UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Equitrans, L.P. Docket No. RP05-164-000

ORDER ON TECHNICAL CONFERENCE

(Issued August 1, 2005)

1. On February 28, 2005, the Commission addressed a Natural Gas Act (NGA) limited section 4[1] rate filing by Equitrans, L.P. (Equitrans) in the instant Docket No. RP05-164-000 (February 28, 2005 Order).[2] That order accepted and suspended the proposed tariff sheets to be effective August 1, 2005, subject to refund, and to the outcome of a hearing on rate issues and a technical conference on Equitrans' proposal to replace Rate Schedules IGS (Interruptible Gathering Service) and APS (Appalachian Pooling Service) with new Rate Schedule AGS (Appalachian Gathering Service). The technical conference was held on April 12, 2005, followed by comments from the parties.

2. The instant order addresses the proposals and comments originating from the technical conference proceeding, and, subject to modifications discussed below, approves Equitrans' revised proposed Rate Schedule AGS and its newly proposed Rate Schedule PS (Pooling Service) to replace its existing services.

I. Background

3. Rate Schedule IGS currently provides for interruptible gathering service which is only applicable to the CIPCO District of Equitrans' system. Rate Schedule APS currently provides for pooling service on Equitrans' entire system.

4. On January 28, 2005, Equitrans filed, under section 4 of the NGA, tariff sheets to establish gathering rates for existing and new gathering services. Equitrans also proposed to replace Rate Schedules IGS and APS with new Rate Schedule AGS. Rate Schedule

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[1] 15 U.S.C. § 717 (c) (2005).

[2] *Equitrans, L.P.*, 105 FERC ¶ 61,407, *order on reh'g* 111 FERC ¶ 61,214 (2005), *reh'g pending*.

AGS is a customer-specific interruptible gathering service. According to Equitrans, under proposed Rate Schedule AGS customers must nominate to and from a virtual pooling point. With certain exceptions, Rate Schedule AGS gathering transportation service must be nominated into another of Equitrans' open access transportation services. In its original proposal, two pool-to-pool transfers would be permitted per month. Further, Rate Schedule AGS would also incorporate and replace Rate Schedule APS.

5. On February 28, 2005, the Commission accepted and suspended Equitrans' January 28, 2005 for five months, to be effective upon motion on August 1, 2005, subject to refund and to a hearing and technical conference.

6. In the February 28, 2005 Order, the Commission found that the issues raised by the proposed Rate Schedule AGS and the proposed deletion of Rate Schedules IGS and APS should be set for technical conference. It stated that Equitrans currently performs gathering service as a separate, unbundled service under Rate Schedule IGS or under its open access transportation rate schedules. The February 28, 2005 Order stated that Rate Schedule APS is a pooling service, not a gathering service and is a separate service that permits a pool operator to operate a pool.[3] Pools, as specified at Rate Schedule APS, section 2.1,[4] are an accounting service that entails the aggregation of gas from receipt points within the pool for downstream transportation. The Commission stated that as an aggregation service, many transportation customers may join a pool, and the pool operator provides the accounting services that match supply to market, manage imbalances and provide joint nomination services. However, the Commission noted, proposed Rate Schedule AGS would eliminate the role of pool operators aggregating multiple transportation customers' supply, and replace it with single transportation customer "pools," aggregating only their supplies. The Commission concluded that these single customer pools appear to be no more than nomination points. In addition, the Commission found that eliminating the Rate Schedule APS pooling would put Equitrans' tariff out of compliance with Order Nos. 636 and 587,[5] as the only pooling service would no longer be available.

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[3] *Equitrans, L.P.*, 110 FERC ¶ 61,194 at P 25.

[4] Equitrans' FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 72.

[5] *Standards For Business Practices of Interstate Natural Gas Pipelines*, Order No. 587, FERC Stats. & Regs., Regulations Preambles (1996-2000) ¶ 31,038 (1996); *order denying reh'g*, Order No. 587-A , 77 FERC ¶ 61,061 (1996). *See also Equitrans, L.P.*, 79 FERC ¶ 61,171 at 61,799 (1997); *National Fuel Gas Supply Corp.*, 78 FERC ¶ 61,147 at 61,618-619 (1997).

7. Further, the Commission stated that in Equitrans' Order No. 637 compliance proceeding, the Commission found that Rate Schedule APS provided imbalance management services[6] and that eliminating Rate Schedule APS pooling would appear to significantly reduce the imbalance management services available to Equitrans' customers.

8. Accordingly, the Commission established a technical conference in the February 28, 2005 Order to investigate Equitrans' proposal's compliance with Order Nos. 637 and 587, as well as any other non-rate issues the parties raised with Rate Schedule AGS.

9. On March 30, 2005, Equitrans submitted *pro forma* tariff sheets proposing Rate Schedule PS (Pooling Service) and an associated Form of Service Agreement in response to the February 28, 2005 Order to establish a pooling service on Equitrans' transmission system. Equitrans stated that it had determined that its proposal in its initial filing to eliminate Rate Schedule APS may have been inconsistent with the Commission's regulations and policies. These *pro forma* tariff sheets were addressed in comments on the April 12, 2005 technical conference.

II. <u>Comments on Issues Set for Technical Conference</u>

10. On May 23, 2005, Equitrans filed comments on the issues set for technical conference. Columbia Gas of Pennsylvania, Inc. (Columbia PA), The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope (Dominion LDCs), and the Independent Oil and Gas Association of West Virginia (IOGA) filed reply comments in opposition to certain elements of Equitrans' post technical conference comments. Equitrans and the Dominion LDCs filed answers to the reply comments.[7]

11. In its comments on the matters set for technical conference, Equitrans submitted further revised *pro forma* tariff sheets to reflect what it asserts is a fair resolution of the issues set by the Commission for technical conference. In addition, it claims that numerous discussions have taken place among the active parties which has yielded progress in resolving many of the tariff issues that they have raised in this docket. Equitrans notes that, to the extent it did not propose any modifications in its comments on the technical conference, the Rate Schedule AGS tariff sheets would take effect as filed.

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[6] *Equitrans, L.P.*, 99 FERC ¶ 61,210 at P 47, 54 (2002).

[7] We will accept these answers as they may aid in the disposition of the issues raised by Equitrans' post technical conference filing.

Equitrans proposes that it would be appropriate for Equitrans to resubmit all the tariff sheets, including tariff sheets unchanged by this proposal, as part of any compliance filing effective August 1, 2005. Equitrans requests that the Commission so provide in its order on the technical conference.

12. In response to the Commission's statement that Equitrans' proposed elimination of Rate Schedule APS pooling would put Equitrans' tariff out of compliance with Order Nos. 636 and 587,[8] Equitrans states that it has proposed Rate Schedule PS to provide pooling services on its transmission system, which, it asserts, will put it back into compliance.

13. Equitrans also states that it believes that its proposed Rate Schedule PS addresses the Commission's concerns that the elimination of Rate Schedule APS would appear to significantly reduce the imbalance management services available to Equitrans' customers. For example, Equitrans states that Rate Schedule PS will provide transmission service shippers with access to pools operated either by themselves or by third parties (free of charge by Equitrans), thereby assisting such shippers in the daily management of their services and providing them with an opportunity to avoid any imbalance penalties. Equitrans also states that it anticipates that the pools established under Rate Schedule PS, in conjunction with the use of Gathering Aggregation Points by gathering customers under Rate Schedule AGS, will facilitate the development of market centers on the Equitrans' pipeline system.

14. Equitrans states that it has proposed to make several modifications to proposed Rate Schedule AGS, including the following:

> (1) The term "Pooling Points" has been replaced with the term "Gathering Aggregation Points" to eliminate any confusion between the services being offered under Rate Schedule AGS and Rate Schedule PS. *See pro forma* section 1.21 of Equitrans' General Terms and Conditions (GT&C).
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> (2) The minimum quantity of gas required to qualify for service under Rate Schedule APS has been reduced. *See pro forma* section 2.2 of Rate Schedule APS.
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> (3) The point at which retainage will be applied to services rendered via Equitrans' gathering facilities (i.e., the receipt point) has been clarified. *See pro forma* section 2.7 of Rate Schedule APS.

[8] 110 FERC ¶ 61,194 at P 26.

(4) The delivery point for gas aggregated at the PA North Gathering Aggregation Point (i.e., the distribution system of Equitable Gas Company) has been clarified. *See pro forma* section 3.1(a)(i) of Rate Schedule APS.

(5) The procedure for modifying, and adding, Gathering Aggregation Points has been modified to require Equitrans to provide advance notice to its customers prior to making a tariff filing to modify its Gathering Aggregation Points. *See pro forma* section 3.2 of Rate Schedule APS.

(6) The number of permitted Gathering Aggregation Point title transfers has been increased from two (2) to three (3). *See pro forma* section 5.2(c) of Rate Schedule APS.

(7) The options for resolving disparities between receipts into Gathering Aggregation Points and nominations from Gathering Aggregation Points has been modified to include (a) the issuance of Operational Flow Orders in accordance with section 11 of Equitrans' GT&C, (b) reduction of supply and (c) the assessment of a fee equivalent to the maximum rate, including all applicable surcharges and retainage, under Rate Schedule LPS. *See pro forma* section 5.2(g) of Rate Schedule APS.

However, Equitrans states that it is not willing to compromise on what it considers to be rate issues (including billing determinants), which it asserts are clearly beyond the scope of the technical conference.

15. On March 30, 2005, Equitrans submitted *pro forma* Rate Schedule PS as a proposed pooling service for use by shipping on Equitrans' transmission system. In its comments on the issues set for technical conference, it proposed the following additions to the *pro forma* Rate Schedule PS:

(1) Proposed *pro forma* section 1 is revised to address the convention that a "Pool Operator" under Rate Schedule PS is not necessarily required to be a "Customer" under one or more of Equitrans' transportation rate schedules (*e.g.*, Rate Schedule FTS, ITS, etc.).

(2) The requirement in proposed section 6.1 that actual, physical deliveries into Market Aggregation Points must match actual, physical receipts from Market Aggregation Points was revised to reflect the fact that nominations must match; actual physical receipts and *deliveries* are the responsibility of Equitrans' customers under their Rate Schedule FTS and ITS service agreements.

(3) Proposed section 6.2 dealing with imbalance resolution is clarified to provide that Equitrans' transportation customers are responsible for resolving imbalances

under their Rate Schedule FTS and ITS service agreements; physical imbalances are not a Pool Operator's responsibility under Rate Schedule PS.

16. In addition, Equitrans states that it has made several other ministerial changes to both Rate Schedule AGS and proposed Rate Schedule PS, including the correction of certain typographical errors, as reflected in the redline, *pro forma* tariff attached to its comments.

III. Discussion

A. Rate Schedule AGS

1. Service to End Users

17. The Dominion LDCs state that the gathering facilities for which Equitrans seeks rate approval in this proceeding include those that were originally owned by CNG Transmission Corporation and were spun off to Eastern States Oil & Gas, Inc. (Eastern States), pursuant to order issued in Docket No. CP93-200-000 et al.[9] Around the time of the spin off, Dominion Hope and Eastern States negotiated two service agreements that were intended to continue the level of service to Dominion Hope and its customers that was historically provided by CNG Transmission. The Dominion LDCs contend that Equitrans' proposed Rate Schedule AGS provides for a basic gathering service and does not address the needs of Dominion Hope for serving customers directly from Equitrans' gathering lines.

18. The Dominion LDCs state that they are concerned that Rate Schedule AGS does not provide for the same level or type of service to Dominion Hope for serving Dominion Hope customers connected to Equitrans' gathering facilities as previously provided. They assert that this type of service is currently provided pursuant to the contract between Dominion Hope and Equitrans' predecessor in title to certain of the gathering facilities. The Dominion LDCs state that Dominion Hope is willing and, in fact, prefers to address this issue by means of a special service agreement, regardless of whether these gathering facilities are ultimately found to be subject to the Commission's ratemaking jurisdiction. Dominion Hope anticipates negotiating such a new service agreement with Equitrans. The Dominion LDCs state that this issue was not addressed in the Commission's notice of technical conference and believe that it is appropriate to pursue the issue as part of the overall resolution of the various rate cases that Equitrans has filed, where both the costs and revenues related to the services to Dominion Hope can be explored and accounted for. The Dominion LDCs state that they comment on this issue merely to preserve their

[9] *CNG Transmission Corporation*, 74 FERC ¶ 61, 217 (1996).

rights to address the issue during the rate proceeding and to avoid the appearance that they may have waived such rights by not raising this unique service issue at this time.

19. The Dominion LDCs are correct that negotiated service agreements were not among the issues the Commission identified for discussion at the technical conference. Therefore, this issue is beyond the scope of this proceeding and should be addressed in the hearing, if raised.

2. New Taps

20. Equitrans' *pro forma* section 2.3 of proposed Rate Schedule AGS provides that:

> Equitrans' only obligations under this Rate Schedule shall be to receive gas from any Appalachian receipt point and to permit that gas to flow against the existing pressure in Equitrans' facilities. Equitrans shall not be obligated to lower such line pressure by compression or otherwise to accommodate receipts from a Customer under this Rate Schedule

21. IOGA states that the Commission should not interpret *pro forma* section 2.3 of Rate Schedule AGS to provide Equitrans with carte blanche to deny a new tap or connection on the gathering system. It claims that Equitrans has declined to install new receipt taps for at least one IOGA member/producer on a line where capacity exists. IOGA states that it does not object to the language of this provision, but requests that the Commission clarify in its order that its interconnection policy[10] applies to Equitrans under Rate Schedule AGS.

22. We clarify that Commission policy regarding new connections to the system, as detailed in *Panhandle,* applies to new connections on the Equitrans gathering and transmission systems. Under that policy, a pipeline may not deny a request for an interconnection, where the party requesting the interconnection satisfies the five conditions described in *Panhandle*.[11] Among other things, the party requesting the interconnection must be willing either to pay the cost of any necessary construction if the pipeline performs that task or be willing to construct the facilities itself in compliance with the pipeline's technical requirements. Thus, the *Panhandle* interconnection policy does not require the pipeline to perform any construction itself, but it does require the pipeline to grant access to its system where the specified conditions have been satisfied.

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[10] IOGA at 2. *See Panhandle Eastern Pipe Line Co.*, 91 FERC ¶ 61,037 (2000) (*Panhandle*).

[11] *Id.* at 61,141.

The Commission adopted the *Panhandle* interconnection policy in order to "allow[ ] a broader range of entities to have access to the pipeline grid and promote[ ] competition on open access pipelines."[12] These policy objectives apply equally with respect to granting access to gathering facilities owned by open access pipelines as to granting access to their transmission facilities.

23. The Commission observes that *pro forma* section 2.8 of Rate Schedule AGS provides that Equitrans is not obligated to add any new facilities. This provision is not inconsistent with the *Panhandle* interconnection policy, since that policy does not require pipelines to construct any facilities, including "the interconnection itself."[13] Thus, the Commission will not require any modification in proposed section 2.8. However, the Commission does clarify that Equitrans may not deny any request to permit an interconnection that satisfies the conditions set forth in *Panhandle*, "regardless of whether it previously has allowed an interconnection for a similarly situated shipper."[14]

<u>Delivery Under Rate Schedule AGS onto Third-Party Systems</u>

24. Equitrans' originally proposed *pro forma* section 2.4 of Rate Schedule AGS provided that:

> With the exception of the PA North and WV North Gathering Aggregation Points, gas gathered under this Rate Schedule *may* be delivered into service agreements executed under Rate Schedules NOFT, FTS, or ITS. Gas received at the PA North and WV North Gathering Aggregation Points may not be directly redelivered into Equitrans' transmission system. (emphasis added)

25. In its comments, Equitrans revised section 2.4 to state that gas "may" be delivered into rather than "shall" be delivered into the service agreements described in that section. Equitrans' revised *pro forma* section 3.1 of Rate Schedule AGS further provides a list of Gathering Aggregation Points and describes each point. Each description includes a

[12] *Id*. at 61,142.

[13] *Id*. at 61,141.

[14] *Id*.

statement that gas delivered at that point will be delivered into a specified system, and does not modify the language to track the changes made to section 2.4 of Rate Schedule AGS.[15]

26. IOGA asserts that Equitrans' changes in *pro forma* section 2.4 of Rate Schedule AGS, wherein Equitrans modified the language from gas gathered under this Rate Schedule "*shall* be delivered into" downstream service agreements in its original filing to "*may* be delivered into" downstream service agreements (emphasis added), leaves open the possibility that gathered gas can be delivered to third-parties, including other interstate pipelines and LDCs at or upstream of the Gathering Aggregation Points. However, IOGA also requests that, if Equitrans cannot agree to make an affirmative indication that gathered gas can be delivered off-system before reaching the Gathering Aggregation Points in the rate schedule, the Commission should require Equitrans to permit such deliveries where such direct interconnections between its gathering system and third party systems exist. Further, IOGA asks that the Commission require Equitrans to make corresponding changes to *pro forma* section 3.1 of Rate Schedule AGS, which IOGA states continues to provide that gas "will be delivered" from the specified Gathering Aggregation Points to specific systems when alternatives are available.

27. In its reply comments, Equitrans states that no action is required on this point because it has previously stated on the record in this proceeding that it will accept and review shipper requests to transport gas to Dominion Transmission, Inc. (Dominion Transmission)[16] and reiterated this offer at the technical conference. Equitrans states that it has made it clear that IOGA members can deliver gas to Dominion Transmission if Equitrans can operationally meet their requests.

28. The reason for the change from "shall" to "may" is unclear. However, we do not believe that it was intended to preclude any new hook-up to Equitrans' gathering system, provided that any such new hook-up is reflected on the tariff sheet in a section 4 filing. However, despite the change to the permissive "may" in *pro forma* section 2.4, *pro forma* section 3.1 of Rate Schedule AGS continues to provide that gas "will be delivered" from the specified Gathering Aggregation Points to specific systems. In order to conform Equitrans' tariff to the representations it has made in the record of this proceeding, we

[15] For example, section 3.1(b)(i) of Rate Schedule AGS provides, in pertinent part, that the PA South Gathering Aggregation Point is "Appalachian gas gathered by facilities whose terminus is the Waynesburg Compressor Station, Greene County, Pennsylvania. Gas aggregated at the PA South Gathering Aggregation Point will be delivered into the Equitrans' CIPCO District transmission system."

[16] Equitrans Answer at 2, citing February 18, 2005 Answer in RP05-164-000.

will require Equitrans to modify section 3.1 of Rate Schedule AGS to provide that gas "may be delivered" to specific systems, consistent with section 2.4 of that Rate Schedule. In addition, while Dominion Transmission is currently the only interstate pipeline receiving gas off of Equitrans' gathering system, if other pipelines begin to receive gas off of Equitrans' gathering system in the future, we expect Equitrans to accept and review any future shipper requests to transport gas for delivery onto other systems, and propose tariff changes as necessary. Equitrans should make this clarification in its compliance filing.

4. Custody Transfer Point

29. *Pro forma* section 2.7 of proposed Rate Schedule AGS provides, in pertinent part that:

> In determining quantities available to Customer at a Gathering Aggregation Point, Customer's gathering receipts upstream of Gathering Aggregation Point will be adjusted … for any deliveries from the gathering system through custody transfer points upstream of the Gathering Aggregation Points.

30. IOGA requests that the Commission require Equitrans to make the term "custody transfer point," as used in *pro forma* section 2.7 of Rate Schedule AGS, into a defined term in section 1 of the GT&C or otherwise require Equitrans to make it clear in *pro forma* section 2.7 of Rate Schedule AGS what it means by the term "custody transfer point."

31. The term "custody transfer point" in *pro forma* section 2.7 of Rate Schedule AGS is unclear. As the context of *pro forma* section 2.7 of Rate Schedule AGS relates to quantities and billing, the ambiguity gives Equitrans undue discretion as whether to bill and how much it will bill for gathering services. The Commission requires Equitrans to include tariff language that clarifies that term when it files its compliance filing.

5. Gathering Charge

32. Both the Dominion LDCs and IOGA state that they are concerned that Equitrans has proposed to change its billing for gathering services from being based on delivered quantities to being based on quantities received into Equitrans' gathering system in Rate Schedule AGS. The Dominion LDCs state that *pro forma* section 4.1 of proposed Rate Schedule AGS provides that a gathering charge will be assessed on each Dth of gas received into Equitrans' gathering system whereas, currently, Equitrans' CIPCO District tariff provides for gathering charges to be assessed on gathering deliveries (net of fuel) as opposed to receipts, so this proposal would change without support or explanation Equitrans' historical and current billing practice. They claim that proposed Rate Schedule AGS would require a customer to pay a gathering charge on quantities that are

consumed by Equitrans as compressor fuel or are lost or otherwise unaccounted for and, thus, are never received by the customer. IOGA states that producers should not be required to pay for the movement of lost and unaccounted for gas. The Dominion LDCs claim that this would create a huge disincentive to Equitrans to reduce its lost and unaccounted for gathering quantities because each Dth of reduced lost and unaccounted for gas would be one less Dth of gas that Equitrans can bill in order to recover its approved cost of service.

33. In its answer, Equitrans states that these claims directly implicate the level of billing determinants that underlies the development of the gathering rates at issue in this proceeding, and therefore are not an issue for review in this technical conference. It contends that the Commission's February 28, 2005 Order set only non-rate issues for technical conference and therefore, any issue related to the gathering rate design (as well as the application of rates) can be addressed in the context of Equitrans' general rate application.

34. In its answer to Equitrans' answer, the Dominion LDCs state that Equitrans has not shown how its gathering billing determinants were determined and affected by this issue. They state that this is not simply a rate issue because Equitrans' proposed practice would create a huge disincentive to Equitrans to reduce its 11.85 percent fuel and lost and unaccounted for percentage gathering and thus is very much an operational issue. They claim that the burden of proof in an NGA section 4 proceeding is on the pipeline and that Equitrans has the burden of proof in proposing a change of its billing practices and cannot satisfy that burden without having filed any supporting testimony.

35. Billing determinants are used in the rate calculation as the denominator to the numerator of allocated costs. Billing determinants must be adjusted to reflect many factors, such as adjustments for known and measurable changes, and whether to bill on gross or net volumes. Therefore, Equitrans' proposed change to its billing for gathering services from being based on delivered quantities to being based on quantities received into Equitrans' gathering system is related to the appropriate calculation of billing determinants, which is a rate issue set for hearing by the February 28, 2005 Order.[17] The Commission will not address that issue in this order.

6. Gathering Aggregation Point Quantity Estimates

36. Equitrans proposes at *pro forma* section 5.2(b) to provide Gathering Aggregation Point quantity estimates to shippers on or about the 20th "working" day of the month. At *pro forma* section 5.2(a), the gathering shippers and Equitrans must agree in advance on

[17] 110 FERC ¶ 61,194 at P 28.

the monthly production to be received at each Gathering Aggregation Point 30 days prior to the production month.[18]

37. IOGA claims that the provision in *pro forma* section 5.2 of Rate Schedule AGS requiring Equitrans to provide estimates of gas received during the prior month by the 20th working day of the following month is not workable. IOGA proposes to use the 20th calendar day of the month, instead of the 20th working day. According to IOGA, its members and shippers state that Equitrans provides the measurement information late, which in turn pushes their nominations of the quantities they will deliver to Equitrans' Gathering Aggregation Points during the following month until the end of the commodity gas bid week when there can be a price disadvantage. IOGA states that if Equitrans cannot provide the information on a consistent basis by the 20th calendar day of the month, the Commission must require the pipeline to implement a default mechanism that provides estimates based on prior months or historical actuals that a shipper can rely on early in the bid week process and that Equitrans can make an adjustment in the following month if necessary.

38. In its answer, Equitrans states that no change to *pro forma* section 5.2 of Rate Schedule AGS is necessary because the 20th working day of the month provides shippers with ample time to submit first of the month nominations and is a common timeframe for supplying measurement estimates in the Appalachian region (*i.e.*, primarily because of the time needed to properly integrate measurement charts). Equitrans claims that it would have to increase both internal and external measurement costs in order to meet IOGA's suggested timeframe.

39. Equitrans states that it is concerned with the cost implications of providing more timely data. Based on Equitrans' representations, we find that the 20th "working day"[19] of the month provides shippers with enough time to make their first of the month nominations of quantities to be delivered to Equitrans as required by section 8 of

[18] As the Commission understands the timeline, Equitrans will provide estimates of gas received at Gathering Aggregation Points during Production Month 1 on or about 20th working day of Production Month 2. Shippers then use this information to make their first of the month nominations of the quantities they intend to deliver to Equitrans' at Gathering Aggregation Points during Production Month 3.

[19] The term "working day" is undefined in Equitrans' proposed tariff provisions. Equitrans should include revised tariff sheets, using the term "business day" as required by NAESB, Wholesale Gas Quadrant, Definition 3.2.1, in its compliance filing.

Equitrans' GT&C (Scheduling).[20] IOGA also contends that Equitrans provides the measurement information late. Under *pro forma* section 5.2(d) of Rate Schedule AGS and 8.1(d) of the existing GT&C,[21] a customer has the right to change its nominations daily and within the day in intra-day nominations. Therefore, the ability to modify the nomination is adequate to address IOGA's concerns.

7. Title Transfers

40. Equitrans' proposed *pro forma* section 5.2(c) of Rate Schedule AGS provides, in relevant part:

> Gathering Aggregation Point title transfers shall be permitted on an interruptible basis. Up to three *total* transfers are permitted for Customer each month either incoming or outgoing. Transfers may be made to another Customer at the same Gathering Aggregation Point or, subject to approval by Equitrans, to a Customer at a different Gathering Aggregation Point. [Emphasis added.]

41. IOGA states that Equitrans' proposal, in *pro forma* section 5.2(c) of Rate Schedule AGS, to permit three title transfers each month is insufficient to enable the customer to avoid imbalances by transferring title at a Gathering Aggregation Point. IOGA states that most of the Gathering Aggregation Points will not be liquid for trading purposes and that customers may require multiple trades to net out an imbalance and avoid a penalty. IOGA therefore requests that the Commission require Equitrans to provide at least 10 title transfers each month.

42. In its answer, Equitrans states that pool operators under Rate Schedule APS have been limited to two total transfers per month.[22] Equitrans contends that the increase in permitted title transfers will provide ample opportunity for Rate Schedule AGS customers to manage any imbalances that might arise. Moreover, Equitrans submits that increasing the number of permitted monthly title transfers beyond three is

[20] *Pro forma* section 5.2(d) of Rate Schedule AGS states that the customer will nominate quantities to be delivered to Equitrans in accordance with GT&C section 8.

[21] Equitrans' FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 225 and Original Sheet No. 225A.

[22] Equitrans' Answer at 2, citing Equitrans' FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 77, section 6.

administratively burdensome and would require reprogramming of Equitrans' nomination and billing system and increased manpower in order to manage such transfers.

43. Equitrans is not required to provide title transfer service. Therefore, Equitrans' proposal to provide title transfer tracking service for three title transfers is within Equitrans' discretion, so long as its provision of these title transfers is non-discriminatory. However, the Commission regulations provide that tariff provisions may not inhibit the development of market centers.[23] Equitrans may not limit the total number of title transfers as that may limit the number of third-party title transfers that enhance the development of market centers on Equitrans' system. Shippers have the right to sell their gas to different customers each and every day of the month, and any given package of gas may be sold numerous times at a market center. While Equitrans does not have to provide title tracking service, it must permit shippers the right to use third party title transfer service providers, and it cannot restrict how often a package of gas is transferred in such third-party transfers. In its compliance filing, Equitrans must revise the tariff language to permit unrestricted title transfers by third parties.

8. Actual Physical Imbalances and OFOs

44. Equitrans proposed *pro forma* section 6.1 of Rate Schedule AGS provides that "The Customer shall be responsible for maintaining a balance between actual receipts and actual deliveries at each Gathering Aggregation Point and assumes responsibility for any imbalance which shall occur on a daily or monthly basis." *Pro forma* section 6.2 of Rate Schedule AGS provides as follows:

> Any differences between actual receipts and actual deliveries shall be held as an operational imbalance under the Customer's AGS Service Agreement. Operational imbalances are not to exceed a tolerance of 10% of each Gathering Aggregation Points' actual receipts for the month. Equitrans will monitor scheduled nominations and actual receipts and deliveries and may in its discretion issue Operational Flow Orders in accordance with Section 11 of the General Terms and Conditions to correct any imbalances which exceed the allowed tolerance. Failure to comply with an Operational Flow Order may subject the Customer to penalties in accordance with Section 11.6 of the General Terms and Conditions. Operational imbalances within the allowed tolerance level will be corrected as the first gas into or out of the Gathering Aggregation Point during the month after the imbalance is provided to the Customer in accordance with section 5.2 (b) of this Rate Schedule.

[23] 18 C.F.R. § 284.7(b)(3) (2005).

45. IOGA requests that Equitrans modify *pro forma* section 6.1 of Rate Schedule AGS to eliminate the reference to actual “daily” imbalances because this sub-paragraph refers to after-the-fact differences between actual receipts and actual deliveries. IOGA states that there is no need to refer to "daily" imbalances, since very few meters are read daily.

46. Penalties are supposed to provide an incentive to shippers not to engage in actions that may impair reliable service.[24] In relation to nominations, IOGA asserts that Equitrans is barely capable of providing monthly meter information on a timely basis, and Equitrans states that it would have to increase costs to provide measurement estimates before the 20th “working day” of the month. If Equitrans’ does not identify daily transgressors until at least one or more months after the fact, the value in a penalty to protecting the system is significantly reduced. Therefore, when Equitrans files its compliance filing, it must remove the reference to daily imbalance penalties.

47. Finally, IOGA contends that *pro forma* section 6.2 of Rate Schedule AGS implies some sort of penalty for operational imbalances exceeding 10 percent. IOGA states that since customers receive their production estimates from Equitrans, and Equitrans says it will require receipts and deliveries to match, the only way an imbalance should be created is if Equitrans’ estimates are more than 10 percent off of actual production. IOGA contends that any excess deviation is not the customer's fault because it is using data it is given by Equitrans. Therefore, IOGA asks the Commission to require Equitrans to delete these provisions and simply state that "All operational imbalances will be corrected as the first gas into or out of the Gathering Aggregation Point during the month after the imbalance is provided to the Customer..."[25]

48. In its answer, Equitrans states that regardless of the source of production estimates, Equitrans should be permitted a reasonable opportunity to control excessive imbalance activity. If the imbalance penalty provision is removed from Rate Schedule AGS, then Equitrans should have the unilateral right to change shipper nominations at any time during the month to minimize or avoid imbalances altogether.

49. The Commission finds that *pro forma* sections 6.1 and 6.2 are unclear. In its compliance filing, Equitrans must explain these provisions *inter alia*, by including answers to the following questions, and or modify its proposed tariff language to reflect its clarifications:

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[24] 18 C.F.R. § 284.12(b)(2)(v) (2005).

[25] IOGA at 5.

(a) How and when are daily measurement data provided shippers, and which imbalance resolution provisions of Equitrans tariff apply to daily imbalances?

(b) Must operational imbalances within the 10 percent tolerance be corrected monthly, or may they be rolled into the next month?

(c) What happens for operational imbalances in excess of the 10 percent tolerance? If there are penalties, which penalties apply?

(d) What imbalance management options do shippers have under the terms of the proposed tariff? If access to imbalance trading and park and loan service is not proposed, please explain why not.

(e) Clarify when an OFO may be issued, and identify the reason why the chosen criteria are appropriate.

(f) Clarify whether there are any additional OFO penalties specific to Rate Schedule AGS.

50. IOGA asserts that operational imbalances subject to penalties can be the result of estimates provided by Equitrans that are used by shippers in their nominations. The Commission finds that this cannot occur. Penalties cannot apply to imbalances that arose because of a prior period adjustment to reflect differences between actual and estimated numbers.[26] Equitrans must include tariff language clarifying this in its compliance filing.

B. Rate Schedule PS

1. Impact on Other Services

51. Columbia PA asserts that it has no desire to use the proposed Rate Schedule PS (Pooling Service). However, it submits that Rate Schedule PS could adversely affect service to existing firm customers, such as Columbia PA and should, therefore, be rejected. Columbia PA states that the best way to place Equitrans in compliance with Order Nos. 637 and 587 would have been to reinstate Rate Schedule APS. Columbia PA contends that in many respects the proposed pooling service appears to have the same characteristics as the Market Segmentation Service provided under section 36 of Equitrans' GT&C. It states that since that service is available, it is unclear how the

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[26] NAESB WGQ Standard 2.3.31: No imbalance penalty should be imposed when a prior period adjustment applied to the current period causes or increases a current month penalty.

availability of proposed Rate Schedule PS would create any new market center opportunities.

52. Columbia PA states that it believes that, although Equitrans states that Rate Schedule PS is an “accounting service,” it would affect the physical flow of gas, as well as nominations and scheduling on the Equitrans system. Specifically, it states that while *pro forma* section 2.2 of Rate Schedule PS describes the proposed Pooling Service as “interruptible,” Columbia PA claims that is not clear what order of interruption would be utilized relative to other interruptible services. Moreover, it argues that absent adequate controls on imbalances, even an interruptible service could result in decreased flexibility for firm customers. Columbia PA submits that Rate Schedule PS should not be approved absent a showing that this service will neither increase the frequency of OFOs for firm customers, nor increase existing retainage levels.

53. Equitrans answers that Columbia PA's concern is alleviated by the fact that only the pooling service itself can be interrupted and not the underlying transportation services. Equitrans states that if it should ever find it necessary to interrupt service under Rate Schedule PS because, for example, its nomination and billing system fails, then only the accounting service would be impacted. The effect of this would be that shippers would be required to submit nominations, as opposed to their agent, the pool operator submitting the nominations.

54. The Commission approves Equitrans’ proposed Rate Schedule PS. It has the advantage of providing pooling on the transmission part of Equitrans’ system as compared to Rate Schedule APS, which was limited to gathering-only pools. The service is distinct from Rate Schedule FTS’ capacity release and segmentation permitted on Equitrans’ system that Columbia PA references. The capacity release and segmentation service is contract specific. Rate Schedule PS pooling service permits the pool operators to aggregate members’ transportation services to match members’ supply with their markets across transportation contracts. Rate Schedule PS service does not impact service under Rate Schedules FTS or ITS. As Equitrans points out, under Rate Schedule PS the pool operator simply provides an accounting and agency service for shippers with contracts for Rate Schedule FTS or ITS services. Rate Schedule PS will put Equitrans in compliance with the market center and pooling requirements of Order Nos. 636 and 587.

2. Applicable Rates

55. IOGA requests that the Commission require Equitrans to clarify who pays the Rate Schedule FTS or ITS rate under *pro forma* sections 2.2 and 4.1 of Rate Schedule PS. *Pro forma* section 2.2 of Rate Schedule PS states that:

> Service under this Rate Schedule is interruptible. Upon interruption of service hereunder, Pool Operator will be required to nominate gas supplies using the

> applicable Rate Schedules FTS and/or ITS service agreements in accordance with Section 8 of the General Terms and Conditions of Equitrans' FERC Gas Tariff.

Pro forma section 4.1 of Rate Schedule PS states that:

> Subject to section 6 of this Rate Schedule, no rates will be charged for service under this Rate Schedule; provided, however, that nothing in this Rate Schedule PS shall be construed to relieve Customers from their obligation to pay applicable rates and other charges, including retainage, under their Rate Schedule FTS and/or ITS service agreements.

56. IOGA also contends that, if the only way into or out of a pool is a nomination under Rate Schedule FTS or ITS, even though there is no charge for pooling, it is unclear from the tariff language whether Equitrans intends to collect two transportation charges, one into the pool and one out of the pool, or just one. It states that Equitrans clarified during the technical conference that it intends to only charge one transportation rate and IOGA requests that this be made clear in the tariff and in the Commission's order.

57. In its response, Equitrans states that, under section 2.6 of *pro forma* Rate Schedule PS,[27] it will assess transportation charges on gas delivered to the Market Aggregation Point and that this is a one-time charge, and is consistent with Equitrans' Commission-approved Market Segmentation program set forth in section 36 of the GT&C of its tariff.[28]

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[27] Section 2.6 of *pro forma* Rate Schedule PS states:

> Transportation of gas to the Market Aggregation Points for ultimate delivery to the delivery point shall be effectuated pursuant to the rates, terms and conditions of Rate Schedules FTS and ITS.

[28] Equitrans Answer at 3, citing Equitrans' FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 310. Section 36 of the existing GT&C of Equitrans' tariff provides that a shipper may segment its capacity into two segments: a receipt segment and a delivery segment to and from Equitrans' Market Aggregation Point (which are to physical points) or to other physical points. The Commission notes that Rate Schedule PS does not modify Rate Schedule FTS segmentation or capacity release rights under Equitrans' GT&C's section 36. Releasing and replacement shippers have procedural, contractual and rate rights and capacity release responsibilities under section 36 that are separate and apart from Rate Schedule PS services.

58. Section 2.6 of *pro forma* Rate Schedule PS states:

> Transportation of gas to the Market Aggregation Points for ultimate delivery to the delivery point shall be effectuated pursuant to the rates, terms and conditions of Rate Schedules FTS and ITS.

59. The Commission finds that *pro forma* section 4.1 of Rate Schedule PS is clear that there is a charge of zero for the pooling service, and that Rate Schedules FTS and ITS charges still apply for services rendered the shipper under those transportation contracts. However, the proposed tariff language is not clear that pooling service does not divide a single contract transportation into multiple transportations subject to multiple transportation charges, regardless of whether or not that gas traveled through a Market Aggregation Point. Equitrans must clarify that it will only charge one transportation rate for each service despite going into and out of a Market Aggregation Point. This rate is to be paid by the Rate Schedule FTS or ITS shipper

3. <u>Charges for Daily Nomination Imbalances</u>

60. Section 6.1 of Equitrans' *pro forma* Rate Schedule PS states that:

> A Pool Operator shall be responsible for ensuring that daily nominations into each Market Aggregation Point match daily nominations from each Market Aggregation Point. Any Pool Operator with a disparity between nominations, at any Market Aggregation Point, will be assessed a charge for each un-nominated quantity equivalent to the maximum rate and all applicable surcharges and shrinkage under Rate Schedule LPS.

61. Columbia PA asserts that under this section, Equitrans would assess charges for daily nomination imbalances "equivalent to the maximum rate and all applicable surcharges and shrinkage under Rate Schedule LPS." Columbia PA states that it believes that these charges should be classified as penalties, and that the resulting penalty revenues should be credited to firm customers in accordance with section 33 of the GT&C of Equitrans' tariff. It claims that this section should also address monthly (as opposed to daily) imbalances, and any charges for such imbalances should likewise be treated as eligible penalty revenues which are subject to the crediting mechanism. Finally, IOGA states that where the imbalance in a pool is identical to the imbalance at a Gathering Aggregation Point, Equitrans should collect only one penalty and should not collect the Rate Schedule LPS charges from both the Pool Operator and the Customer at the Gathering Aggregation Point.

62. The Commission notes that no other Equitrans Rate Schedule is subject to a nomination imbalance penalty. Equitrans made no showing as to why this particular service is different from others, especially since the pool operator would be submitting

nominations as an agent on behalf of the pool members' Rate Schedule FTS and ITS services. Further, as Equitrans is the confirming party in the nomination and scheduling process, it has the right to confirm and schedule only a single volume for receipt and delivery: the lesser nominated volume or the previously scheduled volume so that no physical imbalances should occur as a result of different nominations.[29] Thus, it is unclear how a disparity between nominations can result in unbalanced scheduled volumes unless Equitrans permits them to occur. And, if Equitrans permits it to occur, it is not clear why the pool operator should be responsible for penalties, particularly when it is only acting as agent for the transportation contract holders. Therefore, we reject section 6.1 of *pro forma* Rate Schedule PS. We believe that this ruling resolves IOGA's concerns because the remaining penalty section, section 6.2 of *pro forma* Rate Schedule PS, simply provides that Rate Schedules FTS and ITS penalty provisions continue to apply.

4. Imbalances in Physical Deliveries

63. Finally, section 6.2 of proposed *pro forma* Rate Schedule PS addresses imbalances in physical deliveries. *Pro forma* section 6.2 provides that:

> Customers under the applicable Rate Schedule FTS and ITS agreements shall be responsible for scheduled or unscheduled physical receipt and delivery point imbalances which may occur on a daily basis in accordance with the Rate Schedules FTS and/or ITS.

64. Columbia PA believes that such imbalances could be significant, since much of the gas subject to this service is likely to come from local production, where actual measurements may not be available for some time. Without strict controls, Columbia PA claims that such imbalances could decrease the quality of service provided to firm customers. Also, it argues that there should be a clear provision for assessing penalties for such physical imbalances, and the resulting penalty revenues should, once again, be

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[29] *See* NAESB WGQ Standard 1.3.22 (i), incorporated into Equitrans' tariff:

> With respect to the timely nomination/confirmation process at a receipt or delivery point, in the absence of agreement to the contrary, the lesser of the confirmation quantities should be the confirmed quantity. If there is no response to a Request For Confirmation or an unsolicited Confirmation Response, the lesser of the confirmation quantity or the previously scheduled quantity should be the new confirmed quantity.

credited to firm customers in accordance with section 33 of Equitrans' GT&C. Finally, Columbia PA states that section 6.2 of *pro forma* Rate Schedule PS places responsibility for physical imbalances on the "Customer," rather than the "Pool Operator" (who would be responsible for nomination imbalances under proposed section 6.1 of Rate Schedule PS). It states that the reason for this difference in responsibilities is not clear, and these provisions should not be approved absent a satisfactory explanation.

65. Section 6.2 of *pro forma* Rate Schedule PS provides that Rate Schedules FTS and ITS shippers whose contracts are part of the pool will be responsible for physical imbalances whether scheduled or unscheduled, in accordance with Rate Schedules FTS and ITS. There is no change from Equitrans' existing tariff regarding how actual imbalances are calculated or what penalties are applicable to Rate Schedules FTS and ITS services. Further, Columbia PA fails to identify why Rate Schedule PS would change any of those Rate Schedules' terms or their application. Section 7 of *pro forma* Rate Schedule PS states that all of the GT&C of Equitrans' tariff are applicable to this rate schedule and are incorporated therein, except as specifically excluded. Section 6.2 of *pro forma* Rate Schedule PS specifically states that Customers are responsible for physical imbalances in accordance with Rate Schedules FTS and ITS. Under Rate Schedules FTS and ITS, the Customer bears the ultimate responsibility for actual deliveries. Therefore, Columbia PA's objection is without merit and we accept Equitrans' proposal that the Customer bear responsibility for actual imbalances.

<u>The Commission orders</u>:

(A) Equitrans' proposed Rate Schedule AGS, as modified by the Commission's findings and rulings above, is approved.

(B) Equitrans' proposed Rate Schedule PS, as modified by the Commission's findings and rulings above, and deletion of Rate Schedules IGS and APS are approved.

(C) Within 30 days of the date of this order, Equitrans shall file actual tariff sheets and clarifications reflecting the above-approved *pro forma* tariff revisions, as modified by the Commission's findings and rulings above, to be effective August 1, 2005.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.