

157 FERC ¶ 61,018
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 12, 2016

In Reply Refer To:
Equitrans, L.P.
Docket No. RP16-1179-000

Equitrans, L.P.
625 Liberty Avenue
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Pittsburgh, PA 15222

Attention: Mathew T. Eggerding
Counsel, Midstream

Ladies and Gentlemen:

1. On August 19, 2016, Equitrans, L.P. (Equitrans) filed tariff records¹ reflecting a non-conforming negotiated rate transportation agreement (Agreement) with EQT Energy, LLC (EQT Energy) for new service on the Ohio Valley Connector Project (Project). As a result of the open season to solicit market interest in the Project, Equitrans entered into a precedent agreement with EQT Energy providing that EQT Energy would be a Foundation Shipper on the Project. In its order approving the Project, the Commission required Equitrans to submit the agreements associated with the Project for further review.² As discussed below, upon review of those agreements, we accept the EQT Energy agreement, subject to the condition that Equitrans remove any provisions that provide EQT Energy preferential rights to become a Foundation Shipper in future expansions.

¹ Equitrans, L.P., FERC NGA Gas Tariff, Equitrans Tariff, [Section 6.42, Non-Conforming Agreements, 15.0.0](#) and [Section 4.6, EQT Energy, LLC - EQTR19837-1296, 4.0.0](#).

² *Equitrans, L.P.*, 153 FERC ¶ 61,381, at ¶ F (2015).

2. Equitrans requested that the tariff records be accepted effective upon the date the Project facilities are placed into service, which was projected to be October 1, 2016. The Project facilities went into service on October 1, 2016. The Commission accepts Equitrans' revised tariff records, subject to conditions, to be effective October 1, 2016, as proposed.
3. Public notice of the filing was issued on August 22, 2016. Interventions and protests were due on or before August 31, 2016, as provided in section 154.210 of the Commission's regulations.³ Pursuant to Rule 214,⁴ all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.
4. In *Columbia*,⁵ the Commission clarified that a material deviation is any provision in a service agreement that (a) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff; and (b) affects the substantive rights of the parties. A material deviation may be permissible if the Commission finds that such deviation does not constitute a substantial risk of undue discrimination.⁶
5. The Agreement between Equitrans and EQT Energy, for which Equitrans seeks approval, contains three non-conforming provisions for service, with an effective date of the first day of the month immediately following the date on which Equitrans is able to render service on the Project. Specifically, the agreement provides: (1) the right of EQT Energy to participate in any future open season for an expansion of the system with the benefits and designation of a Foundation Shipper, (2) most-favored-nation status to EQT Energy which will enable EQT Energy to match the decreased negotiated rate if Equitrans contracts for a lower negotiated rate with another shipper, and (3) stricter credit-worthiness requirements for EQT Energy.

³ 18 C.F.R. § 154.210 (2016).

⁴ *Id.* § 385.214.

⁵ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,002 (2001) (*Columbia*).

⁶ *Columbia*, 97 FERC, at 62,003-04 (2001); *see also Equitrans, L.P.*, 130 FERC ¶ 61,024, at P 5 (2010).

6. As noted, the first of the three non-conforming provisions in the Agreement grant EQT Energy the unqualified right to be a Foundation Shipper, with the respective benefits thereof, in future expansions of the Equitrans system. Section 6 of Exhibit A to the Agreement states:

Should Equitrans elect in the future to expand the Ohio Valley Connector or a lateral directly connected to the Ohio Valley Connector on a forward haul basis, Customer shall have a right to participate in that project (“OVC Expansion Project”). Equitrans shall notify Customer prior to holding an Open Season for an OVC Expansion Project **and, in consideration of Customer committing to be a Foundation Shipper on the Ohio Valley Connector Project, Customer shall have the right to participate in any OVC Expansion Project as a Foundation Shipper and to receive Foundation Shipper benefits, regardless the level of transportation service capacity Customer chooses in that project.**

7. Equitrans contends that this provision will have no adverse effects on any of Equitrans customers and will not result in any shipper receiving a different quality of service. Contrary to Equitrans’ contentions, this non-conforming provision grants EQT Energy benefits that confer with the designation of a Foundation Shipper, regardless of the level of transportation service capacity EQT Energy chooses in a future system expansion. Accordingly, we reject this provision. It not only affects customers on the current Equitrans system, but also may affect customers on any future expansions of Equitrans. As written, EQT Energy would be granted all special rights granted to a Foundation Shipper, without being required to meet the contract level necessary for a prospective shipper to be recognized as a Foundation Shipper. Equitrans is requesting the Commission allow a non-conforming provision that survives the execution of the service agreement. We find this provision to be unduly discriminatory to future shippers, and condition our acceptance of the remainder of the agreement upon Equitrans removing the above-quoted bold text.

8. The second non-conforming provision is a most-favored-nation clause. Equitrans states that this non-conforming provision gives EQT Energy the right to a lower rate under its service agreement if, during the first five years of the service agreement, Equitrans grants a third party a lower negotiated or discounted rate, that uses similar, defined receipt and delivery points for a lesser or equal Maximum Daily Quantity. Equitrans contends that although no comparable provision exists in its form of service agreement, the provision should be accepted, however, because Equitrans is authorized to negotiate rates, and the most-favored-nation clause is a form of negotiated price.

9. The Commission accepts most-favored-nation clauses if, and only if, the clause relates only to rates and not to terms and conditions.⁷ We accept Equitrans' most-favored-nation clause as it only applies to rates, and not quality of service.

10. The third non-conforming element of the Agreement is the creditworthiness provisions of section 6, Exhibit A to the service agreement, which incorporates by reference the credit agreement dated July 23, 2016. Equitrans filed the credit agreement as Appendix B in the instant filing. Equitrans states that the non-conforming provisions set forth in the service agreement were necessary to provide Equitrans with assurance sufficient to justify its undertaking the financial risk of the proposed Project facilities.

11. The *Policy Statement on Creditworthiness* permits pipelines to include different credit requirements in the service agreements of the initial shippers on a project.⁸ The non-conforming creditworthiness provisions at issue here fall within the scope of the *Policy Statement on Creditworthiness*. As such, we accept the creditworthiness provisions as not resulting in undue discrimination to any other shippers.

12. For the reasons discussed above, we accept the Agreement for filing, subject to Equitrans deleting the preferential and unduly discriminatory Foundation Shipper language, and re-filing the Agreement within 30 days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁷ *E.g.*, *Gulfstream Natural Gas System, L.L.C.*, 100 FERC ¶ 61,036, *order on reh'g*, 101 FERC ¶ 61,368, at P 22 (2002); *Northern Natural Gas Co.*, 110 FERC ¶ 61,321, *order on reh'g*, 111 FERC ¶ 61,379, at P 46 (2005).

⁸ *Policy Statement on Creditworthiness for Interstate Natural Gas Pipelines and Order Withdrawing Rulemaking Proceeding*, 111 FERC ¶ 61,412 (2005) (*Policy Statement on Creditworthiness*).