139 FERC ¶ 61,205
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 No. CP12-32-000

ORDER AMENDING CERTIFICATE,
AUTHORIZING ABANDONMENT, AND APPROVING LEASE

(Issued June 12, 2012)

1. On December 16, 2011, Equitrans, L.P. (Equitrans) filed an application under sections 7(b), (c), and (e) of the Natural Gas Act (NGA)[1] seeking authority to (1) amend its certificate of public convenience and necessity issued July 21, 2011, authorizing Equitrans to construct and operate the Sunrise Project,[2] (2) abandon a portion of facilities authorized in the July 21 Order by sale to a newly-created affiliate, Sunrise Pipeline, L.L.C. (Sunrise), and (3) lease those facilities back from Sunrise. Equitrans also requests pregranted authorization to terminate the lease and reacquire the passive interest in the leased facilities when the lease ends.

2. We approve Equitrans's proposed certificate amendment, abandonment of the Sunrise Project facilities by sale to Sunrise, and the lease of the facilities by Equitrans. In addition, we will approve Equitrans's request for pregranted authority to reacquire the leased facilities upon termination of the lease.

I. Background

3. Equitrans is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania and states that it is owned by EQT Corporation (EQT Corp.), which holds a 97.25 percent interest in the partnership, and ET Blue Grass, LLC,

[1] 15 U.S.C. §§ 717f(b), (c), and (e) (2006).

[2] *Equitrans, L.P.*, 136 FERC ¶ 61,046 (2011) (July 21 Order). Equitrans requested rehearing of this order on an unrelated rate issue, which is currently under consideration by the Commission.

which holds the remaining 2.75 percent interest. Equitrans is a natural gas pipeline company within the meaning of section 2(6) of the NGA[3] engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission.

4. Equitrans states that EQT Corp. also owns EQT Investment Holdings, LLC (EQT Holdings), which formed Sunrise for the purpose of acquiring and owning a passive interest in the Sunrise Facilities. Equitrans states that Sunrise will not be a natural gas company regulated under the NGA following the authorization requested in its application.

5. The Sunrise Project, located in West Virginia and Pennsylvania, will provide up to 313,560 dekatherms (Dth) per day of capacity to transport natural gas from production areas in Pennsylvania and West Virginia to markets in the northeastern and mid-Atlantic United States. Equitrans has begun, but not yet completed, construction of the project. Equitrans states that it expects to complete and place the Sunrise Project into service during the third quarter of 2012.

6. As described in the July 21 Order, the Sunrise Project included: (1) the H-302 Pipeline, an approximately 41.5-mile long, 24-inch diameter pipeline in Wetzel County, West Virginia and Greene County, Pennsylvania; (2) the H-306 Pipeline, an approximately 2.7-mile long, 16-inch diameter pipeline in Wetzel County, West Virginia; (3) the H-309 Pipeline, an approximately 0.21-mile long, 20-inch diameter pipeline in Greene County, Pennsylvania; (4) the Jefferson Compressor Station, a new compressor station consisting of three natural gas combustion engine reciprocating units providing approximately 14,205 horsepower, located in Greene County, Pennsylvania; and (5) five new interconnections to connect the Sunrise Facilities to Equitrans's existing system and the systems of Texas Eastern Transmission, LP and Dominion Transmission, Inc. (hereinafter referred to as the Sunrise Facilities). The Sunrise Project also included the replacement and upgrading of certain pipeline facilities that are part of Equitrans's existing mainline transmission system; however, Equitrans does not propose to convey these facilities to Sunrise as part of the Sunrise Facilities.[4]

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[3] 15 U.S.C. § 717a(6) (2006).

[4] Specifically, the July 21 Order also authorizes Equitrans to replace approximately 2.6 miles of 16-inch inactive pipeline on the existing H-111 Pipeline in Greene County, Pennsylvania with new 20-inch pipeline and requalify approximately 4.8 miles of the existing 20-inch H-111 Pipeline in Greene County, Pennsylvania. July 21 Order, 136 FERC ¶ 61,046 at P 4.

II. Proposal

7. Equitrans proposes to abandon the Sunrise Facilities by sale to Sunrise. Equitrans would transfer legal ownership of the Sunrise Facilities to Sunrise, according to the terms of an Assignment Agreement which requires Equitrans to convey the Sunrise Facilities to Sunrise through a three-part, deemed transaction: (1) Equitrans will transfer fee ownership of the Sunrise Facilities through a distribution of assets by Equitrans to EQT Corp. (including any facilities under construction, facilities that have been constructed and placed into service at the time of the transfer, if applicable, and a sufficient amount of cash to pay for the remaining construction costs); (2) EQT Corp. will make a capital contribution of the same assets to EQT Holdings, the sole member of Sunrise; and (3) EQT Holdings will contribute the same assets to Sunrise. Under the terms of the Assignment Agreement these three steps will occur simultaneously.

8. Equitrans also seeks authorization to lease the Sunrise Facilities back from Sunrise and approval of its Lease Agreement with Sunrise. Equitrans states that the Lease Agreement between Equitrans and Sunrise will govern the terms under which Equitrans will lease and operate the Sunrise Facilities. The Lease Agreement will commence on the date Equitrans transfers the Sunrise Facilities to Sunrise under the Assignment Agreement and will terminate on the lease termination date. Under the Lease Agreement, Equitrans states that it will pay Sunrise monthly rent for the use of the Sunrise Facilities. Equitrans states that the lease payment due in any given month will be the lesser of two payment amounts produced by two alternative payment formulas: (1) a payment based upon a cost of service composed only of plant-related costs for the Sunrise Facilities (C-Payment Alternative) or (2) a revenue-based payment reflecting the revenues generated by Equitrans from the operation of the Sunrise Facilities minus the cost to Equitrans of operating the facilities (R-Payment Alternative). Equitrans states the lease payment represents the negotiated distribution of costs and benefits only as between Equitrans and Sunrise and will not affect the cost of providing service on the Sunrise Facilities under Equitrans's tariff or the incremental rate paid by customers for service on those facilities.

9. Equitrans notes that it is not requesting any rate approval from the Commission regarding either of the alternative payment formulas, the lease costs that may result from those formulas, or the recoverability of those lease costs in future Equitrans rate cases. Equitrans states that the recourse and negotiated rates for its existing customers and customers on the Sunrise Facilities will not change as a result of the proposed sale and leaseback transaction. In addition, Equitrans notes that in the event it seeks to transfer any plant costs from additional facilities into the lease, it will first seek Commission review and approval under section 7 of the NGA.

10. During the term of the Lease Agreement, Equitrans states that it will operate and maintain the Sunrise Facilities consistent with sound and prudent gas transportation

industry practices and its prudent operation and management of its own facilities. Equitrans states it will operate the facilities in compliance with all applicable laws, regulations, orders, permits, and other authorizations affecting the Sunrise Facilities, including provisions under Equitrans's tariff, the orders and regulations of the Commission, and the regulations of the U.S. Department of Transportation.

11. Because service on the Sunrise Facilities is priced incrementally, as authorized in the July 21 Order, Equitrans states that it has maintained separate books and accounts for these facilities. Equitrans states that under the terms of the Lease Agreement, it will continue to maintain all necessary books and accounts consistent with the Commission's Uniform System of Accounts, on behalf of Sunrise, related to the operation and maintenance of the Sunrise Facilities and will have access to such records throughout the term of the lease agreement.

12. Equitrans also requests the Commission issue pregranted abandonment and amended certificate authority to permit Equitrans to terminate the lease agreement when it ends and to permit Equitrans to reacquire ownership in fee of the Sunrise Facilities. Equitrans states the lease termination date is 15 years following the commencement of the Lease Agreement. However, Equitrans states the lease termination date may occur on an earlier or later date if mutually agreed between Sunrise and Equitrans or if ordered by the Commission, provided all necessary authorizations under the NGA have been obtained. Equitrans states that section 5.4 of the Lease Agreement requires that upon termination of the lease Sunrise must transfer the Sunrise Facilities to Equitrans either by sale, by consolidation or merger of Sunrise into Equitrans, or by any other legal disposition of the Sunrise Facilities from Sunrise to Equitrans resulting in Equitrans obtaining fee ownership of the Sunrise Facilities. Equitrans argues that this will ensure the Sunrise Facilities will continue to be used for jurisdictional interstate natural gas transportation under Equitrans's tariff when the lease expires and that service to any customers on the Sunrise Facilities will continue uninterrupted under rates, terms, and conditions approved by the Commission following the termination of the lease. Because ownership will revert to Equitrans after the termination of the lease agreement without any further action on Equitrans's part, Equitrans argues that approval of pre-granted authority for Equitrans to reacquire the Sunrise Facilities is appropriate and would be consistent with previous authorizations granted by the Commission under similar circumstances.

13. Equitrans states that the requested authorizations are required by the public convenience and necessity as they will provide Equitrans with a greater degree of financial flexibility, strengthening Equitrans's financial position and benefiting Equitrans and its shippers. Equitrans states this additional flexibility will enable Equitrans to further develop gas infrastructure, which will benefit natural gas and energy consumers across the United States, all while maintaining reliable, open-access service to its customers through its existing facilities.

III. Notice and Intervention

14. Public notice of Equitrans's application in Docket No. CP12-32-000 was published in the *Federal Register* on December 30, 2011 (76 Fed. Reg. 82,293). Equitable Gas Company, PECO Energy Company, and Philadelphia Gas Works filed timely, unopposed motions to intervene.[5] Independent Oil and Gas Association of West Virginia, Inc. (IOGA of West Virginia) filed a motion to intervene out of time. IOGA of West Virginia demonstrated an interest in this proceeding and its late intervention will not delay or otherwise prejudice the proceeding.[6] Therefore, we will grant this motion. No protests or objections to the proposal were filed.

IV. Discussion

15. Since Equitrans's proposal pertains to facilities certificated to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, it is subject to the requirements of sections (b), (c), and (e) of section 7 of the NGA.[7]

A. Certificate Policy Statement

16. The Certificate Policy Statement provides guidance for evaluating proposals for certificating new construction.[8] 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, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, the 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.

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[5] Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2011).

[6] 18 C.F.R. § 385.214(d) (2011).

[7] 15 U.S.C. §§ 717f(b), (c), and (e) (2006).

[8] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

17. 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 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, the Commission 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 the Commission proceed to complete the environmental analysis where other interests are considered.

18. 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. Equitrans's proposal to sell legal title to the Sunrise Facilities to Sunrise and leaseback the facilities from Sunrise does not disturb our finding in the July 21 Order that Equitrans's existing customers will not subsidize the Sunrise Project because Equitrans will continue to use incremental rates to recover the costs associated with the Sunrise Project.[9] In addition, approving this arrangement does not disturb our findings that Equitrans's existing customers should not experience any degradation in service and that there will be no adverse impacts on existing pipelines in the market or to their captive customers. Finally, the proposal has no effect on Equitrans's actual construction of the Sunrise Project facilities, which, as approved in the July 21 Order, should have minimal impacts on landowners and neighboring communities.[10]

19. The July 21 Order approved the Sunrise Project based on the above findings and the representations in Equitrans's original certificate application for the project, including the fact that Equitrans would own all of the Sunrise Project facilities. However, granting Equitrans's request for amended certificate authority that will continue to authorize its construction and operation of the Sunrise Facilities, but permit it to transfer legal title to those facilities to Sunrise and lease them back on a long-term basis, will not change any of the above-described findings in the July 21 Order underlying the Commission's grant to Equitrans of a certificate for its project.

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[9] July 21 Order, 136 FERC ¶ 61,046 at P 12.

[10] *Id*. P 13-14.

B. Lease Agreement

20. Equitrans is proposing a financial transaction which it asserts will provide it a greater degree of financial flexibility, thus strengthening its financial position and concomitantly benefitting its customers. Equitrans will remain the entity authorized and obligated under its certificate to operate the Sunrise Facilities. Service utilizing the facilities will continue to be provided pursuant to the terms and conditions of Equitrans's Commission-approved tariff and at the rates authorized in the July 21 Order. The terms of the Lease Agreement enable Equitrans to continue to provide seamless transportation service to its existing customers.

21. The Lease Agreement provides that Equitrans will pay Sunrise monthly rent for use to the Sunrise Facilities based on the lesser of two payment amounts produced by two alternative payment formulas set forth in the Lease Agreement. However, Equitrans may not include any costs associated with the proposal, including any payments made to Sunrise under the lease, in its jurisdictional rates unless such recovery is authorized in a future section 4 rate proceeding.[11]

22. The benefits of the project found in the underlying certificate order are unchanged. In view of the above, we find that the public convenience and necessity require the approval of Equitrans's requested certificate amendment, authorizing its lease of the Sunrise Facilities.

C. Abandonment of the Sunrise Facilities

23. Under Equitrans's abandonment proposal, it will transfer passive ownership of the Sunrise Facilities to its affiliate, Sunrise, while retaining authorization and obligation to continue operation of the facilities both under its certificate and under the terms of the Lease Agreement. Thus, approval of the proposed abandonment will have no effect on either the service or rates of present or future customers or the gas supply market. No facilities will be constructed or removed; thus, there are no environmental issues.

24. In view of the above considerations, the Commission finds that Equitrans's proposed abandonment of the Sunshine Facilities is permitted by the public convenience and necessity.

D. Pregranted Abandonment Upon Expiration of the Lease

25. In addition, we will grant Equitrans's request for pregranted abandonment of the lease arrangement and certificate authority to reacquire ownership of the Sunrise

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[11] 15 U.S.C. § 717c (2006).

Facilities upon the expiration of the term of the Lease Agreement. In a previous proceeding, the Commission required a jurisdictional storage company to seek case-specific certificate authorization to reacquire title to the facilities it had sold to and leased back from a development agency in order to qualify for an exemption from local property taxes. However, in that particular case, the agreement between the storage company and the development agency only gave the storage company the option to repurchase the title to the facilities back from the agency when the lease expired.[12] As described, Equitrans's proposal does not require it to take any action in order to reacquire the passive interest from Sunrise. Thus, we find pregranted authority is appropriate in this case.[13]

E. <u>Environmental Analysis</u>

26. Since the lease proposal requires no construction of facilities, the proposal qualifies as a categorical exclusion under section 380.4(a)(27) of the Commission's regulations and therefore no environmental assessment is required.[14]

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

<u>The Commission orders</u>:

(A) Equitrans's certificate of public convenience and necessity granted in Docket No. CP11-68-000 to construct and operate the Sunrise Project is amended solely to permit the transfer of legal title to the Sunrise Facilities to Sunrise Pipeline, L.L.C. and the lease of the facilities by Equitrans, as described herein and more fully in Equitrans's application in this case.

(B) Equitrans is granted permission and approval under section 7(b) of the NGA to abandon the Sunrise Facilities by sale to Sunrise, as described in more detail above.

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[12] *Liberty Gas Storage, LLC*, 117 FERC ¶ 61,224 (2006).

[13] *See, e.g., Tennessee Gas Pipeline Company,* 121 FERC ¶ 61,303, at P 16 (2007).

[14] 18 C.F.R. § 380.4(a)(27) (2011).

(C) Equitrans shall notify the Commission of the effective date of the transfer of title of the Sunrise Facilities to Sunrise within 10 days thereof.

(D) Equitrans's request for pregranted authorization to reacquire the Sunrise facilities at the expiration of its lease agreement is granted.

(E) Except as provided herein, the terms and conditions of Equitrans's certificate authorization granted on July 21, 2011, are unchanged.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.