

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Equitrans, L.P.

Docket Nos. RP04-97-001  
RP04-97-003  
RP04-97-005  
RP04-203-001  
RP04-203-002  
CP05-18-000

ORDER ON REHEARING, CLARIFICATION, AND COMPLIANCE

(Issued November 23, 2004)

1. Several parties request rehearing of the Commission's December 31, 2003 Order in Docket No. RP04-97-000 (December 31, 2003 Order).<sup>1</sup> That order addressed a general rate filing by Equitrans, L.P. (Equitrans) under section 4 of the Natural Gas Act (NGA). It 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, subject to conditions and to outcome of a technical conference established by that order. It also accepted, to be effective January 1, 2004, tariff sheets reflecting the acquisition of Carnegie Interstate Pipeline Company (CIPCO). In addition, several parties request rehearing or clarification of the Commission's March 31, 2004 Order in Docket No. RP04-203-000 (March 31, 2004)<sup>2</sup> which accepted and suspended Equitrans' revised general section 4 rate filing, to be effective September 1, 2004, subject to the outcome of a hearing established in that

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<sup>1</sup> *Equitrans, L.P.*, 105 FERC ¶ 61,407 (2003). Equitrans, L.P. (Equitrans), KeySpan Delivery Companies (KeySpan), and Philadelphia Gas Works filed for rehearing of the December 31, 2003 Order.

<sup>2</sup> *Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004). Columbia Gas of Pennsylvania, Inc. (Columbia PA) and the Independent Oil and Gas Association of West Virginia (IOGA) filed for rehearing of the March 31, 2004 Order. Equitable Field Services filed an answer to IOGA's request for rehearing and IOGA filed an answer to Equitable Field Services' answer. The answer to the request for rehearing does not lie and, therefore, is rejected.

order. This order also addresses issues raised by Equitrans' August 31, 2004 motion to place certain of its suspended tariff sheets in Docket Nos. RP04-97 and RP04-203 into effect and tariff sheets filed to comply with the orders issued in the captioned proceedings, to be effective September 1, 2004.<sup>3</sup>

2. The Commission will grant in part and deny in part rehearing of the December 31, 2003 Order. The Commission will deny rehearing and the motion for clarification of the March 31, 2004 Order. The Commission will accept tariff sheets reflecting Equitrans' proposed compliance rates, effective September 1, 2004, subject to conditions, but deny Equitrans' proposed reservation of the right to move certain suspended rates into effect. Finally, the Commission will establish a proceeding in Docket No. CP05-18-000 to inquire into issues regarding Equitrans' claimed loss of storage cushion gas. This order benefits customers because it removes uncertainty as to Equitrans' rates.

### **Background**

3. Equitrans' last NGA general section 4 rate case underlying the rates in effect as of the December 31, 2003 and March 31, 2004 Orders ended in a settlement which was approved by the Commission on April 29, 1999 (the 1999 Settlement).<sup>4</sup> The 1999 Settlement required Equitrans to file a subsequent NGA section 4 general rate application to be effective no later than August 1, 2003.<sup>5</sup> On July 3, 2003, 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 from CIPCO. This request was granted on July 29, 2003.

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<sup>3</sup> Equitrans' motion and compliance filing was made in Docket Nos. RP04-97-005 and RP04-203-002. The suspended tariff sheets Equitrans moved into effect as of September 1, 2004, are shown on the Appendix along with a reference to the originating docket. In addition, the Appendix identifies the compliance tariff sheets that are accepted by this order.

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

<sup>5</sup> On May 20, 2002, Equitrans and 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" at initial maximum recourse rates equal to CIPCO's then-existing maximum rates. The Commission granted Equitrans certificate authority for the acquisition of these facilities and the initial rates on July 1, 2003. *Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003), *reh'g denied* 106 FERC ¶ 61,013 (2004).

4. 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 and proposed a January 1, 2004 effective date. 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 and initial rates for its CIPCO District approved in the July 1, 2003 Order in Docket No. CP02-233-000 to reflect the acquisition of CIPCO. In its December 31, 2003 Order, the Commission rejected Equitrans' proposed rate increase for its Equitrans District and associated tariff sheets for failure to comply with the Commission's filing regulations, 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, including the initial rates for its proposed CIPCO District, effective January 1, 2004. Finally, the December 31, 2003 Order set issues regarding Equitrans' proposed gas quality standards, new storage ratchets,<sup>8</sup> segmentation proposal and security cost tracker for technical conference.

5. On March 1, 2004, Equitrans filed another general rate case in Docket No. RP04-203-000 which proposed increased rates for its existing Equitrans District services as well as rates and terms of service for gathering service in the CIPCO District. Also on March 1, 2004, Equitrans filed, in Docket No. CP04-76-000, an application seeking authority to refunctionalize certain of its existing Equitrans District facilities, as well as significant portions of the newly-acquired former CIPCO facilities, from transmission and storage to gathering. The proposed rates in the Docket No. RP04-203-000 filing reflected the refunctionalization of costs to gathering consistent with Equitrans' filing in Docket No. CP04-76-000. In an order issued March 31, 2004, the Commission accepted and suspended the proposed tariff sheets in Docket No. RP04-203-000, for five months, to be effective September 1, 2004, or earlier date set by subsequent Commission order, subject to refund and conditions, and set the issues raised by the filing for hearing.<sup>9</sup> Among other things, the Commission directed Equitrans to remove the refunctionalized costs from its proposed gathering rates if Equitrans moves the rates into effect prior to a Commission order in Docket No. CP04-76-000.

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<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> Storage ratchets are stepped reductions in storage withdrawal entitlements that are tied to reductions in storage inventory.

<sup>9</sup> *Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004).

6. On June 30, 2004, the Commission issued an order on the technical conference in Docket No. RP04-97-000, *et al.*, accepting certain tariff sheets, subject to conditions, rejecting one sheet, and setting certain issues from Docket No. RP04-97-000 for hearing in the ongoing hearing proceeding on Docket No. RP04-203-000.<sup>10</sup> Among other things, in the June 30, 2004 Order, the Commission found that disputed issues of fact exist as to Equitrans' proposed storage ratchets and that its proposed security cost tracker raised significant cost, rate design and allocation issues. The order set these issues for hearing in the ongoing proceeding in Docket No. RP04-203-000.

7. On August 31, 2004, Equitrans filed a motion to place certain of the tariff sheets suspended in Docket Nos. RP04-97-000 and RP04-203-000 into effect on September 1, 2004, and included revised tariff sheets to comply with the December 31, 2003 and March 31, 2004 Orders. In its filing, Equitrans stated, *inter alia*, that it was not moving into effect any of the proposed rates reflecting the proposed refunctionalization, but stated that it reserves the right to move its proposed gathering rates into effect upon issuance of an order in Docket No. CP04-76-000. IOGA protested this motion filing.

### **Requests for Rehearing and Clarification**

#### **A. Requests for Rehearing of the December 31, 2003 Order**

##### **1. Rejection of the Rate Portion of the Docket No. RP04-97-000 Filing**

8. Equitrans seeks rehearing of the Commission's determination, in its December 31, 2003 Order, to reject the Equitrans District rates portion of Equitrans' filing in Docket No. RP04-97-000.<sup>11</sup> In the December 31, 2003 Order, the Commission found that Equitrans had not met its burden of providing sufficient evidence to support the proposed rate changes. The Commission stated that Equitrans' cost of service and revenue data in its filed Statements and Schedules were not sufficient to satisfy its burden of proof. Specifically, the Commission found that Equitrans had omitted the cost and revenue data for its recent acquisition, CIPCO, citing section 154.301(c) of the Commission's regulations.<sup>12</sup> The Commission stated that neither the parties to the proceeding nor the

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<sup>10</sup> *Equitrans, L.P.*, 107 FERC ¶ 61,333 (2004).

<sup>11</sup> As noted above, Equitrans filed to implement the initial rates for the CIPCO District authorized by the Commission, which rates were accepted effective January 1, 2004.

<sup>12</sup> 18 C.F.R. § 154.301(c) (2004).

Commission could determine whether the allocation variables or the allocated costs were just and reasonable without the complete data required by the Commission's regulations.<sup>13</sup>

9. On rehearing, Equitrans asserts that the Commission's decision to reject the rate change portion of the filing did not meet the legal standards for rejection and was arbitrary and unreasoned. Equitrans claims that it presented a complete case-in-chief supporting its application and that the Commission should have ordered it to file supplemental information rather than reject the filing. Equitrans maintains that it presented its entire case-in-chief and that the Commission's ability to evaluate its proposal does not "hinge upon whether Equitrans has included some discrete cost and revenue data for [CIPCO]."<sup>14</sup> It also contends that the Commission's reliance on section 154.301(c) of the Commission's regulations in the context of an initial rejection of an application is "misplaced." Equitrans argues that this section of the regulations states that it applies only in the context of the merits determination phase of a rate proceeding. Equitrans also argues that the Commission should have rejected only the discrete cost components that were unsupported or ordered Equitrans to file supplemental information.

10. The Commission denies rehearing. In its filing addressed by the Commission's December 31, 2003 Order, Equitrans failed to provide all the cost and revenue data necessary to evaluate the proposed increase in Equitrans' rates for services provided in what had become, following its acquisition of the CIPCO facilities (CIPCO District), a new "Equitrans District." The deficiency in data related to the individual cost components of the cost of service of the newly-acquired CIPCO facilities, which could be required under the Commission rate policies to be used to allocate, for example, Equitrans' claimed Administrative and General (A&G) costs between the Equitrans District and the new CIPCO District.<sup>15</sup> Those A&G costs, \$15,618,722 out of a total Equitrans District cost of service of \$75,622,954, constitute a significant percentage (20.6 percent) of the filed cost of service. Accordingly, although the rate for the CIPCO District was approved by the Commission in the certificate proceeding as an initial rate

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<sup>13</sup> December 31, 2003 Order at P16-17. This finding was without prejudice to Equitrans filing, in a new proceeding, a complete case-in-chief in compliance with the Commission's filing requirements.

<sup>14</sup> Equitrans Request for Rehearing at 14.

<sup>15</sup> The *Kansas-Nebraska* formula is frequently used by the Commission to functionalize A&G costs among functions and to allocate functionalized costs among services. The formula requires total labor and plant data to perform these functions. The Commission adopted the *Kansas-Nebraska* method in Opinion No. 731, *Kansas-Nebraska Natural Gas Company, Inc.*, 53 FPC 923, 934 (1975), *order on reh'g*, 54 FPC 923, 934 (1975), *aff'd*, 534 F.2d 227 (10th Cir. 1976).

under section 7 of the NGA, it was nonetheless incumbent upon Equitrans to provide the CIPCO District cost and other data to permit a determination of what portion of the A&G costs should be removed from the Equitrans District rates (thereby reducing those rates) and be allocated to the CIPCO District.

11. The missing data should have been included in Statements and Schedules A through H and the revenue data in Statement G. Thus, contrary to Equitrans' contention, the missing CIPCO data was needed to evaluate the entire rate filing as it is inextricably intertwined with the issues of cost allocation raised by the filing. As the Commission clarified in the December 31, 2003 Order,<sup>16</sup>

These data are required because applicants must demonstrate that, even in situations such as here where Equitrans is not requesting to change the rates for the newly acquired CIPCO District services, costs have been properly identified and allocated to those services' rates with respect to which changes are proposed.<sup>17</sup> Examples of such costs include labor and administrative overhead. These costs are often allocated using variables such as gross plant. Neither the parties to the proceeding nor the Commission can determine whether the allocation variables or the allocated costs are just and reasonable without the complete data required by the Commission's regulations. This finding is without prejudice to Equitrans filing, in a new proceeding, a complete case-in-chief that complies with the Commission's filing requirements.

12. In light of the deficiencies in its filing, Equitrans was not able to "sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable," as expressly required by section 154.301(c). Equitrans' contention that this determination is to be made in the "hearing phase" of a rate case is incorrect. The Commission's regulations do not mandate that section 154.301 apply only after a hearing proceeding has been established. In recognizing that the company must include materials that would comprise the company's case-in-chief "in the event that ... the matter is set for hearing" the regulation reflects that this evidentiary obligation must be met in its filing and not later.

13. Nor did the Commission err in failing to give Equitrans a "second bite at the apple" by accepting the filing subject to Equitrans submitting the required data, exhibits, and so forth in a later compliance filing. Section 4 of the NGA places on the pipeline the burden of supporting any proposed rate increase and showing that it is just and

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<sup>16</sup> 105 FERC ¶ 61,407 at P 17.

<sup>17</sup> *Williston Basin Interstate Pipeline Company*, 55 FERC ¶ 61,340 at 62,008 (1991); *National Fuel Gas Supply Corporation*, 69 FERC ¶ 61,253 at 61,653 (1994); *CNG Transmission Corporation*, 80 FERC ¶ 61,137 at 61,502 (1997), *reh'g denied*, 81 FERC ¶ 61,031 at 61,165-66 (1997).

reasonable.<sup>18</sup> As made clear in *Ozark Gas Transmission System*<sup>19</sup> and *Mississippi River Transmission Corporation*,<sup>20</sup> the pipeline must present its full case in chief in its filing. Moreover, section 154.301(c) of our regulations requires that the pipeline

must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's complete case-in-chief *in the event that the change is suspended and the matter is set for hearing*.<sup>21</sup>

14. Thus, contrary to Equitrans' assertion, the Commission is not required to process incomplete filings or give applicants multiple opportunities to cure defects in such filings. In the cases Equitrans cites,<sup>22</sup> the Commission conditionally accepted general rate case filings subject to the company filing additional supporting documentation. However, the filing deficiencies did not reach the degree reflected by Equitrans' filing in this case. The deficiencies in those cases were limited to fairly narrow, discrete rates or proposals that, unlike here, would not involve the filing of data comparable to that of an entirely new rate case for the CIPCO component of the pipeline's rates. Nor did the deficiencies generally relate to matters that could have as significant an impact relative to the overall cost issues as in the instant case. In the instant case, common costs allocable among the various services and districts include significant A&G costs. As noted above, Equitrans' claimed A&G Costs of \$15,619,772 amounts to 20.6 percent of the total cost of service. Although Equitrans had no burden to justify the initial rates set for the CIPCO District in

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<sup>18</sup> See *Northwest Pipeline Corporation*, 87 FERC ¶ 61,266 (1999) and *ANR Pipeline Company*, 105 FERC ¶ 61,236 (2003).

<sup>19</sup> 75 FERC ¶ 61,101 at 61,334 (1996).

<sup>20</sup> 75 FERC ¶ 61,095 at 61,322 (1996).

<sup>21</sup> 18 CFR § 154.301(c) (2003) (emphasis added).

<sup>22</sup> *National Fuel Gas Supply Corp.*, 69 FERC ¶ 61,253 (1994) (rejecting discrete readjustments due to a refunctionalization of unidentified production facilities as transmission); *CNG Transmission Corp.*, 80 FERC ¶ 61,137 (1997) (rejecting a discrete stranded gathering plant surcharge for inadequate support). *Williston Basin Pipeline Co.*, 55 FERC ¶ 61,340 (1991)(*Williston*). In *Williston*, the Commission allowed Williston to resubmit production cost of service data in order to confirm its allocation of administrative and general expenses. However, this differs from the instant case in that Equitrans would be required to file and the equivalent of an entire rate case for the CIPCO district and not merely certain discrete data.

the certificate proceeding, it still must support the rates that it is proposing under section 4 of the NGA, *i.e.*, the Equitrans District rate. Equitrans failed to do so. Accordingly, Equitrans' rate filing was correctly rejected.

## **2. Injection of Storage Cushion Gas**

15. Equitrans also requests rehearing of the Commission's determination that Equitrans must obtain certificate authorization to replenish cushion gas required to provide its certificated services that it claims was "lost" due to migration.<sup>23</sup> Equitrans proposed to buy and inject approximately 9,600,000 Dth of additional cushion gas into its existing storage fields at a projected cost of approximately \$49.1 million and to reflect this projected cost in its rates. In the December 31, 2003 Order, citing section 154.312(c)(1) of the Commission's Regulations,<sup>24</sup> which requires, *inter alia*, certificate authorization for costs of facilities to be included in rates by the close of a suspension period, the Commission stated that a change in cushion gas is considered a change in plant requiring Commission certificate authorization. Further, the Commission stated that storage fields are certificated to achieve certain operational characteristics with defined plant requirements and that if Equitrans believed that additional cushion gas is necessary to achieve its certificated storage operational levels, it needed to make a filing pursuant to section 7 of the NGA and Part 157 of the Commission's regulations and demonstrate why any such proposal is required by the public convenience and necessity.<sup>25</sup> The Commission concluded that such a filing and a Commission ruling on that filing must precede Equitrans' engaging in these activities or placing such plant additions into service. Equitrans did not renew its proposal in its subsequent general section 4 rate case in Docket No. RP04-203-000; nor has it separately filed for such authorization.

16. On rehearing, Equitrans contends that it is not seeking to add additional cushion gas,<sup>26</sup> but is merely seeking to restore its fields to their certificated levels of operation. Equitrans also states that its "certificates do not in all cases certificate individual levels of cushion gas and working gas" and that "at most, some of the certificates require that the combination of cushion gas and working gas not exceed a maximum storage quantity." Equitrans also contends that, regardless of whether it is seeking to modify its authorized

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<sup>23</sup> "Cushion gas" is gas owned by the pipeline that is needed for operational reasons to pressurize the storage reservoirs to permit other gas (working gas) to be injected into and withdrawn from the reservoir. Certain cushion gas may be non-recoverable.

<sup>24</sup> 18 C.F.R. § 154.312(c)(1) (2004).

<sup>25</sup> December 31, 2003 Order at P 18.

<sup>26</sup> Equitrans Request for Rehearing at 16.

level of cushion gas, the December 31, 2003 Order is overly broad in claiming that changes to cushion gas require certificate authorization. It states that the December 31, 2003 Order does not cite to any requirement in the NGA or the Commission's regulations that requires such certificate authority. Equitrans asserts that cases cited by the Commission in that order, required certificate amendments only when the storage certificate specified the level of base and working gas. It asserts that the cases cited do not establish a specific level of base gas for its storage pool. Finally, it asserts that the appropriate level of cushion gas can be determined outside of the context of a certificate proceeding, and can be a hearing issue in the instant proceeding because the determination of the appropriate level of cushion gas will affect, among other things, the approved level of rate base investment to be included in the base rate.

17. Contrary to Equitrans' assertion, it is not clear at this juncture whether Equitrans' claimed loss of significant amounts of cushion gas reflects a change in the operating parameters or boundaries of the reservoir requiring new or modified certificate authorization. However, whether or not Equitrans may only obtain authorization for its proposed injection of cushion gas by filing a new or modified certificate application, the Commission finds that Equitrans' claim, that a significant portion of the previously injected cushion volumes were "lost" due to migration, raises operational and other issues regarding whether its storage operations and facilities are meeting its current NGA section 7 certificate requirement to provide service in the public convenience and necessity. These issues implicate the Commission's authority under section 7 of the NGA and warrant an inquiry and Commission review prior to Equitrans being permitted to engage in these actions. Equitrans' storage facilities, and the storage services provided thereby, are subject to a certificate of public convenience and necessity under section 7 of the NGA. Pursuant to its certificate, these facilities must be capable of performing the certificated services in the public convenience and necessity and not in a way to result in an abandonment of service. These facilities also must be operated by Equitrans in the same manner. If the storage reservoir is not capable of performing its storage function properly without losing significant quantities of cushion gas required to pressurize the reservoir, a proposal to merely add more cushion gas may not be appropriate and implicates the Commission's authority under the existing section 7 certificate to ensure that the proposal is in the public convenience and necessity.

18. In this circumstance, it is appropriate for the Commission to direct the company to hold off injecting the gas until a determination can be made that its proposal is appropriate. In particular, the Commission questions why it is appropriate to purchase (at great cost to be borne by its customers) and inject substantial amounts of gas into a reservoir that may not be being operated or functioning properly for the storage of gas. The Commission is quite concerned by Equitrans' claim that a large volume of gas has been "lost" through alleged migration, a volume so large that Equitrans characterizes it as "extraordinary."<sup>27</sup> Equitrans only states that these alleged losses "were the result of

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<sup>27</sup> Testimony of Andrew L. Murphy for Equitrans, Docket No. RP04-97-000, Exh.

several factors that were recently uncovered as a result of geologic and reservoir analysis that Equitrans undertook following unusual deliverability problems that were experienced at the end of the winter of 2002-03.” The Commission continues to have significant concerns regarding the circumstances underlying the previously undetected claimed migration of such a large quantity of gas to regions either within or outside of the boundaries of Equitrans’ storage field. It is not clear if the claimed "lost" volumes no longer are “used or useful” in the operation of the fields or whether they are still providing reservoir pressure and thereby are still functioning as cushion gas even if they are now unrecoverable due to migration; nor is it clear what volume of gas is in fact "lost," what volumes actually are needed to replenish such allegedly "lost" volumes, and whether the "lost" volumes are unrecoverable.

19. Further, the Commission needs to determine whether the manner in which Equitrans has operated the fields has contributed in any way to the claimed migration of gas. Finally, the Commission is concerned that the reservoir in question may not be able to function properly to store gas without continuing to lose significant quantities of cushion gas in the process, and whether the certificate operating parameters should be modified to reflect the operating realities of the field.

20. These are issues that are not appropriate for resolution in a general section 4 rate case and should be resolved in a separate forum where these technical and operational issues can be focused on and expeditiously resolved to prevent any wasteful or otherwise unnecessary purchase and injection of additional cushion gas. However, thus far, Equitrans has not sought Commission approval of its cushion gas purchase proposal, preferring to stand, instead, on its procedural arguments in this rate case. These issues must be addressed in a separate forum as they go beyond the narrow cost recovery question raised by its rate filing proposal and encompass the foregoing important operational and certificate issues. Accordingly, we will establish a separate proceeding to conduct an inquiry into these matters, by notice to be issued contemporaneously herewith in Docket No. CP05-18-000. We defer resolution of the certificate issues raised by its rate filing and in its rehearing request for resolution as part of the inquiry in Docket No. CP05-18-000. Rehearing is, therefore, denied.

### **3. Change in Form of SS-3 Service Agreement**

21. KeySpan requests rehearing of the Commission’s December 31, 2003 Order, stating that the Commission erred by failing to reject Equitrans’ proposed change to Article III of its Form of Service Agreement for Rate Schedule SS-3. It claims that Equitrans proposed to delete language from the tariff’s Form of Service Agreement which contractually authorizes a storage customer to withdraw up to 110 percent of its maximum daily withdrawal quantity (MDWQ) until 83 percent of the total gas held in

storage for the customer is withdrawn. It asserts that this change is apparently tied to Equitrans' proposal in this proceeding to change the storage ratchets applicable to Part 284 storage services.<sup>28</sup> KeySpan asserts that the Commission should have rejected this proposal because Equitrans provided no support for this change and does not even address it in testimony. In addition, KeySpan states that it will "lose its valuable contractual right to withdraw up to 110% of its MDWQ" if this change is allowed. However, KeySpan "acknowledges that [this change] would not by itself cause [KeySpan] to lose its 110% withdrawal rights," but would only subject it to the "risk that Equitrans could at any time make an NGA section 4 filing that would reduce KeySpan's withdrawal rights"<sup>29</sup> because the 110 percent right is currently set forth in Rate Schedule SS-3.<sup>30</sup>

22. KeySpan also asserts that Equitrans' proposal to modify the pro forma SS-3 service agreement is not properly advanced under section 4 of the NGA. It claims that Rate Schedule SS-3 customers have historically had the right to withdraw 110 percent of their MDWQ and that the Commission has rejected previous attempts to impose increased ratchets on SS-3 customers and reduce their storage withdrawal rights.<sup>31</sup> KeySpan contends that the imposition of new storage ratchets on existing customers may represent the type of permanent reduction in service levels that constitutes abandonment of service requiring Commission approval under section 7(b) of the NGA.<sup>32</sup>

23. We will grant rehearing of this issue and will reject the proposed change to the Rate Schedule SS-3 Form of Service Agreement.<sup>33</sup> However, we also clarify that KeySpan retained the 110 percent withdrawal right under any existing contract with Equitrans even though the Commission did not summarily reject the proposal in the December 31, 2003 Order. As KeySpan points out, Equitrans did not propose to

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<sup>28</sup> *Citing* Direct Testimony of Andrew L. Murphy (Exhibit ELP-1) at 37-42.

<sup>29</sup> KeySpan Request for Rehearing at 4, *citing* Equitrans' FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 65.

<sup>30</sup> KeySpan Request for Rehearing at 4.

<sup>31</sup> *Citing Equitrans, Inc.*, 74 FERC ¶ 61,054 at 61,129 n.14 (1996); *Equitrans, L.P.*, 81 FERC ¶ 61,399 at 62,834 (1997).

<sup>32</sup> KeySpan Request for Rehearing at 4, *citing United Distribution Companies v. FERC*, 88 F.3d 1105, 1134-35 (D.C. Cir. 1996), *cert. denied, Associated Gas Distributors. v. FERC*, 520 U.S. 1224 (1997), *on remand* Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998).

<sup>33</sup> Equitrans' FERC Gas Tariff Original Vol. No. 1, First Revised Sheet No. 443.

eliminate the 110 percent withdrawal right from its rate schedule SS-3. It only proposed to eliminate it from its rate schedule SS-3 pro forma Form of Service Agreement. Section 6.3 of Rate Schedule SS-3 provides in pertinent part:<sup>34</sup>

Withdrawal of gas from storage on behalf of the Customer will be permitted during the withdrawal period according to a sliding scale described as follows:

Percentage of Quantity in Storage to TASQ <sup>35</sup>	Available Withdrawal Quantity
100 % - 17 %	110 % of MDWQ
Below 17%	100% of MDWQ

Further, Article XIII of the SS-3 Form of Service Agreement provides:<sup>36</sup>

The terms of this service agreement are subject to the terms of Rate Schedule SS-3 and STS-1. In the event of any conflict between this agreement and Rate Schedule SS-3 or the General Terms and Conditions incorporated herein, the Rate Schedule and Terms and Conditions shall govern.

24. Accordingly, the pro forma Form of Service Agreement of the tariff provides that the 110 percent right set forth in Rate Schedule SS-3 governs. The proposed elimination of such right from the Form of Service Agreement, being inconsistent with the governing provisions of Rate Schedule SS-3, and unsupported by Equitrans in its filing, should have been rejected, even though, as discussed above, such change would have no practical effect. However, the issue of the elimination of the 110 percent withdrawal right still should be addressed in the hearing as part of the general matter of storage ratchets set for hearing.

25. Philadelphia Gas Works also requests rehearing of the December 31, 2003 Order, stating that First Revised Sheet No. 65 should have been rejected. On February 27, 2004, Equitrans filed with the Commission to withdraw this tariff sheet, and the Commission permitted the withdrawal.<sup>37</sup> Therefore, this request has been rendered moot and is, therefore, denied.

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<sup>34</sup> Equitrans' FERC Gas Tariff, Second Revised Sheet No. 65.

<sup>35</sup> TASQ refers to the Total Annual Storage Quantity. Equitrans' FERC Gas Tariff, Original Sheet No. 33.

<sup>36</sup> Equitrans' FERC Gas Tariff, Original Sheet No. 449.

<sup>37</sup> *Equitrans, L.P.*, 106 FERC ¶ 61,340 at P 1 (2004).

**B. Requests for Rehearing and Clarification of the March 31, 2004 Order**

26. In its March 31, 2004 Order in Docket No. RP04-203-000, the Commission accepted and suspended, for a five month period, to be effective September 1, 2004, tariff sheets Equitrans filed on March 1, 2004, reflecting a NGA section 4 rate case. Equitrans filed this rate case in response to the Commission's rejection of the Equitrans District rate increase portion of its earlier rate case in Docket No. RP04-97-000 and to reflect certain of the Commission's rulings, including the above-discussed rejection of its proposed purchase of additional cushion gas, and to reflect its refunctionalization application in Docket No. CP04-76-000. As such, it included revised rates for its existing Equitrans District services as well as new gathering rates and terms for its claimed gathering services in the new CIPCO District.

**1. Requests for Rehearing****a. Test Period**

27. Columbia PA requests rehearing of the March 31, 2004 Order to the extent that the order conditionally accepted rates that reflect costs incurred or anticipated beyond a test period adjustment period ending April 30, 2004. Equitrans' March 1, 2004 filing included data reflecting a test period ending July 31, 2004, including a base period ending October 31, 2003. Columbia PA contended in its protest to the filing that the base period should have ended March 31, 2003, and the test period should have ended December 31, 2003, based on its claim that the August 1, 2003 filing deadline required by the 1999 Settlement should have been used to determine the test period, not the actual March 1, 2004 filing date. In the March 31, 2004 Order, the Commission rejected Columbia PA's proposal stating that Columbia PA had not established that the 1999 Settlement controlled the timing or content of the rate case in Docket No. RP04-203-000. Further, the Commission stated, even if it did, the settlement contained no provision that addressed what test period Equitrans was required to use. The Commission stated that because the settlement did not address test periods, to the extent there was a constraint on Equitrans' choice of a test period, it would have been the Commission's filing requirement regulations at section 154.303. The Commission stated that that regulation provides that a base period should not be more than four months prior to the date of filing and that Equitrans' proposed October 31, 2003 end of base period is four months prior to the March 1, 2004 filing date. Therefore, the Commission stated that it accepted Equitrans' proposed base period.

28. On rehearing, Columbia PA contends that the 1999 Settlement required Equitrans to file a rate case by August 1, 2003, and that, based on the Commission's regulations, the correct test period with adjustments should have ended December 31, 2003. Columbia PA states that section 154.303 of the Commission's regulations states that the last month of a test period may be no more than 4 months prior to the date of filing and that the adjustment period may be no more than 9 months immediately following the test

period.<sup>38</sup> It argues that the date of filing, as set by the 1999 Settlement, must control the base period and adjustment period because the 1999 Settlement reflects a “bargained-for-benefit” and that the Commission is bound by the terms of an approved settlement.

29. Columbia PA makes no argument that was not previously considered and rejected by the Commission.<sup>39</sup> Contrary to Columbia PA’s contentions, the actual filing date, not the August 1, 2003 date in the 1999 Settlement, was the appropriate date to be used in applying section 154.303(a).<sup>40</sup> As the Commission noted in the March 31, 2004 Order, the 1999 Settlement itself does not contain any provision regarding the test period. Thus, the Commission’s test period regulations must apply. Under section 154.303(a) of the Commission’s regulations, the test period consists of a base period followed by an adjustment period, and both the base and adjustment periods are fixed by the filing date of the rate change proposal. Section 154.303(a)(1) specifically states that the base period is a period of 12 consecutive months of data and may not end more than four months prior to the filing date. Further, section 154.303(a)(2) provides that the adjustment period is a period of up to 9 months immediately following the base period.

30. Based on a filing date of March 1, 2004, the correct end date of the base period, as provided in section 154.303(a)(1), was no later than October 31, 2003, which Equitrans’ March 1, 2004 filing reflected. Further, with a base period ending October 31, 2003, pursuant to section 154.303(a)(2), the adjustment period here could run through July 31, 2004, which is the end of the adjustment period reflected in Equitrans’ March 1, 2004 filing. Columbia PA’s request for rehearing on this matter is, therefore, denied.<sup>41</sup>

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<sup>38</sup> 18 CFR § 154.303 (2003).

<sup>39</sup> March 31, 2004 Order, 106 FERC ¶ 61,340 at P 27-28.

<sup>40</sup> As noted earlier herein, on July 29, 2003, the Commission granted Equitrans’ unopposed motion to extend the time it was required to file a new general section 4 rate case until December 1, 2003. Equitrans, thereupon, complied with the new filing deadline of the settlement by filing its general rate case in Docket No. RP04-97-000 on December 1, 2003. Following rejection of the rate portion of the filing in the Commission’s December 31, 2003 Order, Equitrans filed a revised general section 4 rate case on March 1, 2004 in Docket No. RP04-203-000, with a base period ending October 31, 2003 and an adjustment period ending July 31, 2004.

<sup>41</sup> Moreover, the Commission notes that Columbia PA made no objection to Equitrans’ request to extend the filing date provided by the 1999 Settlement which the Commission granted on July 29, 2003.

**b. Equitable Field Services Gathering Rates**

31. IOGA requests rehearing asserting that the Commission erroneously denied its protest as to whether Equitrans and its affiliate, Equitable Field Services, had “worked in concert to favor the interests of the non-jurisdictional gathering affiliate at the expense of IOGA member producers and Equitrans’ customers.”<sup>42</sup> IOGA had argued that, following the spin-down of certain of its gathering facilities to Equitable Field Services, Equitrans and Equitable Field Services began working in concert to coerce shippers into paying either multiple gathering rates or unreasonable gathering rates. IOGA requested that the Commission investigate and set for hearing these issues, including whether it should retract its authorization of the spin-down and order Equitrans to file cost-based rates for the spun-down services. The March 31, 2004 Order denied IOGA’s requests, stating that this proceeding is a general rate case proceeding and that if IOGA wishes to pursue whether Equitrans or its affiliates engaged in collusive practices, IOGA should file a complaint pursuant to section 385.206 of the Commission’s regulations.<sup>43</sup> Further, the Commission noted that part of IOGA’s argument was speculative, as the Commission had not ruled on Equitrans’ requests for refunctionalization in Docket No. CP04-76-000.

32. On rehearing, IOGA asserts that, instead of suggesting that IOGA file a complaint as to Equitrans’ and Equitable Field Services’ alleged anticompetitive behavior, the Commission should have set the issues for hearing, thereby permitting IOGA the right to seek changes in unchanged components of rates under section 5 of the NGA. IOGA claims that the March 31, 2004 Order denied its rights under section 5 of the NGA to demonstrate that Equitable Field Services’ gathering of gas should now be considered a jurisdictional activity with the costs allocated away from Equitrans’ non-jurisdictional affiliate, Equitable Field Services, and back to the interstate pipeline. IOGA submits that “it made a prima facie showing sufficient to justify setting the issue for hearing with the other rate case issues.”<sup>44</sup>

33. IOGA’s request for rehearing is denied. The March 31, 2004 Order reasonably invoked its discretion by directing that, if IOGA wishes to pursue whether the Commission should reassert jurisdiction over the rates and services of the facilities previously spun-down to Equitable Field Services, IOGA should file a complaint. While the proper forum for resolution of IOGA’s concern regarding the jurisdictional status of Equitable Field Services and alleged anticompetitive conduct is the Commission, we have the right to control in which Commission forum such issues should be resolved.<sup>45</sup> The

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<sup>42</sup> IOGA Request for Rehearing at 2.

<sup>43</sup> 18 C.F.R. § 385.206 (2004).

<sup>44</sup> IOGA Request for Rehearing at 2.

<sup>45</sup> *Stowers Oil and Gas Co., et al.*, 27 FERC ¶ 61,001 (1984); *Entergy Services, Inc.*, 105 FERC ¶ 61,016 at P 12 n.19 (2003).

issues it proposes to raise are far too attenuated from the instant rate case to warrant inclusion in the hearing below. Moreover, IOGA is not being deprived of the right to pursue its claims at the Commission merely because it would prefer to raise issues in a forum found unsuitable by the Commission. To date, IOGA has not availed itself of the opportunity to file a complaint. The Commission did not foreclose or prohibit IOGA from pursuing its issue concerning the jurisdictional status of Equitable Field Services' facilities and services. However, these issues cannot be properly resolved in a rate case involving Equitrans, not Equitable Field Services.

**c. Refunctionalization**

34. On rehearing, IOGA also asserts that the Commission erred in failing to reject Equitrans' proposed refunctionalization of transmission and storage costs to gathering for failure to provide sufficient detail to permit the Commission to determine whether the proposed refunctionalization is consistent with Commission policy. In its filing, Equitrans proposed to increase its existing (Equitrans District) gathering rate and also proposed a gathering rate for the CIPCO District based on a refunctionalization of the cost of certain of its existing facilities and significant portions of the newly-acquired former CIPCO facilities from transmission to gathering, consistent with its March 1, 2004 application in Docket No. CP04-76-000. IOGA, among others, protested the section 4 rate refunctionalization proposal in the instant rate filing docket. In the March 1, 2004 Order, the Commission declined to set the refunctionalization issues for hearing and conditionally accepted the rates, finding that it can process such refunctionalization filings more expeditiously out of the context of a rate case, thereby leaving the issues to be resolved in the Docket No. CP04-76-000 proceeding.

35. Further, the Commission held that, in order to prevent gathering services from subsidizing transmission, if Equitrans moves its rates into effect prior to a Commission finding in the Docket No. CP04-76-000 proceeding permitting refunctionalization, Equitrans must remove costs currently functionalized as transmission and storage from the proposed gathering rates. Citing Commission orders in *Equitrans* and *National Fuel*, Equitrans claims that, under this precedent, the Commission should have rejected Equitrans' proposed refunctionalization, instead of removing it from the rate base and deferring it to what it asserts is the equally deficient certificate docket.<sup>46</sup>

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<sup>46</sup> IOGA states that “[f]or example, in the 1997 *Equitrans* rate case addressed in IOGA’s protest, the Commission rejected Equitrans[’] proposal to refunctionalize facilities, in part, ‘because Equitrans has failed to identify most of the refunctionalized facilities and also has failed to explain on a facility-by-facility basis the reasons for its refunctionalizations.’” IOGA request for rehearing at 4, *citing Equitrans, L.P.*, 80 FERC ¶ 61,144 at 61,562 (1997); *National Fuel Gas Supply Corp.*, 79 FERC ¶ 61,253 (1994), *reh’g denied in part*, 71 FERC ¶ 61,029 (1995).

36. The Commission denies rehearing. Because Equitrans' rate filing proposal to refunctionalize costs from transmission to gathering was premised on approval of its pending application in Docket No. CP04-76-000, which had not occurred at the time it filed its motion to place its suspended rates into effect, Equitrans was required to refile its rates effective September 1, 2004, to reflect the reversal of its functionalization proposal and the re-functionalization of such costs away from its gathering rates by removing such costs from its gathering rates. Therefore, contrary to IOGA's contention, the Commission did, in fact, reject Equitrans' proposed refunctionalization in the instant section 4 rate proceeding. As discussed below, in an order issued contemporaneously herewith, the Commission is granting Equitrans' petition in Docket No. CP04-76-000 to permit the proposed refunctionalization. Accordingly, the Commission will permit Equitrans to file a limited section 4 filing to reflect that refunctionalization. Any further concerns IOGA has with the refunctionalization ruling should be raised in the Docket No. CP04-76 proceeding.

## **2. Request for Clarification**

37. Equitable Field Services filed a motion for clarification of the Commission's March 31, 2004 Order with respect to a statement the Commission made regarding the 1999 Settlement. It claims that IOGA erroneously stated, in a proceeding before the West Virginia Public Service Commission (West Virginia PSC), that the March 31, 2004 Order found that the 1999 Settlement remains effective as to the Equitable Field Services facilities. The result, it asserts, is that IOGA argued that a gathering rate discount "for the life of the Equitrans Settlement" provided for in an April 1, 1999 letter agreement for gathering services provided by Equitable Field Services to shippers remains in effect as the Equitable Field Services rate. Equitable Field Services states that, based on this claim, the West Virginia PSC ruled that Equitable Field Services should maintain a discounted rate for an indeterminate time. Equitable Field Services states that it believes that the Commission's March 31, 2004 Order was worded in the following section to avoid the construction IOGA would assign to it:

With the exceptions provided in the settlement, the Commission expects the settlement rates for services under our jurisdiction to remain in effect until Equitrans moves the rates in this general section 4 case into effect following the five-month suspension required by this order, thus satisfying the condition in the settlement for the termination of the settlement rates.<sup>[47]</sup>

38. Equitable Field Services seeks clarification that the Commission's March 31, 2004 Order only continued the Equitrans settlement rates in effect for services under the Commission's jurisdiction until Equitrans moves the rates in its general section 4 rate filing into effect, and did not continue the settlement itself in effect beyond July 31, 2003.

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<sup>47</sup> *Equitrans, L.P.*, 106 FERC ¶ 61,340 at P 18.

Equitable Field Services contends that July 31, 2003, is the latest possible termination date of the settlement agreed to by the parties, citing Article IX, section 4 of the 1999 Settlement which states: “[t]he latest possible date for termination of this Stipulation shall be July 31, 2003 consistent with Section 7 of this Article IX.” Based on this provision, Equitable Field Services contends that subsequent to July 1, 2003, it was no longer bound to an April 1, 1999 agreement to charge the IOGA producers a discounted gathering rate, which it asserts it agreed to as part of the 1999 Settlement.

39. IOGA filed an answer to Equitable Field Services’ request for clarification, claiming that the Commission’s March 31, 2004 Order makes it clear that the 1999 Settlement itself remains in effect until Equitrans moves superseding rates into effect. IOGA asserts that Equitable Field Services’ suggestion that extension of the 1999 Settlement’s filing deadline somehow is separate and apart from the term of the settlement does not stand up to scrutiny.<sup>48</sup>

40. Equitable Field Services’ request for clarification is denied. Article IX, section 4 of the Docket No. RP97-346-000 settlement provides:

Except as otherwise provided for in specific provisions, this Stipulation shall terminate on the day prior to the effective date of a (1) superseding general rate change filing by Equitrans pursuant to section 4(e) of the Natural Gas Act, or (2) rate change resulting from a Commission Order pursuant to Section 5 of the Natural Gas Act; *provided however*, that . . . the latest possible date for termination of this Stipulation shall be July 31, 2003, consistent with Section 7 of this Article IX.

41. Section 7 of Article IX, referred to in section 4 above, provides for the following rate filing requirement: "Equitrans shall submit a general Natural Gas Act Section 4(e) general rate adjustment application placing rates into effect no later than August 1, 2003."

42. Based on these provisions, it is clear that the termination of the 1999 Settlement coincided with the effectiveness of new, superceding rates. Pursuant to Article IX, section 4 of the 1999 Settlement, and in light of the subsequent events of the extension of the rate filing date, the rejection of its rate filing in Docket No. RP04-97-000 and Equitrans’ refiling of its rates on March 1, 2004, the 1999 Settlement terminated on September 1, 2004, the effective date of Equitrans’ superseding rates. The statement in section 4 of Article IX, on which Equitable Field Services relies, that the “latest possible date for termination of this Stipulation shall be July 31, 2003,” does not operate to terminate the 1999 Settlement on July 31, 2003. Because the 1999 Settlement rates were required to remain in effect until September 1, 2004, the 1999 Settlement itself had to remain in effect until that date as well. Therefore, the proviso in section 4 regarding the "latest" termination date, as well as the proviso in section 7 regarding the effective date of

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<sup>48</sup> Answer of IOGA at 4.

a new rate filing, had to be considered modified to be consistent with the modified effective date. The termination provisions of section 4 of Article IX only tracked the rate filing effective date deadline established in section 7 of Article IX of the settlement, which, as noted above, ultimately became September 1, 2004, the date Equitrans' new rates in the instant Docket No. RP04-203-000 became effective.

43. In any event, Equitable Field Services only raised the issue of when the 1999 Settlement terminated to forward a claim regarding its contract for gathering rates and services which became not subject to the Commission's jurisdiction under the NGA effective March 19, 2002, when the transfer of the facilities from Equitrans to Equitable Field Services became effective.<sup>49</sup> To the extent that Equitable Field Services requested that the Commission, in effect, interpret contracts that are not within the Commission's jurisdiction, we appropriately declined. In this circumstance, the Commission finds it reasonable to defer the issue of interpretation of this non-jurisdictional contract to the West Virginia PSC or local courts to resolve. The Commission, therefore, denies Equitable Field Services' motion for clarification.

#### **Equitrans' August 31, 2004 Motion and Compliance Tariff Filing**

44. On August 31, 2004, Equitrans filed a motion to place certain of its tariff sheets from Docket Nos. RP04-97 and RP04-203 into effect and a statement reserving a right to subsequently move other rates into effect. In addition, it included revised tariff sheets to be effective September 1, 2004, that it states incorporates changes to suspended tariff sheets that have been directed to be made by the Commission in the orders issued in these proceedings. In the March 31, 2004 Order, the Commission stated that if the Commission has not made a finding that the transmission and storage facilities identified by Equitrans are gathering by the time Equitrans moves the rates into effect, the gathering services will be subsidizing transportation and storage services. Therefore, the Commission stated that if Equitrans moves its rates into effect prior to a Commission

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<sup>49</sup> On July 2, 2001, Equitrans and Equitable Field Services filed an application under sections 1(b) and 7(b) of the NGA seeking Commission approval for Equitrans to abandon five natural gas pipeline systems located in West Virginia and Pennsylvania by transfer to Equitable Field Services and requested that the Commission determine that, upon abandonment, the facilities would perform a gathering function exempt from the Commission's NGA jurisdiction. On February 14, 2002, the Commission authorized the abandonment of these facilities to Equitable Field Services and found that the facilities' primary function was gathering. *Equitrans, L.P.*, 98 FERC ¶ 61,160 (2002). The Commission therefore found that the Equitable Field Services facilities were exempt from the Commission's jurisdiction under the NGA. *See* Letter dated March 20, 2002, Docket No. CP01-396-000, from James D. McKinney, Jr., esq., attorney for Equitrans informing the Commission of the transfer of the facilities to Equitable Field Services effective March 19, 2002.

finding in the Docket No. CP04-76-000 proceeding permitting the refunctionalization of transmission and storage plant as non-jurisdictional gathering facilities, Equitrans must remove transmission and storage function costs from the gathering rates. In its motion filing, Equitrans stated that since the Commission had not yet acted on its application in Docket No. CP04-76-000, Equitrans was not moving into effect any of the proposed rate changes that reflect the outcome of the facilities refunctionalization request in that docket. Equitrans stated that it reserved the right to move into effect its proposed gathering rates upon issuance of an order in Docket No. CP04-76-000.<sup>50</sup>

45. Notice of the August 31, 2004 filing was issued on September 3, 2004, providing for protests to be filed on or before September 13, 2004. IOGA was the only party to file a protest.

46. IOGA protested Equitrans' filing to the extent that it reserved the right to file a later motion to move its proposed rates into effect following issuance of an order permitting the proposed refunctionalization. First, IOGA states that section 4 of the NGA and section 154.206(a) of the Commission's regulations do not allow a second motion filing. Second, IOGA argues that just and reasonable rates in a section 4 rate case are established on the basis of a 12-month base period of actual cost and throughput experience and that any refunctionalization would be outside of this test period.

47. On September 21, 2004, Equitrans filed an answer to IOGA's protest.<sup>51</sup> Equitrans asserts, *inter alia*,<sup>52</sup> that the NGA and the Commission's Regulations do not prohibit Equitrans from moving its rates into effect at a later time as proposed. It asserts that the NGA does not prohibit more than one motion to place rates into effect. Further, it asserts that it has complied with the letter and spirit of the Commission's March 31, 2004 Order, and section 154.206(a), because it effectively "remove[d] transmission and storage function costs from its proposed gathering rates" by not moving into effect any gathering rates that include the costs of facilities sought to be refunctionalized.

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<sup>50</sup> On September 24, 2004, Equitrans submitted a response to a Commission Staff data request, dated September 23, 2004, clarifying that a proposed 0.00% Gathering Fuel Retention Factor on 1st Revised Sheet No. 11 of its filing was included to be consistent with the March 31, 2004 Order's requirement to remove refunctionalized costs from its gathering rates if the Commission determination in Docket No. CP04-76-00 had not issued by the time it moves its rates into effect in Docket No. RP04-203-000.

<sup>51</sup> We will accept the answer as it may aid in the disposition of the issues raised by its August 31, 2004 filing.

<sup>52</sup> Equitrans also makes the claim that IOGA's pleading is an inappropriately filed petition for declaratory order. This argument is unfounded as IOGA's pleading is properly filed as a protest to the compliance and motion filing.

48. We find that Equitrans cannot reserve a right to move its proposed gathering rates into effect upon the issuance of an order in Docket No. CP04-76-000. As noted earlier herein, its proposed gathering rates were rejected because a condition for their acceptance had not been met and, therefore, it cannot move them into effect. In the March 31, 2004 Order, the Commission stated that if it did not issue an order in Docket No. CP04-76-000 approving the proposed refunctionalization of transmission to gathering by the close of the suspension period, *i.e.*, August 31, 2004, Equitrans must *remove* the transmission and storage function costs from the gathering rates. The Commission did not state that these rates were suspended until the Commission acts in Docket No. CP04-76-000; such an indeterminate suspension period would have exceeded the Commission's authority to suspend the rates for a maximum of five months. Nor could it comply with the Commission's directive to remove costs from its gathering rates simply by failing to move them into effect. Removing costs required a change in the gathering rates that went into effect on September 1, 2004. The Commission did not act in Docket No. CP04-76-000 before the end of the suspension period and, therefore, Equitrans' gathering rates were rejected and Equitrans was obligated to remove the proposed CIPCO zone gathering rate and to reduce the Equitrans zone gathering rate to reflect the removal of the refunctionalized costs, effective September 1, 2004. This was Equitrans' compliance obligation irrespective of whether Equitrans chose to not move its suspended gathering rates reflecting the proposed refunctionalization into effect. However, because the Commission is contemporaneously issuing an order in Docket No. CP04-76-000 permitting the refunctionalization of transmission and storage plant to gathering, we will allow Equitrans to make a limited section 4 filing in a new docket in order to reflect the rate changes as a result of that decision and will, at that time, include the revised rates in the issues to be litigated in the ongoing hearing proceeding in the instant Docket No. RP04-203.

49. Finally, the Commission finds that the tariff sheets in the Appendix comply with the Commission's orders herein and, therefore, accepts the sheets effective September 1, 2004, subject to refund and the outcome of the hearing proceedings below.

The Commission orders:

(A) The request for rehearing of the Commission's December 31, 2003 Order is granted in part and denied in part, as discussed in the body of this order.

(B) The request for rehearing of the Commission's March 31, 2004 Order is denied, as discussed in the body of this order.

(C) The request for clarification of the Commission's March 31, 2004 Order is denied, as discussed in the body of this order.

(D) Docket No. CP05-18-000 is hereby established to conduct an inquiry into matters pertaining to Equitrans' claimed loss of cushion gas and its proposed purchase and injection of replacement cushion gas, as discussed in the body of this order.

(E) The compliance tariff sheets listed in the Appendix are accepted, effective September 1, 2004, subject to refund and the outcome of the hearing in Docket No. RP04-203, *et al.*

(F) Equitrans' FERC Gas Tariff Original Vol. No. 1, First Revised Sheet No. 443 is rejected.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

Appendix

List of Tariff Sheets  
Docket Nos. RP04-97-005 and RP04-203-002

List of Suspended Tariff Sheets moved into effect effective September 1, 2004:

Equitrans, L. P.'s FERC Gas Tariff: Original Volume No. 1:

First Revised Sheet No. 36	Docket No. RP04-97-000
First Revised Sheet No. 42	Docket No. RP04-97-000
Second Revised Sheet No. 65	Docket No. RP04-203-000
Third Revised Sheet No. 201	Docket No. RP04-203-000
First Revised Sheet No. 235	Docket No. RP04-97-000
First Revised Sheet No. 236	Docket No. RP04-97-000
First Revised Sheet No. 237	Docket No. RP04-97-000
Second Revised Sheet No. 274	Docket No. RP04-203-000
Third Revised Sheet No. 302	Docket No. RP04-203-000
Original Sheet No. 311	Docket No. RP04-97-000
Original Sheet No. 312	Docket No. RP04-97-000
Second Revised Sheet No. 427	Docket No. RP04-97-000

List of Compliance Tariff Sheets, effective September 1, 2004:

Equitrans, L. P.'s FERC Gas Tariff: Original Volume No. 1:  
2nd Rev Ninth Revised Sheet No. 5  
2nd Rev Twelfth Revised Sheet No. 6  
1st Rev Third Revised Sheet No. 7  
1st Rev Third Revised Sheet No. 8  
2nd Rev Eighth Revised Sheet No. 10  
1st Rev Fifth Revised Sheet No. 11  
Second Revised Sheet No. 234