104 FERC ¶ 61, 008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Equitrans, L.P. Docket No. CP02-233-000
and
Carnegie Interstate Pipeline Company

ORDER REJECTING SETTLEMENT AND AUTHORIZING ABANDONMENT AND ACQUISITION OF FACILITIES

(Issued July 1, 2003)

1. On May 20, 2002, Equitrans, L.P. (Equitrans) and Carnegie Interstate Pipeline Company (Carnegie), affiliated interstate pipelines, filed an application for abandonment and certificate authority pursuant to Sections 7(b) and 7(c), respectively, of the Natural Gas Act (NGA). Equitrans proposed to acquire Carnegie's jurisdictional facilities by merger and assume its jurisdictional service obligations. On March 25, 2003, Carnegie and Equitrans filed a contested offer of settlement addressing certain issues raised by parties in response to the application.

2. For the reasons discussed herein, the Commission is rejecting the offer of settlement. However, the Commission is granting the requisite abandonment and certificate authorizations to effectuate the applicants' corporate reorganization based on the Commission's finding that the applicants' merger will be in the public interest because it will result in administrative and operational efficiencies, which should enhance services and ultimately reduce costs.

BACKGROUND AND PROPOSAL

3. Equitrans and Carnegie have jurisdictional transmission facilities in the same regions of Pennsylvania and West Virginia, and their systems interconnect at two points. In 1999, Equitable Resources, Inc., which owns 99 percent of Equitrans, purchased all of the Carnegie companies, including the applicant and its affiliated companies engaged in natural gas production, marketing and local distribution.

4. Carnegie's facilities consist of 328 miles of transmission pipeline in Pennsylvania and West Virginia, approximately 344 miles of gathering lines, a gas processing plant at Waynesburg, Pennsylvania, and six gathering compressor stations. Equitrans' facilities consist of approximately 719 miles of pipeline in West Virginia and Pennsylvania, and 15 gas storage fields. Equitrans spun down its gathering facilities in 2002.[1]

5. Equitrans proposes to acquire all of Carnegie's existing facilities, including its gathering facilities, and other assets by merger at actual net depreciated book cost. The parties have entered into a Transfer Agreement, attached to the application as Exhibit R. Under the agreement, Equitrans will become the successor in interest to Carnegie's interstate gas business. Thus, in addition to acquiring Carnegie's facilities, Equitrans will assume all of Carnegie's interstate service obligations, as well as its gathering service obligations, and any other legal and regulatory obligations and liabilities. Equitrans will perform all services over Carnegie's facilities after the merger pursuant to its Part 284 blanket certificate.

6. Following the merger, the Equitrans proposes as initial rates for services on the facilities presently owned by Carnegie, rates that are the same as Carnegie currently charges for service on its system, until new rates for the combined systems are determined in Equitrans' next general rate case. Under a 1999 settlement approved by the Commission, Equitrans must file a general rate case proposing rates to be in effect by August 1, 2003.[2] Until rates are approved for the merged Equitrans-Carnegie system, customers receiving service on the Carnegie portion of the merged system will contract for service under a new rate schedule designated for service in the "CIPCO District," which Equitable would file as a separate Part 284 rate schedule in its tariff. The application includes a pro forma tariff sheet reflecting the rates for services in the "CIPCO District."

7. Carnegie and Equitrans contend that their proposal is required by the public convenience and necessity because the merger of the two small interstate pipelines will provide administrative cost savings by consolidating duplicative functions currently performed by the two companies. Additionally, the applicants assert that the cost of regulatory compliance will be reduced by half since only one entity will have to make the

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[1]Equitrans, LP and Equitable Field Services, LLC, 98 FERC ¶ 61,160 (2002). Although Equitrans' gathering facilities were spun down, costs associated with gathering have not yet been removed from Equitrans' rate base used to determine its jurisdictional rates.

[2]See Equitrans, L.P., 87 FERC ¶ 61,116 (1999).

Commission's required regulatory and reporting filings. Carnegie and Equitrans maintain that the Commission will have to provide less regulatory oversight, thereby decreasing its administrative burden. The applicants aver that the existing customers of both pipelines will benefit because of reduced administrative and regulatory compliance costs.

8. Further, Carnegie and Equitrans cite operational benefits that will accrue from the proposed merger. In particular, they explain that integration of the two systems will produce cost-saving efficiencies and will improve the availability of capacity. The latter will assist in relieving bottlenecks and will enhance system reliability. The applicants note that in another proceeding wherein Equitrans proposed to acquire a small, affiliated interstate pipeline, the Commission found that the proposal was in the public interest. The because found that the acquisition permitted shippers to avoid duplicative nominations, scheduling procedures, and pancaked rates of two separate pipelines; relieved the acquired pipeline of the need to comply with the Commission's filing requirements and the Uniform System of Accounts; and allowed Equitrans' existing customers to establish receipt and delivery points on the acquired system.[3] The applicants believe the same will be true with respect to this proposed merger.

INTERVENTIONS AND PROCEDURAL ISSUES

9. Notice of Carnegie's and Equitrans' application was published in the Federal Register on May 31, 2002 (67 Fed. Reg. 38088-89). Timely motions to intervene were filed by Independent Oil & Gas Association of West Virginia (IOGA); The KeySpan Companies, consisting of The Brooklyn Union Gas Company d/b/a Keyspan Energy Delivery New York, KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island, Boston Gas Company, North Natural Gas, Inc. and Essex Gas Company (filing jointly as KeySpan NE); Columbia Gas of Pennsylvania, Inc.; Equitable Gas Company (Equitable Gas); Pennsylvania Office of Consumer Advocate; Peoples Natural Gas Company d/b/a Dominion Peoples (Peoples); and PSEG Energy Resources and

[3] See Equitrans, L.P., 91 FERC ¶ 61,041 (2000), reh'g denied, 92 FERC ¶ 61,010 (2000) (Three Rivers) (approving Equitrans' acquisition of Three Rivers Pipeline Company's facilities, except for 26 miles of pipeline that was leased to another pipeline).

Trade LLC (PSEG Energy).[4] In addition to a timely intervention, PSEG Energy filed a protest and a supplemental protest, the substance of which will be discussed below.[5]

10. PECO Energy Company (PECO Energy) filed a motion to intervene out-of-time and a protest. PECO has demonstrated an interest in this proceeding and its late intervention will not delay resolution of the issues in this proceeding or otherwise prejudice other parties. Therefore, for good cause shown, the Commission will grant the motion to intervene out of time. The substance of PECO's protest will also be discussed below. Carnegie and Equitrans filed a motion for leave to answer the protests. The Commission will accept the answer because it provides information that clarifies the issues and aids us in our decision-making.

11. As explained in more detail below, on March 26, 2003, Carnegie and Equitrans offered a settlement to address objections to the merger proposal.[6] Timely comments and reply comments were filed by numerous parties pursuant to Rule 601f(2) of the Commission's rules of practice and procedure.[7] On May 16, 2003, Philadelphia Gas filed an answer to Carnegie's and Equitrans' reply comments, stating that while it recognizes that the Commission's rules do not specifically provide for answers to reply comments, its answer is necessary to address certain misstatements in the reply comments. On May 23, 2003, Carnegie and Equitrans filed a reply to Philadelphia Gas' answer, arguing that

[4]Timely, unopposed motions to intervene are granted by operation of Rule 214 of the Commission's rules of practice and procedure. 18 C.F.R. § 385.214.

[5]PSEG filed its supplemental protest on August 30, 2002 in response to Carnegie's and Equitrans' August 8, 2002 response to a staff data request.

[6]On January 2, 2003 and March 12, 2003, Carnegie and Equitrans filed letters advising the Commission on the status of the ongoing settlement discussions and requesting the Commission to defer action on the application until after the settlement offer was filed.

[7]18 C.F.R. ¶ 385.601 f(2). The following filed timely comments on Carnegie's and Equitrans' offer of settlement: Philadelphia Gas Works (Philadelphia Gas), the KeySpan Companies, Equitable Gas, PSEG Energy, IOGA, PECO Energy, Peoples, Columbia Gas of Pennsylvania, Inc., and the Pennsylvania Office of Consumer Advocate. Timely reply comments were filed by: Carnegie and Equitrans (filing jointly), and Equitable Gas. Equitable Gas supports IOGA's position in its comments and reply comments.

the answer should be rejected as untimely and impermissible, and as an attempt by Philadelphia Gas to further argue its position on the settlement.

12. The Commission's procedural rules relating to settlements do not provide for answers to reply comments. However, the general rule regarding answers, Rule 213, prohibits answers to answers.[8] Reply comments are, in effect, answers. Thus, both Philadelphia Gas' answer and Carnegie's and Equitrans' reply to that answer are impermissible under the Commission's rules. Nevertheless, because these pleadings provide information that clarifies the issues and aids us in our decision-making, the Commission will accept the pleadings. The substance of the comments and reply comments relating to the proposed settlement, as well as the answers, will be discussed to the extent necessary below.

DISCUSSION

13. The subject facilities have been used by Carnegie to provide transportation of natural gas in interstate commerce. Further, Equitrans seeks to acquire the facilities to provide interstate transportation service. Therefore, Carnegie's abandonment proposal and Equitrans' certificate application are subject to Sections 7(b) and 7(c), respectively, of the NGA and the Commission's jurisdiction.

The Protests

14. In their protests, PSEG Energy and PECO Energy object to the possibility that in its next Section 4 rate case, Equitrans will seek rolled-in rate treatment for the costs related to the acquisition and operation of Carnegie's facilities. The protesters assert that a roll-in will result in increased rates for Equitrans' existing shippers.

15. PECO Energy maintains that the Commission's Certificate Policy Statement[9] should be applied in this proceeding to the merger proposal to determine whether Equitrans' existing shippers will subsidize what PECO Energy characterizes as an expansion of Equitrans' system. PECO states that it does not oppose the merger, but believes that if there will be an impermissible subsidy, the Commission should require

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[8]18 C.F.R. § 385.213.

[9]Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61, 227 (1999), Order Clarifying Statement of Policy, 90 FERC¶ 61,128 (2000), Order Further Clarifying Statement of Policy, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

Equitrans to establish rates in its next rate case that (1) will include a surcharge for service through the Carnegie facilities or (2) require Equitrans to absorb the difference between its current rates to its existing customers and any higher rate that would result from rolled-in treatment.

16. PSEG Energy states that its rates should not increase as a result of the merger, since it will not benefit from the merger. In this regard, PSEG Energy maintains that the unquantified benefits of the merger would not outweigh the adverse effect of increased rates for Equitrans' existing shippers. Further, PSEG Energy is concerned that approval for Equitrans to roll in costs associated with Carnegie's facilities would result in all shippers on the merged systems continuing to pay costs that are associated with Carnegie's gathering facilities. PSEG Energy points out that Equitrans agreed in its 1999 rate settlement to fully unbundle its gathering costs; has since received authority to abandon its own gathering facilities; and presumably will remove costs associated with those gathering facilities from its rate base in its next Section 4 rate case. However, as part of the proposed merger, Equitrans will acquire Carnegie's gathering and production facilities. Therefore, PSEG Energy seeks a condition on any approval of the applicants' proposal to ensure that Equitrans' jurisdictional rates following the merger do not include costs associated with Cargnegie's gathering and productions facilities.

17. PSEG Energy also states that Carnegie has liabilities, such as costs related to environmental risks, which Equitrans will assume through the proposed merger. PSEG Energy requests that the Commission ensure through an appropriate condition that the costs of Carnegie's liabilities and/or other obligations are not passed through to Equitrans' existing shippers.

18. In answer to the protests, Carnegie and Equitrans maintain that since this proceeding concerns only the effectuation of their merger and does not involve a proposal to change any rate, this is not the proper forum to consider the effect on Equitrans' existing shippers of rolling in the costs associated with the Carnegie facilities. The applicants point out that Equitrans is required by its 1999 rate settlement to file a general Section 4 rate case proposing rates to be effective August 1, 2003, and that it is in that proceeding that just and reasonable rates will be determined for all of Equitrans' services.

The Settlement Offer

19. On March 25, 2003, Equitrans and Carnegie filed an offer of settlement pursuant to Rule 602 of the Commission's rules of practice and procedure.[10] Briefly the settlement provides:

(A) No party will seek rehearing or reconsideration of any Commission order approving the merger application;

(B) All parties' rights to oppose a proposed roll-in cost treatment for the Carnegie facilities in Equitrans' next Section 4 rate case will be reserved;

(C) Within thirty days after the Commission approves the settlement agreement, Equitrans and its affiliate, Equitable Field Services, LLC, will file with the Commission an application for a determination of non-jurisdictional gathering status for all gathering facilities acquired from Carnegie, whether or not they presently are classified as such, and Equitrans will apply for authority to abandon the gathering facilities by transferring them to its affiliate; further, no party to the instant proceeding will oppose the application for abandonment and if Equitrans files a general rate case before it has authority to abandon the gathering facilities, it will establish a separate gathering rate designed to recover all costs associated with the gathering facilities and gathering services;

(D) Equitrans will waive its right to file a general Section 4 rate case so that Equitrans' and Carnegies' existing rates will remain in effect until March 31, 2005;

(E) In light of the provisions of Paragraph (D) above, the 1999 settlement requirement that Equitrans file a general Section 4 rate case to place new rates into effect on August 1, 2003, shall be deemed satisfied and of no further force and effect.[11]

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[10] 18 C.F.R. ¶ 385.602.

[11] The NGA Section 4 rate filing requirement is contained in Article IX, Sections 5 and 7 of the Joint Stipulation and Agreement, as amended, approved in Docket Nos.

(continued...)

(F) If Equitrans seeks rolled-in rate treatment in a general Section 4 rate case for the costs associated with any of Carnegie's assets or liabilities, Equitrans will have the burden of demonstrating that the rolled-in treatment will not increase the rates for service or fuel for any of Equitrans' pre-merger customers and any party may take any position it chooses on any proposed roll-in;

G) If Equitrans chooses not to file a general Section 4 rate case at the end of the rate moratorium period provided by the proposed settlement, the parties agree that Equitrans may file a single-issue rate filing under Section 4 of the NGA in order to recover accrued Post Retirement Benefits Other Than Pensions (PBOP) through a surcharge and the parties to the instant proceeding will reserve their right to challenge the cost accounting methodology proposed by Equitrans;[12] and

H) if the Commission approves the settlement proposed here without modification, Equitrans' previous rate settlement would terminate and be of no further force and effect.

Comments on the Settlement Offer

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[11](...continued)
RP97-346-018, et al., on April 29, 1997. See 87 FERC ¶ 61,116 (1999).

[12]Equitrans explains that its 1999 rate settlement provided for a funding allowance for PBOP and also allowed Equitrans to record as a regulatory asset the difference between the actual PBOP, which has been increasing each year, and the funding allowance until Equitrans files to recover such costs in its next general Section 4 rate case. The single-issue rate filing provision of the settlement was proposed in this proceeding in response to shippers' concerns that there would be a future rate shock if the PBOP keeps accruing over time and Equitrans does not file a general Section 4 rate case at the end of the moratorium period proposed in the settlement in this proceeding.

20. Five comments, including ones by the protesters in this proceeding, were filed in support of the settlement without reservation.[13] Other parties offered qualified support for the settlement, but objected to specific provisions related to the treatment o gathering facilities and recovery of PBOP.[14]

21. IOGA opposes the settlement on the grounds that deferring the rate case which Equitrans is required to file under the 1999 rate settlement will cause IOGA to lose the benefits it bargained for under the previous settlement. IOGA asserts that this is especially true because the proposed settlement in this proceeding does not require Equitrans to ever file a general Section 4 rate case. IOGA emphasizes that in the rate proceeding leading to the 1999 settlement, IOGA agreed to accept significant increases in Equitrans' gathering rates in exchange for rate certainty for an extended period, i.e., from April 29, 1999 (when the previous settlement was approved) until August 1, 2003 (the date by which Equitrans' new rates are supposed to go into effect. Since the Commission approved the 1999 settlement, IOGA contends that the Commission must enforce its provisions, absent special circumstances, which are not present here.[15] IOGA argues that a settlement (or a contract) can be abrogated only if all signatory parties agree or the Commission finds pursuant to Section 5 of the NGA that the settlement has become inconsistent with the public interest.[16]

22. IOGA asserts that Equitrans' current rates are not just and reasonable. To support this contention, IOGA submits an analysis to support its contention that Equitrans has been over recovering its previous settlement cost of service. This fact, IOGA asserts, is why the general Section 4 rate case required by the 1999 settlement should not be put off any longer. IOGA also explains the general rate case is needed not only to address

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[13]The commenters include: Columbia Gas of Pennsylvania, Inc.; Equitable Gas; the KeySpan Companies; PECO Energy; and PSEG Energy.

[14]Commenters who objected to specific provisions of the settlement include, the Pennsylvania Office of Consumer Advocate, Peoples, and Philadelphia Gas.

[15]Citing Williston Basin Interstate Pipeline v. FERC 874 F.2d 834 (D.C. Cir. 1989).

[16]Citing United Gas Pipeline Co. V. Mobile Gas Services Corp., 350 U.S. 332 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348, 355 (1956); El Paso Natural Gas Co., 95 FERC ¶ 61,238 at 61,653 (1990); Panhandle Eastern Pipe Line Co., 49 FERC ¶ 61,372 at 62,352 (1989); and Iroquois Gas Transmission System, L.P., 70 61,181 at 61,598 (1995).

Equitrans' acquisition of Carnegie's facilities, but also because the costs and volumes associated with Equitrans' acquisition of Three Rivers' facilities have not yet been rolled in, and that roll in may result in rate reductions.

23. Finally, IOGA notes that the proposed settlement in this proceeding is unnecessary because parties' concerns can be addressed in the general Section 4 rate case that the 1999 settlement requires Equitrans to initiate by filing revised rates to be effective by August 1, 2003. IOGA argues that the Commission can use this imminent new rate case – rather than this proceeding – to determine the impact of rolling in costs associated with Carnegie's facilities and whether doing so would be consistent with the Commission's current roll-in policy. For all of these reasons, IOGA requests that the Commission hold Equitrans to the terms of the 1999 rate settlement and require that it file a general Section 4 rate case now.

24. Carnegie and Equitrans respond that IOGA's members no longer have the same interest they had in the proceeding resulting in the 1999 rate settlement. Therefore, Carnegie and Equitrans assert that IOGA has no interest at this time in having the terms of that earlier settlement enforced. Specifically, Carnegie and Equitrans explain that IOGA's interest in the earlier settlement was in the gathering rates that Equitrans would charge. While Equitrans has since spun down its gathering facilities and no longer provides gathering service, the 1999 rate settlement provided Equitrans' gathering customers, including some members of IOGA, with rate certainty under default contracts with Equitrans' affiliated gathering company, Equitable Fields Services. Carnegie and Equitrans state that the fact that some of IOGA's members may use interruptible transportation on Equitrans' current facilities or the facilities to be acquired from Carnegie is too minimal an interest to cause the Commission to reject the current offer of settlement. Carnegie and Equitrans emphasize that Equitrans' firm transportation and storage customers are responsible for 98 percent of Equitrans' revenues and IOGA's members are not part of this group.

25. Carnegie and Equitrans state that during discussions and correspondence relating to the proposed settlement, IOGA focused exclusively on Equitable Field Services' provision of gathering services and the eventual transfer of Carnegie's gathering facilities to Equitable Field Services after Equitrans acquires the facilities through the merger. Therefore, it is Carnegie's and Equitrans' view that IOGA is trying to use its objections to the proposed settlement to gain concessions in gathering rates charged by Equitable Field Services.

26. Carnegie and Equitrans assert that the Commission should reject IOGA's attempt to establish a genuine issue of material fact – *i.e.*, that Equitrans is currently over-

recovering its cost of service – since the cost and revenue study submitted by IOGA contains substantial errors. The applicants submit an analysis purporting to show that that Equitrans is actually significantly under recovering its costs. If the Commission cannot approve the settlement over IOGA's objections, Carnegie and Equitrans request that IOGA be severed so that the settlement may be approved as uncontested.

Commission Response to the Settlement Offer

27. The Supreme Court has held that where a settlement is contested, the Commission must make an "independent finding supported by 'substantial evidence on the record as a whole' that the proposal will establish 'just and reasonable' rates."[17] Consistent with this requirement, Rule 602(h)(1)(I) of the Commission's regulations provides that the Commission may decide the merits of a contested settlement only if "the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact."[18] In Trailblazer Pipeline Company (Trailblazer) [19] the Commission outlined four approaches to approving a contested settlement:

> Approach No.1, where the Commission renders a binding merits decision on each of the contested issues; Approach No. 2, where approval of the contested settlement is based on a finding that the overall settlement as a package provides a just and reasonable result; Approach No. 3, where the Commission determines whether the benefits of the settlement outbalance the nature of the objections, in light of the limited interest of the contesting party in the outcome of the case; and Approach No. 4, where the Commission approves the settlement as uncontested for the consenting parties, and severs the contesting parties to litigate the issues."[20]

28. The Commission finds that it cannot approve the proposed settlement as just and reasonable in view of IOGA's objections. Carnegie and Equitrans argue that the Commission can approve the settlement under Approach No. 2, as outlined in

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[17] Mobil Oil Corp. V. FERC, 417 U.S. 283, 314 (1974).

[18] 18 C.F.R.§ 385.602.

[19] Trailblazer, 85 FERC ¶ 61,345 (1998), order on reh'g, 87 FERC ¶ 61,110 (1999).

[20] 87 FERC ¶ 61,110 at 61,439.

Trailblazer. However, in Trailblazer the Commissioner explained that in order to find that approval of a settlement is just and reasonable under Approach No. 2, the Commission must find that the contesting party will be in no worse position under the terms of the settlement than if the case is litigated.[21] There is no basis for making such a finding with respect to the IOGA, the contesting party in this case. Equitrans and Carnegie argue that IOGA's members would not be harmed by the settlement since it ensures that their rates will not increase. IOGA contends, however, that there have been changes on Equitrans' system which could result in rate decreases, if Equitrans is required to initiate a a general Section 4 rate case now, as required by the 1999 settlement. As discussed above, IOGA has pointed out that Equitrans' acquisition of Three Rivers' facilities may have resulted in significant additional load on Equitrans' system and the merger with Carnegie will have significant effects on Equitrans' rate base and cost of service. Further, we note that the costs associated with Equitrans' spundown gathering facilities have not yet been removed from its rates . In view of these considerations, IOGA's members may be better off if Equitrans files a general Section 4 rate case with rates to be effective August 1, 2003, as required by the 1999 rate settlement.

29. Nor can the Commission approve the settlement, as requested by the applicants, using Approach No. 3 set forth in Trailblazer. IOGA's interest is not minimal. As we explained in Equitrans' rate proceeding leading to the 1999 rate settlement:

> IOGA is a significant participant in this proceeding whose interests are not so insubstantial that they can be overlooked. Equitrans itself concedes that some of IOGA's members ship under Equitrans's gathering rates. The Commission also permits trade associations to participate in proceedings to ensure that pipeline rates do not adversely affect their membership and are just and reasonable. In this proceeding, IOGA, as a trade association, represents producers whose gas is shipped on Equitrans's system and who, therefore, have substantial interest in Equitrans's rates. Even parties representing non-shippers affected by a pipeline's rates have the right to file comments attacking a settlement and have those comments considered on the merits.[22]

30. Carnegie and Equitrans contend that IOGA no longer has the interest it had in the previous rate proceeding because its members, independent producers, no longer receive

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[21] Id.

[22] Equitrans, 85 FERC ¶ 61,395 at 62,527 (1998).

gathering service from Equitrans. However, as stated above, the Commission recognizes that parties who are not shippers on a pipeline may have an interest in the pipeline's rate proceeding. Here, even if the IOGA members are not themselves shippers on Equitrans' or Carnegie's system, these producers have reserves located in a geographic region where they can access Equitrans' or Carnegie's facilities as a path to market. Whether the shipper is the producer or a marketer, local distribution company or end user, the price that the shipper pays to ship gas on a firm or interruptible basis on the pipeline's system has a direct effect on the netback to the producer. In Trailblazer, the Commission held that this is a sufficient interest to prevent the application of Approach No. 3 to approve a settlement over the producers' objections.[23]

31. Carnegie and Equitrans suggest, in the alternative, that the Commission sever IOGA from the settlement and permit IOGA to litigate its issues separately. However, IOGA's objection goes to the heart of the settlement: it wants Equitrans to file a general Section 4 rate case for rates to be effective August 1, 2003, consistent with the 1999 settlement. Aside of concerns related to IOGA's losing the benefit of its bargain, if IOGA were severed from the settlement, a rate proceeding would be necessary to establish just and reasonable rates for IOGA's members. Since such a proceeding would be expensive and time-consuming for both the pipeline and IOGA, it is not at all clear that any savings could be realized by delaying Equitrans' general Section 4 rate case, as the proposed settlement attempts to do.[24] Further, while it appears that none of the producers represented by IOGA currently have contracts for firm or interruptible transportation on Equitrans' system, they have an interest in the rates that shippers who purchase their gas pay for transportation service since, as discussed above, those rates affect the producers' netback. Therefore, IOGA producer members' concerns would not be met by severing IOGA and having their rates addressed in a proceeding limited to their rates.

32. The Commission also is concerned that the settlement would by its terms declare a previously approved settlement of no force and effect, despite the objection of a party to the earlier settlement. The Commission will not disturb a settlement it has approved over the objections of parties to the settlement unless special circumstances exist which dictate

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[23]Trailblazer, 87 FERC at 61,442.

[24]See Enbridge Pipelines L.L.C. (UTOS), 101 FERC ¶ 61,342 at 62,421 (2002) (finding that severing the objecting parties would still require UTOS to litigate its case, which is costly, and if it must do so, all of its customers should participate).

that the public interest will be served by abrogating the settlement.[25] Such special circumstances have not been shown by Carnegie and Equitrans. Contrary to Carnegie's and Equitrans' assertion, the Commission does not agree that rejection of this new settlement will undermine its policy favoring settlements. Rather, rejection of this settlement will provide parties assurance that when they bargain to reach a settlement it will not be superceded by a later settlement, notwithstanding their opposition and the absence of exceptional circumstances justifying abrogation of the original settlement.

Commission Response to the Protests

33. PSEG Energy and PECO Energy contend in their protests that the Commission should apply its Certificate Policy Statement on new pipeline facilities to the merger proposal in this proceeding to determine whether the costs associated with acquiring Carnegie's system should be rolled into Equitrans' rate base. They are concerned that existing Equitrans' shippers might experience a rate increase if a roll-in occurs.

34. Because the Commission is rejecting the settlement, Equitrans will be required to file a general Section 4 rate case in accordance with the terms of its 1999 rate settlement. Under the circumstances, we think that rate case is the better vehicle to address the complicated rate issues likely to result from the merger of the two pipeline systems. This is especially so in light of the general lack of evidence necessary to make such a determination in this proceeding. If Equitrans proposes to roll the costs associated with Carnegie acquisition into rate base so that Equitrans' rates for its existing customers would increase, parties may present their arguments why the benefits of the merger do not justify such rate increases. Since the Commission can consider in the rate case whether Equitrans' proposed rates are just and reasonable, the protests by PSEG Energy and PECO Energy will be denied.

Public Interest

35. The Commission finds that it is in the public interest to grant Equitable's and Carnegie's respective certificate and abandonment requests to effectuate their merger. The Commission finds that such approval is in the public interest. Although Carnegie

[25] See Williston Basin Interstate Pipeline v. FERC, 874 F.2d 834, 837 (D.C. Cir. 1989) (absent special circumstances, the Commission is bound by settlement agreements that it has approved); and El Paso Natural Gas Co., 95 FERC. ¶ 61,238 at 61,653 (1990) (absent convincing evidence, unless all parties agree to a proposed change in a settlement, the Commission will reject the proposal).

and Equitrans have not attempted to quantify specifically the benefits of the merger, the Commission agrees that the merger will result in administrative and regulatory cost savings. As the applicants' point out, consolidating the duplicative administrative functions of each pipeline by itself will reduce costs. Since Carnegie will no longer be required to make filings to meet state and federal reporting requirements, the merged entity will have to make fewer filings of this sort. Only one electronic bulletin board will be required, and fewer applications would need to be filed with regulatory agencies.

36. Additionally, Carnegie and Equitrans cite to operational benefits that will result from the merger of their systems. They note that two interconnections between the two systems already exist. The interconnections between the systems may relieve bottlenecks, and merging the two systems will provide efficiencies that will improve service and reliability. Further, shippers will not have to engage in duplicative nominations and scheduling procedures or pay rates to two pipelines.

CONCLUSION

37. For the reasons discussed in this order, the Commission finds that acceptance of the applicants' proposed offer of settlement is not in the public interest. However, the Commission finds that approval of the applicants' proposals to effectuate their proposed merger, including the proposal to use the rates Carnegie currently charges as initial rates for service over the former Carnegie facilities, is required by the present and future public convenience and necessity. Therefore, the Commission will issue Equitrans certificate authority to acquire Carnegie's facilities and grant Carnegie authority to abandon its facilities by sale to Equitrans. Because the Carnegie's facilities will be abandoned in place and no construction is being approved or required for the merger to occur, an environmental review of this proposal is not required.[26] Additionally, there are no accounting issues.

38. At a hearing held on June 25, 2003, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein; and upon consideration of the record,

The Commission orders:

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[26] See Section 380.4(a)(27) and (31) of the Commission's regulations, 18 C.F.R § 380.4(a)(27 and (31).

(A) Equitrans is issued a certificate of public convenience and necessity pursuant to NGA Section 7(c) to acquire Carnegie's facilities, as described herein and in the application.

(B) Carnegie is granted authority pursuant to NGA Section 7(b) to abandon its services and facilities by sale to Equitrans, as described herein and in the application.

(C) Equitrans' certificate authorization granted by Ordering Paragraph (A) is conditioned upon Equitrans' compliance with the Natural Gas Act and all relevant provisions of the Commission's regulations, particularly Part 154 and paragraphs (a), (c), (e) and (f) of Section 157.20 of the Commission's regulations.

(D) Equitrans' acquisition of Carnegie's facilities shall be completed within 12 months from the date of this order in accordance with Section 157.20(b) of the Commission's regulation

(E) Carnegie shall notify the Commission within 10 days of its abandonment and facilities and services as authorized by Ordering Paragraph (B) and file tariff sheets cancelling its FERC Gas Tariff consistent with the requirements of Part 154 of the Commission's regulations.

(F) Equitrans' proposal for initial Part 284 rates for service over Carnegie's facilities after the merger is approved and Equitrans shall make a Section 4 filing to place into effect its pro forma rate schedules and conforming tariff changes and provisions to reflect its merger with Carnegie, as described herein and in the application, not more than 60 days and not less than 30 days before it begins operation of Carnegie's facilities.

(G) The applicants' offer of settlement filed on March 25, 2003, is rejected.

(H) Equitrans shall follow the requirements of Gas Plant Instruction No. 5 and the text of Account 102, Gas Plant Purchased or Sold, of the Uniform System of Accounts.

(I) PECO Energy's late motion to intervene is granted.

(J) The protests by PSEG Energy and PECO Energy are denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.