

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. CP04-76-001

ORDER DENYING REHEARING AND CLARIFYING ORDER

(Issued April 19, 2005)

1. On November 23, 2004, the Commission issued an order in this proceeding finding that various facilities owned and operated by Equitrans, L.P. (Equitrans) in Pennsylvania and West Virginia perform a gathering function.<sup>1</sup> On December 23, 2004, the Independent Oil and Gas Association of West Virginia (IOGA) filed a request for rehearing and/or clarification of the November 23, 2004 Order. The Commission is denying the request for rehearing but is clarifying the order. The denial of rehearing is in the public interest because it confirms Equitrans' proper realignment of its facilities and their functions under the Natural Gas Act (NGA).

**Background**

2. Equitrans is a limited partnership organized and existing under the laws of Pennsylvania and authorized to do business in that state and in West Virginia. In connection with the restructuring of its system pursuant to Order No. 636, Equitrans ceased to be a merchant of gas and began the process of unbundling its rates for gathering service from its rates for interstate transportation. In 1999, Equitable Resources, Inc., a limited partner of Equitrans that owns a 99 percent interest in the limited partnership, acquired by merger the assets of Carnegie Interstate Pipeline Company (CIPCO), including some of the facilities which are the subject of this

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<sup>1</sup> 109 FERC ¶ 61,209 (2004).

proceeding.<sup>2</sup> At about the same time it acquired the CIPCO facilities, Equitrans was authorized by the Commission to abandon five gathering systems and transfer them to its non-jurisdictional affiliate, Equitable Field Services, L.L.C. (EFS).<sup>3</sup>

3. On March 1, 2004, Equitrans requested permission to refunctionalize the facilities that are at issue in this proceeding. Equitrans also filed a general rate case under section 4 of the Natural Gas Act (NGA) in Docket No. RP04-203-000, in which it proposed, among other things, to revise its transmission and gathering rates to reflect the refunctionalization. In an order issued in that docket on November 23, 2004, contemporaneously with the order in this proceeding, the Commission rejected Equitrans' proposed gathering rates because the refunctionalization of the facilities had not occurred during the suspension period.<sup>4</sup> However, subsequently, Equitrans filed a limited NGA section 4 rate case in Docket No. RP05-105-000 to reflect the permitted refunctionalization of assets, including revised gathering rates.<sup>5</sup> On January 28, 2005, Equitrans proposed in Docket No. RP05-164-000 new gathering rates for services over all of its gathering facilities, including some gathering facilities recently acquired from EFS. By order issued February 28, 2005, the Commission accepted and suspended the proposed new gathering rates, to be effective on August 1, 2005, upon motion by Equitrans, subject to refund and to the outcome of a hearing and technical conference.<sup>6</sup>

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<sup>2</sup> 104 FERC ¶ 61,008 (2003). Effective January 1, 2004, Equitrans integrated the CIPCO assets into its system and operated them under separate CIPCO District rate schedules for transmission and gathering services. These rates were the same as those formerly charged by CIPCO. *See Equitrans, L.P.*, 105 FERC ¶61,407 (2003).

<sup>3</sup> *Equitrans, L.P. and Equitable Field Services, L.L.C.*, 98 FERC ¶ 61, 160 (2002) (*Equitrans/EFS*).

<sup>4</sup> *Equitrans, L.P.*, 109 FERC ¶61,214 (2004).

<sup>5</sup> Equitrans' proposed gathering rates were based on the zone in which the gathering services are performed. In an order issued December 30, 2004, the Commission accepted the gathering rates effective December 1, 2004, subject to refund and subject to the outcome of a hearing established by that order. *Equitrans, L.P.*, 109 FERC ¶ 61,384 (2004); *reh'g pending*. The Commission also consolidated Docket No. RP05-105-000 with the ongoing hearing in Docket No. RP04-203-000.

<sup>6</sup> *Equitrans, L.P.*, 110 FERC ¶ 61,194 (2005); *reh'g pending*. Among other things, the Commission directed the ALJ to examine Equitrans' gathering services to determine which services and facilities may be treated as providing service in connection with

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### **The November 23, 2004 Order**

4. In the November 23, 2004 Order, the Commission granted Equitrans' request to refunctionalize certain facilities from transmission and/or storage to gathering. These facilities included certain facilities owned and operated by Equitrans prior to the merger with CIPCO, as well as certain of the facilities Equitrans acquired from CIPCO. The Commission approved Equitrans' proposal. All of the CIPCO facilities, plus three compressor stations and two pipelines owned by Equitrans prior to the merger, are the subject of IOGA's rehearing request.

5. The November 23, 2004 Order denied IOGA's protest to Equitrans' proposal in which IOGA argued that a properly applied primary function test indicates that the facilities at issue perform a transmission function. IOGA argued that in previous proceedings the subject facilities had been found to perform a transmission function. IOGA also contended that the proposal is not in the public interest because (1) Equitrans would be re-entering the gathering business contrary to the Commission's unbundling policy and (2) Appalachian small producers would have to pay two separate gathering rates since Equitrans' gathering facilities would be downstream of those of EFS, Equitrans' gathering affiliate. The Commission also declined IOGA's request to impose data requests submitted by IOGA on Equitrans. IOGA filed a timely request for rehearing of the November 23, 2004 Order.

### **Discussion**

#### **The Commission Should Have Rejected Equitrans' Application**

6. IOGA asserts that the Commission should have rejected Equitrans' application as patently deficient. IOGA contends that the Commission acted arbitrarily in effectively allowing Equitrans to amend or supplement its application through responses to data requests instead of rejecting the application as incomplete.<sup>7</sup> IOGA states that it was unable to adequately analyze and rebut Equitrans' contentions because the facts were constantly changing. IOGA also argues that the Commission should have submitted IOGA's suggested data requests to Equitrans instead of finding that there was a sufficient record on which to base the jurisdictional determinations.

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jurisdictional transportation, and to make recommendations as to gathering service rates in accordance with those findings.

<sup>7</sup> Citing *Equitrans, L.P.*, 80 FERC ¶ 61,144 (1997) and *National Fuel Gas Supply Corp.*, 69 FERC ¶ 61,253 (1994), *reh'g denied in part*, 71 FERC ¶ 61,029 (1995).

Section 157.8 of the Commission's regulations states that an application may be rejected if it patently fails to comply with applicable statutory requirements or regulations.<sup>8</sup> We do not find that Equitrans' application was so patently incomplete as to warrant rejection. In the proceedings cited by IOGA, the Commission rejected the applications because they failed even to identify the facilities the applicants sought to refunctionalize. This was not the case here.<sup>9</sup>

7. Furthermore, the Commission has the discretion to determine whether any deficiencies in an application can be remedied by requiring the applicant to file additional information.<sup>10</sup> In this case, the Commission issued several data requests to Equitrans to clarify various issues, as the Commission does routinely with respect to applications filed pursuant to Part 157 of the Commission's regulations. We concluded that our data requests solicited all of the additional information necessary to process Equitrans' application and therefore we found no need to propound the questions proposed by IOGA.

**The Commission Misapplied the Primary Function Test to Equitrans' Pre-merger Facilities**

8. Four of the facilities owned by Equitrans prior to the merger with CIPCO for which it sought refunctionalization are located between Equitrans' transmission and storage system and the gathering facilities Equitrans sold to its affiliate EFS. These are the Burnsville Compressor station in Braxton County, West Virginia, two compressor engines (Units 1 and 2) at the downstream Copley Run Compressor station in Lewis County, West Virginia, and Lines H-505 and H-503, two segments of a single line, which flow gas from the Burnsville station to the Copley Run station. Two compressor engines (Units 1 and 2) at a fifth facility, West Union Compressor station in Doddridge County, West Virginia, are also at issue in this request for rehearing. IOGA contends

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<sup>8</sup> 18 C.F.R. § 157.8 (2004).

<sup>9</sup> For example, Equitrans' application contained 15 pages of text and in Exhibit F included 46 pages of testimony by an Equitrans official describing the various facilities Equitrans sought to refunctionalize. Among other things, that testimony contained a chart describing in detail the physical characteristics of the CIPCO pipelines that are the subject of this proceeding.

<sup>10</sup> See, e.g., *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over their procedures).

that the Commission “strain[ed]” to find that the elements of the primary function test supported Equitrans’ contention that these facilities now primarily perform a gathering function.<sup>11</sup>

9. We disagree. As explained in our November 23, 2004 Order, and as acknowledged by IOGA, it is difficult to discern the point of demarcation between gathering and transmission on Appalachian systems; thus, the various factors of the test seem not to apply as neatly here as they might in some other regions of the county. This is in part because production and market areas overlap in the Appalachian region and the size and operating pressures of many facilities are generally smaller and lower. Accordingly, when applied to any specific facility, some factors of the primary function test may point to a gathering function, other factors might suggest a transmission function and some factors may not be indicative either way. In the end, the Commission must balance the results of applying all of the factors.

10. IOGA asserts that the Commission’s conclusion that “on balance,” the physical primary function criteria are consistent with a finding of a gathering function is not supported by a balanced, reasoned analysis of the factors. IOGA maintains that the Commission gave Equitrans’ “self-serving” arguments too much weight.

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<sup>11</sup> The Commission presently relies on the modified primary function test, which includes consideration of several physical and geographic factors, including: (1) the length and diameter of the pipelines; (2) the extension of facilities beyond the central point in the field; (3) the facilities’ geographic configuration; (4) the location of compressors and processing plants; (5) the location of wells along all or part of the facilities; and (6) the operating pressures of pipelines. *See Amerada Hess Corp.*, 52 FERC & 61,268 (1990); and *Farmland Industries, Inc.*, 23 FERC & 61,063 (1983). The Commission cannot use any one factor of the primary function test as a litmus test when determining the jurisdictional status of facilities. The Commission may also consider non-physical factors such as purpose, location, and operation of facilities, the general business activity of the owner of the facilities, and whether the jurisdictional determination is consistent with the NGA and the Natural Gas Policy Act of 1978 (NGPA). 15 U.S.C. § 3301, *et seq.* However, the Commission may only consider these factors as secondary to the analysis of the physical factors. *See Sea Robin Pipeline Company*, 127 F.3d 365 (5<sup>th</sup> Cir. 2003) (*Sea Robin*).

11. IOGA asserts that a reasoned application of the primary function test to Lines H-505 and H-503 would result in a conclusion that it is, at best, a “toss up” as to whether the lines’ length, (a total of 16.4 miles) and size (16 and 20 inches in diameter) reflect a gathering or transmission function. However, IOGA contends, having the opportunity to decide this factor either way, the Commission arbitrarily ignored the advice of IOGA’s expert and ruled in favor of the pipeline. IOGA further states that the Commission placed undeserved emphasis on length and diameter despite recent warnings of the Court of Appeals not to do so.<sup>12</sup>

12. IOGA contends that the Commission’s observation that lines of similar length and diameter have been functionalized as gathering in the Appalachian region is not dispositive because similar lines in the region also have been found to perform a transmission function. Similarly, IOGA notes that lines in Appalachia with the same 40 psig operating pressure as Lines H-505 and H-503 have been found to be transmission lines. IOGA maintains that the Commission ignored the fact that the maximum operating pressure of the lines running between the Burnsville and Copley Run stations is 440/540 psig, which IOGA contends is identical to the maximum operating pressure of lines Equitrans’ functionalizes as transmission.

13. IOGA also takes exception to the Commission’s finding that Lines H-505 and H-503 form a gathering spine because it maintains that the lines are unidirectional and unbroken and there are no wells attached to them. IOGA asserts that the absence of wells is a key factor in the primary function analysis and that the Commission’s dismissal of this fact on the grounds that no one factor of the primary function test is dispositive shows that the Commission gave this factor short shrift. Finally, IOGA argues that the Commission’s contention that these lines are in effect looped by similar gathering lines is erroneous.

14. No one disputes that the primary function test is not a bright line test. Its application frequently requires the exercise of judgment. The Commission did not arbitrarily ignore IOGA’s arguments in favor of Equitrans’ to find that the length and diameter of Lines H-505 and H-503 indicate that they perform a gathering function. The Commission noted that some lines that Equitrans previously transferred to its affiliate, EFS, which were found to perform a gathering function, had similar physical characteristics and were located in the same area as the Burnsville and Copley Compressor stations. The Commission made this comparison between Lines H-503 and H-505 and gathering lines in the general area not to demonstrate that they had to be

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<sup>12</sup> IOGA cites *Sea Robin*, 127 F.3d 365, 370-71 (5<sup>th</sup> Cir. 2003) (quoting *Tenneco Gas v. FERC*, 969 F.2d 1187, 1241 (D.C. Cir. 1992).

found to perform a gathering function, but to show that the length and diameter of the lines, as well as their configuration (*i.e.*, running more or less in a straight line), were not inconsistent with such a gathering function. The Commission did not analyze those lines in isolation. Instead, we determined the function of those lines with reference to other facilities around them and to the Commission's finding that the compressor station upstream of the lines and the two compressor units downstream of the lines perform a gathering function.

15. Regarding the location of processing plants, another factor of the primary function test, IOGA argues that since the processing plant located at the Copley Run station is inactive and gas is processed farther downstream on Dominion's system, neither the Burnsville nor the Copley Run compressor station meets the behind the plant test, and to the extent the Commission relied on this factor, it should not have done so.

16. In the November 23, 2004 Order, the Commission discussed Equitrans' recent reconfiguration of the piping at the Copley Run station to bypass a small extraction processing plant located on the discharge side of the station. As a result of the bypass, the wet, unprocessed gas coming into Units 1 and 2 of the Copley Run station is delivered into Dominion's interstate, wet transmission system on the discharge side of these units and is processed downstream at Dominion Field Services' Hastings products extraction plant, which is a straddle plant on Dominion's system. The same type of reconfiguration also occurred at the West Union Compressor station, such that gas moving through Units 1 and 2 at that station bypasses a small extraction plant and, instead, is processed at the Hastings plant. The order concluded that the behind the plant test is not particularly helpful in analyzing whether the compressor stations should be functionalized as gathering rather than transmission now that the active processing plant for Equitrans' gas is no longer on Equitrans' system.

17. IOGA also argues that the Commission erred in concluding that, because gas is no longer processed at an extraction plant located at the Copley Run station, gas flowing from the outlet side of Units 1 and 2 of the station will not go into Equitrans' interstate storage facility located in proximity to the station. IOGA states that the Commission ignored the fact that the extraction plant at the station could still be operated and that in January 2004, gas was processed at that plant during a time period in which Dominion Field Service's Hastings plant was shut down. However, the fact that the extraction plant at the Copley Run station was temporarily operated due to exigent circumstances does not change our analysis that, on balance, Units 1 and 2 at the Copley Run station and all of the facilities upstream of the station perform a gathering function.

18. IOGA argues that the Commission's reliance on the location of the Burnsville, Copley Run, and West Union compressor stations in a production area is not a helpful distinction because most Appalachian pipelines' transmission systems also are located

in production areas. IOGA further argues that the Commission's reliance on the fact that the operational pressures of the Burnsville station and Units 1 and 2 of the Copley Run and West Union stations are lower than many of the compressor stations on Equitrans' system which are classified as transmission is misguided because there are at least two downstream transmission compressor stations that operate at pressures as low. IOGA also maintains that the fact that the Burnsville station and Units 1 and 2 of the Copley Run and West Union stations operate at lower pressures than the market area stations does not require a conclusion that those stations perform a gathering function.

19. The fact that the three compressor stations are located in production areas demonstrates that their location is not inconsistent with a gathering function because in most cases compression facilities located in production areas serve a gathering function. The fact that these compressor stations are located in production areas, however, does not mean that they must be found to perform a gathering function.

20. Likewise, the Commission's comparison of the pressures of the Burnsville Compressor station and Units 1 and 2 of the Copley Run and West Union Compressor stations with other compressor stations on Equitrans' system was made to demonstrate that the pressures at which these compression facilities operate are not inconsistent with a gathering function since those pressures, especially the suction pressures, are less than the pressures at some of the compression facilities which will continue to be functionalized by Equitrans as transmission. Again, this does not mean that the subject compression facilities automatically must be functionalized as gathering. This is borne out, as IOGA points out, by the fact that there are two other compressor stations functionalized as transmission which operate at pressures as low as the subject compression facilities. On the other hand, IOGA characterizes the two transmission compressor stations, which the Commission noted operate at higher pressures than the subject facilities, as market area compressor stations, indicating that there are some distinctions between the characteristics of transmission and gathering facilities that are clear even in the Appalachian region where the parties agree such distinctions are not always obvious. The fact that the subject compressor facilities are not in a market area tends to favor a finding that they perform a gathering function. The Commission made such a finding when other factors, such as the purpose of the facilities, were considered.

21. IOGA contends that the Commission ignored Equitrans' statement that there has been no change in the operation of the Burnsville station which, IOGA states, has performed a transmission function since 1916. Given this fact, IOGA maintains, there can be no change in the station's functionalization.

22. The Commission found in the November 23, 2004 Order that the Burnsville station, as well as Units 1 and 2 at the Copley Run and West Union stations, currently perform a function related to gathering and production and that this function is their

primary one. As explained in the November 23, 2004 Order, the facilities function to keep the pressure in the gathering lines upstream of those stations at a low level to allow gas produced at a low pressure to enter the gathering lines; thus, the stations perform a gathering function. The fact that no change in operation was necessary for the Burnsville station to provide this function does not preclude a finding that the function of the station is gathering and IOGA provides no support for its position that no change in operation means no change in function. Further, as noted in the November 23, 2004 Order, the function is consistent with the stated function of at least one of the field compressors transferred to EFS in Equitrans' spindown proceeding.<sup>13</sup>

23. IOGA argues that the Commission should not have considered the transportation of wet, unprocessed gas through the subject facilities as a factor in its primary function analysis because wet gas in Appalachia is often of pipeline quality, all of the Appalachian pipelines carry wet gas in their transmission systems, and products extraction is performed for economic purposes, not to improve the quality of the gas. IOGA cites two proceedings, one in 1982 and the other in 1984, to demonstrate that the processing that formerly took place at the subject compressor stations, as well as the current processing on Dominion's system downstream of these facilities, is for economic purposes, not to improve gas quality.<sup>14</sup> IOGA concludes that since Equitrans did not process its gas at those points until the 1980s, the wet gas did not require such processing. In IOGA's view, since the processing is not necessary for any operational purpose, the changed circumstance alleged by Equitrans is not relevant to the function of the facilities. IOGA also notes that wet gas compressed at the Crooked Creek Compressor station, which the Commission found to be a gathering facility, is delivered directly to a local distribution system without any processing occurring.

24. The cases cited by IOGA provide some historical perspective regarding processing at the now-unused processing plants at the Copley Run and West Union compressor stations. The 1982 Order reported that Equitable Gas Company needed to construct lines to the extraction plant because "injection of this hydrocarbonrich [*sic*] gas [into the Skin Creek and Rhoads Storage Pools] can result in condensation of hydrocarbons, causing line blockage and other operating problems."<sup>15</sup> The 1984 Order

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<sup>13</sup> *Equitrans, L.P. and Equitable Field Services, L.L.C.*, 98 FERC ¶ 61,160 at p. 61,587 (2002).

<sup>14</sup> *See Equitable Gas Co.*, 21 FERC ¶ 62,404 (1982) and *Equitable Gas Co.*, 29 FERC ¶ 62,237 (1984).

<sup>15</sup> *Equitable Gas Co.*, 21 FERC ¶ 62,404, 63,627 (1982).

stated that “to avoid pipeline blockages and freeze-offs during the winter months, [Equitable Gas Company] must remove the liquefiabiles from the gas stream before injecting such gas into its Shirley Storage Pool.” Thus, it appears that the wet gas could not be injected into Equitrans’ storage facilities for operational reasons at that time. That is apparently still the case since gas flowing into Dominion’s wet system is processed for delivery downstream to delivery points on either Dominion’s or Equitrans’ system.

25. IOGA questions the Commission’s acceptance of Equitrans’ statement that the Burnsville station and Units 1 and 2 of the Copley Run and West Union stations serve to hold down pressure on upstream gathering lines, a factor indicative of a gathering purpose, noting that the Equitrans official, Andrew L. Murphy, who provided much of the information in support of Equitrans’ position, is not an engineer. Mr. Murphy stated that he has responsibility for “overall operations” of Equitrans’ system, including field operations. Although Mr. Murphy’s academic background is in economics and business, it is reasonable for the Commission to accept his statements as credible because his position requires him to be sufficiently well-versed in Equitrans’ pipeline operations, with advice, as necessary, from the appropriate personnel regarding such operations.

26. IOGA’s engineer, Mr. Yoho, presented much information regarding Appalachian systems in general and applied some of those generalizations to Equitrans’ pre-merger facilities. However, at the time of his testimony, Equitrans had not yet clarified its application to provide additional, relevant information. For example, Equitrans stated in responses to data requests that the Burnsville station and Units 1 and 2 of the Copley Run and West Union stations operate to hold pressures on upstream pipelines down so that gas from low-pressure wells could flow into the gathering lines. Further, Equitrans explained the status of the extraction plants at the Copley Run and West Union Compressor stations and that those plants are now bypassed. Mr. Yoho’s statements with respect to Equitrans’ system were not informed by the subsequent data responses and he did not respond to this additional information.

27. Where information provided by an applicant appears on its face to be flawed or where information is confusing, the Commission solicits additional clarifications as it did here. As IOGA points out in its rehearing request, some aspects of Equitrans’ initial pleading were confusing or unclear. Therefore, the Commission required Equitrans to supplement its filing through data requests. The Commission based its finding on the complete record. We find the information ultimately provided by Equitrans to be credible.

28. Further, while IOGA disputes Equitrans' description of how its system operates, IOGA's speculations are unsupported by the facts presented here. Thus, there are not material issues of fact in dispute which would necessitate trial-type procedures, including detailed discovery, as IOGA seems to advocate.<sup>16</sup> The Commission considered IOGA's arguments that the physical characteristics of Equitrans' pre-merger facilities support only a finding of a transmission function, in part because the facilities historically were classified as transmission, as well as Equitrans' contentions regarding the role the compression facilities play in allowing gas from upstream wells to flow into gathering lines.

29. The record shows that the purpose of the compressors at the Burnsville Compressor station and Units 1 and 2 at the Copley Run and West Union Compressor stations relate to enabling the gathering of upstream gas and/or boosting pressures so gas can enter Dominion's interstate system. The Commission was justified in its determination that these compressors should be functionalized as gathering.<sup>17</sup> That Equitrans once viewed those compression facilities as related to transmission because at that time the gas went into Equitrans' storage facilities after it was processed, does not mean that the same facilities have not also served the purpose of holding pressure on upstream gathering lines to enhance production from low pressure wells.

**The Commission Arbitrarily Gave No Weight to Non-physical Factors Indicative of a Transmission Function**

30. IOGA asserts that the Commission failed to consider various non-physical factors relating to the function of Equitrans' facilities, which may be considered in addition to the factors of the primary function test. IOGA points out that the court in *Sea Robin* only held that such non-physical factors should be given less weight. Specifically, IOGA avers that when the purpose, location and operation of the subject facilities are evaluated, a finding that most of the facilities continue to perform a transmission function will result. IOGA emphasizes that the historical function of facilities should influence the outcome of jurisdictional determinations. Thus, in IOGA's opinion, the

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<sup>16</sup> As discussed above, IOGA requested that the Commission issue data requests prepared by IOGA to Equitrans. IOGA states in its rehearing request that it was entitled to seek discovery on specific aspects of Equitrans' operations. Trial-type discovery, however, is rarely required in NGA section 7 proceedings and is not needed where no issues of material fact are in dispute.

<sup>17</sup> See, e.g., *El Paso Natural Gas Co.*, 82 FERC ¶ 61,337 at p. 62,336 (1998).

fact that the Burnsville Compressor station and Units 1 and 2 of the Copley Run and the West Union Compressor stations historically were functionalized as transmission means that the function of these facilities must remain transmission.

31. IOGA also contends that the Commission did not give enough weight to the fact that Equitrans ceased to operate as a merchant after reorganizing its system and that all of its gathering facilities were spun down to its affiliate in the *Equitrans/EFS* proceeding.<sup>18</sup> IOGA avers that in that proceeding, Equitrans separated its gathering and transmission facilities at logical and appropriate points. IOGA believes that the Commission must give some weight to the fact that Equitrans previously realigned its system when considering whether any of the facilities in this proceeding should be refunctionalized as gathering. Also, IOGA maintains, as it did in its protest, that Equitrans should not be allowed to re-enter the gathering business. In response to the Commission's statement in the November 23, 2004 Order that it had no policy prohibiting interstate pipelines from performing gathering operations, IOGA asserts that the absence of such a stated policy heretofore does not mean that the Commission should not nevertheless bar Equitrans from doing so here. IOGA states that this is a case of first impression.

32. IOGA states that the Commission also failed to assess whether a gathering determination for the subject facilities is consistent with the goals of the NGA and the NGPA and that any such analysis should include an assessment of the impact on small captive producers on Equitrans' affiliate's system. Further, IOGA maintains that the Commission erred by disavowing its long-standing promise to producers regarding unbundling of rates on Appalachian pipelines. IOGA states that the Commission found in *CNG Transmission Corp.*<sup>19</sup> that the impact of unbundled gathering rates on small producers must be taken into consideration when Appalachian pipelines' unbundle gathering rates, and that the Commission failed to do so here. IOGA takes exception to the Commission's response in the November 23, 2004 Order that the *CNG Transmission Corp.* proceeding was determined in the pre-Order No. 636 environment when pipelines were still offering bundled sales, and that in the current environment where rates for services are fully unbundled, the impact of unbundling on specific groups of shippers is less of a concern since shippers only pay for services they receive.<sup>20</sup> IOGA maintains

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<sup>18</sup> *Equitrans, L.P. and Equitable Field Services, L.L.C.*, 98 FERC ¶ 61, 160 (2002) (Equitrans/EFS).

<sup>19</sup> 46 FERC ¶ 61,838 (1989).

<sup>20</sup> *See Equitrans, L.P.*, 109 FERC 61,209 at n. 52 (2004).

that the Commission's continuation of the straight fixed-variable rate mitigation for small distribution customers is evidence that the Commission does continue to consider the effects of unbundling on small customers.

33. In the November 23, 2004 Order, the Commission pointed out that the fact that facilities were historically functionalized as transmission and were constructed and operated pursuant to a certificate does not create an irrebuttable presumption that the facilities do not function as gathering facilities. We explained that in connection with the unbundling that occurred on interstate pipelines in compliance with Order No. 636, many facilities that had been treated as transmission were found to be gathering and many of those facilities were spun off to non-jurisdictional entities. Thus, while the Commission may consider the historical treatment and operations of facilities a pipeline seeks to refunctionalize, doing so may not be helpful in many situations. In this proceeding, as we discussed above, it is arguable that Equitrans' pre-merger facilities could have been functionalized as gathering in the past, but that the integrated nature of the pipeline's operations and the bundling of its services did not require a precise separation between gathering and transmission facilities. Moreover, unless asked by an applicant, the Commission generally does not analyze whether the facilities for which a pipeline seeks a certificate might include facilities that could be classified as gathering facilities.

34. IOGA is correct that the Commission may look to non-physical factors when determining the function of facilities, but it need not give much weight to those factors if the Commission believes the application of the physical factors of the primary function test is determinative of the function of the facilities. In this proceeding, the Commission concluded that the fact that Equitrans was no longer a merchant of gas did not dictate a particular finding regarding the function of the subject facilities. Since virtually all interstate pipelines are no longer merchants of gas, this factor can have little relevance. But, as the Commission noted with respect to one of the Equitrans facilities acquired from CIPCO, pipelines *should* seek to refunctionalize facilities if they determine that the function of a facility has changed or that it was incorrectly functionalized at some point. The Commission explained that it was reasonable for Equitrans to review its system's operations and facilities in light of the acquisition of the CIPCO facilities.

35. Regarding IOGA's contention that the Commission failed to consider whether the proposed refunctionalizations were consistent with the goals of the NGA and the NGPA, the Commission reiterates that the rates EFS is charging for its gathering services and the rates Equitrans may charge for such gathering service are not relevant in determining the *jurisdictional* status of the subject facilities. The Commission recognizes the possibility that Appalachian producers may have to pay more for their gathering services if they have to pay two rates.

36. However, in the November 23, 2004 Order, the Commission explained that it has no jurisdiction over the rates charged for gathering services provided by non-jurisdictional companies such as EFS. We noted proceedings relating to such rates that are before the West Virginia Public Service Commission in which IOGA and its members could participate. Regarding any concerns about the gathering rates Equitrans might charge, we explained that the proper forum to address those rates would be in a rate proceeding when Equitrans filed to place such rates into effect. As indicated earlier in this order, Equitrans has made two such filings since the November 23, 2004 Order. In short, the Commission did not ignore the rate impact on IOGA and its members that might result from Equitrans' proposed refunctionalization of facilities; it merely explained the instant proceeding was not the proper place to consider such issues. Moreover, if Equitrans seeks abandonment authority at a later date in order to spin off the facilities it will now operate to provide gathering services under separately stated rates, IOGA can raise the issue of whether such an abandonment is consistent with the public interest.

37. IOGA asserts that the Commission, as a matter of policy, should not allow Equitrans to re-enter the gathering business because of the rate impact issue described above. IOGA likens the fact that Equitrans proposes to operate gathering facilities located between an existing gatherer's facilities and an interstate pipeline's facilities to the situation in *Louisiana Gas System Inc. and Conoco Inc. v. Panhandle Eastern Corporation and Centana Energy Corporation, et al.*,<sup>21</sup> wherein the Commission stated that no regulatory goal would be served by applying its NGPA section 311 exemption policy to allow a multistate chain of "intrastate" or "Hinshaw" affiliates connected by *de minimis* interstate facilities at state borders because such an interpretation "would create a strong incentive for interstate pipelines to construct a second tier grid owned by affiliates, in order to provide interstate service under a different regulatory framework than currently applies under Order No. 636."<sup>22</sup>

38. However the circumstances are not the same here. Unlike the cited case, the issue here is whether the facilities are jurisdictional transmission facilities or non-jurisdictional gathering facilities. Further, there is no evidence that Equitrans seeks to refunctionalize the facilities in order to create such a secondary tier grid nor to avoid the Commission's regulatory oversight. If Equitrans continues to operate the facilities, then the rates it charges for gathering in connection with transportation are still be subject to the Commission's jurisdiction.

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<sup>21</sup> 73 FERC ¶ 61,161 (1995).

<sup>22</sup> *Id.* at 61,502.

39. The reason most pipelines spun off their gathering facilities was to promote operational and economic efficiencies. Spinning off gathering facilities is within a pipeline's business judgment. The thrust of the Commission's unbundling requirements was not to force pipelines out of one business or another, but to create an environment where the different aspects of a pipeline's business were kept sufficiently separate so as to avoid unfair subsidization by customers of services they do not use and to preclude discriminatory operations. However, while most pipelines have separate affiliated gathering companies, numerous interstate pipelines continue to own gathering facilities and provide gathering services under separately stated rates. Thus, the Commission concludes that it is unnecessary to create any new policy regarding this issue.

**The Commission Disregarded Its Own Precedent by Not Relying on the Point of First Compression to Distinguish Transmission From Gathering on the CIPCO Facilities**

40. IOGA contends that the Commission adopted the point of first compression as the place where gathering ends and transmission begins in *Carnegie Natural Gas Company and Carnegie Interstate Pipeline Company (CNG/CIPCO)*, where it previously reviewed the function of facilities on CIPCO's system.<sup>23</sup> IOGA argues that the Commission should have applied that test to all of the facilities at issue in this proceeding. IOGA contends that the Commission did not point to any change in the operation of the CIPCO facilities, but relied only on the change in ownership to justify discarding a previous, valid primary function determination and making new jurisdictional determinations.

41. The Commission did not rely solely on the change in ownership to reach its jurisdictional determinations regarding the CIPCO facilities. The Commission found that the change in ownership was a change in circumstances justifying Equitrans' request that the Commission take a new look at the primary function of the subject facilities. Further, the Commission noted that in the earlier *CNG/CIPCO* order, it did not analyze the function of the individual compressor stations but only acquiesced in CIPCO's decision to utilize the point of first compression as the demarcation point between gathering and transmission facilities. Therefore, the Commission did not discard its previous analysis because there was no analysis of the function of CIPCO's compressor stations. We note that, generally, producers raise issues and concerns when pipelines seek determinations that facilities are not jurisdictional, not when pipelines accede to the Commission's jurisdiction.

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<sup>23</sup> 69 FERC ¶ 61,364 (1994).

42. In the November 23, 2004 Order, the Commission observed that all of the CIPCO compressor stations Equitrans sought to refunctionalize from transmission to gathering, except for the Waynesburg Compressor station, operate at low suction and discharge pressures consistent with a gathering function. With regard to the Waynesburg Compressor station, the Commission found that the reason it operates at higher pressures than any of the upstream compressor stations is to boost the gas to 600 psig so that it can enter the Holly Hill extraction plant. That function may be viewed as the last step in the gathering of gas. Regarding various pipeline segments on the former CIPCO system, the Commission noted that the lines operated at relatively low pressures, were short in length, had small diameters and had wells located along them. The Commission noted that the *CNG/CIPCO* order also described the pipelines in this manner, but in that preceding the Commission gave deference to CIPCO's view of how its system operated without analyzing the function of the compressor stations which CIPCO intended to continue classifying as transmission.

43. When the Commission made jurisdictional determinations regarding the facilities that Equitrans spun down to its affiliate EFS, the Commission did not articulate a "point of first compression" test. Rather, regarding compressor stations that an intervening party argued should be functionalized as gathering instead of transmission, the Commission observed that Equitrans considered those compressor stations to perform a transmission function because they were associated at that time with its interstate storage operations. Some of those stations, however, were the points of first compression on parts of the system where lines behind those stations were functionalized as gathering.<sup>24</sup>

**The Commission Erred by Failing to Recognize That an Exchange Occurs Between Equitrans and Dominion**

44. IOGA continues to argue that when Equitrans delivers gas from the discharge side of Units 1 and 2 of the Copley Run and West Union Compressor stations into Dominion's system, and Dominion at some point downstream of the Hastings extraction plant delivers or arranges for other interstate pipelines to deliver an equivalent amount of gas back to Equitrans, an exchange takes place. According to IOGA, if this is the case, these compressor facilities must be considered to perform a transmission function

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<sup>24</sup> See, e.g., *Equitrans/EFSS*, 98 FERC ¶ 61, 160, 61,588 (2002) (lines in the Pratt section delivered gas directly to the Goodwin compressor station, which was to remain transmission).

because if one side of an exchange is a jurisdictional transaction, the other side must also be jurisdictional. IOGA contends that the holding in *National Fuel Gas Distribution Corp.*<sup>25</sup> should be applied here.

45. In *National Fuel*, a gathering company, Nornew Energy Supply, Inc. (Nornew), had *contracted* to transport gas for the Board of Public Utilities for the City of Jamestown (Jamestown), which is in proximity to the production area in which Nornew's affiliated gatherer, Norse Pipeline LLC (Norse), operated. Nornew constructed, without NGA section 7 certificate authority, a 7.3-mile delivery lateral from Norse's gathering system to transport gas for use as fuel at Jamestown's electric generation plant. Jamestown contracted to purchase gas supplies produced in the Gulf of Mexico. The producer had contracted for firm transportation service on Tennessee Gas Pipeline Company (Tennessee), an interstate pipeline, to move the gas supplies for ultimate delivery to Jamestown. However, under the arrangements made by the parties, Tennessee would retain Jamestown's gas produced in the Gulf because Norse could not receive gas from Tennessee, and an equivalent amount of gas gathered by Norse for delivery to Tennessee, under separate arrangements, would instead be delivered to Jamestown's electric plant, via Nornew's new lateral.

46. The Commission found that while Norse and Nornew would be delivering local production to Jamestown, such service was subject to the Commission's NGA jurisdiction because their delivery of Jamestown's interstate gas supplies would be effectuated by displacement on Tennessee's system. Accordingly, both Norse and Nornew were required to obtain the requisite NGA certificate authorizations.

47. In this proceeding, after gas moves through Units 1 and 2 of Equitrans' Copley Run and West Union Compressor stations into Dominion's interstate system, transportation of the gas is subject to the Commission's NGA jurisdiction, whether the transportation service is on Dominion's system, Equitrans' downstream transmission facilities, or on some other interstate pipeline. Thus, the potential in *National Fuel* for avoidance of the Commission's NGA jurisdiction is not present here.

48. Further, we disagree with IOGA's argument that transportation arrangements between Equitrans and any other interstate pipelines downstream of Units 1 and 2 at the Copley Run and West Union Compressor stations requires a finding that those compressors perform a transportation function. IOGA confuses Equitrans' role as a gatherer with Equitrans' role as an interstate pipeline. Even though Equitrans offers both

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<sup>25</sup> *National Fuel Distribution Corp.*, 93 FERC ¶ 61,276 (2000), *order on reh'g*, 94 FERC ¶ 61,136 (2001) (*National Fuel*).

transmission and gathering services, under the Commission's regulatory scheme these services must be unbundled. The fact that Equitrans, as part of its gathering service, delivers gas into interstate facilities, while providing transportation service over other parts of its system does not turn its gathering service into transmission service. Unlike Nornew in *National Fuel*, Equitrans does not appear to be contracting to use its gathering facilities at the Copley Run and West Union Compressor stations to provide jurisdictional transmission service.

49. Additionally, the scenario here is no different from when other gatherers of gas deliver gas to interstate pipelines. At the point of interconnection between the gathering and transmission facilities, interstate transportation begins. Transmission over those downstream pipelines may occur by forward haul, backhaul, displacement or exchange without any jurisdictional consequences for the gatherer. The downstream transportation arrangements have no bearing on the function of the compression facilities in this case.

### **IOGA's Request for Clarification**

50. IOGA states that if the Commission denies its request for rehearing, it should clarify that there are no transmission facilities belonging to Equitrans located between the discharge sides of Units 1 and 2 of the Copley Run and West Union Compressor stations and Dominion's interstate, wet system. IOGA is concerned that if there are such facilities, Equitrans could charge a transportation rate in addition to the gathering rate it would charge for service over the refunctionalized facilities. Further, IOGA requests clarification that the delivery points from the Equitrans' gathering facilities will be available to all shippers on a non-discriminatory basis.

51. It does not appear that there are any transmission facilities owned by Equitrans that are downstream of Units 1 and Units 2 of the Copley Run and West Union Compressor stations. To the extent there are any such facilities, however, those facilities should be functionalized as performing a gathering function, as were the compressor units. If this is the case, Equitrans should make appropriate revisions to its proposed gathering and transmission rates so the costs associated with those facilities are properly allocated.

### **Conclusion**

52. For all of the above reasons, IOGA's request for rehearing is denied. However, the November 23, 2004 Order is clarified to the extent discussed herein.

The Commission orders:

(A) IOGA's request for rehearing of the November 23, 2004 Order in this proceeding is denied.

(B) IOGA's request for clarification of the November 23, 2004 Order in this proceeding is granted.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.