155 FERC ¶ 61,194
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 No. CP15-41-002

ORDER DENYING REHEARING

(Issued May 20, 2016)

1. On December 30, 2015, the Commission issued Equitrans, L.P. (Equitrans) a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA)[1] to construct and operate two compressor stations and approximately 37 miles of pipeline in West Virginia and Ohio (Ohio Valley Connector Project or Project).[2] In doing so, the Commission rejected Equitrans' request for a new rate zone and conditioned the certificate on Equitrans using an incremental reservation rate, the mainline system interruptible rate, and the mainline system fuel rate as the initial recourse rates for Project service.

2. On January 29, 2016, Equitrans filed a timely request for rehearing, alleging that the Commission acted arbitrarily and capriciously in rejecting its request for a separate rate zone.[3] As discussed below, we deny Equitrans' request.

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[1] 15 U.S.C. § 717f(c) (2012).

[2] *Equitrans, L.P.*, 153 FERC ¶ 61,381 (2015) (Certificate Order).

[3] Equitrans attached an affidavit of Justin Maken, Vice President of Gas Systems Planning of EQT Corporation, in support of its rehearing request. We note that the affidavit restates information submitted in Equitrans' application and therefore does not violate the Commission's policy not to accept additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause. *See, e.g.*, *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005); *Midwest Independent Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,178, at P 11 (2008).

I. Background and Rehearing Request

3. Equitrans is a natural gas company that owns and operates a 900-mile interstate natural gas pipeline system and natural gas storage reservoirs overlapping natural gas reserves in southwestern Pennsylvania and northern West Virginia. The system transports natural gas from these reserves to distribution companies and other interstate pipelines. Equitrans' system currently consists of its mainline facilities, the Sunrise Transmission System – which expanded the grid-like, reticulated mainline – and the Allegheny Valley Connector – consisting of a separate transmission and storage system.[4] The Commission has approved a postage stamp rate structure for service on the mainline and Sunrise System,[5] and a separate rate zone for the Allegheny Valley Connector.[6]

4. In the Certificate Order, the Commission approved Equitrans' request to construct and operate a subsequent mainline expansion, known as the Ohio Valley Connector Project. The Project is an expansion of the mainline consisting of two sections connected to that system. Section one includes the Corona Compressor Station and a 0.6 mile, 16-inch-diameter extension of pipeline H-306 in Wetzel County, West Virginia. Section two begins approximately four miles away on the existing H-302 mainline in Wetzel County and includes 35 miles of 30-inch-diameter pipeline known as the H-310 line, the Plasma Compressor Station, and two header pipelines to connect the station to new interconnects with the Rockies Express Pipeline LLC (REX) and Texas Eastern Transmission, LP (Texas Eastern) transmission systems near Clarington, Monroe County, Ohio. The facilities will create 850,000 dekatherms (Dth) per day of new firm transportation service, and Equitrans signed a precedent agreement with EQT Energy, LLC for 650,000 Dth per day of that service.

5. Equitrans proposed to allocate the costs of the Project to a new Ohio Valley Connector Zone, encompassing the two non-contiguous sections described above. Equitrans also proposed to charge any firm transportation customer nominating to a secondary point across rate zones, the rates equivalent to the other zones' interruptible

[4] The Sunrise Transmission System and mainline system are collectively referred to as the mainline system.

[5] *Equitrans, L.P*, 136 FERC ¶ 61,046 (2011) (Sunrise Certificate), *order on reh'g*, 143 FERC ¶ 61,108 (2013).

[6] *Equitrans, L.P.*, 145 FERC ¶ 61,194, at P 42 (2013) (Allegheny Valley Connector Certificate) *amended by* 155 FERC ¶ 61,084 (2016).

usage rates. The Commission rejected this proposal because the zone would not result in an operationally and geographically distinct area. The Commission also examined whether Equitrans' request was otherwise reasonable, but determined that Equitrans had not justified its request to treat project facilities as non-integrated, when in fact, project facilities were integrated with Equitrans' existing system.[7] Accordingly, the Commission conditioned its certificate on Equitrans' charging firm incremental rates and system fuel and interruptible rates on the Project facilities.

6. On rehearing, Equitrans argues that the Ohio Valley Connector Project is eligible for a zone because it consists of non-integrated facilities. Alternatively, even if the facilities are integrated, Equitrans contends that its request is warranted when facilities are operationally and geographically distinct from the mainline system. Equitrans further argues that to hold otherwise would ignore Commission precedent for factually similar projects and ratemaking principles of cost causation and cost recovery.[8]

II. Commission Determination

7. The Commission permits pipelines to divide their pipeline systems into zones to allow pipelines to account for distance-based costs.[9] Rate zones may be appropriate for grid-like, reticulated systems similar to that of Equitrans, so long as zone boundaries reflect distinct geographical and operational areas.[10] In such circumstances, each zone is treated as a separate operating entity for cost allocation purposes and results in stand-

[7] Certificate Order, 153 FERC ¶ 61,381, at P 29.

[8] Request for Rehearing, filed January 29, 2016, at 2-3.

[9] This is consistent with Commission regulations requiring that rates reasonably reflect any material variation in the cost of providing service due to the distance over which the transportation is provided. 18 C.F.R. § 284.10(c)(3)(ii) (2015).

[10] Certificate Order, 153 FERC ¶ 61,381, at P 27. *See also Koch Gateway Pipeline Company*, 84 FERC ¶ 61,143, at 61,774 (1998) (permitting the allocation of direct costs among zones, when those zones were based on capacity allocation areas and were bounded by constraint points over a large geographic area).

alone rates for facilities in each zone.[11] Shippers pay for each zone through which gas is transported.[12]

8. Otherwise, additive, or "incremental plus," pricing is only appropriate for an expansion project's initial rates if the project is distinct from (i.e., not integrated with) the existing system or is a lateral operated for the exclusive benefit of a single or limited number of shippers.[13] The Commission permits additive pricing in these instances because such pricing will not impact any existing customer's service. For all other integrated expansion facilities, the Commission has found it appropriate for pipelines to charge an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm transportation rate.[14]

A. The Certificate Order properly found that the Ohio Valley Connector Project is integrated with Equitrans' existing mainline system

9. Equitrans contends that, although the Ohio Valley Connector Project relies on the existing mainline system, it is not integrated with the mainline system because (1) gas entering the expansion project facilities is easily identifiable and, (2) if these facilities break down, expansion customers could not take service from the existing system to reach their primary delivery points.[15] Equitrans contends that these facts demonstrate that the Ohio Valley Connector Project does not satisfy the Commission's test for integration articulated in *Tennessee Gas Pipeline Co.* (*Tennessee Gas*).[16]

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[11] *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1161 (D.C. Cir. 1998).

[12] A firm customer paying reservation charges to secure capacity in any part of a zone only receives access to any other receipt or delivery point within that zone on a secondary basis. Order No. 636-A, FERC Stats. and Regs., Regulations Preambles 1991-1996 ¶ 30,950 (1992).

[13] *See, e.g., Colorado Interstate Gas Co.*, 122 FERC ¶ 61,256, at PP 58-65 (2008) (permitting additive rates for non-integrated facilities); *Wyoming Interstate Co.*, 119 FERC ¶ 61,251, at P 20 (2007) (approving separate incremental rates that were also applicable to shippers using the Kanda supply lateral on a secondary basis).

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

[15] Rehearing Request at 15.

[16] *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1997).

10. While the Commission stated in *Tennessee Gas* that integration "is commonly illustrated by: (1) an inability to know whether old or new customers are using either old or new facilities," and (2) "the ability of either the old or new customers to take service from either set of facilities if either set of facilities breaks down," the test for integration is broader.[17] Fundamentally, an expansion facility is integrated with an existing facility where "the pipeline operate[s] the new facilities and the old facilities as a single system."[18] Put another way, an expansion facility is integrated when existing facilities effectuate service on the expansion facility, or vice versa.[19]

11. Equitrans acknowledges in its rehearing request that it must operate the mainline and the Ohio Valley Connector Project as one integrated system. Equitrans states that natural gas will travel from the mainline to the new Corona Compressor Station and then back to the mainline for roughly four miles before flowing onto the new H-310 pipeline to new delivery points.[20] Equitrans also points out that the Corona Compressor will only provide compression for a volume of gas equivalent to 21 percent of the gas traveling to the H-310 pipeline under normal operating conditions.[21] Once on the four-mile mainline segment, a portion of this compressed gas is delivered to an existing point and the remainder mixes with additional gas entering the system from existing receipt points. Volumes then split, with Project volumes flowing onto the H-310 pipeline and the rest remaining on the H-302 mainline pipeline.

12. The four-mile segment not only connects the expansion facilities, but its existing receipt points provide most of the expansion service gas. Equitrans cannot actually flow the full contracted-for volumes between firm points, but must meet a large portion of project service by displacement.[22] Thus, the Ohio Valley Connector Project is integrated with the mainline system because the two expansion segments are divided by, and rely upon, the existing mainline. The Commission has found that expansion facilities are

[17] *Id*. at 61,209.

[18] *Id*.

[19] Conversely, an expansion facility is not integrated when it is operationally isolated and does not rely on existing facilities to effectuate service. *Colorado Interstate Gas*, 122 FERC ¶ 61,256, at P 60.

[20] Rehearing Request at 12.

[21] *Id.*

[22] *See id.* at 14; May 5, 2015 Amendment to Abbreviated Application at Exhibit G, 3-4.

integrated in such cases where expansion service is made possible by the existing system.[23]

13. Equitrans further contends that Ohio Valley Connector Project is similar to the Allegheny Valley Connector, which was approved for a separate rate zone.[24] But the then-leased Allegheny Valley Connector was not integrated with Equitrans' mainline system as it did not rely on existing facilities to effectuate service.[25] Although the facilities were physically connected to the mainline, the Allegheny Valley Connector was a preexisting system and the firm customer service was limited to primary points on that system.[26] Unlike the Ohio Valley Connector, the Allegheny Valley Connector had operated, and would continue to operate, on a stand-alone basis.

B. The Certificate Order properly denied Equitrans' request for the Ohio Valley Connector zone

14. In the alternative, Equitrans argues that its proposed zone is appropriate because the Project is geographically and operationally distinct since most of the zone consists of facilities that extend the mainline system to new and expanded markets in Ohio. Moreover, according to Equitrans, no existing shipper would subsidize the project and no existing customers object to the new zone. Equitrans contends that the Commission has permitted new zones for similar projects in other proceedings.[27]

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[23] *See, e.g., Gulf South Pipeline Co., LP and Destin Pipeline Co., L.L.C.*, 120 FERC ¶ 61,291 (2007), *reh'g*, 122 FERC ¶ 61,162 (2008) (determining that the project was a downstream delivery component of a previous integrated expansion); *Paiute Pipeline Co.*, 153 FERC ¶ 61,292, at P 9 (2015) (finding that the Southeast Expansion Project was integrated when facilities were physically connected with, and shipper's primary delivery point is located on, the existing system).

[24] Request for Rehearing at 17.

[25] Allegheny Valley Connector Certificate, 145 FERC ¶ 61,194 at P 42.

[26] *Id.* P 42. Moreover, operational constraints prevented mainline shippers from accessing the Allegheny Valley Connector.

[27] Rehearing Request at 13, 16-22 (citing *Rockies Express Pipeline LLC,* 123 FERC ¶ 61,234 (2008) (*Rockies Express*); *Gulf South Pipeline Co., LP*, 129 FERC ¶ 61,062 (2008) (*Gulf South*); *Eastern Shore Natural Gas Co.*, 132 FERC ¶ 61,204 (2010) (*Eastern Shore*); *Colorado Interstate Gas Co.*, 131 FERC ¶ 61,086 (2010) (*Colorado Interstate*); and *Texas Eastern Transmission LP, Algonquin Gas Transmission, LLC,* 139 FERC ¶ 61,138 (2012) (*Texas Eastern*); and *Sabine Pass Liquefaction, LLC,*

(continued ...)

15. The Commission has permitted a new zone for a substantial system extension to access an area it previously could not serve, but only when that extension was in a distinct operational and geographical area.[28] Equitrans' proposal does not meet this standard when approximately four miles of the existing mainline bisects its proposed zone. The proposed zone boundaries would consist of a multi-segment Ohio Valley Connector Zone pockmarking the mainline system. To illustrate, one Project segment—the Corona Compressor Station and H-306 extension—is only needed for the expansion service, but this compression will now serve transportation to existing points as well.[29] In contrast, the cases cited by Equitrans either involved a contiguous extension of a previously zoned system, none of which affected service to existing points, or are not applicable.[30]

16. Equitrans contends that the rejection of its zone request conflicts with the Commission's decision in *Texas Eastern*,[31] which purportedly encouraged zone rates to meet the Certificate Policy Statement.[32] Under the Commission's Certificate Policy

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Sabine Pass LNG, L.P., Cheniere Creole Trail Pipeline, L.P, 151 FERC ¶ 61,012, (2015) (*Creole Trail*)).

[28] *See, e.g., Rockies Express,* 123 FERC ¶ 61,234 (authorizing Zone 3 for a 639 mile-long extension from the pipeline's terminus in Audrain County, Missouri to Monroe County, Ohio).

[29] May 5, 2015 Amendment to Abbreviated Application at Exhibit G, 3-4.

[30] *Rockies Express,* 123 FERC ¶ 61,234; *Creole Trail*, 151 FERC ¶ 61,012 (approving Zone 2 for a 48.5 mile-long contiguous extension, when Cheniere had previously proposed, and the Commission accepted, allocating costs between two zones in *Cheniere Creole Trail Pipeline, L.P.*, 118 FERC ¶ 61,125, at P 17 (2007)); *Colorado Interstate*, 131 FERC ¶ 61,086 (approving two new zones over a 118.6 mile-long contiguous extension connecting new markets to existing system zones); *Texas Eastern*, 139 FERC ¶ 61,138 (indicating the Commission would consider a proposal to allocate costs associated a contiguous 15.2 mile extension of Zone M3); *Eastern Shore*, 132 FERC ¶ 61,204 (2010) (approving the use of Rate Schedule FT Zone 1 reservation rate as the incremental rate for service on a contiguous 8-mile pipeline extension of Zone 1); and *Gulf South*, 125 FERC ¶ 61,199 (2009) (approving an uncontested settlement under section 4 of the NGA, which created a new zone for contiguous expansion facilities where parties agreed the settlement did not establish precedent).

[31] *Texas Eastern,* 139 FERC ¶ 61,138 at P 46.

[32] Request for Rehearing at 19-21.

Statement, the threshold question in our analysis is whether the project can proceed without subsidies from existing shippers through rolled-in or incremental pricing.[33] This ensures that the market finds that a project is viable.

17. In *Texas Eastern*, the Commission did not suggest that the pipeline create a new zone for part of an expansion project to meet the no subsidy threshold. The project met the no subsidy threshold by charging incremental firm rates. However, the high costs associated with one project segment, a 15.2 mile extension to new markets, could lead to a significant cost differential between the expansion customers and the existing customers who used the extension on a secondary firm or interruptible basis.[34] The Commission found that an incremental rate was permissible, but indicated that a zone could also be an appropriate method to recover such substantial expansion costs.

18. Here, by contrast, Equitrans' proposed zone would impermissibly raise rates for existing service. Equitrans proposed to apply an additional charge to any firm transportation customer nominating to a secondary point across rate zones. With Equitrans' proposed zone, existing customers would be forced to use one zone segment—containing the Corona Compressor Station and H-306 extension— and pay an additional charge to reach existing delivery points on a secondary basis. The Commission may not modify rates for existing service in a section 7 certificate proceeding, even in the absence of protests from existing customers.[35] Moreover, as discussed in the Certificate Order, such a rate increase for existing firm customers amounts to a similar access charge that Equitrans proposed, and that the Commission ultimately rejected, for the Sunrise Project.[36] Such charges effectively shift the cost of the expansion, and the risks Equitrans assumed for the unused capacity, to existing customers. However, as we explained in the Certificate Order, this finding is without prejudice to Equitrans' proposing changes to its mainline system rates in a general section 4 proceeding.[37]

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[33] *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227, at 61,747 (1999), *orders clarifying policy*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

[34] *Texas Eastern*, 139 FERC ¶ 61,138 at P 33 (noting that the expansion project's incremental interruptible rate would be 200 percent greater than the existing system interruptible rate).

[35] *Panhandle Eastern Pipe Line Co. v. FERC*, 613 F.2d 1120, 1132 (1979).

[36] *See id.* P 27 & n.31 (citing Sunrise Order, 136 FERC ¶ 61,046).

[37] Certificate Order, 153 FERC ¶ 61,381 at P 30 & n.37.

C. **The Certificate Order did not ignore the ratemaking principles of cost causation and cost recovery**

19. Equitrans argues that rejection of its proposed rate zone violates principles of cost causation and cost recovery because the proposal was designed to ensure that Equitrans could continue to market available capacity in order to recover project costs. Equitrans contends that granting mainline shippers access to the Project facilities without an additional payment conflicts with *FPC v. Hope Natural Gas*, which held that a natural gas company is entitled to a reasonable opportunity to recover project costs and earn a fair return on investment.[38]

20. We disagree with Equitrans' suggestion that a rate zone is needed to market the Project's unsubscribed capacity. The Commission permits a pipeline to put itself at risk for unsubscribed capacity, but it must show there is a market need to be balanced against any adverse impacts. The inability of a project to attract sufficient market support on its own may signal that the project should be modified or not be constructed. Equitrans represented to the Commission that it would assume a financial risk for unsubscribed capacity on the assumption that future customers would find value in the link provided by the Project between Appalachian Basin gas supplies and mid-continent and Gulf Coast markets. The rejection of a separate rate zone does not affect this assumption. Granting as-available secondary point access to existing shippers will not degrade more valuable and guaranteed primary point rights. Customers that want to be assured of obtaining access to expansion service will subscribe to firm capacity.

21. Finally, the Commission did not deny to Equitrans an opportunity to recover the full Project costs. Equitrans' assumed the risk for any unsubscribed capacity. If on rehearing, Equitrans seeks to be compensated for a true lack of demand with a rate scheme that imposes higher charges upon existing shippers—who pay for the existing system upon which the expansion depends and who partially subsidize the rates charged to expansion shippers—then the Commission would be encouraging the very overbuilding that the Certificate Policy Statement, and the NGA, was designed to prevent. If Equitrans secures additional firm customers, then the secondary firm charge could allow Equitrans to recover revenues in excess of project costs. Neither scenario supports granting Equitrans' request under section 7 of the NGA.

[38] *Fed. Power Comm. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

The Commission orders:

Equitrans' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.