

131 FERC ¶ 61,090
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2010

In Reply Refer To:
Equitrans, L.P.
Docket No. RP10-549-000

Equitrans, L.P.
625 Liberty Avenue, Suite 1700
Pittsburgh, Pennsylvania 15212-5861

Attention: Thomas Yeh
Manager, Rates and Commercial Analysis

Reference: Non-Conforming Transportation Service Agreements

Dear Mr. Yeh:

1. On March 31, 2010, Equitrans, L.P. (Equitrans) filed four non-conforming service agreements and a revised tariff sheet.¹ Two service agreements are for Firm Transportation Service (Rate Schedule FTS), and two are for Interruptible Storage Service (Rate Schedule INSS). As discussed below, the Commission accepts Equitrans' service agreements subject to conditions and rejects the revised tariff sheet, as detailed in the body of this order.

2. Equitrans states that all four service agreements deviate from the *pro forma* agreements in Equitrans' FERC gas tariff. Equitrans requests that the Commission find that the service agreements provide for service in a manner that is consistent with its tariff and do not create any potential risk of undue discrimination against other shippers.

¹ First Revised Sheet No. 319 to Equitrans, L.P.'s FERC Gas Tariff, Original Volume No. 1.

3. The two FTS agreements are with Hess Corporation (Hess)² and EQT Energy LLC (EQT Energy).³ Equitrans states that both agreements contain the same deviation from the FTS Form of Service Agreement in its tariff. Specifically, Section 4 of Exhibit A of the Form of Service Agreement provides that the agreement will be “in effect for a primary period of [space to be filled in] year(s) and thereafter yearly subject to a six months written cancellation notice by either party.” Section 4 of the Hess agreement has been filled in to provide for a primary term of one month, and Section 4 of the EQT Energy Agreement has been filled to provide for a primary term of seven months. In both agreements, the provision for annual rollovers has been deleted. Equitrans notes that its agreement with Hess is for a term shorter than the six month notice of termination period in the annual rollover provision, and both agreements are intended to terminate at the end of the primary term as agreed upon by the parties. Therefore, Equitrans asserts that this rollover language is unnecessary and contrary to the intent of the parties.

4. Equitrans asserts that the Commission has stated that deviations may be acceptable so long as the customer is not “receiving a different quality of service than that provided to other customers under the pipeline’s tariff [footnote omitted] or that affect the quality of service received by others.”⁴ Equitrans further asserts that removal of the rollover provision in Section 4 of Exhibit A does not create a different quality of service as any customer requesting a short-term FTS agreement and any customer, with Equitrans’ agreement, can terminate the contract at the end of the contract term and also have the same rollover language removed. Equitrans also states that the Commission has previously ruled that removal of the rollover language is consistent with Equitrans’ tariff.⁵ Therefore, Equitrans concludes that these non-conforming agreements provide service in a manner which is consistent with the FTS agreement in the tariff, and do not create any potential risk of undue discrimination against other shippers on Equitrans’ system.

² Firm Transportation Service Agreement, No. EQTR8991-316.

³ Firm Transportation Service Agreement, No. EQTR9063-469.

⁴ Equitrans cites *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,003 (2001).

⁵ Equitrans cites an unpublished letter order issued on December 1, 2009 in Docket Nos. RP10-96-000 and RP10-96-001.

5. The two INSS agreements are with UGI Energy Services Inc. (UGI)⁶ and Dominion Field Services (DFS).⁷ Equitrans states that both the UGI agreement and the DFS agreement contain the same deviation from the INSS *pro forma* service agreement in the tariff. In both agreements, the *pro forma* Exhibit A has been modified to add a provision for a Maximum Daily Quantity at the Storage Receipt and Delivery Point. Equitrans asserts that this additional provision is necessary in order for Equitrans to manage and operate its system effectively and all current customers and any new customer's INSS Agreements would also contain this Maximum Daily Quantity term. Equitrans contends that this provision does not provide for service that is inconsistent with the tariff and the Commission has previously ruled on similar non-conformance filings in which the addition of operational details such as a Maximum Daily Quantity does not create any potential risk of undue discrimination against other shippers on Equitrans' system.⁸

6. Equitrans has also filed a revised tariff sheet adding these four agreements to its list of non-conforming agreements.

7. Public notice of the filing was issued on April 1, 2010. Interventions and protests were due on or before April 12, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2009)), all timely filed motions to intervene and any 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. No protests or adverse comments were filed.

8. The Commission accepts Equitrans' four filed agreements, subject to Equitrans revising its Forms of Service Agreement for both Rate Schedules FTS and INSS service, so that the material deviations in the four filed agreements no longer deviate from the relevant Form of Service Agreement. Because this condition will render the filed agreements conforming, the Commission rejects Equitrans' proposed tariff sheet adding these agreements to its list of non-conforming Agreements.

9. Section 154.110 of the Commission's regulations requires that pipeline tariff contain an unexecuted *pro forma* copy of each form of service agreement. The form of service agreement must:

refer to the service to be rendered and the applicable rate schedule of the tariff; and, provide spaces for insertion of the name of the customer,

⁶ Interruptible Storage Service Agreement, No. EQTR8894-432.

⁷ Interruptible Storage Service Agreement, No. EQTR8891-367.

⁸ Equitrans cites *Equitrans, L.P.*, 128 FERC ¶ 61,193 (2009).

effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity and other specifics of each transaction as appropriate.

10. Sections 154.1(d) and 154.112(b) require that pipelines file any contract which “deviates in any material aspect from the form of service agreement” for Commission review. The Commission has held that such material deviations fall into two general categories – those that must be prohibited because they present a significant potential for undue discrimination among shippers and those that can be permitted without substantial risk of undue discrimination.⁹ In addition, section 154.112(b) requires that all accepted non-conforming agreements must be referenced in the pipeline’s open access transmission tariff.

11. Consistent with section 154.110, Equitrans’ *pro forma* service agreements for service under each rate schedule should have blank spaces or optional provisions which accommodate all the types of contractual provisions Equitrans typically offers to customers under that rate schedule in the normal course of business. Compliance with this requirement helps minimize undue discrimination among customers by ensuring that all customers have notice of all the types of contractual provisions that may be negotiated. It also reduces burdens on the pipeline, the Commission, and others from the filing and processing of non-conforming agreements, by minimizing the number of agreements that must be filed.¹⁰

12. Equitrans’ explanation of why the material deviations at issue here do not present a risk of undue discrimination makes clear that the only reason these material deviations are included in the filed agreements is that its FTS and INSS Forms of Service Agreement do not accommodate all the types of contractual provision it typically offers to its shippers under those rate schedules.

13. Currently, the term provision of Equitrans’ form of service agreement for firm service includes an automatic rollover provision unless notice is given six months prior to the end of the term. As Equitrans explains, this means that whenever it enters into a firm service agreement in which the parties do not intend to include a rollover provision, it must file the contract as non-conforming to eliminate the rollover provision. Equitrans also makes clear that it regularly agrees to remove the rollover provision from agreements where the parties intend for the agreement to terminate at the end of the primary term, without any rollover. This situation appears to arise particularly in circumstances where Equitrans enters into firm service agreement with a term of less than

⁹ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,003 (2001).

¹⁰ *Id.*, at 62,001-3.

a year, as here. In these circumstances, the Commission's acceptance of the two FTS agreements filed in this case is subject to the condition that Equitrans revise its FTS Form of Service Agreement to make the rollover provision optional. This will eliminate any need to file FTS service agreements which do not contain rollover provision as non-conforming agreements.

14. Similarly, Equitrans' INSS Form of Service Agreement does not contain a blank space for the Maximum Daily Quantity term, despite the fact Equitrans states it intends to include such a provision in all INSS agreements. Thus, absent a change in the INSS Form of Service Agreement, Equitrans would have to file all its INSS service agreements as non-conforming. Accordingly, the Commission's acceptance of the two filed INSS service agreements is also subject to the condition that Equitrans must revise its INSS form of Service Agreement to include a blank for Maximum Daily Quantity.

15. Equitrans' compliance with the conditions of this order will render all four filed agreements in this proceeding conforming. Therefore, the Commission conditionally accepts the service agreements and rejects the tariff sheet in footnote 1, which would identify the service agreements as non-conforming.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties
Public File