

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Equitrans, L.P.

Docket No. CP06-275-000

ORDER ISSUING CERTIFICATE

(Issued November 15, 2006)

1. On May 10, 2006, Equitrans, L.P. (Equitrans) filed an application under section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity requesting authority to construct and operate approximately 67.61 miles of 20-inch diameter pipeline and appurtenant facilities in eastern Kentucky (the Big Sandy project). We will authorize the Big Sandy project, with appropriate conditions, as discussed below.

I. Background

2. Equitrans is a limited partnership composed of three corporations: ET Blue Grass Company, the general partner holding a one percent interest, and Equitable Resources, Inc. and Equitable Gathering, Inc. (Equitable Gathering), limited partners holding 85 percent and 14 percent interests, respectively.

3. Equitrans is a natural gas company under section 2(6) of the NGA, engaged in storing and transporting natural gas in interstate commerce subject to the jurisdiction of the Commission. Equitrans transports gas on an open-access basis under the Commission's regulations. Currently, Equitrans has jurisdictional pipeline facilities in western Pennsylvania and north-central West Virginia.

II. Proposals

A. Facilities

4. Equitrans proposes to construct and operate: (1) a 67.61-mile long, 20-inch diameter pipeline extending from the proposed Big Sandy compressor station near Langley, in Floyd County, Kentucky north through Floyd, Johnson, and Lawrence Counties to a connection with Tennessee Gas Pipeline Company's (Tennessee) Broad Run lateral in Carter County; (2) the Big Sandy compressor station, consisting of three

3,000 horsepower electrically-driven compressor units at the outlet of the existing Kentucky Hydrocarbon compressor plant;¹ (3) a meter station and pig launcher at the Big Sandy compressor station; and (4) a meter station and pig receiver at the terminus of the Big Sandy pipeline.² The proposed pipeline will have a capacity of 130,000 Dth per day and a maximum allowable operating pressure of 1,200 psi. The Big Sandy project is operationally distinct and geographically separate from Equitrans' existing system in Pennsylvania and West Virginia.³

5. Equitrans states that it conducted two open seasons for the capacity created by the Big Sandy project – the first open season extended from January 11 through February 17, 2006 and the second open season extended from March 7 through March 21, 2006. As a result of the two open seasons, Equitrans states that it received “expressions of interest” for 164,923 Dth per day of firm capacity and has signed precedent agreements for 68,893 Dth per day of firm capacity. Equitrans explains that it expects the Big Sandy project’s capacity to be fully subscribed under firm transportation agreements. On October 18, 2006, Equitrans filed supplemented information indicating that it has executed precedent agreements for 99,893 Dth per day of capacity.⁴ Equitrans did not file the precedent agreements with the Commission.

B. Rates

6. Equitrans estimates that the total cost for the construction of the Big Sandy project will be \$150,371,210. Equitrans proposes incremental firm and interruptible recourse rates under its existing Rate Schedules FTS and ITS for transportation service on the Big Sandy project. While Equitrans proposes initial incremental recourse rates, Equitrans

¹ Equitable Gathering, an affiliate of Equitrans, owns the Kentucky Hydrocarbon plant. Currently, gas can be delivered to Columbia Gas Transmission Corporation’s (Columbia) Line KA-20 at the discharge side of the Kentucky Hydrocarbon plant.

² A pipeline pig is a device used to clean or inspect the pipeline. A pig launcher or receiver is an above-ground facility where pigs are inserted or retrieved from the pipeline.

³ There are no non-jurisdictional facilities associated with this project.

⁴ See Equitrans’ October 18 answer at 5.

states that it intends to enter into negotiated rate agreements for firm service on the Big Sandy project and that it will file the negotiated service agreements with the Commission in accordance with its tariff⁵ and the Negotiated Rate Policy Statement.⁶

C. Rationale for Equitrans' Proposals

7. Equitrans contends that there is only one jurisdictional transmission pipeline in the eastern Kentucky production basin – Line KA-20 operated by Columbia – and that there have been significant curtailments in the region because of this single pipeline outlet. Equitrans contends that the proposed Big Sandy project will provide a new source of transportation capacity that will reduce capacity constraints in eastern Kentucky. In addition, Equitrans asserts that the Big Sandy project will increase the reliability of the interstate pipeline grid by introducing over 47 Bcf of gas into the interstate market.

III. Interventions

8. Notice of Equitrans' application was published in the *Federal Register* on May 24, 2006 (71 Fed. Reg. 29930). The parties listed in Appendix A filed timely, unopposed motions to intervene.⁷ Numerous federal and state representatives, local producers, and other energy related companies filed comments in support of Equitrans' application.

9. Chesapeake Appalachia, L.L.C. (Chesapeake) and Interstate Natural Gas Company (Interstate) filed untimely motions to intervene. Chesapeake and Interstate have demonstrated an interest in this proceeding and have shown good cause for intervening out of time. Further, the untimely motions to intervene will not delay, disrupt, or otherwise prejudice this proceeding. Thus, we will grant Chesapeake's and Interstate's untimely motions to intervene.

10. The motion to intervene of North East Gas Corporation (North East) included a protest. The motions to intervene of the Attorney General of the Commonwealth of Kentucky (Kentucky Attorney General) and Big Branch Holding Company, LLC (Big

⁵ Equitrans' FERC Gas Tariff, Original Volume No. 1, General Terms and Conditions, section 30.

⁶ *Natural Gas Pipeline Negotiated Rates Policies and Practices*, 104 FERC ¶ 61,134 (2003), *order on reh'g*, 114 FERC ¶ 61,042, *order denying reh'g*, 114 FERC ¶ 61,304 (2006).

⁷ Timely, unopposed motions to intervene are granted by operation of Rule 214.

Branch) included comments. Equitrans filed an answer to North East's protest and to the Kentucky Attorney General's comments. The Kentucky Attorney General filed an answer to Equitrans and Equitrans filed an answer to the Kentucky Attorney General. The Kentucky Attorney General also filed a motion to defer action on Equitrans' application. Equitrans filed an answer to the motion to defer and the Kentucky Attorney General filed an answer to Equitrans.

11. Answers to protests and answers to answers are not allowed under our rules.⁸ Nevertheless, we will accept the answers of Equitrans and the Kentucky Attorney General, because these pleadings provided information that assisted us in our decision making.

IV. Discussion

12. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA.

A. Public Convenience and Necessity Finding

1. The Certificate Policy Statement

13. The Certificate Policy Statement provides guidance as to how we will evaluate proposals for certificating new construction.⁹ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

⁸ 18 C.F.R. § 385.213(a)(2) (2006).

⁹ *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

14. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

a. Subsidization

15. As noted above, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Here, none of the costs of the proposed Big Sandy project are included in the rates of Equitrans' existing customers using facilities in Pennsylvania and West Virginia. Rather, Equitrans proposes to charge incremental rates to recover the costs of the Big Sandy project. We have previously determined that where a pipeline proposes to charge an incremental rate for new construction, it satisfies the threshold requirement that the project will not be subsidized by existing shippers.¹⁰ Thus, there is no subsidization here.

b. Existing Customers and Competing Pipelines

16. Equitrans' existing system consists of facilities in north central West Virginia and western Pennsylvania. The proposed Big Sandy project is in eastern Kentucky and operationally distinct and geographically separate from Equitrans' existing system. We find that the proposed Big Sandy project will not result in the degradation of service to any of Equitrans' existing customers.

17. The existing pipelines in eastern Kentucky are fully subscribed. These pipelines and their customers will not be adversely affected by the introduction of new

¹⁰ See *Eastern Shore Natural Gas Co.*, 95 FERC ¶ 61,344 (2001); *Transcontinental Gas Pipe Line Corp.*, 94 FERC ¶ 61,380 (2001); *Texas Eastern Transmission Corp.*, 92 FERC ¶ 61,285 (2000).

transportation capacity. In addition, the proposed Big Sandy project will be capable of transporting trapped gas out of eastern Kentucky. Thus, we find that there will not be any adverse effects on existing pipelines or their customers.

c. Landowners

18. The right of way for Equitrans' proposed pipeline will cross 476 parcels of land and 1,093.65 acres. In its September 22, 2006 response to a data request, Equitrans states that it has obtained easements for 338 parcels and 793.75 acres and it expects to obtain easements for another 107 parcels and 211.31 acres. Equitrans contends that it will be required to condemn 31 parcels and 88.59 acres. Equitrans asserts that the number of parcels that it expects to condemn has been declining as a result of continuing negotiations with landowners.

(i) Condemnation Issues

19. The Kentucky Attorney General contends that Equitrans has filed a condemnation proceeding in the United States District Court for the Eastern District of Kentucky against 53 tracks of land in Carter, Lawrence, and Johnson Counties and is notifying an unknown number of landowners in Floyd County that it will file condemnation proceedings against them if they do not sign over rights of way. The Kentucky Attorney General states that Equitrans is relying on a Kentucky statute which, the Kentucky Attorney General contends, confers eminent domain rights to pipeline companies subject to the jurisdiction of the Kentucky Public Service Commission,¹¹ because the Commission has not issued a certificate for the project making federal eminent domain rights applicable. The Kentucky Attorney General asserts that Equitrans' actions against the landowners are unconscionable at this point before the Commission has issued a certificate.

20. In addition, the Kentucky Attorney General asserts that Equitrans should be required to explain the discrepancy between the 31 parcels that Equitrans claims that it needs to condemn in its September 22 response to a data request and the 53 parcels for

¹¹ Kentucky Revised Statute 278.502 provides, in part, that:

Any corporation or partnership organized for the purpose of . . . constructing, maintaining, or operating oil or gas wells or pipelines for transporting or delivering oil or gas . . . in public service may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn the lands . . . that are necessary for constructing, maintaining, drilling, utilizing, and operating pipelines

which it seeks condemnation in Federal Court, as well as the unknown number of additional parcels in Floyd County. The Kentucky Attorney General also contends that the Commission should require Equitrans, before condemning property, to submit precedent agreements to demonstrate that the Big Sandy project will be fully used as claimed by Equitrans. Finally, the Kentucky Attorney General claims that any evaluation of the Big Sandy project must be made in light of the Straight Creek project,¹² which it asserts will provide the facilities necessary to remedy current pipeline constraints in eastern Kentucky with little need of right-of-way acquisition by condemnation. For these reasons, the Kentucky Attorney General requests that the Commission defer final action on Equitrans' application until the benefits of the project outweigh the adverse consequences.

21. Big Branch, a coal and surface property owner, asserts that it will be "financially ruined," if the pipeline crosses its property.

22. We encourage project sponsors to acquire as much of the right of way as possible by negotiation with the landowners and consider the extent to which the applicant has attempted to limit the need to obtain rights of way by eminent domain in weighing the benefits against any adverse effects of the proposed project. In our consideration of landowner and community interests under the Certificate Policy Statement, we seek to avoid unnecessary construction in order to minimize the applicant's power to condemn land to construct facilities under the eminent domain rights conveyed by the Commission's certificate.¹³

23. Here, the Kentucky Attorney General complains that Equitrans is using a state statute to condemn land prior to the issuance of a certificate under the NGA. Under section 7(h) of the NGA, the issuance of a certificate by the Commission confers on the certificate holder the right to obtain property through the power of eminent domain if the certificate holder cannot reach agreement with the property owner. Our issuance of a certificate in this order conveys NGA eminent domain rights to Equitrans to acquire the land necessary to construct and operate its proposed facilities. We emphasize that prior

¹² Straight Creek Gathering, L.P. (Straight Creek) contemplates constructing a 60-mile long, 20-inch diameter gathering pipeline from production fields in eastern Kentucky to a connection with Tennessee's Broad Run lateral in Carter County. In *Straight Creek Gathering, L.P.*, 117 FERC ¶ 61,005 (2006), we issued a declaratory order disclaiming jurisdiction over the pipeline.

¹³ Certificate Policy Statement, 88 FERC at 61,748. *See also Order Clarifying Statement of Policy*, 90 FERC at 61,398.

to the issuance of this certificate, Equitrans had no rights under the NGA to initiate condemnation proceedings. We take no position on whether or not Equitrans' reliance on the Kentucky state statute to commence eminent domain proceedings prior to certification under the NGA is proper under state law.¹⁴

24. In response to the Kentucky Attorney General's request, Equitrans explains that the discrepancy between the number of tracts of land for which it has commenced condemnation proceedings and the number reported in a data response is due to the passage of time and the changing status of negotiations with landowners. Equitrans states that on September 1, 2006, when Equitrans commenced condemnation proceedings, there were 53 tracts of land proposed to be condemned and by September 22, 2006, that number had declined to the 31 which was reported in the Staff data response. Equitrans also states that as of the date of its October 18 answer, it has secured ownership or easements for 318 tracts out of the total of 364 tracts required for the project, or approximately 87 percent of the tracts required for the project.¹⁵ We find nothing unusual about the fact the number of expected condemnations has changed due to ongoing negotiations, but we encourage Equitrans to continue to negotiate with affected landowners in order to limit the need to obtain rights of way by eminent domain.

25. Under the Certificate Policy Statement, an applicant may rely on a variety of factors to demonstrate that the public benefits of its proposed project outweigh any residual adverse effects. We will consider all evidence submitted by the applicant reflecting on the need for the project, including, but not limited to, precedent agreements.¹⁶ If an applicant has entered into precedent agreements for some portion of the capacity, those agreements constitute significant evidence of demand for the proposed project.¹⁷ We recognize, however, that precedent agreements, by themselves, may not provide sufficient assurance that a project will be constructed. For this reason, we require

¹⁴ To the extent that the Kentucky Attorney General believes it is not, the appropriate forum in which to seek relief is the federal district court where suit has been filed.

¹⁵ Equitrans states that of the 46 tracts that still require condemnation, 27 of them are owned by the same landowner, with whom Equitrans is in active negotiations.

¹⁶ We also examine demand projections, potential cost savings to consumers, as well as compare projected demand with the amount of capacity currently serving the market.

¹⁷ Certificate Policy Statement at 61,747-48.

an applicant to execute firm transportation service agreements with its shippers for the level of service and the terms of service represented in the precedent agreements prior to commencing construction, rather than before starting the process of eminent domain. Because Equitrans states that it has signed precedent agreements for 99,893 Dth per day, we will require it execute firm transportation agreements for that level of service prior to commencing construction of the Big Sandy project.¹⁸ This should adequately address the Kentucky Attorney General's concern regarding whether Equitrans has firm commitments for its proposed project.

26. We also do not agree with the Kentucky Attorney General's claim that the existence of the Straight Creek project bars our issuance of a certificate for the Big Sandy project. The Commission determined that Straight Creek will be a non-jurisdictional gathering company as constructed and operated by Straight Creek.¹⁹ The Commission policy is to allow the market to determine which projects are best suited to serve the infrastructure needs of an area.²⁰

27. Based upon the above discussion, we find no merit in the Kentucky Attorney General's request to defer our issuance of a certificate here based on the impact of condemnation, lack of filed precedent agreements, or in light of the Straight Creek project.

28. As to Big Branch's concerns, pipelines are required to pay compensation to landowners for easements across the landowner's property. Compensation for the granting of a pipeline easement is determined as the result of negotiations between the pipeline company and the landowner. These negotiations could potentially include compensation for damage to the property or for any perceived loss of property value. If an easement cannot be negotiated with the landowner, the company may exercise in court the right of eminent domain. In an eminent domain proceeding, the court will require the pipeline to compensate the landowner for the right of way, as well as for any damages incurred during construction. The level of compensation would be determined by the

¹⁸ We have routinely certificated pipeline projects that have contractual commitments of less than 100 percent of the design capacity. See, e.g., *ANR Pipeline Co.*, 90 FERC ¶ 61,171 (2000); *Tennessee Gas Pipeline Co.*, 89 FERC ¶ 61,129 (1999).

¹⁹ See *Straight Creek*, 117 FERC ¶ 61,005 (2006).

²⁰ See, e.g., *Islander East Pipeline Co.*, 100 FERC ¶ 61,276 at 62,109 (2002).

court according to state laws that set forth the procedures for the use of eminent domain once we issue a certificate. Thus, we believe that Big Branch's concerns should be alleviated.

29. For these reasons, while the Commission acknowledges that it may be necessary for Equitrans to acquire some portion of required rights of way through the exercise of eminent domain, we find that on balance, any adverse impacts on landowners and communities near the pipeline route will be minimal.

(ii) North East's Protest

30. North East states that it owns and operates a natural gas gathering pipeline, known as the NEGC pipeline, in Floyd, Johnson, Lawrence, and Carter Counties, Kentucky. North East asserts that the Big Sandy pipeline will encroach on the right of way of the NEGC pipeline at four locations and that the encroachment raises operational and safety concerns.²¹ In addition, North East states that it has agreed to contribute portions of its pipeline right of way to Straight Creek to facilitate the construction of the Straight Creek gathering system. North East contends that Equitrans' encroachment on NEGC's right of way could impede the construction and operation of the Straight Creek gathering system. Thus, North East requests that the Commission deny Equitrans' application.

31. Equitrans asserts that its personnel will work cooperatively with North East to assure that the pipeline crossings can be accomplished in a safe and environmentally acceptable manner and that it is in the process of securing the necessary rights of way from the applicable property owners. Equitrans requests that the Commission deny North East's protest.

32. The fact that a pipeline may share geographic proximity with, or cross, another pipeline is not grounds to refuse to authorize pipeline construction. Further, pipelines can

²¹ In its answer, Equitrans states that the Big Sandy pipeline will encroach on NEGC's right of way at five locations.

be constructed in close proximity in an environmentally safe manner. We frequently authorize pipelines to be constructed close to each other or in the same right of way.²² North East does not allege any specific safety issues here and, in the environmental assessment (EA), we have found none. Thus, we will deny North East's request.

d. Conclusion

33. We conclude that any potential adverse effects of the Big Sandy project are outweighed by the substantial benefits of the project. Equitrans' proposals will provide much needed transportation infrastructure in eastern Kentucky which will help move gas out of the region into the interstate pipeline network. We also conclude that there is substantial market demand for the project as demonstrated by the fact that Equitrans has signed precedent agreements for 99,893 Dth per day of capacity, or approximately 76 percent of the proposed capacity of the project. In addition, Equitrans' existing customers will not subsidize the Big Sandy project. There will be no degradation of service to Equitrans' existing customers or any adverse effects on existing pipelines or their customers. Finally, adverse impacts on landowners and neighboring communities will be minimal. For these reasons, we find, consistent with the Certificate Policy Statement and section 7(c) of the NGA, that the public convenience and necessity requires approval of Equitrans' proposals.

B. Rates

34. As discussed above, Equitrans proposes to charge incremental recourse rates under its existing Rate Schedules FTS and ITS for the expansion facilities based on the cost of service for the Big Sandy project. The proposed FTS maximum reservation rate of \$19.7603 per Dth is based on a proposed annual cost of service of \$30,826,054.²³ and design determinants of 130,000 Dth per day based on the design capacity of the project. In developing the cost of service, Equitrans has used an overall after-tax rate of return of 11.40 percent and a depreciation rate of 2.5 percent. The proposed ITS maximum rate of \$0.64965 per Dth is the 100 percent load factor equivalent of the FTS rate.

²² See, e.g., *Freeport-McMoRan Energy, LLC*, 115 FERC ¶ 61,201 (2006); *Rendezvous Gas Services, L.L.C.*, 112 FERC ¶ 61,141 at P 22, *order denying reh'g*, 113 FERC ¶ 61,169 (2005); *Kern River Gas Transmission Co.*, 98 FERC ¶ 61,205, *order denying reh'g*, 100 FERC ¶ 61,056, *order dismissing request for reh'g*, 101 FERC ¶ 61,042 (2002).

²³ See Equitrans' August 2, 2006 response to a data request.

35. Equitrans proposes a retainage factor of one percent for all transportation on the Big Sandy project for lost and unaccounted-for gas.²⁴ In addition, Equitrans states that its proposed tariff sheets establish an electric power cost tracker provision for the recovery of electric power costs at the Big Sandy compressor station. Equitrans proposes an initial rate of \$0.04 per Dth.

36. Consistent with Commission policy on incremental rates, Equitrans states it will maintain a separate record of costs of the Big Sandy project on its books and accounts.

37. The Commission has reviewed the proposed cost of service and proposed initial rates and generally finds them reasonable, subject to the conditions discussed below. We also approve Equitrans' proposal to implement an electric power cost tracker for this project.

1. Cost of Service

a. Return on Equity

38. Equitrans proposes a capital structure of 37 percent debt and 63 percent equity, an incremental return on equity of 14.25 percent, a cost of debt of 6.55 percent, and an overall after-tax rate of return of 11.40 percent.²⁵ Equitrans, however, did not provide any support for its proposed cost of capital factors. The Commission policy requires that rates for incremental expansion projects in an NGA section 7(c) proceeding be designed on the pipeline's approved capital structure and rate of return.²⁶ For Equitrans, the Commission recently approved a general rate case settlement that established new system rates.²⁷ Article 1.3 of the settlement provides that "the settled cost of service level is based upon a pretax return of fifteen percent (15%) and Equitrans' as-filed capital structure in RP05-164-000."²⁸ Thus, we will require Equitrans to revise its proposed

²⁴ *Id.*

²⁵ This equates to a 17.28 pre-tax rate of return when a 39.55 percent combined effective tax rate is applied to the equity component of the capital structure.

²⁶ See, e.g., *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 at P 139 (2006); *Northwest Pipeline Corp.*, 98 FERC ¶ 61,352 at 62,499 (2002).

²⁷ *Equitrans, L.P.*, 115 FERC ¶ 61,007 (2006).

²⁸ Equitrans' as-filed capital structure in the settlement consists of 37.35 percent debt and 62.65 percent equity.

recourse rates for the Big Sandy project using its Commission approved pre-tax rate of return of fifteen percent and a capital structure consisting of 37.35 percent debt and 62.65 percent equity.

b. Operation and Maintenance Expenses (O&M)

39. Equitrans includes charges of \$545,000 for the material and installation cost of the pig launcher and receiver and \$140,000 for the cost of pigging the line. Both these costs are necessary to place the pipeline in operation. Equitrans also states that it will conduct smart pigging every 10 years and that it will amortize one-tenth of this cost (\$17,500) over this period to its O&M expenses. Equitrans correctly capitalizes the costs of smart pigging to bring the pipeline to operation. However, Equitrans indicates that pipeline integrity costs will occur in the tenth year of operation. Its proposal to pre-collect those costs on the basis of a 10-year amortization is inconsistent with our accounting rules, which require that costs incurred to inspect, test and report on the condition of plant to determine the need for repairs or replacements are to be charged to maintenance expense in the period the costs are incurred.²⁹ Further, section 38 of the General Terms and Conditions of Equitrans' tariff provide for a pipeline safety cost tracker (PSCT) mechanism for the separate recovery of costs incurred by Equitrans under the Pipeline Safety Improvement Act of 2002 and our accounting rules.³⁰ The PSCT mechanism provides for the collection of pipeline safety costs, which may include smart pigging related to pipeline safety. This eliminates the need to recover safety related smart pigging expenses in base rates. For these reasons, we will require Equitrans to remove the \$17,500 annual charge for smart pigging from its O&M expenses.

c. Conclusion

40. We will require Equitrans to file actual tariff sheets reflecting the revisions to its rates as directed by this order not less than 30 days, nor more than 60 days, before service begins.³¹ In addition because we are approving incremental rates for the project,

²⁹ *Order on Accounting for Pipeline Assessment Costs*, 111 FERC ¶ 61,501 at P 21 and 27, *reh'g denied*, 112 FERC ¶ 61,309 (2005).

³⁰ *Id.*

³¹ We note that certain of the rates included in the pro forma rate sheets were not consistent with the rates reflected in Equitrans' work papers and the pro forma rate sheets did not include an IT rate. When Equitrans files its actual tariff sheets, it should include all its proposed rates for the project on its rate sheets and the proposed rates should be consistent with the derivation of its rates reflected in its work papers.

Equitrans is required to maintain its accounts for these facilities in accordance with section 154.309 of the Commission's regulations, which applies to incremental expansions.

2. Interruptible Revenues

41. Equitrans does not propose to allocate costs to interruptible service. The Commission's policy requires a 100 percent credit of the interruptible revenues, net of variable costs, to firm and interruptible customers or an allocation of costs and volumes to the services for new pipelines or major expansions.³² If Equitrans chooses to allocate costs to interruptible service, it must allocate an appropriate level of the estimated cost of service to its interruptible service, recalculate its rates, and file documentation demonstrating the recalculation. In the alternative, Equitrans must revise its tariff to provide for a mechanism to credit one hundred percent of the ITS revenues, net of variable costs, to its firm and interruptible cost-based recourse rate shippers. Equitrans must reflect its choice and the appropriate tariff revisions when it files to place its rates and tariff into effect.

3. Three-Year Rate Review

42. Because the proposed Big Sandy project will represent a significant portion of Equitrans' total system cost of service and rate base,³³ we will require Equitrans to file a cost and revenue study at the end of its first three years of operation to justify its cost-based firm and interruptible transportation rates.³⁴ In its filing, the projected units of service should be no lower than those upon which Equitrans' approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the regulations to update cost of service data. After reviewing the data, we

³² See, e.g., *Independence Pipeline Company*, 89 FERC ¶ 61,283 (1999), *Maritimes & Northeast Pipeline L.L.C.*, 80 FERC ¶ 61,136, at 61,475, *order on reh'g*, 81 FERC ¶ 61,166 at 61,725-26 (1997).

³³ See Equitrans' December 9, 2005 Settlement filed in Docket No. RP05-164, *et al.*

³⁴ See, e.g., *Trunkline LNG Company*, 82 FERC ¶ 61,198 at 61,780 (1998), *aff'd sub nom. Trunkline LNG Co. v. FERC*, 194 F.3d 68 (D.C. Cir. 1999); *Horizon Pipeline Co., L.L.C.*, 92 FERC ¶ 61,205 at 61,688 (2000); *Vector Pipeline Co.*, 85 FERC ¶ 61,083 (1998).

will determine whether to exercise our authority under section 5 of the NGA to establish just and reasonable rates. In the alternative, in lieu of that future filing, Equitrans may make an NGA section 4 filing to propose alternative rates.

C. Request to Reassert Jurisdiction over Equitrans' Gathering Affiliate

1. Issues Raised

43. The Kentucky Attorney General contends that Equitrans operates and controls Kentucky West Virginia Gas Company, LLC (Kentucky West) as a subservient, non-regulated division for the benefit of the Big Sandy project.³⁵ Specifically, the Kentucky Attorney General filed two affidavits alleging that in a meeting between representatives from the East Kentucky Independent Oil and Gas Association (EKIOGA) and Mr. Alan Vaina, Vice President of Equitrans, Mr. Vaina stated that, "Make no mistake about it, I can speak for Equitrans and Kentucky West." The Kentucky Attorney General contends that "Equitrans speaking for Kentucky West" has repeatedly denied requests by independent producers for taps on Kentucky West's system upstream of the Kentucky Hydrocarbon plant so that gas can move to Straight Creek. In this regard, the Kentucky Attorney General filed a third affidavit alleging that, in a conversation between Mr. Vaina and Ken Hall, the Vice President of EKIOGA, Mr. Vaina stated that, "Look, we are building a FERC-regulated pipeline that this gas can go into, and we are not in the business of helping competitors take wet gas off our system to put into [Straight Creek]."

44. The Kentucky Attorney General contends that "once producers' gas enters the Kentucky West gathering system, those producers are foreclosed from taking delivery of their gas off Kentucky West in order to market that gas into alternative pipelines" and that, when the "Big Sandy project is completed, this gas will be forced to flow into that pipeline, and nowhere else." The Kentucky Attorney General believes that the Equitrans/Kentucky West policy of holding gas "hostage" on the Kentucky West system for the benefit of the Big Sandy project is anti-competitive, stifles gas development, and exacerbates the shut-in gas well situation in eastern Kentucky. The Kentucky Attorney General contends that when a pipeline and its gathering affiliate act in concert for anti-competitive purposes, the Commission may disregard the corporate structure and exercise

³⁵ Kentucky West, a former interstate pipeline, is a non-jurisdictional affiliate of Equitrans that gathers gas from one of Equitrans' affiliated producers and numerous independent producers in eastern Kentucky. The Kentucky West gathering line flows into the Kentucky Hydrocarbon plant.

jurisdiction over the non-jurisdictional gatherer.³⁶ For this reason, the Kentucky Attorney General requests that Equitrans' certificate be conditioned to require that Kentucky West provide open-access transportation. In the alternative, if the Commission lacks that authority, the Kentucky Attorney General requests that the Commission make Kentucky West a jurisdictional, open-access pipeline.

45. Equitrans contends that the allegations of the Kentucky Attorney General are unfounded, asserting that Kentucky West is willing to provide a tap to Straight Creek on the discharge side of the Kentucky Hydrocarbon plant in the same place as the taps to Columbia and its proposed Big Sandy pipeline. Equitrans asserts that it is willing to compete "fully and fairly" with Straight Creek, but that there is no reason to require it to provide a tap upstream of the Kentucky Hydrocarbon plant into Straight Creek, because an upstream tap would bypass the hydrocarbon plant and provide processing opportunities to Straight Creek undercutting the economics of its affiliate's hydrocarbon plant investment.³⁷ Equitrans asserts that:

What remains unexplained in this record is why it is so critical that, in order for producers to have this competitive new choice between Big Sandy and Straight Creek, a tap must be provided only upstream of [the] Kentucky Hydrocarbon [plant]. If the answer is that processing by Straight Creek is vital to its economic success, then that is not this Commission's concern, nor should it be the Kentucky [Attorney General's] concern. Alternatively, if the answer is that receipt of unprocessed gas is vital to Straight Creek's jurisdictional status before this Commission, then that likewise is no basis for the Commission to interfere in market choices. Whatever is the point of the Kentucky [Attorney General's] insistence on a tap upstream of the Kentucky Hydrocarbon [plant], there is nothing whatsoever in this record to

³⁶ The Kentucky Attorney General cites *Conoco, Inc. v. FERC*, 90 F.3d 536, 549 (D.C. Cir. 1996); *Millennium Pipeline Company, L.P.*, 100 FERC ¶ 61,277, at 62,140 (2002); *Chesapeake Panhandle Limited Partnership v. Natural Gas Pipeline Company of America*, 92 FERC ¶ 61,082, *reh'g denied*, 92 FERC ¶ 61,260 (2000), *order denying complaint*, 102 FERC ¶ 61,229 (2003).

³⁷ In addition to the costs of the Big Sandy project, Equitrans estimates that the hydrocarbon plant will require an additional \$75 million in capital investment.

suggest that eastern Kentucky producers can only benefit from Straight Creek if a tap into that system is installed upstream of the Kentucky Hydrocarbon plant.³⁸

46. Equitrans concludes that there is no basis to reassert jurisdiction over Kentucky West. Equitrans states that it is willing to install a tap to Straight Creek downstream of the hydrocarbon plant and that it is common practice for employees of integrated energy service providers to provide support services for affiliates.

2. Commission Response

47. The Kentucky Attorney General requests that we impose open-access transportation requirements on Kentucky West or reassert NGA jurisdiction over Kentucky West.

48. In *Arkla Gathering Services Company*,³⁹ we stated that in particular circumstances we could reassert jurisdiction over an interstate pipeline's gathering affiliate "where such action is necessary to accomplish the Commission's policies for the transportation of natural gas in interstate commerce." To assert jurisdiction over a gathering affiliate, we held that there must be concerted action between the jurisdictional pipeline and its gathering affiliate and that the action must be undertaken in a manner that frustrates the Commission's effective regulation of the interstate pipeline.⁴⁰ We stated that our ability to assert jurisdiction was limited to abuses "directly related to the affiliate's unique relationship with an interstate pipeline," such as "tying gathering service to the pipeline's transmission service" or "cross-subsidization between the affiliate's gathering rates and the pipeline's transmission rates."⁴¹

49. The United States District Court for District of Columbia, in interpreting the Commission's policy in *Arkla Gathering*, emphasized that the point of the test is to identify the limited scenarios where the Commission may treat the pipeline and gatherer

³⁸ Equitrans' September 14 answer at 4-5.

³⁹ 67 FERC ¶ 61,257 (1994), *order on reh'g*, 69 FERC ¶ 61,280 (1994), *reh'g denied*, 70 FERC 61,079 (1995), *reconsideration denied*, 71 FERC ¶ 61,297 (1995) (collectively *Arkla Gathering*), *aff'd in part and rev'd in part*, *Conoco Inc. v. FERC*, 90 F.3d 536 (D.C. Cir. 1996) (*Conoco*).

⁴⁰ 67 FERC at 61,871.

⁴¹ *Id.*

as a single entity and that only when both prongs of the test have been satisfied, may the Commission pierce the corporate veil and treat the entities as one.⁴² The court also stated that the Commission could not reassert jurisdiction where a gathering affiliate's relationship with the interstate pipeline did not enhance or detract from the affiliate's ability to engage in allegedly anti-competitive behavior, but could exercise jurisdiction only where the affiliate is leveraging its relationship with the pipeline to enhance its market power.⁴³

50. Based on this record and the court's interpretation of the Commission's precedent in *Williams Gas Processing*, we find there is insufficient basis to reassert NGA jurisdiction over Kentucky West. The Kentucky Attorney General maintains that because of its affiliation with Equitrans, Kentucky West is denying the requested taps on the Kentucky West system in order to force the gas transported on the Kentucky West system "to flow into the [Big Sandy pipeline], and nowhere else." However, the record contradicts this assertion, because at the outlet side of the Kentucky Hydrocarbon plant, gas can flow into Columbia, in addition to Equitrans' proposed Big Sandy project. Also, Kentucky West has offered to provide a tap with Straight Creek at the outlet of the hydrocarbon plant.⁴⁴ Thus, there is no effective tying of the affiliate's gathering service with Equitrans transmission service here.

51. The record also does not support the assertion that Kentucky West's actions in refusing to provide taps on its gathering system arise specifically because of its interrelationship with Equitrans. As explained by Equitrans, Kentucky West wants the gathered gas to flow through the Kentucky Hydrocarbon plant, because of Equitrans Gathering's investment plans to upgrade the plant. Thus, it appears that Kentucky West's refusal to provide taps upstream of the processing plant is more likely due to its affiliate relationship with Equitrans Gathering, rather than its affiliation with Equitrans. In any event, the Kentucky Attorney General has not shown that the affiliate's ability to engage in allegedly anti-competitive behavior is enhanced by its affiliation with Equitrans.

⁴²*Williams Gas Processing – Gulf Coast Co. v. FERC*, 373 F.3d 1335, 1343 (D.C. Cir. 2004) (*Williams Gas Processing*) (vacating the Commission's reassertion of jurisdiction over the gathering rates of a jurisdictional pipeline's affiliate), *order on remand*, 110 FERC ¶ 61,162, *reh'g denied*, 112 FERC ¶ 61,293 (2005).

⁴³ *Williams Gas Processing*, 373 F.3d at 1342.

⁴⁴ See Equitrans' September 14, 2006 answer at 3 and the affidavit of Alan Vaina attached to the answer.

52. The cases cited by the Kentucky Attorney General do not support our exercise of jurisdiction over Kentucky West. In *Conoco*, the court affirmed the Commission's decision in *Arkla Gathering* to approve the spin down of the company's gathering facilities to its gathering affiliate. Various producers objected contending, among other things, that the Commission was inconsistent in holding that it no longer had jurisdiction over the gathering affiliates, but could exercise jurisdiction in the future under *Arkla Gathering*, if the affiliate engaged in anti-competitive behavior. While concluding that as a conceptual matter, the Commission's position was not "internally contradictory," the court noted that it was not in a position to evaluate the question other than as an abstract matter because the Commission had yet to assert jurisdiction over a gathering affiliate.⁴⁵ In the second cited case, Chesapeake alleged that an interstate pipeline and affiliated gathering companies acted in concert to charge gathering rates that would exceed the jurisdictional pipeline's maximum filed rates. In *Chesapeake*, the Commission did not use the *Arkla Gathering* case to decide any issues and did not assert jurisdiction over the gathering affiliate.⁴⁶

53. In *Millennium*, also cited by the Kentucky Attorney General, several parties contended that we should not rely on precedent agreements with affiliates to demonstrate market support for construction projects.⁴⁷ The discussion in *Millennium* justified our practice of relying on precedent agreements with affiliates and merely noted that the test announced in the *Arkla Gathering* case could be used in situations where abuses by affiliates were present. Other than noting the *Arkla Gathering* case, however, the *Millennium* order did not use the test and did not find any affiliate abuse. Thus, *Millennium*, like the *Conoco* and *Chesapeake* cases cited by the Kentucky Attorney General, does not support the Kentucky Attorney General's position.

54. For these reasons, we find that the Kentucky Attorney General has not met the criteria set forth in *Arkla Gathering* for reasserting jurisdiction over Kentucky West under the NGA. Any concerns the Kentucky Attorney General may have regarding

⁴⁵ *Conoco*, 90 F.3d at 549.

⁴⁶ 92 FERC at 61,350-51.

⁴⁷ The *Millennium* case was not decided under our Certificate Policy Statement. Since *Millennium* filed its application prior to the issuance of the Certificate Policy Statement, we decided *Millennium* under the construction policy in existence at the time of the filing. That policy provided that an applicant needed to demonstrate that it had entered into long-term, binding precedent agreements for transportation services to establish market need for the proposed construction.

Kentucky West's denial of taps on its system should be raised in an appropriate state or local proceeding. In addition, we note that the Commission has issued a notice of inquiry in Docket No. PL05-10-000 to evaluate possible changes in the *Arkla Gathering* test.⁴⁸ If as a result of this inquiry the Commission determines to abandon the *Arkla Gathering* test and adopt a different test for reassertion of NGA jurisdiction, our action today is without prejudice to the Kentucky Attorney General's ability to present evidence that would satisfy a new test.

D. Environmental Analysis

55. Equitrans used the Commission's National Environmental Policy Act of 1969 (NEPA) Pre-Filing Process for its project.⁴⁹ The purpose of using the Pre-Filing Process is to involve interested stakeholders early in the project planning and to identify and resolve issues prior to filing the certificate application. Use of this process allowed more than four months of stakeholder input prior to Equitrans filing its application on May 10, 2006.

56. On February 3, 2006, the Commission issued its Notice of Intent to Prepare an Environmental Assessment for the Proposed Big Sandy Pipeline Project, Request for Comments on Environmental Issues, and Notice of Site Visit (NOI). In addition, Commission staff held a public site visit for the project on February 23, 2006.

57. Approximately seven comments were received during the scoping period. The complete record of the pre-filing Docket No. PF06-12-000 has been received into and integrated with the record of this docket.

58. On September 29, 2006, the Commission issued the EA for Equitrans' proposed project, with comments due on October 30, 2006. The EA addressed geology and soils, water resources, wetlands, vegetation and wildlife, threatened and endangered species, land use, cultural resources, socioeconomics, environmental justice, air quality and noise, safety and reliability, polychlorinated biphenyls, and alternatives. The EA also addressed all substantive comments received in response to the NOI and the comments related to the environmental aspect of the proposed project filed in Docket No. CP06-275-000.

⁴⁸ See *Criteria for Reassertion of Jurisdiction Over the Gathering Services of Natural Gas Company Affiliates*, 112 FERC ¶ 61,292 (2005).

⁴⁹ Docket No. PF06-12-000 was established on December 28, 2005 for Equitrans' pre-filing proceeding.

Comments were received in response to the EA from the Kentucky Division of Water (KYDW), Kentucky Division for Air Quality (KYDAQ), and the Kentucky Department for Public Health (KYDPH).

59. The KYDW is concerned with the crossing of Paint Creek. Paint Creek does not currently support the cold water aquatic habitat designation because of sediment and silt caused by non-point problems, and the KYDW noted that further impacts from these pollutants should be avoided. Erosion and sedimentation impacts from construction and stream crossing procedures were addressed in the EA. The EA determined that Equitrans' Erosion & Sedimentation Control Plan was acceptable and that implementation would minimize erosion and sedimentation.

60. The KYDPH is concerned about a 5-mile-long section of the proposed route near Blaine, KY possibly being near closed and plugged oil well production sites that may not have been remediated of potential contaminants. Both active and inactive oil wells that are known to occur in the project area based on field surveys were addressed in the EA. However, the KYDPH has requested that Equitrans do a physical review of the 5-mile-long section to assure no contaminated areas are affected. If contaminated areas are found, the KYDPH believes minor adjustments could be made to avoid impacts. On October 31, 2006, Equitrans filed a response agreeing to KYDPH's requested review by stating that it is already working closely with the KYDPH to ensure that routing of the Big Sandy Pipeline does not disturb any closed and plugged oil well production sites which may not have been remediated of potential contaminants. Equitrans and the KYDPH's initial review determined that the current route would not disturb these areas.

61. In its letter, the KYDAQ cited two of its regulations concerning fugitive emissions and open burning. While the KYDAQ did not express any specific concerns with the project, they did indicate that these regulations will apply to this project. Fugitive emissions were addressed in the air quality section of the EA. Equitrans will be required to comply with state regulations concerning open burning and all state and local government regulations

62. On September 21, 2006, Equitrans filed a Rare, Threatened, and Endangered Species Report for the Indiana and gray bat that shows seven bat portals were identified within the project area. Six of these portals are potentially suitable habitat. Equitrans states that it will modify the route to avoid impacting three of the portals by adopting avoidance measures suggested by the United States Fish and Wildlife Service (USFWS), such as the 300-foot no-clearing buffer and timing restrictions for tree clearing. The three remaining bat portals are along an existing road, JAR-7B. Equitrans states that it will not modify the road, and will install barriers where necessary to prevent soil from entering any portals. Our staff has determined, based on the concurrence letter from the

USFWS filed on October 27, 2006, that this report satisfies the recommendation concerning the federally-listed bat species in the EA. Therefore, it is not included as a condition of this order.

63. Based on the discussion in the EA, we conclude that if constructed in accordance with Equitrans' application and supplements and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

64. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction of facilities approved by this Commission.⁵⁰

65. Equitrans shall notify the Commission's environmental staff by telephone, e-mail, or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Equitrans. Equitrans shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

66. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Equitrans to construct and operate the Big Sandy project, as described more fully in the order and in the application.

(B) The certificate issued herein is conditioned on Equitrans' compliance with all of the applicable regulations under the Natural Gas Act, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20.

⁵⁰See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(C) Equitrans shall execute firm service agreements equal to the level of service represented in its precedent agreements prior to commencing construction.

(D) Equitrans' incremental recourse rates, as modified by this order, are approved as initial section 7 rates.

(E) Equitrans must file actual tariff sheets in accordance with section 154.207 of the Commission's regulations not less than 30 days and not more than 60 days prior to commencing service, consistent with the discussion in this order.

(F) Equitrans must file a cost and revenue study at the end of its first three years of operation to justify its cost-based firm and interruptible transportation rates.

(G) The certificate issued herein is conditioned on Equitrans' compliance with the environmental conditions set forth in Appendix B to this order.

(H) Equitrans shall notify the Commission's environmental staff by telephone, e-mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Equitrans. Equitrans shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(I) Equitrans' facilities shall be constructed and made available for service within one year of the date of the order in this proceeding.

(J) Chesapeake's and Interstate's untimely motions to intervene are granted.

(K) The Kentucky Attorney General's motion to defer action is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix A

Motions to Intervene in Docket No. CP06-275-000

Attorney General of the Commonwealth of Kentucky
Big Branch Holding Company, LLC
Columbia Gas Transmission Corporation
Equitable Gas Company
KeySpan Delivery Companies⁵¹
North East Gas Corporation
PECO Energy Company
Philadelphia Gas Works
The Peoples Natural Gas Company d/b/a Dominion Peoples and Hope Gas, Inc. d/b/a
 Dominion Hope (joint motion)
Straight Creek Gathering, LP

⁵¹ The KeySpan Delivery Companies consist of KeySpan Energy Delivery New York; KeySpan Energy Delivery Long Island; Boston Gas Company; Colonial Gas Company; EnergyNorth Natural Gas, Inc.; and Essex Gas Company.

Appendix B

Environmental Conditions for the Big Sandy Project

As recommended in the EA, this authorization includes the following conditions:

1. Equitrans shall follow the construction procedures and mitigation measures described in its application and supplements including responses to staff data requests and as identified in the environmental assessment (EA), unless modified by this Order. Equitrans must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of this Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction
3. **Prior to any construction**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors, and contractor personnel will be informed of the environmental inspector's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets, and shall include all of the staff's recommended facility locations identified in the EA. **As soon as they are available, and before the**

start of construction, Equitrans shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by this Order. All requests for modifications of environmental conditions of this Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Equitrans' exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to this Order must be consistent with these authorized facilities and locations. Equitrans' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Equitrans shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to route variations required herein or extra workspace allowed by the Upland Erosion Control, Revegetation, and Maintenance Plan, minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the certificate and prior to construction**, Equitrans shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Equitrans will implement the mitigation measures required by this Order. Equitrans must file revisions to the plan as schedules change. The plan shall identify:
- a. how Equitrans will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - b. the number of environmental inspectors assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - c. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
 - d. the training and instructions Equitrans will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change).
 - e. the company personnel (if known) and specific portion of Equitrans' organization having responsibility for compliance;
 - f. the procedures (including use of contract penalties) Equitrans will follow if noncompliance occurs; and
 - g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the mitigation training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Equitrans shall file updated status reports prepared by the head environmental inspector with the Secretary on a *weekly* basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;

- b. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of this Order, and the measures taken to satisfy their concerns; and copies of any correspondence received by Equitrans from other federal, state or local permitting agencies concerning instances of noncompliance, and Equitrans' response.
8. Equitrans shall develop and implement an environmental complaint resolution procedure. The procedure shall provide landowners with clear and simple directions for identifying and resolving their environmental mitigation problems/concerns during construction of the project and restoration of the ROW. **Prior to construction**, Equitrans shall mail the complaint procedures to each landowner whose property would be crossed by the project.
- a. In its letter to affected landowners, Equitrans shall:
 - (1) provide a local contact that the landowners should call first with their concerns; the letter should indicate how soon a landowner should expect a response;
 - (2) instruct the landowners that, if they are not satisfied with the response, they should call Equitrans' Hotline; the letter should indicate how soon to expect a response; and
 - (3) instruct the landowners that, if they are still not satisfied with the response from Equitrans' Hotline, they should contact the Commission's Enforcement Hotline at (888) 889-8030.
 - b. In addition, Equitrans shall include in its weekly status report a copy of a table that contains the following information for each problem/concern:
 - (1) the date of the call;
 - (2) the identification number from the certificated alignment sheets of the affected property;
 - (3) the description of the problem/concern; and

- (4) an explanation of how and when the problem was resolved, will be resolved, or why it has not been resolved.
9. Equitrans shall employ at least one environmental inspector per construction spread. The environmental inspector shall be:
 - a. responsible for monitoring and ensuring compliance with all mitigation measures required by this Order and other grants, permits, certificates, or other authorizing documents;
 - b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
 - c. empowered to order correction of acts that violate the environmental conditions of this Order, and any other authorizing document;
 - d. a full-time position, separate from all other activity inspectors;
 - e. responsible for documenting compliance with the environmental conditions of this Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
10. Equitrans must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
11. **Within 30 days of placing the certificated facilities in service**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed/installed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Equitrans has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
12. Equitrans shall limit its nominal construction right-of-way width to 85 feet. Where Equitrans believes additional right-of-way width is necessary for extra

workspace during construction, it shall file with the Secretary a request for the review and written approval of the Director of OEP **before construction in each extra workspace area**. Each request shall:

- a. identify the location by milepost(s) and the specific dimensions it believes are needed; and
 - b. provide a detailed site-specific justification and alignment sheet designating the change for each location.
13. **Prior to any construction**, Equitrans shall file with the Secretary its mitigation procedures regarding pipeline integrity for active mines crossed by the project.
14. Equitrans shall install temporary fencing along the edge of the access roads in the area of the Rogers Family and May-Graham Family Cemeteries.
15. Equitrans shall **defer construction and use** of facilities and staging, storage, and temporary work areas and new or to-be-improved access roads **until**:
- a. Equitrans files the Kentucky State Historic Preservation Office's (SHPO) comments on the Addendum archaeological and architectural survey reports and the Phase II report, and any USACE comments on the Project reports;
 - b. Equitrans files Phase I archaeological and architectural survey reports, and any necessary Phase II evaluation reports, for the denied access areas, access roads, staging areas, warehouse yards, and any other remaining areas requiring survey, and the SHPO's and any USACE comments on the reports;
 - c. Equitrans files any required treatment plans and the SHPO's and any USACE comments on the plans;
 - d. the ACHP is afforded and opportunity to comment, if historic properties would be adversely affected; and
 - e. the Director of OEP reviews and approves all reports and plans and notifies Equitrans in writing that it may proceed with treatment or construction.

All material filed with the Commission containing location, character, and ownership information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: "CONTAINS

PRIVILEGED INFORMATION—DO NOT RELEASE”.

16. Equitrans shall file a noise survey at the Big Sandy Compression Station to verify that the noise from all the equipment operated at full capacity does not exceed the previously existing noise levels that are at or above an L_{dn} of 55 dBA at the nearby noise sensitive areas (NSA). The results of this noise survey shall be filed with the Secretary **no later than 60 days** after placing the modified units in service. If any of these noise levels are exceeded, Equitrans shall, **within 1 year** of the in-service date, implement additional noise control measures to reduce the operating noise level at the NSAs to or below the previously existing noise level. Equitrans shall confirm compliance with this requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls.