

133 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

October 21, 2010

In Reply Refer To:
Equitrans, L.P.
Docket No. RP10-1319-000

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

Attention: Thomas Yeh, Manager, Rates and Commercial Analysis

Reference: Non-Conforming Service Agreement with PDC Mountaineer, LLC

Dear Mr. Yeh:

1. On September 21, 2010, Equitrans, L.P. (Equitrans) filed revised and new tariff records¹ to report a non-conforming service agreement with PDC Mountaineer, LLC (PDC). Equitrans' service agreement with PDC (Contract Number EQTR10297-510) is for firm transportation under Equitrans' Rate Schedule FTS with a primary term through November 30, 2021. The service agreement is a negotiated rate agreement with a monthly reservation rate of \$9.125 per MDQ (Maximum Daily Quantity), a commodity rate of \$0.03 per Dth, and an Authorized Overrun rate of \$0.33 per Dth. The customer will also pay the applicable ACA surcharge and an estimated 2.0 percent retainage rate trued-up for actual fuel use on a quarterly basis. On September 29, 2010, Equitrans filed a response to the Commission's September 27, 2010 data request.

2. Equitrans states that the service agreement contains a non-conforming provision that provides for the ramp-up of the MDQ. Specifically, the agreement establishes an MDQ of 7,000 Dth per day for service starting on October 1, 2010 and provides that the MDQ will increase by pre-determined amounts at specified

¹ See Appendix

dates over the next 14 months until it reaches its full contract amount of 26,000 Dth per day. Equitrans asserts that this MDQ ramp-up is permissible because in these circumstances, the provision does not present a risk of undue discrimination. Equitrans argues that the ramp up provision is designed to accommodate the needs of a producer that is ramping up production and that it will occur over a short period of time to be completed by December 2011. Equitrans argues that this provision is consistent with other short term ramp up provisions associated with the construction of new facilities that were accepted by the Commission. Equitrans also sets forth another potential deviation contained in Exhibit C to the PDC service agreement related to the negotiated rate agreement.

3. Equitrans states that it deleted a clarification sentence in paragraph 1 of Optional Exhibit C to the pro forma service agreement. The sentence states “[e]xcept as expressly stated herein Equitrans’ applicable maximum rates and charges set forth in the Statement of Rates of its Tariff continue to apply.” Equitrans states that in order to avoid creating any ambiguity with the negotiated rates established with PDC in Exhibit C the parties deleted this language. Equitrans also requests a waiver of section 154.207 of the Commission’s regulations (18 C.F.R. § 154.207 (2010)) to permit the service agreement with PDC to become effective on October 1, 2010, on less than 30 days notice.

4. The instant filing was noticed with interventions and protests due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2010)). Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2010)) all timely filed notices of intervention and motions to intervene and any motions to intervene out of time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or comments were filed.

5. If a pipeline and a shipper enter into a contract that materially deviates from the pipeline’s form of service agreement, the Commission’s regulations require the pipeline to file the contract containing the material deviations with the Commission.² In *Columbia Gas Transmission Corporation*,³ the Commission

² 18 C.F.R. § 154.1(d) (2010).

³ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 (2001).

clarified that a material deviation is any provision in a Transportation Service Agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties.⁴

6. Equitrans' non-conforming agreement with PDC includes a ramp-up provision that increases the contract quantity at specified dates for specified volumes. In its September 29, 2010, response to the Commission's Data Request No. 2, Equitrans states that:

All parties were provided an opportunity to ramp up capacity during the open season as well as during negotiation of final agreements. Included in the project highlights section of the open season posting is the following statement: 'Flexible capacity additions to meet the short and long term market need.' The open season service request form also permits producers to request ramp up capacity through multiple projects.

7. The Commission finds that this ramp-up provision is permissible because the ramp-up option was afforded to all shippers participating in the open season bidding and in subsequent negotiations for the available capacity.⁵ Accordingly, under such circumstances, the Commission finds that the instant provision is permissible because it does not constitute a substantial risk of undue discrimination. Lastly, the Commission finds that the deletion of the clarification sentence in Optional Exhibit C is permissible as it is merely a clarification sentence that does not change the rights of any parties. Therefore, the

⁴ In *Natural Gas Pipeline Negotiated Rate Policies and Practices*, 104 FERC ¶ 61,134 at P 27 (2003), the Commission stated "[s]ince there would appear to be no reason for the parties to use language different from that in the form of service agreement other than to affect the substantive right of the parties, this effectively means that all language that is different from the form of service agreement should be filed with the Commission." *Id.* P 32.

⁵ *Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009).

Commission grants waiver of the 30-day notice requirement and accepts Equitrans' tariff records and service agreement effective October 1, 2010, as filed.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

Appendix

Equitrans, L.P.
Equitrans Tariff
FERC NGA Gas Tariff

Tariff Records Accepted Effective October 1, 2010

Section 1, Table of Contents, 2.0.0
Section 6.42, Non-Conforming Agreements, 1.0.0
Tariff, Original Volume No. 1A, 0.0.0
Section 1, Table of Contents - Volume No. 1A, 0.0.0
Section 2, Non-Conforming Agreements, 0.0.0
Section 3, Negotiated Rate Agreements, 0.0.0
Section 4, Non-Conforming Negotiated Rate Agreements, 0.0.0
Section 4.1, PDC Mountaineer, LLC-EQTR10297-510, 0.0.0