

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Equitrans, L.P.

Docket No. RP05-164-001

ORDER ON CLARIFICATION AND REHEARING

(Issued May 10, 2005)

1. Equitrans, L.P. (Equitrans) and The Independent Oil and Gas Association of West Virginia (IOGA) separately request clarification of the Commission's February 28, 2005 Order in Docket No. RP05-164-000 (February 28, 2005 Order).¹ In the alternative, Equitrans requests rehearing of the February 28, 2005 Order. That order, in pertinent part, addressed a filing, under section 4 of the Natural Gas Act (NGA), containing tariff sheets² to establish gathering rates for services performed on existing and recently acquired gathering facilities. The Commission accepted and suspended the proposed tariff sheets, to be effective August 1, 2005, upon motion by Equitrans, subject to refund, and to the outcome of a hearing and technical conference established therein. The February 28, 2005 Order stated that gathering services on the recently acquired facilities in connection with interstate transportation are subject to Equitrans' currently effective West Virginia Gathering Rate and that this rate applies to the services unless and until superseded by new rates. The Commission will grant IOGA's request for clarification and deny Equitrans' request for clarification and request for rehearing of the February 28, 2005 Order.

¹ *Equitrans, L.P.*, 110 FERC ¶ 61,194 (2005), *errata* issued March 4, 2005.

² *See* Appendix to the February 28, 2005 Order for the list of tariff sheets.

Background

2. After restructuring its system pursuant to Order No. 636, Equitrans ended its merchant role and its gathering facilities became used primarily to provide open-access gathering services. Equitrans also began the process of unbundling its rates for gathering service from its rates for interstate open-access transportation. Under the Stipulation and Agreement approved in Docket No. RP97-346-000, *et al.*, Equitrans agreed to fully unbundle its rates for gathering service by a date certain.³

3. Equitrans subsequently acquired assets formerly owned by Carnegie Interstate Pipeline Company (CIPCO) effective January 1, 2004.⁴ Equitrans then determined that some of its remaining pipeline facilities, including some of the newly-acquired CIPCO facilities, were performing a gathering function. In Docket No. CP04-76-000, Equitrans requested permission to refunctionalize them from transmission and storage to gathering. In an order issued November 23, 2004, the Commission authorized the refunctionalization.⁵

4. After the Commission approved the refunctionalization also on November 23, 2004, Equitrans then filed a limited NGA section 4 rate case in Docket No. RP05-105-000 on November 30, 2004 to reflect the permitted refunctionalization of assets, including revised gathering rates. Equitrans' proposed gathering rates were based on the zone in which the gathering services are performed. These rates included a "West Virginia Gathering Rate."⁶ On December 30, 2004, the Commission accepted the

³ *Equitrans, L.P.*, 87 FERC ¶ 61,116 (1999).

⁴ CIPCO merged into Equitrans on January 1, 2004, pursuant to the Commission's order in *Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003). Gathering services previously provided by CIPCO are offered by Equitrans under its gathering rates for service in the CIPCO District.

⁵ *Equitrans, L.P.*, 109 FERC ¶ 61,209 (2004).

⁶ See February 28, 2005 Order, 110 FERC ¶ 61,194 at P19 & n.16, citing Fourteenth Revised Sheet No. 6 to Equitrans FERC Gas Tariff, Original Volume No. 1 ("Applicable to when Customer's transportation gas is received or delivered at any point on Equitrans' gathering facilities (other than CIPCO District.)").

gathering rates, including the West Virginia Gathering Rate, effective December 1, 2004, subject to refund and subject to the outcome of a hearing established by that order.⁷

5. Effective January 1, 2005, Equitrans acquired non-jurisdictional West Virginia gathering facilities from its affiliate, Equitable Field Services, LLC (EFS). These facilities include West Virginia gathering facilities it had previously had sold to EFS⁸ and gathering facilities that EFS had acquired from CNG Transmission Corporation, which Equitrans refers to as the Hastings facilities (collectively, Reacquired EFS Facilities).⁹ Collectively, the gathering facilities Equitrans acquired from EFS amount to approximately 1,214 miles of low pressure pipeline ranging from 1- to 30-inches in diameter, and 1,760 horsepower of compression.¹⁰

6. On January 28, 2005, Equitrans filed, under section 4 of the NGA, tariff sheets in Docket No. RP05-164-000 proposing to establish a single “postage stamp” gathering rate for virtually all of its West Virginia gathering facilities, including the Reacquired EFS Facilities. Equitrans claimed a total annual gathering cost of service of approximately \$14,829,000. This gathering cost of service reflected a base period ending September 30, 2004, as adjusted. This cost of service compares to Equitrans’ total gathering cost of service of approximately \$10,040,000 underlying the currently effective gathering rates

⁷ *Equitrans, L.P.*, 109 FERC ¶ 61,384 (2004); *order on reh’g, Equitrans, L.P.*, 111 FERC ¶ 61,112 (2005). In that order, the Commission also consolidated Docket No. RP05-105-000 with the ongoing hearing in Docket No. RP04-203-000. *See Equitrans, L.P.*, 106 FERC ¶ 61,340 (2004).

⁸ At about the same time as the CIPCO acquisition, Equitrans sought and obtained authority to abandon by transfer to EFS, certificated and uncertificated natural gas pipeline facilities consisting of approximately 1,308 miles of low pressure, predominantly small diameter pipeline, thirteen field compressor units with a total of 4,040 horsepower of compression, meters and various appurtenant facilities used to gather gas from numerous wells in West Virginia and Pennsylvania. On February 14, 2002, Equitrans was permitted to abandon the assets at depreciated book cost, and the Commission found that, upon acquisition by EFS, the facilities would be gathering facilities exempt from the Commission’s jurisdiction under NGA section 1(b). *Equitrans, L.P.*, 98 FERC ¶ 61,160 (2002). The individual assets are described in the Commission’s February 9, 2002 Order.

⁹ *CNG Transmission Corp.*, 74 FERC ¶ 61,217 (1996).

¹⁰ Equitrans’ Ex. ELP-1 at 8-9.

as proposed in Docket No. RP05-105-000.¹¹ Equitrans stated that the gathering cost of service reflects the same return, depreciation and other cost principles proposed and supported in Equitrans' general section 4 rate case in Docket No. RP04-203-000. However, Equitrans continued, there are two exceptions. The filing in the general section 4 rate case uses the "KN methodology" to allocate administrative and general overhead costs, and gross operating plant to allocate general and intangible plant. In the instant proceeding, Equitrans asserted that these allocation factors would result in a disproportionate share of administrative and general costs and general and intangible plant being allocated to gathering. Equitrans proposed to allocate no more of these costs and plant to gathering services than what it proposed in the Docket No. RP04-203-000 general section 4 rate case.

7. On February 28, 2005, the Commission accepted and suspended Equitrans' limited section 4 filing in the instant Docket No. RP05-164-000, for five months, to be effective August 1, 2005, subject to refund and to a hearing and technical conference. The Commission stated that the rates, terms and conditions for gathering services Equitrans performs in connection with its NGA jurisdictional open access interstate transportation service are subject to the Commission's jurisdiction under sections 4 and 5 of the NGA effective January 1, 2005. However, in response to the protest by IOGA, the Commission directed the ALJ to examine the gathering services provided over these Equitrans' gathering facilities to determine which services and facilities may be treated as providing service "in connection with the transportation . . . of natural gas subject to the jurisdiction of the Commission" under NGA sections 4 and 5, and to make recommendations as to gathering service tariff conditions and rates in accordance with those findings. The Commission stated that gathering services in connection with interstate transportation are subject to Equitrans' currently effective West Virginia Gathering Rate and that this rate applies to the services unless and until superseded by new rates.

Requests for Clarification and Rehearing

8. Equitrans and IOGA both request clarification of the rate Equitrans is legally permitted to charge and collect for services provided over the newly acquired gathering facilities during the suspension of the rates proposed in this proceeding. Equitrans requests that the Commission clarify that the February 28, 2005 Order did not intend to preclude it from charging, during the suspension period, the preexisting rates in effect, including the \$0.3300 per Dth West Virginia Public Service Commission (West Virginia

¹¹ Equitrans' Docket No. RP05-105-000, sum of original Equitrans and CIPCO District gathering function costs in Statement A.

PSC) approved rate for those services on gathering facilities recently acquired by Equitrans from EFS (EFS Gathering Rate), in addition to the \$0.3206 West Virginia Gathering Rate. IOGA requests that the Commission clarify that Equitrans is only permitted to charge the gathering rate contained in its tariff, the West Virginia Gathering Rate. Equitrans requests rehearing to the extent that the February 28, 2005 Order requires it to charge the rate on file in its tariff and not the EFS Gathering Rate for its Reacquired EFS Facilities.

9. IOGA seeks clarification because Equitrans has tendered invoices for “EFS Gathering” for January shipments which seek to charge and collect the same gathering rates and retainage percentage charged by EFS for December shipments that were regulated by the West Virginia PSC prior to Equitrans’ acquisition of the former EFS facilities. IOGA states that Equitrans has informed IOGA of its intention to charge these rates throughout the suspension period. IOGA argues that Equitrans can lawfully charge only one rate, the currently effective gathering rate in its tariff on file with the Commission.

10. IOGA states that the invoices it received bill rates that for most of Equitrans’ gathering systems exceed \$0.3000 per Dth plus a five percent retainage factor. In addition, IOGA contends that Equitrans informed it that Equitrans also intends to bill shippers for the same molecules of gas flowing through the same rolled-in gathering facilities the currently effective FERC Gas Tariff rate of \$0.3206 per Dth plus a 2.79 percent retainage factor. IOGA contends that the five percent retainage factor exceeds the filed rate and that the combined rates also exceed the filed rates.

11. IOGA argues that the EFS Gathering Rate that Equitrans charged in its invoices ceased to exist on January 1, 2005 when Equitrans took possession of the gathering systems. At that point, IOGA contends, the rates for gathering on the systems became subject to the Commission’s jurisdiction over the rates for gathering of natural gas “in connection with” interstate transportation.¹² IOGA argues that Equitrans filed with the West Virginia PSC on January 28, 2005 to withdraw the EFS Gathering Rates, admitting that the Commission’s NGA jurisdiction preempted the West Virginia PSC’s jurisdiction.¹³

12. IOGA contends that a pipeline takes the risk that it may not be able to recover its costs when it files a section 4 rate case. It argues that Equitrans made a tactical decision

¹² IOGA Request for Clarification at 5.

¹³ Ex. A to IOGA’s Request for Clarification at 5.

to unilaterally acquire facilities from its affiliate and to file a limited section 4 rate case proposing to roll the costs of the newly acquired facilities into its existing gathering rate and retainage factor. IOGA asserts that Equitrans cannot rely on its affiliate's/predecessor's previously state-filed rate, contracts, or any other basis for the charges reflected in the January invoices.

13. Equitrans argues that by suspending Equitrans' proposed tariff sheets, the Commission presumably intended to allow Equitrans to continue to charge the rates previously in effect, the EFS Gathering Rates. Equitrans states that "[u]ntil August 1, 2005, it is the [West Virginia PSC]-approved [EFS] Rate and the previously effective Hastings facility rates that should be charged by Equitrans for service related to the Reacquired EFS Facilities and Hastings Assets respectively. Any other finding by the Commission would deny Equitrans an opportunity to recover its cost of service."¹⁴ It claims that, in effect, "the Commission essentially also 'suspended' its jurisdiction over the Reacquired EFS Facilities."¹⁵ Equitrans asks that the Commission clarify that "pending the end of the suspension period on August 1, 2005, Equitrans may continue to assess the [EFS] Rate and fuel retention (\$0.33 per Dth and 5.00 % retainage) for services rendered via the Reacquired EFS Facilities, and the preexisting rate and fuel retention (\$0.27 per Dth and 8.00% retainage) for services rendered via the Hastings Assets."¹⁶ Equitrans claims that any other reading of the Commission's February 28, 2005 Order is in error and that if the Commission intended to direct Equitrans to charge only the West Virginia Gathering rate approved in Docket No. RP05-105-000 for any services over all of its West Virginia Gathering facilities, including the Reacquired EFS Facilities, that holding is in error.

14. Equitrans argues that when the Commission orders a pipeline to modify its tariff, the Commission must do so in compliance with section 5(a) of the NGA¹⁷ and when the Commission acts pursuant to section 5, the Commission bears the burden of proof and "must show not only that its proposed rates or charges are just and reasonable, but that those it would alter are not."¹⁸ Thus, it argues, section 5 requires that, when the

¹⁴ Equitrans Request for Clarification at 6.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 513 (D.C. Cir. 1985) (per curiam); *Public Service Comm'n v. FERC*, 642 F.2d 1335, 1345 (D.C. Cir. 1980).

¹⁸ *Municipal Defense Group v. FERC*, 170 F.3d 197, 201 (D.C. Cir. 1999).

Commission seeks to impose a rate not proposed by the pipeline, it must first find that the effective rate that will be modified is unjust or unreasonable, and then find that its proposed rate is just and reasonable.

15. Equitrans contends that, assuming that IOGA's interpretation¹⁹ was the intent of the February 28, 2005 Order, the Commission would not have satisfied either of its burdens under section 5 of the NGA. First, it asserts that the Commission has not found that the EFS Gathering Rate currently in effect for the Reacquired EFS Facilities is unjust and unreasonable, much less supported any such finding with substantial evidence. Second, Equitrans argues that the Commission has not explained how its proposed rate, which it claims is zero for use of the Reacquired EFS Facilities, is just and reasonable.

16. Equitrans also argues that IOGA's interpretation of the February 28, 2005 Order would lead to harsh and inequitable results. It contends that although both the Commission-approved West Virginia Gathering Rate and the EFS Gathering Rate are cost-based rates that were derived using generally accepted ratemaking methodologies and actual data, Equitrans would be unable to charge customers any rate for their use of the Reacquired EFS Facilities. Equitrans asserts that it would lose approximately \$2.6 million, plus a temporary retainage under recovery of approximately 446,000 Dth during the suspension period under IOGA's interpretation of the February 28, 2005 Order. Equitrans argues that it would be unprecedented for the Commission to require a pipeline to provide customers with services but to deny that pipeline the right to recoup its cost of service associated with the facilities used to provide such services. It asserts that if Equitrans were prohibited from recouping any costs associated with the gathering services that its Reacquired EFS Facilities provide, not only is this a patently harsh and inequitable result but, in effect, the West Virginia Gathering Rate would constitute an impermissible confiscatory rate.²⁰

¹⁹ Equitrans states that it understands IOGA's interpretation of the February 28, 2005 Order to be that if customers use gathering services provided by Equitrans' Refunctionalized Facilities as well as gathering services provided by its Reacquired EFS Facilities, instead of paying both the West Virginia Gathering Rate (\$0.3206) and EFS Gathering Rate (\$0.3300), such customers would only have to pay Equitrans the West Virginia Gathering Rate.

²⁰ Equitrans Request for Clarification at 8, stating that “[i]n order to satisfy the just compensation clause, utility rates set by federal and state regulatory agencies must not be ‘so 'unjust' as to be confiscatory.’” (citations omitted).

17. Both Equitrans and IOGA filed answers to the requests for clarification and/or rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2004), prohibits answers to requests for rehearing. The answers effectively are to the rehearing requests. We will accordingly reject Equitrans' and IOGA's answers.

Discussion

18. The Commission grants IOGA's request for clarification and denies Equitrans' requests for clarification and request for rehearing.

19. Equitrans acquired gathering facilities from EFS effective January 1, 2005. From that date forward, the gathering transportation services were by Equitrans, not EFS. Equitrans' contention that the Commission intended to "'suspend' its jurisdiction over the Reacquired EFS Facilities" is in error.²¹ The February 28, 2005 Order specifically stated that "the rates, terms and conditions for gathering services Equitrans performs in connection with its NGA jurisdictional open access interstate transportation service are subject to the Commission's jurisdiction under sections 4 and 5 of the NGA effective January 1, 2005."²² In addition, EFS filed with the West Virginia PSC stating that it had sold the subject facilities to Equitrans and that, therefore, this Commission's jurisdiction preempted that of the West Virginia PSC.²³ There is no indication that Equitrans objected to this interpretation of this Commission's jurisdiction.

20. Therefore, from January 1, 2005 forward, the gathering transportation services performed in connection with jurisdictional transportation must be provided pursuant to rates on file with the Commission that have been accepted and made effective by the Commission pursuant to section 4 of the NGA. This includes service in connection with jurisdictional transportation over the Reacquired EFS Facilities. As of January 1, 2005, Equitrans had and continues to have maximum recourse rates for gathering transportation service in connection with jurisdictional transportation in effect. Equitrans' tariff states that the West Virginia Gathering Rate is "[a]pplicable to when Customer's transportation gas is received or delivered at *any point* on Equitrans' gathering facilities (other than CIPCO District)."²⁴ Therefore, by the terms of Equitrans' tariff, these rates apply to gas

²¹ *Id.* at 6.

²² February 28, 2005 Order at P 19.

²³ *See* Ex. A to IOGA's Request for Clarification.

²⁴ Fourteenth Revised Sheet No. 6 to Equitrans FERC Gas Tariff, Original Volume No. 1 (emphasis added).

received or delivered at “any point on Equitrans’ gathering facilities,” (other than the CIPCO District) which, as of January 1, 2005, includes the gathering services performed on the newly-acquired gathering facilities. The Commission’s statement was simply pointing out the obvious – Equitrans’ jurisdictional gathering services on the newly acquired facilities had to be subject to maximum recourse rates on file in Equitrans’ Commission-approved tariff.

21. None of the state-approved EFS Gathering Rates was subject to this Commission’s review. Nor were they ever proposed by EFS or anyone else pursuant to section 4 of the NGA. The EFS Gathering Rates are not on file with this Commission; nor are they otherwise reflected in Equitrans’ FERC Gas Tariff. For jurisdictional services, under the filed rate doctrine,²⁵ Equitrans may only charge rates that have been filed and are accepted by this Commission, and are effective for the period the service was rendered. Therefore, Equitrans’ assertion that it should be able to charge the rates previously in effect is incorrect. Equitrans cannot charge those rates for jurisdictional service because those rates were never filed with the Commission, were never reviewed by the Commission pursuant to section 4 of the NGA, and were never in effect.

22. Equitrans argues that its effective gathering rates do not fully recover the gathering cost of service related to the newly acquired facilities. That may or may not be true.²⁶ However, even if true, the NGA does not give pipelines the right to charge unfiled and unaccepted rates pending the prospective implementation of other revised rates. If filed rates do not recover a pipeline’s cost of service, the pipeline has the right to file for changed rates pursuant to section 4 of the NGA – but only on a prospective basis. Equitrans has done so with regard to the cost recovery allegedly related to the newly acquired plant in Docket No. RP05-164-000, and the Commission has accepted those tariff sheets with a five-month suspension and subject to refund. All pipelines subject to section 4 of the NGA face the financial risk associated with not requesting timely changes to rates and the risk of not recovering costs during the period of suspension.²⁷

²⁵ *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, (1981).

²⁶ Acquiring new facilities does not imply rates must be increased. For example, the incremental costs associated with the acquired facilities may be less than the incremental revenues from services rendered on the acquired facilities; or the total revenue requirement of the total zone may be less than the total revenue responsibility of the customers.

²⁷ *FPC v. Tennessee Gas Transmission Co.*, 371 U.S. 145, 152 (1962).

Pipelines cannot change filed rates retroactively.²⁸ Nor can they recover past period costs in current rates.²⁹

23. The fact that the effective gathering rate was calculated without the newly acquired facilities does not imply that these rates are not applicable to services on the acquired facilities. Pipeline additions and abandonments are frequently made without a statutory or Commission requirement to change either the availability provisions of the tariff or the rate level. Generally applicable rate schedules are usually designed to be applicable to all jurisdictional facilities of a pipeline capable of rendering the service. Between rate cases, the facilities may be added or abandoned without affecting rates. For example, facilities constructed or acquired pursuant to blanket certificates add plant without changing effective rates.³⁰ The Commission will often approve system rates for incremental facilities and services even though those rates do not include the new facilities and services.³¹ There is no statutory, regulatory or policy requirement that rates must be adjusted to reflect every facility addition.

24. Equitrans argues that the Commission has not met its section 5 burden requiring that when the Commission seeks to impose a rate not proposed by the pipeline, it must first find that the effective rate that will be modified is unjust or unreasonable, and then find that its proposed rate is just and reasonable. It asserts that the Commission failed to meet its section 5 burden because the Commission has not found Equitrans' existing state-approved EFS Rate is unjust and unreasonable, and has not explained how what it asserts is the Commission's "proposed zero rate" for use of the Reacquired EFS Facilities is just and reasonable. Equitrans misses the point. The Commission is not seeking to

²⁸ See *Associated Gas Distributors v. FERC*, 898 F.2d 809, 810 (D.C. Cir. 1990) (concurring opinion of Justice Williams).

²⁹ *Id.* The exception is tracker tariff procedures where customers have notice that their rates may be subject to recovery of past unrecovered costs. There was no such notice here. See also, *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, (1981). Equitrans states that under recovery of retainage will be temporary until such time as Equitrans files for adjustment. Equitrans Request for Clarification at 2, n.2.

³⁰ See 18 C.F.R. Part 157, subpart F (2004). See also *Tennessee Gas Pipeline Company*, 111 FERC ¶ 61,094 (2005).

³¹ See *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,277 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128 (2000); *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

impose a rate not proposed by the pipeline. Nor did the Commission's order require any change to its currently effective tariff. Before Equitrans' filing in the instant proceeding, it proposed, and the Commission accepted, subject to refund and hearing, the West Virginia Gathering Rate in Docket No. RP05-105-000. That is the rate that was in effect on January 1, 2004, and that rate will remain in effect, subject to refund and the outcome of a hearing, until Equitrans moves the rates proposed in the instant Docket No. RP05-164 into effect. In the February 28, 2005 Order, the Commission simply identified the West Virginia Rate as the only rate in Equitrans' tariff applicable to jurisdictional gathering transportation services on the non-CIPCO District portion of its system. Therefore, since Equitrans is now offering jurisdictional gathering service over the Reacquired EFS Facilities, which it incorporated into the non-CIPCO District portion of its system, it must offer this service in accordance to its tariff, *i.e.*, at the West Virginia Gathering Rate proposed in Docket No. RP05-105-000. Further, and for the same reasons, the February 28, 2005 Order did not impose a zero rate as Equitrans incorrectly claims. The order simply clarified what the existing lawful maximum rate on file is, *i.e.*, the West Virginia Rate Equitrans proposed in Docket No. RP05-105-000, which is in effect subject to refund and the outcome of the hearing. Since that rate was proposed by Equitrans pursuant to section 4 of the NGA, the Commission clearly has no section 5 burden to show that it is just and reasonable.

25. As to Equitrans' contention that the Commission's February 28, 2005 Order would lead to harsh and inequitable results because it would require Equitrans to charge a zero rate for services provided on the Reacquired EFS Facilities, we disagree. The February 28, 2005 Order does not require Equitrans to charge a zero rate for services over the Reacquired EFS Facilities; it permits Equitrans to charge the West Virginia Gathering Rate for service over those facilities under each contract it has with a shipper on its expanded system. For example, if a shipper had a contract with EFS for service on EFS's facilities and also had a contract with Equitrans for service on its West Virginia facilities, once Equitrans acquired the facilities from EFS it stepped into the shoes of EFS in those former EFS contracts. Accordingly, following that acquisition on January 1, 2005, Equitrans was contractually authorized to charge the shipper up to the West Virginia Rate for services under each separate contract.

26. Pursuant to section 4 of the NGA, pipelines are largely in control of the timing of requests to change rates. They choose when to file and to propose the effective date for the change. Equitrans, when it acquired the gathering assets from its affiliate, EFS, should have included in its business plan not just the requirements for title transfer, but also cost recovery. The acquisition plan should have coordinated the acquisition of EFS' gathering facilities and providing gathering services with any rate filings necessary with

FERC.³² Gathering facilities are not subject to section 7 of the NGA. As such, the certificate initial rate process that pre-approves the cost recovery mechanism for the new facilities is not available. However, the section 4 process always was available and would have provided Equitrans the rate relief it now seeks in the instant proceeding had it filed revised rates prior to the effective date of the acquisition to establish revised NGA maximum recourse rates to be effective January 1, 2005.

The Commission orders:

(A) IOGA's request for clarification is hereby granted, as discussed in the body of this order.

(B) Equitrans' request for clarification and request for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

³² EFS's, filing with the West Virginia PSC clearly states EFS's view that the gathering services were to fall under Commission jurisdiction. *See* Ex. A to IOGA's Request for Clarification. There does not appear to be any misunderstanding on the part of the Equitrans family that this Commission's rules and regulations would apply after the date of transfer.