

148 FERC ¶ 61,250  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Equitrans, L.P.

Docket No. RP14-1208-000

ORDER ON TARIFF RECORDS

(Issued September 30, 2014)

1. On August 28, 2014, Equitrans, L.P., (Equitrans) filed a revised tariff record<sup>1</sup> to modify the reservation charge crediting provisions set forth in section 6.9 of its General Terms and Conditions (GT&C). For the reasons discussed below, the Commission accepts the revised tariff record effective October 1, 2014, as requested, subject to the condition that Equitrans make certain changes to its proposed tariff record. In addition, Equitrans is directed, pursuant to section 5 of the Natural Gas Act (NGA), to either modify certain existing tariff provisions which it did not propose to change in the instant filing or explain why it should be required not to do so.

**Background**

2. In *Natural Gas Supply Association, et al.*,<sup>2</sup> the Commission encouraged interstate pipelines to review their tariffs to determine whether their individual tariff complies with the Commission's policy concerning reservation charge credits, and, if not, make an appropriate filing to comply. In general, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages. The Commission requires pipelines to provide full reservation charge credits for outages of primary firm service caused by non-*force majeure* events and partial reservation charge credits during *force majeure* outages, to

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<sup>1</sup> Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff, [Section 6.9, Curtailment of Service, 5.0.0.](#)

<sup>2</sup> *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, at P 2, *order on reh'g*, 137 ¶ 61,051 (2011) (NGSA).

allow risk sharing for events for which neither party is responsible. Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (i.e., 10 days or less).<sup>3</sup>

3. The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. The Commission has held that routine, scheduled maintenance is not a *force majeure* event, even on “pipelines with little excess capacity”<sup>4</sup> where such maintenance may require interruptions of primary firm service. Commission policy recognizes that even if such outages are considered to be uncontrollable, they are expected. The U.S. Court of Appeals for the District of Columbia Circuit affirmed this policy in *North Baja Pipeline, LLC v. FERC*,<sup>5</sup> stating:

Although some scheduled maintenance interruptions may be uncontrollable, they certainly are not unexpected. There is nothing unreasonable about FERC’s policy that pipelines’ rates should incorporate the costs associated with a pipeline operating its system so that it can meet its contractual obligations.

4. On January 3, 2012, the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 (2011 Act) related to new pipeline safety requirements was signed into law. That act requires the Department of Transportation to conduct studies and consider rulemakings on various matters, including possible changes to the pipeline integrity management regulations of the Pipeline and Hazardous Materials Safety Administration (PHMSA).

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<sup>3</sup> See, e.g., *Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh’g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by*, *Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006). The Commission has stated that pipelines may also use some other method which results in an equitable sharing of the risk.

<sup>4</sup> *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

<sup>5</sup> *North Baja Pipeline, LLC v. FERC*, 483 F.3d 819, 823 (D.C. Cir. 2007), *aff’g*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh’g*, 111 FERC ¶ 61,101 (2005).

5. In the recent decisions in *Gulf South, et al.*,<sup>6</sup> the Commission stated that it would allow partial reservation charge crediting for outages of primary firm service required to comply with orders issued by PHMSA pursuant to section 60139(c) for a transitional two-year period commencing on January 1, 2013. The Commission found that such outages are comparable to those for which partial crediting is allowed as *force majeure* events.<sup>7</sup> The Commission held that the nature and timing of any other new safety requirements PHMSA may adopt pursuant to the 2011 Act are too speculative at this time to justify modifying Commission policy to treat any outages resulting from such new requirements similarly to *force majeure* events.

### **Details of the Filing**

6. Section 6.9(8) of Equitrans' current tariff provides that it will provide 100 percent load factor demand charge credits if it is unable to provide service under its firm storage Rate Schedules SS-3 (Winter Storage Service), 115SS (115 Day Storage Service), 60SS (60 Day Storage Service) and/or GSS (General Storage Service)<sup>8</sup> for reasons other than a *force majeure* event. Equitrans' current tariff does not provide for any other reservation charge credits during *force majeure* or non-*force majeure* events.

7. As requested by the Commission in *NGSA*, Equitrans proposes to revise its reservation charge crediting provisions to be consistent with the Commission's reservation charge crediting policies, including providing partial credits for outages of primary firm service caused by *force majeure* events. In section 6.9(8)(b)(iii) of its GT&C, Equitrans proposes using the Safe Harbor method for *force majeure* events, under which it will provide reservation charge credits to shippers after ten days when it cannot provide service due to such an event. Under section 6.9(8)(a), Equitrans proposes to provide full reservation charge credits to shippers where the outage of primary service under any firm service agreement occurred due to a non-*force majeure* event within Equitrans' control.

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<sup>6</sup> *Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224 at P 40 (2012), *aff'd*, 144 FERC ¶ 61,215 (2013) (*Gulf South*); *Gulf Crossing Pipeline Co. LLC*, 141 FERC ¶ 61,222, at P 40 (2012) (*Gulf Crossing*); *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223, at P 39 (2012) (*Texas Gas*) (collectively referred to as *Gulf South, et al.*).

<sup>7</sup> *Gulf South*, 141 FERC ¶ 61,224 at n.25; *Gulf Crossing*, 141 FERC ¶ 61,222 at n.24; *Texas Gas*, 141 FERC ¶ 61,223 at n.26 (citing *Florida Gas Transmission Co.*, 107 FERC ¶ 61,074, at P 32 (2004)).

<sup>8</sup> These are firm storage services.

8. Equitrans sets forth in proposed section 6.9(8)(a) how it would calculate the reservation charge credits. When advance notice of the inability to render service is provided to shippers after the timely nomination cycle for the period of the service interruption, the credit would be the lesser of (1) the nominated quantities, or (2) the applicable Maximum Daily Quantity (MDQ) or Maximum Daily Withdrawal Quantity (MDWQ) multiplied by the applicable reservation rate. When advance notice of the inability to render service is provided prior to the timely nomination cycle for the period of the service interruption, the credit will be the lesser of (1) the average of the last seven days' nominated quantities prior to the start of the service interruption, or (2) the applicable MDQ or MDWQ multiplied by the applicable reservation rate.

9. Under section 6.9(8)(b)(iv), Equitrans proposes to provide partial reservation charge credits for a two-year transitional period for outages necessary to comply with orders issued by PHMSA pursuant to section 60139(c) of Title 49 of the United States Code, Chapter 601. Equitrans proposes to utilize the Safe Harbor method to credit reservation charges for these outages.

10. Under section 6.9(8)(b), Equitrans proposes certain situations where it would not provide reservation charge credits, including where the shipper re-nominates to secondary points to receive the service; where failure to render service is due to the conduct of the shipper or point operator; and, when the shipper is operating under a negotiated rate agreement entered into after September 30, 2014 which does not explicitly provide for reservation charge credits.

11. Under proposed section 6.9(8)(c), Equitrans proposes that when it is unable to inject nominated gas into storage tendered by a firm storage customer during the summer injection period, Equitrans will, if operating conditions permit, allow the shipper to inject quantities in excess of its Maximum Daily Injection Quantity (MDIQ) or make injections in the winter without penalty up to the lesser of the quantities Equitrans was unable to inject or the shipper's Total Annual Storage Quantity (TASQ). Proposed section 6.9(8)(d) provides that if, at the end of the injection period and any subsequent extension pursuant to section 6.9(8)(c), the shipper's storage inventory is less than its TASQ solely due to Equitrans' inability to inject the gas in accordance with the storage rate schedule, the Space Storage Charge for the current storage year will be the Space Storage Charge in the service agreement multiplied by the storage inventory at the end of the storage period and extension period.

### **Public Notice**

12. Public notice of Equitrans' filing was issued on September 2, 2014. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)) of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the

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. National Grid Gas Delivery Companies (National Grid) filed a protest. Independent Oil & Gas Association of West Virginia, Inc., (IOGA) filed adverse comments. The issues raised in the protest and adverse comments are discussed below.

13. On September 19, 2014, Equitrans filed an answer to the protests and comments and proposed alternatives to its original proposal (Answer),<sup>9</sup> which is discussed below.

### **Discussion**

14. The Commission accepts the revised tariff record listed in footnote 1 to this order to become effective October 1, 2014, subject to the condition that Equitrans make certain changes to its proposed tariff record. In addition, Equitrans is directed, pursuant to section 5 of the NGA, to either modify certain existing tariff provisions which it did not propose to change in the instant filing or explain why it should not be required to do so.

### **Historical Usage for Calculating Reservation Charge Credits**

15. Under proposed section 6.9(8)(a), when advance notice of the inability to render service is provided prior to the timely nomination cycle for the period of the service interruption, the reservation charge credit calculated by Equitrans will be the lesser of (1) the average of the last seven days' nominated quantities prior to the start of the service interruption, or (2) the applicable MDQ or MDWQ multiplied by the applicable reservation rate.

16. National Grid opposes this proposed provision as unjust and unreasonable. It states that, while the Commission has approved tariff provisions that permit pipelines to calculate reservation charge credits based on some measure of historical usage, those provisions have been approved to address concerns that shippers might "game" the reservation charge crediting mechanism by scheduling nominations for higher amounts knowing that they will be rejected. National Grid asserts that Equitrans has presented no evidence that gaming has ever been a problem on its system, even though it has had reservation charge crediting provisions in effect for some time. It states that, as such, Equitrans has offered no evidence or support to implement this proposal.

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<sup>9</sup> Rule 213(a)(2) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.213(a)(2) (2014)) prohibits answers to protests or answers unless otherwise ordered by the decisional authority. In this case, the Commission will accept Equitrans' Answer because it assisted the Commission in its decision-making process.

17. In its Answer, Equitrans contends that such evidence has not been required by the Commission in previous orders approving similar crediting proposals. Equitrans further contends that there are reasons that Equitrans has no direct evidence of parties “gaming” reservation charge credits. Equitrans asserts that its existing reservation charge crediting provisions, which apply only to storage services, are not subject to gaming based on advance notice because there is no difference between the reservation charge credit provided under a non-*force majeure* outage that occurs before the Timely Nomination Cycle versus an outage that occurs after the Timely Nomination Cycle. Equitrans also states that its practical experience with non-*force majeure* storage curtailments is minimal.

18. In *Southern*,<sup>10</sup> the Commission found that it is reasonable for a pipeline to use an appropriate historical average of usage as a substitute for use of actual scheduled amounts to determine the level of a shipper’s reservation charge credits under circumstances where the pipeline has given advance notice of the unavailability of service, i.e., due to an outage or scheduled maintenance, prior to shippers’ scheduling nominations. The Commission determined that this approach minimizes the potential for gaming, where shippers would submit scheduling nominations for high amounts knowing that the scheduling nomination will be rejected. This approach also ensures that shippers who do not nominate will receive credits based on their recent usage of the system. Where there is a potential for gaming under a tariff provision, there is no need for the pipeline to wait until actual gaming occurs before modifying its tariff to minimize the potential for such gaming. Accordingly, the Commission finds that it is reasonable for Equitrans to use historical usage data to calculate the reservation charge credit when the pipeline has given advance notice of an outage before the timely nomination cycle.

#### **Reservation Charge Credits for Storage Services – Inability to Inject Gas**

19. Equitrans’ rates for its storage services include a two-part reservation charge. That charge includes (1) a Storage Space Charge based on the customers’ TASQ, i.e., the maximum amount of gas they are entitled to maintain in storage and (2) a Storage Demand Charge based on the customers’ MDWQs during the winter storage withdrawal season. Equitrans’ storage rates do not include any reservation charge specifically tied to their MDIQs during the summer period. Equitrans charges only a usage rate for storage injections.

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<sup>10</sup> *Southern Natural Gas Co.*, 135 FERC ¶ 61,056, at PP 29-34, *order on reh’g*, 137 FERC ¶ 61,050 (2011) (*Southern*).

20. Proposed sections 6.9(8)(c) and (d) address the relief to be provided to a firm storage shipper when Equitrans is unable to inject into storage all the gas nominated by that shipper during the summer injection season. Under section 6.9(8)(c), Equitrans proposes that in this situation “if operating conditions permit, injection quantities in excess of the MDIQ or winter injections shall be permitted without penalties up until the lesser of (1) quantities Equitrans was unable to inject during the injection period or (2) the Customer’s TASQ.” Section 6.9(8)(d) provides that if, at the end of the injection period and any subsequent extension discussed in section 6.9[(8)(c)], “Customer’s storage inventory is less than Customer’s TASQ due solely to Equitrans’ inability to inject gas in accordance with Section 5 if a firm storage rate schedule, then the Storage Space Charge applicable for the current storage year (April 1 – March 31) shall be calculated as follows: Storage Space Charge specified in the Customer’s Storage Service Agreement multiplied by the Customer’s storage inventory at the end of the injection period and any subsequent extension thereof divided by the TASQ specified in the Customer’s Storage Service Agreement.”

21. National Grid protests two aspects of Equitrans’ proposed treatment of firm storage service. First, National Grid contends that these provisions improperly allow Equitrans to unilaterally extend the storage injection season for an undefined length of time. National Grid contends that the storage injection season should only be extended upon mutual agreement of Equitrans and the customer. National Grid argues that an extension date mutually agreed to by Equitrans is necessary because customers may be unable to extend their scheduled storage injections for a variety of reasons including the need to withdraw gas or the lack of availability of upstream transportation to deliver gas for injection. Second, National Grid contends that Equitrans proposes to limit the amount of credit to a portion of the Storage Space Charge and does not propose to provide any credit to reduce the Storage Demand Charge to recognize the fact that shippers will not be able to withdraw gas up to their MDWQ if they were unable to inject gas into storage up to their TASQ during the summer injection period.

22. National Grid proposes that the Commission direct Equitrans to modify its proposed crediting provisions applicable to a failure to receive injections for storage so that: (1) the shortfall in injections would be measured at either October 31 (the end of the normal injection period) or at an extension date *mutually agreed to* by Equitrans and the affected shipper; and, (2) reservation charge credits are provided for both the Storage Demand Charge and the Storage Space Charge, and not solely the Storage Space Charge as currently proposed. National Grid states that such proposed modifications would be

consistent with storage reservation charge crediting provisions approved for Dominion Transmission, Inc.<sup>11</sup>

23. In its Answer, Equitrans agrees with National Grid that a reservation charge credit related to volumes for which a shipper is unable to withdraw because it was unable to inject into storage, was not addressed. Therefore, Equitrans agrees to add the following sentence to section 6.9(8)(d) in a subsequent compliance filing:

The same proportionate reduction shall be made to the Customer's Storage Demand Charge for the current storage year (April 1 – March 31).

24. The Commission agrees with Equitrans that the addition of this provision along with the existing language in section 6.9(8)(d) reasonably provides reservation charge credits with respect to both the Storage Space Charge and Storage Demand Charge for storage customers affected by an inability to inject gas into storage consistent with procedures previously approved by the Commission.<sup>12</sup>

25. Equitrans also responds to National Grid's assertion that Equitrans' reservation charge crediting proposal will unreasonably allow it to unilaterally extend the storage injection period. Equitrans argues that its ability to extend the injection season is already present in each storage service rate schedule.<sup>13</sup> Equitrans further argues that the inclusion of the language in section 6.9(8)(c) was proposed to highlight the opportunity and there is no proposed language which requires a customer to take advantage of an extension of the storage season. However, in order to clarify this intent, Equitrans agrees to include the following phrase at the end of section 6.9[(8)(c)] in a subsequent compliance filing:

provided that, so long as the injection requirements are otherwise met, the Customer will not be obligated to inject quantities into storage if the injection period is extended.

26. Based on Equitrans' explanation and its proposed additional language to 6.9(8)(d) and clarification in section 6.9(8)(c), we find that the revised proposed crediting tariff language with respect to storage injections is reasonable and needs no modification

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<sup>11</sup> Citing section 35.2 of the GT&C of Dominion's FERC Gas Tariff. *See also Dominion Transmission, Inc.*, 146 FERC ¶ 61,101, at PP 42-44 (2014).

<sup>12</sup> *See, e.g.*, section 35.2 of the GT&C of Dominion Transmission, Inc's tariff.

<sup>13</sup> Citing Rate Schedules 115SS and 60SS.

beyond the revisions agreed to by Equitrans in its Answer. Accordingly, we direct Equitrans, within 21 days of the date of this order, to file the revised tariff provisions it has proposed.

### **Historical Usage Data for Contract Storage Services**

27. National Grid contends that, even assuming that it may be generally reasonable to base reservation charge credits on a seven-day average of historical use when there is advance notice of an outage, use of such an historical average is not reasonable in the context of storage withdrawal rights which are only available for a limited number of days per year. It asserts that, for service under Equitrans' Rate Schedule SS-3 (a firm storage service), shippers must fill their storage for the coming winter by the timely nomination cycle on November 1 of each year, when the storage withdrawal season begins.<sup>14</sup> National Grid further asserts that, if the outage notice occurs on November 1, the shipper would not receive any reservation charge credits since the previous seven days fell in the injection season where no withdrawal nominations were made. National Grid contends that this result is unreasonable and unfair.

28. National Grid asserts that, if the Commission allows Equitrans to use historical usage data to calculate reservation charge credits for contract storage services, then at a minimum it should consider the use of Equitrans' services in the same months of prior years as well as in the last seven days. It proposes that the Commission require Equitrans to provide storage shippers with a reservation charge credit equal to the greater of ¶(1) their average nominated quantities in the last seven days, or (2) their average daily usage in the same month of the prior year, adjusted for any changes in the shippers' storage withdrawal rights.

29. IOGA asserts that the seven-day average may limit credits for both transportation and storage services in situations where the outage lasts longer than seven days. For example, it contends that if an outage affecting receipts from storage begins on November 8 and extends into the middle of the winter, the November 1-7 seven-day average of storage withdrawals is not a realistic approximation of the shipper's subsequent foregone use of its storage withdrawal entitlements. IOGA raises the same concern with respect to a producer whose transportation service nominations can change with weather conditions or completion of additional wells. IOGA urges the Commission to require Equitrans to modify the seven-day average for an outage lasting more than seven days if the shipper can demonstrate that either: (1) its use of capacity historically has been higher during similar periods of a prior year or during similar weather

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<sup>14</sup> *Citing* section 6.1 of Equitrans' Rate Schedule SS-3.

conditions in a prior year; or, (2) additional production above the seven-day average is available for flow at the affected point.

30. In its Answer, Equitrans responds that the Commission has stated that there is no perfect method to estimate the amount of service a shipper would have used during an outage, if the pipeline had not given advance notice of the outage and approved the use of a seven-day average for other pipelines. Equitrans asserts that the inclusion of historical volumes, as suggested by IOGA, from similar periods of a prior year or during similar weather conditions in these circumstances could in fact reduce the volumes associated with reservation charge credits just as likely as it could result in an increase. Equitrans further asserts that this, coupled with the inclusion of additional production as suggested by IOGA, would simply make the calculation of any reservation charge credit much more subjective and administratively difficult to implement.

31. However, with respect to storage related firm services, Equitrans agrees that there are circumstances for which the use of the seven-day average prior to the outage may not be the most representative estimate of a customer's usage, especially where the outage occurs at the outset of a storage withdrawal period. Therefore, Equitrans agrees to include the following exception to section 6.9(8)(a)(ii) in a subsequent compliance filing:

Rate Schedules 115SS, 60SS, SS-3, STS-1, and FTSS, where in the case advance notice of the inability to render service was provided prior to the Timely Nomination Cycle, the demand charge credit shall be determined by the greater of (i) the average of the last seven (7) days nominated quantities prior to the start of the service interruption or (ii) the average daily usage in the same month of the prior year, adjusted for any changes in the Customer's MDQ or MDWD, neither to exceed the Customer's current MDQ or MDWQ, multiplied by the applicable reservation or demand rate.

32. We find that Equitrans' proposed calculation using the seven-day average, as revised in its Answer, provides an appropriate, reasonably representative historical average for the calculation of reservation charge credits. Under the NGA, the Commission must accept a just and reasonable tariff proposal by a pipeline, regardless of whether other tariff provisions would also be just and reasonable.<sup>15</sup> The Commission has recognized that there is "no perfect method of estimating" the amount of service a shipper would have used during an outage, if the pipeline had not given advance notice of the

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<sup>15</sup> *Consolidated Edison Co. v. FERC*, 165 F.3d 992, 998, 1002-1004 (1999).

outage.<sup>16</sup> The Commission has accepted proposals to base credits on usage during the seven days immediately preceding notice of the outage<sup>17</sup> and proposals to use an average of usage during several prior years.<sup>18</sup> Equitrans' proposal in its Answer to modify its storage withdrawal crediting proposal to use the higher of a shipper's average storage withdrawals during the immediately preceding seven days or its average storage withdrawals during the same month of the prior year reasonably addresses the concerns raised by National Grid and IOGA concerning use of the seven-day average for storage withdrawal credits.

33. With regard to transportation services which are available year-round, unlike storage withdrawals, the use of historical volumes, as requested by IOGA, from similar periods of the prior year or during similar weather conditions in these circumstances could in fact reduce the volumes associated with reservation charge credits and just as likely result in an increase. Further, as the Commission pointed out in *Texas Gas*, “[a]ny inaccuracies in the estimate produced by [Equitrans’] proposed methodology should even out over time, because that methodology could as easily overestimate, as underestimate, a shipper’s need for ... service during the outage.”<sup>19</sup> Regardless of any inaccuracies, on balance, Equitrans’ proposal, as revised with respect to storage services, provides a reasonable method of estimating the service a shipper would have used during the outage while minimizing opportunities for gaming. Accordingly, the additional suggested revisions by IOGA are rejected as unnecessary.

34. The Commission finds that the revised tariff language proposed in Equitrans’ Answer is reasonable. Therefore, we direct Equitrans, within 21 days of the date of this order, to file the revised tariff provision it has proposed.

### **Secondary Point Rights**

35. Section 6.9(8)(a) of Equitrans’ proposed reservation charge crediting provisions limit reservation charge crediting to primary firm service from a shipper’s primary receipt point to its primary delivery point. Further, proposed section 6.9(8)(b)(i) provides that Equitrans will not provide reservation charge credits when the shipper re-nominates using

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<sup>16</sup> *Texas Gas Transmission, LLC*, 141 FERC ¶ 61,223, at P 79 (2012) (*Texas Gas*).

<sup>17</sup> *Southern*, 137 FERC ¶ 61,050 at P 21; *TransColorado Gas Transmission Co., LLC*, 139 FERC ¶ 61,229, at PP 36-41 (2012).

<sup>18</sup> *Texas Gas*, 141 FERC ¶ 61,223 at P 79.

<sup>19</sup> *Id.*

an alternative receipt or delivery point and that the customer will not be required to submit re-nominations.

36. IOGA asserts that, even if a firm shipper is able to successfully nominate and schedule gas from or to a secondary point, Equitrans should nevertheless be required to provide reservation charge credits for those nominations. IOGA contends that Equitrans is a production-area pipeline, and as such, has several outlets to downstream interstate pipelines as well as to local distribution companies. It states that, in a curtailment, a firm shipper may be forced to nominate to a secondary receipt or delivery point that provides a lower price than its primary point, or be forced to seek more costly secondary gas supply. IOGA notes that section 38.2(a)(ii) of Columbia Gas Transmission, LLC's (Columbia Gas) GT&C provides for the crediting of reservation charges for shippers nominating to or from secondary points.<sup>20</sup> IOGA submits that, at a minimum, the Commission should require Equitrans to provide a similar provision in its tariff. IOGA argues that the reservation charge credits provided by a supply area pipeline such as Equitrans should reflect the economic loss of primary receipt or delivery point capacity, whether or not the firm shipper is able to move gas to or from a secondary point.

37. In its Answer, Equitrans contends that the Commission should not extend its policy and require credits that reflect economic loss of primary receipt or delivery point capacity. Equitrans argues that the Commission has recognized that there is no perfect method to estimate the amount of any credit. Equitrans further argues that its proposed language is consistent with previously approved reservation charge credit language<sup>21</sup> and is consistent with the other previously approved language that reservation charge credits should "be appropriately reduced to account for quantities delivered by Transporter." Equitrans asserts that its proposed language provides that "Customer will not be obligated to submit re-nominations to another receipt or delivery point" and, therefore, any economic decision by the Customer as to whether to submit such nominations is appropriately left to their discretion.

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<sup>20</sup> Section 38.2(a)(ii) provides that "Reservation charge credits shall also be applicable to quantities nominated from secondary receipt points to the extent Transporter is unable to schedule and or deliver Shippers' nominated quantities due to a capacity shortfall affecting Transporter's ability to provide service to Shipper from its primary receipt point(s) to its primary delivery point(s)."

<sup>21</sup> *Citing* GT&C VII 38.1(c) of Columbia Gas' tariff; GT&C section 45.2(A)(4) of Dominion Transmission Inc's tariff; section 7.14 (E)(i) Rockies Express Pipeline LLC's tariff.

38. The Commission finds it just and reasonable for Equitrans to reduce any reservation charge credits during an outage of primary firm service by the amount of secondary firm service provided to the firm shipper in place of the primary firm service not provided. When a pipeline provides service from or to secondary receipt or delivery points nominated by the firm shipper, the firm shipper is receiving service under its contract with the pipeline. Therefore, it is reasonable for the pipeline to continue charging the firm shipper the reservation charge that entitles the firm shipper to such secondary firm service. As Equitrans points out in its Answer, its proposed section 6.9(8)(b)(i) provides that a shipper is not required to submit renominations to a secondary receipt or delivery point when the pipeline cannot provide primary firm service. Therefore, the firm shipper may make an economic decision whether to schedule secondary firm service or instead receive credits during a primary firm service outage.

39. Finally, while Columbia Gas' tariff does include a provision that requires Columbia Gas to credit reservation charges for shippers nominating to secondary receipt and delivery points, pipelines may include such provisions in their tariffs but are not required to do so.

#### **Conduct of Other Parties**

40. Equitrans proposes in section 6.9(8)(b)(ii) to not provide reservation charge credits when the failure to render services is due to the conduct of the customer or the upstream or downstream operator of the facilities at the receipt or delivery point not controlled by Equitrans.

41. Equitrans' proposed crediting exemption must be revised to be consistent with Commission policy. Commission policy requires the pipeline to provide reservation charge credits for outages where the failure to deliver is due to events within the pipeline's control. On the other hand, when a pipeline cannot deliver the service solely because of events not within the pipeline's control reservation charge credits are not required i.e., operating conditions on upstream or downstream facilities or a shipper's inability to obtain gas supplies or find a purchaser to take delivery of the supplies.<sup>22</sup> Therefore, the Commission directs Equitrans to limit the scope of the proposed section 6.9(8)(b)(ii) exemption to expressly state that the exemption is limited to situations where Equitrans' failure to deliver gas was due *solely* to the conduct of the customer or the upstream or downstream operator of the facilities at the receipt or delivery points.

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<sup>22</sup> See, e.g., *Gulf South*, 141 FERC ¶ 61,224 at P 84.

**Existing Definition of Force Majeure**

42. Section 6.10 of Equitrans' GT&C sets forth its definition of *force majeure*:

Neither Equitrans nor a Customer shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe; *curtailments or interruptions of gas service which maybe required, on notice by Equitrans to Customer, under any regulation or order of, or any rule filed with and accepted by, any regulatory body having jurisdiction; any other binding order which has been resisted in good faith by all reasonable legal means;* and any other cause, whether of the kind enumerated or otherwise, not reasonably within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. [emphasis added.]

43. The italicized portion of Equitrans' existing definition of *force majeure* is overly broad and thus inconsistent with Commission policy. The Commission has considered similar existing tariff provisions which included in the definition of *force majeure* all interruptions of service required by governmental actions in several cases. The Commission explained that outages resulting from governmental actions may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline's control and are unexpected.<sup>23</sup> As the Commission has recently clarified,<sup>24</sup> outages of primary firm service resulting from one-time, non-recurring government requirements may be considered outside the pipeline's control and thus eligible for treatment as *force majeure* events. However, outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business

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<sup>23</sup> See, e.g., *Iroquois Gas Transmission System, L.P.*, 145 FERC ¶ 61,233, at PP 85-86 (2013), *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,082, at PP 24-25 (2013); *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012) (*Texas Eastern*); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at PP 47-49 (2012) (*GTN*).

<sup>24</sup> *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at PP 35-44 (2013) and *Gulf South*, 144 FERC ¶ 61,215, at PP 31-34.

to ensure the safe operation of the pipeline are reasonably within the pipeline's control and thus cannot be treated as *force majeure* events. Accordingly, to the extent a pipeline's existing tariff language treats all outages for testing, repair, and maintenance to comply with governmental orders as *force majeure* events it is over-inclusive and in conflict with Commission policy.<sup>25</sup>

44. Accordingly, the Commission finds that Equitrans' existing tariff provision defining *force majeure* events to include, among other things, all "curtailments or interruptions of gas service which maybe required, on notice by Equitrans to Customer, under any regulation or order of, or any rule filed with and accepted by, any regulatory body having jurisdiction; any other binding order which has been resisted in good faith by all reasonable legal means" to be unjust and unreasonable. Therefore, pursuant to section 5 of the NGA, Equitrans is directed, within 21 days of the date of this order, either to (1) revise this provision to clarify that it does not apply to regulatory requirements that are within the pipeline's control or expected, or (2) show cause why it should not be required to do so.

The Commission orders:

(A) The tariff record listed in footnote 1 to this order is accepted to become effective October 1, 2014, subject to conditions, as discussed in this order and the ordering paragraph below.

(B) Within 21 days of the date of this order, Equitrans is directed to file a revised tariff record and either a modification of certain tariff provisions or show cause why it should not be required to do so consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>25</sup> *GTN*, 141 FERC ¶ 61,101 at P 49; *Texas Eastern*, 140 FERC ¶ 61,216 at P 88.