

149 FERC ¶ 61,204
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 5, 2014

In Reply Refer To:
Equitrans, L.P.
Docket No. RP14-1208-001

Equitrans, L.P.
625 Liberty Avenue
Suite 1700
Pittsburgh, Pennsylvania 15222-3111

Attention: Sarah A. Shaffer
Rates Director

Dear Ms. Shaffer:

1. On October 14, 2014, Equitrans, L.P., (Equitrans) filed revised tariff records¹ to comply with the Commission's Order on Tariff Records issued on September 30, 2014, in Docket No. RP14-1208-000 (September 30 Order).² In that order, the Commission conditionally approved Equitrans' proposal to modify the reservation charge crediting provisions set forth in section 6.9 of its General Terms and Conditions (GT&C), subject to Equitrans' making certain revisions to its proposal. The Commission also directed Equitrans, under section 5 of the Natural Gas Act, to revise its existing definition of *force majeure*. In the instant filing, we conditionally accept Equitrans' revised tariff records as in compliance with the September 30 Order, effective October 1, 2014, subject to Equitrans' filing revised tariff records consistent with the discussion below.
2. Public notice of the filing was issued on October 15, 2014, allowing protests to be filed on or before April 27, 2010. No protests or adverse comments were filed.
3. In this proceeding, Equitrans filed revised tariff records to modify the reservation charge crediting provisions set forth in section 6.9 of its GT&C. In the September 30 Order, the Commission conditionally accepted Equitrans' proposal subject to Equitrans filing revised tariff records, within 21 days of the order's issuance date, setting forth

¹ See Appendix.

² *Equitrans, L.P.*, 148 FERC ¶ 61,250 (2014) (*Equitrans*).

certain tariff revisions. Specifically, the Commission directed Equitrans to: (1) clarify in its tariff that reservation charge credits will be provided for both the Storage Space Charge and the Storage Demand Charge; (2) provide exceptions to using the average of the nominated quantities for the seven days prior to the outage when calculating reservation charge credits; (3) limit the scope of proposed section 6.9(8)(b)(ii) of its GT&C 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; and (4) modify its definition of *force majeure*, as discussed below. Equitrans generally complies with the Commission's directives in the September 30 Order, with one exception.

4. In the September 30 Order,³ the Commission noted that 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]

5. The Commission found that the italicized portion of Equitrans' existing definition of *force majeure* was overly broad and thus inconsistent with Commission policy. 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.⁴ The Commission further stated that outages of primary firm service resulting from one-time,

³ *Equitrans*, 148 FERC ¶ 61,250 at P 42.

⁴ Citing, *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); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at PP 47-49 (2012).

non-recurring government requirements may be considered outside the pipeline's control and thus eligible for treatment as *force majeure* events.⁵ However, outages necessitated by compliance with government standards concerning the regular, periodic maintenance activities a pipeline must perform in the ordinary course of business to ensure the safe operation of the pipeline are reasonably within the pipeline's control and thus cannot be treated as *force majeure* events.

6. The Commission found that Equitrans' existing tariff provision defining *force majeure* events to include, among other things, all "curtailments or interruptions of gas service which may be 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. Pursuant to section 5 of the NGA, in the September 30 Order, the Commission directed Equitrans to either: (1) revise the definition of *force majeure* set forth in section 6.10 of its tariff 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.

7. In its compliance filing, Equitrans states that it proposes to update its definition of *force majeure* set forth in section 6.10 of its GT&C to narrow the inclusion of interruptions as a result of government actions or binding orders to those outside of Equitrans' control or expectations. Equitrans proposes to add the following italicized language to its definition of *force majeure* in section 6.10 of its GT&C:

...curtailments or interruptions of gas service which may be 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 *which regulation, order or rule is outside of Equitrans' control or is unexpected*; any other binding order *outside of Equitrans' control or is unexpected* which has been resisted in good faith by all reasonable means...

8. We find that this revised definition of *force majeure* does not comply with the directive in the September 30 Order. As discussed above, the Commission has found 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. Accordingly, within 21 days of the date this order issues, we direct Equitrans to file revised tariff records clarifying that outages resulting from governmental actions may be treated as resulting

⁵ *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at PP 35-44 (2013) and *Gulf South Pipeline Co.*, 144 FERC ¶ 61,215, at PP 31-34 (2013).

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.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.