

138 FERC ¶ 61,229  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Equitrans, L.P.

Docket Nos. RP12-465-000  
RP11-1859-000  
(not consolidated)

ORDER ON PIPELINE SAFETY COST TRACKER FILINGS

(Issued March 30, 2012)

1. On April 19, 2011, Equitrans, L.P. (Equitrans) submitted revised tariff records<sup>1</sup> in Docket No. RP11-1859-001 in order to comply with the Commission's letter order issued on March 30, 2011.<sup>2</sup> In the March 2011 Order, the Commission directed Equitrans to recalculate its Pipeline Safety Cost Tracker (PSCT) surcharge for costs incurred during the 2010 calendar year in order to be in accordance with section 6.38 (4) of the GT&C of its tariff, which requires using actual throughput adjusted for known and measurable changes, and not estimates. Equitrans requests that the Commission accept the revised tariff records to be effective April 1, 2011. As discussed below, the Commission finds that Equitrans' recalculated PSCT surcharge and associated revised tariff records in Docket No. RP11-1859-001 comply with the March 2011 Order and will be accepted effective April 1, 2011, as proposed.

2. On March 1, 2012, Equitrans filed revised tariff records<sup>3</sup> in Docket No. RP12-465-000 in order to update its PSCT surcharge for costs incurred during the 2011

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<sup>1</sup> Section 4.1, Transportation Rates NOFT & FTS, 4.1.0 and Section 4.2, Transportation Rates ITS, STS-1, AGS & Products Extraction, 4.1.0 to Equitrans Tariff, FERC NGA Gas Tariff.

<sup>2</sup> *Equitrans, L.P.*, 134 FERC ¶ 61,250 (2011) (March 2011 Order).

<sup>3</sup> Section 4.1, Transportation Rates NOFT & FTS, 7.0.0 and Section 4.2, Transportation Rates ITS, STS-1, AGS & Products Extraction, 7.0.0 to Equitrans Tariff,

(continued...)

calendar year. Parties object to the manner in which Equitrans calculates its PSCT, and that Equitrans has not adequately explained how it is accounting for negotiated-rate contracts. The tariff records filed in Docket No. RP12-465-000 are accepted and suspended effective April 1, 2012, subject to further review.

### **Background**

3. Equitrans' PSCT mechanism is set forth in section 6.38 of its General Terms and Conditions (GT&C). Equitrans included the PSCT in its tariff pursuant to the settlement of its last general section 4 rate case in Docket No. RP05-164-000, *et al.* The Commission approved that settlement in 2006.<sup>4</sup>

4. Section 6.38 (1) defines "Qualifying Costs" as costs "incurred by Equitrans under the Pipeline Safety Improvement Act of 2002 ('PSIA') and the Commission's Orders," including "(i) the return, taxes and depreciation expense associated with invested capital and (ii) the actual operating and maintenance expenses incurred by Equitrans," but excluding "costs associated with operation and maintenance expenses or capital additions made in the ordinary course of business." Section 6.38 (2) requires Equitrans to make annual PSCT filings to be effective April 1 of each year. Section 6.38 (3) provides that the PSCT surcharge "shall be assessed on a per dekatherm basis and apply to all receipts by Equitrans, pursuant to Customer Nominations and after fuel retainage, under Rate Schedules FTS, STS-1, ITS, and NOFT on a point to point basis."

5. Section 6.38 (4) sets forth the methodology that Equitrans must use to calculate its PSCT surcharge. In summary, subsection (a) provides that Equitrans must determine the amount of Qualifying Costs as of each December 31 of the preceding year. Subsection (b) provides that the sum of the Qualifying Costs, adjusted for any over-collection or under-collection from the prior period, shall be divided by the actual throughput, adjusted for any known and measureable changes, during the preceding calendar year to derive the PSCT surcharge to become effective each April 1.

### **2011 Compliance Filing**

6. In the March 2011 Order, the Commission found that Equitrans' calculation of its PSCT surcharge to be effective April 1, 2011 did not follow the terms of section 6.38 (4)

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FERC NGA Gas Tariff. The proposed tariff records in Docket No. RP12-465-000 replace the tariff records in Docket No. RP11-1859-001.

<sup>4</sup> *Equitrans, L.P.*, 115 FERC ¶ 61,007 (2006).

of its tariff.<sup>5</sup> Equitrans used nine months of actual throughput (April through December 2010) and three months of estimated throughput (January through March 2011) instead of actual throughput for calendar year 2010, adjusted for any known and measurable changes, as required by the terms of its tariff. The Commission therefore directed Equitrans to recalculate its PSCT surcharge in accordance with section 6.38 (4).

7. In its compliance filing, Equitrans recalculated its PSCT surcharge in accordance with section 6.38 (4) of its tariff by starting with the sum of the actual throughput for the 12-month period ending December 31, which was 61,541,152 dth. Equitrans states that the known and measurable adjustment is the 5,009,520 Dth from the prior filing,<sup>6</sup> plus an additional net reduction of 988,366 Dth applied for the actualization of January and February 2011 billing determinants. As a result, the revised billing determinants total increased from 54,698,007 Dth to 55,543,266 Dth; and that in turn reduced the PSCT surcharge from \$0.1476 per Dth to \$0.1453 per Dth.

### **Notice and Responsive Pleadings**

8. On May 2, 2011, the Independent Oil & Gas Association of West Virginia (IOGA) filed a protest to Equitrans' compliance filing. On May 6, 2011, Equitrans filed an answer. Under Rule 213(a)(2) of the Commission's regulations, answers to protests are prohibited unless otherwise ordered by the decisional authority.<sup>7</sup> We will accept Equitrans' answer because it provides a more complete record in this proceeding.

9. In its protest, IOGA states that Equitrans' compliance filing fails to follow section 154.203(a)(2) of the Commission's regulations, which provides that compliance filings include "[r]evised workpapers, data, or summaries with cross-references to the originally

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<sup>5</sup> Section 6.38 (4)(b) provides that the sum of the qualifying costs adjusted for any over-collection or under-collection from the prior period must be divided by the sum of the actual throughput under certain rate schedules, adjusted for any known and measurable changes for the 12-month period ending December 31 to derive the PSCT surcharge to become effective on April 1 of the following year.

<sup>6</sup> This amount is a net reduction set forth in Equitrans' initial filing in this proceeding (March 1, 2011 PSCT Annual Adjustment Filing), which consists of cancelled contracts in 2011, overrun volumes which are not expected to recur and the projected incremental growth.

<sup>7</sup> 18 C.F.R. § 385.213(a)(2) (2011).

filed workpapers, data, or summaries.”<sup>8</sup> IOGA asserts that Equitrans should be required to file new workpapers supporting the known and measurable changes adjustment of 5,009,520 Dth.

10. In its answer, Equitrans states that the March 2011 Order rejected IOGA’s argument that Equitrans be required to base its surcharge billing determinants solely on “actual experience.”<sup>9</sup> Equitrans further states that, in addition to agreeing that making known and measurable changes to the throughput number used in the surcharge calculation was permissible, the Commission was fully aware of the known and measurable changes set forth in the initial filing in this proceeding.

### **Commission Determination**

11. We deny IOGA’s protest and find that Equitrans adequately supported its revised PSCT surcharge. As Equitrans explains in the compliance filing, it filed updates to certain work papers (WP-1 and WP-7) to reflect the Commission’s directive to recalculate the PSCT based on actual throughput as required by section 6.38 (4)(b) of its tariff. In the compliance filing, Equitrans performed the required calculation to use actual instead of estimated volumes for a full 12 months as directed by the Commission. Equitrans also explained how the known and measurable changes would apply to the revised calculation to devise a modified PSCT surcharge, including the fact that the net reduction in volumes for known and measurables (i.e. the 5,009,520 Dth) is still applicable to the revised calculation. We find that Equitrans properly recalculated the PSCT surcharge and that the work papers and analysis provided with the compliance filing provide sufficient detail to support the revised surcharge. Equitrans’ proposed recalculated PSCT surcharge complies with section 6.38 (4)(b) of its tariff and the March 2011 Order. Accordingly, we accept the revised tariff records listed in footnote 1, effective April 1, 2011, as proposed.

### **2012 Annual Filing**

#### **Details of Filing**

12. Equitrans proposes to increase its PSCT from \$0.1476 per Dth to \$0.1872, effective April 1, 2012. Equitrans states that the proposed PSCT would recover \$10.4 million in Qualifying Costs from 2011, over a total projected transportation throughput of 54.7 million Dth. Equitrans states that it has procedures in place to evaluate safety expenditures and assure that they are properly included or excluded as Qualifying Costs,

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<sup>8</sup> 18 C.F.R. § 154.203(a)(2) (2011).

<sup>9</sup> See March 2011 Order, 134 FERC ¶ 61,250 at P 10 & n.9.

both before starting safety-related projects and again through a year-end review. Equitrans submits eleven workpapers detailing its calculations. Finally, Equitrans notes that the Commission has not taken final action on its PSCT filing for the previous year, in Docket No. RP11-1859-000. Equitrans notes that the instant filing assumes that the previous year's filing will be accepted as proposed.

### **Notice and Responsive Pleadings**

13. Public notice of Equitrans' 2012 annual PSCT filing in Docket No. RP12-465-000 was issued on March 2, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>10</sup> Pursuant to Rule 214,<sup>11</sup> all timely filed 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. Philadelphia Gas Works (PGW) and Independent Oil & Gas Association of West Virginia (IOGA) filed protests. On March 19, 2012, Equitrans filed an answer. Under Rule 213(a)(2) of the Commission's regulations, answers to protests are prohibited unless otherwise ordered by the decisional authority.<sup>12</sup> We will accept Equitrans' answer because it provides a more complete record in this proceeding.

14. PGW protests that Equitrans' filing cannot be considered just and reasonable because it is silent as to how Equitrans is accounting for a negotiated-rate agreement with Equitrans' affiliate, EQT Energy LLC (EQT). PGW states that EQT's negotiated-rate agreement provides that when EQT nominates to make deliveries to off-system markets (i.e., to use delivery points on Equitrans' Sunrise expansion project),<sup>13</sup> Equitrans will waive the PSCT surcharge. However, when EQT nominates service to delivery points on Equitrans' existing system, it is subject to the PSCT surcharge.<sup>14</sup> PGW states that on July 29, 2011, the Commission accepted the negotiated-rate agreement, but "conclude[d]

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<sup>10</sup> 18 C.F.R. § 154.210.

<sup>11</sup> 18 C.F.R. § 385.214.

<sup>12</sup> 18 C.F.R. § 385.213(a)(2).

<sup>13</sup> On January 27, 2011, as amended on February 1, 2011, Equitrans filed an abbreviated certificate application in Docket No. CP11-68-000 to construct the Sunrise facilities. The Certificate was issued on July 21, 2011. *Equitrans, L.P.*, 136 FERC ¶ 61,046 (2011).

<sup>14</sup> *Equitrans, L.P.*, 136 FERC ¶ 61,065, at PP 3-4 (2011).

that issues concerning how Equitrans' negotiated rate agreements should affect its recovery of PSCT and fuel costs are best addressed when Equitrans makes its annual fuel or PSCT filings."<sup>15</sup>

15. PGW states that Equitrans' filing is entirely silent regarding EQT's negotiated-rate agreement. According to PGW, the record does not reveal whether Equitrans has been transporting volumes for EQT without charging the PSCT rate, and if so, including those volumes in computing the PSCT rate. PGW states it is also unclear whether Equitrans is absorbing PSCT costs associated with EQT, or seeking to pass through the costs of the EQT agreement onto its other customers, contrary to Commission policy.

16. IOGA protests that Equitrans' billing determinants are, without explanation, being understated as compared to Equitrans' Form No. 3-Q data. IOGA claims that instead of the roughly 40 million Dth reflected in its PSCT filing, Equitrans should be using the roughly 140 million reflected in its Form No. 3-Q. By using a larger denominator, IOGA argues, the surcharge would be significantly lower. IOGA states that some of the discrepancy is because Equitrans properly included Big Sandy Pipeline data in its Form No. 3-Q until May, but did not include its Big Sandy Pipeline in its PSCT data; however, IOGA estimates that this should only account for 25 percent of the discrepancy. IOGA states that Equitrans has informally explained that the differences were due to quantities of gas delivered off-system through a new delivery point associated with the Sunrise Project.

17. IOGA argues that the differences might be due to Equitrans' improperly accounting for nominations under EQT's negotiated-rate agreement. IOGA suggests that Equitrans may be excluding billing determinants not only for EQT's off-system nominations, but also for its transportation on Equitrans' mainline system. As a result, IOGA argues, Equitrans would be "essentially claiming a unilateral discount adjustment to the surcharge, spreading the surcharge over captive customers without taking into consideration FTS or ITS quantities subject to such a negotiated rate."<sup>16</sup> IOGA argues that this violates Commission policy, which only allows such a discount adjustment when the pipeline already has a tariff provision permitting it.<sup>17</sup> In addition, IOGA argues, excluding EQT nominations would violate tariff section 6.38 (3), which requires that the PSCT surcharge "apply to all receipts by Equitrans." Accordingly, IOGA argues that the

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<sup>15</sup> *Id.* P 9.

<sup>16</sup> IOGA protest at 6.

<sup>17</sup> *Id.* (citing *Tennessee Gas Pipeline Co.*, 135 FERC ¶ 61,208, at P 203 (2011)).

Commission should require Equitrans to supplement its filing in order to explain the discrepancies and detail any instances where it excluded quantities from its surcharge determinants.

18. In its answer, Equitrans urges the Commission to reject the protests and accept its PSCT filing as just and reasonable. Equitrans explains that an increasing proportion of its throughput is on its new facilities, collectively referred to as the Sunrise Project, rather than on its pre-existing, mainline system. Equitrans states that in its January 27, 2011 certificate application for the Sunrise Project, it explained that it would use its existing mainline system as a feeder system to the Sunrise Project. Although Sunrise Project volumes feed from the existing system, Equitrans proposed incremental rate treatment for the Sunrise Project facilities to protect mainline customers from subsidizing the expansion. In addition, Equitrans proposed that the recourse rates for transportation to primary delivery points on the Sunrise Project would not be subject to the PSCT. Equitrans states that the Commission accepted this proposal in its July 21, 2011 order issuing a certificate for the Sunrise Project. Equitrans argues that this arrangement is just and reasonable, and that it accounts for all of the discrepancies that PGW and IOGA cite in their protests.

19. Equitrans further argues that it is following its tariff by uniformly applying the PSCT surcharge to the mainline system and not to Sunrise. All of Equitrans' negotiated rate agreements for delivery to off-system markets provide that the PSCT surcharge will not be imposed on nominations to delivery points on Sunrise, but will be imposed on nominations to delivery points on the mainline system. Equitrans states that this is consistent with the fact the recourse rates approved in the Sunrise Project certificate proceeding exempt nominations to delivery points on Sunrise from the PSCT. Thus, Equitrans argues, the protesters are incorrect to characterize the negotiated-rate contracts as a waiver of the PSCT surcharge that would otherwise be imposed. Further, Equitrans states that by following its tariff, it is not deferring or shifting any costs. Equitrans argues that if it instead were required to impose the PSCT surcharge on Sunrise customers, then Sunrise customers would be improperly subsidizing the legacy system, to the extent that it might have jeopardized the market demand for Sunrise contracts.

20. Equitrans also argues that it treats affiliates the same as other similarly situated customers. Equitrans states that its agreement with EQT is virtually identical to all of its other negotiated-rate agreements for incremental Sunrise capacity.

21. Finally, Equitrans argues that despite IOGA's protest, its estimated billing determinants for 2012 are correctly calculated and in line with past calculations. Equitrans states that it estimates that the PSCT surcharge will be assessed across 54.6 million Dth in 2012, and notes that its billing determinants since 2007 have stayed within a range of 53.9-56.4 million Dth. Equitrans includes two exhibits in its answer,

reconciling the volumes included in the PSCT filing as compared to its annual report on fuel and LAUF and its Form No. 3-Q filings.

### **Commission Determination**

22. Equitrans' proposed PSCT surcharge has not been shown to be just and reasonable and may be unjust and unreasonable. Based on the information provided so far, the Commission cannot determine whether Equitrans' treatment of transactions using both the Sunrise and legacy systems, including negotiated rate transactions, is consistent with the terms of the settlement that established the PSCT and Commission policy. Section 6.38 (3) of Equitrans GT&C, as approved in the settlement, provides that the PSCT surcharge will "apply to all receipts by Equitrans, pursuant to Customer Nominations and after fuel retainage, under Rate Schedules FTS, STS-1, ITS, and NOFT on a point to point basis." However, it appears that Equitrans' negotiated rate agreements with Sunrise shippers provide that the shipper will not pay PSCT surcharge for any shipment to a delivery point on the Sunrise system, even if the shipment was from a receipt point on the legacy system.

23. It is unclear what proportion of Equitrans' throughput during calendar year 2011 may have included transactions using receipt points on the legacy system and delivery points on the Sunrise system. It is also unclear whether all such transactions were negotiated rate transactions or whether there were also recourse rate transactions which used receipt points on the legacy system and delivery points on the Sunrise system and, if so, whether Equitrans charges the PSCT for recourse rate transactions using receipt points on the legacy system and delivery points on the Sunrise system. Equitrans also did not indicate in its filing how it accounted for any such transactions in calculating the proposed PSCT surcharge in this filing. For example, it is not clear if Equitrans has exempted the shippers in such transactions from paying the surcharge, but nevertheless included the throughput associated with such transaction in calculating the PSCT surcharge.

24. Therefore, we direct Equitrans to file, within 20 days of the date of this order, answers to the following questions, along with supporting documentation:

(A) What are the actual volumes, if any, for the 12 months ending on December 31 2011, attributed to nominations with a receipt point on the legacy system and a delivery point on the Sunrise system? Please break down these volumes by month and by rate schedules FTS, STS, ITS, and/or NOFT. Also indicate which volumes were nominated under a negotiated rate agreement, a recourse rate agreement, or a discounted rate agreement, if any.

(B) What volumes identified in the answer to (A) were included in the throughput used to design the PSCT proposed in this docket? For any such volumes included in the throughput used to design the PSCT, indicate whether they flowed under a negotiated, discounted, or recourse rate contract.

(C) Do recourse-rate shippers with a receipt point on the Sunrise system and a delivery point on the legacy system pay the PSCT surcharge? What authority or authorities (tariff, order, or settlement) govern this treatment?

(D) Explain whether GT&C section 6.38 (3) requires that the PSCT be assessed to (1) legacy-only shippers, (2) shippers with a receipt point on the legacy system and a delivery point on the Sunrise system, (3) shippers with a receipt point on the Sunrise system and a delivery point on the legacy system, and (4) Sunrise-only shippers. Does GT&C section 6.38 (3) permit Equitrans to discount the PSCT? If so, does any provision of the PSCT mechanism permit Equitrans to true-up under-recoveries related to discounts?

(E) Does any provision of the PSCT mechanism permit Equitrans to true-up any under-recoveries of the PSCT related to negotiated rate transactions, despite the Commission's general policy that Commission policy that "customers electing the recourse rate should be no worse off as a result of the use of negotiated rates than they would be absent the use of negotiated rates."<sup>18</sup>

### **Suspension**

25. Based on a review of the filing, the Commission finds that the proposed tariff records 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 for filing, and suspend their effectiveness for a minimum period to be effective April 1, 2012, subject to the conditions in this order.

26. The Commission's policy regarding tariff filing suspensions is that such 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.<sup>19</sup> It is

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<sup>18</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, at 61,242 (1996).

<sup>19</sup> See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.<sup>20</sup> The Commission finds that such circumstances exist here, where the proposed tariff filing is pursuant to a regularly updated tracker mechanism. Therefore, the Commission will exercise its discretion and suspend the proposed tariff sheets for the minimum period and permit them to become effective April 1, 2012, subject to review and other conditions, and further order of the Commission.

The Commission orders:

(A) The proposed tariff records in Docket No. RP11-1859-001 are accepted effective April 1, 2011, as proposed.

(B) The proposed tariff records in Docket No. RP12-465-000 are accepted and suspended to be effective April 1, 2012, subject to further review and conditions.

(C) Equitrans must file, within 20 days of the date of this order, the information requested in this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>20</sup> See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension).