

140 FERC ¶ 61,188
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 10, 2012

In Reply Refer To:
Equitrans, L.P.
Docket No. RP12-933-000

Equitrans, L.P.
625 Liberty Avenue,
Suite 17000
Pittsburgh, PA 15222

Attention: Sarah Shaffer, Director, Rates and Marketing

Reference: Acceptance of Tariff Record

Ladies and Gentlemen:

1. On August 8, 2012, Equitrans, L.P. (Equitrans) filed a tariff record to revise Section 7.4.2 of its Tariff to include a new Exhibit B to its form of service agreement under Rate Schedule AGS (Appalachian Gathering Service). This revision would permit Equitrans to enter into negotiated rate agreements for gathering service under Rate Schedule AGS. Equitrans proposes that the revised *pro forma* service agreement be effective September 11, 2012.¹ The Commission accepts the instant tariff record to be effective September 11, 2011 as requested.

2. In the instant filing, Equitrans proposes to modify its *pro forma* service agreement for service under Rate Schedule AGS to include an Exhibit B that would allow Equitrans to enter into negotiated rate agreements with its customers for service under that rate schedule. Equitrans asserts that such a revision will correct an inadvertent omission in its tariff by conforming it to provisions 6.30 and 6.44 of Equitrans' tariff which authorize Equitrans to agree to a negotiated rate for all other services. Equitrans also asserts that the Exhibit B proposed in the instant filing is identical in form and substance to the

¹ Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff, Section 7.4.2, Rate Schedule AGS - Exhibit B, 0.0.0.

exhibits in its other service agreements. Equitrans asserts that the instant filing will provide its Rate Schedule AGS customers the flexibility currently provided by Equitrans for its other services.

3. Public notice of Equitrans' Filing issued on August 9, 2012. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties.

4. On August 20, 2012, Independent Oil & Gas Association of West Virginia, Inc., (IOGA) filed a protest to Equitrans' proposal. IOGA asserts that it does not oppose Equitrans' ability to utilize negotiated rates for gathering service provided under Rate Schedule AGS. IOGA argues, however, that if the Commission accepts Equitrans' proposal then it should condition its grant of negotiated rate authority upon the filing of additional tariff provisions to establish that Equitrans will not shift costs associated with negotiated rate discounts to captive customers. IOGA states that this condition must also include the shifting of costs associated with negotiated fuel and lost and unaccounted for gas (LAUF) to captive shippers.

5. IOGA argues that Commission policy requires that a pipeline assume any risk of under-recovery for negotiated rate discounts.² IOGA asserts that other pipelines with negotiated rate provisions reflect this policy in their tariffs and Equitrans should be required to also reflect the Commission's policy in its tariff.³ IOGA concedes that Equitrans' recourse gathering and fuel retention rates are currently fixed until Equitrans files a rate case under section 4 of the Natural Gas Act (NGA), and that Equitrans' fuel and LAUF costs are not subject to a tracking mechanism. IOGA, nevertheless states that:

to avoid any confusion when Equitrans does file to increase its rate, the Commission should make clear now, as a condition of approving Equitrans' proposed revisions to its *pro forma* service agreement under Rate Schedule AGS, that Equitrans add to its tariff a provision reflecting the Commission's policy with respect to responsibility for underrecovery of cost under negotiated rates, particularly for fuel and LAUF.

² IOGA Protest at p. 3 (citing *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at P 31 (2010)).

³ *Id.* (citing, *Rockies Express Pipeline LLC*, FERC Gas Tariff Section 33.8).

6. On August 22, 2012 Equitrans filed an answer to IOGA's protest (Answer). Rule 213 of the Commission's regulations prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority.⁴ We will accept Equitrans' answer because it assisted us in our decision-making process.

7. In its Answer, Equitrans states that it is aware of the Commission's general policy that negotiated rate agreements are entered into at the pipeline's own risk and that any resulting costs and revenue should not be shifted to other captive customers. Equitrans contends that the current negotiated rate provisions in its tariff conform to this policy and that it does not propose any changes which would modify this approach. Equitrans states that restating general Commission policy in its tariff is not necessary.

8. Equitrans also argues that the issue raised by IOGA is more appropriately raised in an NGA section 4 rate case in which Equitrans attempts to shift costs related to a negotiated rate contract. Equitrans further notes that Commission precedent on this matter is clear, and that Equitrans would have a significant burden of proof to justify any attempt to reflect a discount adjustment of costs attributable to a negotiated rate contract. Accordingly, Equitrans asserts that the Commission should reject IOGA's protest and accept its proposed tariff record.

9. The Commission finds the tariff record proposed by Equitrans and listed in footnote 1 of the instant order to be just and reasonable and, therefore, accepts the tariff record to become effective September 11, 2012, as requested.

10. The Commission will not condition its acceptance of this tariff record as suggested by IOGA. First, IOGA has not identified any part of Equitrans' proposed tariff provisions that is contrary to Commission policy. Second, we reject IOGA's contention that Equitrans must restate Commission policy in its tariff to avoid confusion in a future rate case. It seems clear from IOGA's and Equitrans' filings in this proceeding that both parties are aware of the Commission's policy and precedent on this matter.⁵ Moreover, Equitrans acknowledges its obligation to comply with this policy and its understanding that it faces a significant burden of proof to justify any attempt to reflect any adjustment of costs attributable to a negotiated rate contract.

11. Given that both parties appear to understand the Commission's policies at this point, it seems unlikely that confusion will ensue regarding the Commission's policies and their application to possible costs shifts should Equitrans file a general rate case in the future, or that Equitrans' restatement of that policy in its tariff would serve to alleviate any potential confusion. Accordingly, the Commission finds that it is not

⁴ 18 C.F.R. § 385.213(a)(2) (2012).

⁵ See e.g., IOGA Protest at pp. 2-3, Equitrans' Answer at p. 2.

necessary to require Equitrans to reiterate the Commission's policies regarding this matter in its tariff.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.