect to both statutes, the legal standard for the market-based method, as applied to common carrier rates, is the rates must be competitive. Also, the later-enacted general provision (Section 81.061) imposes no restrictions for using the market-based method. When construing a statute, omitted words are presumed excluded purposefully.⁸⁷ It must be presumed, then, that the manifest intent of the Legislature was to impose no prerequisites, restrictions, measured use, or other conditions needed to use the market-based rate method.⁸⁸ Therefore, the general provision (Section 81.061) governs here and the “reasonable latitude” restriction in Section 111.184 is eliminated.

Legal Standards Conclusion

In Texas, two ratemaking methods apply to common carriers: cost-of-service (fair return) and market-based (competitive).

Cost-of-Service (Fair Return) Method

For the cost-of-service method, the legal standard is 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.”⁸⁹

Market-Based (Competitive) Method

For the market-based method, the legal standard only requires that the rates be “competitive.” The Legislature imposes no further restrictions.

⁸⁶ *Id.* § 111.184 (Discretion of Commission).

⁸⁷ *Prop. Cas. Insurers*, 2008 WL 4425520, at *2 (citing *Cornyn*, 988 S.W.2d at 379).

⁸⁸ Tex. Gov’t Code § 311.026(b) (Special or Local Provision Prevails Over General) (“If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, *unless the general provision is the later enactment and the manifest intent is that the general provision prevail.*”) (emphasis added).

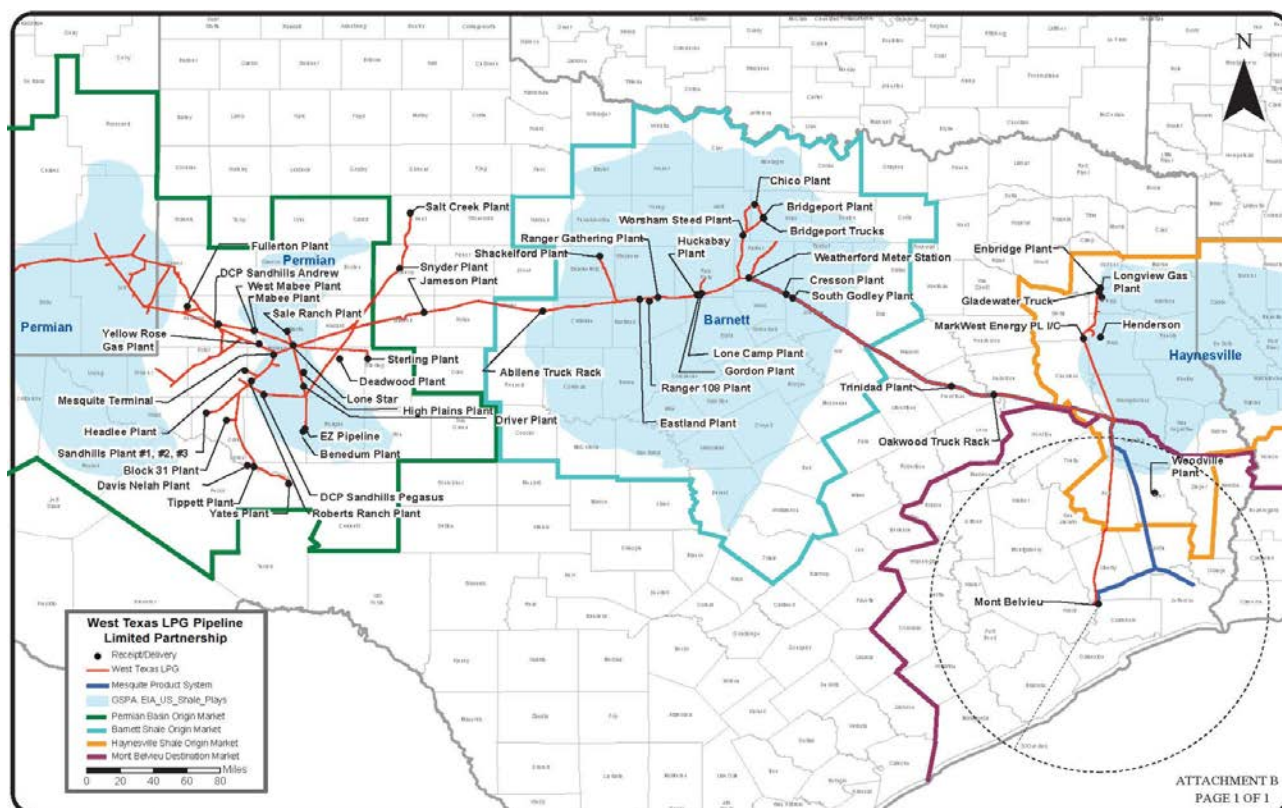
⁸⁹ Tex. Nat. Res. Code § 111.183 (Basis for Rate).

VII. WTXP'S CHALLENGED RATES

Despite the length and complexity of this docket, many facts are not disputed. The parties do not dispute the existence or geographical boundaries of the Permian Basin, Barnett Shale, or Haynesville Shale production areas. No one disputes which pipelines exist in these markets, and no one disputes how much they charged. Instead, the parties primarily disagree how the Texas ratemaking statutes work and how the legal standard should be construed and applied. Only a small handful of rarely-used statutes control, with virtually no precedential guidance. As a result, this case is as much about challenged legal theories as it is about challenged rates.

WTP's theory is straightforward—its rates are not the highest in each market, which means its rates are market based. Targa and ELTM are aligned, arguing that WTP is an old pipeline and should not charge the same rates as new pipelines. Pioneer, ConocoPhillips, and OEMI are aligned, arguing for cost-based rates.

Targa challenged rates in all three markets in its August 11, 2015 complaint. Targa pays WTXP's rates in each of these markets, though not necessarily all rates and not for all origin points. The below map⁹⁰ shows the WTXP pipeline and its origin points within, or near, the Permian Basin, Barnett Shale, and Haynesville Shale.

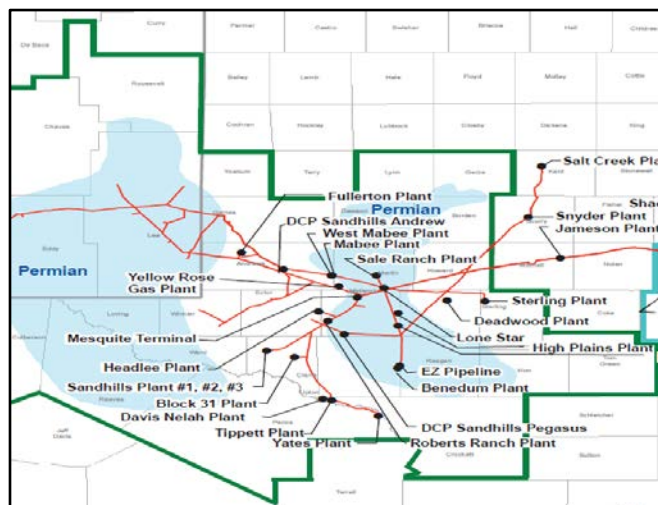


⁹⁰ WTXP Ex. 04 (Van Hoecke Test.), Attachment B (WTXP system map and geographical markets).

Challenged rate 304.91 applies to the uncommitted transportation of Y-grade NGLs from the below 21 origin points located within, or near, the Permian Basin.

**Permian Basin to Mont Belvieu
(in cents per barrel)**

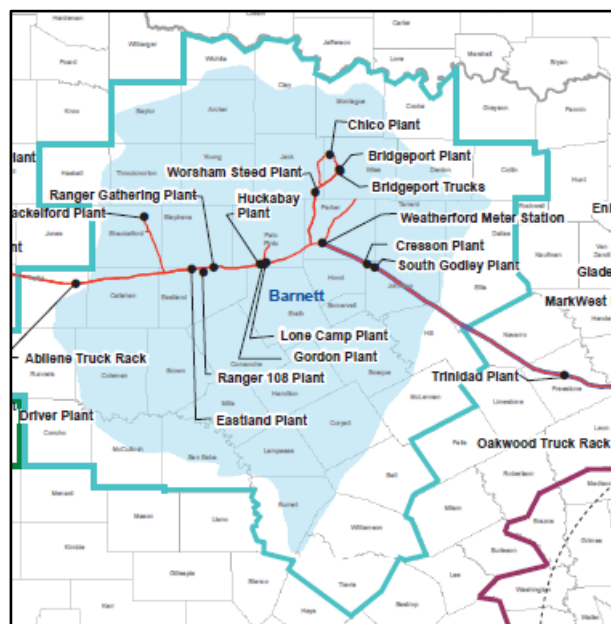
| | | | | WTPX | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | |
|--------------|-------------------------------------|-----------|------------------|--------------|-------------|-----------|----------------------------------|-----------|
| Origin Point | | County | Canceled Rate | July 1, 2015 | Primary | Alternate | Primary | Alternate |
| 1 | Block 31 Plant | Crane | 113.05 | 304.91 | 113.05 | 117.44 | 90.61 | 113.05 |
| 2 | Davis Nelah Plant | Crocket | | | | | | |
| 3 | Fullerton Plant | Andrews | | | | | | |
| 4 | Headlee Plant | Midland | | | | | | |
| 5 | Jameson Plant | Coke | | | | | | |
| 6 | Mesquite Ethane (Mesquite Terminal) | Midland | | | | | | |
| 7 | Roberts Ranch Plant | Midland | | | | | | |
| 8 | Sale Ranch Plant | Martin | | | | | | |
| 9 | Sand Hills Plant | Crane | | | | | | |
| 10 | Tippet Plant | Crocket | | | | | | |
| 11 | Yates Plant | Crocket | | | | | | |
| 12 | Benedum Plant | Reagan | 159.06 | | 159.06 | 165.24 | 127.49 | 159.06 |
| 13 | Deadwood Plant | Glasscock | | | | | | |
| 14 | Driver Plant | Midland | | | | | | |
| 15 | High Plains Plant | Midland | | | | | | |
| 16 | Mabee Plant (Midmar Plant) | Andrews | | | | | | |
| 17 | Salt Creek Plant | Kent | | | | | | |
| 18 | Snyder Plant | Scurry | | | | | | |
| 19 | Sterling Plant | Sterling | | | | | | |
| 20 | West Mabee Plant | Andrews | | | | | | |
| 21 | Yellow Rose Gas Plant | Martin | | | | | | |



Challenged rates 119.09, 172.22, and 304.91 apply to the uncommitted transportation of Y-grade NGLs from the below 17 origin points located within, or near, the Barnett Shale.

**Barnett Shale to Mont Belvieu
(in cents per barrel)**

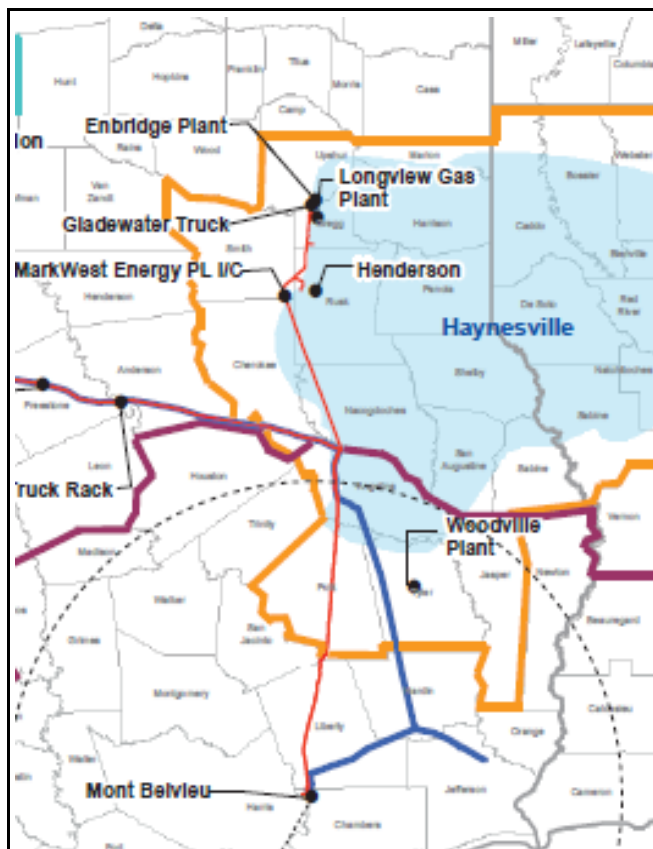
| | | | Canceled Rate | WTXP | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | |
|--------------|---|-------------|---------------|--------------|-------------|-----------|-------------------------------|-----------|
| Origin Point | | County | | July 1, 2015 | Primary | Alternate | Primary | Alternate |
| 1 | Eastland | Eastland | 96.79 | 119.09 | 96.79 | 100.55 | 77.58 | 96.79 |
| 2 | Gordon Plant | Palo Pinto | | | | | | |
| 3 | Huckabay Plant | Palo Pinto | | | | | | |
| 4 | Lone Camp Plant | Palo Pinto | | | | | | |
| 5 | Ranger 108 Plant | Eastland | | | | | | |
| 6 | Ranger Gathering Plant | Eastland | | | | | | |
| 7 | South Godley Plant | Johnson | | | | | | |
| 8 | Bridgeport Plant | Wise | 96.79 | 172.22 | 96.79 | 100.55 | 77.58 | 96.79 |
| 9 | Bridgeport Trucks | Jacks | | | | | | |
| 10 | Chico Plant | Wise | | | | | | |
| 11 | Cresson Plant | Hood | | | | | | |
| 12 | Weatherford Meter (Station) Tolar Plant | Parker | | | | | | |
| 13 | Worsham - Steed | Jack | | | | | | |
| 14 | Oakwood Truck Rack | Freestone | | | | | | |
| 15 | Trinidad Plant | Freestone | | | | | | |
| 16 | Abilene Trucks | Taylor | 113.05 | 304.91 | 113.05 | 117.44 | 90.61 | 113.05 |
| 17 | Shackleford Plant | Shackleford | | | | | | |



Challenged rate 156.91 applies to the uncommitted transportation of Y-grade NGLs from the below six origin points located within, or near, the Haynesville Shale.

**Haynesville Shale to Mont Belvieu
(in cents per barrel)**

| | | | | WTXP | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | |
|--------------|--|--------|---------------|--------------|-------------|-----------|-------------------------------|-----------|
| Origin Point | | County | Canceled Rate | July 1, 2015 | Primary | Alternate | Primary | Alternate |
| 1 | Enbridge Plant | Upshur | 96.79 | 156.91 | 96.79 | 100.55 | 77.58 | 96.79 |
| 2 | Gladewater Trucks | Upshur | | | | | | |
| 3 | Henderson | Rusk | | | | | | |
| 4 | Longview | Gregg | | | | | | |
| 5 | Mark West Energy Pipeline Interconnect | Rusk | 100.55 | | | 100.55 | 104.46 | 80.59 |
| 6 | Woodville Plant | Tyler | | | | | | |



A. WTXP's Support

WTXP must prove, by a preponderance of the evidence, that its challenged rates are proper under either a cost-of-service (fair return) method or a market-based (competitive) method. Only if WTXP fails its burden for any challenged rate is the Commission then required to adjust the rate appropriately.

WTXP attempts to meet its burden solely with a market-based (competitive) method. WTXP's argument is straightforward: the Permian Basin, Barnett Shale, and Haynesville Shale are competitive markets, and WTXP's July 1, 2015 rates were not the highest rates in these markets. In support, WTXP provides testimony from the below witnesses.

- *Timothy T. King*, Manager of Marketing Services for ONEOK, which is the operator and 80-percent owner of the WTXP pipeline. Mr. King discusses how WTXP competes for business and explains the process used by WTXP to establish its challenged July 1, 2015 rates.⁹¹
- *Robert G. Van Hoecke*, a Principal with Regulatory Economics Group, LLC (REG), a firm specializing in economic, financial, and regulatory consulting for the pipeline industry. Mr. Van Hoecke analyzes and examines whether WTXP's challenged rates are set on a market basis.⁹²
- *Michael J. Webb*, an economist and Director at Regulatory Economics Group, LLC (REG). Dr. Webb discusses economic principles associated with setting rates, and the theory and application of competition principles.⁹³

WTXP's Transportation

What WTXP provided in July 2015 in exchange for its rates was intrastate transportation of Y-grade NGLs from origin points within, or near, three production basins—the Permian Basin, Barnett Shale, and Haynesville Shale—to Mont Belvieu. WTXP's rates were “uncommitted” rates, meaning shippers were only charged for the actual volumes they transported.⁹⁴ By contrast, “committed” rates refer to rates some pipelines offer to shippers who are willing to make financial commitments to a pipelines, typically to help fund investment in new or expanded capacity.⁹⁵

⁹¹ See WTXP Ex. 01 (King Test.), WTXP Ex. 02 (King Rebuttal Test.), and WTXP Ex. 03 (King Second Supp. Rebuttal Test.).

⁹² See WTXP Ex. 04 (Van Hoecke Test.), WTXP Ex. 05 (Van Hoecke Rebuttal Test.), WTXP Ex. 06 (Van Hoecke Supp. Rebuttal Test.), and WTXP Ex. 07 (Van Hoecke Second Supp. Rebuttal Test.).

⁹³ See WTXP Ex. 08 (Webb Rebuttal Test.), WTXP Ex. 09 (Webb Supp. Rebuttal Test.), and WTXP Ex. 10 (Webb Second Supp. Rebuttal Test.).

⁹⁴ WTXP Ex. 01 (King Test.) at 11.

⁹⁵ *Id.* at 9-10.

Why and How WTXP Increased its Rates

WTXP increased its rates in 2015 to better align with the published rate amounts of competitor pipelines. In 2015 and the several years prior, oil and natural gas production in Texas increased significantly, and NGL production associated with the increased activity in the Permian Basin, Barnett Shale, and Haynesville Shale created an increase in demand for NGL transportation throughout the industry.⁹⁶ To respond to this demand, new NGL pipelines were built and placed into service in 2012-2013 to help meet increased shipper demand.⁹⁷ These new pipelines had significantly higher published rates than the older, pre-existing pipelines.⁹⁸ In 2015, WTXP reviewed the tariffs of new and older pipelines and decided to benchmark its increased rates against the higher new pipeline rates.⁹⁹

WTXP's approach to increasing its 2015 rates involved reviewing the published tariffs of other pipelines delivering to Mont Belvieu from the Permian Basin, Barnett Shale, and Haynesville Shale origin markets.¹⁰⁰ WTXP then considered geographical proximity to its own origin points and available capacity, and identified competing pipelines that WTXP considered to be the "next best alternatives" that had capacity available to Mont Belvieu.¹⁰¹ Generally, WTXP increased its rates to amounts slightly below the lower of the committed or uncommitted rate on the next best alternative for each WTXP origin point.¹⁰² All the competitors selected by WTXP as next best alternatives were newly-built or newly-expanded pipelines.¹⁰³

Market Competition

According to WTXP, market competition exists in each of the Permian Basin, Barnett Shale, and Haynesville Shale markets. Over 80 percent of the intrastate volumes shipped on the WTXP pipeline move through origin points with more than one pipeline connection.¹⁰⁴ WTXP competes with: existing pipelines that are directly connected to WTXP's origin points; new entrants including new pipeline construction; shipper-built laterals; pipeline-built laterals; other pipelines connected to the same gathering systems; trucks; and other destination markets.¹⁰⁵

⁹⁶ *Id.* at 6.

⁹⁷ *Id.* at 7.

⁹⁸ *See id.* at 9.

⁹⁹ *Id.* at 12-14.

¹⁰⁰ *Id.* at 12-13.

¹⁰¹ *Id.* at 13.

¹⁰² *Id.* at 14.

¹⁰³ *See id.* at 15-18 (DCP Sand Hills (new), Texas Express (new), DCP Southern Hills (new), and Panola Pipeline (expansion)).

¹⁰⁴ Hearing Tr. (March 27, 2017) at 195 (King testifying); WTXP Ex. 03 (King Second Supp. Rebuttal Test.) at 7.

¹⁰⁵ *See* WTXP Post-Hearing Br. at 4-13 (citing to the record); *see also* WTXP Ex. 04 (Van Hoecke Test.) (concluding competition based on FERC approach of identifying geographic markets, product markets, and market participants).

WTXP presents testimony that the Permian Basin, Barnett Shale, and Haynesville Shale meet the criteria used by the FERC to define competitive markets.¹⁰⁶ According to WTXP, each of these markets is a definable geographic origin market and Mont Belvieu is a definable destination market.¹⁰⁷ Within these markets are definable product markets and several market participants.¹⁰⁸

Because the Permian Basin, Barnett Shale, and Haynesville Shale are competitive markets, WTXP argues that setting its rates slightly below the levels of nearby competitor pipelines is consistent with the legal standard for market-based common carrier rates in Texas.¹⁰⁹ According to WTXP, its July 2015 rates:

- are reasonable, market-based rates that reflect the value of the service provided;
- are below observable, filed market-based rates; and
- show no indication that WTXP has exercised market power.¹¹⁰

Marginal Supplier Analysis

WTXP offers a “marginal supplier” analysis to justify the properness of its challenged rate amounts. The marginal supplier analysis rests on the principle that in a market with multiple participants, the market price is determined by the marginal supplier.¹¹¹ The marginal supplier is determined by identifying the lowest netback alternative available but still used by producers in the relevant origin market.¹¹² That represents the least profitable sale currently being accepted by any producer in the market.¹¹³ According to WTXP, if a pipeline is not the marginal supplier in a market it serves, that is evidence that its rates are reasonable and within the range of competitive options available in the market.¹¹⁴ On July 1, 2015, the pipeline rates in each of these markets meeting WTXP’s “marginal supplier” definition were 717.00 (Permian Basin), 583.21 (Barnett Shale), and 222.95 (Haynesville Shale). Because its rates in these markets were lower than the applicable marginal supplier rate, WTXP argues its rates therefore are market based and proper.

WTXP’s challenged rates for each market are treated separately, below.

¹⁰⁶ See WTXP Ex. 04 (Van Hoecke Test.) and WTXP Ex. 08 (Webb Rebuttal Test.).

¹⁰⁷ WTXP Ex. 04 (Van Hoecke Test.) at 5-17; see also WTXP Ex. 08 (Webb Rebuttal Test.).

¹⁰⁸ *Id.*

¹⁰⁹ See WTXP’s Post-Hearing Br. at 1-2.

¹¹⁰ *Id.* at 22-29.

¹¹¹ WTXP Ex. 04 (Van Hoecke Test.) at 23.

¹¹² *Id.* at 23-24.

¹¹³ *Id.*

¹¹⁴ *Id.* at 24; see also WTXP Post-Hearing Reply Br. at 7.

1. Permian Basin (Challenged Rate 304.91)

WTPX selected the DCP Sand Hills pipeline as the next best alternative for its 21 origin points located within, or near, the Permian Basin.¹¹⁵ WTPX benchmarked its challenged rate 304.91 against the DCP Sand Hills committed rate of 325.92.¹¹⁶ WTPX identifies the Lone Star pipeline's FERC rate of 717.00 as the marginal supplier rate in the Permian Basin¹¹⁷—meaning, according to WTPX, that any rate below 717.00 is a proper market-based rate for all transportation of NGLs from the Permian Basin to Mont Belvieu.

Permian Basin to Mont Belvieu (in cents per barrel)

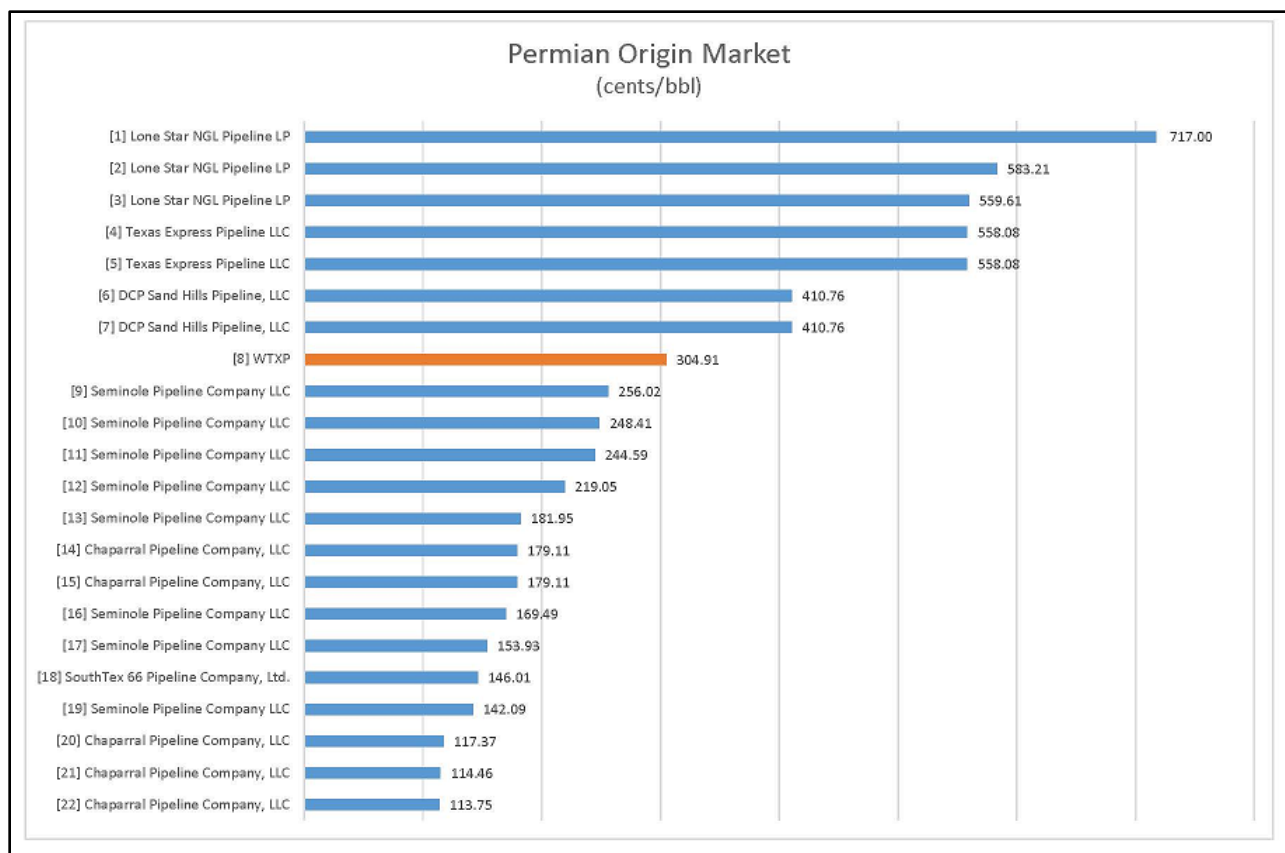
| Origin Point | | County | Canceled Rate | WTPX July 1, 2015 | Comparison Rate Committed/ Uncommitted | Marginal Supplier |
|--------------|-------------------------------------|-----------|---------------|-------------------------|---|----------------------|
| 1 | Block 31 Plant | Crane | 113.05 | 304.91 | DCP Sand Hills 325.92 / 410.76 | Lone Star 717.00 |
| 2 | Davis Nelah Plant | Crocket | | | | |
| 3 | Fullerton Plant | Andrews | | | | |
| 4 | Headlee Plant | Midland | | | | |
| 5 | Jameson Plant | Coke | | | | |
| 6 | Mesquite Ethane (Mesquite Terminal) | Midland | | | | |
| 7 | Roberts Ranch Plant | Midland | | | | |
| 8 | Sale Ranch Plant | Martin | | | | |
| 9 | Sand Hills Plant | Crane | | | | |
| 10 | Tippet Plant | Crocket | | | | |
| 11 | Yates Plant | Crocket | 159.06 | | | |
| 12 | Benedum Plant | Reagan | | | | |
| 13 | Deadwood Plant | Glasscock | | | | |
| 14 | Driver Plant | Midland | | | | |
| 15 | High Plains Plant | Midland | | | | |
| 16 | Mabee Plant (Midmar Plant) | Andrews | | | | |
| 17 | Salt Creek Plant | Kent | | | | |
| 18 | Snyder Plant | Scurry | | | | |
| 19 | Sterling Plant | Sterling | | | | |
| 20 | West Mabee Plant | Andrews | | | | |
| 21 | Yellow Rose Gas Plant | Martin | | | | |

¹¹⁵ WTPX Ex. 01 (King Test.) at 15-16.

¹¹⁶ *Id.* at 16.

¹¹⁷ See WTPX Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), pp. 1-2.

WTPX provides the below “rate stack” to illustrate that its challenged rate 304.91 is not the highest rate charged by pipelines transporting NGLs out of the Permian Basin. Included among these rates are both intrastate (RRC) and interstate (FERC) rates, for both committed and uncommitted transportation.



A full version of this rate stack,¹¹⁸ along with a corresponding informational chart,¹¹⁹ is attached to the PFD as Attachment 10.

2. Barnett Shale (Challenged Rates 119.09, 172.22, 304.91)

WTPX selected the Texas Express pipeline, the DCP Southern Hills pipeline, and the DCP Sand Hills pipeline as next best alternatives for its 17 origin points located within, or near, the Barnett Shale.¹²⁰ WTPX benchmarked its challenged rate 119.09 against the Texas Express committed rate of 129.59.¹²¹ WTPX benchmarked

¹¹⁸ WTPX Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), p. 1.

¹¹⁹ *Id.* at p. 2.

¹²⁰ WTPX Ex. 01 (King Test.) at 15, 16.

¹²¹ *Id.* at 17.

its challenged rate 172.22 against the DCP Southern Hills committed rate of 182.70.¹²² WTXP benchmarked its challenged rate 304.91 against the DCP Sand Hills committed rate of 325.92.¹²³ WTXP identifies the Lone Star Pipeline's FERC rate of 583.21 as the marginal supplier rate in the Barnett Shale¹²⁴—meaning, according to WTXP, that any rate below 583.21 is a proper market-based rate for all transportation of NGLs from the Barnett Shale to Mont Belvieu.

**Barnett Shale to Mont Belvieu
(in cents per barrel)**

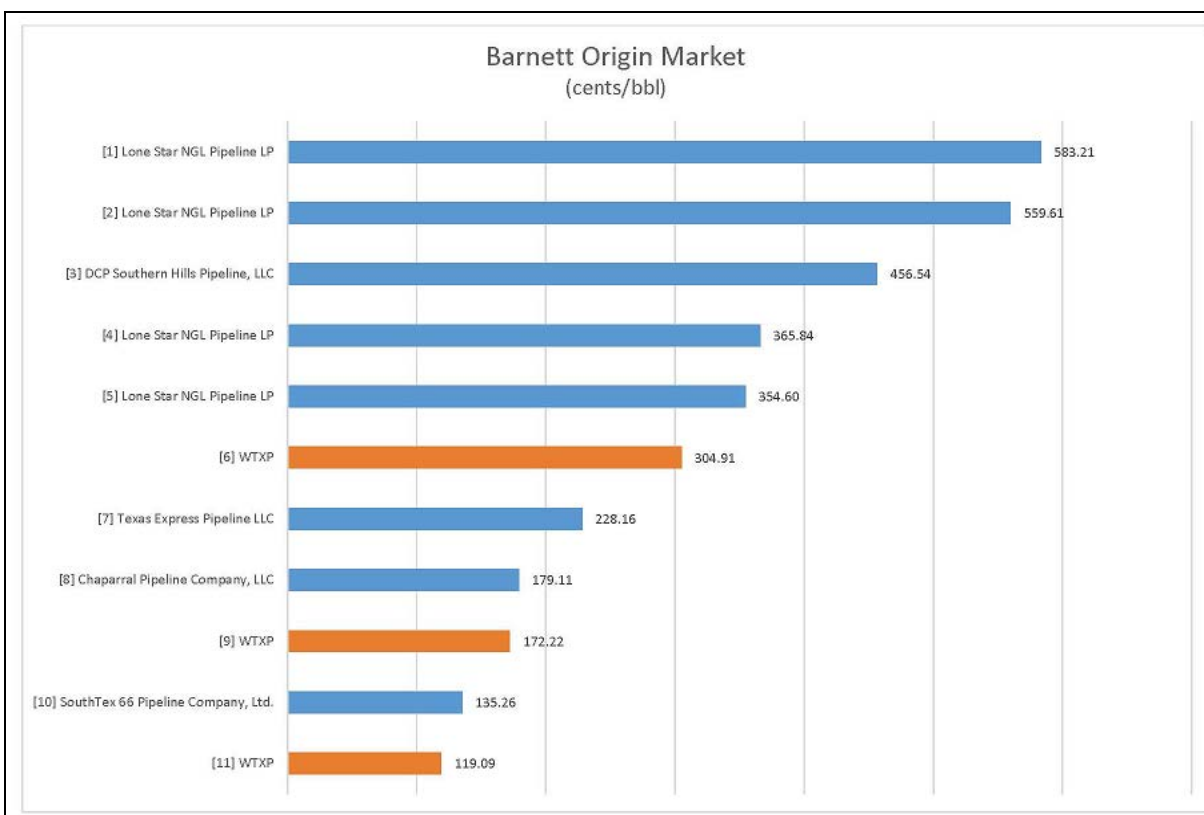
| Origin Point | | County | Canceled Rate | WTXP July 1, 2015 | Comparison Rate Committed / Uncommitted | Marginal Supplier |
|--------------|---|-------------|---------------|----------------------|--|----------------------|
| 1 | Eastland | Eastland | 96.79 | 119.09 | Texas Express 129.59 / 228.16 | Lone Star 583.21 |
| 2 | Gordon Plant | Palo Pinto | | | | |
| 3 | Huckabay Plant | Palo Pinto | | | | |
| 4 | Lone Camp Plant | Palo Pinto | | | | |
| 5 | Ranger 108 Plant | Eastland | | | | |
| 6 | Ranger Gathering Plant | Eastland | | | | |
| 7 | South Godley Plant | Johnson | | | | |
| | | | | | | |
| 8 | Bridgeport Plant | Wise | 96.79 | 172.22 | DCP Southern Hills 182.70 / 456.54 | Lone Star 583.21 |
| 9 | Bridgeport Trucks | Jacks | | | | |
| 10 | Chico Plant | Wise | | | | |
| 11 | Cresson Plant | Hood | | | | |
| 12 | Weatherford Meter (Station) Tolar Plant | Parker | | | | |
| 13 | Worsham - Steed | Jack | | | | |
| 14 | Oakwood Truck Rack | Freestone | | | | |
| 15 | Trinidad Plant | Freestone | | | | |
| | | | | | | |
| 16 | Abilene Trucks | Taylor | 113.05 | 304.91 | DCP Sand Hills 325.92 / 410.76 | Lone Star 717.00 |
| 17 | Shackleford Plant | Shackleford | | | | |

WTXP provides the below rate stack to illustrate that its challenged rates 119.09, 172.22, and 304.91 are not the highest rates charged by pipelines transporting NGLs out of the Barnett Shale. These rates are solely intrastate (RRC) rates, for both committed and uncommitted transportation.

¹²² *Id.*

¹²³ *Id.* at 15.

¹²⁴ See WTXP Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), pp. 3-4.



A full version of this rate stack,¹²⁵ along with a corresponding informational chart,¹²⁶ is attached to the PFD as Attachment 11.

3. Haynesville Shale (Challenged Rate 156.91)

WTXP selected the Panola Pipeline as the next best alternative for its six origin points located within, or near, the Haynesville Shale.¹²⁷ WTXP benchmarked its challenged rate 156.91 against the Panola Pipeline uncommitted rate of 160.08.¹²⁸ WTXP identifies the Black Lake Pipeline's FERC rate of 222.95 as the marginal supplier rate in the Haynesville Shale¹²⁹—meaning, according to WTXP, that any rate below 222.95 is a proper market-based rate for all transportation of NGLs from the Haynesville Shale to Mont Belvieu.

¹²⁵ WTXP Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), p. 3.

¹²⁶ *Id.* at p. 4.

¹²⁷ WTXP Ex. 01 (King Test.) at 17.

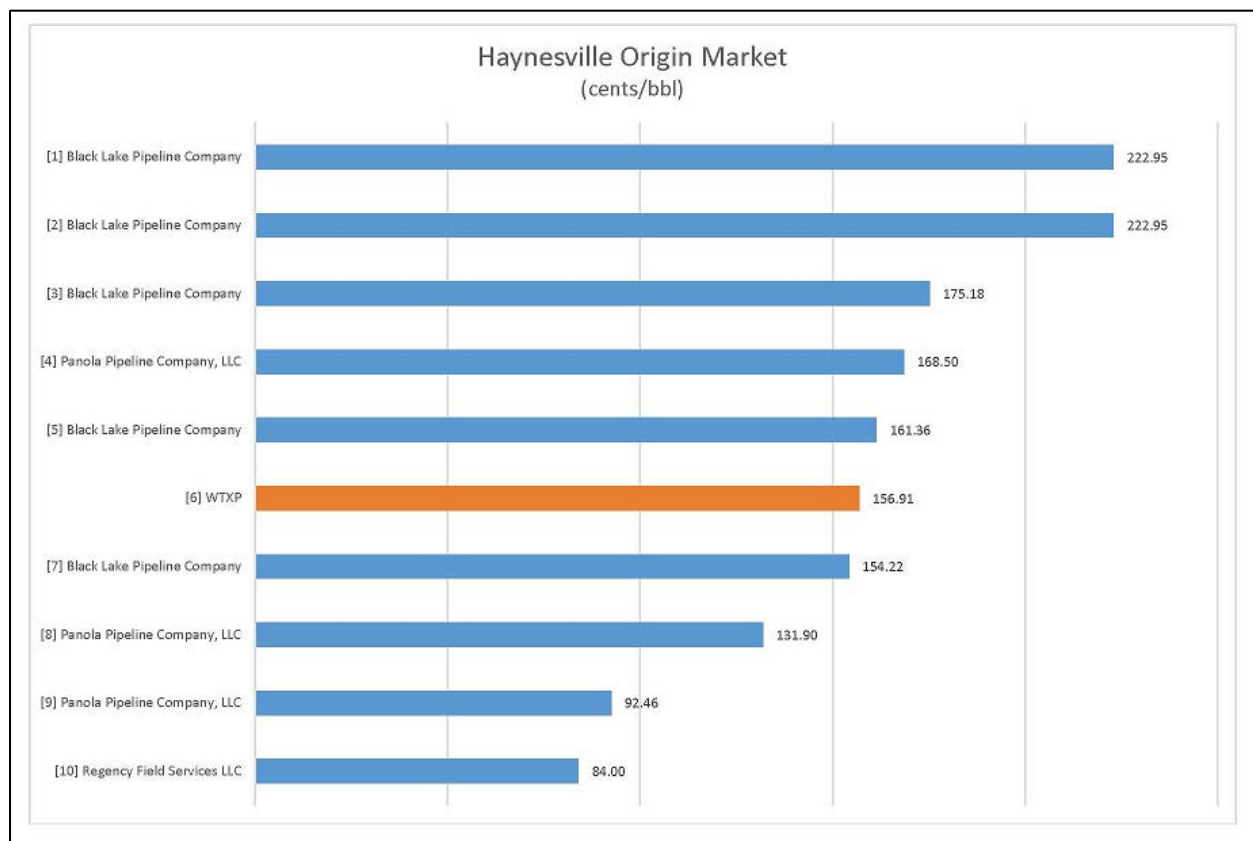
¹²⁸ *Id.* at 17-18.

¹²⁹ See WTXP Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), pp. 5-6.

**Haynesville Shale to Mont Belvieu
(in cents per barrel)**

| Origin Point | | County | Canceled Rate | WTPX July 1, 2015 | Comparison Rate Committed / Uncommitted | Marginal Supplier |
|--------------|--|--------|---------------|----------------------|---|----------------------|
| 1 | Enbridge Plant | Upshur | 96.79 | 156.91 | Panola Pipeline 161.12 / 160.08 | Black Lake 222.95 |
| 2 | Gladewater Trucks | Upshur | | | | |
| 3 | Henderson | Rusk | | | | |
| 4 | Longview | Gregg | | | | |
| 5 | Mark West Energy Pipeline Interconnect | Rusk | 100.55 | 156.91 | Panola Pipeline 161.12 / 160.08 | Black Lake 222.95 |
| 6 | Woodville Plant | Tyler | | | | |

WTPX provides the below rate stack to illustrate that its challenged rate 156.91 is not the highest rate charged by pipelines transporting NGLs out of the Haynesville Shale. Included among these rates are both intrastate (RRC) and interstate (FERC) rates, for both committed and uncommitted transportation.



A full version of this rate stack,¹³⁰ along with a corresponding informational chart,¹³¹ is attached to the PFD as Attachment 12.

B. Opposition by Targa and ELTM

Complainants Targa and ELTM are aligned. They oppose WTXP's increased rate amounts but support using a market-based method to adjust WTXP's challenged rates to appropriate market-based amounts. Targa/ELTM disagree that WTXP's rates are market based just because the rates are below those charged by new/expansion pipelines. They highlight that the WTXP pipeline is very old, has reliability issues, and does not perform as well as the new pipelines.¹³² Targa/ELTM describes older pipelines such as WTXP "legacy" pipelines and argues that they should be treated differently, for ratemaking purposes, than the better-performing, new pipelines. In support, Targa and ELTM provide testimony from the below witnesses.

- *Michael A. Heim*, Vice Chairman of the Board for Targa Resources Corp. (TRC), which is the ultimate parent of Targa. Mr. Heim also is a member of the TRC executive team acting in an advisory role on commercial and operational matters. Mr. Heim previously served in several executive management positions at TRC and its affiliates between 2005 and 2015, including President, Executive Vice President, and Chief Operating Officer. Mr. Heim discusses WTXP's performance and the reliability and performance differences between newer-build pipelines and older, "legacy" pipelines.¹³³
- *Robert Poe Reed*, the Vice President and Chief Commercial Officer of Midcoast Energy Partners, LLP (MEP), a partnership formed by Enbridge Energy Partners, LP (EEP) in 2013 to serve as EEP's primary vehicle for owning and growing its natural gas and NGL midstream business in the U.S. ELTM is a subsidiary of MEP. Mr. Reed joined MEP in September 2015. Mr. Reed discusses WTXP's performance, primarily in or near the Haynesville Shale production area.¹³⁴
- *James L. Watson*, an engineer and Partner/owner of Watson Millican and Company, a consulting firm. Mr. Watson discusses markets for NGL transportation in Texas, pipelines that serve the same areas and products as WTXP, and other issues related to pipelines and tariffs.¹³⁵

Targa/ELTM highlight that WTXP selected only new pipelines with high rates as "next best alternatives," rather than the several older legacy pipelines, with much lower rates, that also serve these three markets.

¹³⁰ WTXP Ex. 04 (Van Hoecke Test.), Attachment E (Rate Stacks by Origin Market), p. 5.

¹³¹ *Id.* at p. 6.

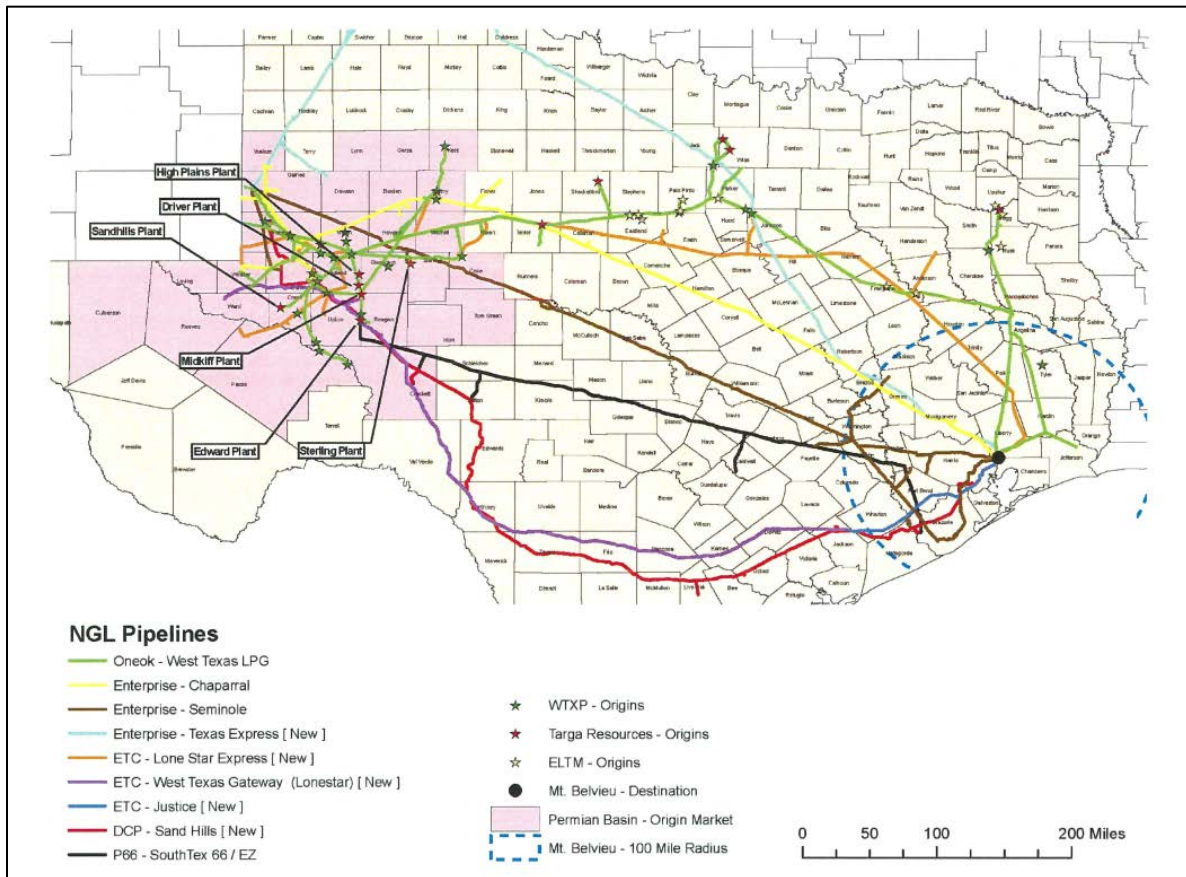
¹³² See Targa Ex. 01 (Heim Test.) and ELTM Ex. 01 (Reed Test.).

¹³³ See Targa Ex. 01 (Heim Test.).

¹³⁴ See ELTM Ex. 01 (Reed Test.).

¹³⁵ See Joint Ex. 01 (Watson Test.).

Permian Basin



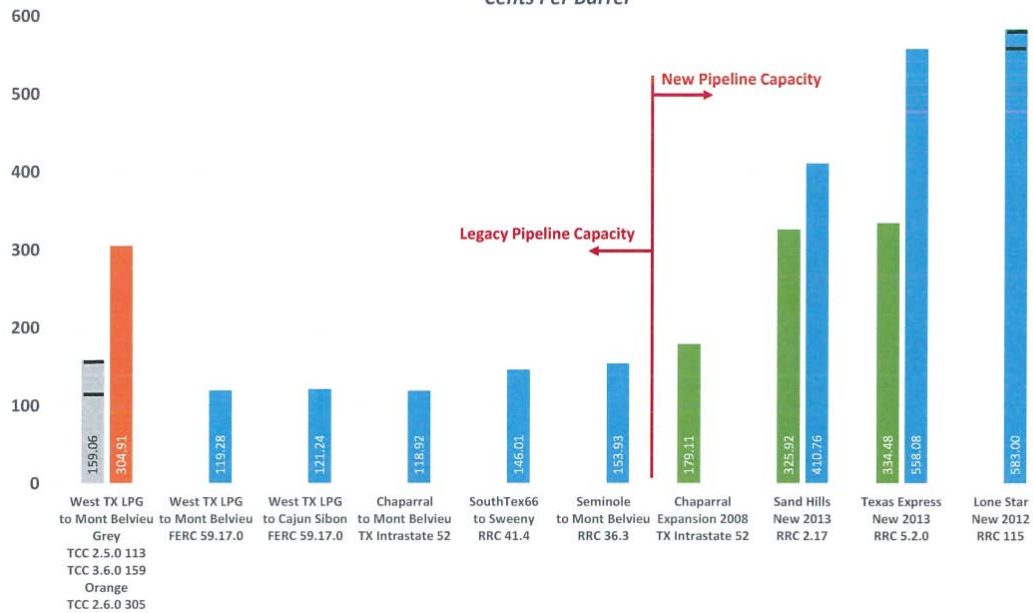
Y-Grade Pipeline Tariffs From Permian Basin to Mont Belvieu Market

Effective As Of July 1, 2015

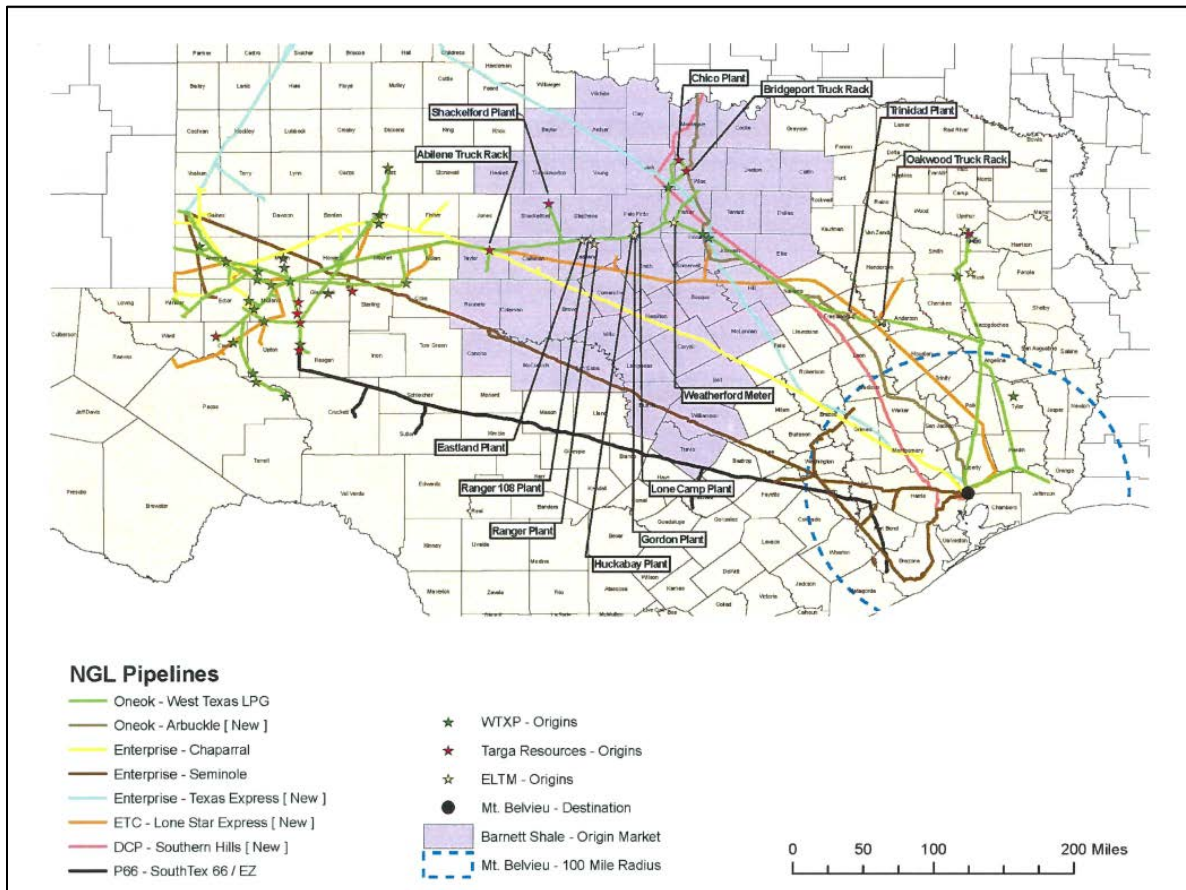
Uncommitted Volume Rates in Blue

Committed Volume Rates in Green

Cents Per Barrel

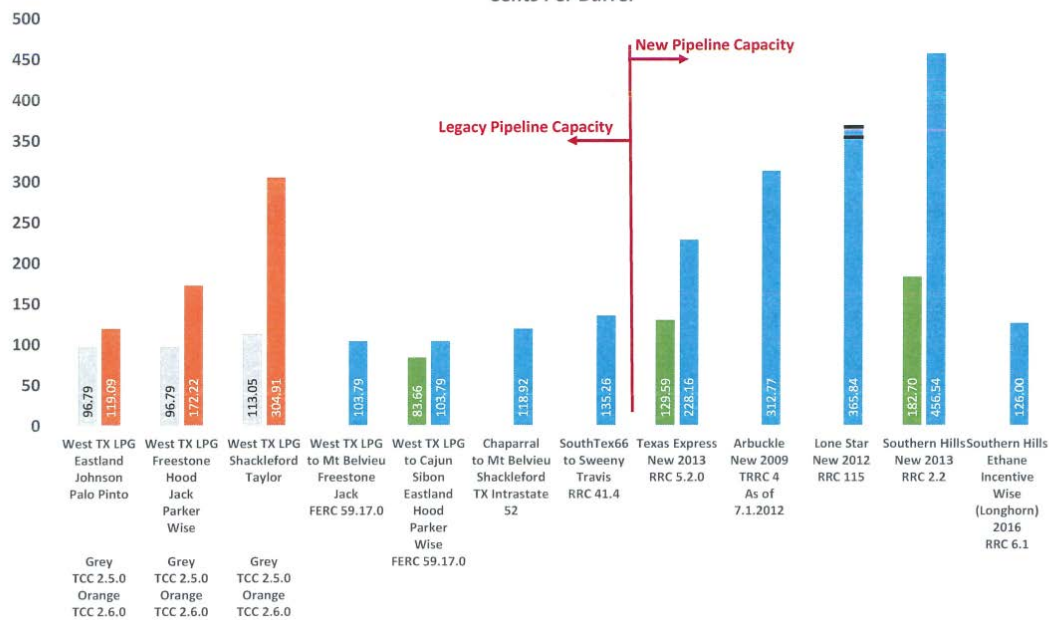


Barnett Shale

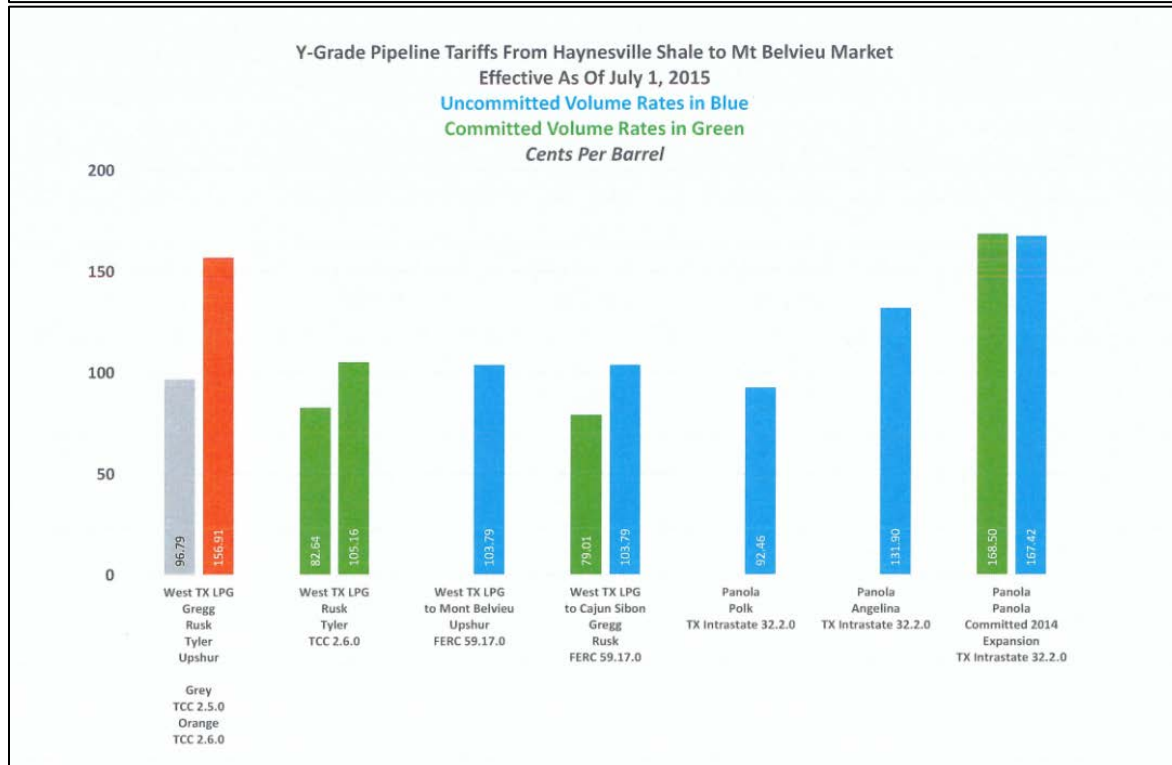
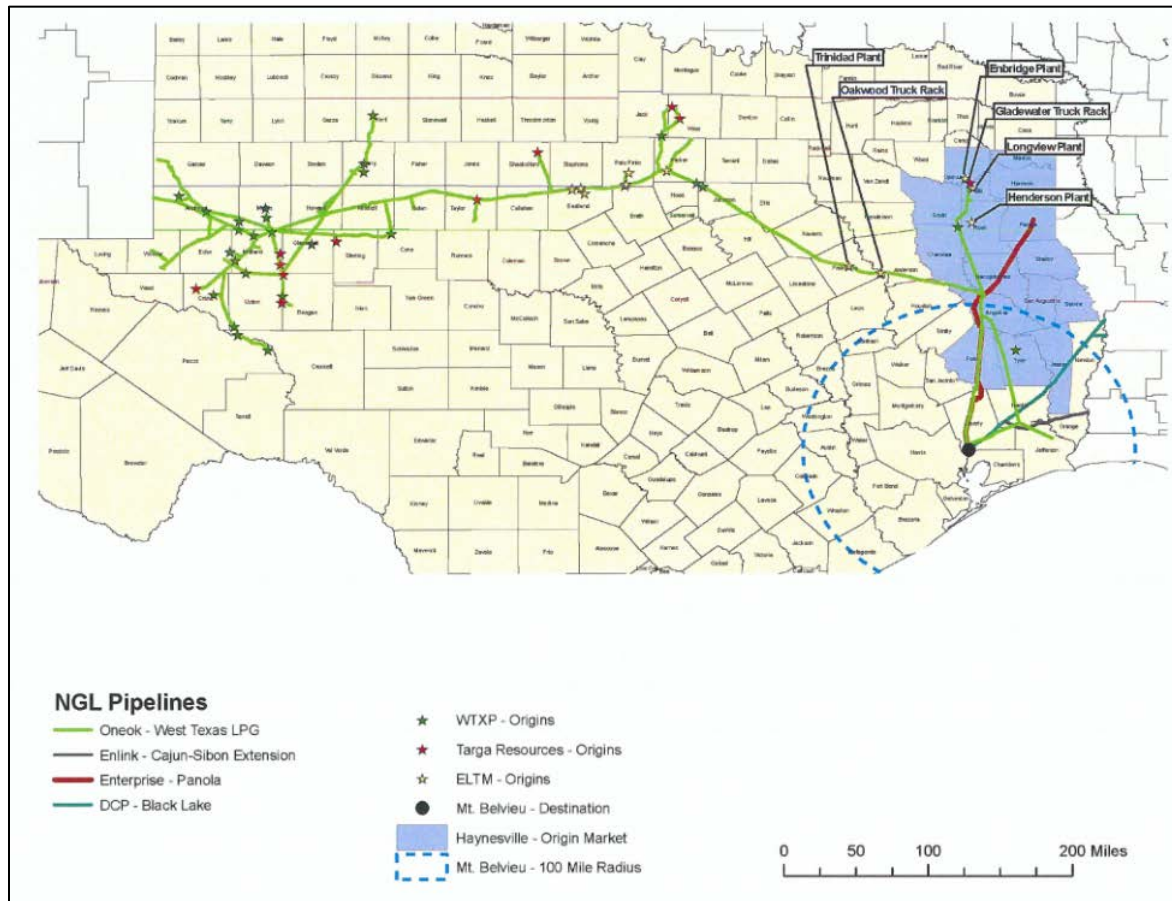


Y-Grade Pipeline Tariffs From Barnett Shale to Mt Belvieu Market
Effective As Of July 1, 2015

Uncommitted Volume Rates in Blue
Committed Volume Rates in Green
Cents Per Barrel



Haynesville Shale



Full versions of these graphics are attached to this PFD as Attachment 13 (Permian Basin), Attachment 14 (Barnett Shale), and Attachment 15 (Haynesville Shale).

Targa and ELTM ask the Commission to adjust WTXP's rates to pre-July 2015 amounts, or alternatively to the pre-July 2015 amounts but increased using the FERC index, a custom practice for Texas pipelines.

C. Opposition by Pioneer, ConocoPhillips, and OEMI

Pioneer, ConocoPhillips, and OEMI are aligned. They argue that switching to another pipeline in these markets can be prohibitively difficult for shippers, logistically and financially, and therefore these are not competitive markets.¹³⁶ Therefore, a cost-of-service method must be used for WTXP. In support, Pioneer, ConocoPhillips, and OEMI provide testimony from the below witnesses.

- *Ann Psencik*, owner of Psencik Consulting, an independent midstream consulting company. Ms. Psencik discusses NGL transportation in Texas, factors limiting the ability of shippers to switch to other carriers, and safety and integrity issues relating to aging pipeline infrastructure.¹³⁷
- *Bruce H. Fairchild*, a Principal in Financial Concepts and Applications, Inc. (FINCAP), a firm engaged in financial, economic, and policy consulting to business and government. Dr. Fairchild offers that the origins on the WTXP system are not competitive markets, and he discusses custom practices used by pipelines in Texas to increase rates. Dr. Fairchild also proposes cost-based rates for service on the WTXP system.¹³⁸
- *Malcolm C. Harris, Sr.*, a consultant and Professor of Finance at Friends University in Wichita, Kansas. Dr. Harris discusses the economics of regulation, regulatory policy, and fundamental economic principles.¹³⁹
- *June M. Dively*, a certified public accountant and Partner at Dively and Associates, PLLC (D&A), a public accounting firm specializing in regulatory and forensic accounting. Ms. Dively analyzes and provides revenue requirements for calculating cost-of-service rates for WTXP.¹⁴⁰

Pioneer, ConocoPhillips, and OEMI ask the Commission to adjust WTXP's rates using a cost-of-service method, or alternatively to the pre-July 2015 amounts.

¹³⁶ See Producers' Ex. A-1 (Psencik Test.) at 11-15 (discussing several factors, including: short-haul tariffs to alternative carrier, capital costs to alternative carrier, shipper history, spot rate, proration policies, line fill policies, demurrage, storage, fractionation, and commercial trading contracts.); *see also* Producers' Ex. A-2 (Fairchild Test.) and Producers' Ex. A-3 (Harris Test.).

¹³⁷ See Producers' Ex. A-1 (Psencik Test.).

¹³⁸ See Producers' Ex. A-2 (Fairchild Test.) and Producers' Ex. A-2.1 (Fairchild Additional Test.).

¹³⁹ See Producers' Ex. A-3 (Harris Test.) and Producers' Ex. A-3.1 (Harris Additional Test.).

¹⁴⁰ See Producers' Ex. A-4 (Dively Test.) and Producers' Ex. A-4.1 (Dively Additional Test.).

D. Findings and Recommendations

Before considering any of the parties' evidence and arguments, the ALJ and Technical Examiner spent significant time identifying and understanding the proper legal standard for intrastate common carrier rates under a market-based method—the sole method used by WTXP to attempt to meet its burden. As treated above, to be market based under Texas law, intrastate common carrier rates need only be competitive. Such a broad term allows for significant situational flexibility and discretion by the Commission.

Regarding evidence, the ALJ and Technical Examiner gave zero weight to speculative reasons for WTXP's rate increases or to WTXP's canceled rate amounts. The Commission's task here is to review WTXP's July 1, 2015 rates—prior rates and speculation on reasons for the increases are not relevant.

1. Targa Properly Challenged All Four Rates Within the Scope of this Proceeding in its August 11, 2015 Complaint.

Targa's August 11, 2015 complaint properly challenged all four rates that are within the scope of this proceeding—304.91, 119.09, 172.22, and 156.91. Although Targa may not have paid every rate amount or taken service at every origin point, Targa—at the time of its complaint—paid WTXP's rates in each of the Permian Basin, Barnett Shale, and Haynesville Shale markets. This case is about whether WTXP's rates are competitive for its origin points within, or near, each of these markets. Therefore, for WTXP's transportation to Mont Belvieu under the above four rates, the Commission should construe a challenge by a shipper paying any rate in a market as a challenge of all the rates.

2. How WTXP Increased its Rates Was Proper.

WTXP canceled its previous rates and began charging new rates contained in a new tariff. Procedurally, nothing more was required by WTXP to change its rates. No intrastate pipeline in Texas—including WTXP—is required to use the FERC indexing method or to negotiate with shippers before increasing rates. Some complainants imply that Texas common carrier rates are not legal unless pre-approved by shippers, either via formal negotiation or constructive acceptance by tendering volumes for transportation. This conflates legal rates with contractual rates. WTXP's rates under Tariff 2.6.0 were legal rates on July 1, 2015, even if no one was paying them and the pipeline was empty.

3. No Prerequisite Conditions Are Required to Set Competitive Rates

All the parties offer overly-strict requirements for using a market-based method to set intrastate common carrier rates. Facially, the Natural Resources Code imposes no prerequisites or restrictions of any kind. Nor are common carriers required to obtain regulatory pre-approval to increase their rates or switch methods for increasing their rates. The legal standard is just one broad word—"competitive." The Commission may create its own restrictions, but the Legislature has not done so and neither has any Texas court.

Pioneer, ConocoPhillips, and OEMI all argue that a market-based method is inappropriate here because moving product to other pipelines is prohibitively difficult—logistically and financially—for shippers unhappy with WTXP's rates. Targa and ELTM argue that market-based rates must be benchmarked only against similarly-aged pipelines because newer pipelines perform better than older pipelines. On a case-by-case basis, these conditions may be appropriate but they are not required. Even WTXP's FERC-based approach of considering geographic markets, product markets, and market participants goes far beyond the required conditions imposed by the Legislature—none.

As treated above, no intrastate pipeline in Texas—including WTXP—is required to use the FERC indexing method or to negotiate with shippers before increasing rates. Aside from how WTXP calculated its 2015 increases, no one is alleging that WTXP acted differently from any other NGL pipeline in Texas—like all the other pipelines, WTXP selected rates amounts it considered to be proper. The Commission should review and, if necessary, adjust WTXP's rate amounts—not impose unique prerequisite conditions on WTXP not applicable to other pipelines.

4. WTXP Failed to Prove that its July 1, 2015 Rates Were Competitive.

WTXP proved what it set out to prove—that competition existed and nearby pipelines had higher rates. The weight of evidence supports the following findings:

- competition existed in each of the Permian Basin, Barnett Shale, and Haynesville Shale markets;
- WTXP's rates were not the highest in these markets; and
- WTXP's performance and reliability improved significantly after 2014 under new ownership and operation by ONEOK.

According to WTXP, this proves that its July 1, 2015 rates were competitive. WTXP's theory is straightforward, but it misses the mark.

In Texas, common carrier rates are market based if they are competitive.¹⁴¹ The focus is on the *rates*, not the pipelines or markets.¹⁴² Logically, for substantially similar rate amounts to be competitive, what is captured by the rates also must be substantially similar. Here, the weight of evidence supports that WTXP's July 2015 rates captured (1) uncommitted intrastate transportation of Y-grade NGLs to Mont Belvieu (2) at a certain level of performance. WTXP benchmarked all its challenged rate amounts against the rates of new/expansion pipelines. The weight of evidence supports that the July 2015 rates of these new/expansion pipelines likely captured more than what WTXP provided. Specifically, these new/expansion rates captured (1) transportation, (2) partial recoupment of new construction/expansion costs, and (3) better performance.¹⁴³

It was not improper for WTXP to benchmark its rates against the rates of these newer pipelines, but doing so required adjusting the comparison rates downward to capture substantially the same thing WTXP's rates captured—transportation only, at WTXP's level of performance. While WTXP's July 2015 rate amounts were lower than the rates of the new pipelines used as comparisons, WTXP failed to prove that the reductions reflect these needed adjustments. WTXP set its rates below the benchmarked rates of the new/expansion pipelines not to adjust for inapplicable recoupment of construction/expansion costs or differences in performance, but rather to charge slightly less.¹⁴⁴ Therefore, WTXP failed to prove that its rates were competitive and failed to meet its burden of proof.

Regarding WTXP's needed downward adjustment for inapplicable recoupment of construction/expansion costs, evidence supports that both the committed and uncommitted rates of newer-build pipelines likely contribute to the recoupment of construction/expansion costs—costs inapplicable to WTXP on July 1, 2015. Though committed rates coupled with transportation services agreements ("TSAs") may induce pipelines to build new/expanded infrastructure, the evidence does not establish that recoupment of those costs is tied solely to committed rates. Shipper commitments under TSA contracts may induce pipelines to take the financial risk of building a new/expanded pipeline, but both committed and uncommitted rates may capture partial recoupment of infrastructure costs. WTXP did not prove otherwise, and so downward adjustments were necessary for the benchmarked new/expansion rates, regardless of whether they were for committed or uncommitted transportation.

¹⁴¹ See Tex. Nat. Res. Code § 111.184 (Discretion of Commission) (the Commission may establish and adjust "competitive rates").

¹⁴² *Id.* § 111.184 (Discretion of Commission) ("competitive rates") (emphasis added).

¹⁴³ Targa Ex. 01 (Heim Test.) at 12-13 (describing benefits offered by new-build pipelines not offered by WTXP); Hearing Tr. (March 29, 2017) at 21 (Heim testifying) ("Brand-new pipe in today's technology typically has far greater integrity both for materials and from construction practices than pipelines that are 100 years old.").

¹⁴⁴ WTXP Ex. 01 (King Test.) at 14 ("To ensure that WTXP would remain competitive, new rates were set below the lower of the committed or uncommitted rate on the next best alternative for each WTXP origin.").

Regarding WTXP's needed downward adjustment for performance, credible evidence supports that, in July 2015, WTXP did not perform as well as the new/expansion pipelines.¹⁴⁵ Generally, new-build pipelines are more likely to perform better than older pipelines.¹⁴⁶ Here, WTXP began transporting Y-grade NGLs around 1957.¹⁴⁷ By contrast, newer NGL pipelines were placed in service around 2012-2013.¹⁴⁸

While evidence supports that pipeline age generally correlates to performance, that correlation is not as absolute as Targa and ELTM argue. Credible evidence also establishes that WTXP's performance improved significantly after 2014 under the operation of ONEOK.¹⁴⁹ Since ONEOK became the operator in 2014, WTXP has delivered the product scheduled for shipment 99.85 percent of the time.¹⁵⁰ Evidence of WTXP's improved performance, however, is only part of the answer when evaluating competitive rates. The other part is determining how well WTXP performed compared to other pipelines. Of the ten witnesses in this docket, only one was in a position to speak credibly and directly to WTXP's comparative performance on July 1, 2015—Targa Witness Heim.¹⁵¹ From 2005 to 2015, Mr. Heim served in several executive management positions at TRC—the ultimate parent of Targa—including President, Vice President, and Chief Operating Officer.¹⁵² At the time his direct testimony was filed in this case, he served as TRC's Vice Chairman of the Board, as well as a full-time member of an executive advisory team on operational matters.¹⁵³ The weight given to Mr. Heim's testimony, therefore, was significant.

¹⁴⁵ Targa Ex. 01 (Heim Test.) at 4-5 ("Simply put, WTXP is an old pipeline that has operational issues."), 8 ("[WTXP] is an old legacy pipeline that continues to offer Targa to [sic] same low level of service"), 9 ("Parts of WTXP are over 100 years old, and it was pieced together over time rather than being designed and constructed as a cohesive operational asset...And Targa's experience in shipping NGLs on WTXP is that WTXP has had recurring operational problems, frequent repairs, and multiple outages resulting in proration."), 11 ("And it is completely inappropriate for WTXP to charge rates even close to those charged by new-build pipelines...While they may both serve parts of the Permian Basin, WTXP's service is not at all similar or comparable to the benefits offered by new-build pipelines or extensions."), and 12-13 (describing benefits offered by new-build pipelines that are not offered by WTXP); *see also* Hearing Tr. (March 29, 2017) at 16 (Heim testifying) ("Under ONEOK we've had 14 [interruptions]...during that same time frame I looked at the Arbuckle pipeline which is a newer ONEOK pipeline, and I had zero interruptions from services in North Texas. I looked at the DCP pipeline out of their new Sand Hills pipeline. I had one interruption.").

¹⁴⁶ *See* Targa Ex. 01 (Heim Test.) at 12-13; *see also* Hearing Tr. (March 29, 2017) at 21 (Heim testifying) ("Brand-new pipe in today's technology typically has far greater integrity both for materials and from construction practices than pipelines that are 100 years old.").

¹⁴⁷ Targa Ex. 01 (Heim Test.) at 9.

¹⁴⁸ Joint Ex. 01 (Watson Test.), Exhibit JLW-5.

¹⁴⁹ Hearing Tr. (March 29, 2017) at 15-16 (Heim testifying, cross examination by WTXP's counsel) ("I have looked at the data basically for the last five years, more or less two and a half years for [previous owner] Chevron when they were operating [and] two and a half years under [new owner] ONEOK. During the two and a half years under...Chevron we had 24 interruptions. Under ONEOK we've had 14. So, basically, ONEOK has had 58 percent of the interruptions that Chevron did...").

¹⁵⁰ WTXP Ex. 02 (King Rebuttal Test.) at 13.

¹⁵¹ ELTM Witness Reed joined ELTM's parent in September 2015, serving as Vice President and Chief Commercial Officer. *See* ELTM Ex. 01 (Reed Test.) at 2-4.

¹⁵² Targa Ex. 01 (Heim Test.) at 3.

¹⁵³ *Id.*

According to Mr. Heim, even though WTXP's performance improved under ONEOK, it still lagged behind newer-build pipelines.¹⁵⁴ Therefore, downward adjustments for performance were necessary for the benchmarked new/expansion rates.

That several origin points in these markets had direct connections to other pipelines is not dispositive that WTXP's rates were competitive. Credible evidence from the Pioneer, ConocoPhillips, and OEMI supports that it can be prohibitively difficult for shippers in these markets to leave a pipeline.¹⁵⁵ Around July 2015, demand for NGL transportation was high and capacity on other connecting pipelines may have been full or nearly full. Even with available capacity on another connecting pipeline, starting over on a new pipeline could require shippers to abandon their guaranteed monthly volumes with the current pipeline based on 12-month shipper histories.¹⁵⁶ Without established shipper histories on other pipelines, new shippers could face significant reductions in guaranteed volumes,¹⁵⁷ especially if demand for NGL transportation is very high—as was the case around July 2015.¹⁵⁸ The high cost to build laterals to other pipelines also makes it difficult for shippers to leave a pipeline.¹⁵⁹ Evidence from Pioneer, ConocoPhillips, and OEMI supports that constructing a pipeline lateral in these markets can cost roughly \$1 million per mile for a 12-inch pipe.¹⁶⁰ Therefore, a shipper's decision to stay with a pipeline and pay that pipeline's rates, even if multiple connections exist, is not dispositive that the pipeline's rates are competitive—it may simply mean that the shipper's best option is to pay an uncompetitive rate.

¹⁵⁴ See *id.* at 4-5, 8, 9, 11, and 12-13; see also Hearing Tr. (March 29, 2017) at 15-16 (Heim testifying).

¹⁵⁵ Producers Ex. A-1 (Psencik Test.) at 11-15 (discussing several factors, including: short-haul tariffs to alternative carrier, capital costs to alternative carrier, shipper history, spot rate, proration policies, line fill policies, demurrage, storage, fractionation, and commercial trading contracts.).

¹⁵⁶ See Hearing Tr. (March 29, 2017) at 96-99 (Heim testifying, cross examination by Pioneer's counsel) ("Q: Mr. Heim, could you explain for us what the role of shipper history is if you...or any other shipper were to look at changing pipelines to move from a pipeline where you have shipper history to one where you did not have any shipper history? A: If you had a curtailment on a pipe...and you were curtailed and you had shipper history on that pipeline, if your plant was fortunate to have multiple connections to NGL pipelines, if you don't have a shipper history on that other pipeline that pipe may or may not use shipper history for the ability to get into it. But if the pipe is full and it uses shipper history you would be like a walk-up shipper with a new nomination and the most you could – all new shippers in aggregate could get would be 10 percent of that common carrier pipeline's capacity.").

¹⁵⁷ *Id.*

¹⁵⁸ See WTXP Ex. 01 (King Test.) at 6 ("During the past decade, oil and natural gas production [in Texas] has increased significantly... NGL production associated with this increased activity in the Permian Basin, Barnett Shale, and Haynesville Shale created an increase in demand by shippers for NGL transportation services, not only on WTXP, but on other NGL pipelines as well.").

¹⁵⁹ See Hearing Tr. (March 29, 2017) at 100 (Heim testifying, cross examination by Pioneer's counsel) ("It would cost me approximately seven and a half million dollars to go loop a line between [the Chico and Shackelford] systems in order to take all the gas that is currently being delivered to the Shackelford plant for processing.").

¹⁶⁰ Producers' Ex. A-1 (Psencik Test.) at 20; see also Hearing Tr. (March 29, 2017) at 107-108 (Psencik testifying).

VIII. COMMISSION-ADJUSTED RATES

Should the Commission accept the above findings and recommendation that WTXP's July 1, 2015 rates were improper, the Commission must adjust those rates to appropriate amounts.

A. Market-Based (Competitive) Method is Appropriate

Commission Rule § 7.7005 (Authority to Set Rates) requires the Commission to "consider all relevant factors" in determining whether to use a cost-of-service (fair return) method or a market-based (competitive) method to set adjusted rates for WTXP.¹⁶¹ Based on the below factors, a market-based (competitive) method is appropriate and recommended.

- 1. The legal standard for market-based common carrier rates is extremely broad and flexible.*

To be market based under Texas law, intrastate common carrier rates need only be competitive. Such a broad term allows for significant situational flexibility and discretion by the Commission. The Commission may impose certain prerequisites or restrictions for setting competitive rates, but the Legislature has not done so and neither has any Texas court.

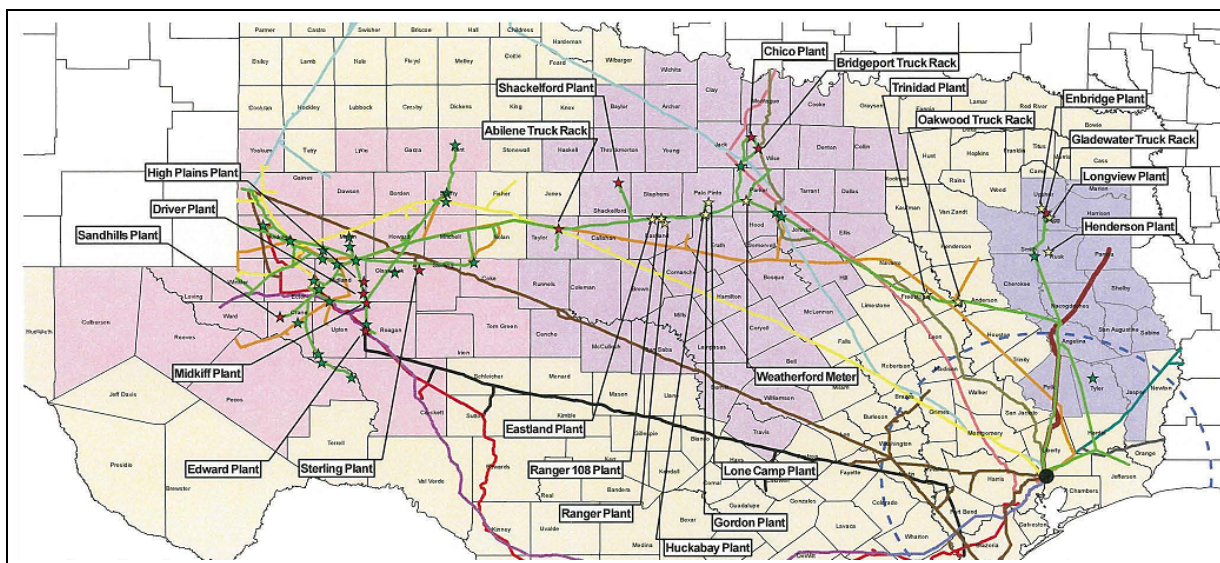
"Competitive" may be construed as broadly or narrowly as the Commission determines appropriate, so long as the Commission's construction is reasonable.¹⁶² If a statute can be reasonably read as the enforcing agency has ruled, then courts are bound to accept that interpretation even if other reasonable interpretations exist.¹⁶³ Just as the Commission, in its discretion, may choose to set cost-of-service (fair return) rates in a highly competitive market, it also may—if circumstances warrant—establish what it considers to be competitive rates for isolated origin points. Here, the evidence establishes that origin points in or near the Permian Basin, Barnett Shale, and Haynesville Shale markets are hardly isolated—multiple pipelines serve each market, transporting Y-grade NGLs to Mont Belvieu, and multiple options are available to meet transportation needs. The below map¹⁶⁴ shows these markets, WTXP's origin points, and other pipelines transporting NGLs to Mont Belvieu.

¹⁶¹ Commission Rule § 7.7005(f) ("In determining whether to use a cost-of-service method or a market-based method to set rates for transportation or gathering service, the Commission will consider all relevant factors in a formal rate proceeding.").

¹⁶² *Verizon Bus. Network Services, Inc. v. Combs*, No. 07-11-0025-CV, 2013 WL 1343530, at *5 (Tex. App.—Amarillo Apr. 3, 2013, pet. dismissed) (citing *First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 632 (Tex. 2008)).

¹⁶³ *Verizon Bus. Network*, 2013 WL 1343530, at *5; see also *Sw. Bell Tel. Co. v. Combs*, 270 S.W.3d 249, 260 (Tex. App.—Amarillo 2008, pet. denied) ("If there is vagueness, ambiguity, or room for policy determinations in a statute or regulation, we normally defer to the agency's interpretation unless it is plainly erroneous or inconsistent with the language of the statute, regulation, or rule.").

¹⁶⁴ Joint Ex. 01 (Watson Test.), Exhibit JLW-8 (map).



If rates cannot be set under some colorable definition of “competitive” here, the Commission’s market-based ratemaking authority may never leave the shelf. Presumably, the Legislature intended for its laws to be used. Section 81.061 (Authority to Establish Market-Based Rates)¹⁶⁵ and Section 111.184 (Discretion of Commission)¹⁶⁶ give the Commission the authority to set competitive rates, without restrictions, and the flexibility to decide what “competitive” means.

2. Substantial evidence exists in the record to set competitive rates.

Though WTXP failed to justify its challenged rate amounts on a market-based (competitive) method, substantial evidence exists for the Commission to establish competitive rates. The existence of other pipelines, their locations, and the July 1, 2015 rates they charged for uncommitted Y-grade transportation to Mont Belvieu are undisputed facts in the record. Substantial evidence supports that at least one other pipeline nearby to WTXP charged rates that captured substantially the same thing WTXP provided. As treated below, these amounts are competitive rates for WTXP. The Commission is not required to exhaust itself with wasteful attempts at perfection or to explore every possible competitive rate.¹⁶⁷ Once any competitive rate is known, the Commission has done its job.

¹⁶⁵ Tex. Nat. Res. Code § 81.061(b) (“The commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.”).

¹⁶⁶ *Id.* § 111.184 (“The commission has reasonable latitude in establishing and adjusting competitive rates.”).

¹⁶⁷ See *Morgan Express, Inc. v. R.R. Com’n of Texas*, 749 S.W.2d 134, 137 (Tex. App.—Austin 1987, writ denied) (“Wasteful and fruitless attempts at perfection are neither expected nor required [of the Railroad Commission] in ratemaking”).

3. *None of WTXP's competitors had Commission-established cost-of-service rates from July 1, 2015, to the present.*

In addition to legal authority and a sufficient evidentiary record, fairness to WTXP is a relevant factor that strongly supports establishing competitive rates. None of WTXP's competitors in these three production markets had Commission-established cost-of-service rates from July 1, 2015, to the present. Formal common carrier rate proceedings are rare in Texas, with rates almost exclusively determined by market participants and forces outside the Commission's walls. Since July 2015, the rates of other intrastate NGL pipelines in these markets were determined by market participants, not the Commission. To single out WTXP with cost-of-service rates during this same time period is unfair and unnecessary.

B. Recommended Adjustments

Wasteful and fruitless attempts at perfection are neither expected nor required of the Commission in ratemaking.¹⁶⁸ As treated above, Texas common carrier rates are market based if they are competitive. The focus is on the *rates*, not the pipelines or markets.¹⁶⁹ For substantially similar rate amounts to be competitive, what is captured by the rates also must be substantially similar.

The Commission-adjusted rate amounts must be supported by the evidence in the record, but the Commission is not required to choose specific rate amounts or approaches used by parties. Here, although Targa and ELTM support using a market-based method, their recommended rates do not follow their recommended approach. Rather than considering the July 2015 rates of older pipelines, Targa and ELTM primarily ask the Commission to adjust WTXP's rates to the canceled pre-July 2015 amounts, or alternatively to the canceled pre-July 2015 amounts but increased using FERC indexing. Neither of these proposals considers the rates of other pipelines or has anything to do with competition. Though a very flexible legal standard, "competitive" presumably warrants considering the rates of at least one competitor.

¹⁶⁸ *Id.*

¹⁶⁹ Tex. Nat. Res. Code § 111.184 (Discretion of Commission) ("*competitive rates*") (emphasis added).

The ALJ and Technical Examiner used a methodical approach to determine competitive rates for WTXP for July 1, 2015, given the existing evidentiary record. *First*, pipelines with rates requiring no adjustments were identified. *Second*, of these pipelines, the one geographically near WTXP's origin points was identified. *Third*, the highest remaining rate amount was selected.

1. Pipelines With Rates Requiring No Adjustments

The evidence supports that the below pipelines had July 1, 2015 rates that captured substantially what WTXP provided.

- From the Permian Basin:
 - Seminole Pipeline (153.93)
 - Chaparral Pipeline (118.92, 117.06, 115.24, 114.46)
 - SouthTex 66 Pipeline (146.01)
- From the Barnett Shale:
 - Chaparral Pipeline (115.24)
 - SouthTex 66 Pipeline (135.26)
- From the Haynesville Shale:
 - Panola Pipeline (131.90, 92.46)

The evidence supports that the July 1, 2015 rates, noted above, of these pipelines captured uncommitted intrastate transportation of Y-grade to Mont Belvieu, and did not capture recoupment of any significant new/expansion infrastructure costs.¹⁷⁰

Seminole Pipeline's rate of 219.05 (Permian Basin) and Panola Pipeline's rate of 167.42 (Haynesville Shale) were excluded because they do not reliably meet the above criteria. Seminole Pipeline's rate of 219.05 captures uncommitted transportation of Y-grade to Mont Belvieu, but it appears from the evidence to apply to an origin point in New Mexico.¹⁷¹ It is unclear from the evidence, then, whether NGLs originating from within Texas are shipped under that rate. Panola Pipeline's rate of 167.42 may partially capture recoupment of new expansion costs and therefore may capture more than what WTXP provided. This rate applies to the same five origin points in Panola County as the near identical 168.50 "contract rate," and Panola's tariff speaks to "contract shippers" executing TSAs and facility expansion.¹⁷²

¹⁷⁰ Joint Ex. 01 (Watson Test.), Exhibit JLW-5 (these pipelines were placed in service before 1995).

¹⁷¹ See Joint Ex. 01 (Watson Test.), Exhibit JLW-20 (Seminole Pipeline RRC Tariff 36.3.0), at 6 (rate 219.05 applies only to Linam Ranch origin), and *id.* (Chaparral Pipeline FERC Tariff 12.12.0), at 8 (listing "Linam Ranch" twice among New Mexico origin points).

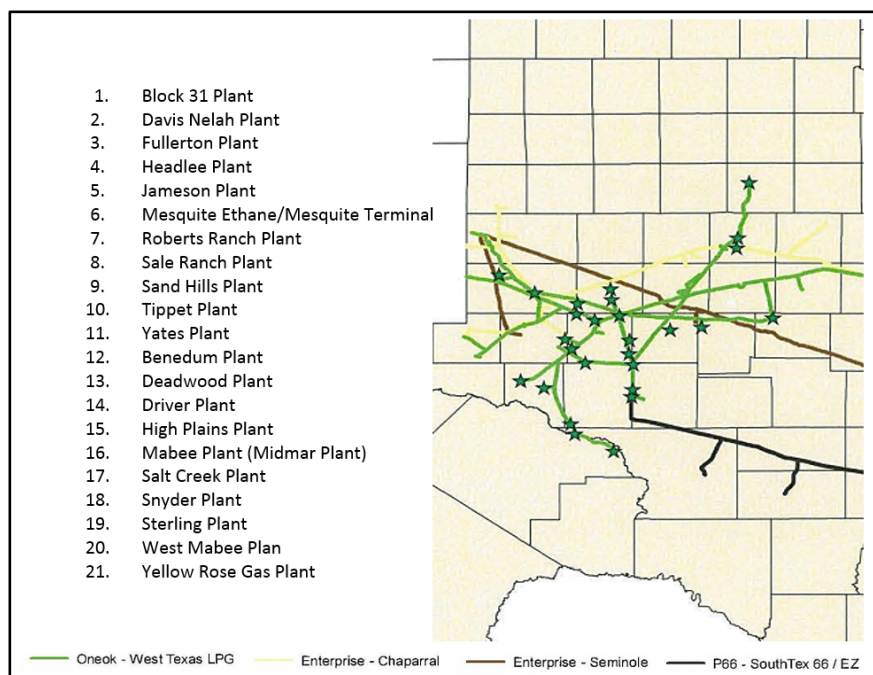
¹⁷² See WTXP Ex. 04 (Van Hoecke Test.), Attachment D, pp. 55-67 (Panola Pipeline RRC Tariff 32.2.0) (rate 167.42 applies to the same five origin points in Panola County as the near identical 168.50 "contract rate" (pp. 2-3), and the tariff speaks to "contract shippers" executing TSAs and facility expansion (p. 6)).

Evidence also supports that the July 1, 2015 rates of these pipelines captured substantially the same level of performance provided by WTXP. Much of the criticism by Targa and ELTM related to availability, not reliability, and many of the reliability problems discussed occurred prior to 2015 under different ownership. ELTM Witness Reed, a commercial executive, joined ELTM's parent in September 2015, and therefore his testimony on the specific issue of WTXP's operational performance in July 2015 was given less weight. Targa Witness Heim served in executive operations positions for Targa's parent in July 2015 and the ten years prior, and his testimony supports that WTXP performed comparable to other "legacy" pipelines and that WTXP's reliability improved significantly after 2014 under the new ownership and operation of ONEOK.¹⁷³

2. Pipelines Geographically Near WTXP's Origin Points

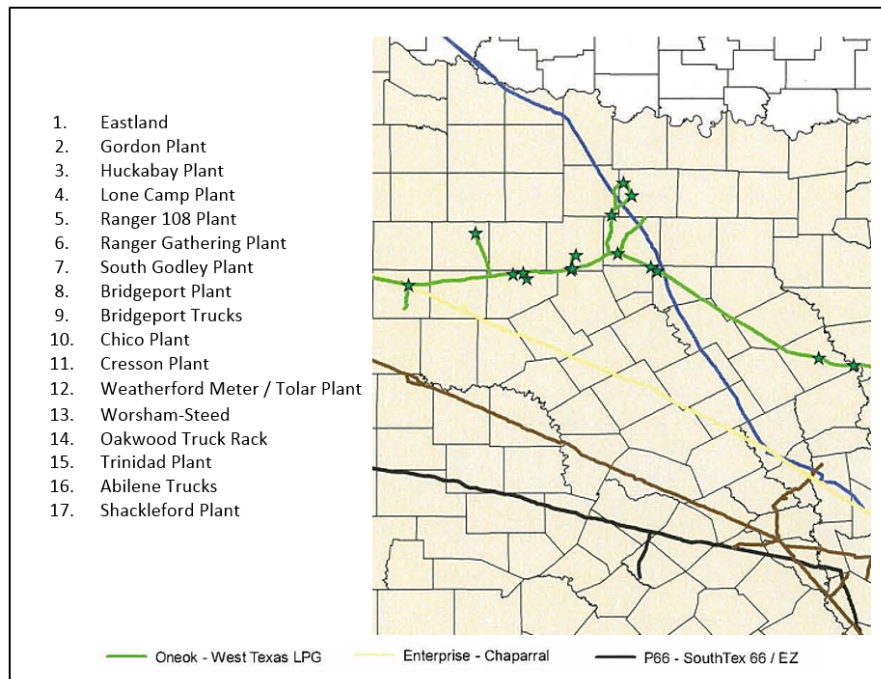
WTXP's approach of looking at rates charged by nearby pipelines was reasonable. Though WTXP failed to make needed adjustments for the pipelines it selected, the same approach can be used to identify the nearest of the above pipelines with rates requiring no adjustments.

From WTXP's origin points in or near the Permian Basin, the Seminole Pipeline (brown), Chaparral Pipeline (yellow), and SouthTex 66 Pipeline (black) all are geographically near WTXP's origin points.

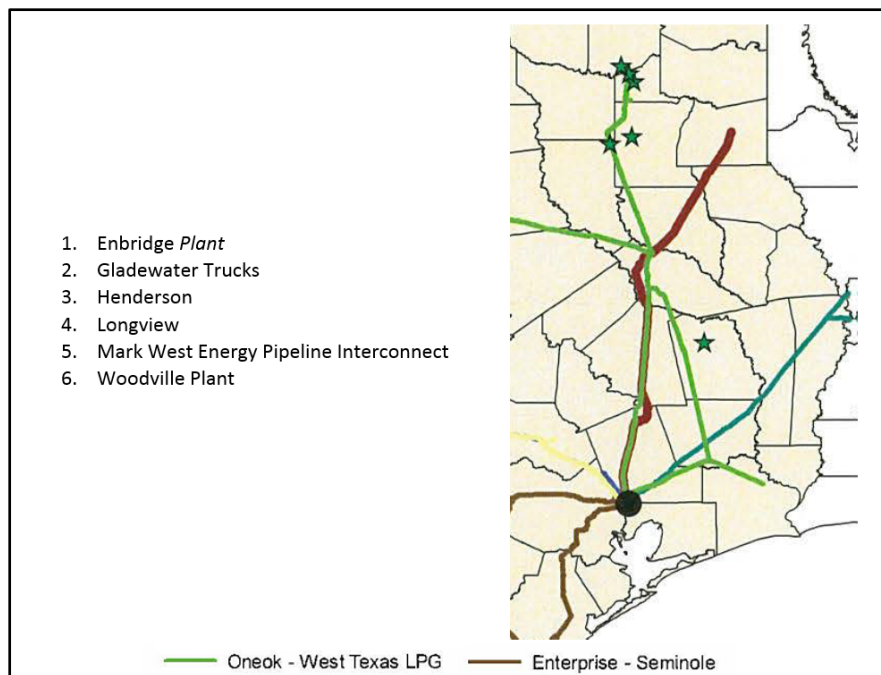


¹⁷³ Hearing Tr. (March 29, 2017) at 15-16, 87 (Heim testifying, cross examination by WTXP's counsel).

From WTXP's origin points in or near the Barnett Shale, the Chaparral Pipeline (yellow) is geographically near WTXP's origin points. *(disregard the blue and brown lines, which represent pipelines that do not meet the above criteria)*



From WTXP's origin points in or near the Haynesville Shale, the Panola Pipeline (red) is geographically near WTXP's origin points.



3. Highest Remaining Rate Amounts

Credible evidence supports that WTXP performed substantially as well as the above pipelines, and so the highest remaining July 1, 2015 rate is an appropriate competitive rate for WTXP. Whether the pipelines charging these rates actually had available capacity on July 1, 2015, is immaterial. These rate amounts reflect the value of the transportation provided, regardless who paid it.

From the Permian Basin, the highest remaining rate amount is 153.93, charged by the Seminole Pipeline. This is a competitive July 1, 2015 rate for WTXP for the below origin points within, or near, the Permian Basin.

| | | | WTXP | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | | PFD | |
|--------------|-------------------------------------|-----------|------------------|--------------|---------|----------------------------------|---------|--------|-----------|
| Origin Point | | County | Canceled Rate | July 1, 2015 | Primary | Alternate | Primary | | Alternate |
| 1 | Block 31 Plant | Crane | 113.05 | 304.91 | 113.05 | 117.44 | 90.61 | 113.05 | 153.93 |
| 2 | Davis Nelah Plant | Crocket | | | | | | | |
| 3 | Fullerton Plant | Andrews | | | | | | | |
| 4 | Headlee Plant | Midland | | | | | | | |
| 5 | Jameson Plant | Coke | | | | | | | |
| 6 | Mesquite Ethane (Mesquite Terminal) | Midland | | | | | | | |
| 7 | Roberts Ranch Plant | Midland | | | | | | | |
| 8 | Sale Ranch Plant | Martin | | | | | | | |
| 9 | Sand Hills Plant | Crane | | | | | | | |
| 10 | Tippet Plant | Crocket | | | | | | | |
| 11 | Yates Plant | Crocket | | | | | | | |
| 12 | Benedum Plant | Reagan | 159.06 | | 159.06 | 165.24 | 127.49 | 159.06 | |
| 13 | Deadwood Plant | Glasscock | | | | | | | |
| 14 | Driver Plant | Midland | | | | | | | |
| 15 | High Plains Plant | Midland | | | | | | | |
| 16 | Mabee Plant (Midmar Plant) | Andrews | | | | | | | |
| 17 | Salt Creek Plant | Kent | | | | | | | |
| 18 | Snyder Plant | Scurry | | | | | | | |
| 19 | Sterling Plant | Sterling | | | | | | | |
| 20 | West Mabee Plant | Andrews | | | | | | | |
| 21 | Yellow Rose Gas Plant | Martin | | | | | | | |

From the Barnett Shale, the highest remaining rate amount is 115.24, charged by the Chaparral Pipeline. This is a competitive July 1, 2015 rate for WTXP for the below origin points within, or near, the Barnett Shale.

| | | | WTXP | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | | PFD | |
|--------------|--|-------------|------------------|--------------|---------|----------------------------------|---------|--------|-----------|
| Origin Point | | County | Canceled Rate | July 1, 2015 | Primary | Alternate | Primary | | Alternate |
| 1 | Eastland | Eastland | 96.79 | 119.09 | 96.79 | 100.55 | 77.58 | 96.79 | 115.24 |
| 2 | Gordon Plant | Palo Pinto | | | | | | | |
| 3 | Huckabay Plant | Palo Pinto | | | | | | | |
| 4 | Lone Camp Plant | Palo Pinto | | | | | | | |
| 5 | Ranger 108 Plant | Eastland | | | | | | | |
| 6 | Ranger Gathering Plant | Eastland | | | | | | | |
| 7 | South Godley Plant | Johnson | | | | | | | |
| | | | | | | | | | |
| 8 | Bridgeport Plant | Wise | 96.79 | 172.22 | 96.79 | 100.55 | 77.58 | 96.79 | |
| 9 | Bridgeport Trucks | Jacks | | | | | | | |
| 10 | Chico Plant | Wise | | | | | | | |
| 11 | Cresson Plant | Hood | | | | | | | |
| 12 | Weatherford Meter (Station) Tolar Plant | Parker | | | | | | | |
| 13 | Worsham - Steed | Jack | | | | | | | |
| 14 | Oakwood Truck Rack | Freestone | | | | | | | |
| 15 | Trinidad Plant | Freestone | | | | | | | |
| | | | | | | | | | |
| 16 | Abilene Trucks | Taylor | 113.05 | 304.91 | 113.05 | 117.44 | 90.61 | 113.05 | |
| 17 | Shackleford Plant | Shackleford | | | | | | | |

From the Haynesville Shale, the highest remaining rate amount is 131.90, charged by the Panola Pipeline. This is a competitive July 1, 2015 rate for WTXP for the below origin points within, or near, the Haynesville Shale.

| | | | | WTXP | Targa, ELTM | | Pioneer, OEMI, ConocoPhillips | | PFD |
|--------------|--|--------|---------------|--------------|-------------|-----------|-------------------------------|-----------|--------|
| Origin Point | | County | Canceled Rate | July 1, 2015 | Primary | Alternate | Primary | Alternate | |
| 1 | Enbridge Plant | Upshur | 96.79 | 156.91 | 96.79 | 100.55 | 77.58 | 96.79 | 131.90 |
| 2 | Gladewater Trucks | Upshur | | | | | | | |
| 3 | Henderson | Rusk | | | | | | | |
| 4 | Longview | Gregg | | | | | | | |
| 5 | Mark West Energy Pipeline Interconnect | Rusk | | | | | | | |
| 6 | Woodville Plant | Tyler | 100.55 | | 100.55 | 104.46 | 80.59 | 100.55 | |

C. Effective Date

The proper effective date is determined by which of the Common Carrier Act's two refund statutes applies—Section 111.186 (Reparation and Reimbursement) or Section 111.187 (Reimbursement of Excess Charges). Here, Section 111.187 applies. Therefore, the proper effective date is August 11, 2015—when the first complaint was filed.

Section 111.186 vs. Section 111.187

Section 111.186 (Reparation and Reimbursement) applies to applications by pipelines governed by Section 111.189 (Hearing and Determination of Rates), where pipelines request that the Commission establish their new rate amounts for them. Section 111.186 requires:

If rates have been filed, each shipper who pays these filed rates is entitled to reparation or reimbursement of all excess rates or transportation charges paid over and above the rate that is finally determined on the shipments.¹⁷⁴

Section 111.187 (Reimbursement of Excess Charges) applies to complaint-initiated adjustment proceedings, such as this one, governed by Section 111.190 (Hearings to Adjust Rates). Section 111.187 is slightly different:

If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.¹⁷⁵

The key difference between these two refund statutes is that Section 111.186 (Reparation and Reimbursement) requires refunds to shippers dating back to when the rates were implemented, whereas Section 111.187 (Reimbursement of Excess Charges), which specifically speaks to complaints initiated by shippers, requires refunds to shippers dating back to when the first complaint is filed. In other words, when pipelines increase rates on their own without involving the Commission, the Legislature allows pipelines to keep all returns for the period its rates remain unchallenged, even if the Commission ultimately determines those rate amounts to be improper.

¹⁷⁴ Tex. Nat. Res. Code § 111.186 (Reparation and Reimbursement).

¹⁷⁵ *Id.* § 111.187 (Reimbursement of Excess Charges).

Section 111.187 Applies Here

Here, Section 111.187 (Reimbursement of Excess Charges) applies. While both statutes speak to refunds owed to shippers, they require different effective dates and therefore are not interchangeable. When construing a statute, the words the Legislature chooses are the surest guide to legislative intent.¹⁷⁶ Here, only Section 111.187 speaks to complaints by shippers. Where possible, statutes must be construed so as to harmonize all relevant laws, not create conflict.¹⁷⁷ Here, the Common Carrier Act provides for two different types of rate proceedings—applications by pipelines (Section 111.189) and complaints by shippers (Section 111.190)—and two different refund statutes. One of the refund statutes (Section 111.187) expressly speaks to shipper complaints. Therefore, Section 111.187 applies to this proceeding—a complaint-initiated adjustment proceeding.

In sum, Section 111.187 (Reimbursement of Excess Charges) applies here and requires that any Commission-adjusted rates be effective starting August 11, 2015—the date Targa filed the first complaint.

D. Future Rates

As already explained, the rates adjusted in this proceeding will become WTXP's past rates, not its future rates. Should WTXP choose to continue charging the Commission-adjusted rate amounts after this docket ends, the rates then belong to WTXP, not the Commission.

Complainant ConocoPhillips asks that the Commission “order that the rates it sets in this docket be observed until changed by order of the Commission.”¹⁷⁸ This constitutes extraordinary relief that the Commission should deny. Even if the law permits the Commission to create a separate regulatory scheme for just one pipeline, there is no cause to do so for WTXP. Breaking from convention by increasing its rates in a manner other than FERC indexing was not illegal or improper, and this is not an enforcement case.

The Commission should deny this requested relief.

¹⁷⁶ *Valley Baptist*, 295 S.W.3d at 410 (quoting *Entergy*, 282 S.W.3d at 437).

¹⁷⁷ *Valley Baptist*, 295 S.W.3d at 410-11 (quoting *Rodriguez v. Texas Workforce Com'n*, 986 S.W.2d 781, 783 (Tex. App.—Corpus Christi 1999, pet. denied)).

¹⁷⁸ ConocoPhillips Company's Closing Statement, filed May 4, 2017 (“ConocoPhillips Br.”) at 31.

IX. REQUIRED REIMBURSEMENTS

The adjusted rates established by the Commission will be WTXP's past rates, not its future rates. Though the adjusted rates are based on what was proper on July 1, 2015, they are effective beginning August 11, 2015—when the first complaint was filed.¹⁷⁹ While perfection is not required of the Commission in adjusting rates, and a wide range of competitive rate amounts may be possible, reimbursements are not discretionary. The Commission must authorize (A) reimbursement to shippers of excess charges made after August 11, 2015, and (B) reimbursement to WTXP of any underrecovery after March 8, 2016.

A. Reimbursement to Shippers

As treated above, the governing hearing statute is Section 111.190 (Hearings to Adjust Rates), and the refund statute tied to Section 111.190 is Section 111.187 (Reimbursement of Excess Charges). Section 111.187 entitles WTXP's affected shippers to reimbursement of rate amounts paid after August 11, 2015—the date the first complaint was filed—in excess of the Commission's adjusted rates:

If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.¹⁸⁰

The statute is silent on timing and whether refunds should include interest. Regarding interest, the intent of the above language appears to be to make shippers whole for overpayments.¹⁸¹ Therefore, the Commission should require that any refunds to shippers include interest. Regarding timing, the Commission should balance the interests of the shippers and WTXP, and allow for reasonable flexibility. It is reasonable to allow WTXP up to 12 months after the Final Order to make all required refunds—with interest—to affected shippers, and then file with the Oversight and Safety Division a compliance certification, attesting that all required reimbursements have been made. To protect sensitive business information, the certification need not include specific customer names or reimbursement amounts.

¹⁷⁹ See Tex. Nat. Res. Code § 111.187 (Reimbursement of Excess Charges).

¹⁸⁰ *Id.*

¹⁸¹ See *Verizon Bus. Network*, 2013 WL 1343530, at *5 (citing *McIntyre v. Ramirez*, 109 S.W.3d 741, 745 (Tex. 2003)) (the primary objective when construing a statute is to ascertain and give effect to the Legislature's intent).

B. Reimbursement to WTXP

Underrecovery by WTXP during the course of this proceeding that is below the amounts established by the Commission is the lawful property of WTXP. By requiring reimbursement of excess charges to shippers beginning August 11, 2015, the Legislature makes the adjusted rates effective on that date.¹⁸² If the adjusted rates are effective for shippers on August 11, 2015, they also must be effective for WTXP.

On March 8, 2016, the Commission approved an interim appeal to lower WTXP's rates for the remainder of this proceeding to pre-July 2015 amounts.¹⁸³ Once this case concludes, WTXP is free to file a new tariff and charge new rates moving forward. If WTXP is not allowed to make itself whole for any underrecovery after its rates were lowered on March 8, 2016, then that interim action by the Commission could render the final adjusted rates inconsequential after that date because they may never be paid by anyone.

This is not a gas utility rate case and "regulatory lag" is inapplicable here. Unlike gas utilities, common carriers in Texas can begin charging increased rates without first obtaining regulatory pre-approval. The Texas Supreme Court defines regulatory lag as "the delay between the time when a utility's profits are above or below standard and the time when an offsetting rate decrease or rate increase may be put into effect by commission order or otherwise."¹⁸⁴ "This delay is due to the inherent inability in the regulatory process to allow for immediate rate decreases or increases."¹⁸⁵ Here, WTXP increased its rates on July 1, 2015. The Commission now is reviewing and adjusting already-increased challenged rates, not prospective rates. Therefore, regulatory lag does not apply.

The Commission should allow WTXP to collect reimbursement for underrecovery from the shippers who received transportation services valued in excess of the rates actually paid. As with refunds to shippers, discussed above, any reimbursements owed to WTXP should include interest. As with refunds to shippers, a 12-month recovery period is reasonable for WTXP to collect reimbursement, and collection should not begin until after WTXP provides all affected shippers with a copy of the Commission's Final Order.

¹⁸² See Tex. Nat. Res. Code § 111.187 (Reimbursement of Excess Charges) ("If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.").

¹⁸³ Order on Interim Appeals, signed by the Commissioners on March 8, 2016 (ordering that "WTXP's rates in effect prior to July 1, 2015, are lawful rates for the duration of this docket unless changed by Commission order.").

¹⁸⁴ *State v. Pub. Util. Com'n of Texas*, 883 S.W.2d 190, 193 n3 (Tex. 1994).

¹⁸⁵ *Id.*

X. CHALLENGED TARIFF TERMS

Pioneer and ConocoPhillips challenge a tariff term relating to WTXP's rates—"Item No. 100 – Incentive Programs"—first appearing in Tariff 2.7.0, and a notice—first appearing in Tariff 2.8.0—indicating WTXP's intent to collect from shippers any underrecovery resulting from this docket. Though tariff terms were including in the scope of the Notice of Hearing, no parties at the Hearing introduced any evidence relating to the properness—or impropriety—of this challenged notice and term.

WTXP's refund language states:

Pursuant to the Texas Railroad Commission's Order on Interim Appeals issued March 8, 2016, in consolidated Gas Utilities Docket No. 10455, the "rates in effect prior to July 1, 2015, are lawful rates for the duration of this docket unless changed by Commission order" (Ordered Rates). If the Commission establishes new higher rates in the docket, either by approving the rates filed on July 1, 2015 or establishing other higher rates (New Rates), WTXP will collect from each shipper the difference between the applicable Ordered Rates and New Rates for each barrel shipped during the period March 8, 2016 through the effective date of the New Rates.¹⁸⁶

This language is a notice of possible future action, not an operative term speaking to existing tariff obligations, and ordinary notices typically are not actionable. Therefore, the Commission should dismiss the complaints challenging this language.

WTXP's "Item No. 100 – Incentive Programs" tariff term, first appearing in Tariff 2.7.0 and first challenged by Pioneer on January 7, 2016,¹⁸⁷ states:

Item No. 100 – Incentive Programs

Carrier reserves the right, but does not have the obligation, to enter into negotiated rates, terms and conditions with Shipper. Such rates, terms and conditions may be determined by, but are not limited to, such factors as rate, duration, volumes, points of origin, points of delivery, available capacity, minimum quantities, creditworthiness and ship or pay commitments. Any agreement reached between the Carrier and Shipper will be contained in an executed transportation agreement and will not be included as part of the Rate Sheet herein.¹⁸⁸

¹⁸⁶ Pioneer Second Supp. Compl., Appendix A (Letter from ONEOK to the Commission, dated March 14, 2016, attaching Tariff 2.8.0) at p. 3 of Tariff 2.8.0.

¹⁸⁷ Pioneer First Supp. Compl., Exhibit A (Letter from ONEOK to the Commission, dated December 30, 2015, attaching Tariff 2.7.0).

¹⁸⁸ *Id.* at p. 3 of Tariff 2.7.0.

No evidence speaking to the properness of this tariff term was introduced at the Hearing. WTXP carried the burden of proof to justify its rate amounts. This ruling¹⁸⁹ was made early in the docket after briefing from the parties on the novel issue of burden of proof in complaint-driven common carrier rate proceedings—briefing filed before this challenged term existed. While no subsequent ruling was made separately assigning the burden of proof for terms challenged, none was needed. Unless the burden of proof is assigned elsewhere, complainants must prove their complaints. Since no evidence on the properness of this term was introduced at the Hearing, the burden of proof was not met and the Commission should dismiss the complaints challenging this tariff term based on insufficient evidence. The Commission should clarify that its dismissal is based on insufficient evidence only and is not a substantive determination that the term is proper. Alternatively, should the Commission want to fully consider and determine the properness of this term, the recommendation is to sever this specific complaint into a separate docket.

XI. CONCLUSION

The Administrative Law Judge and Technical Examiner recommend that the Commission adopt the attached Proposed Final Order, which:


- partially sustains the complaints of Targa, Pioneer, ConocoPhillips, and ELTM;
- adjusts WTXP's challenged July 1, 2015 rates to competitive amounts recommended herein, made effective from August 11, 2015;
- requires WTXP to reimburse affected shippers all excess charges made after August 11, 2015, as recommended herein;
- authorizes WTXP to collect underrecovery occurring after March 8, 2016, from shippers who received transportation services valued in excess of the rates actually paid, as recommended herein; and
- dismisses complaints of tariff terms based on insufficient evidence.

¹⁸⁹ Examiners' Letter No. 11 (Rulings on Preliminary Issues and Pending Motions), issued January 22, 2016, at 9 (Ruling No. 4: Burden of Proof) ("WTXP alone with carry the ultimate burden of proof *in the adjustment hearing.*") (emphasis added).

XII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Findings of Fact and Conclusions of Law contained in the Proposed Final Order, issued contemporaneously with this Proposal for Decision, are incorporated herein by reference.

SIGNED September 29, 2017.



John Dodson
Administrative Law Judge



Rose Ruiz
Technical Examiner