

109 FERC ¶ 61,110  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 29, 2004

In Reply Refer To:  
Kern River Gas Transmission Company  
Docket Nos. RP00-157-014 and  
RP00-157-015

Kern River Gas Transmission Company  
P. O. Box 71400  
Salt Lake City, Utah 84171-0400

Attention: Billie L. Tolman  
Manager, Tariffs and Certificates

Reference: Item No. 1: Eighth Revised Sheet No. 495 to FERC Gas Tariff, Second Revised Volume No. 1  
Item No. 2: Ninth Revised Sheet No. 495 to FERC Gas Tariff, Second Revised Volume No. 1

Ladies and Gentlemen:

1. On October 1, 2004, Kern River Gas Transmission Company (Kern River) filed the tariff sheet, referenced above in Item No. 1, to update its tariff to reflect the redetermined Incremental Facility Charge (IFC) applicable to the negotiated rate transportation service agreement dated June 5, 2003, between it and High Desert Power Trust (HDPT). Specifically, Kern River proposes to lower the IFC from \$391,432 to \$334,411. Kern River requests an effective date of November 1, 2004.
2. Subsequently, on October 5, 2004, Kern River filed the tariff sheet, referenced above in Item No. 2, to replace the sheet filed on October 1, 2004. Kern River states that the tariff sheet that was submitted on October 1, 2004, was based on a superseded version of Sheet No. 495 that contains two negotiated rate agreements that were deleted in a previous filing. Kern River states that the changes applicable to the High Desert negotiated rate were reflected correctly on the improperly paginated sheet.
3. Section 2.3 of Exhibit B of Kern River's negotiated rate transportation service agreement provides that the IFC component of the monthly reservation charge payable by HDPT will be recalculated coincident with the effectiveness of new rates implemented pursuant to a general rate case filed by Kern River or coincident with any other changes

to Kern River's system-wide rates. On April 30, 2004, Kern River filed a general rate case in Docket No. RP04-274-000. On May 28, 2004, the Commission issued a suspension order conditionally accepting and suspending the proposed tariff sheets for five months, so that Kern River's proposed 2004 rates will be effective November 1, 2004.<sup>1</sup> As discussed below, the tariff sheet referenced in Item No. 2 is accepted and suspended, to be effective November 1, 2004, subject to refund and subject to the outcome of the underlying rate case in Docket No. RP04-274. The tariff sheet referenced in Item No. 1 is rejected as moot.

4. The filings were noticed on October 7, 2004 and October 12, 2004, respectively, with comments due on or before October 19, 2004 and October 25, 2004, respectively. On October 13, 2004, HDPT filed a protest.

5. HDPT argues that the reduced IFC should be made effective June 1, 2004, instead of November 1, 2004 as proposed by Kern River because that is the date the Commission made effective the system-wide rate increase in Docket No. RP04-274.<sup>2</sup> HDPT asserts that the negotiated rate transportation service agreement requires only that the effective date of the revised IFC be determined at the time that the Commission determines the effective date of any change in system-wide rates. HDPT contends that nothing in the contract requires that the Commission must put the IFC in effect on the same date as the system-wide rate.

6. We note that the effective date issue, among other issues, was raised by HDPT and rejected by the Commission in its rehearing request of the suspension order.<sup>3</sup> In the order on rehearing,<sup>4</sup> the Commission stated that its interpretation of the HDPT contract led it to

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<sup>1</sup>*Kern River Gas Transmission Co.*, 107 FERC ¶ 61,215 (2004).

<sup>2</sup>We note that the June 1, 2004 date is the effective date initially proposed by Kern River in Docket No. RP04-274-000.

<sup>3</sup>See Request for Rehearing of High Desert Power Trust, Docket No. RP04-274-000, at 6.

<sup>4</sup>*Kern River Gas Transmission Co.*, 109 FERC ¶ 61,060 (2004).

the conclusion that HDPT's IFC is to be redetermined at the same time as all other Kern River rates in the pending rate proceeding in Docket No. RP04-274. None of Kern River's rates were effectively changed on June 1, 2004, so there was no obligation on Kern River to change the IFC on that day.<sup>5</sup> Since the Commission has already denied HDPT's request for rehearing on the effective date issue, we will deny the same request here.

By direction of the Commission.

Linda Mitry  
Acting Secretary

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<sup>5</sup> *Id.*, 109 FERC ¶ 61,060 at P 19.