

135 FERC ¶ 61,130
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 13, 2011

In Reply Refer To:
Equitrans, L.P.
Docket Nos. RP11-2006-000
RP11-1959-000

Equitrans, L.P.
625 Liberty Avenue
Suite 1700
Pittsburgh, PA 15222

Attention: Thomas Yeh
Manager, Rates and Commercial Analysis

Reference: Seasonal Allocations

Ladies and Gentlemen:

1. On April 15, 2011, Equitrans, L.P. (Equitrans) filed revised tariff records¹ in Docket No. RP11-2006-000 to revise its General Terms and Conditions (GT&C) to allow customers to adjust the winter/base allocation among primary receipt and delivery points and to revise its Form of Service Agreement for Rate Schedule FTS to add a column to provide for a base Maximum Daily Quantity (MDQ) and a winter MDQ allocation. In addition, on March 31, 2011, in Docket No. RP11-1959-000, Equitrans submitted tariff records² to reflect a non-conforming Rate Schedule FTS service agreement (Agreement) executed with Equitable Gas Company (EGC) that allowed EGC to adjust its winter/base MDQ allocations among primary receipt points (March 31 Filing). We grant waiver of

¹ Section 6.7, Flexible Receipt and Delivery Points, 3.0.0; Section 7.2.1, Rate Schedule FTS - Exhibit A, 3.0.0 to Equitrans Tariff, FERC NGA Gas Tariff

² Section 6.42, Non-Conforming Agreements, 5.0.0; Section 2.2, Equitable Gas Company, LLC -EQTR11630-585, 0.0.0 to Equitrans Tariff, FERC NGA Gas Tariff.

the Commission's 30-day notice requirement and accept Equitrans' revised tariff records, submitted in Docket No. RP11-2006-000, effective May 15, 2011. Further, we accept the subject tariff records and Agreement, submitted in Docket No. RP11-1959-000, effective May 3, 2011.

2. Section 6.7(1) of Equitrans' GT&C provides that a firm shipper's MDQ at each of its primary receipt and delivery points must be specified in Exhibit A of its Service Agreements. That section also provides that the sum of the shipper's MDQs at each of its primary receipt and delivery points must equal the maximum daily quantity specified in the service agreement. In its March 31 Filing, in Docket No. RP11-1959-000, Equitrans stated that EGC requested the ability to adjust its primary receipt point MDQ allocations between winter³ and summer⁴ seasons to provide for operational flexibility. Equitrans stated that its GT&C and its Rate Schedule FTS Form of Service Agreement do not provide for a shipper to have different receipt and delivery point MDQs in different seasons. Therefore, the separate columns for the winter MDQ allocation and the base MDQ allocation in section 4 of Exhibit A of EGC's Agreement deviate from the Rate Schedule FTS Form of Service Agreement. Equitrans also stated that it would make the instant filing in Docket No. RP11-2006-000 to add such flexibility to its GT&C and Rate Schedule FTS Form of Service Agreement so that all shippers might have this ability. Equitrans noted that, if accepted, the instant filing in Docket No. RP11-2006-000, would permit all shippers such flexibility and that the filing it made in Docket No. RP11-1959-000 to accommodate its material deviation would no longer be necessary for future customers requesting such flexibility. On April 28, 2011, the Commission accepted and suspended, the subject tariff records and Agreement, in Docket No. RP11-1959-000, subject to a further Commission Order.⁵

3. In the instant filing in Docket No. RP11-2006-000, Equitrans states it proposes to revise tariff section 6.7(3) of its GT&C, which currently provides customers the ability to add primary receipt and deliver points, to also include the ability to adjust the winter/base MDQ allocation among a shipper's primary receipt and delivery points. Further, Equitrans states it is also proposing to update tariff section 7.2.1, which contains the Form of Service Agreement for Rate Schedule FTS, to add a column to Exhibit A to

³ "The term "Winter Season" shall mean the period from November 1 through March 31." Section 6.1, Definitions, 0.0.0 to Equitrans Tariff, FERC NGA Gas Tariff.

⁴ Summer season and base season are used interchangeably throughout Equitrans' tariff. "The term "Summer Season" or "Base Season" shall mean the period from April 1 through October 31." Section 6.1, Definitions, 0.0.0 to Equitrans Tariff, FERC NGA Gas Tariff.

⁵ *Equitrans, L.P.*, 135 FERC ¶ 61,086 (2011).

provide for a base MDQ allocation and a winter MDQ allocation for primary receipt and delivery points.

4. Public notice of the filing was issued on April 18, 2011. Interventions and protests were due by April 12, 2011, as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214 of the Commission's rules,⁷ all timely motions to intervene and any unopposed 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. On April 27, 2011, Independent Oil & Gas Association of West Virginia, Inc. (IOGA) submitted comments. On April 29, 2011, Equitrans submitted an answer. While the Commission's regulations do not permit the filing of answers to comments, the Commission will accept the answer because it provides additional information which aids in our decision making process.⁸

5. IOGA states that it supports Equitrans' proposed tariff changes to make seasonal MDQ flexibility available to all shippers. But, IOGA believes that the Commission should require Equitrans to conduct an open season where all interested shippers, including EGC, are able to seasonally adjust their receipt and delivery point MDQs at the same time. In the alternative, IOGA requests that Equitrans represent that no firm shipper's ability to seasonally adjust its MDQ at its primary receipt and delivery points was foreclosed or limited by EGC's MDQ elections.

6. Equitrans states in its answer that EGC's seasonal MDQ elections did not foreclose or limit the ability of any firm shipper to make a similar seasonal designation among primary points.

7. On April 29, 2011, the Commission directed Equitrans to answer several questions related to capacity at points on its system and the impact of its seasonal flexibility proposal on that capacity. In its response dated May 3, 2011, Equitrans states that on March 31, 2011, two long term Rate Schedule FTS contracts between Equitrans and EGC for a total capacity of 191,000 dth/day expired. Equitrans states that EGC, possessing a regulatory right of first refusal, then entered into the Agreement for firm capacity of 164,935 dth/day. Equitrans states that capacity is available at seven of the eight primary receipt points at which EGC has seasonal flexibility under the Agreement. Equitrans

⁶ 18 C.F.R. § 154.210 (2010).

⁷ 18 C.F.R. § 385.214 (2010).

⁸ See Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2010).

asserts that EGC had contracted for all available capacity available at the DTI Pratt receipt point under the previous contract. Equitrans asserts that without granting seasonal flexibility at this point, capacity would not be available to other shippers. Equitrans also states that concerning the primary receipt points where EGC has seasonal flexibility, two such points have other shippers contracting for service on a primary basis. Equitrans asserts that both of these points currently have capacity available.

8. The Commission finds that Equitrans has adequately responded to the Commission's and IOGA's concerns. Therefore, we accept Equitrans' revised tariff records, submitted in Docket No. RP11-2006-000, effective May 15, 2011 as requested.

9. With regard to the tariff records and Agreement, submitted in Docket No. RP11-1959-000, in general, when reviewing any provision that differs from a *pro forma* service agreement, the Commission first determines whether it is a material deviation. The Commission has held that a material deviation is any provision which (1) goes beyond filling in the blank spaces in the form of service agreement with appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties.⁹ The Commission prohibits negotiated terms and conditions of service that result in a customer receiving a different quality of service than that offered to other customers under the pipeline's generally applicable tariff,¹⁰ or that affect the quality of service received by others.¹¹

10. We find that section 4 of Exhibit A of the Agreement, which allows EGC to seasonally allocate MDQ at primary receipt points, was a material deviation at the time that service agreement was executed. EGC was granted the opportunity to elect seasonal MDQ allocations prior to other shippers, which concerned the Commission because of its potential for discrimination and undue preference. However, given the assurances of Equitrans that EGC's seasonal MDQ election did not foreclose or limit the ability of any firm shipper to make a similar seasonal designation among primary points, the Commission will permit the Agreement to take effect May 3, 2011, as requested, despite the fact that the seasonal MDQ allocations were material deviations from the *pro forma* service agreement at that time. Accordingly, the Commission accepts the tariff records and Agreement submitted by Equitrans in Docket No. RP11-1959-000, to be effective

⁹ *Monroe Gas Storage Co., LLC*, 130 FERC ¶ 61,113, at P 28 (2010). See generally *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).

¹⁰ *Texas Eastern Transmission, LP*, 123 FERC ¶ 61,095, at P 14 n.6 (2008).

¹¹ See *Dominion Transmission, Inc.*, 93 FERC ¶ 61,177 (2000).

May 3, 2011.¹² However, we note that in light of our acceptance of the revisions to the Rate Schedule FTS form of service agreement, the Agreement is now no longer a non-conforming agreement. Therefore, Equitrans should revise its list of non-conforming agreements in its tariff to remove the Agreement with EGC.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² On May 3, 2011, Equitrans submitted a motion to place the subject tariff records into effect in Docket No. RP11-1959-000.