

136 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Equitrans, L.P.

Docket No. CP11-68-000

ORDER ISSUING CERTIFICATE

(Issued July 21, 2011)

1. On January 27, 2011, Equitrans, L.P. (Equitrans) filed an application under section 7(c) of the Natural Gas Act (NGA)¹ for a certificate of public convenience and necessity authorizing the construction of Equitrans' Sunrise Project. The Sunrise Project, which includes the construction of pipeline and compression facilities in West Virginia and Pennsylvania, will provide up to 313,560 dekatherms per day (Dth/d) of additional firm capacity to enable producers in the Marcellus Shale formation to move new gas volumes to consuming markets in the northeastern and mid-Atlantic United States. We will authorize the Sunrise Project, with appropriate conditions, as discussed below.

I. Background and Proposal

2. Equitrans is a natural gas pipeline company engaged in the business of gathering, storing, and transporting natural gas in interstate commerce. Equitrans has operated two jurisdictional natural gas transmission systems, the Big Sandy Pipeline located in Eastern Kentucky, and its Mainline Transmission System (Mainline System) located in northern West Virginia and southwestern Pennsylvania.² Equitrans provides open-access transportation service under its Subpart G blanket transportation certificate pursuant to the rates, terms, and conditions set forth in its tariff.

¹ 15 U.S.C. § 717, *et seq.* (2006).

² Equitrans received authority to abandon the Big Sandy facilities to Big Sandy Pipeline, LLC, a wholly-owned subsidiary of Equitrans, on April 5, 2011. *See Equitrans, L.P.*, 135 FERC ¶ 62,006 (2011). By a filing made July 5, 2011, Equitrans has notified the Commission that the sale was completed June 1, 2011. Further, Equitrans states that it sold Big Sandy Pipeline, LLC to Spectra Energy Partners, LP on July 1, 2011.

3. Equitrans states that a dramatic increase in the Marcellus gas production is expected, according to a recent study by Pennsylvania State University.³ Equitrans states that its proposed Sunrise Project will efficiently leverage Equitrans' existing pipeline infrastructure to provide additional take away capacity for natural gas producers in the Marcellus formation.

4. With a cost of approximately \$272,000,000, the proposed Sunrise Project consists of:

- i) approximately 41.5 miles of 24-inch pipeline in Wetzel County, West Virginia and Greene County, Pennsylvania, with a 1,200 psig Maximum Allowable Operating Pressure (MAOP) (the H-302 pipeline);
- ii) approximately 2.7 miles of 16-inch pipeline in Wetzel County, West Virginia, with a 1,200 psig MAOP (the H-306 pipeline);
- iii) approximately 0.21 miles of 20-inch pipeline in Greene County, Pennsylvania, with a 720 psig MAOP (the H-309 pipeline);
- iv) replacing approximately 2.6 miles of 16-inch inactive pipeline on the existing H-111 pipeline in Greene County, Pennsylvania, with new 20-inch pipeline with a 655 psig MAOP;
- v) requalifying approximately 4.8 miles of the existing 20-inch H-111 pipeline in Greene County, Pennsylvania, for a 655 psig MAOP; and
- vi) one new compressor station, consisting of three natural gas combustion engine reciprocating units providing approximately 14,205 horsepower (hp), located in Greene County, Pennsylvania (Jefferson Compressor Station).

5. The Sunrise Project will have a total of five new interconnections. There will be three interconnections with Equitrans' existing Mainline System facilities (H-111 near the Jefferson Compressor Station; H-562 at Pickenpaw, West Virginia; and yard piping at the Logansport Compressor Station). In addition, two interconnections with downstream interstate pipelines, one each with Texas Eastern Transmission, LP (Texas Eastern) and Dominion Transmission, Inc. (Dominion), will be located near the proposed Jefferson Compressor Station.

³ Timothy J. Considine, *et al.*, Pennsylvania State University, College of Earth & Mineral Sciences, Department of Energy & Mineral Engineering, *The Economic Impact of the Pennsylvania Marcellus Natural Gas Play: An Update*, iv-v (2010), cited at Application of Equitrans, at 5, n. 6.

6. Equitrans states that as a result of an open season and reverse open season held in 2009, it has signed commitments to enter into negotiated rate agreements for 199,410 Dth/d out of the Sunrise Project's design capacity of 313,560 Dth/d (64 percent of the total capacity). Equitrans states that it is continuing to market capacity and is working with producers in the project area.

7. Equitrans proposes to charge incremental rates as initial recourse rates for the project. In addition, Equitrans proposes to implement a Sunrise Project retainage factor to track and recover actual fuel and lost and unaccounted for gas.

II. Interventions

8. Notice of Equitrans' application was published in the *Federal Register* on March 17, 2011 (76 Fed. Reg. 9,341). The following parties filed timely, unopposed motions to intervene: National Grid Gas Delivery Companies; Independent Oil & Gas Association of West Virginia, Inc.; Equitable Gas Company; PECO Energy Company; Alpha Natural Resources, Inc. (Alpha); and Philadelphia Gas Works. The timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.⁴ Alpha filed comments on the project, to which Equitrans filed an answer; the comments and the answer are described and discussed in the Environmental Review section of the order below.

III. Discussion

9. Since the proposed facilities will be used to transport natural gas in interstate commerce subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of section 7 of the NGA.

A. Certificate Policy Statement

10. The Certificate Policy Statement provides guidance as to how the Commission will evaluate proposals for certificating new construction.⁵ The Certificate Policy Statement established criteria for determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission balances the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization

⁴ 18 C.F.R. § 385.214 (2011).

⁵ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

11. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

12. As noted, the threshold requirement is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. Equitrans is proposing incremental rates to recover the costs associated with the Sunrise Project which, as discussed below, we find to be appropriate. Therefore, Equitrans will not be relying on subsidies from existing customers and its proposal satisfies the no-subsidization requirement of the Certificate Policy Statement.

13. Equitrans' existing customers should not experience any degradation of service or increase in rates as a result of the proposed project, and none have objected to the proposal. In addition, Equitrans' proposal will provide its existing customers with access to a growing source of gas supply. Further, we find there will be no adverse impacts on existing pipelines in the market or their captive customers because the proposal is for new incremental service and is not intended to replace existing service on any other pipeline. Additionally, no pipeline company has protested Equitrans' application.

14. The economic impact on landowners and neighboring communities should be minimal. Equitrans has designed its project to minimize the impact on landowners and the environment. The proposed pipeline facilities will be constructed parallel to Equitrans' existing pipelines for most of the route and the compressor station will be constructed on land owned by Equitrans. Equitrans states that it will acquire any necessary rights-of-way from landowners through good faith negotiations wherever possible.

15. In view of the above findings, we conclude that Equitrans' proposal is consistent with the Certificate Policy Statement and section 7(c) of the NGA, and that the public convenience and necessity requires approval of Equitrans' proposal subject to the conditions set forth in this order.

B. Rates

16. Equitrans conducted a non-binding open season for additional firm transportation subscriptions from September 21, 2009 until October 14, 2009. Further, in accordance with Commission policy, Equitrans subsequently conducted a reverse open season in November 2009 soliciting turnback of existing capacity in order to minimize the construction that would be necessary. Equitrans states that upon Commission approval of the Sunrise Project, Equitrans and the shippers with precedent agreements will enter into binding firm transportation agreements at negotiated rates for the subscribed capacity.

17. Equitrans estimates that the cost of the Sunrise Project will be approximately \$272 million. Equitrans is proposing an incremental monthly reservation recourse rate of \$12.7326 per Dth for firm transportation service and \$0.4186 per Dth for interruptible transportation service, calculated on a 100 percent load factor basis. Equitrans states that the recourse rates for the Sunrise Project were developed based on an annual cost of service of approximately \$47.9 million, which incorporates the capital structure and the pre-tax return of 15 percent established in Equitrans' last rate case in Docket No. RP05-164-000.⁶ Further, Equitrans states that it will implement a Sunrise Transmission System Retainage Factor of 2.0 percent to track and recover actual experienced fuel and lost and unaccounted for gas.⁷ Equitrans states that it has proposed new tariff language that will true-up actual retainage every six months.

18. Equitrans' Mainline and Sunrise customers will be able to flow gas on a secondary firm and interruptible basis between the systems. Equitrans states that it is therefore proposing to assess a secondary access charge (Sunrise Access Surcharge) for Mainline firm transportation service customers that utilize the Sunrise System on a secondary basis calculated as the difference between the current Rate Schedule NOFT or FTS authorized overrun charge and the Sunrise Project authorized overrun charge, to ensure that a Mainline customer that nominates gas onto or off of the Sunrise System on a secondary or no-notice basis pays the same volumetric rate as a Sunrise customer.

19. Equitrans also proposes to charge those Sunrise customers that nominate deliveries on a firm or secondary basis to the Mainline System a 3.72 percent retainage factor along with the existing Mainline usage and associated surcharges. Finally, Equitrans is

⁶ See section 1.3 of the rate settlement submitted on December 9, 2005 and approved by the Commission on April 5, 2006. See *Equitrans, L.P.*, 115 FERC ¶ 61,007 (2006).

⁷ The Sunrise Transportation Retainage Factor is based on estimated compressor station fuel consumption of 1.5 percent and total lost and unaccounted for gas of 0.5 percent.

proposing that all interruptible service from either a Sunrise or Mainline customer where the gas is transported across both systems be assessed a newly-proposed Combined System Rate, which would be equal to the Sunrise Project interruptible recourse rate and the Mainline Retainage Factor and Mainline IT usage rate and associated surcharges. Equitrans states that these proposed rate provisions are required to preserve the established rates for all existing customers and to ensure no subsidization will occur between the two systems.

20. For integrated mainline expansion facilities, the Commission has found it appropriate for pipelines to charge an incremental rate for service utilizing such facilities if such rate is higher than the generally applicable firm transportation rate.⁸ Pipelines have been required to charge their generally applicable transportation rate if that rate is higher than the cost-based incremental rate for service utilizing the expansion.⁹ The Commission finds that Equitrans' proposed recourse rate for firm Sunrise Project transportation service is a cost-based rate that fully recovers the costs of the proposed construction and is based on the actual design capacity of the expansion. Further, we find that Equitrans' proposed incremental rates for service over the Sunrise facilities are higher than Equitrans' system rate. Therefore, we will authorize Equitrans' proposed firm incremental reservation and usage rates¹⁰ as initial recourse rates for Sunrise Project service.

21. Equitrans states that because of the integrated nature of the Sunrise and Mainline systems, which allows Mainline and Sunrise customers to flow on a secondary firm or interruptible basis between the systems, it is proposing to charge its Mainline firm transmission customers a secondary access charge (Sunrise Access Charge) for mainline firm service customers that utilize the Sunrise System. The Sunrise Access Charge would be assessed on a volumetric basis to all nominated gas received on or delivered off the Sunrise System by a Mainline firm transmission customer.

22. However, it is the Commission's policy that shippers are entitled to access any point within the zone for which they are paying. Therefore, given the fact that Equitrans' rates are designed on a postage-stamp basis, any Equitrans firm Mainline shipper must be allowed to nominate on the Sunrise Project as a secondary receipt point on an as-available basis at the shipper's otherwise applicable transportation rate, subject to the operational capability of Equitrans' reticulated system to make deliveries to such

⁸ See *East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331 (2002).

⁹ See *Trunkline Gas Co.*, 119 FERC ¶ 61,078 (2007).

¹⁰ Equitrans' proposed usage rate for the Sunrise Project consists of a base rate of \$0.00 and an ACA charge of \$0.0019.

shipper's delivery point.¹¹ Further, charging firm mainline shippers an additional access charge to use the Sunrise Project amounts to incremental plus pricing, which the Commission has previously rejected.¹² For these reasons, we reject Equitrans' proposed Sunrise Access Charge for Mainline customers that use the Sunrise system on a secondary basis.

23. Equitrans is also proposing to establish a separate Sunrise transmission IT rate for interruptible service and to charge a Combined System IT rate for interruptible transportation service nominated across both the Mainline and Sunrise systems. The proposed Sunrise IT rate is the 100 percent load factor derivative of the Sunrise Project Reservation Charge. The Combined System IT rate is equal to the maximum Sunrise Project interruptible recourse rate and the Mainline Retainage factor and the Mainline IT usage rate and associated surcharges.

24. As described in the Certificate Policy Statement, the Commission seeks to encourage efficient investment and contracting decisions by pipelines and shippers concerning the construction of new capacity. It does this by generally requiring that expansions be priced incrementally, so that expansion shippers will have to pay the full costs of the new capacity without subsidy from the existing customers through rolled-in pricing. This helps ensure that a project will not go forward unless the market finds the project viable,¹³ because either the expansion shippers or the pipeline must be willing to fully fund the project. However, pipelines generally build expansions to provide the necessary capacity to accommodate demand for additional levels of firm service. Thus, the investment and contracting decisions the Commission seeks to affect through its rolled-in vs. incremental rate policies are those being made by pipelines and their firm, as opposed to interruptible, shippers.

25. Moreover, the existing shippers which the Commission seeks to protect from rate increases are shippers who "sign long-term contracts" for service on the existing system. Only firm shippers sign such long-term contracts. Since interruptible shippers do not contract with the pipeline to obtain any firm entitlement to service on any part of the pipeline's system, the Commission's policy preference for incremental rates does not apply to those shippers.¹⁴ Moreover, the Commission has held that on an integrated

¹¹ *Dominion Transmission, Inc.*, 129 FERC ¶ 61,012, at n.14 (2009).

¹² *Gulf South Pipeline Co., LP and Destin Pipeline Co., L.L.C. (Gulf South)*, 120 FERC ¶ 61,291 (2007), *reh'g*, 122 FERC ¶ 61,162 (2008).

¹³ Certificate Policy Statement, 88 FERC ¶ 61,227 at 61,746. *See also Kern River Transmission*, 117 FERC ¶ 61,077 (2006).

¹⁴ *See Kern River Transmission Co.*, 117 FERC ¶ 61,077 at P 236-238 (2006).

system, the IT rates established in a section 4 rate case should be based on the rolled-in costs of the entire system, regardless of whether there are firm services priced on an incremental basis.¹⁵ Therefore, Equitrans' proposed Sunrise Transmission System IT rate and Combined System IT rates are rejected. Until Equitrans makes a new section 4 rate case filing, the applicable interruptible transportation rate for service on or over the Sunrise Project is its Mainline System IT rate.

26. Equitrans proposes an incremental fuel rate of 2.0 percent for services using the proposed expansion capacity. As discussed above, we have found the proposed Sunrise Project will be an integrated part of the Equitrans system. Therefore, since the estimated expansion project fuel rate is less than the Equitrans' currently effective system fuel rate of 3.72 percent, the existing system fuel rate is approved for service on and over the Sunrise Project facilities.

C. Tariff Changes

27. Equitrans states that because of the integrated nature of the Sunrise Project with the Mainline System, which allows its customers to flow firm and interruptible service on a secondary basis between the systems, it is necessary to modify certain tariff provisions to prevent the cross-subsidization of the Sunrise Project with the existing Mainline System. To prevent such cross-subsidization, Equitrans proposes to modify sections 4.1, 4.2 and 4.5 (Statement of Rates and Retainage Factors), section 5.1 (Rate Schedule NOFT), section 5.2 (Rate Schedule FTS), section 5.3 (Rate Schedule ITS), and section 6.1 (Definitions) to include the new proposed rates and to define the availability of the Sunrise Project within each rate schedule. Equitrans is also proposing to modify section 6.7 (Flexible Receipt and Delivery Points) to allow its Sunrise and Mainline customers the ability to nominate on a secondary receipt basis on the other system and section 6.8 (Scheduling of Services) to remove the constraint on the Mainline section.

28. Based on the rate discussion above, the proposed changes to reflect the Sunrise Access Surcharge, Incremental IT rate, Combined System IT Rate and separate fuel, lost and unaccounted for charges are rejected. The proposed changes made to sections 6.7 (Flexible Receipt and Delivery Points) and 6.8 (Scheduling of Services) are accepted. Equitrans is directed to file actual tariff sections reflecting the above discussions at least 30 days but no more than 60 days prior to the in-service date of the new facilities.

¹⁵ *Id.* P 338.

D. Negotiated Rates

29. Equitrans indicates that, prior to the in-service date of the Sunrise Project, Equitrans and the expansion shippers will execute firm transportation agreements at negotiated rates for the subscribed capacity. Equitrans states that the negotiated rate agreements will replace the precedent agreements and will not contain provisions that materially deviate from Equitrans' tariff. In certificate proceedings we establish initial recourse rates, but do not make determinations regarding specific negotiated rates for proposed services.¹⁶ Equitrans must file either its negotiated rate contracts or numbered tariff sheets at least 30 but not more than 60 days prior to the commencement of service on the new pipeline, stating for each shipper paying a negotiated rate, the exact legal name of the shipper, the negotiated rate, the applicable receipt and delivery points, the volume to be transported, the beginning and ending dates of the contract term, and a statement that the agreements conform in all material respects with the *pro forma* service agreements in Equitrans' FERC Gas Tariff.

E. Environmental Review

30. The Commission staff began its environmental review of the Sunrise Project following initiation of the pre-filing process on May 28, 2010, in Docket No. PF10-19-000. As part of the pre-filing review, our staff issued a Notice of Intent to Prepare an Environmental Assessment for the Planned Sunrise Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting (NOI) on September 3, 2010. The NOI was published in the Federal Register and mailed to over 890 parties including federal, state, and local government officials; agency representatives; conservation organizations; local libraries and newspapers; Native American groups; and property owners affected by the proposed facilities. FERC staff conducted two public scoping meetings in the vicinity of the proposed project.

31. We received comments in response to the NOI from 14 landowners; a member of the Environmental Justice Advisory Board for the Commonwealth of Pennsylvania; Pennsylvania Department of Conservation and Natural Resources (PADNR) and the Pennsylvania Department of Environmental Protection (PADEP); and Alpha, a coal mining company. The primary issues raised concerned alternative routes, safety, air quality, noise, water quality, wetland impacts, erosion, environmental justice, loss of timber, eminent domain, Pennsylvania state species of concern, and mine subsidence. Also, the West Virginia State Building and Construction Trades Council, AFL-CIO,

¹⁶ *CenterPoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007, at P 19 (2004); *ANR Pipeline Co.*, 108 FERC ¶ 61,028, at P 21 (2004); *Gulfstream Natural Gas System, LLC*, 105 FERC ¶ 61,052, at P 37 (2003); *Tennessee Gas Pipeline Co.*, 101 FERC ¶ 61,360, at n.19 (2002).

provided general comments of items that should be addressed in the EA, but nothing specific.

32. We also received two environmental comments from Alpha and the Pennsylvania Game Commission (PGC) in response to the Notice of Application issued on February 10, 2011. Alpha expressed concerns regarding the crossing of its coal reserves and requested any order issued by the Commission contain mining subsidence conditions consistent with other projects that crossed areas of coal mining. The PGC provided comments on a Pennsylvania bat species of concern.

33. To satisfy the requirements of the National Environmental Policy Act of 1969 (NEPA), our staff prepared an environmental assessment (EA) for the Sunrise Project. The analysis in the EA addressed geology and soils; water resources, fisheries, and wetlands; vegetation and wildlife; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

34. As summarized below, the EA also addressed all substantive issues raised in the scoping period. Several landowners submitted scoping comments on the southern portion of the project as originally proposed in the pre-filing process that included 108.9 miles of pipeline and two new compressor stations. These landowners are no longer impacted by the project as downsized by Equitrans in a filing on January 27, 2011, to a total of about 51.8 miles of pipeline and one compressor station as described in the EA.

35. Equitrans consulted affected landowners when developing its proposed pipeline alignment during the pre-filing process and adopted several pipeline alignment adjustments that were requested by landowners in scoping comments into the proposed route. One landowner-designed alternative near milepost 5.0 was not incorporated into the proposed route. As stated in the EA, alternative routes for this property would require additional new right-of-way affecting two adjacent landowner properties; therefore, no alternative was recommended as preferable to the proposed route.

36. In response to general scoping comments regarding safety, air quality, and noise concerns, the EA clarified that Equitrans will design, construct, operate, and maintain the proposed pipeline and aboveground facilities in accordance with the U.S. Department of Transportation's Minimum Federal Safety Standards in 49 CFR 192. The EA also concluded that construction will result in intermittent and short-term construction air emissions, and found that Equitrans has committed to limit construction to daylight hours to minimize construction noise for nearby residents and to control dust as necessary by applying water to the right-of-way. Section 2.7.2 of the EA described the potential noise impact of the project, and concluded that operation of the Jefferson Compressor Station will not significantly increase existing noise levels at the nearby noise sensitive areas.

Further, environmental condition 12 will ensure that noise attributed to operation of the compressor station does not exceed the noise levels identified in the EA.

37. Scoping comments were received regarding the projects impact on affected waterbodies, wetlands crossed by the project, and general erosion concerns of the construction areas. The EA described Equitrans' commitment to implement our Wetland and Waterbody Construction and Mitigation Procedures for crossing waterbodies and wetlands in order to minimize impacts on these resources during construction and to ensure that these resources are adequately restored. In upland areas, Equitrans will implement the mitigation measures included in our Upland Erosion Control, Revegetation, and Maintenance Plan to minimize erosion and sedimentation. It also developed and will implement a Spill Prevention, Control and Countermeasure Plan to prevent and minimize any impacts in the event of a spill of a hazardous substance, fuel, or oil.

38. The member of the Environmental Justice Advisory Board for the Commonwealth of Pennsylvania stated during scoping that an area where environmental justice is a concern exists in Greene County, Pennsylvania near the project. The EA discussed environmental justice and clarified that the area of concern is not crossed by the proposed pipeline alignment. In response to landowner comments concerning various easement negotiations, the EA stated that Equitrans will compensate landowners for project-related impacts and will purchase easement rights. Equitrans will only secure necessary rights through eminent domain if an agreement for the rights can not be negotiated with the landowner and in accordance with the regulations of West Virginia and Pennsylvania as applicable.

39. In response to scoping comments received from the PGC and PADNR, the EA discussed Equitrans' survey for the Pennsylvania species of concern. Only the northern myotis, wild senna, and insect host plants were found during biological survey of the pipeline corridor. As stated in the EA, Equitrans agreed to the mitigation recommended by the PGA and PADNR to avoid or minimize impact on these species of concern.

40. Alpha's comments requested that the Commission ensure that Equitrans adheres to its proposed measures when mining subsidence occurs under the proposed pipeline. To address Alpha's comments, the EA also discussed reasons that environmental conditions included in the Commission's order for previously authorized projects were not applicable to this project (primarily because Equitrans' proposed alignment is not a greenfield pipeline route and is adjacent to an existing Equitrans' pipeline currently crossing Alpha's coal reserves). As further stated in the EA, Equitrans entered into an agreement with Alpha to cross its properties and also stated that it would continue to consult with Alpha regarding the crossing of its coal mining operations during construction and pipeline operation.

41. The EA was issued on May 11, 2011 for a 30-day public comment period and placed into the public record of this proceeding. The EA was noticed in the Federal Register on May 18, 2011, and mailed to federal, state, and local agencies; elected officials; environmental and public interest groups; local newspapers and libraries; Native American tribes; interveners to this proceeding; affected landowners, potentially affected landowners, and other interested individuals and groups. We received one comment letter on the EA from Alpha.

42. The comments provided by Alpha identify two inaccuracies in the EA. Alpha states that the EA refers to Consol Energy, Inc. (Consol) as being an affiliate of Alpha. Alpha clarified that it is not affiliated with Consol. Alpha further clarified that Equitrans' Mine Subsidence Plan and Procedures is an excerpt from a generic design manual and did not result from previous comments provided by Alpha. Alpha also states that representatives of Equitrans and Alpha affiliates met and reached some understandings regarding subsidence mitigation issues. Based on Alpha's understanding that Equitrans did agree that it was responsible for protecting its pipelines from mine subsidence, Alpha does not oppose the project.

43. We have reviewed the information and analysis contained in the record, including the EA, regarding the potential environmental effect of the Sunrise Project. Based on our consideration of this information, we agree with the conclusions presented in the EA and find that if constructed and operated in accordance with Equitrans' application, as supplemented, and the conditions imposed herein, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

44. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction and replacement of facilities approved by this Commission.¹⁷

45. At a hearing held on July 21, 2011, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

¹⁷ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Equitrans to construct and operate the Sunrise Project, as described more fully in the order and in the application.

(B) The certificate issued herein is conditioned on Equitrans' compliance with all of the applicable regulations under the NGA, particularly the general terms and conditions set forth in Parts 154, 157, and 284, and paragraphs (a), (c), (e), and (f) of section 157.20.

(C) Prior to commencing construction, Equitrans must execute firm service agreements for the levels and terms of service reflected in the precedent agreements submitted in support of its proposal.

(D) Equitrans' facilities shall be constructed and made available for service within one year of the date of the order in this proceeding, in accordance with section 157.20(b) of the Commission's regulations.

(E) Equitrans' request to charge certain incremental rates for services on the Sunrise Project is approved as discussed and limited in the text of this order.

(F) Equitrans must file actual tariff sections reflecting the above discussions at least 30 days but no more than 60 days prior to the in-service date of the new facilities.

(G) The certificate issued herein is conditioned on Equitrans' compliance with the environmental conditions set forth in the appendix to this order.

(H) Equitrans shall notify the Commission's environmental staff by telephone, electronic mail, and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Equitrans. Equitrans shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Environmental Conditions for the Sunrise Project

As recommended in the environmental assessment (EA), this authorization includes the following conditions:

1. Equitrans shall follow the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests) and as identified in the EA, unless modified by the Order. Equitrans must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegation authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from project construction and operation.
3. **Prior to any construction**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel would be informed of the EI's authority and have been or would be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Equitrans shall file with the Secretary any revised detailed survey alignment maps or sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps or sheets.

Equitrans' exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Equitrans' right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. Equitrans shall file with the Secretary detailed alignment maps or sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use or cover type, documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps, sheets, or aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to route variations required herein or extra workspace allowed by Equitrans' Erosion and Sediment Control Plan or minor field realignments per landowner needs and requirements that do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **Within 60 days of the acceptance of the certificate and before construction begins**, Equitrans shall file an Implementation Plan with the Secretary for review and written approval by the Director of OEP. Equitrans must file revisions to the plan as schedules change. The plan shall identify:
 - a. how Equitrans will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EA, and required by the Order;
 - b. how Equitrans would incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and

- specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- c. the number of EIs assigned per spread, and how the company would ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions Equitrans will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change) with the opportunity for OEP Staff to participate in the training sessions;
 - f. the company personnel (if known) and specific portion of Equitrans' organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) Equitrans would follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Equitrans shall file updated status reports with the Secretary on a **weekly** basis until **all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. an update of Equitrans' efforts to obtain the necessary federal authorizations;
 - b. the current construction status of each spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EI(s) during the reporting period (both for the conditions imposed by the Commission and any environmental conditions or permit requirements imposed by other federal, state, or local agencies);
 - d. a description of the corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner or resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and

- g. copies of any correspondence received by Equitrans from other federal, state or local permitting agencies concerning instances of noncompliance, and Equitrans' response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of project facilities**, Equitrans shall file with the Secretary documentation that it has received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. Equitrans must receive written authorization from the Director of OEP **before placing the project into service**. Such authorization would only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facilities in service**, Equitrans shall file an affirmative statement with the Secretary, certified by a senior company official:
 - a. that the facilities have been constructed or installed in compliance with all applicable conditions, and that continuing activities would be consistent with all applicable conditions; or
 - b. identifying which of the certificate conditions Equitrans has complied with or would comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
11. **Prior to construction**, Equitrans shall file with the Secretary evidence of the appropriate landowner concurrence with the site-specific residential construction plans at mileposts 22.6 and 29.3 where construction work areas would be within 10 feet of a residence.
12. Equitrans shall file a noise survey with the Secretary of the Commission **no later than 60 days** after placing the authorized equipment at its compressor station into service. If the noise attributable to the operation of all the equipment at its compressor station at full load exceeds a day-night sound level of 55 decibels on the A-weighted scale at any nearby noise sensitive areas, Equitrans shall install additional noise controls to meet the level **within 1 year** of the in-service date. Equitrans shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days after it installs the additional noise controls**.