122 FERC ¶ 61,278
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 25, 2008

In Reply Refer To:
Kern River Gas Transmission Company
Docket Nos. RP08-209-000
RP08-209-001

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

Attention: Billie L. Tolman
Manager, Regulatory Affairs

Reference: Letter Order Granting Waiver of Posting and Bidding Requirements

Dear Ms. Tolman:

1. On February 25, 2008, as amended on February 29, 2008,[1] Kern River Gas Transmission Company (Kern River) filed a request for waiver of the bidding requirements of the Commission's regulations and the capacity release provisions set forth in section 15 of the General Terms and Conditions of Kern River's FERC Gas Tariff. Kern River seeks to permanently release firm capacity at a discounted rate from San Diego Gas & Electric Company (SDG&E) to its corporate affiliate, Southern California Gas Company (SoCal Gas), without posting such capacity for competitive bid. Kern River states that it is submitting the filing as a result of a December 6, 2007, California Public Utility Commission (CPUC) directive. Kern River requests that the permanent release of capacity from SDG&E to SoCal Gas be effective March 26, 2008. The Commission will grant the request for waiver as discussed below.

[1] On February 29, 2008, Kern River filed an amendment in Docket No. RP08-209-001, to correct rate information Kern River erroneously conveyed in its February 25, 2008 filing.

2. Kern River states that on November 1, 2005, SDG&E acquired 7,245 dth/day of capacity, which it uses to serve its core customers, through a prearranged release at a discounted rate of $.37 per dth under Rate Schedule KRF-1 for a 15-year term. SDG&E's current rate is thus less than the maximum 15-year recourse rate.

3. On December 6, 2007, the CPUC issued a decision in D.07-12-019 requiring that, among other things, SDG&E and SoCal Gas consolidate their gas portfolios used to serve their core customers, effective April 1, 2008. Accordingly, SoCal Gas will take over the responsibilities for purchasing and shipping gas for both its and SDG&E's core requirements, while SDG&E will exit those aspects of its business.

4. Specifically, Kern River seeks waiver of section 284.8(e) of the Commission's regulations[2] in order to permit SDG&E to permanently release its firm capacity to SoCal Gas, SDG&E's affiliate, without posting such capacity for competitive bid. Section 284.8(e) provides that a pipeline releasing firm capacity must allocate such released capacity to the person offering the highest rate under the maximum rate and offering to meet any other terms and conditions of the release.

5. Kern River states that the sole purpose for the permanent release is to transfer capacity from one shipper that originally acquired the capacity to serve its core market to a replacement shipper that will serve the same core market. Kern River notes that the capacity transfer request is pursuant to a CPUC directive. Further, Kern River argues that posting the capacity for competitive bid may result in SoCal Gas paying a higher rate than SDG&E currently pays to serve the same core customers. Finally, Kern River contends that granting waiver will permit SDG&E and SoCal Gas to effectuate the CPUC's directive in an orderly manner as intended, and it will protect the affected consumers from potentially higher gas costs.

6. Notices of Kern River's filings in Docket No. RP08-209-000 and Docket No. RP08-209-001 were issued on February 27, 2008 and March 3, 2008, respectively with protests due as provided by section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2007). Interventions and protests were due as provided by section 154.210 of the Commission's regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

[2] 18 C.F.R. § 284.8(e) (2007).

7. On March 4, 2008, SDG&E and SoCal Gas (collectively, Parties) submitted comments supporting Kern River's request. The Parties state that granting waiver would permit them to comply with the CPUC's core portfolio consolidation directive. The Parties contend that the Commission granted such a waiver under similar circumstances in *Northern Natural Gas Company*.[3] According to the parties, in *Northern*, the Commission permitted the capacity to be transferred without posting for bidding because the same customers would be served by both the releasing shipper and the replacement shipper. The Parties argue that same principle is applicable here and that if the capacity were posted for bidding and the price were bid up, the affected consumers would consequently be required to pay higher rates for the same capacity merely because the CPUC directed the Parties to consolidate their core gas portfolios.[4]

8. The Commission has approved waiver of its bidding requirements in the past. In *Atlanta Gas Light Company*,[5] the Commission granted a limited waiver of its bidding requirements for capacity being transferred at less than the pipeline's maximum rate pursuant to a state regulatory agency's ruling.[6] The Commission found that allowing wavier of the bidding requirements would avoid impeding the state's retail choice directive.

9. As discussed above, Commission policy on capacity assignments, as reflected in 18 C.F.R. § 284.8 (2007), generally requires that release of discounted rate capacity be subject to posting and bidding procedures to ensure that it be assigned to the shipper who values it most. However, in this case the public interest would be served by allowing the consolidation of gas portfolios as the CPUC directed, without adversely affecting current SDG&E customers. Absent a waiver, bidding on the capacity may cause core customers to suffer price increases solely as a result of the state-directed realignment of the gas portfolio responsibility between the Parties. Granting waiver of the required bidding procedures in this situation is reasonable, and will allow the Parties to comply with the CPUC directive without imposing a price increase on their core customers. Kern River is voluntarily forgoing an opportunity to sell the SDG&E capacity at a rate higher than the

[3] 117 FERC ¶ 61,354 (2006) *(Northern)*.

[4] The Parties' reliance on *Northern* is misplaced. While the capacity assigned in *Northern* involved an intra-corporate transfer, it was at a negotiated rate above the maximum tariff rate. The waiver allowed the capacity to be permanently assigned to the affiliate without any loss in revenue to Northern Natural Gas Company.

[5] 84 FERC ¶ 61,119 (1998).

[6] *Id.* at 61,638.

current agreement with SDG&E. For good cause shown, and consistent with prior Commission action,[7] we therefore grant Kern River's waiver request, effective March 26, 2008.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

[7] *Id.*