ANSWER OF EL PASO NATURAL GAS COMPANY, L.L.C.
TO THE MOTION OF THE EL PASO MUNICIPAL CUSTOMER GROUP


The Commission should reject EPMCG’s outrageous attempt to reopen this complex proceeding to adjust the cost of service the Commission has approved after hearing and extensive litigation to take into account a change in one cost component occurring almost seven years after the end of the test period. Movant has utterly failed to demonstrate the extraordinary circumstances required by Commission precedent to reopen this record. In the circumstances of this case, the need for finality and repose clearly outweighs any interest in reopening the record to inequitably reduce El Paso’s

rates on the basis of a selective decrease in one cost component. EPMCG’s request flies in the face of clear Commission precedent prohibiting such a selective change. Indeed, EPMCG’s motion is even more egregious coming almost seven years after the end of the test period during which time other cost and revenue components of El Paso’s rates have changed significantly as well. The Commission should soundly reject EPMCG’s motion.

I. Background

On September 30, 2010, El Paso filed a general, system-wide rate case proposing new services, a rate increase and a change in certain terms and conditions of service.2 The base period used to determine El Paso’s rates in this proceeding was the twelve months ending June 30, 2010, adjusted for various known and measurable changes occurring over a nine month period (adjustment period) ending March 31, 2011.3 As relevant to the issues raised by the Motion, this twenty-one month period is defined by the Commission’s regulations as the “test period”4 although it is common in the industry to also refer to the last twelve months of the twenty-one month period as the test period or test year. Similar to most section 4 natural gas rate cases under the Commission’s jurisdiction, the test period ended on March 31, 2011, the day before the new rates became effective.5 The Commission accepted and suspended El Paso’s proposed primary tariff records, subject to refund, effective April 1, 2011.6

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This proceeding has been highly contentious. An initial decision was issued on June 18, 2012 after almost three months of hearing conducted from October 25, 2011 through December 14, 2011.\(^7\) The evidentiary record was closed on January 17, 2012.\(^8\) On October 17, 2013, the Commission issued Opinion No. 528 on exceptions to the initial decision including all cost of service issues.\(^9\) The federal income tax allowance was not contested by any participant and therefore was not raised as an issue for Commission decision.\(^10\) In addition, the Commission in Order No. 528 found that the record was not sufficient to resolve certain issues relating to Article 11.2(b) of a settlement entered into by El Paso and its shippers in 1996. Consequently, the Commission remanded these Article 11.2(b) issues and required a supplemental hearing to resolve them. Twelve requests for rehearing of Opinion No. 528 were timely filed.\(^11\)

The supplemental hearing on the Article 11.2(b) issues was conducted on June 4 and 5, 2014. On September 17, 2014, the Presiding Administrative Law Judge issued an initial decision on the remand.\(^12\) The federal income tax allowance was not raised in this supplemental proceeding.

On February 18, 2016, the Commission issued Opinion No. 528-A, which ruled on the requests for rehearing of Opinion No. 528 and on the compliance filing required by that order.\(^13\) The Commission denied rehearing on all issues except one issue relating

\(^8\) See id.
\(^10\) See id.
\(^12\) See El Paso Natural Gas Co., 148 FERC ¶ 63,014 (2014).
to the allocation of discounts (the so-called *Williston* issue).\textsuperscript{14} Opinion No. 528-A also addressed exceptions taken to the initial decision on remand on the Article 11.2(b) issues.\textsuperscript{15} Three rehearing requests of Opinion No. 528-A were filed, including two requests for rehearing of the Commission’s grant of rehearing on the *Williston* issue.

On April 18, 2016, two petitions for review were filed in the United States Court of Appeals for the District of Columbia Circuit. On September 16, 2016, the court consolidated the two appeals and ordered them to be held in abeyance.\textsuperscript{16} An appeal of the Commission’s order issued in a prior El Paso rate case, Docket No. RP08-426-000, has been held by the D.C. Circuit in abeyance as well until the disposition of the requests for rehearing of Opinion No. 528-A.\textsuperscript{17}

Now, almost seven years after the close of the test period in this case, after two hearings, two Commission decisions, including an order on rehearing resolving all cost of service issues, and pending appeals in both this rate case and related issues in El Paso’s prior rate case, EPMCG blithely requests the Commission to reopen the evidentiary record to change El Paso’s rates based on this one post-test period event.

\textsuperscript{14} See id. at PP 1, 11-118.

\textsuperscript{15} See id. at PP 343-381.


\textsuperscript{17} See *El Paso Natural Gas Co. v. FERC*, No. 15-1323 (D.C. Cir. Feb. 21, 2017) (unreported order).
II. Answer

A. EPMCG’S Reliance on Ozark to Change the Rates Adjudicated in These Proceedings Almost Seven Years After the End of the Test Period Is Misplaced

Movant primarily relies on Ozark Gas Transmission System ("Ozark"),18 in support of its extraordinary request to reopen the record almost seven years after the test period in this case for the purpose of changing EPNG’s rates to reflect a change to one cost component. In Ozark, the Commission required the pipeline to adjust its rates to incorporate a tax rate decrease enacted in the Tax Reform Act of 1986.19 Movant points to the Commission’s conclusory statements on rehearing in Ozark that the tax rate reduction was a known change, that it would have a significant impact on Ozark’s rates, and if not taken into account would result in unjust and unreasonable rates. Movant asserts that a decrease in the federal corporate income tax rate from 35% to 21% would similarly render El Paso’s rates unjust and unreasonable.

Remarkably, EPMCG contends (at 3) that Ozark “involved circumstances very similar to those of the instant case.” To the contrary, the factual circumstances of the instant case are vastly different than those in Ozark, and the application of the required comprehensive legal analysis yields a very different outcome.


19 Movant also cites Distrigas of Massachusetts Corp., 42 FERC ¶ 61,225 (1988) (“Distrigas”), stating that the Commission in that case relied on Ozark to require an LNG facility operator to reflect the passage of the 1986 tax cut in its rates after the hearing and the issuance of an initial decision. The inapplicability of Ozark to the instant case applies equally to Distrigas.
The test period in *Ozark* ended on August 31, 1984.\(^{20}\) A hearing was held in December 1984 and the Initial Decision was issued on July 15, 1985.\(^{21}\) The Tax Reform Act of 1986 was enacted into law on October 22, 1986 to become effective on July 1, 1987. On May 16, 1987, before the tax rate reduction went into effect, the Commission issued its order on exceptions to the Initial Decision in Opinion No. 273. At the end of this Opinion, the Commission in a two sentence ruling required Ozark to file revised tariff sheets with an effective date of July 1, 1987 to reflect the federal income tax rate that was to go in effect on that date.\(^{22}\)

In its rehearing order in Opinion No. 273-A, the Commission rejected Ozark’s argument that the tax change could not be implemented absent a hearing under section 5 of the Natural Gas Act (“section 5”). In support of its denial of rehearing on this issue, the Commission relied on its policy of approving tracking mechanisms in unusual circumstances. The Commission stated:

> While the Commission generally does not favor the use of tracking mechanisms, it does so in unusual circumstances. As we noted in Order No. 472, the purchased gas adjustment was necessitated by rapid increases in gas costs, and the GRI tracking mechanism was approved to provide pipelines an incentive to voluntarily support GRI’s research, development, and demonstration budget.\(^{23}\)

As the recitation of the complex procedural history of the instant case above indicates, the facts of this case are substantially different. The test period in Docket No. RP10-1398-000 ended on March 31, 2011. On October 17, 2013, the Commission issued Order No. 528 on exceptions to the Initial Decision, and remanded certain issues to a


\(^{21}\) *Id.*

\(^{22}\) 39 FERC at 61,513.

\(^{23}\) 41 FERC at 61,567 (citations omitted).
second supplemental hearing. After the second hearing was held in June 2015, the Commission issued Order No. 528-A on February 18, 2016. In Order No. 528-A, the Commission granted rehearing of one of its rulings in Order No. 528, which resulted in further rehearing requests and petitions for review. The petitions for review of Order Nos. 528 and 528-A, as well as petitions for review of Order Nos. 517 and 517-A in Docket No. RP08-426, are currently being held in abeyance pending rehearing of Order No. 528-A.

The following comparison of timelines in the two cases illustrates the substantial difference in their procedural posture at the time a tax rate reduction was enacted:

<table>
<thead>
<tr>
<th></th>
<th>Ozark</th>
<th>El Paso</th>
</tr>
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<tbody>
<tr>
<td>End of Test Period</td>
<td>August 31, 1984</td>
<td>March 31, 2011</td>
</tr>
<tr>
<td>Enactment of Tax Act</td>
<td>October 22, 1986</td>
<td>December 22, 2017</td>
</tr>
<tr>
<td>Time Lapse</td>
<td>2 Years, 2 Months</td>
<td>6 Years, 9 Months</td>
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</tbody>
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Thus, in contrast to the facts in Ozark, EPMCG is requesting the Commission to change the rates adjudicated in this proceeding to incorporate the effect of a law enacted almost seven years after the end of the test period, and after not only the Commission's decision on the Initial Decision, but after its order on rehearing which resolved all cost of service issues.24

Moreover, the legal justification relied on by the Commission in Ozark cannot withstand scrutiny and cannot justify the reopening of the record in this proceeding to

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24 It is questionable whether the Commission has the authority to reopen the record after a rehearing order on cost of service issues. Although further requests for rehearing were filed on other issues, which prevent the order from being final for purposes of judicial review, in at least in the D.C. Circuit, no request for rehearing was filed on the tax component of the rates. Thus, the Commission’s resolution of the tax cost component of El Paso’s rates is final.
change one cost component of El Paso’s rates. As the passage quoted above indicates, the Commission in *Ozark* relied on its policy allowing cost trackers, such as purchased gas adjustment ("PGA") and GRI cost trackers, to support its change to one cost component. However, the one-time rate adjustment sought by EPMCG to incorporate a change in one rate component seven years after the close of the test period is not a cost tracker. The PGA and GRI tracking mechanisms cited by the Commission in *Ozark*, as well as currently allowed fuel trackers, allow for changes to single cost items that are passed through to shippers on a *periodic* basis via distinct surcharges that are determined and charged separately from a pipeline’s base transportation rates.

In contrast, tax rates are embedded within a pipeline’s cost of service and changes to such rates would affect several components of the cost of service, including the tax allowance and Accumulated Deferred Income Taxes ("ADIT"). Periodic adjustments to a pipeline’s base transportation rates to reflect changes in tax rates would require recomputations of base rates and have never been allowed or required by Commission policy. In short, Commission policy allowing cost trackers in unusual circumstances such as PGAs and GRI costs provide no justification for a one-time adjustment to a pipeline’s rates long after the end of the test period based on a change in one component of its cost of service such as the federal income tax rate.

*Ozark* is also inconsistent with Commission precedent relating to the circumstances in which it is appropriate to take into account post-test period events in setting rates. For example, the Commission justified its actions in *Ozark* by finding that while the tax change occurred outside of the test period, it is a “known” change that will
have a significant impact on Ozark’s rates. 25 The Commission’s reliance on the tax rate reduction being a “known” change is a non-sequitur. All facts are known at some point in time.

The standard the Commission has applied in other cases to determine whether to adjust rates due to a post-test period event is not simply that the change be known, but rather that the change be known and measurable during the test period, or at least prior to the hearing in the case. 26 In National Fuel Gas Supply Corporation, 27 the Commission required the pipeline to adjust its rates to reflect the 1986 tax rate cut. In that case, however, the Commission relied on the fact that the Tax Reform Act of 1986 was enacted during the test period even though it did not go into effect until after the test period. In subsequent cases, the Commission has distinguished other requests to adjust rates for post-test period changes by holding that the adjustment in National Fuel was allowed because it was known and measurable during the test period or at least prior to the hearing. 28 Where post-test period changes were not known and measurable during the

25 41 FERC at 61,657.
26 To adjust rates to incorporate a post-test period change, the Commission also requires that the adjustment be needed to prevent rates that would be seriously in error. In Ozark, the Commission also failed to quantify the impact of the tax rate reduction on Ozark’s rates to make that determination. This requirement is discussed in Section C, infra.
28 See, e.g., Williston Basin Interstate Pipeline Co., 87 FERC ¶ 61,265, at 62,022 (1999) (change in tax law in Nat’l Fuel was known and certain to occur during test period in contrast to post-test event in Williston that was not known or certain to occur until after the test period); Kern River Gas Transmission Co., 142 FERC ¶ 61,132, at P 189 (2013) (change in tax law in Nat’l Fuel recognized because it had occurred as of the date of the hearing while post-test period change in Kern River had not).
test period or by the hearing, the Commission has not allowed them to be considered in setting rates.\textsuperscript{29}

In sum, \textit{Ozark} is an anomalous opinion that is not supported by any analysis or discussion of Commission standards or precedent, and has been superseded by subsequent case law. \textit{Ozark} is also distinguishable on the facts and should not be followed here.

\textbf{B. EPMCG Has Not Shown Extraordinary Circumstances That Go to the Heart of this Case and Which Outweigh the Need for Finality}

EPMCG has not met the heavy burden it must satisfy to reopen the record for the purpose of admitting evidence at this late stage of the proceeding. Indeed, EPMCG has not even mentioned this standard. In refusing to reopen the record to consider new evidence on rehearing, the Commission has stated:

The Commission has the discretion to reopen the record and consider new evidence on rehearing. However, a party seeking to reopen the record carries a heavy burden: In order to persuade the Commission to exercise its discretion to reopen the record, the requesting party must demonstrate the existence of extraordinary circumstances. The Commission has held that the requesting party must demonstrate a change in circumstances that is more than just material — it must be a change in core circumstances that goes to the very heart of the case. This policy against reopening the record except in extraordinary circumstances is based on the need for finality in the administrative process.\textsuperscript{30}

Quoting from other cases, the Commission continued that:

\begin{itemize}
\item \textsuperscript{29}See \textit{id.}
\end{itemize}
Litigation must come to an end at some point. Hence, the general rule is that the record once closed will not be reopened.\(^{31}\)

In the cited and other cases, the standard was applied to attempts to admit new evidence as part of a rehearing request.\(^{32}\) In the instant case, EPMCG is attempting to reopen the record to admit a post-test period adjustment long after requests for rehearing were filed, and well after the Commission’s order on rehearing. Given the extent of litigation in this case and the almost seven years that have passed since the end of the test period, the need for finality is paramount and greatly outweighs any need to reopen the case for the unreasonable purpose of making one selective change to the cost of service approved in this case.

Clearly, a reduction in tax rate does not “go to the very heart” of this rate case. The tax component is only one of many cost components that comprise the cost of service upon which El Paso’s rates are based. El Paso has estimated that the change in federal corporate income tax rate (holding all other cost components constant) would equate to a cost reduction of approximately 5% of the total cost of service underlying the rates filed by EPNG in compliance with Opinion No. 528-A.\(^{33}\) While the dollar amount of the cost reduction is not insignificant, the standard for reopening the case at this late date is not whether the change is material or even whether the change may be considered

\(^{31}\) Id. at P 17, quoting from Transwestern Pipeline Co., Opinion No. 238, 32 FERC ¶ 61,009 (1985), reh'g denied, Opinion No. 238-A, 36 FERC ¶ 61,175, at 61,453 (1986).


\(^{33}\) Federal taxes are approximately 9% of the total cost of service underlying the rates filed in compliance with the Commission’s orders in this case (the September 15, 2011 rates). Applying a 40% reduction (35%-21%) in the federal tax rate to the 9 percent of the cost of service comprised of federal taxes yields a 3.6% reduction in the total cost of service. Taking into account other impacts, such as the tax-on-tax gross up, yields an approximate 5% cost of service reduction.
substantial – a movant seeking to reopen the record has a heavy burden to show an extraordinary change that goes to the heart of the case, which is not present here.

Another case applying the extraordinary circumstances standard that is extremely analogous to the instant case is *Enbridge Pipelines (KPC).*\(^\text{34}\) There, Enbridge Pipelines KPC (“KPC”) sought to reopen the record less than two years after the end of the test period to take into account the impact of Enron Corporation’s declaration of bankruptcy on the cost of capital underlying the rates. KPC’s motion was opposed, *inter alia,* on the ground that it would be improper to litigate a single cost of service item. The Commission refused to reopen the record, finding that KPC failed to demonstrate extraordinary circumstances that would outweigh the need for finality in the administrative process.\(^\text{35}\) The Commission continued:

> [W]e recognize of course that changes have occurred since the close of the record. But such changes always occur. Yet litigation must come to an end at some point. Hence the general rule is that the record once closed will not be reopened.\(^\text{36}\)

Particularly germane to EPMCG’s motion is the following rationale provided by the Commission in *KPC* for its refusal to reopen the record to consider a change to one cost-of-service item:

> The events for which KPC wishes to introduce testimony took place *long after the test period in this case.* The test period ended January 31, 2000. Enron went bankrupt in November, 2001. As discussed elsewhere in this order, the Commission uses the test period concept in gas ratemaking. If KPC believes that conditions have changed since the end of the test period in this proceeding, then it should file a new rate case. In addition, as the opposing parties assert, it is inappropriate to update only one item of a cost

\(^{34}\) 100 FERC ¶ 61,260 (2002).

\(^{35}\) *Id.* at P 382.

of service. There will have been changes in the other items as well, some of which may decrease the cost of service. Consequently, the Commission will not reopen the record to litigate solely the return on equity.  

Clearly, if a period of less than two years is too long after the end of the test period to justify reopening the record to change one cost of service item, then doing so after almost seven years beyond the test period would be “way too long” after the end of the test period and cannot be permitted.

C. The Exception for Recognizing Post-Test Period Events Does Not Apply in This Case.

The Commission’s regulations require a pipeline’s rates to be based on actual data for a one-year base period, as adjusted to reflect known and measurable changes within the following nine month period. 38 Consistent with that regulation, the Commission will generally reject rate adjustments for projected events that ultimately did not become effective during the test period. 39 The Commission, however, has recognized an exception to this requirement to consider post-test period data when that data demonstrates that projections based on the test period data will be seriously in error. 40

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37 Id. at P 383 (emphasis provided) (citation omitted).


40 Id. (Also noting that post-test period change had not occurred prior to the hearing or the Commission order on the initial decision 142 FERC at 61,632); Accord Portland Natural Gas Transmission Sys., 142 FERC ¶ 61,197, at P 30 (2013) (“Commission generally requires that the post-test period demonstrate that projections based on the test period data will be seriously in error”); (must show that the failure to use post-test period data would impose a significant effect on the pipeline’s rates such that would justify a departure from Commission policy); Enbridge Pipelines (KPC), 102 FERC ¶ 61,310, at 62,040-41 (2003) (post-test period data are used only when test period data would be seriously in error).
This exception does not justify EPMCG’s motion to change El Paso’s rates in this proceeding for several reasons. First, Movant has failed to show that using the test period data will result in serious error if the lower federal corporate income tax rate is not incorporated into El Paso’s rates. The mere fact that the federal corporate income tax rate decreased from 35% to 21% does not in and of itself indicate a serious error. As discussed above, the lower federal corporate income tax rate will decrease El Paso’s cost of service by only approximately 5 percent (holding all other cost components constant).

The Commission has refused to allow post-test changes that had a much greater effect on rates. In Williston Basin Interstate Pipeline Company (“Williston”),\(^4\) for example, the Commission refused to consider a reduction in the pipeline’s throughput that occurred only one to three months after the test period and had a much greater impact on the pipeline’s rates than the recent tax rate reduction. Due to a bypass of its system by two major suppliers, Williston proposed to adjust test period billing determinants for firm service from 24,702,772 Dth to 14,321,628 Dth, and to adjust interruptible throughput from 23,798,619 Dth to 11,340,615 Dth.\(^4\) Thus, taking into account the post-test period bypasses that occurred shortly after the test period would have resulted in about half of the firm billing determinants and IT throughput that occurred in the test period, and rates that could be expected to be about double the rates calculated using test period data.

The Commission refused to adjust Williston’s billing determinants and throughput for the bypasses that indisputably would have resulted in a substantial change to Williston’s rates. On remand from the United States Court of Appeals for the District

\(^4\) 87 FERC ¶ 61,265, at 62,022 (1999).

of Columbia, the Commission found that the bypasses were not known and measurable during the nine-month adjustment period and that taking these post-test period changes into account would be inconsistent with the Commission’s test period regulations for natural gas pipelines. In this case, the recent tax legislation likewise was not known during the 2011 test period and the impact of the federal corporate income tax rate reduction (holding all other cost components unchanged) would be much less than the impact on rates caused by the bypasses in Williston. And, like the proposed adjustment in Williston, the recognition of a change in this one cost component most certainly would be inconsistent with the Commission’s test period regulations.

Similarly, in Kern River Gas Transmission Company, the Commission refused to consider post-test period events that resulted in substantially lower billing determinants. The Commission acknowledged that as a result of shipper decisions not to renew expiring contracts, one category of billing determinants had decreased since the issuance of the order on the initial decision to about 16% of the test period amount. Yet again, the Commission refused to take this post-test period data into account in setting Kern River’s rates. Given the Commission’s recitation of its standard of allowing post-test period events if the rates would otherwise be seriously in error, it must be concluded that the Commission did not find this impact to be sufficient to satisfy this standard.

45 Id. (the Commission stated in footnote 241 that this category represented only 10% of the capacity of Period One contracts; however, the impact on this post-test period change on Kern River’s Period One rates would have been larger than the impact of the recent tax rate reduction on El Paso’s cost of service in this case).
46 Id. at P 187.
The above cases demonstrate the Commission’s unwillingness to consider post-test period data in setting rates where the impact of the post-test period event was far greater than the impact of the recent tax rate reduction. Second, and perhaps more importantly, these cases recite the Commission’s rational policy and prohibition against rate adjustments based solely on a change to one rate component occurring after the test period. The Commission has a “longstanding policy” of prohibiting rate adjustments based on such selective post-test period changes in isolation from other cost and revenue changes.

Permitting a change in rates in this case based on a post-test period event that occurred almost seven years after the end of test period would be even more egregious and, in El Paso’s view, would be unlawful. The more time that passes, the greater the certainty that other cost, revenue or throughput components have also changed. Where the Commission recognizes a post-test period event that changes one cost component

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47 Kern River Gas Transmission Co., 142 FERC ¶ 61,132, at PP 167-8 & 191-2 (2013); Williston Basin Interstate Pipe Line Co., 87 FERC ¶ 61,265 at 62,022 (1999). Cf. Houlton Water Co v. Maine Pub. Serv. Co., 55 FERC ¶ 61,037, at p. 61,110 (1991); Iroquois Gas Transmission Sys., 80 FERC ¶ 61,213, at p. 61,845 (1997) (wherein the Commission recognized the “regulatory policy against piecemeal rate changes”); ANR Pipeline Co., 110 FERC ¶ 61,069, at P 18 (2005) (As a general rule, the Commission “does not permit pipelines to change any single component of their cost-of-service outside of a general section 4 rate case. . . . .A primary reason for this policy is that, while one component of the cost-of-service may have increased, others may have declined. In a general section 4 rate case, all components of the cost-of-service may be considered and any decreases in an individual cost component can be offset against increases in other cost components.); Carolina Power & Light Co. v. FERC, 860 F.2d 1097, 1103 (D.C. Cir. 1988) (“we are not presented with a record supporting the application of a consistent policy treating changes in tax liability per se as warranting dollar-for-dollar spot adjustments in established rates without review of other cost-of-service components.”).


49 If the Commission were to grant EPGMC’s motion, El Paso would surely file another petition for review and the appeal of the Commission’s orders in this docket would be even more complex than it already is.
occurring shortly after the close of the test period, there is a strong probability that other cost and revenue components did not also change substantially during this short timeframe. Thus, in that situation the policy against selective changes may, depending on the circumstances, be outweighed by the need to prevent the setting of rates that would be seriously in error.

But that same assumption cannot be made reasonably seven years after the end of the test period. A change in one component seven years later would be unreasonable and unlawful because it is virtually certain that other rate components have also changed substantially. For example, on December 20, 2016, the Commission's Office of Enforcement accepted El Paso’s proposed elimination of its accumulated deferred income tax (“ADIT”) balance as of November 26, 2014 that was required due to a step-up in tax basis of El Paso’s assets, and the resulting elimination of the difference between the book and tax basis of these assets. This reduction in ADIT would increase the total cost of service reflected in El Paso’s compliance filing in this case by approximately 10% (holding all other cost components constant). Thus, the Commission’s “seriously in error” standard makes little sense as time passes and all rate components change. In these circumstances, it is EPMCG’s request to cherry-pick and adjust one cost component that would result in rates that are seriously in error because the rate would not take into


51 The elimination of the test period ADIT balance would increase El Paso’s rate base by 24 percent. The pre-tax return on El Paso’s rate base comprises 41 percent of the total cost of service. Therefore, a 24% increase to the 41% of cost of service represented by the pre-tax return would result in an approximate 10 percent increase in the cost of service. See Enbridge Pipelines (KPC), 100 FERC ¶ 61,260, at PP 151-72 (2002) for a discussion of the rate treatment of such ADIT adjustments. Under the Movant’s theory, El Paso’s rates should be increased effective no later than December 20, 2016.
account all of the other changes that occurred over the last seven years. Consequently, in
the context of this case, denying EPMCG’s motion to make the requested selective
adjustment is necessary to prevent the establishment of rates that are seriously in error.

Finally, FERC has an ongoing process under which it reviews pipeline rates based
on information of the FERC Form No. 2 to determine if the initiation of a complaint
proceeding under section 5 is warranted. Moreover, a petition was filed by shippers
requesting the Commission to initiate industry-wide show cause proceedings on the basis
of the reduction in the federal corporate income tax rate is pending. Any effect of the
decrease in the federal corporate income tax on El Paso’s rates will be considered in
those reviews along with the other information in the FERC Form No. 2. The
Commission should utilize these procedures to assess the impact of this tax reduction on
pipeline rates and deny EPMCG’s motion to adopt an inequitable, unreasonable and
unlawful single cost adjustment in EPNG’s pending 2011 rate case.

52 See Natural Gas Pipeline Co. of America LLC, 129 FERC ¶ 61,158 (2009); N. Natural Gas
Co., 129 FERC ¶ 61,159 (2009); Great Lakes Gas Transmission Ltd. P’ship, 129 FERC ¶ 61,160
(2009); Kinder Morgan Interstate Gas Transmission LLC, 133 FERC ¶ 61,157 (2010); Ozark Gas
Transmission, L.L.C., 133 FERC ¶ 61,158 (2010); Bear Creek Storage Co., 137 FERC ¶ 61,134
(2011); MIGC LLC, 137 FERC ¶ 61,135 (2011); ANR Storage Co., 137 FERC ¶ 61,136 (2011);
Wyoming Interstate Co., 141 FERC ¶ 61,117 (2012); Viking Gas Transmission Co., 141 FERC ¶
61,118 (2012); Tuscarora Gas Transmission Co., 154 FERC ¶ 61,030 (2016); Empire Pipeline,
Inc., 154 FERC ¶ 61,029 (2016); Iroquois Gas Transmission Sys., L.P., 154 FERC ¶ 61,028
(2016); Columbia Gulf Transmission, LLC, 154 FERC ¶ 61,027 (2016); Wyoming Interstate Co.,
158 FERC ¶ 61,040 (2017); Natural Gas Pipeline Co. of America LLC, 158 FERC ¶ 61,044
(2017).

53 See Industry Petition for Initiation of Show Cause Proceedings Directed to Interstate Natural
Gas Pipelines and Storage Companies, filed in Docket No. RP18-415-000.
E. FERC Must Act Under Section 5 and Cannot Change EPNG's Rates Retroactively.

It is not clear from its motion whether EPMCG is requesting the Commission to act under section 4 or 5 of the Natural Gas Act. However, any change to incorporate a change in the tax rate must satisfy the requirements of section 5. El Paso clearly did not propose to change the tax rate underlying the tax allowance in this case, and any change to this rate component almost seven years later by another participant in the proceeding cannot be fairly characterized as being encompassed within El Paso’s filing under section 4 of the Natural Gas Act. Therefore, the proponent of such a change must satisfy the twin burdens of demonstrating that the existing rate is unjust and reasonable and the new replacement rate is just and reasonable, and any such change can be applied prospectively only. Thus, EPMCG’s request that the Commission require El Paso to develop a separate set of rates to be effective January 1, 2018 would run afoul of section 5. Any adjustment to El Paso’s rates based on an order on EPMCG’s motion could only be applied prospectively from the date of a compliance filing implementing such order.

III. Conclusion

The Commission should reject the Motion as a highly unreasonable attempt to reopen a record that was closed in January 2012 and to adjust rates based on a post-test period event occurring almost 7 years past the end of the test period. Movant has failed

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54 15 U.S.C. § 717d(a) (2012). See Am. Gas Ass’n v. FERC, 428 F.3d 255, 263 (D.C. Cir. 2005) (explaining that under section 5 of the Natural Gas Act the “Commission must demonstrate by substantial evidence that the existing rate or tariff has become unjust or unreasonable, and that the proposed rate is both just and reasonable”); “Complex” Consol. Edison Co. of N.Y., Inc. v. FERC, 165 F.3d 992, 1001 (D.C. Cir. 1999) (“Under Section 5, the Commission must first establish that the . . . existing rate is unjust and unreasonable. It is only after this antecedent showing has been made that the Commission properly can illustrate that its alternate rate proposal is both just and reasonable.”); see also W. Res., Inc. v. FERC, 9 F.3d 1568, 1579-80 (D.C. Cir. 1993); Sea Robin Pipeline Co. v. FERC, 795 F.2d 182, 187 (D.C. Cir. 1986).
to make the required showings established by Commission precedent and to demonstrate extraordinary circumstances that warrant departing from Commission policy as discussed above.

Respectfully submitted,

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March 12, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this 12th day of March 2018 caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Howard L. Nelson