

145 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Equitrans, L.P.

Docket No. CP13-88-000

ORDER APPROVING ABANDONMENT

(Issued December 5, 2013)

1. On March 1, 2013, Equitrans, L.P. (Equitrans) filed an application in Docket No. CP13-88-000, under section 7(b) of the Natural Gas Act (NGA)¹ and Part 157 of the Commission's regulations² for authorization to abandon by transfer to Equitable Gas Company, LLC (EGC) certain gathering facilities in western Pennsylvania (Facilities). The facilities to be abandoned consist of six pipeline laterals: lines M-23, M-25, M-30, M-31, M-32, and M-71. EGC states that it will maintain the existing gathering service on these facilities for shippers and producers.

2. As discussed and conditioned in this order, the Commission grants Equitrans' requested authorization.

I. Background and Proposal

3. Equitrans is a Pennsylvania limited partnership engaged in the business of gathering, storing, and transporting natural gas in interstate commerce subject to the jurisdiction of the Commission. Equitrans is currently owned by two subsidiaries of EQT Midstream Partners, L.P.: Equitrans Investments, LLC (97.25 percent ownership) and Equitrans Services, LLC (2.75 percent ownership). Equitrans' mainline system is located in northern West Virginia, and southwestern Pennsylvania. Equitrans is a natural gas company as defined by section 2(6) of the NGA³ and is subject to the jurisdiction of the Commission.

¹ 15 U.S.C. § 717f(b) (2012).

² 18 C.F.R. Part 157, Subpart A (2013).

³ 15 U.S.C. § 717a(6) (2012).

4. Equitrans proposes to abandon the Facilities by transfer to EGC. EGC is a Pennsylvania limited liability company that provides natural gas distribution services to approximately 275,000 customers in Pennsylvania, West Virginia and Kentucky. EGC owns approximately 4,000 miles of gathering and distribution pipeline. EGC is regulated by the Pennsylvania Public Utility Commission, the Public Service Commission of West Virginia, and the Kentucky Public Service Commission.

5. The Facilities are part of Equitrans' gathering assets located in western Pennsylvania (Pennsylvania Gathering Assets). In 2003, when Equitrans acquired the Pennsylvania Gathering Assets, some of the facilities were certificated as transmission facilities and some were functionalized as gathering. However, in 2004, Equitrans sought authorization to refunctionalize those facilities that were classified as transmission to gathering and also sought any necessary abandonment authority. Subsequently, the Commission approved Equitrans' request, in Docket No. CP04-76-000, to refunctionalize the transmission facilities to gathering.⁴ The Commission did not address the issue of abandonment authority at that time because Equitrans did not seek to transfer any of the facilities. Equitrans now seeks to abandon and transfer some of those facilities and states that the function and physical characteristics of the subject facilities have not changed since the Commission approved their refunctionalization to gathering.

6. The proposed abandonment is part of a larger corporate transaction in which EQT Corporation, the ultimate parent of Equitrans and EGC, will sell EGC, which generally comprises the natural gas distribution business of the company, to Peoples Natural Gas Company LLC (Peoples) in late 2013. Equitrans asserts that because the facilities to be abandoned primarily function as gathering, they are exempt from the Commission's jurisdiction. Equitrans also states that EGC will maintain the existing gathering service on the subject facilities for shippers and producers.

7. Equitrans proposes to abandon the following pipeline laterals: M-23, M-25, M-30, M-31, M-32, and M-71. Line M-23 is a 13-mile, 12-inch diameter pipeline with a Maximum Allowable Operation Pressure (MAOP) of 40 pounds per square inch gauge (psig); gas flows northeast on line M-23 to its connection with line M-30. Line M-25 is a 5-mile, 10-inch diameter pipeline with an MAOP of 40 psig; gas flows northeast on line M-25 to its interconnection with M-23. Line M-30 is a 10-mile, 12-inch diameter pipeline with an MAOP of 40 psig; gas flows on line M-30 into the suction side of Equitrans' Waynesburg Compressor Station. Line M-31 is a 11-mile, 10-inch diameter pipeline with an MAOP of 99 psig; gas compressed at the Mt. Morris field compressing station flows northwest on line M-31 toward its interconnection with M-71. Line M-32 is an 11-mile, 12-inch diameter pipeline with an MAOP of four psig; gas flows northeast on line M-32 toward its interconnection with M-71. Finally, line M-71 is a 3-mile, 12-inch

⁴ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004) (order determining jurisdictional status of facilities, *reh'g denied* 111 FERC ¶ 61,091 (2005)).

diameter pipeline with a MAOP of 40 psig. Line M-71 connects to the suction side of the Waynesburg Compressor station, carrying gas from line M-31 and M-32 to that facility.

II. Notice, Interventions, Protests, and Answers

8. Notice of Equitrans' application was published in the *Federal Register* on March 19, 2013 (78 Fed. Reg. 16,846). Timely, unopposed motions to intervene were filed by EGC, the Independent Oil & Gas Association of West Virginia, Inc, National Grid Gas Delivery Companies, the Pennsylvania Independent Oil & Gas Association, and People's Natural Gas Company LLC (People's).⁵ People's filed comments in support of Equitrans' proposal along with its intervention.

9. On April 2, 2013, the Independent Oil and Gas Association of West Virginia, Inc. and the Pennsylvania Independent Oil and Gas Association (Protestors) jointly filed a timely protest (Joint Protest). On April 11, 2013, Equitrans filed a motion for leave to answer the protest. On April 26, 2013, Protestors filed a joint motion for leave to answer Equitrans' April 11, 2013 answer, withdrawing the portion of the Joint Protest requesting Exhibit U attachments.⁶ Protestors further stated that their concerns had been addressed and that they do not oppose the abandonment, but submitted that the Joint Protest needs to be part of the record. On May 1, 2013, Equitrans filed another motion for leave to answer the Protestors April 26, 2013 answer. Although the Commission's Rules of Practice and Procedure do not permit answers to protests or answers,⁷ our rules do provide that we may, for good cause, waive this provision.⁸ We will accept all the responsive pleadings filed in this proceeding because they have provided information that assisted us in our decision-making process. The various protests and comments are discussed below.

⁵ Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2013).

⁶ Equitrans did not file all of its exhibits and attachments for the various transportation and facilities agreements in Exhibit U of their application. Protestors withdrew their request for these additional attachments but reserved the right to seek them in other forums, including future filings with the Commission. The Commission's record is complete without these additional attachments.

⁷ 18 C.F.R. § 385.213(a)(2) (2013).

⁸ 18 C.F.R. § 385.101(e) (2013).

III. Discussion

10. Equitrans seeks to abandon by transfer certain gathering facilities that were previously certificated for the transportation of natural gas in interstate commerce. Therefore, Equitrans' proposal is subject to the Commission's jurisdiction pursuant to section 7(b) of the NGA.⁹

A. Protest

11. In their April 26, 2013 answer, the Protestors state that their concerns about Equitrans' proposal have been answered. However, as they request that their protests remain a part of the record, we will briefly describe the issues raised.

12. The Protestors raise three concerns in their protest: the potential for rate stacking, potential future use of the easements associated with the lines Equitrans proposes to abandon, and whether the future owners of the facilities to be abandoned would be subject to the rate moratorium established under the settlement agreement in Equitrans' latest rate case.¹⁰

13. In the Joint Protest, Protestors allege that the abandonment by transfer would result in rate stacking because shippers and producers using Equitrans' retained gathering facilities located upstream and downstream of the lines proposed for transfer to EGC would have to use both Equitrans and EGC's facilities. Additionally, because EQT Corporation is selling EGC to Peoples, Protestors expressed concern that although Equitrans states that EGC will maintain the existing gathering service on the Facilities, Equitrans made no representation as to the operation of the Facilities by Peoples. Specifically, Protestors had urged the Commission not to grant the abandonment unless Equitrans, EGC, and Peoples represent that there will be no rate increase or change in services to the interstate grid and that the Facilities will remain functionalized as gathering facilities after the abandonment by transfer is completed.

14. In its answers, Equitrans confirms its intent not to stack rates on its retained facilities on top of gathering fees or costs for gas that is shipped through the abandoned facilities, thereby keeping producers cost neutral as a result of the abandonment. Equitrans also states its understanding that EGC and Peoples intend to maintain the current level of rates assessed for gathering services on the Facilities.

15. With respect to the easements, Equitrans confirms that the rights-of-way are being transferred along with the facilities without any dual rights being retained by Equitrans.

⁹ See *Southern Natural Gas Co. L.L.C.*, 143 FERC ¶ 61,207 (2013).

¹⁰ See *Equitrans, L.P.*, 142 FERC ¶ 61,219 (2013).

16. In the Joint Protest, Protestors point to the settlement between Equitrans, the Independent Oil and Gas Association of West Virginia, Inc., and other parties that established a moratorium on Equitrans' rate filings under section 4 of the NGA.¹¹ The settlement prohibits Equitrans from filing a rate case before October 1, 2015, and from changing its transmission or storage retainage rates before October 1, 2015. Protestors express concern that the application is silent regarding whether EGC or Peoples can change the gathering rates before the moratorium expires, and request Equitrans to clarify for the record whether future gathering owners are subject to the moratorium.

17. In its answer to the Joint Protest, Equitrans affirms its commitment to comply with the terms of the settlement agreement, but notes that the agreement does not bind third parties not subject to the agreement.

B. Request for Abandonment

18. When a pipeline wants to divest facilities that are certificated under section 7(c) of the NGA, it must first obtain abandonment authority from the Commission under section 7(b), regardless of the current function or functionalization of the subject facilities.¹² As stated earlier, the Commission previously has found that the primary function of the facilities proposed here for abandonment is gathering.¹³ No party suggests that there has been any change to the circumstances underlying that finding and, therefore, we see no reason to revisit it. The Commission has acknowledged that when it finds that the facilities proposed to be abandoned are currently performing a gathering function and thus are excluded by NGA section 1(b) from the Commission's jurisdiction, it does not have the authority to deny abandonment authorization.¹⁴ Moreover, the

¹¹ *Equitrans, L.P.*, 142 FERC ¶ 61,219 (2013).

¹² See, e.g., *Columbia Gas Transmission Corp.*, 86 FERC ¶ 61,214, at 61,762 (1999); *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105, at P 24 (2011).

¹³ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004) (order determining jurisdictional status of facilities, *reh'g denied* 111 FERC ¶ 61,091 (2005)).

¹⁴ *Tennessee Gas*, 137 FERC ¶ 61,105, at P 24; *Southern Natural Gas Co.*, 126 FERC ¶ 61,246, at P 38 (2009). In *Williams Gas Processing-Gulf Coast Co., L.P. v. FERC (Williams)*, 331 F.3d 1011 (2003), the D. C. Circuit Court found that the Commission does not have discretion to examine whether an interstate pipeline's abandonment of certificated facilities that are gathering facilities is in the public interest. *Id.* at 1022. However, as noted by the Protesters, the *Williams* court acknowledged that the Fifth Circuit court suggested that the Commission does have some amount of discretion to examine whether an interstate pipeline's abandonment of gathering facilities and services is in the public interest. *Id.* (citing *Pacific Gas & Electric Co. v. FERC*, 106 F.3d 1190, 1197 (1997)).

Facilities will retain their non-jurisdictional status whether EGC operates them as gathering or as part of its local distribution system.¹⁵ Therefore, we grant Equitrans' request to abandon the Facilities by transfer to EGC.¹⁶

IV. Environmental Review

19. Environmental review of this proposal under section 380.4 of the Commission's regulations confirms that this action qualifies as a categorical exclusion under section 380.4(a)(31).

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

The Commission orders:

(A) Equitrans is granted permission and approval under NGA section 7(b) to abandon by transfer to EGC the M-23, M-25, M-30, M-31, M-32, and M-71 pipeline laterals, as described above in the order and more fully in the application.

(B) Equitrans shall notify the Commission within 10 days of the abandonment of the facilities described above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁵ *Equitrans, L.P. Equitable Gas Co. LLC*, 144 FERC ¶ 62,119 (2013).

¹⁶ In cases where a pipeline is proposing to abandon certificated facilities that are being used to provide gathering services, it is the Commission's policy that the pipeline must file under Section 4 of the NGA to terminate the services. Such Section 4 filings must be made at least 30 days prior to the proposed effective date of the transfer of the facilities. *See, e.g., Southern Natural Gas Company*, 143 FERC ¶ 61,207 at n.116 (citing *Columbia Gas Transmission Corporation*, 86 FERC ¶ 61,214, at 61,762 (1999)).