106 FERC ¶ 61,340
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Equitrans, L.P. Docket Nos. RP04-203-000 and
RP04-97-000
(not consolidated)

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND, AND ESTABLISHING PROCEDURES

(Issued March 31, 2004)

1. On March 1, 2004, Equitrans, L.P. (Equitrans) filed, under section 4 of the Natural Gas Act, a general rate case. Equitrans filed tariff sheets[1] to reflect a rate increase for most services and rates, and a rate decrease for the Carnegie Interstate Pipeline Company (CIPCO) District's rates. Equitrans proposes an approximately $23.3 million increase in its jurisdictional cost of service, to a total of approximately $69.3 million. Equitrans requests an April 1, 2004 effective date. In the event the Commission suspends the effective date, Equitrans reserves the right to file a motion at a later date to place the suspended tariff sheets into effect.

2. The Commission accepts and suspends the proposed changes for five months, to be effective September 1, 2004, or earlier date set by subsequent Commission order, subject to refund, and sets the issues for hearing.

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[1] Equitrans' proposed tariff sheets are shown on the Appendix. First Revised Sheet No. 65 was proposed and suspended in Equitrans' Docket No. RP04-97-000. (Equitrans, L.P., 105 FERC ¶ 61,407 (2004).) On February 27, 2004, Equitrans filed a motion to withdraw that sheet. Pursuant to § 154.205(a) of the Commission's regulations, the Commission permits the withdrawal. With this permission, no waiver or permission as otherwise required by § 154.205(b) or (c) is necessary for Equitrans to file Second Revised Sheet No. 65.

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Background

3. Equitrans' last section 4 rate case ended in a settlement which was approved by the Commission on April 29, 1999 (the Settlement).[2] The Settlement required Equitrans to file a general rate application no later than August 1, 2003. On May 20, 2002, Equitrans and CIPCO filed a joint application in Docket No. CP02-233-000 seeking Commission authorization for Equitrans to acquire and operate CIPCO's pipeline services and facilities. Under the proposal, the former CIPCO facilities would be treated as a separate rate zone to be known as the "CIPCO District." The Commission approved this application on July 1, 2003.[3] On July 3, 2003, Equitrans filed a request to extend the date by which it was required to submit a rate case under the Settlement to December 1, 2003. This request was granted on July 29, 2003.

4. On December 1, 2003, Equitrans filed, under section 4 of the NGA, a general rate case in Docket No. RP04-97-000 to comply with the terms of the settlement in Docket No. RP97-346-000. On December 31, 2003, the Commission rejected Equitrans' proposed rate increase and associated tariff sheets, but accepted and suspended Equitrans' proposed changes to its general terms and conditions and related tariff sheets.[4]

Cost of Service and Rates

5. In this rate case, Equitrans proposes an approximately $23.3 million increase in its jurisdictional cost of service, to approximately $69.3 million. The cost of service is based on a base period ending October 31, 2003, as adjusted for the adjustment period ending July 31, 2004. Equitrans states that there are several test period adjustments. Among the adjustments are regulatory assets for pension and regulatory expenses, refunctionalization of transmission and storage assets to gathering,[5] new plant, and an increase in the return on equity to 14.25 percent. Equitrans also supports a set of depreciation rates for its assets.

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[2] Equitrans, L.P., 87 FERC ¶ 61,116 (1999).

[3] Equitrans, L.P., 104 FERC ¶ 61,008 (2003), reh'g denied 106 FERC ¶ 61,013 (2004).

[4] Equitrans, L.P., 105 FERC ¶ 61,407 (2003).

[5] Equitrans, on March 1, 2004, filed in Docket No. CP04-76-000 an application pursuant to section 7 of the NGA to refunctionalize these facilities.

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6. Equitrans states that it has designed its transportation rates on the Straight Fixed-Variable methodology, and its storage rates on the Equitable methodology.[6] Equitrans' rates are seasonally differentiated. Equitrans proposes to retain its two existing transportation rate zones. Equitrans proposes to increase its transportation rates in its traditional zone, and decrease transportation rates for its CIPCO District. Equitrans states that, as it has no firm gathering services, it offers only interruptible gathering services, with usage-based rates.

7. Equitrans states that it has modified the manner by which it derives its billing determinants for both storage related transportation and storage services. In addition, Equitrans' billing determinants reflect discount and test period adjustments.

8. Equitrans also proposes changes to its fuel, lost and unaccounted for gas retention percentages, proposes to establish two new gathering gas retention percentages, and proposes to establish a fuel, lost and unaccounted for gas tracker mechanism. Equitrans also requested that the Commission grant such waivers of its regulations as it may deem necessary for acceptance of the filing.

Notice, Interventions, and Protests

9. Notice of Equitrans' filing was issued on March 4, 2003. Interventions and protests were due as provided in § 154.210 of the Commission's regulations. Pursuant to Rule 214 (18 C.F.R. § 385.214), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by the Consumer Advocate Division of the Public Service Commission of the State of West Virginia (CAD), Philadelphia Gas Works, IOGA of West Virginia (IOGA), the Peoples Natural Gas Company d/b/a Dominion Peoples, KeySpan Delivery Companies (KeySpan), PSEG Services, Corp. (PSEG), Pennsylvania Office of Consumer Advocate, PECO Energy Company, Columbia Gas of Pennsylvania, Inc. (CPA) and Equitable Gas Company (Equitable) (collectively Protesters). On March 24, 2004, Equitrans filed a "Clarification Regarding Request for Waiver" in order to clarify the scope of its request for waiver of regulations.

10. Protesters raise many issues regarding Equitrans' rate filing. They claim that the rate increase is unsupported and based on unsubstantiated assertions. Specifically, they maintain that several rate base, refunctionalization, pension, return on equity, cost of capital, rate design, and throughput adjustments may be inappropriate. Many Protesters

[6] Equitable Gas Co., 36 FERC ¶ 61,147 (1986).

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argue that cost allocation, especially with respect to the CIPCO District, needs to be examined to determine justness and reasonableness.

11. The Protestors either request that the Commission reject Equitrans' filing or, in the alternative, accept and suspend the filing for the full five months, subject to refund and hearing.

Discussion

Rate Issues Set For Hearing

12. A number of parties requested summary disposition of various rate issues, or, in the alternative, that we set the rate issues for hearing. The Commission finds that all issues concerning rate derivation and cost-of-service, including Equitrans' proposed cost of service, cost allocation between zones and among services, billing determinants and adjustments thereto, retention levels and tracker mechanisms, gathering rates and other issues, should be explored at a hearing established by this order, except to the extent discussed below.

Refunctionalization

13. Equitrans has identified numerous facilities certificated pursuant to section 7 of the NGA that it believes either are not jurisdictional under the NGA, or whose functions have changed from the date of their last certification. Equitrans, on March 1, 2004, filed in Docket No. CP04-76-000 an application pursuant to section 7 of the NGA to refunctionalize these facilities from transmission to non-jurisdictional gathering facilities. The facilities that Equitrans is seeking to refunctionalize largely consist of facilities recently acquired from CIPCO.[7] The facilities include: (1) approximately 275 miles of low-pressure, predominantly small diameter pipeline; (2) 14 compressor engines, located at 8 compressor stations, having a total of 14,395 horsepower; and (3) various meters and appurtenant facilities, all of which are primarily used to gather gas from numerous gas wells in Pennsylvania and West Virginia and transport such gas to Equitrans' downstream transportation facilities. The facilities are located in various counties in Pennsylvania and West Virginia. Equitrans proposes to include the costs of these facilities in its unbundled gathering rate.

14. IOGA, CAD, Equitable and Dominion Peoples protest various aspects of Equitrans' refunctionalization proposal, including the scope of the facilities subject to the request and the application of the primary function test.

[7] Carnegie Interstate Pipeline Co., 104 FERC ¶ 61,008 (2003).

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15. The Commission will not set these issues for hearing in this general rate case proceeding. Equitrans appropriately filed pursuant to NGA section 7 and Part 157 of the Commission's regulations for a determination as to the continuing jurisdictional status of facilities that are currently certificated as transmission or storage function facilities. The Commission's experience is that the Commission can process these filings more expeditiously outside of a rate case hearing procedure.[8] Further, most rate cases are the subject of settlement negotiations. The Commission encourages settlements. However, Commission jurisdiction is established by statute, and not subject to negotiation and settlement. Equitrans, to the extent it has not already done so in Docket No. CP04-76-000, may incorporate by reference the testimony and other exhibits it has filed in the instant rate case proceeding.

16. The Commission notes that Equitrans' proposed gathering rates include significant plant, operation and maintenance and administrative and general expenses currently functionalized as transmission or storage. If the Commission has not made a finding that the transmission and storage facilities identified by Equitrans are gathering by the time Equitrans moves the rates into effect, the gathering services will be subsidizing transportation and storage services. In Equitrans' Order No. 636 proceeding[9] and other Appalachia interstate pipelines' reorganization proceedings,[10] the Commission was concerned with cross-subsidization of gathering service by jurisdictional services. The Commission directed the unbundling of gathering and transportation services and rates. These objectives were accomplished. Permitting gathering services to subsidize transportation and storage services is no more acceptable than the Commission's original concern. Therefore, if Equitrans moves its rates into effect pursuant to § 154.206(a) of the Commission's regulations prior to a Commission finding in the Docket No. CP04-76-000 proceeding permitting the refunctionalization of transmission and storage plant as non-jurisdictional gathering facilities, Equitrans must remove transmission and storage function costs from the gathering rates.

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[8] See Trunkline Gas Co., 58 FERC ¶ 61,239 at 61,792-93 (1992).

[9] Equitrans, Inc., 64 FERC ¶ 61,374 at 63,600 (1993).

[10] Columbia Gas Transmission Corporation, 64 FERC ¶ 61,365 at 63,524-526 (1993); National Fuel Gas Supply Corporation, 62 FERC ¶ 61,200 at 62,445 (1993); and CNG Transmission Corporation, 64 FERC ¶ 61,303 at 63,219 (1993).

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Gathering Issues

17. IOGA states that under the terms of the settlement in Docket No. RP97-346-000,[11] Equitrans' maximum gathering rate was $0.30 per Dth, plus 5% retention. Equitrans' gathering facilities were subsequently spun off to Equitrans' affiliate, Equitable Field Services, LLP (EFS).[12] IOGA contends that Equitrans and EFS represented to the Commission that EFS was bound to honor Equitrans' gathering rates under the settlement and to honor any discounts under other agreements. IOGA claims that EFS has breached Equitrans' discount agreement in December 2003 and unilaterally imposed a $0.47 per Dth, plus 8% retention, gathering rate effective April 1, 2004. IOGA requests that the Commission confirm that the rates and terms of the Docket No. RP97-346-000 settlement remain in effect until the date that new rates become effective in this proceeding.

18. Whether the settlement rates are considered to stay in effect until the end of the suspension period turns on how the settlement defines its term. Article IX, section 4 of the Docket No. RP97-346-000 settlement provides that "[e]xcept as otherwise provided for in specific provisions, this Stipulation shall terminate on the day prior to the effective date of a (1) superseding general rate change filing by Equitrans pursuant to section 4(e) of the Natural Gas Act… ." With the exceptions provided in the settlement, the Commission expects the settlement rates for services under our jurisdiction to remain in effect until Equitrans moves the rates in this general section 4 case into effect following the five-month suspension required by this order, thus satisfying the condition in the settlement for the termination of the settlement rates. Disputes regarding whether Equitrans breached prior agreements are beyond the scope of this rate case proceeding.

19. IOGA argues that, with the establishment of the new and revised Equitrans' gathering rates, shippers, in some instances, will have to pay multiple gathering rates to the affiliates Equitrans and EFS. IOGA alleges that Equitrans and EFS are acting in concert to coerce shippers into paying either multiple gathering rates or unreasonable rates to EFS. IOGA claims that this is the latest corporate effort of Equitable Resources, Inc. to exert market power over the small producers connected to EFS' gathering system. IOGA requests that the Commission investigate and set for hearing the issue of whether Equitrans and EFS are engaged in concerted action and whether the Commission should retract its authorization of the original spin-down from Equitrans to EFS and order Equitrans to file cost-based rate for EFS gathering service. Further, IOGA requests that the Commission make a final decision before Equitrans is permitted to put its anticompetitive gathering scheme into place.

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[11] Settlement approved at Equitrans, L.P., 87 FERC ¶ 61,116 (1999).

[12] Equitrans, L.P. and Equitable Field Services, LLC, 98 FERC ¶ 61,160 (2002).

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20. The Commission denies IOGA's requests. The subject proceeding is a general rate case proceeding. If IOGA wishes to pursue whether Equitrans or its affiliates engaged in collusive practices, IOGA should file a complaint pursuant to section 385.206 of the Commission's regulations, including supporting documentation.[13] Further, part of IOGA's argument is speculative, as the Commission has not ruled on Equitrans' requests for refunctionalization in Docket No. CP04-76-000.

Extraordinary Gas Losses

21. In the instant proceeding, Equitrans does not renew its proposals with regard to its claimed extraordinary gas losses first made in its general rate case in Docket No. RP04-97-000. In that proceeding, Equitrans proposed to recover from its customers extraordinary gas losses of 9,600,000 Dth and proposed storage function plant increases for their replacement. The Commission rejected Equitrans' general rate case proposal in Docket No. RP04-97-000 as deficient, and did not rule on the merits of Equitrans' extraordinary gas loss claim.[14]

22. Several protesting parties question the relationship of Equitrans' proposed storage retention rates which reimburse Equitrans for ongoing ordinary storage losses and the extraordinary past storage gas losses as identified in Equitrans' earlier filing. In addition, certain parties have requested rejection of Equitrans' proposed loss percentage applicable to Rate Schedule SS-3 storage service, on the grounds that Equitrans has failed to utilize strict base/test period ratemaking in contravention of section 154.303(d) of the Commission's regulations. In its Clarification Regarding Request for Waiver, Equitrans clarified that it is seeking waiver of this regulation. The Commission finds that the factors that determine the retention rates are typical cost of service issues that should be examined in the hearing.

23. PSEG requests that the Commission make four additional findings. First, PSEG requests that the Commission place Equitrans on notice that it should not create a regulatory asset for any lost amounts. The Commission denies PSEG's request. PSEG's request is premature, as there is no outstanding claim by Equitrans that it has suffered an extraordinary gas loss of any level or that it intends to record a regulatory asset for such amounts. If Equitrans believes it is probable that the Commission would permit recovery of extraordinary gas losses in a period other than the period it would ordinarily be charged to expense under the general requirements of the Commission's Uniform System of Accounts, it may decide to establish a regulatory asset account. However, creating

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[13] IOGA is not foreclosed in this proceeding from raising the market power argument in the context of Equitrans' return on equity determination.

[14] Equitrans, L.P., 105 FERC ¶ 61,407 (2004).

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such an account is for financial accounting purposes. The establishment of a regulatory asset account does not determine whether the Commission will permit the recovery of those costs, nor does it affect in any way parties' rights to raise any argument regarding recovery of those costs.[15]

24. Second, PSEG requests that the Commission require Equitrans to demonstrate how it proposes to perform its certificated services. The Commission denies PSEG's request. PSEG's request is based on speculation. Equitrans is obliged to perform its certificated and contracted services. If it fails to perform, there are both regulatory and legal consequences.

25. Third, PSEG proposes a modification to Equitrans' tariff that would require Equitrans to make its customers whole when the pipeline denies firm service. PSEG is free to make its proposal pursuant to section 5 of the NGA in the hearing.[16]

26. And lastly, PSEG speculates that Equitrans may have sold, as opposed to lost, storage gas. PSEG requests that the Commission require Equitrans to discontinue its merchant service. The Commission denies PSEG's request. PSEG's request is based on speculation. If PSEG has evidence that Equitrans has sold storage base gas or customer inventory without prior Commission approval, it may file a complaint.

Test Period

27. CPA argues that Equitrans' rate filing should be rejected as it uses an incorrect test period. Equitrans' test period consists of a base period ending October 31, 2003, as adjusted for the adjustment period ending July 31, 2004. CPA contends that the test period is controlled by the Docket No. RP97-346-000 settlement, and should consist of a base period ending March 31, 2003, and an adjustment period ending December 31, 2003.

28. The Commission rejects CPA's argument. First, CPA has not established that the Docket No. RP97-346-000 settlement controls the timing or content of the instant general section 4 rate case. Further, even if it does, the settlement has no provision that addresses what test period Equitrans is required to use. The Commission notes that Article IX, sections 5 and 7, which establish the earliest and latest dates Equitrans could and had to file a general rate case, provided Equitrans a two year window in which to file a rate case.

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[15] Tennessee Gas Pipeline Co., 71 FERC ¶ 61,001 (1995).

[16] See Tennessee Gas Pipeline Co., 76 FERC ¶ 61,022 (1996) (Opinion No. 406), reh'g, 80 FERC ¶ 61,070 (1997) (Opinion No. 406-A), establishing the Commission's policy concerning reservation charge credits when firm service is curtailed.

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As the settlement did not address test periods, to the extent there was a constraint, it would have been the Commission's filing requirement regulations at § 154.303. That regulation provides that a base period should not be more than four months prior to the date of filing. Equitrans' proposed October 31, 2003 end of base period is four months prior to the March 1, 2004 filing date. Therefore, the Commission accepts Equitrans proposed base period.

Suspension

29. Based upon a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets listed in the Appendix, for filing and suspend their effectiveness for the period set forth below, and permit them to become effective, subject to the conditions set forth in this order.

30. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[17] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[18] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend the accepted tariff sheets listed in the Appendix for the maximum period and permit the rates to take effect on September 1, 2004, subject to refund and subject to the conditions set forth in the body of this order and in the ordering paragraphs below.

The Commission orders:

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective September 1, 2004, subject to refund, the conditions set forth herein and the outcome of the hearing established in this order.

(B) Pursuant to the authority of the NGA, particularly sections 4, 5, 8 and 15 thereof, with the exception of the issues reserved herein, a public hearing will be held in Docket No. RP04-203-000 concerning the lawfulness of Equitrans' proposed rates.

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[17] Great Lakes Gas Transmission Co., 12 FERC ¶ 61,293 (1980) (five-month suspension).

[18] Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (one-day suspension).

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(C) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within ten (10) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. The prehearing conference shall be held for the purpose of establishing a procedural schedule. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's rules of practice and procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Appendix
List of Equitrans' Proposed Tariff Sheets

Equitrans, L. P.: Original Volume No. 1

Ninth Revised Sheet No. 5
Twelfth Revised Sheet No. 6
Third Revised Sheet No. 7
Third Revised Sheet No. 8
Eighth Revised Sheet No. 10
Fifth Revised Sheet No. 11
Fourth Revised Sheet No. 22
Fourth Revised Sheet No. 28
Fourth Revised Sheet No. 31
Second Revised Sheet No. 65
Third Revised Sheet No. 201
Second Revised Sheet No. 274
Third Revised Sheet No. 302