153 FERC ¶ 61,381
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Equitrans, L.P. Docket Nos. CP15-41-000
CP15-41-001

ORDER ISSUING CERTIFICATE

(Issued December 30, 2015)

1. On December 30, 2014, Equitrans, L.P. (Equitrans), filed an application, as amended on May 5, 2015, pursuant to section 7(c) of the Natural Gas Act (NGA)[1] and Part 157 of the Commission's regulations[2] for authorization to construct and operate certain pipeline and compression facilities located in West Virginia and Ohio (Ohio Valley Connector Project). As discussed below, the Commission grants the requested authorizations, subject to conditions.

I. Background and Proposal

2. Equitrans, a limited partnership formed under the laws of Pennsylvania with its principal place of business in Pittsburgh, Pennsylvania, is a natural gas company as defined in section 2(6) of the NGA,[3] which transports and stores natural gas in interstate commerce. Equitrans' existing Mainline and Sunrise Transmission Systems are located in the central Appalachian Basin in northern West Virginia and southwestern Pennsylvania.

3. The Ohio Valley Connector Project is designed to enable Equitrans to provide up to 850,000 dekatherms per day (Dth/day) of additional firm transportation service to new points of interconnections with Rockies Express Pipeline, LLC (REX) and Texas Eastern

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[1] 15 U.S.C. § 717f(c) (2012).

[2] 18 C.F.R. pt. 157 (2015).

[3] 15 U.S.C. § 717a(6) (2012).

Transmission, LP (Texas Eastern). Equitrans states the project will provide the growing mid-continent and Gulf Coast markets improved access to the central Appalachian Basin.

4. Equitrans proposes to construct, operate, and maintain:

(1) Approximately 35 miles of 30-inch-diameter pipeline with a Maximum Allowable Operating Pressure (MAOP) of 1,480 pounds per square inch gauge (psig) (the H-310 pipeline), to be located in Wetzel County, West Virginia, and Monroe County, Ohio. The H-310 pipeline will deliver gas from Equitrans' Sunrise Transmission System to the proposed Plasma Compressor Station;

(2) Approximately 1.2 miles of 30-inch-diameter pipeline with a 1,600 psig MAOP (the H-311 pipeline), to be located in Monroe County, Ohio. The H-311 pipeline will move gas from the proposed Plasma Compressor Station for delivery to a new interconnection with REX;

(3) Approximately 0.6 miles of 16-inch-diameter pipeline with a 1,440 psig MAOP (the H-306 Extension) to be located in Wetzel County, West Virginia. The H-306 Extension will serve as the discharge line from the proposed Corona Compressor Station to a tie-in with Equitrans' existing H-306 pipeline;

(4) Approximately 0.2 miles of 20-inch-diameter pipeline with a 1,000 psig MAOP (the H-314 pipeline) to be located in Monroe County, Ohio. The H-314 pipeline will transport gas from the proposed Plasma Compressor Station to an interconnection with Texas Eastern;

(5) The Plasma Compressor Station, consisting of two gas centrifugal compressors (21,000 nominal horsepower (hp)) with a total capacity of 800,000 Dth/day, to be located in Monroe County, Ohio. In addition to the compressors, a new interconnect with Texas Eastern is also proposed to be constructed at the Plasma Compressor Station.

(6) The Corona Compressor Station,[4] consisting of one gas centrifugal compressor (15,000 nominal hp) with a capacity of up to 250,000 Dth/day, to be located in Wetzel County, West Virginia.[5]

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[4] Equitrans states that it evaluated the feasibility of waste heat recovery facilities at these locations as discussed Interstate Natural Gas Association of America (INGAA) White Paper entitled "*Waste Energy Opportunities for Interstate Natural Gas Pipelines*" (February 2008). Equitrans concluded that waste heat recovery facilities at the Plasma and Corona compressor stations are not economically viable at this time. We

(continued…)

5. Equitrans states that it conducted a non-binding open season for additional firm transportation from January 28, 2014 to March 27, 2014, to provide market participants the opportunity to identify transmission capacity needs for delivery to new interconnects with REX and Texas Eastern. Equitrans executed a precedent agreement with one shipper for 650,000 Dth/day of firm transportation capacity, for a primary term of 20 years at negotiated rates. The estimated cost for the project is $415.5 million.

II. Procedural Matters

6. Notice of Equitrans' application was published in the *Federal Register* on January 13, 2015 (80 Fed. Reg. 1631), with comments due by January 28, 2015. Notice of Equitrans' amendment to its application was published in the *Federal Register* on May 18, 2015 (80 Fed. Reg. 28,265), with comments due by June 2, 2015. The Allegheny Defense Project (Allegheny), Columbia Gas of Pennsylvania, Inc., CONSOL Mining Company, LLC (CONSOL), the National Grid Gas Delivery Companies, NJR Energy Services Company, the Ohio Valley Environmental Coalition (Coalition), Peoples Natural Gas Company, LLC (Peoples) and Murray Energy Corporation, Murray American Energy Inc., Consolidation Coal Company, and the Harrison County Coal Company (collectively, Murray), and Regency Utica Gas Gathering LLC filed timely, unopposed motions to intervene.[6] The Independent Oil & Gas Association of West Virginia, Inc. filed a late motion to intervene, which we will grant as it has demonstrated an interest in this proceeding and granting interventions at this stage will not unduly delay, disrupt, or otherwise prejudice existing parties.[7]

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note that Equitrans should continue to monitor the Plasma and Corona compressor stations, and should the stations meet the waste heat recovery parameters in the INGAA White Paper, Equitrans should post such information on its electronic bulletin board.

[5] Originally, Equitrans proposed to construct an additional pipeline, Line H-313, extend Line H-306, and place the Corona Compressor station between the two, which would have created a loop connecting the existing H-557 and H-306 lines. *See* Application, Exh. G-1. In its amended application, Equitrans eliminated Line H-313, and now proposes to place the Corona Compressor Station between the proposed H-306 extension and the existing line GSF-912, which already connects to H-557. *See* Amended Application, Exh. G.

[6] Timely, unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.214(c) (2015).

[7] 18 C.F.R. § 385.214(d) (2015).

7. Allegheny, the Coalition, and Murray filed comments with their motions to intervene opposing Equitrans' proposal. Allegheny, the Coalition, and FreshWater Accountability Project (FreshWater) also filed joint additional comments opposing the project. Murray later withdrew its objections. The Ohio Department of Natural Resources also filed comments providing environmental recommendations for the project.

8. In addition, Peoples and CONSOL both included protests in their motions to intervene. On February 11, 2015, Equitrans filed an answer to the protests filed by Peoples and CONSOL and the comments filed by Allegheny and Murray.[8] Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests,[9] our rules also provide that we may, for good cause, waive this provision.[10] We will accept Equitrans' answer to the comments filed by Allegheny because it has provided information that assisted us in our decision-making process.

9. In their comments, Allegheny, the Coalition, and FreshWater argue that the Commission must take a hard look at the indirect effects and cumulative impacts of the project, including induced production from the Marcellus and Utica Shale formations, and include other connected, cumulative, and similar actions in this analysis. Allegheny, the Coalition, and FreshWater further assert that the Commission should prepare an Environmental Impact Statement (EIS) for the project, consider reasonable alternatives to the proposed action, and prepare a programmatic EIS for natural gas infrastructure projects in the Marcellus and Utica Shale regions.

III. Discussion

10. Since Equitrans' proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of sections 7(c) and (e) of the NGA.[11]

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[8] On February 20, 2015, Peoples filed a motion to answer Equitrans' answer, to which Equitrans replied on March 6, 2015. On June 30, 2015, Peoples and CONSOL both withdrew their protests.

[9] 18 C.F.R. § 385.213(a)(2) (2015).

[10] 18 C.F.R. § 385.101(e) (2015).

[11] 15 U.S.C. §§ 717f (c) and (e) (2012).

A. Certificate Policy Statement

11. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new pipeline construction.[12] The Certificate Policy Statement establishes criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

12. Under this policy, the threshold requirement for existing pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new facilities. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

13. As discussed above, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The Commission has determined, in general, that when a pipeline proposes an incremental rate to recover the cost of proposed expansion that is higher than the generally applicable system rate, the pipeline satisfies the threshold requirement that the project will not be subsidized by existing shippers.[13] Equitrans proposes to allocate the project costs to a new rate zone, the Ohio Valley Connector Zone, for transmission services on the project facilities. For reasons discussed

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

[13] *See, e.g., Transcontinental Gas Pipe Line Corp.*, 98 FERC ¶ 61,155 (2002).

below, we reject this proposal. However, we will approve, subject to conditions, the incremental reservation charge for firm transportation service which Equitrans submitted in its May19, 2015 Data Response, as the initial recourse rate for service on the project. This incremental recourse rate is designed to recover the full cost of the expansion from service utilizing the new capacity and it exceeds the existing system rate for service. Therefore, existing shippers will not subsidize the expansion. Accordingly, we find that the threshold no-subsidy requirement under the Certificate Policy Statement has been met.

14. The Ohio Valley Connector Project will enable Equitrans to provide 850,000 Dth/d of incremental firm transportation service. Equitrans executed a precedent agreement for a long-term negotiated rate service agreement with one shipper, EQT Energy, LLC, for up to 650,000 Dth/day of firm transportation service on the project. None of Equitrans' existing customers have indicated any concerns that the Ohio Valley Connector Project and services using the incremental capacity will adversely affect existing service. Nor is there any evidence that Equitrans proposed project will adversely affect any other pipelines or their customers.

15. Equitrans states in its application, as amended, that the project was routed to utilize existing utility and road rights-of-way to the maximum extent practicable. The project crosses through minimal existing or planned residential areas, and limits construction of the new compressor stations to lands purchased for the project and owned by Equitrans.[14] Equitrans also states that it will acquire rights-of-way from private landowners through good faith negotiations wherever possible, and intends to work cooperatively with all affected landowners to address concerns they may have.[15]

16. In view of the above considerations, we find that under the criteria of the Certificate Policy Statement the benefits that the Ohio Valley Connector Project will provide to the market will outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and landowners and surrounding communities. We therefore find, subject to the environmental discussion below and other conditions in this order, that the public convenience and necessity requires approval of Equitrans' proposal.

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[14] Application at 15; Amended Application at 5-6.

[15] *Id.*

B. Rate Issues

17. Equitrans' proposed first year incremental cost of service is $92,677,902.[16] Equitrans states that its proposed incremental cost of service is based upon a pretax return of 15.0 percent[17] and a depreciation rate of 5 percent.[18]

18. In its May 19, 2015 data response, Equitrans provided a breakdown of Operation and Maintenance (O&M) expenses by FERC account number and between labor and non-labor costs. Equitrans' revised cost of service includes $8,246,208 in O&M costs. Equitrans' response identified a total of $6,223,975 in non-labor O&M costs.[19] Equitrans classified $27,000 of the non-labor costs as variable costs.

19. Equitrans proposes to create a new rate zone, the Ohio Valley Connector Zone, for transmission services provided utilizing the project facilities and to allocate all project costs to that rate zone. The Ohio Valley Connector Zone would be separate from Equitrans' existing mainline system postage stamp rate design. Equitrans states that creating a new rate zone for the project facilities is consistent with Commission policy as it protects existing customers from subsidizing the new construction and ensures that only those customers that use the capacity created by the new project will pay for it.[20] Additionally, Equitrans contends that a new zone will ensure that only Equitrans will be at risk if the project underperforms.[21]

20. Equitrans states that the recourse rates for the project were derived utilizing the straight-fixed variable rate design method based on the full design capacity. Equitrans allocated $365,000 to interruptible transportation. Equitrans proposes a monthly reservation charge for firm transportation service (FTS) of $9.0503 per Dth based upon

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[16] May 19, 2015 Data Response, Exhibits N and P-2.

[17] Equitrans states that the pretax return was established in its last general NGA section 4 rate case, Docket No. RP05-164-000, *et. al.*, 115 FERC ¶ 61,007 (2006).

[18] Equitrans states that the proposed depreciation rate is based on the life of the 20-year contract term.

[19] *See* May 19, 2015 Data Response, Attachment DR6-1b.

[20] Application at 19.

[21] Application at 19-20.

billing determinants of 850,000 Dth/day and a usage charge of $0.0026.[22] Equitrans also calculated an interruptible transportation service (ITS) charge of $0.3002 per Dth based on 100 percent load factor of the proposed FTS rate.[23]

21. There are four steps in rate design: functionalization of the cost of service; classifying the cost of service between fixed and variable costs; allocating costs to jurisdictional and non-jurisdictional services, to customer classes and/or to zones; and finally rate design.[24] As discussed below, the Commission takes issue with Equitrans' cost of service classification, cost allocation, and rate design.

1. Cost of Service Classification

22. The Commission's standard method of cost classification is to categorize the pipeline's functionalized costs as either fixed or variable costs. The pipeline's costs are then classified (i.e., assigned) to the demand and commodity components of its rates. Equitrans proposed to classify $27,000 in variable costs in the calculation of the usage charge as shown in Exhibit P, Schedule 1 of its May 19, 2015 data response. Equitrans' response also provided a breakdown of Operation and Maintenance expenses by FERC account number and between labor and non-labor costs. Equitrans identified $644,850 in non-labor costs for Account Nos. 853 and 864 as shown in the Attachment DR6-1b to its May 19, 2015 data response. However, consistent with the Commission's regulation requiring the use of Straight Fixed Variable (SFV), these non-labor O&M costs of $644,850 must be classified as variable costs[25] and should be recovered through a usage

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[22] *See* May 19, 2015 Equitrans Data Response, Attachment DR6-1a1.

[23] Application at 19.

[24] *See e.g. Policy Statement Providing Guidance with Respect to the Designing of Rates*, 47 FERC ¶ 61,295, at 62,052 n.14 (1989), describing the Commission's "rate design process" as including four steps and stating that the last step, determining unit rates for each service, "is also known as rate design."

[25] Attachment DR6-1b of Equitrans' May 19, 2015 data response provided the below costs for various accounts. Notably, in accounts 853 and 864, labor costs are classified as fixed and other costs are classified as variable.

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charge, not through the reservation charge as proposed. The Commission finds that Equitrans did not explain the discrepancy for variable cost classification in its May 19, 2015 data response or why it is appropriate to deviate from the Commission's standard method of cost classification.

23. The Commission requires open access pipelines to use the SFV for transportation rates.[26] Equitrans claimed to have used SFV in calculating its proposed initial rates. However, misclassifying variable costs as fixed costs undermines the Commission's objectives in requiring SFV. Further, recovering variable costs (costs that the pipeline only incurs if the shipper moves gas over the pipeline) through the reservation charge (a charge that the firm shippers pay regardless of the amount of gas that it moves over the pipeline) may result in the pipeline over-recovering its cost of service, because shippers often do not use 100 percent of their firm capacity. To the extent that shippers do not use 100 percent of their firm capacity and the reservation charge includes variable costs, the shippers will pay and the pipeline will recover variable costs that were not incurred by the pipeline.[27] The Commission rejects Equitrans' proposed cost classification as unsupported, and requires Equitrans to use $644,850 in variable costs.

Acct	Labor	Other	Fixed	Variable
850	$ 141,660		$ 141,660	
853	$ 696,664	$ 404,118	$ 696,664	$ 404,118
856	$ 512,867	$ 59,964	$ 572,831	
857	$ 389,628		$ 389,628	
863	$ 66,673	$ 3,642	$ 70,315	
864	$ 203,090	$ 240,732	$ 203,090	$ 240,732
	$ 2,010,582	$ 708,456	$ 2,074,188	$ 644,850
Check sum		$ 2,719,038		$ 2,719,038

[26] 18 C.F.R. §284.7(e) (2015).

[27] *See Northwest Pipeline Corp.*, Opinion No. 396, 71 FERC ¶ 61,253, at 61,997-999 (1995), where the Commission found that Northwest's proposed non-conforming cost classification methodology was unsupported.

2. <u>Cost Allocation</u>

24. Equitrans proposes to allocate costs to a new Ohio Valley Connecter rate zone for transmission services on the proposed project facilities. [28] Equitrans states that creating a separate rate zone for the project is consistent with Commission policy, as it protects existing customers from subsidizing costs of the expansion, and only those customers that use the new facilities will pay for them. Equitrans also states that it derived the recourse rates for the project using a SFV rate design method based on design capacity, thereby placing Equitrans at financial risk for any unsubscribed capacity. Therefore, Equitrans asserts, the new capacity of the mainline extension should be a separate zone for all shippers.

25. The Commission rejects Equitrans' proposal to create a new rate zone and instead will require Equitrans to use an incremental rate to recover the incremental costs of the project.

26. Equitrans argues that creating the Ohio Valley Connector Zone is required to ensure that incremental costs are recovered from incremental customers, and to protect existing customers from subsidizing the cost of the project. However, Equitrans does not explain why the use of incremental rates without adding a zone to its existing postage stamp rate structure would not achieve the same end. Nor does Equitrans explain why its currently-effective postage stamp system rate structure prevents the use of an incremental rate for the incremental shippers utilizing the incremental project capacity. The Commission and the industry have used incremental rates for many years to achieve the exact goals Equitrans has identified.[29] Further, as we discuss below, we recently approved the use of an incremental rate for the recovery of Equitrans' Sunrise Project's expansion costs.[30]

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[28] Equitrans' system currently consists of two rate zones: the Mainline/Sunrise Transmission System Zone and the Allegheny Valley Connector Zone.

[29] *See Dominion Transmission, Inc.*, 135 FERC ¶ 61,239 (2011), where the Commission approved proposed incremental recourse rates for service on the Appalachian Gateway Project, which included 42.3 and 54.2 mile extensions of Dominion Transmission, Inc.'s transmission system. *See also East Tenn*essee *Natural Gas Co.*, 98 FERC ¶ 61,331 (2002), where the Commission approved an incremental rate, which exceeded the existing Part 284 maximum rate, ensuring that existing customers will not subsidize expansion service.

[30] *Equitrans, L.P.*, 136 FERC ¶ 61,046 (2011).

27. Rate zones are normally distinct segments of pipeline with clear zone boundaries and rates applicable for transportation service provided over the facilities within the zone. However, Equitrans' proposed Ohio Valley Connector Zone would not have a clear zone boundary. The project overlays much of Equitrans' existing system and is not geographically nor operationally distinct. The incremental project services will utilize, in part, Equitrans' existing system. The Commission finds that Equitrans has not shown that the proposed Ohio Valley Connector Zone would be sufficiently operationally or geographically distinct to make separate zone rates appropriate. Rather, we find Equitrans' proposal to be similar to its Sunrise Project, authorized in 2011, where the Commission found that Equitrans' proposal to charge firm mainline shippers an additional access charge to use the project would amount to impermissible incremental plus pricing.[31]

28. The Commission affirmed this finding when it denied Equitrans' request for rehearing, finding again that its proposal to charge mainline firm transmission shippers a secondary access charge was against Commission policy.[32] The rehearing order also noted Equitrans' statement that it designed the access charge to ensure that shippers who nominated on the Sunrise Project would pay for the project's cost of service to prevent subsidization between different classes of shippers.[33] The rehearing order held that this is accomplished by requiring expansions to be priced incrementally.[34]

29. We note that in the case of Equitrans' lease of the Allegheny Valley Connector, the Commission permitted Equitrans to add a new rate zone to its transmission system.[35] In that case, unlike the proposed Ohio Valley Connector rate zone in this proceeding, Equitrans proposed to lease existing transportation and storage facilities from an affiliate. The Commission highlighted that the bulk of the facilities in the Allegheny Valley Connector zone consist of an extension of Equitrans' transmission system, and storage facilities that "*are not integrated with Equitrans' existing system*," and that shippers currently do not have access to capacity on these facilities under Equitrans' interruptible

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[31] *Id.* P 22; *Gulf South Pipeline Co. LP and Destin Pipeline Co., L.L.C. (Gulf South)*, 120 FERC ¶ 61,291 (2007), *reh'g*, 122 FERC ¶ 61,162 (2008).

[32] *Equitrans, L.P.*, 143 FERC ¶ 61,108, at P19 (2013).

[33] *Id.* P 8.

[34] *Id.* P 19.

[35] *Equitrans, L.P.*, 136 FERC ¶ 61,108, at P 25 (2011).

transportation rate. [36] Thus, unlike the instant project, the Allegheny Valley Connector's facilities are not part of Equitrans' integrated and reticulated system.

30. For the reasons cited above, we reject Equitrans' proposal to create a new rate zone for the project facilities.[37] The Commission has consistently found that an incremental rate is appropriate for expansion projects that expand existing pipeline capacity and are extensions of the mainline. Incremental rates ensure that expansion shippers will pay the full costs of the new capacity without subsidy from existing customers.[38] The Commission finds that incremental rates for transportation service within Equitrans' mainline system will achieve this objective and are appropriate for these incremental services.

3. <u>Rate Design</u>

31. We approve, subject to the conditions below, the incremental reservation charge for firm transportation service which Equitrans submitted in its May 19, 2015 Data Response, as the initial recourse rate for service on the project. As noted above, consistent with the Commission's regulation requiring the use of SFV, certain non-labor O&M costs are classified as variable costs and should be recovered through a usage charge, not through the reservation charge as proposed. Accordingly, Equitrans is directed to classify its costs consistent with the Commission's SFV regulations and to recalculate its project incremental reservation and usage charges.

32. Equitrans' proposed monthly reservation charge for firm transportation service for the project is higher than the system recourse charges for firm transportation service on the Mainline System contained in Equitrans' tariff.[39] Under the Certificate Policy Statement, there is a presumption that incremental rates should be charged for proposed

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[36] *Equitrans, L.P.*, 145 FERC ¶ 61,194, at P 42 (2013) (emphasis added).

[37] This finding is without prejudice to Equitrans proposing, in a general section 4 rate proceeding, to change its postage stamp rate design to a different rate design. *See Maritimes & Northeast Pipeline, L.L.C.*, 130 FERC ¶ 61,035, at P 29 (2010).

[38] *Equitrans, L.P.*, 136 FERC ¶ 61,046, at P 18.

[39] Equitrans' currently effective Mainline System monthly system transportation reservation charges for Rate Schedule FTS service is $5.5559 per Dth and $6.1206 per Dth, for Base (April 1 to October 31) and Winter (November 1 to March 31), respectively. Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff; [Section 4.1, Transportation Rates NOFT, FTS, STS-1 & FTSS, 12.0.0](#).

expansion capacity if the incremental rate will exceed the maximum system-wide rate. While the Commission has not recalculated the project reservation charge, removal of the improperly classified variable costs from the costs recoverable through the reservation charge will result in the recalculated reservation charge being higher than Equitrans' Mainline System reservation charge. With regard to the usage charge, the Commission estimates that the project's usage charge will be lower than Equitrans' currently effective Mainline System usage charge.[40] Therefore, we direct Equitrans to utilize its currently effective Mainline System usage charge for service utilizing project facilities.

33. In addition, we direct Equitrans to utilize its Mainline System interruptible rate for interruptible service on or over the project facilities.[41] It is Commission policy that until Equitrans makes a new section 4 rate case filing, the applicable interruptible transportation rate is the Mainline System IT rate.[42]

34. To ensure that all parties have full knowledge of the costs and revenues attributable to the project, the Commission requires Equitrans to keep separate books and accounting of costs attributable to the new facilities. Further, the books should be maintained with applicable cross-references as required by section 154.309 of the Commission's regulations. This information must be in sufficient detail so that the data can be identified in Statements G, I, and J in any future NGA section 4 or 5 rate case and provided consistent with Order No. 710 on incremental facilities.

4. Fuel

35. Equitrans is proposing an Ohio Valley Connector fuel retainage factor for use and lost and unaccounted of 1.26 percent, which will be adjusted annually.[43] As discussed above, we have found the proposed project to be an integrated part of the Equitrans

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[40] $664,850 / 10,200,000 dth = $0.0632 per dth. Equitrans currently effective Mainline maximum usage charge is $0.1466 per Dth. Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff; Section 4.1, Transportation Rates NOFT, FTS, STS-1 & FTSS, 12.0.0.

[41] Equitrans' currently effective Mainline Rate Schedule ITS charges are $0.3239 per Dth (winter) and $0.3018 per Dth (summer). Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff; Section 4.2, Transportation Rates ITS, AGS & Products Extraction, 12.0.0.

[42] *Equitrans, L.P.*, 136 FERC ¶ 61,046, at P 22 (2011).

[43] *See* April 9, 2015 Data Response, Attachment DR3-5.

system. It is Commission policy that the use of a pipeline's currently-effective fuel rate is appropriate where the incremental fuel rate is lower than the system rate. Therefore, since the estimated expansion project fuel retainage factor is less than the Equitrans currently effective system fuel retainage factor, the Commission directs Equitrans to charge its currently-effective system fuel retainage factor for the project.[44]

5. Negotiated Rate Agreement

36. Equitrans executed a precedent agreement for a long-term negotiated rate service agreement with one shipper, EQT Energy, LLC, for up to 650,000 Dth/day of firm transportation service on the project. Equitrans states that it will enter into a binding firm transportation agreement with the shipper at negotiated rates for the subscribed capacity. Equitrans must file either its negotiated rate agreement or tariff records setting forth the essential terms of the agreement associated with the project, in accordance with the Alternative Rate Policy Statement[45] and the Commission's negotiated rate policies.[46] Equitrans must file the negotiated rate agreement or tariff records at least 30, but not more than 60 days, before the in-service date of the proposed facilities.[47]

6. Tariff

37. Equitrans proposes to revise section 6.7(2) of its General Terms and Conditions (GT&C) to provide that when a customer nominates to a secondary point within a different rate zone, customers will pay, in addition to the firm reservation charge under

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[44] Equitrans' currently effective Mainline/Sunrise Transmission System Retainage Factor is 2.72 percent. Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff; Section 4.5, Statement of Retainage Factors, 9.0.0.

[45] *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194 (1996).

[46] *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification*, 114 FERC ¶ 61,042, *dismissing reh'g and denying clarification*, 114 FERC ¶ 61,304 (2006).

[47] Pipelines are required to file any service agreement containing non-conforming provisions and to disclose and identify any transportation term or agreement in a precedent agreement that survives the execution of the service agreement. 18 C.F.R. § 154.112 (b) (2015).

the initial rate zone, the applicable maximum transportation rate equivalent to the usage rates for service under Rate Schedule ITS on the other applicable rate zone.

38. As discussed above, we have found the project to be an expansion of Equitrans' Mainline/Sunrise Transmission System rate zone. It is the Commission's policy that shippers are entitled to access any point within the zone for which they are paying. Therefore, any Equitrans firm Mainline/Sunrise Transmission System shipper must be allowed to nominate on the 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; and the project's incremental shippers are permitted to nominate secondary receipt or delivery points on Equitrans' existing system without additional charge.[48] Therefore, we reject Equitrans' proposed revision to section 6.7(2) of its GT&C.

39. In addition, Equitrans proposes to add sections 6.31(10) through 6.31(13) to its GT&C to provide for the calculation of its proposed Ohio Valley Connector fuel retainage factor. As discussed above, we direct Equitrans to charge its currently effective system fuel retainage factor for the project. We find Equitrans' proposed tariff revisions describing the calculation of the Ohio Valley Connector fuel retainage factor to be unnecessary; therefore we reject Equitrans' proposed revisions to sections 6.31(10) through 6.31(13) of its GT&C.

40. We approve the remaining language in Equitrans' *pro forma* tariff records, subject to the following conditions. Equitrans submitted *pro-forma* tariff records in its certificate application that apply to the creation of a new rate zone for the project facilities. Based on the discussion above, we direct Equitrans to revise its *pro forma* tariff records to eliminate all references and tariff provisions regarding the proposed new rate zone for the project facilities. Equitrans is directed to file actual tariff records reflecting the above discussion at least 30 days but no more than 60 day prior to the in-service date of the new facilities.

C. Environmental Analysis

41. On June 20, 2014, Commission staff began its environmental review after granting Equitrans' request to use the Commission's pre-filing process for the project under Docket No. PF-14-13-000. As part of the pre-filing review, staff participated in open houses sponsored by Equitrans on July 7-10, 2014, to explain our environmental review process to interested stakeholders. On August 29, 2014, the Commission issued a

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[48] *Equitrans, L.P.*, 136 FERC ¶ 61,046, at 22 (2011); *Dominion Transmission, Inc.*, 129 FERC ¶ 61,012, at n.14 (2009).

Notice of Intent to Prepare an Environmental Assessment (NOI). Following Equitrans' amendment application on May 5, 2015, the Commission issued a *Supplemental Notice of Intent to Prepare an Environmental Assessment* (Supplemental NOI). The NOI and Supplemental NOI were mailed to federal, state, and local government representatives and agencies; elected officials; affected landowners; environmental and public interest groups; potentially interested Native American tribes; other interested parties; and local libraries, newspapers, and radio stations.

42. In response to the NOI and Supplemental NOI, we received fourteen comments, including one landowner comment.[49] Two comments were filed in response to the Supplemental NOI. The primary issues raised by the commenters related to the project's impacts on water quality, wetlands, vegetation, fisheries, wildlife habitat, federal and state special status species, migratory birds, soil and erosion, and air quality.

43. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA),[50] Commission staff prepared an environmental assessment (EA) for Equitrans' proposal that was placed into the public record on October 23, 2015. The EA addresses water resources, geology, soils, vegetation and wildlife, land use, cultural resources, air quality and noise, reliability and safety, cumulative and indirect impacts, and alternatives. The EA also addresses all substantive issues raised by the commenters.

44. The EA concludes, based on the environmental analysis, Equitrans' application, and supplemental filings, implementation of Equitrans' proposed mitigation, and the mitigation recommended in the EA, that approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment. Following the issuance of the EA, we received one letter from the U.S. Fish and Wildlife Service, dated October 14, 2015 providing concurrence with the EA's determination of effect to federally listed species, which completes Endangered Species Act section 7 consultation requirements. Therefore, environmental condition 14 recommended in the EA is no longer required as a condition in this Order.

45. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental impact of the Ohio Valley Connector Project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and implemented in accordance with

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[49] The landowner requested realignment of the proposed pipeline to avoid his property and water well. Equitrans subsequently incorporated a variation into the proposed route, addressed in the EA, to address his concern.

[50] 42 U.S.C. §§ 4321-4370 f (2012).

Equitrans' application, as amended, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

46. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. We encourage cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.[51]

47. 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 authorization(s) sought herein, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Equitrans under NGA section 7(c), authorizing the construction and operation of natural gas facilities as described in this order and in the application.

(B) The authorization in Ordering Paragraph (A) is conditioned on Equitrans:

(1) complying with the conditions set forth in the appendix to this order and all regulations under the NGA, but not limited to Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the Commission's regulations;

(2) constructing and making available for service the facilities described herein, within two years in accordance with section 157.20(b) of the Commission's regulations;

[51] *See, e.g., Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (holding state and local regulation is preempted by the Natural Gas Act to the extent they conflict with federal regulation, or would delay the construction and operation of facilities approved by FERC); and *Iroquois Gas Transmission System*, L.P., 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(3) compliance with the Environmental Conditions in Appendix A to this order; and

(4) executing firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(C) Equitrans' proposed initial recourse rates as discussed above are approved, as conditioned and modified herein the body of this order.

(D) Equitrans shall file actual tariff records no earlier than 60 days and no later than 30 days, prior to the date the project facilities go into service.

(E) Equitrans shall keep separate books and accounts of costs attributable to the proposed incremental services, as described above.

(F) Equitrans must file not less than 30 days, or more than 60 days, before the in-service date of the proposed facilities, all negotiated rate agreements or a tariff record describing the negotiated rate agreements associated with this project.

(G) Equitrans shall notify the Commission's environmental staff by telephone, email, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Equitrans. Equitrans shall file written confirmation of such notification with the Secretary of the Commission within twenty-four hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix
Environmental Conditions

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Equitrans LP (Equitrans) shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Equitrans must:
   a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
   b. justify each modification relative to site-specific conditions;
   c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
   d. receive approval in writing from the Director of the Office of Energy projects (OEP) **before using that modification**.

2. The Director of the OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project and abandonment activities. This authority shall allow:
   a. the modification of conditions of the Order; and
   b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.

3. **Prior to any construction**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EI's authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.

4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Equitrans shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facilities approved by the Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Equitrans' exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Equitrans' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipelines or aboveground facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other that natural gas.

5. Equitrans shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, laydown/contractor yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area**.

This requirement does not apply to extra workspace allowed by the FERC's Upland Erosion Control, Revegetation, and Maintenance Plan and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:
(i) implementation of cultural resources mitigation measures;
(ii) implementation of endangered, threatened, or special concern species mitigation measures;
(iii) recommendations by state regulatory authorities; and
(iv) agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. Within 60 days of the acceptance of the Certificate and before construction begins, Equitrans shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Equitrans must file revisions to the plan as schedules change. The plan shall identify:

a. how Equitrans will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
b. how Equitrans will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
c. the number of EIs assigned, and how the company will ensure that nt personnel are available to implement the environmental mitigation;
d. company personnel, including environmental inspectors and contractors, who will receive copies of the appropriate material;
e. the location and dates of the environmental compliance training and instructions Equitrans will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change);
f. the company personnel and specific portion of Equitrans' organization having responsibility for compliance;
g. the procedures (including use of contract penalties) Equitrans will follow if noncompliance occurs; and
h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
    (1) the completion of all required surveys and reports;
    (2) the environmental compliance training of onsite personnel;
    (3) the start of construction; and
    (4) the start and completion of restoration.

7. Equitrans shall employ at least one EI per construction spread. The EIs shall be:
    a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
    b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
    c. empowered to order the correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
    d. a full-time position, separate from all other activity inspectors;
    e. responsible for documenting compliance with the environmental conditions of that Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
    f. responsible for maintaining status reports

8. Beginning with the filing of its Implementation Plan, Equitrans shall file updated status reports with the Secretary **on a biweekly basis until all construction and**

restoration activities are complete. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:

a. an update on Equitrans' efforts to obtain the necessary federal authorizations;
b. the construction status of the project, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally-sensitive areas;
c. a listing of all problems encountered and each instance of noncompliance observed by the environmental inspector(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
e. the effectiveness of all corrective actions implemented;
f. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
g. copies of any correspondence received by Equitrans from other federal, state, or local permitting agencies concerning instances of noncompliance, and Equitrans' response.

9. **Prior to receiving written authorization from the Director of OEP to commence construction of any project facilities**, Equitrans shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).

10. Equitrans must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.

11. **Within 30 days of placing the authorized facilities in service**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official:

a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
b. identifying which of the Certificate conditions Equitrans has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented,

if not previously identified in filed status reports, and the reason for noncompliance.

12. **Prior to construction**, Equitrans shall file with the Secretary a table of all water wells and springs within 150 feet of any construction workspace, as well as any mitigation that would be implemented for applicable wells and springs. **Within 30 days of placing the facilities in service**, Equitrans shall file a report with the Secretary discussing whether any complaints were received concerning well yield or water quality and how each was resolved.

13. Equitrans shall restrict all project activities within 660 feet of any bald eagle nest or consult with the FWS to determine recommended guidelines and permit requirements if project activities are required within this buffer zone.

14. **Prior to construction**, Equitrans shall file with the Secretary evidence of landowner concurrence with the site-specific residential construction plans for any residences located within 25 feet of the proposed construction workspace.

15. Equitrans shall make all reasonable efforts to ensure its predicted noise levels from the Corona and Plasma Compressor Stations are not exceeded at nearby NSAs and file noise surveys showing this with the Secretary **no later than 60 days** after placing the new facilities in service. If a full load condition noise survey is not possible, Equitrans shall provide an interim survey at the maximum possible load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all the equipment at the Corona and Plasma Compressor Stations under interim full load conditions exceeds an Ldn of 55 dBA at any nearby NSAs, Equitrans shall file a report on what changes are needed and shall install additional noise controls to meet the level **within 1 year** of the in-service date. Equitrans shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs any additional noise controls.