

138 FERC ¶ 61,076
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 1, 2012

In Reply Refer To:
Equitrans, L.P.
Docket No. RP05-164-017

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

Attention: Thomas Yeh
Manager, Rates and Commercial Analysis

Reference: Letter Order on Annual Report on
Gathering and Lost and Unaccounted for Gas

Dear Mr. Yeh:

1. On June 3, 2011, Equitrans, L.P. (Equitrans) filed its annual report on gathering fuel and lost and unaccounted for gas (LAUF) to comply with the Commission's order issued on April 5, 2006 (April 5, 2006 Order) in Docket No. RP05-164-005, *et al.*¹ The April 5, 2006 Order approved an uncontested offer of settlement (Settlement) made by Equitrans on December 9, 2005, which became effective June 1, 2006. Article IV, section 4.1, of the Settlement provided for Equitrans' gathering retainage percentage for the recovery of fuel use and LAUF to be reduced each year from 11.5 percent as of June 1, 2006 to 9.5 percent for the June 1, 2010 through June 1, 2011 period. Thereafter, the retainage percentage remains fixed, unless and until Equitrans proposes a change pursuant to NGA section 4 or the Commission modifies it pursuant to NGA section 5. Article IV, section 4.4(a) of the Settlement states that Equitrans must file annual reports with the Commission updating its fuel use and LAUF, including progress on the

¹ *Equitrans, L.P.*, 115 FERC ¶ 61,007 (2006).

reduction of the LAUF incurred on its gathering systems. As discussed below, the Commission accepts Equitrans' annual report on LAUF for filing in satisfactory compliance with the April 5, 2006 Order.

2. Public notice of the filing was issued on June 15, 2011, with interventions and protests due by June 20, 2011. Pursuant to Rule 214,² all timely filed 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. Independent Oil & Gas Association of West Virginia, Inc. (IOGA) filed adverse comments. On July 7, 2011, Equitrans filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to protests or answers unless otherwise permitted by the decisional authority.³ We will accept Equitrans' answer because it provides information that will assist us in our decision-making process.

3. IOGA states that it does not seek a full section 5 investigation of Equitrans' LAUF nor does it seek to encourage Equitrans to file a section 4 rate increase. However, IOGA asserts that Equitrans' annual report shows that its actual fuel and LAUF has risen to 13.18 percent during the 12 months ended March 31, 2011, from 10.86 percent during the previous year. IOGA states that, because Equitrans has failed to explain the basis for its gathering LAUF over the five-year period since the Settlement, it is critical for the Commission to seek additional information regarding the ongoing losses. IOGA urges the Commission to require Equitrans to file additional information regarding the ongoing losses.

4. In its answer, Equitrans states that IOGA's request for the Commission to impose additional LAUF reporting requirements is inconsistent with the terms of the Commission-approved, uncontested Settlement and should be rejected. Equitrans points out that its June 3, 2011 Filing did not propose to increase its currently effective 9.5 percent retainage percentage for gathering service to recover increased fuel and LAUF costs. Equitrans explains that the purpose of the June 3, 2011 Filing was solely to comply with section 4.4(a) of the Settlement, which required Equitrans "to file annual reports with the Commission updating its fuel use and LAUF, including progress on the reduction of its LAUF experience on its gathering systems." Equitrans points out that IOGA does not contest that Equitrans filed all of the required annual reports and provided all of the information required by the Settlement. Further, Equitrans states that IOGA

² 18 C.F.R. § 385.214 (2011).

³ 18 C.F.R. § 385.213(a)(2) (2011).

does not claim that Equitrans violated any provision of the Settlement. Instead, Equitrans asserts that IOGA claims that Equitrans has not adequately explained the basis for its reported gathering LAUF over the five-year period since the Settlement, and requests that the Commission seek additional information and verification regarding LAUF.

5. We find that IOGA is, in effect, asking the Commission to modify the Settlement by adding new reporting requirements beyond those freely negotiated between Equitrans and its customers (including IOGA) and approved by the Commission. As such, the relief IOGA requests is at odds with the Commission's long standing policy to encourage settlement – a policy which the Commission has upheld by enforcing the terms of settlement agreements and not expanding such terms of the settlement.⁴

6. Further, we find that the relief IOGA seeks is also at odds with D.C. Circuit precedent prohibiting the Commission from requiring a pipeline to supplement materials filed pursuant to a settlement agreement.⁵ In *Dominion Transmission Inc. v. FERC* (DTI), the D.C. Circuit vacated a Commission order granting a customer's request that DTI supplement its annual fuel accounting report with additional information.⁶ Therefore, we find that, in accordance with Article IV, section 4.4(a) of the Settlement, Equitrans has filed its annual report on gathering and LAUF and has not proposed a rate change.

7. Accordingly, IOGA's requested relief would violate the terms of the Settlement and more specifically would be at odds with precedent prohibiting the Commission from requiring a pipeline to supplement materials filed pursuant to a settlement agreement.⁷ In addition, since neither Equitrans nor IOGA is seeking a change in the currently effective retainage percentage for gathering service, there appears little purpose to further investigating Equitrans' fuel use and LAUF at this time. Thus, the Commission accepts

⁴ See *Sunoco, Inc. v. Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,400 P 34 (2005) (citing *Brooklyn Union Gas Co. v. FERC*, 409 F.3d 404, 407 (D.C. Cir. 2005) (for the proposition that courts support “the Commission's goal of encouraging settlements by enforcing the sanctity of such agreements on the parties” and recognize the principle that “parties might hesitate to enter into rate settlement if a subject of settling parties could later pull the rug out from under them.”))

⁵ *Dominion Transmission Inc. v. FERC*, 533 F.3d 845, 853-56 (2008).

⁶ *Id.*

⁷ *Id.*

the report for filing. Consequently, we reject IOGA's request for additional information, without prejudice to IOGA's rights to file under section 5 of the NGA, if it so chooses.

By direction of the Commission.

Kimberly D. Bose,
Secretary.