

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Equitrans, L.P.

Docket No. RP04-97-000

Docket No. RP04-203-000

ORDER ON TECHNICAL CONFERENCE AND MOTION TO CONSOLIDATE

(Issued June 30, 2004)

1. On December 31, 2003, the Commission addressed a Natural Gas Act (NGA) general section 4<sup>1</sup> rate filing by Equitrans, L.P. (Equitrans) in Docket No. RP04-97-000 (December 31, 2003 Order).<sup>2</sup> That order rejected the rate-related tariff sheets and accepted and suspended tariff sheets related to terms and conditions of service to be effective June 1, 2004<sup>3</sup> subject to conditions and to the outcome of a technical conference established by that order. The technical conference was held on February 2, 2004.

2. The instant order addresses the comments on the technical conference proceeding, accepts certain tariff sheets, subject to conditions, rejects one sheet, and sets certain issues from Docket No. RP04-97-000 for hearing in the ongoing hearing proceeding on Docket No. RP04-203-000.

**I. Background**

3. Equitrans' last NGA general section 4 rate case underlying the currently effective base rates ended in a settlement which was approved by the Commission on April 29, 1999 (the 1999 Settlement).<sup>4</sup> The Settlement required Equitrans to file a subsequent NGA section 4 general rate application no later than August 1, 2003. On July 3, 2003,

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<sup>1</sup> 15 U.S.C. §717 (c) (2003).

<sup>2</sup> Equitrans, L.P., 105 FERC ¶ 61,407 (2003), *reh'g pending*.

<sup>3</sup> On February 27, 2004, Equitrans filed a letter with the Commission stating it agreed that it would defer moving the suspended tariff sheets into effect until at least 30 days following the suspension period in this case, *i.e.*, until, at least, July 1, 2004.

<sup>4</sup> Equitrans, L.P., 87 FERC ¶ 61,116 (1999).

Equitrans filed a request to extend the date by which it was required to submit a general rate case under the 1999 Settlement to December 1, 2003 to fully accommodate the acquisition of new facilities. This request was granted on July 29, 2003.

4. On May 20, 2002, Equitrans and Carnegie Interstate Pipeline Company (CIPCO) filed a joint application in Docket No. CP02-233-000 seeking Commission authorization for Equitrans to acquire and operate CIPCO's pipeline services and facilities. Under the proposal, the former CIPCO facilities would be treated as a separate rate zone to be known as the "CIPCO District." The Commission granted Equitrans certificate authority for these facilities on July 1, 2003.<sup>5</sup>

5. On December 1, 2003, Equitrans filed a general NGA section 4 rate case in Docket No. RP04-97-000 to comply with the terms of the 1999 Settlement. Equitrans also included proposed changes to the terms and conditions of its tariff as well as proposed tariff revisions in compliance with Order No. 637 capacity segmentation requirements as directed by the Commission in an order issued May 21, 2002,<sup>6</sup> and tariff revisions to reflect the acquisition of CIPCO. On December 31, 2003, the Commission rejected Equitrans' proposed rate increase and associated tariff sheets, but accepted and suspended until June 1, 2004 Equitrans' proposed changes to its general terms and conditions and related tariff sheets.<sup>7</sup> Further, the Commission accepted the tariff sheets reflecting the acquisition of CIPCO effective January 1, 2004. Finally, the December 31, 2003 Order set issues regarding Equitrans' proposed gas quality standards, new storage ratchets, segmentation proposal and security cost tracker for technical conference. This technical conference was held on February 2, 2004.<sup>8</sup> On May 18, 2004, Equitrans filed comments on the technical conference proceeding (Equitrans' Comments) reflecting a consensus of most of the parties on revised terms and conditions.

6. On March 1, 2004, Equitrans filed another general rate case in Docket No. RP04-203-000 which proposed increased rates for its existing services as well as rates and terms of service for gathering service. The Commission accepted and suspended these proposed tariff sheets, for five months, to be effective September 1, 2004, or earlier date set by subsequent Commission order, subject to refund, and set the issues raised by the filing for hearing.

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<sup>5</sup> Equitrans, L.P., 104 FERC ¶ 61,008 (2003), *reh'g denied* 106 FERC ¶ 61,013 (2004).

<sup>6</sup> Equitrans, L.P., 99 FERC ¶ 61,210 at P 30 (2002).

<sup>7</sup> Equitrans, L.P., 105 FERC ¶ 61,407 (2003).

<sup>8</sup> Equitrans, L.P., 106 FERC ¶ 61,340 (2004).

## II. Comments on Issues Set for Technical Conference

7. The Commission's December 31, 2003 Order instructed Staff to hold a technical conference wherein Equitrans' proposed gas quality standards, new storage ratchets, segmentation proposal and security cost tracker could be discussed.<sup>9</sup> The technical conference was held on February 2, 2004. As a result of the technical conference, Equitrans and interested parties held a series of additional meetings, culminating in a May 18, 2004 filing by Equitrans. In its Comments, Equitrans reported that it had reached consensus with all parties except for Columbia Gas of Pennsylvania (Columbia PA) on the issues that the Commission reserved for the technical conference. The results of the consensus are reported in Equitrans' comments, which include *pro forma* tariff sheets showing the revisions to Equitrans' original proposal.

8. Columbia PA filed a procedural motion to reject Equitrans' Comments and filed comments in opposition to certain elements of the consensus. Equitrans and the KeySpan Delivery Companies (KeySpan) filed answers in opposition to Columbia PA's motion.

9. As indicated in Equitrans' Comments, the elements of the consensus are as follows:

(a) Equitrans agrees to make the following tariff changes to the suspended tariff sheets within 15 days of the final Commission order, no longer subject to rehearing or appeal, on the consensus proposal. The refund condition for sheets moved into effect should be removed. If the Commission makes any changes, Equitrans and the consenting parties reserve the right to withdraw its support:

(i) *Segmentation*: Equitrans' suspended proposal will be modified to include an additional segmentation point, commodity charges will be collected only on the receipt segment; and the Market Aggregation Point will not be a physical delivery point, but a nomination point.

(ii) *Gas Quality*: Equitrans will clarify the specifications for hydrogen sulphide, total sulfur and testing for bacteria, change its minimum heating value to a dry basis, and withdraw its proposal with regard to gasoline content and customer installed corrosion analysis equipment.

(iii) *Security Cost Tracker*: Equitrans will clarify that tracked security costs will be limited to certain extraordinary costs contemplated under the Commission's policy statement in Docket No. PL01-6-000,<sup>10</sup> and will not be for costs necessitated by the Pipeline Safety Improvement Act of 2002. These costs may be challenged in Equitrans' annual cost tracker filing. The Security Cost

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<sup>9</sup> 105 FERC ¶ 61,407 at P 19.

<sup>10</sup> 96 FERC ¶ 61,299 (2001).

Tracker surcharge will apply to gas transported under Rate Schedule NOFT only once, and the charge will apply only once for gas that is transported across rate zones as part of a single transaction. Equitrans agrees that it will roll security costs into base rates in its next general NGA section 4 rate proceeding or as part of a NGA section 5 base case investigation. Equitrans further agreed to a sunset provision for the security cost tracker of December 31, 2007.

(iv) *Rate Schedule SS-3*: Equitrans agrees to withdraw suspended First Revised Sheet No. 443.

(v) *Other Administrative Changes*: Equitrans proposes to withdraw other suspended tariff sheets to clean up tariff pagination.

(b) Storage ratchets:

(i) *Consolidation*: Equitrans' proposed storage ratchets for open access storage services should be consolidated with the ongoing hearing proceeding in Docket No. RP04-203-000.

(ii) *Effectiveness*: Equitrans proposes that the storage ratchet tariff sheets go into effect July 1, 2004, subject to refund and subject to the outcome of the proceedings in Docket No. RP04-203-000.

### III. Procedural Issues

10. Columbia PA, in its motion to reject, argues that the proposal in Equitrans' Comments is really closer to a settlement. It argues that the Commission's rules provide for the parties to follow certain procedures and there are certain policies in place applicable to contested settlements. Columbia PA believes that Equitrans is attempting to short-circuit these required procedural protections. Further, Columbia PA argues that Equitrans' proposals amount to an amendment of the tariff filing. Besides failing to satisfy the statutory requirement for notice and various filing requirements, Columbia PA argues that amendments of suspended tariffs violate rule 215 of the Commission's Rules of Practice and Procedure. 18 C.F.R. section 385.215(a)(2)(2003).

11. In its answer, Equitrans claims that it is not attempting to truncate Columbia PA's procedural rights.<sup>11</sup> It states that the use of a less formal comment process is not uncommon in the context of technical conference proceedings and that it was used for the benefit of all participants, not just Equitrans. In addition, KeySpan states that there is no rule, policy or practice that would prevent parties from adjusting their positions as a

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<sup>11</sup> In addition, Equitrans claims that at an April 27, 2004 informal conference between the parties, it asked that the parties advise whether or not they would be comfortable using an informal process or would rather file a formal settlement. It states that no party present objected to the informal process. However, Columbia PA was not present at this April 27 conference.

result of technical conference discussions and providing the Commission with information concerning any changes in their comments.

12. In addition, both Equitrans and KeySpan state that Columbia PA's rights have not suffered as a result of the informal process. Columbia PA has had the opportunity, through its motion to reject the Comments, to make its objections known. Equitrans also claims that all participants, including Columbia PA, were given full notice of the proposed consensus through numerous circulated drafts of the proposal. Both Equitrans and KeySpan argue that the relief requested by Columbia PA would require additional procedures that have not been established in the current proceeding.

13. Equitrans also states that rule 215(a)(2) is not applicable. Equitrans did not propose to implement an amendment of any tariff or rate filing within the meaning of this rule. It contends that for any proposed tariff or rate amendment to be effective it must conform to the specific requirements of section 4 of the NGA and the Commission's regulations. Equitrans states that if accepted, the proposed changes would then be filed as a proposed amendment to Equitrans' tariff subject to all the requirements of NGA section 4 and the Commission's regulations.

14. Equitrans also argues that Columbia PA is seeking to have the consensus rejected without any consideration of the merits of its objections to the consensus.

15. The Commission will not reject Equitrans' Comments. Technical conferences typically result in additional filings by parties or applicants that supplement the record or refine proposals based on a better understanding of and agreements on the issues. The Commission will not reject such proposals simply because these are presented in the form of comments as opposed to a formal settlement. Equitrans does not contend that it achieved settlement, and acknowledges Columbia PA's opposition. The fact that one party to a proceeding may not agree to what other parties agree to does not foreclose the parties from informing the Commission of their agreement. In addition, Columbia PA has been given an adequate opportunity, through its motion to reject the Comments and its comments in opposition to the Comments, to comment on the consensus report, the same as if the consensus proposal was filed as a formal settlement.

16. Columbia PA also argues that Equitrans' report equates to an amendment of its tariff application, and is, thereby, in violation of rule 215(a)(2) of the Commission's Rules of Practice and Procedure.<sup>12</sup> Equitrans is not in violation of rule 215(a)(2). This section of the rule applies to actual tariff filings. The *pro forma* tariff sheets appended to the Comments were not an actual tariff filing and contain no tariff sheets for the Commission to act upon.

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<sup>12</sup> 11 C.F.R. § 385.215(a)(2)(2003).

#### **IV. Substantive Issues**

17. Columbia PA also filed objections to the substance of certain of the tariff revisions proposals in Equitrans' Comments. Equitrans claims that Columbia PA's objections do not warrant Commission denial of the consensus proposal. As to the storage ratchet provision, Equitrans states that Columbia PA will not be harmed as a result of a brief deferral of this issue for resolution in the ongoing hearing in Docket No. RP04-203-000. In addition, Equitrans argues that Columbia PA's objections to the security cost tracker and segmentation proposals should be disregarded because they are not key issues and their objections are groundless.

##### **a. Storage Ratchets**

18. Columbia PA argues that it would be adversely affected by the Equitrans consensus proposal. Columbia PA opposes the consolidation of the ratchet provisions with the ongoing hearing in Docket No. RP04-203-000 and continues to urge rejection of Equitrans' ratchet proposal. Columbia PA contends that the proposal results in essentially identical services (open access storage and NGA section 7 certificated storage) subject to different service restrictions. Columbia PA believes the traditionally certificated services will have less service restrictions, which requires Equitrans to impose harsher restrictions on the open access storage services received by Columbia PA to maintain firm services for all. Columbia PA argues that, while it is willing to litigate this proposal, it still requests rejection of the tariff sheets because a refund condition is not enough protection for the financial risk it faces from impaired storage service.

19. Equitrans claims in its answer that Columbia PA objects to the storage ratchets to existing Part 284 storage services, but not as to existing Part 157 storage services. Equitrans states that it cannot unilaterally impose storage ratchets on existing Part 157 storage customers. It states that the Commission should approve the consensus proposal and assert that Columbia PA is free to raise its storage ratchet objections in Docket No. RP04-203-000. In addition, Equitrans claims that there is not currently an evidentiary hearing established in the instant docket and that Columbia PA has failed to explain how it would not be able to obtain the relief it seeks in Docket No. RP04-203-000.

20. The Commission finds that disputed issues of fact exist as to the level and scope of the storage ratchets, and these issues should be resolved in a hearing proceeding. Accordingly, the Commission will set the storage ratchet issue for hearing in the ongoing proceeding in Docket No. RP04-203-000. Equitrans has the right to move the suspended tariff sheets into effect at the end of the suspension period unless the Commission first rejects or modifies the sheets.

**b. Withdrawal of First Revised Sheet No. 443**

21. One of the consensus proposals in the Comments is that Equitrans will propose to withdraw First Revised Sheet No. 443, which reflects proposed revisions to the form of service agreement for service under Rate Schedule SS-3 and STS-1. Columbia PA argues that Equitrans has not shown good cause to withdraw a suspended tariff sheet as required by section 154.205(a) of the Commission's regulations.<sup>13</sup> Equitrans, in its answer, claims that its proposal to withdraw First Revised Sheet No. 443 pertains to Part 157 storage services and has no impact on Columbia PA. In addition, it states that section 154.205(a) does not specify that a pipeline seeking to withdraw a tariff sheet must use a prescribed form of withdrawal and that good cause exists for withdrawal of this sheet because of the consensus participants' willingness to resolve their differences amicably.

22. Showing that a majority of the parties to a proceeding agree to the withdrawal is normally a sufficient showing of good cause to permit the withdrawal of a tariff proposal if the pipeline originally filed the proposal pursuant to NGA section 4. Moreover, if an applicant no longer wishes to go forward with a tariff proposal, the Commission would rather know sooner than later. Such a notice has the additional benefit of removing moot tariff sheets from the tariff data base. Further, a withdrawal of a NGA section 4 proposal does not limit the ability of parties to seek tariff changes pursuant to NGA section 5. If Equitrans files a notice to withdraw First Revised Sheet No. 443, parties may protest this filing pursuant to Rule 216 of the Commission's Rules of Practice and Procedure. 18 C.F.R. section 385.216 (2003).

**c. Security Cost Tracker**

23. Columbia PA objects to the modifications to Equitrans' suspended Security Cost Tracker proposed in its Comments. Columbia PA argues that the modifications do not go far enough to limit and define the security costs that may be included in the tracker. Columbia PA argues that the Commission's policy statement did not suggest the use of a tracker mechanism, and the policy did not address security costs required by "any other federal, state or local mandate[s]."<sup>14</sup> Columbia PA also contends that Equitrans could include in the tracker costs incurred in the ordinary course of business. These costs, Columbia PA claims, should be recovered through a normal NGA section 4 filing. Columbia PA claims that the Commission's security cost recovery policy did not provide for depreciation-related costs or embedded return levels and related taxes. And,

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<sup>13</sup> First Revised Sheet No. 443 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

<sup>14</sup> Citing proposed section 37.5 of the General Terms and Conditions.

Columbia PA continues, Equitrans' proposed rate design and cost allocation is inconsistent with those proposed in its general rate case.

24. In its answer, Equitrans states that, although use of a Security Cost Tracker was not addressed by Commission policy, it was not prohibited and Equitrans is not the first pipeline to propose a tariff provision to address such costs. It also claims that Columbia PA would be given full rights to challenge the included costs in the annual filings to be made.

25. The Commission appreciates the consensus proposal to limit the scope of Equitrans' original Security Cost Tracker proposal. Nonetheless, both Equitrans' suspended tariff proposal and the revised consensus proposal in its Comments raise significant cost, rate design and allocation issues that are in dispute and that affect all rates on Equitrans' system and would benefit from a formal hearing. Therefore, the Commission sets these issues for hearing in Docket No. RP04-203-000.<sup>15</sup>

**d. Compliance with Order No. 637 – Segmentation**

26. Order No. 637 required that pipelines permit Part 284 firm service customers to segment and release their capacity on their system. In Docket No. RP00-462, the Commission, in recognition of the then pending acquisition of CIPCO, granted Equitrans an extension of time to file to implement capacity segmentation until 60 days prior to its integration with CIPCO.<sup>16</sup> In the instant Docket No. RP04-97-000, Equitrans filed tariff sheets implementing the acquisition of CIPCO, which became effective January 1, 2004.<sup>17</sup> Equitrans also filed its compliance segmentation proposal in the same proceeding.

27. The proposed section 36 to the General Terms and Conditions of its tariff, entitled "Market Segmentation," provides that a shipper may segment its capacity into two segments: Receipt Segment and Delivery Segment. As originally proposed, a Receipt Segment would be from the point where gas is received into the system to a "Market Aggregation Point," which the tariff would define as not a physical point, *i.e.*, a virtual point. The Delivery Segment would be from the virtual "Market Aggregation Point" to the shipper's designated delivery point. Segmentation would be limited to contiguous sections of the system where gas can physically flow without conditions that may

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<sup>15</sup> See, e.g., Florida Gas Transmission Co., 105 FERC ¶ 61,171 at P 42-47 (2004).

<sup>16</sup> Equitrans, L.P., 99 FERC ¶ 61,210 at P 30 (2002).

<sup>17</sup> Equitrans, L.P., 105 FERC ¶ 61,407 at P 20 (2003).

threaten the operational integrity of the system. Each segment would be limited to the shipper's contractual Maximum Daily Quantity (MDQ).

28. Equitrans submitted testimony of Andrew L. Murphy clarifying that, whereas each segment could be sold individually, the owner of either segment does not have the right to request changing its point from the virtual aggregation point to another point on Equitrans' system, or to resegment their capacity. The consensus proposal provides that Receipt and Delivery Segments may also be to or from storage. The Commission directed that the segmentation proposal be further discussed at the technical conference.<sup>18</sup>

29. The Commission finds that, although an effort in the right direction, Equitrans has not complied with the requirements of Order No. 637 and the Commission's May 21, 2002 order in Docket No. RP00-462 to provide capacity segmentation on its system. Equitrans' proposal does not satisfy Order No. 637's requirement that the pipeline permit a firm shipper to segment its "capacity into separate parts for its own use or for the purpose of releasing that capacity to replacement shippers to the extent such segmentation is operationally feasible."<sup>19</sup> There are a number of features and/or omissions to Equitrans' proposal that do not comply with Commission policy. For example, under the Commission's policy, shippers must be able to divide their capacity into whatever physical segments are operationally feasible. As modified by the inclusion of storage points in the consensus proposal, the only physical segments permitted would have to be to or from storage. All other segments would be to or from the virtual "Market Aggregation Point." It failed to explain how its proposal complies with the existing requirement for flexible receipt and delivery point authority.<sup>20</sup> Further, Equitrans' proposal, even as modified in the consensus proposal, does not allow a Part 284 firm service customer to segment its capacity into more than two segments. Under Commission policy, shippers must be permitted to segment their capacity in as many segments as they choose, within the operational limitations of the system. Finally, Equitrans has not submitted evidence that these restrictions are operationally necessary.

30. Because the filing does not comply with the capacity segmentation requirement of Order No. 637 and the Commission's May 21, 2002 Order on Equitrans' original Order No. 637 compliance filing in Docket No. RP00-462-000, the Commission rejects the proposed tariff revision and directs Equitrans to file, pursuant to section 5 of the NGA, a *pro forma* segmentation proposal in compliance with Order No. 637 and the Commission's May 21, 2002 Order in Docket No. RP00-462. Equitrans's proposal

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<sup>18</sup> 105 FERC ¶ 61,407 at P 19.

<sup>19</sup> 18 C.F.R. § 284.7(d) (2003).

<sup>20</sup> 18 C.F.R. § 284.221(g) and (h) (2003).

should reflect the foregoing concerns and, in addition, should examine the approved segmentation plans of other pipelines that the Commission pointed out in the May 21, 2002 Order.<sup>21</sup> In preparing its segmentation and capacity release compliance proposal, Equitrans may reflect the operational limitations it claims with regard to interruptible capacity.

31. Equitrans must submit a fully supported segmentation and capacity release compliance proposal reflected on *pro forma* tariff sheets within 30 days of the date of this order. The Commission will create a new docket number for this filing.

**e. Gas Quality Standards**

32. The consensus proposal contained in the Comments identifies several parts of Equitrans' original proposal to modify its gas quality standards as unclear and proposes certain revisions, including a reduction in the scope of the proposed changes. Columbia PA does not note that it has any objections to the proposal on gas quality standards as agreed to by the other parties and included in the *pro forma* tariff sheets appended to Equitrans' Comments. The Comments therefore represent a consensus on this issue. The Commission will accept the consensus gas quality standards as proposed. Equitrans is directed to file revised tariff sheets consistent with the consensus within fifteen days of the date of this order.

**V. Motion to Consolidate**

33. On April 8, 2004, Equitable Gas Company (Equitable) filed a motion to consolidate the proceeding in Docket No. RP04-97-000 with the Docket No. RP04-203-000 proceeding. Equitable argues that the issues overlap, are consistent with the original structure of Equitrans filing in Docket No. RP04-97-000, and that consolidation would be administratively efficient. Columbia Gas and KeySpan oppose Equitable's motion. They argue that the tariff issues should be resolved during the suspension period, as the refund condition does not provide adequate protection in the event the proposed tariff changes are found not to be just and reasonable. They assert that consolidation would only delay resolution of the tariff issues.

34. The Commission denies the motion to consolidate the proceedings. However, as described above, the Commission is setting certain issues that have arisen in Docket No. RP04-97-000 for hearing in the ongoing Docket No. RP04-203 proceeding.

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<sup>21</sup> Equitrans, L.P., 99 FERC ¶ 61,210 at P 30 (2002).

The Commission orders:

(A) Issues raised in Docket No. RP04-97-000 regarding Equitrans' proposed storage ratchets and security cost tracker are set for hearing in the ongoing hearing in Docket No. RP04-203-000.

(B) Equitrans' proposed gas quality standards, as modified in Equitrans' Comments, are approved subject to the condition that Equitrans must file tariff revisions consistent with the consensus on the gas quality provisions within 15 days of the date of this order, to be effective July 1, 2004, upon motion by Equitrans.

(C) First Revised Sheet No. 310, reflecting Equitrans' proposed "Market Segmentation" provision (section 36), is rejected. Equitrans is directed to file *pro forma* tariff sheets to implement firm capacity segmentation and capacity release consistent with the requirements of Order No. 637 within 30 days of the date of this order in a docket to be established.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.