143 FERC ¶ 61,108
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Equitrans, L.P. Docket No. CP11-68-001

ORDER DENYING REHEARING

(Issued May 8, 2013)

1. On July 21, 2011, the Commission issued Equitrans, L.P. (Equitrans) a certificate of public convenience and necessity, under section 7(c) of the Natural Gas Act (NGA) to construct and operate the Equitrans' Sunrise Project, which includes the construction of pipeline and compression facilities in West Virginia and Pennsylvania.[1] The Sunrise Project will provide up to 313,560 dekatherms per day (Dth/day) of additional firm capacity to enable producers in the Marcellus Shale formation to move gas volumes to markets in the Northeastern and Mid-Atlantic United States.

2. On August 22, 2011, Equitrans filed a timely request for rehearing of the certificate order. As discussed below, this order denies rehearing.

I. Background

3. Equitrans designed the Sunrise Project to provide new pipeline transportation capacity from the Marcellus Shale production areas in Pennsylvania and West Virginia to the Mid-Atlantic and East Coast markets. Equitrans intended the Sunrise Project to meet both current and future market demand for transportation of shale gas supplies. Equitrans

[1] *Equitrans, L.P.*, 136 FERC ¶ 61,046 (2011) (July 21 Order).

stated that it "purposefully 'oversized' the project to account for 'projections of rapid and continued development of production in the Marcellus formation.'"[2]

4. As approved, the Sunrise Project located in Pennsylvania and West Virginia will consist of more than 47 miles of pipeline of various diameters as well as compression facilities.[3] The Sunrise Project will have a total of five new interconnections: three interconnections with Equitrans' existing Mainline System facilities (H-111 near the Jefferson Compressor Station; H-562 at Pickenpaw, West Virginia; and yard piping at the Logansport Compressor Station); one interconnection with Texas Eastern Transmission, LP (Texas Eastern), located near the proposed Jefferson Compressor Station; and one interconnection with Dominion Transmission, Inc. (Dominion) also located near the proposed Jefferson Compressor Station. The proposed Jefferson Compressor Station, in Greene County, Pennsylvania, will provide approximately 14,205 hp of compression.

5. The Sunrise Project's three interconnections with Equitrans' Mainline System will be bi-directional. The first interconnect will allow Sunrise to receive and deliver natural gas to and from the low pressure east and west sides of the Mainline System and will allow Equitrans to transport locally produced gas as well as storage withdrawals from Equitrans' Shirley Storage to Texas Eastern through the Jefferson Compressor. The second interconnect, located at the Southern most point of the Sunrise System will provide access to Equitrans' Mainline Pickenpaw interconnection with Columbia Gas Transmission, which can be used as a delivery point off the Sunrise Project and can also

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[2] Equitrans' August 22, 2011 Rehearing Request at 3 (Rehearing Request) (citing Equitrans' January 27, 2011 certificate application in Docket No. CP11-68-001 at 9 (Certificate Application)).

[3] Specifically, the July 21 Order approved the construction of: (1) approximately 41.5 miles of 24-inch pipeline in Wetzel County, West Virginia and Greene County, Pennsylvania, with a 1,200 psig Maximum Allowable Operating Pressure (MAOP) (the H-302 pipeline); (2) approximately 2.7 miles of 16-inch pipeline in Wetzel County, West Virginia, with a 1,200 psig MAOP (the H-306 pipeline); (3) approximately 0.21 miles of 20-inch pipeline in Greene County, Pennsylvania, with a 720 psig MAOP (the H-309 pipeline); (4) replacing approximately 2.6 miles of 16-inch inactive pipeline on the existing H-111 pipeline in Greene County, Pennsylvania, with new 20-inch pipeline with a 655 psig MAOP; (5) requalifying approximately 4.8 miles of the existing 20-inch H-111 pipeline in Greene County, Pennsylvania, for a 655 psig MAOP; and (6) one new compressor station, consisting of three natural gas combustion engine reciprocating units providing approximately 14,205 horsepower (hp), located in Greene County, Pennsylvania (Jefferson Compressor Station).

receive gas from Columbia for displacement purposes. The third interconnect, located near the Logansport Compressor station, will enable Sunrise to receive and deliver natural gas to and from the east side of its Mainline System and will provide access to Equitrans' storage located on the southern portion of the Mainline System. Equitrans further notes that all three proposed interconnects will allow Equitrans to displace natural gas to reduce compressor fuel and lost and unaccounted for gas and to provide backhaul service across both the Mainline and Sunrise Project system.

6. Equitrans conducted a non-binding open season for additional firm transportation subscriptions from September 21, 2009, until October 14, 2009. Equitrans also conducted a reverse open season in November 2009 to solicit turnback of existing capacity in order to minimize the construction that would be necessary for the project. The July 21 Order stated upon Commission approval, Equitrans and shippers with precedent agreements would enter into binding firm transportation agreements at negotiated rates for subscribed capacity.

7. Equitrans signed negotiated-rate long-term agreements for 199,410 Dth/day, less than two-thirds of the projects design capacity. In its rehearing request, Equitrans states that: (1) it purposefully "oversized" the project to account for the projections for the rapid and continued development of production in the Marcellus formation, (2) it designed a rate to allow it to compete with a competitive pipeline projects, and (3) slow economic growth and environmental uncertainty caused shippers to postpone capacity commitments.[4]

8. In its certificate application, Equitrans stated that because of the integrated nature of the Sunrise and Mainline Systems, which allows Mainline and Sunrise customers to flow on a secondary firm or interruptible basis between the systems, it proposed to charge its Mainline firm transmission customers that utilize the Sunrise System a secondary access charge (Sunrise Access Charge).[5] Equitrans stated that it designed the access charge to ensure that shippers who nominate on the Sunrise Project pay for the project's costs so that there is no subsidization between different classes of shippers. The July 21 Order rejected the Sunrise Access Charge because under Commission policy, shippers are entitled to access any receipt or delivery points within the zone for which they are paying subject to the availability of capacity.[6] Therefore, the Commission stated that given the fact that Equitrans' rates are designed on a postage-stamp basis, any Equitrans firm

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[4] Rehearing Request at 3-4.

[5] Certificate Application at 19.

[6] July 21 Order, 136 FERC ¶ 61,046 at P 22.

Mainline shipper must be allowed to nominate on the Sunrise Project as a secondary receipt point on an as-available basis at the shipper's otherwise applicable transportation rate, subject to the operational capability of Equitrans' reticulated system to make deliveries to such shipper's delivery point. In addition, the July 21 Order stated that charging firm mainline shippers an additional access charge to use the Sunrise Project amounts to incremental plus pricing, which the Commission has previously rejected.[7]

9. Equitrans also proposed to establish: (1) a separate Sunrise Transmission IT rate for interruptible service; and (2) a Combined System IT rate for interruptible transportation service nominated across both the Mainline and Sunrise Systems. The proposed Sunrise Transmission IT rate is the 100 percent load factor derivative of the Sunrise Project Reservation Charge. The Combined System IT rate is equal to the maximum Sunrise Project interruptible recourse rate and the Mainline Retainage factor and the Mainline IT usage rate and associated surcharges. The July 21 Order rejected Equitrans' proposed Sunrise Transmission IT rate and the Combined System IT rate because, under the Certificate Policy Statement,[8] expansion shippers have to pay the full costs of the new capacity without subsidy from existing customers. However, this policy preference for incremental rates does not apply to interruptible shippers. The July 21 Order required Equitrans to charge its existing Mainline IT rate for shippers nominating on the Sunrise Project on an interruptible basis until such time that Equitrans files for new rates in a general section 4 rate case.

10. Finally, Equitrans proposed to implement a Sunrise Transmission System Retainage Factor of 2.0 percent to track and recover actual experienced fuel and lost and unaccounted for gas (LAUF).[9] Equitrans proposed new tariff language to true-up the actual retainage every six months. The July 21 Order rejected Equitrans' proposed retainage rate. The Commission found that since the Sunrise Project is integrated with the Mainline System, the higher fuel rate of the Mainline, rather than the lower incremental rate for the expansion should apply to the Sunrise shippers. The July 21 Order required Equitrans to charge Sunrise shippers the full 3.72 percent Mainline fuel retainage rate.[10]

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[7] *Id.*

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

[9] Certificate Application at 18.

[10] July 21 Order, 136 FERC ¶ 61,046 at P 26.

11. On January 14, 2013, and supplemented on January 22, 2013, Equitrans filed a Stipulation and Agreement and its Appendices (2013 Settlement) in Docket Nos. RP12-446-000 and RP12-465-000. Pertinent here, the 2013 Settlement lowered Equitrans' mainline system transmission retainage factor from 3.72 percent to 2.72 percent.[11] In addition, the 2013 Settlement provided that Equitrans will no longer track recovery of its base storage gas. On March 22, 2013, the Commission approved the 2013 Settlement, which became effective on April 1, 2013.[12]

II. Rehearing Request

12. On August 21, 2011, Equitrans filed a request for rehearing of the July 21 Order's rejection of its proposed: (1) Sunrise Access Charge, (2) Sunrise transmission IT rate, and (3) retainage rate.

A. Rejection of Equitrans' proposed Sunrise Access Charge

13. Equitrans states that by denying the proposed Sunrise Access Charge, the Commission improperly departed from the cost causation principle without providing a rational reason for doing so. Equitrans argues that under the July 21 Order, Mainline shippers are able to nominate on the Sunrise Project facilities on a secondary basis without paying any additional rate or otherwise contributing to recovery of the $272 million in Sunrise Project costs.

14. Further, Equitrans argues that the Commission improperly applied the secondary rights policy, which states that "shippers are entitled to access any point within the zone for which they are paying" to this expansion facility.[13] Equitrans contends that the secondary rights policy does not justify allowing Mainline shippers to use the expansion facilities without paying for them, because the rationale behind the secondary rights policy is that the shippers are merely getting to use the facilities for which they are paying. Equitrans states that for an expansion facility with an incremental rate, existing shippers do not pay for the costs of the expansion facilities. As a result of the July 21 Order, Equitrans states that Mainline shippers would gain the ability to access the more

[11] The 2013 Settlement did not change the Sunrise Transmission System Retainage Factor of 3.72 percent as set by the July 21 Order.

[12] *Equitrans, L.P.*, 142 FERC ¶ 61,219 (2013).

[13] Equitrans' Rehearing Request at 16-17 (citing July 21 Order, 136 FERC ¶ 61,046 at P 22).

expensive Sunrise Project facilities on a secondary basis even though these costs are not included within the Mainline shippers' rates.

15. Equitrans argues that the July 21 Order is inconsistent with the Commission's application of secondary rights policy as applied in *Transcontinental Gas Pipeline Corp.*[14] In *Transco I*, the Commission stated that any Part 284 customer paying expansion system costs that are rolled-into their Part 284 rates, should also be able to access any secondary receipt points because any other approach would unduly balkanize the system. Equitrans states that *Transco I* did not violate the cost causation principle because the shippers accessing the expansion facility on a secondary basis had already paid for at least a portion of the facilities through rolled-in rate treatment. In this proceeding, Equitrans states that the Mainline shippers have not paid for any of the costs of the Sunrise Project.

16. Further, Equitrans disputes the July 21 Order's application of *Gulf South Pipeline Company*[15] to the project, stating that charging firm mainline shippers an additional access charge to use the Sunrise Project amounts to incremental plus pricing, which the Commission rejects. Equitrans states that the Commission should not rely on *Gulf South* to support its decision with respect to the rates for the Sunrise Project. The rate treatment for the expansion facilities at issue in *Gulf South* was the subject of a petition for review that the pipeline filed with D.C. Circuit, and which the pipeline withdrew only after the Commission approved an uncontested settlement that resolved the cost causation issues associated with the Commission's rate treatment.[16]

17. Equitrans states that the Commission has not been consistent in rejecting a pipeline's use of an access charge for secondary expansion facilities – even for those integrated in the mainline system. For example in *Dominion Transmission Incorporated*,[17] the Commission accepted a surcharge that would apply to all shippers contracting for service on the expansion facilities in addition to the firm reservation rates, charges, and fuel retention already being paid. The Commission held that under the circumstances, the Commission found the surcharge to be appropriate for recovering the project's costs.

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[14] 73 FERC ¶ 61,361, at 62,127 (1995) (*Transco I*).

[15] 120 FERC ¶ 61,291 (2007), *order on reh'g*, 122 FERC ¶ 61,162 (2008) (*Gulf South*).

[16] Equitrans' Rehearing Request at 20.

[17] 129 FERC ¶ 61,012, at P 18 (2009) (*Dominion).*

18. In addition, Equitrans argues that although the Sunrise Project is located within Equitrans' Mainline System, once gas enters the Sunrise Project, the majority of the gas is delivered to Texas Eastern via the Jefferson Compressor Station. There are only two interconnects that can deliver gas off of the Sunrise system into the Mainline System – one provides direct access to Columbia Transmission via the Mainline System. Consequently, the Mainline and Sunrise Systems are essentially two separate systems. Although they are located in the same rate zone, Mainline shippers pay the existing Mainline rate and Sunrise shippers pay the higher incremental rate to cover the expansion costs.

Commission Response

19. We disagree with Equitrans' position that by denying the proposed Sunrise Access Charge the Commission has departed from the cost causation principle of the Certificate Policy Statement. The policy statement states that the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing an expansion project is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers.[18] Those existing customers in this case are Equitrans' current shippers who have signed long-term contracts. In *Kern River Transmission Company*,[19] the Commission stated that under the Certificate Policy Statement, the Commission seeks to encourage efficient investment and contracting decisions by pipelines and shippers concerning the construction of new capacity. It does this by generally requiring that expansions be priced incrementally, so that expansion shippers will have to pay the full costs of the new capacity without subsidy from the existing customers through rolled-in pricing. This ensures that the market finds the project viable, because either the expansion shippers or the pipeline must be willing to fully fund the project. In addition, the Commission held that existing shippers should not be required to pay the costs of an expansion during the term of their contract "because these shippers sign long-term contracts with the expectation that increases in their rate will be related to the costs and usage of the system for which they subscribe. Raising the rates of these existing shippers during the term of their long-term contracts to include expansion costs reduces rate certainty and increases contractual risk, and the Commission has determined their contracts should protect them from this risk."[20]

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[18] Certificate Policy Statement, 88 FERC at 61,745, *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094.

[19] 117 FERC ¶ 61,077, at P 333 (2006) (*Kern River*).

[20] *See Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC

(continued…)

20. In its certificate application, Equitrans stated that it "has oversized the Sunrise Project based on the projections for the rapid and continued development of production in the Marcellus formation."[21] Equitrans further stated that it "has signed commitments to enter into negotiated rate agreements for 199,410 Dth/day out of a Sunrise Project design capacity of 313,560 Dth/day."[22] Equitrans also stated that "[w]ith the addition of the Sunrise Project, Equitrans will use its existing pipelines on its Mainline System as a feeder system to the Sunrise Project."[23]

21. The Commission recognizes that Equitrans did follow the Commission's policy and designed rates for the Sunrise Project based on the full design capacity of the project. However, since Equitrans does not have commitments for the remainder of the design capacity, Equitrans has put itself at-risk to sign up new firm customers to pay for the overbuilt capacity.

22. The Certificate Policy Statement describes factors to be balanced in assessing the public convenience and necessity in structuring the pipeline's project proposal. One of the considerations of adverse effects on potentially affected interests is the interest of existing customers of the pipeline applicant. The policy statement states the interests of the existing customers of the expanding pipeline may be adversely affected if the expansion results in their rates being increased or if the expansion causes a degradation in service.[24]

23. Equitrans argues that the Commission should allow it to shift the cost of the expansion facilities to its current customers. By charging an access fee to its current customers for the ability to transport gas on a secondary basis to the same points on its system, the access charge shifts the cost of the Sunrise Project to Equitrans' current

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Stats. & Regs. ¶ 31,091, *clarified*, Order No. 637-A, FERC Stats. & Regs. ¶ 31,099, at 31,637, *reh'g denied*, Order No. 637-B, *aff'd in part and remanded in part sub nom. Interstate Natural Gas Association of America v. FERC*, 285 F.3d 18 (D.C. Cir. 2002), *order on remand*, 101 FERC ¶ 61,127 (2002), *order on reh'g*, 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Association v. FERC*, 428 F.3d 255 (D.C. Cir. 2005).

[21] Certificate Application at 9.

[22] *Id.*

[23] *Id.* at 8.

[24] Certificate Policy Statement, 88 FERC at 61,747.

customers. Therefore, we find this charge at odds with the Commission's policy statement.

24. Equitrans in its rehearing request argues that the Commission stated in *Transco I*[25] that any Part 284 customer paying expansion system costs that are rolled-into Part 284 rates, should be able to access any secondary receipt points because any other approach would unduly balkanize the system.

25. As the Commission stated in *Transco I*, "[t]he Commission … did not create any new limitations to access secondary receipt points in a zone. Payment of a reservation fee is itself sufficient to obtain access to secondary receipt points, absent any other requirements imposed by a pipeline's rate design."[26] In addition, the Commission stated that, "[w]e find as a policy matter that Zone 6 Part 284 shippers should be given secondary receipt point rights on the Zone 6 Leidy facilities, even those parts of Zone 6 Leidy facilities whose costs are recovered in incremental rates."[27] The Commission further found that if a Part 284 shipper pays a share of the costs of the facilities in Zone 6 it should have secondary point access there.

26. Since Equitrans' Sunrise Project is integrated into Equitrans' systems, and since Equitrans consists of only a single "zone," all Part 284 shippers have the right to secondary receipt points on Equitrans' system, including the new Sunrise Project facilities, without incurring any additional costs.

B. Rejection of Equitrans' proposed Sunrise IT Rate

27. Equitrans argues that the July 21 Order violates the cost causation principle, because IT shippers will be able to use the Sunrise Project facilities without paying rates to recover the costs of the expansion facilities. Equitrans states that all IT shippers must pay the Mainline IT rate, regardless of whether the shippers use the $272 million expansion facilities. However, rather than pay the maximum tariff rate of $0.4186/Dth (derived from the costs of the Sunrise Project), Equitrans contends that the order incorrectly requires IT shippers to pay only the minimum tariff rate of $0.1646/Dth during the base season and a maximum tariff rate of $0.1867/Dth during the winter season, amounts that include none of the Sunrise Project costs.

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[25] *Transco I*, 73 FERC at 62,127.

[26] *Id*.

[27] *Id*.

28. Equitrans argues that in *FPC v Hope*,[28] the Supreme Court stated that when setting just and reasonable rates, the Commission must balance the interests of the investor and the consumer. The July 21 Order's failure to follow this cost-causation principle denies Equitrans the ability to recover the costs of the Sunrise Project and earn a reasonable investment. Equitrans may only recover the costs via the approved incremental rate from shippers that nominate on the Sunrise Project; it cannot recover expansion costs from shippers who nominate the facilities on a secondary or interruptible basis.

29. Equitrans notes that the July 21 Order recognized that the Certificate Policy Statement generally requires incremental pricing for expansion facilities "so that expansion shippers will have to pay the full costs of the new capacity without subsidy from existing customers."[29] The Commission held that this policy does not extend to interruptible service because pipelines generally build expansions to provide the necessary capacity to accommodate demand for additional levels of firm service and the investment and contracting decisions the Commission seeks to apply do not extend to interruptible rate shippers. Equitrans argues that the Commission's rationale does not apply to the Sunrise Project because, as stated above, Equitrans purposefully overbuilt the facilities to meet future demand for Marcellus Shale gas in the Mid-Atlantic and East Coast markets. Equitrans states that it is relying on interruptible volumes to recover the project's costs until the Sunrise Project is fully subscribed. But, under the July 21 Order, Equitrans cannot recover the costs of the facility from interruptible shippers.

30. Equitrans argues that the July 21 Order creates a disincentive for shippers to contract for firm capacity on the project or to renew their contracts at the end of the current term. Mainline shippers and replacement shippers who acquire Mainline capacity will pay significantly lower rates when they nominate on the Sunrise Project on a secondary basis as compared to Sunrise shippers nominating on a primary basis. Potential shippers will have a strong incentive to obtain Mainline capacity via capacity release and then nominate on the Sunrise Project on a secondary basis, rather than nominate on the Sunrise Project on a primary basis.

31. Equitrans states that the July 21 Order's rejection of the proposed access charge unduly discriminates between two classes of firm shippers. By requiring an incremental rate for Sunrise shippers, but allowing Mainline shippers to use the Sunrise Project at a low Mainline rate, the Commission has created undue discrimination by creating a preference without a reasoned basis. Equitrans states that this discriminatory pricing

[28] 320 U.S. 591, 603 (1944).

[29] Equitrans' Rehearing Request at 23 (citing July 21 Order, 136 FERC ¶ 61,046 at P 24).

masks the true market value of the Sunrise Project because the costs of the expansion capacity are not reflected in the Mainline rate. The NGA requires the Commission "to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce, having due regard for the public interest, the integrity of the markets, fair competition, and protection of customers."[30] By establishing an artificial price disparity for the same firm capacity on the Sunrise Project, the order reduces market transparency and conflicts with the goals of the NGA and Commission policy.

32. Equitrans disputes the July 21 Order's reliance on *Kern River*,[31] to support the Commission's argument that Commission policy is to generally not allow a separate IT rate for new projects. Equitrans states that *Kern River* also contains an exception that separate incremental rates for IT service are allowed in situations where the shippers using the new facility would be identified and accounted for. Equitrans argues that this exception applies to Sunrise, because Equitrans can identify and account for all IT shippers nominating on the expansion facilities.

33. Further, Equitrans contends that by rejecting the Sunrise IT rate, the Commission departed from recent precedent. Specifically, Equitrans sites to *Transcontinental Gas Pipeline Corp.*[32] stating that the Commission allowed the applicant to charge a separate interruptible rate on an expansion facility when the applicant articulated a good reason to do so. In addition, Equitrans argues that the Commission in *Texas Eastern Transmission LP*[33] approved the oversized Marietta expansion and permitted Texas Eastern to charge an initial incremental rate for interruptible service using unsubscribed capacity and allowing the use of the 100 percent load factor rate as the maximum rate for interruptible service.

Commission Response

34. We disagree. Equitrans' reliance on the Commission's decisions in *Kern River* and *Transco II* is unfounded. In both cases, the Commission stated that its policy is to generally not allow a separate IT rate for new projects.[34] And, as Equitrans

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[30] Equitrans' Rehearing Request at 30 (citing 15 U.S.C. § 717t-2).

[31] 117 FERC ¶ 61,077 at PP 336-38.

[32] 79 FERC ¶ 61,286, at 62,247 (1997) (*Transco II*).

[33] 129 FERC ¶ 61,151 (2009) (*Texas Eastern*).

[34] *Kern River*, 117 FERC ¶ 61,077 at P 336 (citing *Transco*, 79 FERC at 62,250-51).

acknowledged, the Commission will not allow separate incremental rates for IT service unless the shippers using the new facilities would be separately identified and accounted for.[35]

35. We do not find that Equitrans can appropriately identify and account for shippers using the new facilities. As stated above, Equitrans' new Sunrise facilities will interconnect with its Mainline System at three separate interconnections to provide a bidirectional flow of gas, thus demonstrating that the Sunrise facilities will be operated as an integrated part of the Equitrans' system. Further, Equitrans itself states that the Sunrise Project will be integrated into the Equitrans' system and that the Mainline facilities will be used as a feeder into the Sunrise Project.[36] Therefore, Equitrans cannot specifically identify and account for shippers only using the Sunrise facilities, since the facilities will be fully integrated into Equitrans' system. Therefore, the Sunrise Project does not qualify for incremental IT rates as discussed in *Kern River* and *Transco II*.

36. We also disagree with Equitrans' reliance on *Texas Eastern*.[37] Texas Eastern's Marietta Expansion project was a nonintegrated lateral extending from the discharge side of Texas Eastern's Marietta Compressor Station to a new interconnect with Transco. The limitation of the contract path on the Marietta lateral is far different from that available to Sunrise Project shippers. Interruptible customers on the Marietta Expansion Project have the right to ship on an interruptible basis on the Marietta Extension, but not elsewhere on the existing Texas Eastern system. Since Equitrans' system is an integrated system, IT shippers can ship anywhere on Equitrans' system be it either Mainline or on the Sunrise Project.

37. Equitrans has stated numerous times both in its application and in its rehearing request that the Sunrise Project was purposely oversized to account for the projections for the rapid and continued development of production in the Marcellus formation.[38] The Certificate Policy Statement states that the threshold requirement in establishing the public convenience and necessity for existing pipelines proposing an expansion project is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers.[39] Equitrans has admitted to taking the risk of

[35] *Id*.

[36] Certificate Application at 8.

[37] *Texas Eastern*, 129 FERC ¶ 61,151.

[38] Request for Rehearing at P 3.

[39] Certificate Policy Statement, 88 FERC at 61,746.

oversizing the project and is now attempting to argue that it is relying on potential IT revenue as the backbone to support its oversized project until such time as potential shippers are willing to make firm commitments to the project, contrary to the requirements of the Certificate Policy Statement.

C. Rejection of Equitrans' proposed retainage rate

38. Equitrans argues that the Commission erred in applying the Mainline retainage rate of 3.72 percent to the Sunrise shippers. Equitrans states that the Mainline System's retainage rate, established in a 2006 Settlement,[40] was designed to capture actual fuel and LAUF plus the costs of replenishing the 7.1 Bcf of base storage gas that had migrated from the Mainline storage facilities. Equitrans states that the July 21 Order overcharges the Sunrise shippers because of the inclusion of the additional storage base gas component of the 3.72 percent retainage rate. Equitrans argues that the Mainline retainage rate's inclusion of lost base storage gas is not relevant to Sunrise shippers because the Sunrise Project has no storage facilities and the rate is meant to recover gas from a prior period and is unrelated to the Sunrise Project. Equitrans states that the July 21 Order should have compared respective retainage rates for the Mainline and Sunrise Project for actual fuel and LAUF only. This analysis would have shown that the retainage rates for the projects are essentially the same (Mainline is approximately 1-2 percent and Sunrise is approximately 2 percent).

39. As stated above, Equitrans' 2013 Settlement lowered Equitrans' Mainline System transmission retainage factor from 3.72 percent to 2.72 percent and provided that Equitrans will no longer track recovery of its base storage gas.[41] Equitrans will continue to apply the difference between the amounts recovered through the 2.72 percent Mainline System transmission retainage factor and fuel used and LAUF to replenish its base storage gas.[42]

Commission Response

40. As previously discussed, Equitrans' Sunrise system will be an integrated part of Equitrans' reticulated system. It is Commission policy that the use of its currently-effective system fuel rate is appropriate where the incremental fuel rate is lower that the

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[40] *Equitrans, L.P.*, 115 FERC ¶ 61,007 (2006).

[41] *Equitrans, L.P.*, 142 FERC ¶ 61,219 at P 6.

[42] *See* January 17, 2013 Stipulation and Agreement of Settlement filed in Docket Nos. RP13-446-000 and RP12-465-000 at 5.

system rate. The July 21 Order stated that Equitrans' system fuel rate was based on a 2006 Settlement in Docket No. RP05-164-000. The 2006 Settlement set the transmission retainage factor at 3.72 percent for a period of up to ten years starting September 1, 2005, during which Equitrans was precluded from modifying its retainage fuel rate until it recovered 7.1 Bcf of replenishment base gas. The July 21 Order correctly based the Sunrise retainage rate on this factor because there was nothing in the 2006 Settlement that stated that the settled retainage factor would not apply to new shippers or to new services.

41. However, since the July 21 Order, the Commission approved Equitrans' 2013 Settlement, which reduced Equitrans' Mainline System retainage factor from 3.72 percent to 2.72 percent, effective February 1, 2013. The Mainline System retainage factor will remain in effect through at least April 1, 2016.[43] Consistent with Commission policy it is appropriate to use the currently-effective system fuel rate where the incremental fuel rate is lower that the system rate. Equitrans' proposed Sunrise incremental fuel rate of 2.0 percent is lower than the Mainline System retainage factor of 2.72 percent in its 2013 Settlement. Therefore, for service on and over the Sunrise Project facilities, we are modifying the Sunrise System incremental fuel rate from 3.72 percent to 2.72 percent.[44]

The Commission orders:

(A) Equitrans, L.P.'s August 11, 2011 request for rehearing is denied.

(B) Equitrans' Sunrise System incremental fuel rate is modified from 3.72 percent to 2.72 percent.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[43] *Id.* P 7.

[44] Equitrans' argument that Sunrise shippers are overcharged because of the inclusion of the mainline storage base gas component on the Sunrise System retainage rate is moot as the Mainline System retainage factor approved in the 2013 Settlement no longer tracks the recovery of lost base gas.